

Decision No. W 015 /2008

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of appeals under s120 of the Act

BETWEEN **INTERCONTINENTAL HOTEL**

(ENV-2006-WLG-000536)

AND

PRIME COMMERCIAL LIMITED and
MIRO PROPERTY HOLDINGS
LIMITED

(ENV-2006-WLG-000537)

AND

WELLINGTON CIVIC TRUST and
WATERFRONT WATCH INCORPORATED

(ENV-2006-WLG-000539)

AND

WELLINGTON REGIONAL COUNCIL

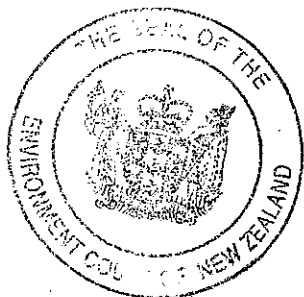
Respondent

AND

WATERFRONT INVESTMENTS LIMITED

(ENV-2006-WLG-000540)

Applicant/ Appellant



BEFORE THE ENVIRONMENT COURT

Environment Judge B P Dwyer
 Commissioner H A McConachy
 Commissioner J R Mills

HEARING at Wellington on 30 July 2007 to 3 August 2007, 6 August 2007 to 10 August 2007
 15 October 2007 – 17 October 2007
 Closing submissions received on 27 November 2007

COUNSEL/APPEARANCES:

Mr C Anastasiou for Intercontinental Hotel, Prime Commercial Limited and Miro Property Limited
 Mr M J Slyfield for Waterfront Watch Incorporated and Wellington Civic Trust
 Ms S Dossor and Ms S Chadwick for Wellington Regional Council
 Mr P B Churchman and Ms J J Troup for Waterfront Investments Limited
 Mr W C McClellan for himself
 Mrs H Ritchie for herself

DECISION***Introduction***

[1] On 19 September 2006, Wellington Regional Council (the Regional Council) granted Waterfront Investments Ltd (Waterfront Investments/the Applicant) various resource consents allowing it to construct, use and maintain a hotel building on a site known as the Outer-T of Queens Wharf, situated in Wellington City.

[2] The particular consents granted were;

- Coastal permit WGN 060184 [24998] for the use and development of structures including a hotel building, decks, a vehicular access tunnel, demolition of an existing structure and refurbishment of the existing wharf structure associated with the proposal;
- Coastal permit WGN 060184 [24999] to disturb the foreshore and seabed associated with the re-piling of the existing wharf structure;



- Coastal permit WGN 060184 [25000] to discharge contaminants to the coastal marine area in connection with demolition and construction activities.

[3] A number of appeals emerged from the Regional Council decision;

- The Intercontinental Hotel, Wellington (the Intercontinental) appealed against all of the various grants of consent;
- Prime Commercial Ltd (Prime Commercial) and Miro Property Holdings Ltd (Miro Property) jointly appealed against all of the various grants of consent;
- Wellington Civic Trust (the Trust) and Waterfront Watch Inc (Waterfront Watch) jointly appealed against consents 24998 and 24999;
- Waterfront Investments appealed against two of the conditions of consent imposed by the Regional Council namely Condition No 24 limiting the number of service vehicles per day which might access the proposed hotel via what is known as the Shed 6 route and Condition No 29 preventing coaches from being taken to the hotel entrance.

An appeal by Wellington Indoor Sports was withdrawn prior to the hearing.

[4] In addition to the various Appellants identified, two other persons participated in the appeal process pursuant to the provisions of s274 Resource Management Act 1991 (RMA) namely

- Mr W McClellan;
- Mrs H Ritchie

Background

[5] The application site sits towards the middle of the inner Wellington Harbour area which runs from Shed 21 (near the Railway Station) in the north to the Overseas Passenger Terminal in the south. The area is generally bounded by Waterloo Quay, Customhouse Quay, Jervois Quay, Cable Street and Oriental Parade and is known as the Lambton Harbour Area or the Lambton Harbour Development Area. It contains about 20 hectares overall.

[6] Queens Wharf is sited to the east of the junction point of Willis Street, Grey Street, Customhouse Quay and Jervois Quay in the centre of Wellington City. It is the oldest wharf in central Wellington. The wharf was originally constructed in 1863. At that time it had two



T's which were lateral additions extending out on either side from the main stem of the wharf. In 1865 a third and outermost T was added.

[7] The main stem of the wharf runs in an approximately east/west direction and the three T's ran in an approximately north/south direction.

[8] Much of the inner portions of Queens Wharf and its two original T's have been modified by or incorporated within development which has occurred in this vicinity so that today all that obviously remains of Queens Wharf as a wharf is the outermost portion of the wharf stem and the Outer-T.

[9] The northern end of the Outer-T is presently occupied by a somewhat utilitarian wharf-shed building called Shed 1. Shed 1 occupies an area 92 metres by 22 metres and is about 12 metres high above the wharf deck. There is presently open space 9-10 metres wide between Shed 1 and the edge of the wharf which allows public access around the wharf. The proposed hotel will generally occupy the same footprint as Shed 1 but with some protrusions beyond that footprint.

[10] Although the site is situated in central Wellington it lies outside the jurisdiction of the Wellington City Council (the City Council) as it is wholly located on the seaward side of mean high water springs and is accordingly within the region controlled by the Regional Council.

Existing Environment

[11] The Outer-T of Queens Wharf is the furthest seaward extension of the wharf system in the central Wellington area. This particular aspect undoubtedly contributes to the overall significance of the Outer-T in relation to the rest of the harbour and the central city itself. Another significant aspect is use of the Outer-T by a wide range of vessels for berthage.

[12] Shed 1 which is situated on the Outer T contains a large indoor sports facility, the East by West Ferry offices and the Helipro helicopter depot and offices. The southern end of the Outer-T is used for helicopter takeoffs, landings and related operational activities. There is a large crane and a small shed on the southern end of the T.



[13] The building closest to Shed 1 is Shed 3 which is situated on the stem of Queens Wharf. This is a two-storey wooden building orientated in an east/west direction which is considerably smaller than Shed 1. It is presently occupied by a restaurant and bar known as Dockside.

[14] To the west of Dockside is Shed 5 which is also occupied by a restaurant/bar operation. This is a somewhat larger building than Dockside and is orientated in a north/south direction running parallel with Shed 1.

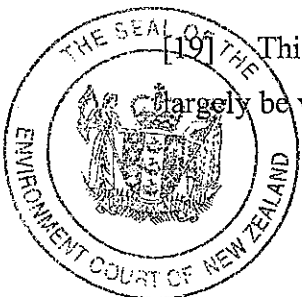
[15] Shed 1, Dockside and Shed 5 form a U-shaped cluster of buildings based on the wharf structures with the body of the U occupied by the sea. This small sea basin provides berthage facilities for ferries, yachts and other craft. Dockside and Shed 5 are identified in the Regional Coastal Plan as buildings of historic merit, both being constructed in the 1800s.

[16] To the south side of the stem of Queens Wharf and south of Shed 5 is another shed, Shed 6 which appears to be of similar utilitarian construction to Shed 1. Shed 6 is partially occupied by a kayak hire business and offices as well as some indoor recreational facilities.

[17] The southern end of the Outer-T, the stem of Queens Wharf and the wharf structure upon which Shed 6 is erected also form a U which creates a small marine basin with berthage for boats as well as facilities for the launching of canoes. This basin mirrors that formed on the northern side of the wharf by Shed 1, Dockside and Shed 5. A large crane straddles the gap between Shed 6 and the wharf edge and there is presently a container hoist based at the stem of the wharf near its junction with the southern end of the Outer-T.

[18] Immediately to the west of Sheds 5 and 6 are two large buildings known as the Queens Wharf or Retail Centre and the Events Centre. These buildings were described in unflattering terms by a number of witnesses. To the west of these buildings again and fronting onto Jervois Quay are the former Wellington Harbour Board Offices (now Queens Wharf Apartments) and the former Bond Store (now the Maritime Museum) both of which are identified as heritage buildings in the Wellington City District Plan (the District Plan).

[19] This enclave of buildings provides the context within which the proposed hotel will largely be viewed and makes up just one part of the Wellington waterfront. The District Plan



notes that the waterfront contains a series of distinct character areas. The enclave which we have just described is identified as the Queens Wharf Area in the District Plan.

[20] Immediately to the north of the Queens Wharf Area is another character area identified in the District Plan as North Queens Wharf. The buildings in this area closest to those we have described are a large two storied wooden building occupied by the Loaded Hog Bar and Restaurant and a recently constructed four or five storey building occupied by Meridian Energy. The Loaded Hog sits next to Shed 5 and the Meridian building to the north of that again.

[21] An important feature of the waterfront is the promenade or walking area which extends along the water's edge for nearly the full length of the waterfront. Near the Outer T the promenade proceeds south along the front of the Meridian building, in front of the Loaded Hog building, along the front of Sheds 5 and 6 and then onto Frank Kitts Park and beyond. The stem of Queens Wharf and the Outer-T are on the seaward side of the promenade. It was common ground between all parties that the promenade is a very extensively used and highly valued part of the waterfront. It was similarly common ground that the stem of Queens Wharf and the Outer-T itself are also areas extensively visited, used and valued by Wellingtonians.

The Proposal

[22] The main features of the proposal as shown in the application for resource consent¹ are as follows:

- The construction, maintenance and use of a hotel building with approximately 142 hotel rooms and associated restaurant, bar, function and conference facilities, and ancillary service activities, structures and signage;
- Decks for dining and general use by patrons of the hotel;
- Enhancement of public space in the general vicinity of the hotel;
- Construction, maintenance and use of vehicular access by an underground tunnel from the existing Queens Wharf basement car park to the Outer-T of Queens Wharf;
- Demolition, site works, new piling and refurbishment of the existing wharf structure to facilitate the proposal; and



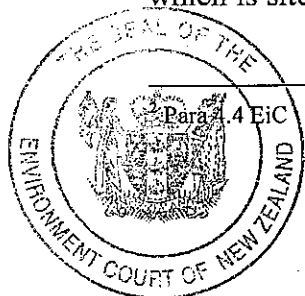
- Vehicular and pedestrian access from Jervois and Customhouse Quays to the hotel, including, in particular the use of the wharf areas in the immediate vicinity of the hotel for vehicle manoeuvring and short-term parking associated with the operation of the hotel.

[23] It is intended that the hotel will be operated by the Hilton Hotel group under the Hilton brand. It is to be designed as a 5-Star Hotel. Extensive plans and photomontages of the intended development were supplied to us as part of the hearing process.

[24] The proposed hotel building is largely contained within the rectangular footprint of Shed 1 although its associated decks and the southern part of the building itself will extend beyond that footprint. The building is to be five stories in height. At its roof line the building is to be 19.4 metres above wharf level. Service areas situated above the main roof line extend the building height to 22 metres above deck level. There are further protrusions and features above the roof line. The most significant of these are two wing walls at the northern end (22 metres above wharf level) and a lightbox (26 metres above wharf level) and mast (33 metres above wharf level) at the southern end.

[25] Mr M R Chaplin of Sumich Architects (the hotel architects) described the architectural features of the building to us. He advised² that the rooms were stacked in a way which suggested containers on a wharf. Each room was to have a sliding aluminium shutter which would have the effect of altering the external appearance of the building. The hotel was to have a cantilevered floating roof. Steel plate cladding was to be used on the ends of the building which would be painted in a rust-brown colour to reflect the boats and cranes in the area. The ground floor of the hotel was primarily to be public space providing outdoor dining, indoor dining, service areas and reception facilities with extensive use of glass to enable views through the building. The ground floor glazing was to be set back from the main support columns which we were told by Mr Chaplin would create a floating effect and give the building a *lightweight elegance*.

[26] A hotly debated aspect of the proposal is the means of vehicle access to the hotel site which is situated on the seaward side of the pedestrian promenade. In order to avoid vehicles



cutting across the promenade to access the hotel, the Applicant proposes an underground vehicle approach by way of a new tunnel from the existing Queens Wharf car park which is situated underneath the Retail Centre and the Events Centre. The tunnel is to go under the promenade and emerge on the stem of the wharf seaward of the promenade. There is an existing disused tunnel on the wharf which proved to be unsatisfactory for a number of reasons.

Ownership and Management

[27] The submissions for the Regional Council set out in some detail matters relating to the ownership and statutory history of the Lambton Harbour Area which assist in understanding the current resource management regime applicable to the site. We did not understand there to be any challenge to these aspects of the Regional Council's submissions and we paraphrase them here as they provide context for our subsequent considerations.

[28] In 1987 land within the Lambton Harbour Area was owned by the Wellington Harbour Board, the City Council and the Crown. In that year Parliament passed the Wellington Harbour Board and Wellington City Council Vesting and Empowering Act 1987 which was enacted to remove constraints on the development of the Area.

[29] Key elements of the legislation were that:

- Queens Wharf and the Outer-T were vested in the Wellington Harbour Board (as was the Overseas Passenger Terminal site).
- The Harbour Board and City Council were empowered to develop and promote the commercial, maritime, residential, educational, cultural, social, recreational and other uses and activities of the area and were given specific powers to erect buildings, structures, etc.
- The Lambton Harbour Development Area was defined.
- The Town and Country Planning Act 1977 was to apply to the area.

[30] The Local Government (Wellington Region) Reorganisation Order 1989 vested all of the land covered by the 1987 Act which was previously owned by the Harbour Board, in the City Council which then became sole owner of the Lambton Harbour Development Area.



[31] The City Council has in turn devolved ownership of the land to Wellington Waterfront Limited (WWL) which is a 100% Council controlled organisation under the Local Government Act 2002. WWL is the City Council's implementation agency for development of the Lambton Harbour Area.

[32] Additionally the City Council established a Waterfront Development Sub-committee including representatives from the community which reports to the Council and has the responsibility for ongoing planning and development of the waterfront. The Development Sub-committee is advised by a Technical Advisory Group (TAG) which is a group of independent professionals providing monitoring and technical advice to the sub-committee.

[33] In summary therefore, WWL holds title to all land contained in the Lambton Harbour Area (including the application site) and administers the area on behalf of the City Council.

[34] Presently, development in the Lambton Harbour Area which straddles the City and Regional boundaries is controlled by the provisions of the Wellington City District Plan (the District Plan) and the Wellington Regional Coastal Plan (the Regional Coastal Plan). Preceding these Plans the two Councils jointly administered the Lambton Harbour Combined Scheme (the Combined Scheme) for the Area which became operative on 15 December 1989 and has now lapsed.

Preliminary Issues

[35] Before we move to consider the merits of the proposal there are a number of preliminary issues which require discussion or determination. Those issues are:

- Status of the application
- The Wellington Waterfront Framework
- Interrelationship of Regional and City Plans
- Existing traffic use
- Additional resource consents

We address those matters separately.

Status of Application

[36] It was common ground between all parties that the document which determines the status of the application is the Regional Coastal Plan. This became operative on 19 June



2000. Pursuant to the Regional Coastal Plan those aspects of the proposal which require resource consent by way of coastal permits are all discretionary activities.

The Wellington Waterfront Framework

[37] In the course of preparation for the appeal hearing the planning witnesses for the various parties prepared an *Agreed Statement*. That statement recorded that the relevant documents for consideration by the Court included the Wellington Waterfront Framework and further³ that the Wellington Waterfront Framework *is the dominant design guide for the Wellington Waterfront within the Lambton Harbour Development Area*.⁴

[38] The document referred to is entitled *The Wellington Waterfront Framework – Report of the Waterfront Leadership Group* dated April 2001. It will be referred to in this decision as the Waterfront Framework.

[39] As indicated by its title, the Waterfront Framework is the report of a City Council appointed Waterfront Leadership Group whose function was to recommend to the City Council *a framework to guide the future development of Wellington's central waterfront area*⁵.

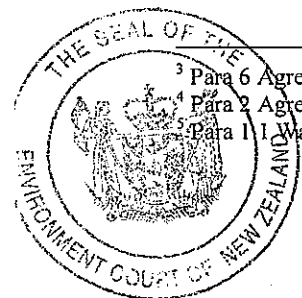
[40] Formation of the Leadership Group was substantially driven by controversy arising over proposed Variation 17 to the District Plan. Variation 17 was a variation notified in October 1999 and intended to facilitate development on the waterfront. It drew about 2,500 submissions of which 94 percent opposed the Variation in one form or another. Variation 17 was withdrawn in April 2000 and the City Council determined to establish a three stage process for developing and implementing a new plan for the waterfront. Stage One was to develop a framework for the waterfront, Stage Two to decide more detailed plans for each area of the waterfront and Stage Three to implement and monitor those plans.

[41] The Waterfront Leadership Group was an independent group established to undertake Stage One. It commenced work in early September 2000 and its report (the Waterfront Framework) was adopted by the City Council in April 2001. The process undertaken by the

³ Para 6 Agreed Statement of Planning Experts

⁴ Para 2 Agreed Statement of Planning Experts

⁵ Para 11 Waterfront Framework



Waterfront Leadership Group in completing its report is described in the document⁶ as is the public involvement in this process.

[42] It is apparent that the Waterfront Framework in its final form is the outcome of a process with considerable public input. The document commences with a message from the then Mayor (Mr Mark Blumsky). It states:

*The City Council's adoption of this framework as its policy for Wellington's waterfront marks a significant milestone in our efforts to develop the waterfront in a way that makes the most of this unique and special part of the city.*⁷

[43] In her submissions for the Regional Council, Ms Dossor submits:

*The current policy and plan for the Lambton Harbour Area is the Wellington Waterfront Framework (April 2001). The framework is not intended as a master plan for the area. It sets out visions, values and principles to guide the development of the waterfront.*⁸

[44] Section 5.2 of the Waterfront Framework contains the Leadership Group's recommendations as to how the Framework should be progressed on a statutory planning basis. It recommends⁹ a two-stage process involving:

- Firstly, incorporation of the substance of the Framework into the District Plan by way of a variation to give *statutory weight* at a policy level to the contents of the Framework. The Framework noted that corresponding changes should also be made in the Regional Coastal Plan.
- Secondly, the undertaking of further design work identifying more detailed plans for waterfront development and the incorporation of that design work into the District Plan by way of further District Plan changes in due course.

The first stage of this two-stage process was undertaken by the City Council through Variation 22 to the District Plan which became operative on 27 July 2004.

[45] Variation 22 made a substantial number of amendments to the District Plan reflecting recommendations contained in the Waterfront Framework. For the purposes of our

immediate discussion, the most significant change was the inclusion of a General Provision 3.2.4.2.4. This Provision is included in Part 3.2.4 of the District Plan which deals with design guide applications.

[46] The District Plan contains (Volume Two) a Design Guide document which identifies the character and features of various parts of the city and seeks to ensure that new development relates to that character in a positive way. The Design Guide seeks to protect and enhance those identified aspects of the various areas of the city which contribute to their (and the city's) overall character. Consideration of a particular proposal against the relevant area Design Guide is frequently one of the assessment criteria to which the City Council is to have regard in determining whether or not to grant consent to or what conditions will be imposed on any particular resource consent application

[47] General Provision 3.2.4.2.4 provides as follows:

3.2.4.2.4 For the Lambton Harbour Area

For building and open space developments within the Lambton Harbour Area each application must provide a design statement that sets out how the design principles of the proposal respond to the values, principles and objectives of the Wellington Waterfront Framework (April 2001). In particular the design statements should identify how the proposal will:

- *Be in character with the waterfront as a whole and maximise the unique value of the waterfront location*
- *Express the heritage and history of the waterfront*
- *Enhance the relationship between open spaces and adjacent buildings, structures and water areas*
- *Support and contribute to the quality of surrounding open spaces*
- *Contribute to the provision of different open spaces and buildings that cater for diverse uses and activities compatible with a waterfront location*
- *Enhance physical access and visual links between the city and the waterfront*

The design statement which will identify how the proposal will contribute towards an overall sense of collective ownership and involvement.

[48] Variation 22 also incorporated the following objective into the District Plan:



12.2.11 To ensure that the development of the Lambton Harbour Area and its connections with the remainder of the City's Central Area, maintains and enhances the unique and special components and elements that make up the waterfront.

A series of policies (12.2.11.1 – 12.2.11.9) then follow. The various policies identify the methods which will be used to give effect to them and frequently included in those methods (inter alia) are:

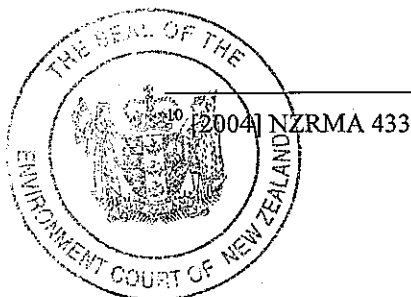
- *Design guides (the Wellington Waterfront Framework), and*
- *Operational activities (the Wellington Waterfront Framework).*

[49] The policies were in turn given effect to by the inclusion of reference to the Waterfront Framework in relevant rules of the District Plan. By way of example, Discretionary Activity Rule 13.4.7 (which relates to the construction of new buildings in the Lambton Harbour Area) and Rule 13.4.8 (which relates to development of new or modification of existing open space in the Lambton Harbour Area) both include amongst their assessment criteria consideration of the principles and objectives of the Wellington Waterfront Framework.

[50] It is apparent from the above that the City Council set out to directly incorporate the provisions of the Waterfront Framework into the District Plan. Regrettably, we consider that it has failed to do so adequately.

[51] Prior to the Resource Management Amendment Act 2005, RMA did not contain specific provision for incorporation of documents by reference into District Plans which Variation 22 purported to do. The only mechanism available at that time for the inclusion of provisions into Plan documents was the process contained in Schedule 1 RMA which was silent on the matter of inclusion by reference.

[52] The Court has been ambivalent in its approach to inclusion of documents by reference into district and regional plans. We compare the somewhat different approaches taken by the Court in *Remarkables Park Ltd v Queenstown Lakes District Council*¹⁰ and in *Auckland City*



*Council v Auckland Regional Council*¹¹. Notwithstanding the ambivalent views previously expressed by the Court we consider that there was a fundamental problem in the process of incorporation by reference in this instance.

[53] We were advised by Ms Dossor on behalf of the Regional Council that it was not possible for parties to submit on the contents of the Waterfront Framework as part of the Variation 22 process and it appears that the Regional Council Hearings Committee was given similar advice when it considered this application¹².

[54] Although RMA (pre 2005 Amendment) was silent on the issue of inclusion of documents by reference it certainly did not exclude such documents from having to undergo the procedure contained in Schedule 1. We understand that in this case that process was not followed as persons were precluded from making any submission on the contents of the Waterfront Framework which they were clearly entitled to do pursuant to Clause 6 Schedule 1. Accordingly, we consider that the Waterfront Framework has not been appropriately included in the City Plan in accordance with the provisions of Schedule 1 RMA.

[55] Section 131(10) Resource Management Amendment Act 2005 is a transitional provision relating to documents previously incorporated into a plan by reference. It provides that such documents would be treated as if they had been so incorporated by (new) Clause 30 Schedule 1- which was also inserted by the 2005 Amendment Act. However s130 specifically limits the type of material which can be inserted by reference (essentially to standards and technical documents) and does not appear to cover a document such as the Waterfront Framework.

[56] We are of the view that the Waterfront Framework has no status as a component of the District Plan and those provisions of the Plan which purport to incorporate the Framework into it are ultra vires. Nor do we agree with the statement contained in the Agreed Statement of planning experts that the Waterfront Framework is the *dominant design guide* for the waterfront. The Waterfront Framework does not purport to direct design matters but rather to be a policy document. That is apparent from reading the Framework's discussion¹³ on how it



is to be incorporated into the District Plan. The matter of design was something which was to be dealt with through Stage Two of the Waterfront Leadership Group's recommended two-stage process.

[57] In his closing submissions for the Applicant, Mr Churchman contended¹⁴ that the Court did not need to resolve the legal status of the Framework to determine this case. We agree with him to the extent that we consider the outcome of this application will largely be determined by a consideration of environmental effects, however we also consider that determination of the legal status of the Framework is important in these proceedings. It is a matter which was widely discussed by the planning witnesses and in the submissions of Counsel. The s274 parties (Mr McClellan and Mrs Ritchie) relied very extensively in their submissions on the provisions of the Waterfront Framework. That is entirely understandable, given the references to the Framework in the District Plan. Those references engender a view that the Waterfront Framework must be given considerably more weight than we consider can be attributed to it.

[58] Even if we were wrong in our views as to the status of the Waterfront Framework we would not give it the weight in our considerations which we will give to the contents of the Regional Plan and District Plan (where relevant). The Waterfront Framework is a policy document. As such it has clearly been overtaken by the provisions of the District Plan as amended by Variation 22 which was intended to give statutory weight to the Framework.

[59] All of the parties to the proceedings accepted that the Waterfront Framework was a document to which we might have regard as an *other matter* pursuant to s104(1)(c) RMA. To that extent it has relevance in our considerations. It contains a series of statements of fact and desirable outcomes which no party sought to challenge and which we will regard as *givens* for the purposes of our considerations. The Waterfront Framework is a City Council document however we note that its provisions are not inconsistent with those of the Regional Coastal Plan.

[60] We will accordingly have regard to the provisions of the Waterfront Framework when considering this appeal, however as a statement of relevant policies for the Lambton Harbour



Area it must be accorded considerably less weight than the contents of Variation 22 which have superceded it and the Regional Coastal Plan which is the operative planning document for the site. That was the approach taken by the Hearings Commissioners and we concur with them.

Interrelationship Regional and District Plans

[61] Although our discussion about the Waterfront Framework has largely centred on the contents of the District Plan we again note that the application site is subject to the provisions of the Regional Coastal Plan not the District Plan. In this section of our decision we discuss the relationship between those documents.

[62] The *General Objectives and Policies* section of the Regional Coastal Plan contains a number of objectives and policies which seek to align management of land under the jurisdiction of the Regional Council with land controlled by the adjoining territorial authority (in this case the City Council). Similarly the District Plan contains provisions seeking consistency of administration across the boundary between region and district.

[63] We do not propose to detail those various provisions in this decision. It was common ground between all of the planners who gave evidence.

[64] It is apparent that both the Regional and City Councils have endeavoured to provide for a unified approach to consideration of planning matters as they relate to the Lambton Harbour Area. Although the Regional Coastal Plan must be the primary document relating to the application, regard will be had to relevant provisions of the District Plan and to the provisions of the Waterfront Framework (subject to the limitations previously noted) in determining this application.

Existing traffic use

[65] An integral part of the Hilton proposal is the establishment of a traffic tunnel from the underground car park in the Events/Retail Centre which would emerge onto the stem of Queens Wharf and provide the primary small vehicle access to the hotel. One of the limitations of the tunnel is that it will not accommodate vehicles larger than 2.2 metres in height which will have to access the hotel by what is known as the Shed 6 route. The Shed 6 route would also be the only access route for all construction related vehicles until such time



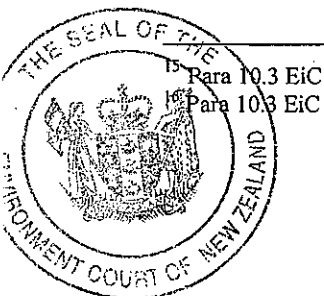
as the tunnel is available and thereafter would continue to be the route for vehicles which are too large to use the tunnel to access the site during construction. The Applicant estimates that about 300 large vehicles would use this route over the two year construction period. Upon completion of construction the Shed 6 route would continue to provide access to the hotel for large service vehicles which cannot use the tunnel (limited to three per day) and up to 12 coaches per year (if the Applicant's appeal in respect of Condition 29 is successful).

[66] The Shed 6 route is presently the commonly used means of access for vehicles going to the Outer-T, Shed 6, Dockside or Shed 5. This route enters the Lambton Harbour Area south of the Events Centre at a point opposite the junction of Hunter Street and Jervois Quay. It runs around the south side of the Events Centre and then along the edge of the wharf in front of Shed 6. At the northern end of Shed 6 a right turn takes vehicles onto the stem of Queens Wharf itself from where Dockside and Shed 1 can be accessed. Shed 5 can be accessed by vehicles simply continuing in a northern direction once past Shed 6.

[67] Much of the route which we have described is also part of the pedestrian promenade which is a prominent feature of the waterfront. There is an obvious conflict between pedestrians and vehicles in this area.

[68] For a period of time WWL endeavoured to restrict use of the Shed 6 route by the installation of card activated barrier arms at the southern end of the Events Centre. The barrier arms were intended to ensure that only authorised vehicles could access the route. Unfortunately the barrier arms were subjected to what Mr I N Pike (the Chief Executive of WWL) described to us as *regular and deliberate destruction*.¹⁵

[69] We understand that motorists intending to use the Shed 6 route, frustrated at being denied access, would attack the barrier arm and dismember it. This happened on such a number of occasions that WWL simply gave up trying to control access through the Hunter Street intersection, so that for some time there has been largely unrestricted vehicle access along the Shed 6 route to the Queens Wharf area. Mr Pike described¹⁶ this situation as *unacceptable*. Notwithstanding the acknowledged unacceptability of the traffic environment



Mr Pike advised¹⁷, in response to a question from the Court, that WWL had allowed this situation to carry on for at least two years.

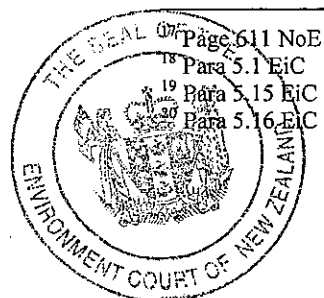
[70] Mr P T McCombs (the Applicant's traffic engineer) gave evidence as to the extent of usage of the Shed 6 route. That was also addressed in the transportation assessment which formed part of the application. The greatest extent of pedestrian usage on the various figures produced by Mr McCombs was nearly 750 pedestrians in the course of an hour late on a Saturday morning and early afternoon. That was a peak, however it appears that pedestrian numbers in the order of 250 persons plus per hour are not uncommon along this route.

[71] Mr McCombs identified¹⁸ peak vehicle volumes of around 50 vehicles per hour using the route. He further identified a peak use of up to 27 private cars an hour using the Shed 6 route to gain access to the outer wharf between 10 and 11am on a Saturday morning, ranging (more typically) down to five to ten an hour at other times of the day¹⁹. Peak taxi usage identified by Mr McCombs²⁰ was up to 57 per hour to and from restaurants and bars between 10 and 11pm on a Friday night.

[72] The figures need to be used carefully as the peak hours for the respective uses do not necessarily coincide and the surveys are limited in their time span, however what the figures unequivocally demonstrate is the very high potential for conflict between pedestrians and vehicles using the promenade. Mr Pike's description of this situation as unacceptable is, in our opinion, a considerable understatement.

[73] It was the case for the Applicant that two specific aspects of the Hilton proposal would considerably improve the present unsatisfactory traffic situation on the Shed 6 route.

- First is the introduction of a traffic management plan which (inter alia) will provide for the establishment of a new barrier at the Hunter Street/Jervois Quay intersection so that access to the Shed 6 route can be restricted. The barrier is to be a rising bollard system which will block the access way but sink down below road level when activated by way of a swipe card, thereby allowing access to authorised vehicles. We were told that the bollards were likely to



follow a design used by the United States Embassy in Baghdad and are not readily susceptible to destruction or removal as was the case with the barrier arms.

- The second measure is the provision of access to the Outer T through the underground tunnel from the Events Centre car park. This will enable access to the hotel (and Dockside and Shed 5) by smaller vehicles, which will consequently be excluded from the Shed 6 route.

[74] The Applicant submitted²¹ that the institution of these measures would bring about a very substantial reduction in traffic on the Shed 6 route and was a positive effect of the application.

[75] The response of the other Appellants to the proposition that the reduction in traffic on the Shed 6 route constituted a positive effect was twofold: -

- Firstly, that having acknowledged the unsatisfactory nature of the present traffic arrangements, WWL should have taken steps earlier to resolve that situation. Mr Pike contended that it was unrealistic to expect WWL to have done so in advance of a specific development proposal because of the high cost of establishing such bollards. We do not agree. All parties to these appeals acknowledged the unsatisfactory nature of the existing traffic environment along the Shed 6 route. In our view it was unacceptable for WWL to allow this situation to continue unabated for a period of at least two years (and possibly longer) whilst it waited for the Applicant to provide it with a solution. As the implementation agency for a responsible local authority it was incumbent upon the WWL to resolve what its Chief Executive Officer acknowledges was an unacceptable situation.
- Secondly it was contended that the existing use of the Shed 6 route by traffic (other than port related traffic) to access the Outer-T, Shed 6, Dockside and Shed 5 is illegal in that such activity requires resource consent and no resource consent is in place authorising it. No *credit* should be given to the Applicant as the result of cessation of this illegal activity which WWL has permitted. We consider that proposition in more detail.



[76] It is extremely difficult for the Court to resolve the status of the Shed 6 route in terms of what traffic is authorised to use it. That is due to the different Plan documents applicable to parts of the route, changes in the relevant Plans over the years and ambiguity in the information before us. The Court was assisted by a detailed assessment of the origins of the Shed 6 route undertaken by Mrs S J Allan (planning witness for Waterfront Watch and the Civic Trust) but even after considering Mrs Allan's evidence significant uncertainty remains.

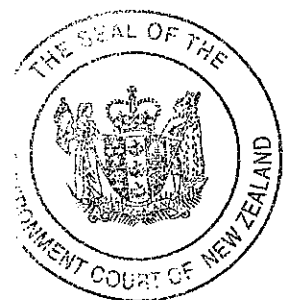
[77] The Shed 6 route traverses some land contained within the City boundary but for a substantial portion of its distance (more particularly around and along Shed 6 itself) is on part of Queens Wharf which lies within the coastal marine area and is controlled by the provisions of the Regional Coastal Plan.

[78] The starting point for determining the legality of the route within the coastal marine area is found in s12(3) RMA which provides as follows:

- (3) *Without limiting subsection (1), no person may carry out any activity –*
- (a) *in, on, under, or over any coastal marine area; or*
 - (b) *in relation to any natural and physical resources contained within any coastal marine area, -*
- in a manner that contravenes a rule in a regional coastal plan or a proposed regional coastal plan unless the activity is expressly allowed by a resource consent or allowed by s20A (certain existing lawful activities allowed).*

[79] The use of the Shed 6 route by vehicles to access and service buildings on the Queens Wharf is an activity carried out over the coastal marine area. Is it an activity which contravenes a rule in the Regional Coastal Plan? If so is it allowed by a resource consent or by s20A?

[80] The applicable rules in the Regional Coastal Plan are Rules 10 and 25. They provide



as follows: -

- **Rule 10 Activities in or on structures**

Any activity undertaken in or on any structure or any part of a structure fixed in, on, under, or over any foreshore or seabed which is not specifically provided for in a rule in this Plan, and:

- (1) *was lawfully occurring at 29 June 1994 (the date of public notification of this Plan as a proposed plan); or*
- (2) *(not relevant)*
- (3) *(not relevant)*

is a Permitted Activity provided it complies with the conditions below.

Conditions

- (1) *the activity shall comply with the general standards listed in s14.1.*

- **Rule 25 All remaining activities involving the use and development of structures outside any Area of Significant Conservation Value**

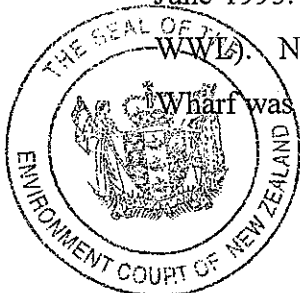
Any activity involving the use or development of any structure or any part of a structure fixed in, on, under, or over foreshore or seabed outside an Area of Significant Conservation Value:

- *that is not specifically provided for in Rules 6 – 24 or Rules 26 or 27; or*
- *which cannot meet the requirements of those Rules;*

is a Discretionary Activity and shall comply with the terms below.

In summary therefore if use of the Shed 6 route for access purposes was lawfully established prior to 29 June 1994 it is a permitted activity (subject to compliance with the relevant standards) otherwise, it is a discretionary activity and must be authorised by way of resource consent.

[81] Evidence as to the extent of lawful traffic access activities on Queens Wharf as at 29 June 1994 came before the Court by way of various documents provided by Counsel for the Regional Council. The documents in question were two land use consent applications for the re-development of Queens Wharf made by Lambton Harbour Management Limited on 15 June 1993. (We understand Lambton Harbour Management Limited to be a predecessor of WWL). No evidence identifying any other consents authorising traffic access on Queens Wharf was given to us.



[82] The applications were made in accordance with the requirements of the Combined Scheme then jointly administered by the City and Regional Councils. The primary application was to enable establishment and construction of the Events Centre and Retail Centre together with various ancillary aspects of that proposal including traffic access and circulation. We will refer to it as the Events Centre application. The second application was for a waiver of parking requirements and is of no relevance for the purpose of our considerations.

[83] The Combined Scheme set out to control the extent of access through the Queens Wharf area. It identified a number of *Activity Areas*. For the purposes of our discussion, relevant areas were Activity Area A (Queens Wharf Square), Activity Area D (a large area to the south of Queens Wharf Square including Shed 6 and the wharf around it) and Activity Area L (an access area from Jervois Quay into the Lambton Harbour Area).

[84] The Combined Scheme provided for the use of Area L for vehicular access. Underground car parking and underground service access was permitted in both Areas A and D. Area A could be used for access to buildings and wharves at ground level (possibly limited to pedestrian access) but in Area D there was no provision for general access at ground level for servicing purposes. Both Areas A and D however could be used for *Port Purposes* including the servicing of vessels and the movement of goods and passengers.

[85] The net effect of the above provisions was that the use of the (present) Shed 6 route for general access and servicing activities was not permitted as of right under the Combined Scheme, however it could be used for the servicing of vessels and the movement of goods and passengers for Port Purposes which were defined in the Scheme.

[86] A significant feature of the Events Centre application was obtaining consent for access and traffic arrangements which were to apply to the Queens Wharf area generally once the Events Centre was constructed. At the time of the application a substantial portion of this area was used for parking. Access to the area was then through the Queens Wharf gates on Jervois Quay. The Events Centre and Retail Centre were to take over the car parking space with a reduced area of underground car parking provided below them. Vehicle access through the Queens Wharf gates was to be restricted to all but exiting left-turning service vehicles and



buses. New vehicular access points to the wharf area were to be established at Whitmore Street (to the north) and at Hunter Street (to the south).

[87] The Events Centre application contained the following proposals relating to access in and around Queens Wharf.

- The first reference is found in the assessment of effects and provided as follows:

2.2.4 Queens Wharf, vicinity of Sheds 3, 5 and 6

This open area has the dual function of providing for pedestrian and vehicular access. Vehicles will be permitted on a controlled basis, as provided for in the Transitional Combined Plan, onto the outer tee of Queens Wharf to service vessels berthed at the wharf, the helicopter and the activities carried out in Sheds 3, 5 and 6 (and, in future, in Shed 1). Vehicular access to the outer tee of Queens Wharf will be along the waterfront on existing wharves (in the case of small service vehicles), or across Queens Wharf Square in the case of larger trucks and emergency vehicles. (our emphasis)

This controlled approach, taking into account the small number of vehicular movements likely during a typical day, and other management measures such as encouragement of off-peak servicing hours and speed limits, will provide for safe access.

- The second reference is found in the *Technical Report* completed by Traffic Design Group Limited which formed part of the Events Centre application documents. That document proposed (inter alia):

12 Truck Access and Servicing

Servicing of the restaurants and other dockside facilities on the seaward side of this present re-development is to be maintained through Queens Square. It is intended that all access for delivery vehicles and servicing is to be provided from Jervois Quay with entry via the signal-controlled Hunter Street intersection. (our emphasis)

Trucks and service vehicles would then follow a path along the north side of the Maritime Museum building in order to then gain access at surface level across the top of the completed car parking building to the retail areas on either side of Queens Wharf Square, to Sheds 5 and 3 and to the outer tee of the Wharf. Egress will be via a left-turn out onto Jervois Quay through the Queens Wharf gates. The total volume of such movements is estimated to be



fewer than 20 per day, and is to be closely controlled and managed by Lambton Harbour Management Limited in terms of the nature and extent of their movements and as to the time of the day during which such movements will be permitted.

Other movements and deliveries using smaller vehicles and regular courier vans will be handled via the ordinary driveways and stairs from the underground car park in the usual way. (our emphasis)

In summary therefore the Events Centre application specified that *larger trucks* would access Queens Wharf and the various buildings on it across Queens Wharf Square and that *small service vehicles* would access those areas along the waterfront on existing wharves, or via ordinary driveways and stairs from the underground car park.

[88] It seems clear that the traffic situation in the Queens Wharf area today has arisen (at least in part) through implementation of the Events Centre consent. It is common ground that the existing situation is unsatisfactory. It appears to us that this situation arises to some extent due to inadequacies in the application and its supporting material. By way of example, none of the documents which we have reviewed;

- Identify what is to be regarded as *smaller* and *larger* vehicles
- Define what constitutes *service vehicles*, for example are taxis service vehicles and thus entitled to access under the consent?
- Identify the routes along existing wharves which can be used by small service vehicles
- Set out what the *controlled basis* is by which access will be allowed
- Define the term *ordinary driveways*. Does it mean the circulation areas in the underground car park including the existing tunnel or does it include other driving routes around the wharves?

It is accordingly extremely difficult to now ascertain with any degree of precision the traffic movement proposals set out in the Events Centre application. The application was granted on 7 September 1993 in accordance with the application and the *accompanying support documents*²².



Condition A, Resource Consent 7 September 1993.

[89] The most which can be said with any certainty is that the Events Centre application provided for:

- Larger vehicles (whatever those might be) to access the Outer-T and related buildings via Queens Wharf Square.
- Smaller service vehicles (whatever those might be) to access the Outer-T via an alternative unidentified route along the waterfront on existing wharves. The only available such route from the Hunter Street intersection to the Outer-T is in fact the Shed 6 route, so its use by smaller service vehicles appears to have been contemplated by the Events Centre application.
- Exclusion of private vehicles.
- A controlled access situation which has apparently been abandoned.

[90] We understand that some time after the construction of the Events and Retail Centres, large sail structures were set up in Queens Wharf Square. These precluded use of the Square by larger trucks and service vehicles which were consequently diverted to the Shed 6 route, notwithstanding that use of that route by such vehicles was not provided for by the Events Centre application.

[91] Accordingly it is impossible for us to accurately quantify the extent of *unlawful* use of the Shed 6 route. Use of the route by smaller service vehicles (whatever they might be) appears to be authorised by the Events Centre consent, but use of the route by larger trucks and service vehicles (whatever they might be) appears not to be authorised. That latter conclusion however must be tempered by the rider that use of the Shed 6 route for *Port Purposes* by any vehicles whatsoever (whether large or small) is an activity permitted by Rule 10 as it was a permitted activity under the Combined Scheme. Accordingly vehicles such as fuel tankers, rubbish trucks and tour buses servicing vessels using Queens Wharf are entitled to use the Shed 6 route.

[92] The usage figures provided as part of Mr McCombs' evidence do not go to the extent of identifying what percentage of use of the route might be small vehicles, what might be large vehicles and what might be for Port Purposes. We do not think there is any doubt that the large extent of usage by private vehicles, which was separately identified, is not lawful.



[93] We conclude that the establishment of a traffic management system which removes all small vehicles from the Shed 6 route is a positive effect of the proposal. We cannot quantify the extent of that positive effect accurately because although some of the smaller vehicles (eg private cars) and large trucks using the route should not be there it appears that some of the existing small service vehicles (possibly including taxis) which use the route are entitled to do so.

[94] On more than one occasion during the course of his evidence, Mr McCombs suggested that queries raised about various aspects of the proposed traffic management system for Queens Wharf and the Outer-T were matters of detail which would appropriately be left for resolution between the Applicant and Regional Council. Condition numbers 21, 23 and 24 of the resource consent granted by the Regional Council all provide for final details of the Hunter Street vehicle access, traffic management plan and servicing plan respectively to be resolved between the Applicant and the Manager, Environmental Regulation, Wellington Regional Council. Condition number 23 in particular relating to the traffic management plan identifies a range of traffic management matters which fall into that category.

[95] We agree with Mr McCombs to the extent that it is not for the Court to *micro-manage* the consent process. It is common in resource consents for some matters of detail to be resolved after the grant of consent. In this particular case however traffic issues and the conflict between traffic and pedestrian usage of the Queens Wharf area are at the very forefront of the issues before the Court. At the Court's pre-hearing conference in these proceedings on 31 January 2007 we expressed disquiet as to the extent of matters which had been left for resolution through the traffic management plan process. That disquiet appears to have been justified in the light of the present unsatisfactory traffic system which is the outcome of a non-notified resource consent application which was not subject to any degree of public scrutiny. Our concern remains.

Additional Resource Consents

[96] One of the issues in contention before us from the outset of proceedings was whether or not a resource consent was required to authorise access to the Hilton site by way of the Hunter Street/Jervois Quay intersection. The possible need for such a resource consent arises out of the provisions of Rule 13.1.1.7.7 of the District Plan. The rule in question is a permitted activity condition which provides:



13.1.1.7.7 No vehicle access is permitted to a site across any restricted road frontage identified on District Plan Map 34 provided that this shall not prevent the continuation or the undertaking of any Permitted Activity on a site involving the use of any lawfully established vehicle access.

The Hunter Street/Jervois Quay intersection is a restricted road frontage identified on Map 34.

[97] Both the Applicant and the Regional Council disputed that the Rule triggered a requirement for a resource consent in this case. The other Appellants contended that a consent was necessary.

[98] However, during the course of the proceedings it became apparent that there was an additional resource consent which all parties agreed was required and which had not been applied for as part of the Hilton application.

[99] That additional consent was a subdivision consent. The need for a subdivision consent arises because of the term of the lease of that part of the Outer-T which is to be occupied by the hotel. Section 218(1)(a)(iii) RMA provides that the lease of part of an allotment which (including renewals) is or could be for a term of more than 35 years constitutes a subdivision. We were advised that the lease of the Hilton site is apparently to exceed the 35 year trigger and that accordingly a resource consent is required to authorise the lease.

[100] On reflection, the possibility of a lease term exceeding 35 years for such a substantial development as the Hilton should not have been unexpected. However the requirement for a subdivision consent was apparently not identified by any of the parties during the Regional Council hearing process, the Court pre-hearing process nor during Court managed mediation. The need for subdivision approval first came to light in the course of the hearing.

[101] When the hearing recommenced on 15 October 2007 the Court was advised by Mr Churchman that WWL had applied for resource consents firstly to authorise access across the Hunter Street intersection and secondly for subdivision consent.

[102] We understand the access consent application to have been made purely on a precautionary basis and that the Applicant has not resiled from its position that use of the intersection was lawfully authorised in the first place. That is not an unreasonable position for the Applicant to take depending on the contents of the District Plan on 7 September 1993 (the date of issue of the Events Centre consent). The Events Centre consent clearly provided



for all service access to the Lambton Harbour Area to be through the Hunter Street intersection, and may be adequate authority for that use. We are unable to resolve that on the basis of the evidence before us.

[103] The same cannot be said about the subdivision consent. That is particularly the case since the Court was advised²³ by Mr Churchman that the subdivision application incorporated proposed conditions relating to traffic and a traffic management plan similar to conditions imposed under the Regional Council consent which were live issues before us.

[104] Mr Churchman further advised²⁴ that the applications in question were to be processed on a non-notified basis by the Wellington City Council and that it was anticipated that consents would be available on Wednesday of that week (17 October 2007). We declined to comment on that possibility as we considered that it was not our function to direct the City Council how to process current applications before it. However Messrs Anastasiou and Slyfield for the remaining Appellants both expressed their concern about the process and Mrs Ritchie read to the Court an email which she had sent to the City Council threatening to take judicial review proceedings in the event that the applications were dealt with non-notified.

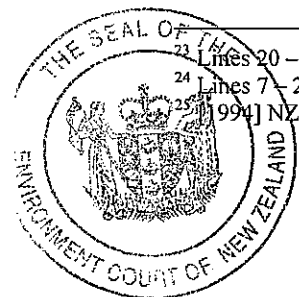
[105] The concerns expressed by other parties are understandable. The statement contained in the Planning Tribunal decision *AFFCO New Zealand Limited v Far North District Council (No 2)*²⁵ that...*good resource management practice requires that in general all the resource consents required for a project should be carefully identified from the outset, and applications for them all should be made so that they can be considered together or jointly...* simply reflected the long-standing practice under both the Town and Country Planning Act 1977 and RMA regimes. It is a practice which is or should be well known to all RMA practitioners.

[106] We were not given any reason for the failure of the identified consent applications (particularly for subdivision) to have been made earlier. We were advised that in this instance the applications have been made by WWL but there was nothing to preclude Waterfront Investments from making such applications from the outset notwithstanding that it is not the owner of the land in question. The subdivision application should in our view have formed part of the initial application package.

²³ Lines 20 – 26, Page 1253 NoE

²⁴ Lines 7 – 26, Page 1253 NoE

²⁵ [1994] NZRMA 224 (233)



[107] Those comments however beg the question as to how the Court is now to deal with the belated filing of consents. Mr Slyfield invited²⁶ the Court to contemplate that it may not be appropriate to continue processing the current application independent of the new resource consent applications.

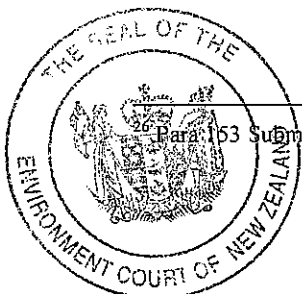
[108] That is not something which the Court can realistically consider in this case. This appeal relates to a proposal of considerable public interest which has occupied nearly three weeks of Court hearing time. If the matter of other consents had been raised prior to commencement of our hearing we may well have deferred the hearing until the other consent applications had *caught up* with these appeals. However it is too late for that. If there are any shortcomings in the Applicant's case which might possibly have been addressed through a subdivision consent (for example, by way of imposition of consent notice conditions) then those shortcomings must be borne by the Applicant.

Section 104 Resource Management Act 1991

[109] It was common ground between all of the parties that the Hilton proposal required consent as a discretionary activity under the Regional Coastal Plan. Pursuant to s104B RMA the Court has power to grant or refuse the application and if the application is granted may impose conditions pursuant to s108. The matters to which we must have regard in determining whether or not to grant consent are those set out in s104(1) RMA which provides;

104 Consideration of applications

- (1) *When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to –*
- (a) *any actual and potential effects on the environment of allowing the activity; and*
 - (b) *any relevant provisions of –*
 - (i) *a national policy statement;*
 - (ii) *a New Zealand coastal policy statement;*
 - (iii) *a regional policy statement or proposed regional policy statement;*
 - (iv) *a plan or proposed plan; and*
 - (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*



[110] In closing Mr Churchman submitted²⁷ that the . . . *starting point and primary focus in considering an application of this nature must be the actual and potential effects on the environment in allowing the activity (s104(1)(a))*. He then went on to identify²⁸ the following effects which were relevant in this case, namely:

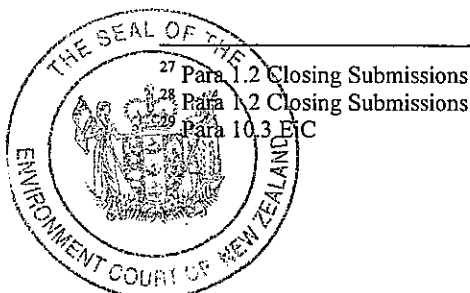
- Traffic effects
- Effects on public space
- Heritage effects
- Economic effects
- Effects on views
- Various others, including construction effects, effects on port operations, effects on the wharf structure and shading. (Mr Churchman also referred to noise but this was not in dispute before us.)

We agree that the list of effects identified by Mr Churchman encapsulates those effects which are relevant in this case. We will consider all of those effects although in slightly different sequence than Mr Churchman.

Effects

[111] Consideration of effects pursuant to s104(1)(a) extends to consideration of positive as well as adverse effects which might arise out of any proposed activity. In his evidence for the Applicant, Mr A A Aburn (planning consultant) identified²⁹ what he considered to be the beneficial effects of the proposal. He identified some 18 positive effects. We do not propose to set them out in full here but rather summarise them into the following categories.

- Economic effects arising out of construction of the hotel, employment opportunities and economic activity generated by hotel operations and hotel guests.
- Benefits of having a hotel building constructed to a high standard on a prominent site providing a range of facilities to guests and the public and incorporating improvements and enhancement to the existing wharf facilities.
- The attraction of the public to the area.
- Improvement of the existing traffic environment.
- A catalyst for further improvement of the waterfront



Whether or not many of the benefits identified by Mr Aburn were real or illusory and the extent of those benefits were the subject of much of the debate before us.

Economic Effects

[112] It is apparent from their decision that the Hearings Commissioners considered³⁰ that the most significant benefits were those which fell into the economic category.

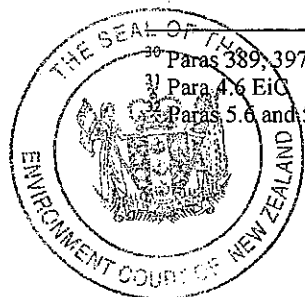
[113] Evidence as to the economic effects of the Hilton proposal was given to the Court on behalf of Waterfront Investments by Mr M C Copeland a highly experienced consultant economist. Although the contents of Mr Copeland's two briefs of evidence were challenged in cross-examination, they were not contradicted by any other economic evidence.

[114] Mr Copeland did not deal with the issue of economic benefits which might accrue to Waterfront Investments or to the Hilton but rather considered economic impacts *from the viewpoint of the community at large*³¹.

[115] The economic benefits identified by Mr Copeland are the following:

- *Hotel Construction Impacts*

Mr Copeland advised that the estimated construction cost of the hotel was \$47.5m over a two year construction period. The construction workforce directly employed during that two year period was expected to average 89 persons. Mr Copeland applied multipliers to calculate additional indirect economic benefits and indirect job creation arising out of the construction activity. As a result he calculated that the hotel construction would lead to an increase in direct plus indirect economic output in the Wellington region of \$48.6m p.a over the two year construction period (\$97m total) and an additional 260 direct and indirect jobs arising from that construction with direct and indirect household income impacts of \$11m per annum (\$22m over two years). We understood him to say³² that if the Hilton project did not proceed there could be no guarantee of alternative economic returns being generated by construction on this site because of uncertainty as to whether or not there would in fact be any such alternative activity.



³⁰ Paras 389, 397 decision of Hearings Commissioners

³¹ Para 4.6 EIC

³² Paras 5.6 and 5.7 EIC

- *Hotel Operational Impacts.*

Mr Copeland calculated³³ that the direct and indirect employment impact of ongoing Hilton Hotel operations would be 201 additional full time equivalent jobs of which 128 would be directly employed by the hotel. He further calculated that the direct plus indirect household income impact would be an increase in household income for the Wellington region of \$7m per annum.

- *Guest Expenditure Impacts*

Mr Copeland calculated³⁴ that the amount of outside hotel expenditure by hotel guests would generate additional revenue of \$5.9m per annum for local businesses serving the visitor market.

- *Community Economic Well-Being Effects*

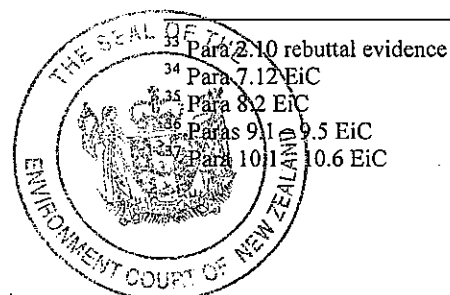
Mr Copeland testified³⁵ that there would be benefits generally for local businesses and individuals involved in the tourism industry from the greater spending outside the hotel and from marketing initiatives of the hotel.

- *Economic Efficiency Effects*

In addition to the effects identified above Mr Copeland was of the view³⁶ that wider economic efficiency effects arising out of increased levels of economic activity would flow from development of the proposed hotel.

[116] Mr Copeland also went on to identify two potentially adverse economic effects from the proposed development.

- He acknowledged³⁷ that developing a Hilton Hotel on the site would preclude alternative use. However he considered that the proposed Hilton use would certainly generate greater economic activity than the current use of Shed 1 and that there was considerable uncertainty as to whether an alternative use might gain approval.



- Secondly, he acknowledged that it might be argued that the Hilton would simply divert trade away from other providers of hotel accommodation, restaurants etc, rather than create additional economic benefits. He considered however (on the basis of evidence given by the Hilton Group), that the Hilton would attract a certain percentage of guests (possibly 30 percent) which might not otherwise visit Wellington. In any event he was of the view that decisions on whether or not a new capacity was required in the hotel industry was a matter best left to be determined by participants in that industry.

[117] Mr Anastasiou cross-examined Mr Copeland at some length. Nothing in that cross-examination led us to conclude that there was any fundamental error in the calculations which Mr Copeland had made. We consider that Mr Copeland's calculations of economic benefits were made reasonably and conservatively and demonstrate that economic benefits to the region will arise out of construction and operation of the hotel.

[118] During the course of his evidence and cross-examination Mr Copeland made two significant observations.

- The first of these was in response to an assertion that he had significantly overstated the commercial benefits. Mr Copeland said . . . *it is my personal view that this Court won't decide that the project will proceed because the benefits are 6.9 million dollars or 9.9 million dollars. I think that the quantitative analysis I've done is to assist the Court, not to get it correct to the last .1 or even one million dollars.*³⁸

We think that is a fair observation. Although there might be some debate as to the exact extent of the economic benefits we have no doubt that there are such benefits and that generally they are likely to be of the order identified by Mr Copeland. We further accept Mr Copeland's view that increased economic activity of itself is beneficial.

- Secondly, and significantly, in response to a series of questions from Mr Anastasiou, Mr Copeland acknowledged³⁹ that he had not endeavoured to attach an economic value to the qualitative considerations arising under Sections 6, 7 and 8 RMA and to which the Court is required to have regard. Mr

³⁸ Lines 7-12, page 1106 NoE

³⁹ Line 8, page 1109 – line 38, page 1111 NoE



Copeland expressed the view that it is not possible to attach dollar values to such considerations. He stated that the economic benefits which he had identified were just one of the competing factors which the Court had to weigh up in reaching a decision.

[119] We accept Mr Copeland's conclusions as to the economic benefits which will flow from the proposed development. Where we have some difficulty is putting those benefits in context. We do not know how significant they are in the overall regional economic environment. Are they of such significance that they counterbalance the adverse effects alleged by opponents of the proposal (assuming that those adverse effects are established). The Applicant's case did not address that question in any detail. We now turn to consider the various other effects identified by Mr Churchman.

Traffic Effects (This section of the decision was written by Commissioner Mills)

[120] In this section of our decision we discuss the traffic effects of the proposed hotel. In particular we assess any actual and potential adverse traffic effects arising from the construction and operation of a hotel on the site.

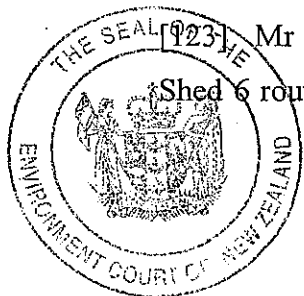
[121] We heard evidence from four expert traffic engineers, Mr P T McCombs on behalf of the Applicant; Mr M G Smith, reviewing the evidence of Mr McCombs; Mr R S Spence, on behalf of the Respondent; and Mr G P Clark, on behalf of the other Appellants.

[122] We discuss our assessment of the traffic effects of the proposal under the following headings:

- Existing Traffic Environment on Queens Wharf;
- Effects on the Wider Traffic Network of the Proposal;
- Rising Bollards
- Management of Traffic on Queens Wharf with Hilton Hotel in Place – The Tunnel – Shed 6 Route – Parking – Traffic Management Plan (TMP) – Parking;
- Coach Access to Hilton Hotel.

Existing Traffic Environment on Queens Wharf

[123] Mr McCombs provided traffic counts of vehicles, cyclists and pedestrians using the Shed 6 route. He counted 32 vehicles between 11.00 am and 2.00 pm on Saturday and 120



cyclists and 750 pedestrians per hour at 2.30pm on Saturday. He recorded up to 57 taxis per hour using this route on Friday evenings.

[124] Mr McCombs acknowledged in his evidence-in-chief that a proportion of this vehicular traffic is unauthorised. As we have noted earlier we are unable to quantify precisely what proportion.

[125] Mr Clark agreed in general terms with the data provided by Mr. McCombs' company Traffic Design Group – (TDG), although he noted that Mr. McCombs had not provided data for pedestrian use in the off-peak times when it has been proposed that heavy vehicles servicing the hotel will use the route – we will return to this issue.

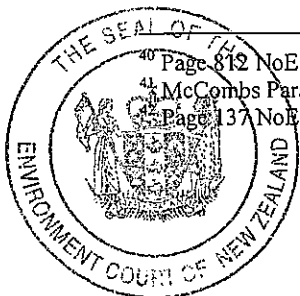
[126] Mr Spence also accepted and relied on the traffic counts provided by Mr. McCombs.⁴⁰

[127] There was general agreement that the unrestricted use of the Shed 6 route via the Hunter Street intersection that presently exists is unsatisfactory.

[128] Mr McCombs described plans (irrespective of the Hilton Hotel development) to erect a pair of rising steel bollards opposite Hunter Street at that entrance to the wharf to allow authorised traffic only to use this route⁴¹. His evidence was that this control would be in place *soon*. We will return to this issue.

[129] We did not receive evidence regarding the precise level of authorised vehicular traffic servicing Dockside Restaurant, Ferg's Kayaks facility, cruise ships and naval vessels via the Shed 6 route, however we are confident that with the introduction of the rising bollards and the availability of access via the wharf tunnel the levels of overall usage will decrease significantly. Mr. McCombs predicts an 80% reduction⁴².

[130] As we have noted above there was general agreement by the traffic witnesses on the existing traffic environment. We accept that a substantial proportion of the vehicular traffic on Queens Wharf is unauthorised and certainly inappropriate - we welcome Mr McCombs' prediction that the installation of the rising bollards will occur *soon*.



⁴⁰ Page 812 NoE

⁴¹ McCombs Para 5.17. EiC; McCombs Para 4.4 E in Reply

⁴² Page 137 NoE

Effects on the Wider Traffic Network

[131] The Hunter Street and Jervois Quay intersection will be the point at which the majority of the traffic generated by the hotel will enter and leave the site. Jervois Quay provides one of the main traffic access routes into and through the Wellington CBD. It is constructed to carry large volumes of traffic (up to six lanes) and in the vicinity of Queens Wharf carries up to 50,000 vehicles per day (weekdays). As this major intersection will be the first part of the wider traffic network to experience any effects from Hilton traffic, measurement of any adverse effects on its performance due to Hilton traffic will provide a good indicator of any possible effects on the wider network.

[132] Based on the figures presented by Mr McCombs, Mr Spence estimated that at the present time the morning peak traffic entering Queens Wharf represents a total of 3.3% of the total flow (5,800 vehicles per hour) through the Hunter Street intersection and the evening peak exiting the site to be about 4% of the total flow through this intersection.

[133] He considered that based on modelling undertaken by TDG the intersection will easily accommodate any additional traffic generated by the hotel.

[134] Mr Clark had concerns about the capacity of the right turn lane for northbound Jervois Quay traffic turning into the site. He had observed up to six vehicles queuing under the present traffic environment. He described this movement as critical and stated: *any increase in this queue length has the potential to block through-traffic along Jervois Quay creating a serious safety and efficiency issue for users of the busy arterial route, particularly during peak hours*⁴³.

[135] Mr McCombs' evidence was that the intersection functions satisfactorily now and will continue to provide a satisfactory level of service with the hotel in place. During cross-examination Mr McCombs explained that since the completion of the inner city bypass traffic volumes along Jervois Quay had dropped by 250 to 300 vehicles per hour⁴⁴.

[136] In response to Mr Clark's concerns Mr McCombs commissioned a further series of traffic counts at peak times. These surveys confirmed the reduced traffic volumes since the completion of the bypass. He was able to update his assessment of the intersection



performance and he confirmed that it will continue to provide a similar level of service to that currently experienced, following completion of the hotel.

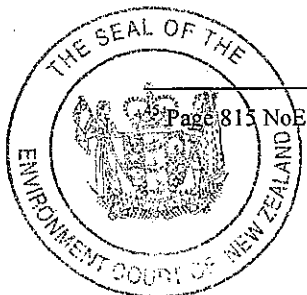
[137] There was no challenge to the Applicant's evidence in respect of the reduced traffic flow since the opening of the inner city bypass. We consider that any adverse effects on the performance of this intersection and consequently on the wider traffic network as a result of Hilton Hotel generated traffic will be adequately offset by the reduction in traffic flows on Jervois Quay and the extended waterfront route. We accept Mr McCombs' evidence on this point. We find that traffic effects of the Hilton on the wider traffic network will be at worst minor.

Rising Bollards

[138] There was general agreement between the traffic experts that unrestricted access to the Shed 6 route is unsatisfactory. To rectify the present lack of effective control of vehicles entering Queens Wharf at the Hunter Street entrance the Applicant proposes a system of rising bollards to prevent unauthorised entry to the Outer-T from Jervois Quay.

[139] Mr Clark stated that the layout of the rising bollard system shown in Mr McCombs' Plan TDG02 Revision A will not meet the proposed conditions of consent as it is not physically possible to turn large vehicles in front of the bollards should they fail to gain access to the wharf. In cross-examination Mr McCombs agreed that the most recent positioning of the bollards was depicted in his TDG008. His evidence was that a large vehicle unable to activate the bollards would reverse slightly and then turn right through a gate and manoeuvre in the Event Centre dock area and then turn around and leave.

[140] Mr Spence, when asked if this was a satisfactory situation for a large truck proximate to a major traffic corridor replied that *it was totally unacceptable*⁴⁵. He explained that this was not the same layout put before the Commissioners' hearing. Mr McCombs subsequently produced as Exhibit 12, a revised Plan TDG09 Revision B, showing the bollards and swipe card access substantially further east than previously shown. Mr Clark conceded there was now room for a truck to turn in front of the bollards in the event of swipe card access being denied but retained a concern regarding the need for a turning truck to execute several manoeuvres across the pedestrian linkage from Frank Kitts Park to the Event Centre.



[141] We have already noted the general agreement in respect of the unsatisfactory aspect of lack of control of vehicle access to the Shed 6 route. Now that the position of the bollards and swipe-card access has been established to the satisfaction of the parties (TDG009B- Exhibit Number 12) there no longer appears to be any opposition to what is proposed – except for Mr. Clark’s residual concern noted above.

[142] We agree that the introduction of the rising bollards will significantly improve the safety and amenity of the non-motorised and pedestrian users of the wharf by reducing vehicle numbers on the Shed 6 route. We understand that this work is to be undertaken soon in any event. It clearly needs to be done.

The Tunnel

[143] An integral part of the proposed hotel development is a new vehicle access to be built to connect the hotel and outer areas of the wharf with the existing basement carpark under the Events Centre. This will enable cars, taxis and light service vehicles to access the hotel and other parts of the wharf in a manner separated from the main pedestrian and cycle traffic which passes along the promenade.

[144] The only hotel traffic to use the Shed 6 route will be larger vehicles (including rubbish removal) and that is to be limited to three vehicles a day. Mr McCombs said that once the tunnel and its associated controls are in place, most of the vehicle usage associated with Dockside and Shed 5 will then use the tunnel, in the same manner as intended for the hotel⁴⁶.

[145] Mr McCombs agreed in cross-examination that although the entrance to the tunnel from the spine of the Outer-T will be controlled by traffic signals (lights), there will be no physical barrier preventing children from walking down the tunnel. He noted that with the combination of the rising bollards (already discussed) and a tunnel for all light vehicular traffic he expected the vehicle numbers using the Shed 6 route to drop by 80%. Mr Anastasiou suggested these improvements could be achieved without the Hilton. In other words the bollards and the tunnel could be installed now. Mr McCombs agreed that the tunnel and bollards were not dependant on the hotel development occurring and that their construction was desirable, but without the Hilton and its associated financial contributions there were constraints.



⁴⁶ McCombs para 10.11 EIC

[146] Mr McCombs confirmed during cross-examination that the proposed tunnel would be available for the use of all light vehicles accessing the Outer-T, Dockside, Shed 5 and not just those associated with the Hilton⁴⁷.

[147] Mr Clark acknowledged⁴⁸ that the proposed tunnel was an acceptable way for traffic to get to the Outer-T. However he raised concerns about the proposed gradients of the ramp which are, starting from the lowest point:

- 1 in 10 for 3.25 metres
- 1 in 5 for 7.5 metres
- 1 in 10 for 5 metres

These are consistent with Condition 31 of the Resource Consent.

[148] Mr Clark suggested that on completion of the development the number of pedestrians and cars in the area will increase (Mr Spence agreed)⁴⁹ and further exacerbate any safety issues. He does not think the distance of 5 metres at 1 in 10 grade at the top of the ramp is sufficient for a driver to check for pedestrians then stop if necessary before entering onto the wharf area. He would prefer the following gradients (again beginning from the lowest point)

- 1 in 10 for 2 metres
- 1 in 5 for 7.5 metres
- 1 in 20 for the last 10 metres at the top of the ramp where pedestrians are likely to be present.

[149] He suggested that the current design does not meet AS-NZS289 (2004) nor the provisions of the District Plan. Mr McCombs calculated that a ramp of the gradients suggested by Mr Clark would be 3.7 metres longer overall than what is currently proposed, and that the *connection between the ramp and a pedestrian area is arranged so as to comply with the provisions of the Wellington District Plan....*⁵⁰. He conceded that the middle section at a 1 in 5 gradient meets the Australia and New Zealand standards but not the District Plan's standards.

[150] The Applicant's evidence⁵¹ was that increasing the tunnel length in the manner proposed by Mr Clark would have the effect of further segregating the southern basin of the

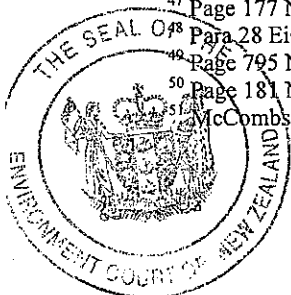
⁴⁷ Page 177 NoE

⁴⁸ Para 28 EIC

⁴⁹ Page 795 NoE

⁵⁰ Page 181 NoE

⁵¹ McCombs Para 9.3 E in Reply



Outer-T from the remainder of the wharf and reducing the area available to large service vehicles to turn without reversing. Mr Spence was not confident that any benefits would outweigh the disadvantages⁵².

[151] Our consideration at this point is confined to the performance and effects of the tunnel itself and not to any effects beyond the point of entry onto the central spine of Queen's Wharf which we will discuss separately.

[152] We are left in no doubt that a tunnel, as proposed, would improve the traffic situation and the vehicle/pedestrian interface, for those sections of the wharf from which it removes vehicles. Without further development on the Outer-T such an initiative could not be justified on the grounds of cost.

[153] Apart from the gradient, the traffic witnesses all endorsed the concept of a tunnel as proposed. On the matter of gradients, we accept in general terms Mr Clark's proposition that the reduced gradient and increase in length of the final section of the tunnel as it approaches the pedestrian interface would give greater driver/pedestrian visibility. It would also ensure a slower and safer exit into the pedestrian shared space.

[154] We did not understand either Mr McCombs or Mr Spence to disagree that Mr Clark's tunnel gradients would deliver some benefit, but that any benefits would be at the expense of a decreased (by 3.75 metres) turning and manoeuvring room for larger vehicles towards the eastern extremity of the wharf.

[155] We did not receive enough evidence to reach a final conclusion on the optimal tunnel gradient and consequential length. Mr. McCombs confirmed that the tunnel interface with the wharf as proposed meets the standards of the Wellington City Plan. It is only the final 5 metres of the tunnel that is required to have a gradient of 1 in 10 and that is what is planned⁵³. We accept Mr McCombs view that with this section of tunnel complying with the requirements of the District Plan an acceptable level of safety will be achieved although we have reservations as to whether or not this represents an optimal solution.

[156] However we also consider that if the 3.75 metres of turning space which will be lost, (should the tunnel be designed to Mr Clark's preferred specifications), is critical to the safe



manoeuvring of large vehicles in this shared space, then that is a telling indicator of the constraints of this site to accommodate hotel related traffic.

[157] We find that the addition of a vehicle tunnel as proposed will provide a significant improvement to the traffic environment of those sections of Queen's Wharf from which traffic is removed. That finding must however be read in the context of what happens when vehicles leave the tunnel.

Ramp Exit to Hotel Door and Return

[158] We begin this section by quoting from the evidence of Mr Spence:

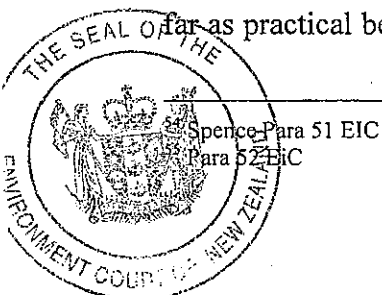
Perhaps the most important matter to be addressed in the design of the project, to ensure its traffic effects will be acceptable, is the management of potential pedestrian and vehicle conflict in the area of the Outer-T around the hotel entrance. In this area the vehicles emerge from the tunnel and are manoeuvring to drop off or pick up passengers, or are accessing an adjacent service bay to deliver goods. It is in this area where pedestrians will routinely share space with vehicles and where the design needs to ensure constraints are placed on vehicles through such measures as surface design elements, furniture, signage, road markings and a mandated low speed limit of 10 kilometres an hour as well as the control of vehicles through the tunnel traffic signals.⁵⁴

We agree.

[159] Mr Spence went on to say that limiting the number of vehicles allowed access to the tunnel is a key factor together with:

- Proposals to limit access through vehicle tunnel;
- A proposed limit on service vehicles around Shed 6 route;
- Suitable physical design being put in place on the site so as to achieve a safe and convenient sharing of space on the outer T between those vehicles that need to be on the site and the predominant/priority use of the area by pedestrians as envisaged in the Waterfront Framework⁵⁵.

[160] Mr Spence discussed the desirability of containing the space available to vehicles as far as practical between the tunnel exit and front entrance of the hotel. The challenge is to do



this by way of seating, bollards, lighting units etc, rather than formal traffic signs, road markings, traffic islands and the like, as the latter were considered to be less satisfactory in terms of their aesthetic appeal and not compatible with the design objectives for this important area of public space.

[161] Mr Spence referred to Plan TDG007 and Plan IGL007 which when read together incorporate the design elements referred to above. Mr Spence's evidence was that: *the proposed design will provide a level of delineation or demarcation which will constrain vehicular traffic and provide some clear pointers to both drivers and pedestrians to reinforce the intent of pedestrians having priority in this space...*⁵⁶

[162] Mr McCombs did not consider that the unmarked (shared space) area in front of the proposed hotel would bring conflict and potential hazard for pedestrians. His view was that while there is potential for conflict it will be managed in an appropriate way. He discussed the layout of the space, its physical arrangements, its general area of supervision and the requirements of the Traffic Management Plan. He further stated that this does not give priority for pedestrians in one place and priority for vehicles in another. *That is not the manner in which these shared spaces are designed...*⁵⁷.

[163] In addition to the Shed 6 counts, Mr McCombs provided pedestrian and cycle counts for both the Outer-T and the area outside Dockside Restaurant. These peaked on a Friday, late afternoon/early evening:

350 pedestrians per hour – outside Dockside

125 pedestrians per hour – on the Outer-T

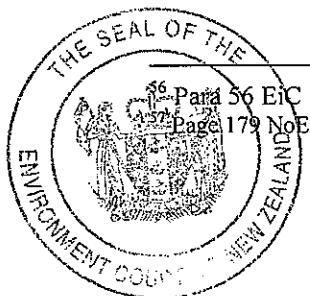
On Saturdays:

400 plus pedestrians per hour – outside Dockside

200-250 pedestrians per hour – on the Outer-T

[164] It was generally agreed that pedestrian numbers are likely to increase with the introduction of the Hilton Hotel.

[165] Mr McCombs estimated the vehicle arrival and departure numbers at the busiest hours on a Monday morning to and from the new hotel.



[166] His estimates for the combined total tunnel use (existing tenants and hotel patrons) for the peak Monday AM is 35 vehicles per hour inbound and 35 vehicles per hour outbound. Our reading of Mr. McCombs' evidence on this point (Table 3)⁵⁸ is that these figures should read 45 VPH inbound and 45 VPH outbound.

[167] It was his evidence (corroborated by independent peer review) that the tunnel has the capacity to accommodate this traffic and he confirmed that it will provide *an acceptable level of service at peak demand during a typical week*.⁵⁹

[168] The majority of service vehicles for the proposed hotel are required to be less than 2.2 metres in height and these will use the tunnel. Larger service vehicles (including rubbish removal trucks) will continue to use the Shed 6 route but will be limited to three per day on average. These vehicles will travel either from the tunnel exit or along the Shed 6 route past Dockside, depending on their size, down the eastern side of the hotel to the service area. The larger vehicles will be required to execute a turn east of the lobby and reverse along the eastern side of the hotel to the service area.

[169] We have already noted (and agreed with) Mr Spence's comment on the importance of managing traffic and mitigating adverse traffic effects in this area.

[170] We have had regard to the principle in the Waterfront Framework which provides: *The entire waterfront is predominantly for people, not motor vehicles. Pedestrians and non-motorised transport will be able to use the waterfront safely. However service vehicle access needs to be provided for*⁶⁰. We understood that all parties before us agreed with this principle. Our interpretation of the principle is that people and non-motorised transport have priority over motorised transport and need to be able to use the waterfront safely. The principle recognises the need for service vehicles. The Framework acknowledges the possibility of new buildings, however it appears to us a contradiction to consider new activities, such as a hotel, which have significant vehicle servicing requirements in such a sensitive position on the wharf which is *predominantly for people not motor vehicles*.

[171] We note a further passage from the Waterfront Framework⁶¹: *As a general principle, vehicle traffic is restricted or excluded from moving on and around the waterfront. Access for*

⁵⁸ McCombs Page 26 EIC

⁵⁹ McCombs Para 9.5 EIC

⁶⁰ Page 19 Waterfront Framework

⁶¹ Page 28 Waterfront Framework



service and emergency vehicles will be allowed in a controlled manner, but minimised, as will access for car parking. There will be no routes dedicated to different forms of access, except for a pedestrian only section of the promenade by Shed 5 because of congestion of this narrow part of the promenade. Otherwise, pedestrians, cyclists, service and emergency vehicles will all share the same space, while still giving pedestrians priority.

[172] Again we have referred to this passage as we did not understand any party to take issue with it.

[173] We consider that a proposal such as this hotel appears contrary to the overall intent of the Waterfront Framework in terms of minimising access by vehicles.

[174] Hotel traffic flows of 35 vehicles per hour exiting and entering the tunnel will need to queue on the centre of the spine of the Outer-T while they wait for a green light and their turn to enter the tunnel.

[175] While we accept Mr McCombs' evidence that the tunnel would provide an *acceptable level of service* for vehicles during peak hours we have no doubt that at these peak times the area outside the hotel on the Outer-T leading to and from the tunnel will contain vehicular traffic to a degree that it will resemble a vehicle precinct and deter or interfere with pedestrian use of this area. There will be vehicles parked while discharging or uplifting passengers and baggage. There will be vehicles queuing to enter the tunnel and others traversing the route from the tunnel to the hotel. That is why we have described the area as a vehicle precinct.

[176] There are also taxis servicing Dockside and Shed 5 to consider. In order to access the restaurants, taxis would be required to make a u turn after they exited the tunnel and drive down the spine of the wharf to the restaurant door to drop off their passengers. They would be required to turn again, drive east along the spine before making another u turn to re enter the tunnel. These manoeuvres would add significantly to traffic/pedestrian issues created by the hotel traffic.

[177] The Court was left in some doubt as to the route these taxis would use, or if in fact they would be authorised to use the wharf at all. The evidence was far from definitive. Mr. Pike's evidence was:...*There is no reason why taxis have to park outside Dockside. They can deposit their passengers at a location between Museum of the Sea and the Events Centre*⁶².



[178] Counsel for the Applicant in answer to questions from the Court stated: *...And I opened on that point Sir. All small vehicles having legitimate activity in that area, whether they are servicing Dockside or Shed 5 or anything else, will be going through the tunnel. That was the basis upon which the application was put before the Commissioners . . .*

*It is the basis upon which this application has been put to the Court and it is in the evidence.*⁶³

[179] However later he had this to say: *....The concept of service vehicle does not include taxis so it will be the small service vehicles, the tradesmen's vehicles, the other vehicles, the four vehicles that are entitled to park outside Dockside at the moment, those types of vehicles will be able to use the tunnel and no other vehicles.*⁶⁴

[180] The application for Resource Consent⁶⁵, which was filed with the Court as part of the agreed bundle of documents does not support counsel's position. Under a heading *Access and Egress* it states:

It is intended that all vehicle access and egress other than for large service vehicles to the outer wharf (ie for the planned hotel and existing Shed 5 and Dockside restaurant facilities) will be via a new vehicle tunnel connecting the existing basement carpark with the outer tee. This represents a significant change from the existing arrangements where all traffic to and from the outer tee, including taxis, (our emphasis) currently uses the service vehicle route around the perimeter of Shed 6.

[181] And further on in the same document under the heading *New Tunnel* it states:

.....It is particularly noted that the new tunnel is to have a minimum height clearance of 2.2 metres so as to accommodate all light vehicles including courier vans, and other smaller vehicles servicing the restaurants (our emphasis) and hotel.

*.....This proposed arrangement will then provide for the outer vehicle access to the east of Shed 6 to be restricted for use only by the larger service vehicles and the occasional coach that are unable to be physically accommodated via the basement*⁶⁶.

[182] Nor does the draft Traffic Management Plan support counsel's position or that of Mr Pike. It specifically refers to taxis as one of the groups of vehicles that currently service Dockside⁶⁷. In a later table dealing with the situation post Hilton construction, it describes the

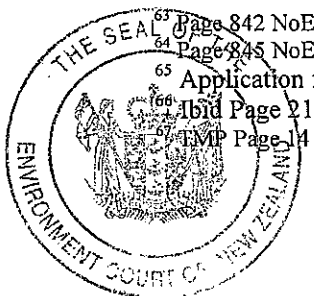
⁶³ Page 842 NoE

⁶⁴ Page 845 NoE

⁶⁵ Application for Resource Consent (Annexure "C"). Appendix 10, page 20

⁶⁶ Ibid Page 21

⁶⁷ TMP Page 14



access route for taxis servicing *Restaurants, Event Centre, Hotel as via basement car park, new vehicular tunnel.*⁶⁸

[183] Both the application for resource consent and the TMP anticipate taxis servicing Shed 5 and Dockside via the new tunnel. Nowhere do these documents state absolutely and unequivocally that taxis are to be denied access to Shed 5 or Dockside via the tunnel. The documents contain a series of contradictory or uncertain possibilities.

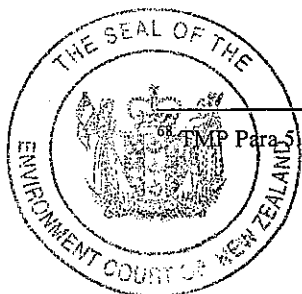
[184] Our uncertainty is increased by a series of letters from TDG to Wellington City Council (dated 28 September, 5 October 2007) and to WWF (dated 11 October 2007) some of which indicate that taxis will be restricted and others that at least a preferred taxi company would be allowed access to the wharf.

[185] The contradictions and uncertainties arising from differences in the documents and the assertions made to the Court leave us in a difficult position when attempting to quantify the extent of vehicle usage on Queen's Wharf post Hilton. As an aside we note that it appears to create a traffic management situation fraught with difficulty if taxis were able access the Hilton through the tunnel but not Dockside or Shed 5.

[186] We consider that there is potential for any vehicles (including taxis) servicing Dockside or Shed 5 via the vehicle tunnel to exacerbate an unacceptable traffic environment on the Outer-T. We accept that the restaurant traffic will not normally occur at the hotel traffic peak early in the morning but there is clearly potential for difficulty in the evening and at weekends for example.

[187] Added to this situation will be the occasional large vehicle traversing the Shed 6 route. The presence of these vehicles will intensify and expand the range of an already vehicle-dominated space.

[188] We have already noted that pedestrian numbers are predicted to increase in this area if the hotel establishes on this site. This will potentially increase the difficulties for drivers having to negotiate vehicles in a space shared by more pedestrians, and affect the amenity and safety of pedestrians.



[189] Considered overall, we find that the traffic related effects of the Hilton on non-motorised users (cycles, prams, skaters, alligator bikes, pedestrians) east of the tunnel entrance/exit on the spine of the Outer-T will be significant and adverse.

Shed 6 Route

[190] The Applicant proposed and has accepted a condition of consent, restricting the number of large vehicles (too large for the proposed tunnel) servicing the Hilton via the Shed 6 route to an average of three per day.

[191] Mr McCombs' evidence was that there can be up to 50 vehicles per hour using this route as the entrance from Jervois Quay is not controlled at present.

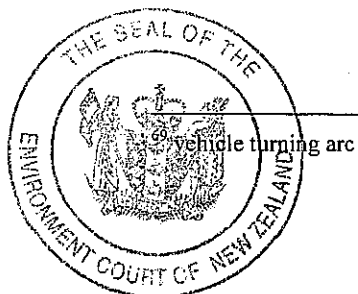
[192] If bollards are installed at the Hunter Street intersection so that large vehicles using this route are limited to three per day for the hotel plus the legitimate users attached to existing tenancies on the wharf, this would be between one-sixth and one-quarter of the present volume using the route. Hilton service vehicles would be required to avoid use of the Shed 6 route during prime pedestrian commuting times (7am – 9am, 12pm – 2pm, 4pm – 6.30pm) and no deliveries after 11am on the weekends.

[193] Mr Clark stated that this will concentrate the number of large vehicles outside of peak pedestrian commuting times and so increase the effect on those recreational pedestrians using the wharf outside those times. His evidence was that the use of the Shed 6 route by any additional large vehicles will have a significantly adverse effect on pedestrians.

[194] We note this route is currently used by coaches and other large vehicles servicing cruise liners and naval vessels. Plan TDG03 attached to Mr McCombs' evidence shows the route and *swept paths*⁶⁹ of these vehicles. Evidence on the number and frequency of this use was sparse, as was evidence as to how other existing vessels legitimately using the wharf would be able to be serviced by vehicles.

[195] This use will continue irrespective of the Hilton development.

[196] Mr McCombs' evidence was that 50 to 350 pedestrians an hour use the Shed 6 route and up to twice that number on a holiday weekend. A vehicle moving the length of Shed 6



may expect to encounter 30 pedestrians on average coming the other way on a normal weekday.

[197] We first consider the arguments for and against restricting large service vehicles to times outside peak pedestrian use. In effect this would mean between 9am to noon and 2pm to 4pm weekdays, and before 11am on weekends. On average this would mean approximately one heavy vehicle every one hour and forty minutes during the week off-peak times and possibly at shorter average intervals before 11am during weekends.

[198] Mr Clark describes this as concentrating the heavy vehicle movements to when recreational pedestrians are using the wharf. We do not agree that an average of one vehicle every hour and forty minutes is a concentration. We accept that pedestrians may be disadvantaged by this arrangement but we see this as occurring as a result of a perfectly sensible proposition as without this proposed restriction it is likely that at least some of the heavy vehicle movement would occur when pedestrian use is at its highest.

[199] We agree that if heavy vehicle movements are to be authorised around the Shed 6 route for the Hilton they should only occur outside peak pedestrian hours.

[200] We next consider the adverse effects, if any, of the average three heavy vehicles per day on pedestrians. We are mindful of the swept paths of a range of heavy vehicles supplied by Mr McCombs⁷⁰.

[201] It is clear that at the south end of Shed 6 most of the available shared carriageway will be required by any of the largest heavy vehicles (such as diesel tankers) when they are using the route. While vehicles such as rubbish trucks do not swing in quite such a wide arc they also require enough of the available carriageway to make non-motorised and pedestrian use difficult when they are executing their turns.

[202] In the McCombs *swept path* diagrams a pinch-point is shown as vehicles turn east on the wharf stem and move between the proposed tunnel and the Dockside parking area and the area used occasionally for outdoor tables for dining and drinking.

[203] As the hearing progressed, it became clear that a line of bollards shown between Shed 5 and Shed 6 were incorrectly marked on Mr McCombs' plan. They are in fact several metres



to the west. Mr McCombs confirmed that, by utilising this additional space, turning vehicles would no longer need to encroach on the Dockside space.

[204] However this turning manoeuvre occurs across the main pedestrian promenade which is unsatisfactory.

[205] The evidence identified a restriction in the width of the promenade alongside Shed 6 in front of Ferg's Kayaks. This restriction is caused by the presence of a crane as well as by the addition of the dedicated walkway (as proposed by the Applicant), parked vehicles and parked kayak trailers.

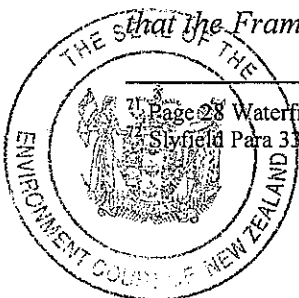
[206] These are not shown in Mr McCombs' plan and apart from the crane will not necessarily all be in place all the time. They have the effect of preventing two heavy vehicles from passing and they will further constrain the space available for pedestrian use.

[207] The question is: how significant an effect are three (average) per day large vehicles on those pedestrians using the route in off peak times? We make our assessment having had regard to the provisions of the Waterfront Framework. We have expressed our reservations as to the weight to be attached to that document, however none of the parties challenged the emphasis which the Framework put on protection of the promenade as primarily pedestrian space.

[208] We note the submissions of Mr McClellan and Mrs Ritchie. We felt in many ways their use and appreciation of the wharf as a safe and relatively vehicle free recreational space, reflected that of the Wellington public, who use the wharf and promenade.

[209] Where the Waterfront Framework does mention *service vehicles*, it is in the context of service and emergency vehicles: *As a general principle, vehicle traffic is restricted or excluded from moving on and around the waterfront. Access for service and emergency vehicles will be allowed in a controlled manner, but minimised.....*⁷¹

[210] Careful consideration of all these factors lead us to agree with the submission of Counsel for Wellington Civic Trust and Waterfront Watch Ltd.: *In my submission what the applicant seeks is fundamentally incompatible with the type of limited service vehicle activity that the Framework contemplates:.....*⁷². The whole thrust of this document is to enable and



promote non-motorised use with pedestrians having priority. We consider that thrust is consistent with relevant provisions of the Regional Coastal Plan and District Plan to which we will refer in due course.

[211] We noted Mr Spence's arguments against coach access to the Hilton using the Shed 6 Route. The Regional Council's position was that one coach per month (on average) is unacceptable on this route. If that is so we are at a loss to see how three additional large vehicles per day including rubbish trucks and diesel tankers may be regarded as acceptable.

[212] We find the addition of an average of three heavy vehicles to those vehicles legitimately using the Shed 6 route will constitute an adverse effect on pedestrian and non-motorised users of the Wharf and Promenade. Having said that we acknowledge that the Shed 6 route now appears to be the only means of access for large vehicles to the Outer-T so that there is likely to be ongoing conflict which must be managed in any event.

Parking

[213] There is a 385 space car park beneath the Events and Retail Centres. Mr McCombs' evidence was that three-quarters of all vehicle movements to and from this car park enter and leave via the Hunter Street entrance. The remainder use the northern exit.

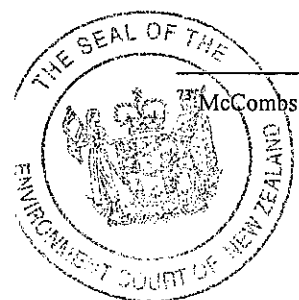
[214] Weekday demands for these parks are highest and they operate at or near capacity between 9.30am and 3.30pm weekdays.

[215] Parking demand for the proposed hotel has been calculated from the parking patterns recorded at the Hilton Hotel on Princess Wharf in Auckland. Demand is typically highest in the weekends as a consequence of a higher proportion of domestic guests who rely on private cars rather than taxis over weekends.

[216] Projected weekday average peak parking requirement for the hotel is for 30 spaces. Hotel guests will have their vehicles parked by way of a valet service operated by hotel staff.

[217] Thirty spaces have been sought within the basement car park for use by the hotel. Fifteen spaces will be reserved and dedicated for hotel use – a further fifteen will be made available for use by the hotel as required. A further ten spaces will be made available within a 500 metre radius for exclusive use of hotel.⁷³ No parking is to be provided on the wharf.

⁷³ McCombs Para 8.12 EiC



[218] Mr Spence's evidence was that no dedicated on site parking is required for CBD hotels under the District Plan and that the arrangements outlined above for the hotel development are appropriate. He notes that no allowance has been made for users of other hotel facilities such as casual diners.

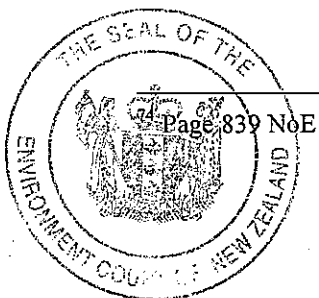
[219] Any discussion on parking for the proposed hotel must start from the point that there is no requirement under the District Plan to provide on site parking and it is appropriate to apply a similar standard to the Hilton. We accept as reasonable Mr. McCombs' estimate of parking demand based on the Hilton Hotel on Princess Wharf in Auckland. Parking in the Events Centre underground park by way of valet service is a reasonable and sensible proposition. We understand that this requirement can be arranged although we note that the Court has not been provided with documentation confirming this arrangement. Any such arrangement would need to apply for the duration of the resource consent.

[220] The Events Centre car park is the route by which any vehicles wishing to access the hotel must travel prior to entering the tunnel. The Court held some concerns in respect of the practicality of such a route to access the front of house of a Hilton Hotel. In answer to questions from the Court on this matter Mr. Spence had this to say: *-I mean it certainly won't be the easiest hotel to access. It will perhaps be one of the most difficult to access in terms of finding the route or making sense of the route and the time taken to get there. No question about that.*⁷⁴

[221] Our concerns remain. This arrangement will be less than satisfactory in terms of access however that would be the Hilton's problem.

[222] Mr McCombs' evidence was that there is ample room in the underground parking basement to allow parking related movements and access to and from the tunnel. This evidence was not challenged. We accept Mr McCombs' opinion that the *difficult* access to the hotel will not impact on the parking situation.

[223] We accordingly find that parking arrangements as described in the Applicant's evidence are satisfactory subject to confirmation that basement parks have been secured for the life of the consent.



Traffic Management Plan - TMP

[224] Mr Spence commented on the Traffic Management (TMP) in his evidence-in-chief and described it as a useful starting draft. He said: *I believe it fails in a number of ways to satisfy Condition 23. For example: it does not address the matter of time limits to be imposed on service vehicle access via Shed 6; there is no evidence that there has been consultation with other parties; and there is no evidence that access to the site has been secured by the basement car park or parking secured.*⁷⁵

[225] Mr Spence went on to say the TMP should be dealt with post-consent rather than burdening the Court with substantial matters of detail.

[226] Mr Clark's evidence is that the TMP places no controls on WWL – who are responsible for the document - to ensure pedestrian amenity and safety is not compromised as it is currently along the waterfront. He states that all existing activities using the waterfront around Shed 6 are going to continue to do so regardless of vehicle size.⁷⁶ Accordingly, there will be a number of small vehicles still using the waterfront route. It is his opinion that the draft TMP clearly shows a lack of understanding of the problems of vehicles using the waterfront route and the level of service for pedestrians.

[227] Mr McCombs' response in respect of any controls on WWL, is that Condition 23 of the consent requires approval of the TMP by the Manager Environmental Management, Regional Council. He stated that with the tunnel in operation all the small vehicles associated with other tenancies such as Dockside and Shed 5 will use that for access. Mr McCombs said that Condition 23 specifically requires detailed information which is not available at this stage and as a result he acknowledges that the draft TMP is incomplete.

[228] The tension for those preparing this or any similar plan is the level of detail required pre-consent and how much detail can be left to the post-consent and pre-construction period. The combination of the TMP and conditions of consent needs to provide the Court with the confidence that any adverse effects from the proposal can be mitigated and any proposed consent condition complied with.

[229] In answer to questions from the Court, Mr McCombs directed us to Condition 23. His evidence was that the Court should state the outcomes that it is looking to achieve and the



TMP should be drafted in such a way as to achieve those outcomes. Mr McCombs referred specifically to the relevant requirements of Condition 23 which require the TMP to address the following matters:

- *Evidence that access to the site through the TSB Bank Arena basement car park has been secured and that this will be provided on an ongoing basis;*
- *Details of the parking that has been secured in the vicinity of the hotel (including numbers of car parks, numbers of valet car parks, hours of use and distance from the hotel, and length of any lease);*
- *A servicing plan prepared in accordance with Condition (24) to this permit;*
- *Recommended speed limits for vehicles using the wharf;*
- *Protocol for the operation of the access tunnel (to include details of traffic control signals and details regarding the issuing and management of access cards and PIN numbers and access arrangements for casual users);*
- *Protocol for the management and planning of the traffic associated with hotel events and management of hotel traffic during significant waterfront events;*
- *Arrangements to ensure pedestrian safety, particularly in the vicinity of the tunnel exit and the hotel entrance; and*
- *Details regarding the safe design and treatment of the tunnel exit to ensure the safe exiting of vehicles is achieved.*

Note: in reviewing the traffic management plan for approval, the Manager, Environmental Regulation will consult with the Chief Transport Engineer, Wellington City Council.

[230] We accept that the bullet points in Condition 23 identify traffic issues which must be addressed. The last 5 bullet points all involve matters of traffic safety and pedestrian amenity – both issues identified from the outset as being pivotal to this application. Although mentioned in the TMP and the evidence, they have not been canvassed in the detail required for the Court to have confidence that the adverse effects have been mitigated. We are being asked to approve a process where issues such as, who might use the tunnel, when they might use it, pedestrian safety, safe design of the tunnel exit, and arrangements to ensure pedestrian safety on the Outer-T are left to be determined by a Council officer through the TMP.

[231] It is not appropriate for matters of such significance in the context of this case to be left to be decided by a council officer. Condition 23 appears to leave a wide discretion with the Council officer as to whether or not safe conditions have been achieved. The Court



indicated very early in these proceedings⁷⁷ that there were aspects of traffic management on Queen's Wharf post Hilton about which we were uncertain and therefore unhappy. The Applicant has had ample time to address these issues but has failed to do so. The court must be satisfied that these matters have been adequately addressed. We are not in that position.

Coach Access to Hilton

[232] Condition 29 of the proposed Resource Consent Conditions requires all coaches to load and unload in the coach parking area at the rear of the Museum of City and Sea – or any other area outside Queens Wharf. The Applicant has appealed this condition. The Applicant wants to bring up to 12 coaches a year around the Shed 6 route.

[233] Mr Spence while recognising that there would be instances where it would be beneficial for the hotel to have coach access directly to the hotel, stated there are unusual constraints with this particular site. He concluded *in summary, on considering the various aspects of the case for and against permitting coach access, I support the Commissioners' decision not to provide for any coach access to the hotel. I believe that individually the effect of such large, intrusive vehicles would be potentially significant and not in tune with the intentions of the WWF.*⁷⁸

[234] Mr Spence conceded that there may be up to 12 coaches at one time for a large cruise ship but *on the occasions where there are coaches going through there and there are pedestrians on the Shed 6 route there is a fair degree of inconvenience to pedestrians. It is not an acceptable situation but it is an existing situation – it is there.*⁷⁹ Although there will be limits placed on the size of the ships able to berth at Queens Wharf with the Hilton in place, Mr. Pike's evidence was that only a small number of the cruise ships that have berthed at Queen's Wharf in the past or are booked to in the future will be restricted from berthing because of their size, post Hilton.⁸⁰ They will have to use the southern end of the Outer-T.

[235] Mr Pike also stated that all of the New Zealand naval vessels that have berthed at the wharf since 2002 will be able to continue to do so,⁸¹ although it is apparent that most of them will also be restricted to the southern end of the Outer-T.

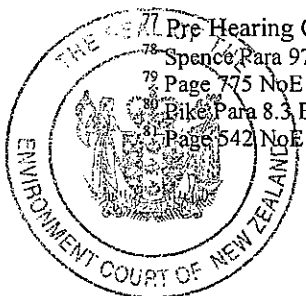
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⁷⁸ Spence Para 97 EiC

⁷⁹ Page 775 NoE

⁸⁰ Pike Para 8.3. EIC

⁸¹ Page 542 NoE



[236] For the purposes of our discussion we assume the status quo will remain in terms of ship related wharf traffic although it is reasonable to expect a reduction in this traffic if the Hilton proceeds.

[237] On this debate we feel it worthwhile to quote an interchange between Mr Churchman and Mr Spence: -

Mr Churchman: *And it is the sort of situation that is consistent with this being a shared environment, shared traffic environment, isn't it?*

Mr Spence: *No, I believe it goes too far. I do not believe that one could say that it is an acceptable shared environment. It is a situation established, by the fact that cruise ships do go there. It is historically a wharf. Ships have gone to the wharf and these sort of activities take place. But, I believe in the context of the Wellington Waterfront Framework that the situation is not a happy situation, it is not a good situation, it is not desirable.*

I do not think vehicles, I do not think pedestrian share space with coaches well at all, certainly not in the numbers that you talked about.⁸²

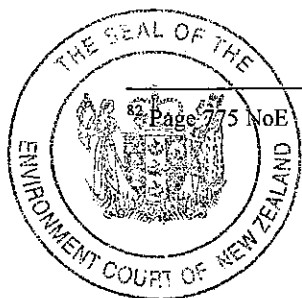
[238] On the matter of coach access to the Hilton we accept the evidence of Mr Spence.

[239] The situation in respect of coaches servicing cruise ships and naval vessels is far from satisfactory. However it is an existing situation that predates the increased pedestrian use of the waterfront promenade.

[240] Consenting to extra coach activity, even the modest increase being sought must only exacerbate pedestrian disruption and the existing unsatisfactory situation. We consider that coach access to the Hilton via the Shed 6 route should not be permitted.

Conclusion on Effects of Traffic of the Hilton Hotel on the Outer-T

[241] Considered together, we find that the adverse effects of traffic generated by the Hilton on the amenity and safety of pedestrians, cyclists and other non-motorised users of the wharf are potentially significant and adverse. We are not satisfied that the potential adverse effects have been adequately avoided, remedied or mitigated.



Heritage Effects

[242] Evidence was given to the Court about the impacts of the development on heritage matters by three specialist witnesses. They were

- Ms M P O'Keefe (an archaeologist) for Waterfront Investments
- Mr L J E Salmond (an architect with considerable experience in building conservation work and heritage studies) also for Waterfront Investments
- Ms B A Fill (a heritage consultant) for the other Appellants.

[243] The application documents filed by Waterfront Investments with the Regional Council included an archaeological assessment by Dr P I Chester which we have read, however this document has been overtaken by the direct evidence of witnesses to the Court. The evidence of Mr A W Thornton (a civil/structural engineer) who assessed the condition and engineering status of the wharf as part of the application process is also of considerable relevance in addressing heritage issues.

[244] In addition we propose to discuss under this heading the matter of the appropriateness of the design for the site in a wider sense. The evidence of Ms D I Popova (an urban designer called by the Applicant) Mr G R McIndoe, (architect and member of TAG called by the Regional Council), Mr W F Thresher (a landscape architect/urban designer called by Intercontinental) and Dr M L Steven (a landscape architect called by Intercontinental) will be relevant in this regard.

[245] Heritage issues fall to be considered under two separate sub categories;

- Firstly what might be described as archaeological effects.
- Secondly how the proposal relates to the heritage context of Queens Wharf.

[246] Insofar as archaeological issues are concerned it is common ground that Queens Wharf is an archaeological site as defined in the Historic Places Act 1993. Any modifications to Queens Wharf will require authority from the New Zealand Historic Places Trust (NZHPT) in due course. That was identified in Dr Chester's initial archaeological assessment.

[247] Queens Wharf and its edges are identified⁸³ in the Regional Coastal Plan as a feature or building of historic merit.



[248] Considerations as to changes to the physical structure of Queens Wharf (in an archaeological sense or otherwise) need to be considered in the light of Mr Thornton's engineering assessment of the wharf. Mr Thornton's view is that the wharf is in poor structural condition and requires pile replacement, repairs and seismic strengthening irrespective of whether or not the Hilton Hotel development proceeds. It does not meet current Building Code seismic requirements. It was apparent from Mr Thornton's evidence that the wharf has been poorly maintained for a long period of time. It was his assessment that the wharf could be upgraded to sufficient strength to accommodate the Hilton building in a manner which would minimise damage to the existing fabric of the wharf.

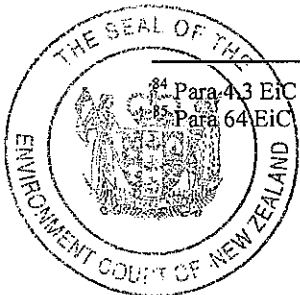
[249] Condition 20 of the Regional Council consent required preparation of a conservation management plan. The Applicant's advisors had prepared a plan in response to that condition. Ms Fill identified shortcomings in that document which were acknowledged by Ms O'Keefe and Mr Salmond, however we did not understand there to be any real dispute that the appropriate means of protection of heritage fabric is by way of an appropriately drafted conservation plan. Additionally we note the need to obtain authority for work on the wharf from NZHPT which will specifically address the heritage fabric of the wharf.

[250] The issue of how the Hilton proposal fitted with the wider heritage context of Queens Wharf was not as easily resolved. We note that in addition to Queens Wharf and its edge, the Regional Coastal Plan identifies both Dockside (Shed 3) and Shed 5 as features or buildings of historic merit. The Bond Store building and former Harbour Board Wharf Offices are protected under the District Plan as well as being registered with NZHPT.

[251] In Sections 3 and 4 of her evidence Ms Fill undertook a reasonably detailed description and consideration of the heritage features in and around the site. She contended that . . . *the context of Queens Wharf has significant heritage value*⁸⁴. Both Ms O'Keefe and Mr Salmond agree with that contention. Ms Fill concluded that . . . *the proposed hotel development will, because of its height and bulk and the associated modifications to the wharf's structure for strengthening, construction of the hotel, carparking and access arrangements, have an adverse effect on the heritage values of the wharf and its surroundings which include a number of significant heritage buildings*⁸⁵.

⁸⁴ Para 43 EIC

⁸⁵ Para 64 EIC



[252] Mr Salmond disputed that view. He pointed out that the Waterfront Framework anticipated the replacement of Shed 1. That is correct. Clearly any significant development on the site is likely to involve the removal of Shed 1 although we cannot absolutely discount the possibility that it might remain (in some form or other) in the longer term.

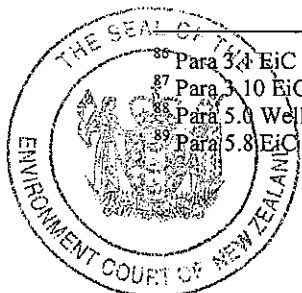
[253] Mr Salmond discussed the issue of placement of new structures into settings with high heritage values and concluded that this can be satisfactorily achieved where . . . *careful account has been taken of those elements and qualities of the site that constitute its significance.*⁸⁶ He noted that Dockside and Shed 5 (notwithstanding alterations which had been made to them) retained their historic form and scale and that any new building should *develop a satisfactory response to those attributes in order that it may be seen to "fit in" to what remains of the historic setting.*⁸⁷ It was Mr Salmond's view that the hotel building achieved that by reusing the footprint of Shed 1.

[254] Use of the Shed 1 footprint was a theme throughout much of the evidence for the Applicant. It was contended that because the Hilton building occupied the same footprint as Shed 1 it reflected the historic pattern of development on the waterfront. We consider that there is an air of unreality in that approach. It requires the Court to overlook the bulk of the building in its context even having regard to the architectural treatments imposed on the building to minimise the effects of its bulk. We understand the term bulk to refer to the size of a building relative to its surroundings which is a function of both its vertical and horizontal dimensions.⁸⁸

[255] Ms Fill expressed the view⁸⁹ that the Hilton development would compromise the heritage values of the wharf because of its size and scale in relation to the adjacent buildings. She referred to and adopted evidence given on behalf of NZHPT to the Regional Council hearing that the loss of two to three storied scale and the construction of a large, imposing, geometric structure in this context was inappropriate in heritage terms.

[256] We accept Ms Fill's views in that regard. We conclude that establishment of a building of the bulk of the Hilton in this context will further compromise the historic setting of Queens Wharf, a setting which Mr Salmond identified has already been compromised by

⁸⁶ Para 3.4 EIC
⁸⁷ Para 3.10 EIC
 Para 5.6 Wellington District Plan Design Guides
⁸⁹ Para 5.8 EIC



the erection of unsympathetic buildings (the Events and Retail Centres) in this vicinity. Rather than fitting in with the scale of the remaining heritage buildings near the Outer-T the Hilton will tower over and dominate them. It will become the dominant building on the wharf and overwhelm the scale of past development.

[257] In terms of the wider issue of the appropriateness of the design for the site (which must be considered having regard to the heritage values of the area) we have closely considered the evidence of Ms Popova for the Applicant. Ms Popova considered that the effects of the building's bulk were dealt with in a number of ways. The first of these was the use of the Shed 1 footprint and we refer to our earlier comments in that regard.

[258] Secondly, Ms Popova (and also Mr McIndoe) noted that the proposed building was of a similar height to other buildings in the area such as the Queens Wharf Apartments and the Maritime Museum. The buildings with which that height comparison has been made are however, situated on the Jervois Quay frontage of the Wharf as far back from the water's edge as it is possible to be in the Queens Wharf area. What is apparent to even the most casual observer is that the buildings on Queens Wharf step down from the city so that the buildings at the water's edge (Sheds 1 and 6) are markedly lower than those on Jervois Quay. The Events Centre disrupts that pattern to some extent but there has been an obvious attempt made to integrate its roofline with that of the lower Shed 6 roofline in front of it. The proposed hotel development places the tallest building in this particular precinct on its most prominent site at the water's edge.

[259] Ms Popova considered that various architectural features of the building would reduce the effect of its bulk. Those features included:

- The way in which the facades were subdivided;
- Contrasting colours used in the design;
- Shadows created by the design;
- The way the top floor was recessed;
- The obvious subdivision into separate floors;

[260] Mr Thresher however contended:

In my opinion the proposed building design is inconsistent with the surrounding buildings and would not be integrated into the environment. The visual impact of bulk is influenced by building shape as well as size and location previously discussed, and



*the box-like form results in substantially increased building mass and monolithic form (albeit with an articulated envelope), particularly in this visually prominent and isolated location.*⁹⁰

[261] Dr Steven similarly placed considerable emphasis on the location of the site and its prominence as being significant factors in assessing the impact of the proposed hotel on its surroundings. We consider that the Applicant's and Regional Council witnesses do not appear to have adequately factored these particular elements into their assessment.

[262] We think that Mr Thresher and Dr Steven are correct. We accept that architectural treatments have been applied to the building in an attempt to diminish the effects of its bulk. Regrettably we do not consider that they can adequately mitigate the wider effects of the bulk of the building on this particularly prominent site. We accept Mr Thresher's view that the building will be *incongruous in its context*⁹¹.

Effects on Public Space

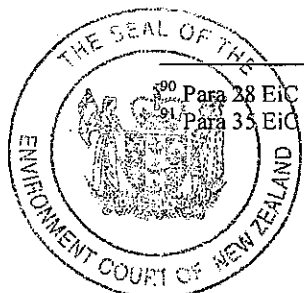
[263] The effect of the hotel building and activities on public space was dealt with by a number of expert witnesses:

- Mr D P Irwin (a landscape architect) for the Applicant;
- Mr Chaplin;
- Mr McIndoe;
- Ms Popova;
- Dr Steven;
- Mr Thresher.

Additionally Mrs Swann for Waterfront Watch and the Wellington Trust, Mr McClellan and Mrs Ritchie also expressed views on the impact of the proposal on public space.

[264] We do not propose to recite the views of these witnesses or submitters in detail but rather to address the issues which they raised and the significant evidence of various witnesses relating to those issues.

[265] By public space we mean those areas of Queens Wharf around and in proximity to the hotel site presently available for use by the public. This public space contributes to the



amenity not only of Queens Wharf itself but of the wider waterfront and city. The availability of public space at Queens Wharf is one of the most significant contributors to the amenity values of this environment. Amenity values are . . . *those natural or physical qualities and characteristics of an area that contribute to peoples' appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes*⁹².

[266] At present the amenity of the Outer T is considerably enhanced by the 9-10 metre wide public space around the periphery of Shed 1. We were told that this space is used by the public for a wide range of activities such as bike riding, roller blading, skate boarding, fishing, walking, jogging or simply sitting and enjoying. When a vessel of interest ties up at the wharf the area is popular with interested observers. The width of the wharf enhances the amenity of this public space.

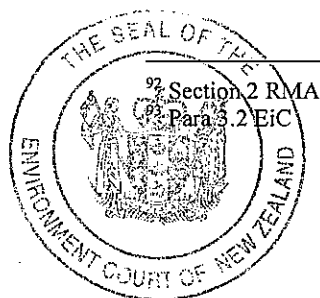
[267] None of the parties challenged the view that the protection of use of the public spaces on the waterfront was an essential component of any development proposal at Queens Wharf. Consideration of the impacts of the Hilton proposal in this regard appears to raise three primary issues:

- Physical effect of the proposed building on public space;
- Effect of activities associated with the hotel on public space;
- Public space design.

The Building

[268] Mr Chaplin told us⁹³ that part of the architect's brief in designing the proposed hotel was to:

- Ensure that the boardwalk around the existing shed remained accessible to the public;
- Enhance the area through the amenities of the hotel including bars, restaurants and outdoor seating;
- Design the building to integrate with the restaurant activities of Dockside and Shed 5;
- Ensure that the building design was in the existing shed's footprint so that any loss of views from the Queens Wharf plaza to the harbour would be minimal;
- Design the building in a manner which enforced the iconic nature of the site;



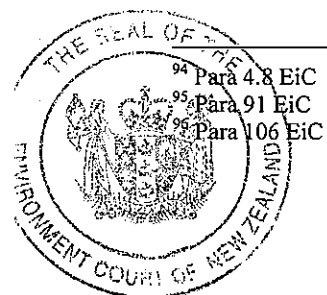
- Consider the effects of vehicular and pedestrian traffic, wind and sun shading.

Mr Chaplin considered that these requirements had been incorporated into the hotel design. A significant feature of the hotel design identified by Mr Chaplin and referred to by a number of the Applicant's witnesses was that the ground floor of the hotel was *primarily public space*⁹⁴. The restaurant and bar of the hotel would spill out on to the wharf area linking in with the activities at Dockside and Shed 5.

[269] Mr McIndoe had undertaken a detailed comparison of the dimensions of the Hilton building with other buildings in the vicinity. That comparison was set out in his Table 1⁹⁵. In terms of effects of the building itself he was of the view that it had a sense of *human scale*⁹⁶ brought about by design features of the building including glazing, canopies, screens, balconies and openings. We understood his evidence in this regard to be that the building related well to the public using the spaces around the wharf. Ms Popova also considered that articulation and detailing of facades provided a human scale.

[270] Contrary views as to the impact of the building on public space and its users were expressed by Dr Steven and Mr Thresher. Dr Steven considered that the ground floor façade which rose to a height in excess of 6 metres above the deck level was considerably in excess of what might be regarded as human scale. Mr Thresher considered that the building would overwhelm or dominate the pedestrian open spaces. Both considered that the effects of the building would be worsened by the reduction in promenade space available to the general public brought about by the hotel decks. The decks would reduce the public space around the edge of the wharf to about 5 metres in their vicinity (approximately by half).

[271] A number of the witnesses who supported the Hilton proposal referred to the generous use of glass proposed for the ground floor which they contended created an open appearance to the area thereby enhancing the public spaces. Dr Steven and Mr Thresher both had reservations in that regard and we consider those reservations are justified. The open effect created by use of the glass will be substantially reduced because of the service areas along the eastern side of the hotel building and the open lounge areas will be substantially occupied by furniture, hotel staffing, guest activities and the like.



[272] Overall we consider that the views of Dr Steven and Mr Thresher are correct and that the hotel building will dominate its surrounding public areas due to its bulk and its decks will reduce the amount of public space around the wharf edge. We consider that the hotel decks which are elevated above wharf level will intrude into the public space rather than being seen as part of it. The decks will be hotel space open to those members of the public who might wish to eat or drink there.

Hotel Activities

[273] There was a strong divergence of views between those witnesses who supported the hotel proposal and those who expressed opposition to it, as to how hotel activities would relate to the activities being undertaken in the public space around the hotel.

[274] Messrs Irwin and Chaplin for example, thought that the hotel connected well to the other bars and cafes in this vicinity. The restaurant and bar which would be open to the public would increase the enjoyment of eating, drinking and socialising which would be compatible with Dockside and Shed 5. Mr Irwin suggested that the public space improvements being undertaken in association with the hotel would significantly increase the range of activities occurring on the wharf and complement the facilities on the wharf. Ms Popova also expressed views as to the way in which the activities in the hotel would relate well to other activities being undertaken in and around the wharf.

[275] Dr Steven however expressed very strong negative views in this regard. His views were summed up in this passage from his evidence:

The wharf is an egalitarian behaviour setting within which a wide range of activities and behaviours are acceptable, while the hotel is an elitist behaviour setting where behaviours are governed by a much stricter set of codes. Different behaviour patterns at the active edge will, in my opinion, lead to conflicts between users of the internal hotel spaces and users of the external, public spaces⁹⁷.

Dr Steven considered that this conflict would lead ultimately to appropriation of the wharf as *de facto* Hilton Hotel space.

[276] We found this aspect of the evidence difficult. We felt that the emphasis on the Hilton Hotel and its 5-Star status was somewhat overdone. We considered that any private



hotel/dining establishment which spilled out into the public arena in this vicinity could be expected to have similar effects to the Hilton. We noted the evidence given by Mr J W Ingram (general manager of the Hilton, Auckland) that the ground floor facilities of the Auckland Hilton are widely utilised by the general public. He expressed the view based on his observations of the Hilton Auckland, that the Wellington development would add to the waterfront atmosphere and attract the public to the Outer-T.

[277] We consider that the reality lies somewhere between the views of all of the various witnesses. We think that the fact of the matter is that the presence of the Hilton, or rather its bar/restaurant facilities on the ground floor will attract some persons to it, but will also provide a disincentive for others to visit the Outer-T whose present character will change. Overall we consider that it is the spatial effects of the bulk of hotel building and its decks intruding into the public space which are detrimental to the enjoyment of the public space rather than the dining/socialising activities themselves.

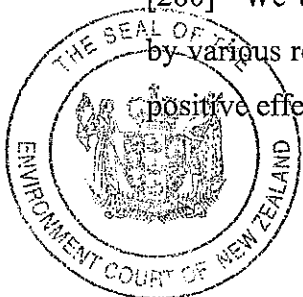
[278] Some emphasis was placed by a number of the witnesses for the Applicant on the contribution which the hotel ground floor bar/restaurant facilities might make to the vibrancy of the area. The Applicant's planner, Mr Aburn, identified the beneficial effects of these activities in his evidence. In a general sense we agree with those observations. However we do not consider that those benefits should be achieved at the expense of public space in this context. We observe that there are already many opportunities for such activities in this vicinity due to the presence of Dockside, Shed 5, the Loaded Hog and the various cafes and bars contained in the Events and Retail Centres.

Public Space Design

[279] As part of its development proposal the Applicant proposes various measures to assist in the use and enhancement of public space. These include:

- Maintenance and refurbishment of bollards, railway tracks and other features which have a connection with the wharf's maritime history;
- Demarcation of safe/unsafe spaces to protect pedestrians;
- Provision of seats.

[280] We understand that these improvements are consistent with recommendations made by various reports for enhancement of the waterfront. We agree that these improvements are positive effects of the proposal.



Effects on Views

[281] Consideration of the effects of the Hilton development on views falls into two broad categories, private views and public views. By private views we mean views from places which are not generally accessible to the public, primarily in this case, buildings in and around the CBD. By public views we mean views from public spaces, primarily roads and streets in the CBD and other parts of the waterfront. The most significant aspect of the public view issue is the effect of the Hilton development on *viewshafts* identified in the District Plan.

Private Views

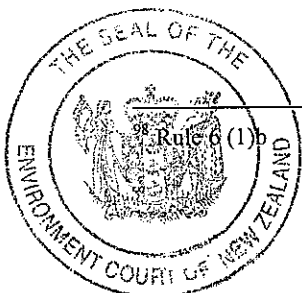
[282] As a general proposition it may be accepted that the protection of private views is not guaranteed by the District Plan nor by the Regional Coastal Plan. However the availability of views from private spaces across the waterfront to the harbour is clearly something which may contribute to the amenity values enjoyed by the owners and occupants of some buildings in the CBD.

[283] When assessing the impact of the Hilton on these private views there is a significant factor which must be taken into account. In the coastal marine area the Regional Coastal Plan allows, as a permitted activity, replacement of or additions to existing buildings as long as such addition or replacement does not exceed the dimensions of the existing building by 5 metres in horizontal projection or 1 metre in vertical projection.⁹⁸ In other words the permitted baseline for the consideration of effects of a structure extending Shed 1 would be a building 5 metres longer and 1 metre higher than the existing shed.

[284] In the District Plan there is a zero permitted height level for any new building in the Lambton Harbour Area. In baseline terms we consider that the effect of the relevant provisions of the two Plans is that we may assess the adverse amenity effect on private views of any building on this site which exceeds a height of more than 1 metre above the height of existing Shed 1.

[285] We heard detailed evidence as to the likely effects of the Hilton development on private views of the harbour from the Wellington CBD from:

- Mr I T Leary (a planner called by the Intercontinental);
- Mr M R Garnham (a director of two companies which owned properties situated on Customhouse Quay).



Other witnesses touched on these matters only briefly.

[286] Mr Leary gave evidence as to the effects of the new Hilton building on views from the Intercontinental Hotel. He provided photomontages showing before and after situations. Mr Leary concluded that there would be *significant*⁹⁹ effects on views from the Intercontinental Hotel. These effects would be most apparent from the 6th and 7th floors.

[287] We visited the Intercontinental Hotel and having done so agree that there would be adverse effects on views from the 6th and 7th floors. Views of the harbour would be reduced (at least from some rooms) by the new Hilton building. That effect substantially diminished from the 9th floor which, because of its height, would lose a view of only a restricted foreground portion of the harbour but not the body of the harbour nor the horizon.

[288] The Court was not unanimous as to the significance of this effect in the case of the Intercontinental. Its guests will (we assume) be largely transient and many will not be aware of the before and after situation. Although immediate harbour foreground views will be lost, side views of the harbour will remain. However the Hilton will dominate views from the lower floors which we visited. The majority opinion (Commissioners McConachy and Mills) was that the adverse effect was more than minor.

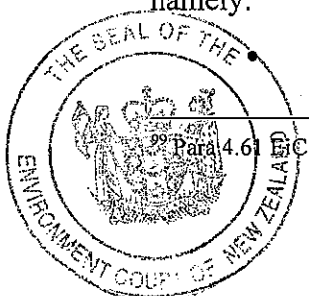
[289] Mr Garnham is a principal of Prime Commercial and Miro Property. Prime Commercial owns ABN Amro House and Miro Property was previously the owner of Deloitte House. Both of these buildings are substantial commercial buildings situated on Customhouse Quay with views across the waterfront to the harbour. Both buildings are tenanted by a number of commercial tenants.

[290] Mr Garnham testified that he purchased the buildings in the expectation that town planning policies expressed in the District and Regional Plans would result in minimal or low rise development on the waterfront. When pressed by Mr Churchman for specifics in that regard, Mr Garnham was unable to identify with any precision the particular policies to which he was referring.

[291] Mr Garnham identified what he considered were key attractions of the buildings, namely:

Virtually unobstructed views across the inner harbour;

⁹⁹ Para 4.61



- A feeling of spaciousness engendered by the limited amount and height of construction on the waterfront;
- The majority of the views are of a maritime or seascape nature;
- The number and bulk of manmade structures within the viewsapes are relatively minor;
- There are relatively unobstructed views of the movement of boats and other maritime craft.

Mr Garnham considered that these features make the buildings attractive to tenants who were prepared to enter into long-term leases to take advantage of them.

[292] We visited both ABN Amro House and Deloitte House. We looked at various views from both buildings on the 8th or 9th and 4th or 5th floors. As we did with the Intercontinental, we found that the likely effect on views of a 5 storey building on the Outer T was substantially worse from the lower than from the higher floors. In each case the buildings concerned presently have expansive views of the inner and outer harbour and Oriental Bay from the floors which we have described. Occupants of the 4th and 5th floors of those buildings will certainly have their present wide and open outlook substantially reduced by the Hilton building. Their existing views of the inner harbour, the harbour horizon and parts of Oriental Bay and its shoreline will be severely restricted. None of the Applicant's witnesses assessed these views.

[293] Mr McIndoe made a brief assessment of views from the Tower Building on Customhouse Quay. He seemed to say that the Hilton presented a better view than Shed 1. Ms M E O'Callahan (the Regional Council's Planning witness) expressed the opinion that the impact of the Hilton on these private views would be minor. We disagree with her in respect of ABN Amro House and Deloitte House, and the majority of the Court disagrees with her in respect of the Intercontinental. Ms O'Callahan made the point that these buildings are situated in the central city which is a dynamic area where on-going development is anticipated and desirable. She says that new buildings can be considered on the waterfront. That latter comment however rather appears to overlook the baseline issue as to the restricted height of buildings which are permitted as of right, at Lambton Harbour.

[294] We note Ms O'Callahan's observation that buildings in the central city are valued for their proximity to entertainment opportunities, places of employment and the general vibrancy



of the central area. However we also agree with Mr Garnham's identification of the features of ABN Amro House and Deloitte House which make them particularly attractive to their owners and occupants particularly the wide harbour views.

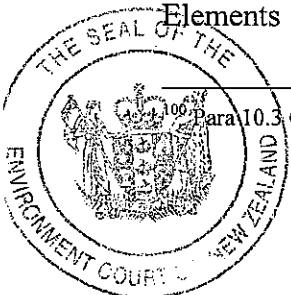
[295] In his closing submissions Mr Churchman referred to what he described as *exaggerated and totally unrealistic claims about views*¹⁰⁰ made by Mr Garnham. Having visited the properties in question we find that Mr Garnham's evidence with regard to views was in fact accurate. We find that there will be adverse effects on views for the occupants of a number of the floors of the two buildings in question and that such adverse effects will be more than minor.

Public Views

[296] Discussion as to the effect of the Hilton building on public views revolved around the effect which the building would have on viewshafts identified in the District Plan. The viewshafts in question identify views contained within the city which the District Plan seeks to protect. The viewshafts provide a visual link between the city, the harbour and the suburbs beyond. It was common ground that two of the viewshafts identified in the District Plan would be impacted by the Hilton Hotel development.

[297] We were told by Ms O'Callahan that the City Council has recently updated the viewshaft provisions of the District Plan. These are to be incorporated into the District Plan by Plan Change 48 (PC 48). The viewshafts in question are numbered Vs6 (Johnston Street) and Vs7 (Brandon Street) in PC 48. In the operative District Plan these viewshafts are referred to as Vs8 (Johnston Street) and Vs9 (Brandon Street). We will refer to them as the Johnston Street and Brandon Street viewshafts.

[298] The Johnston Street viewshaft looks from the western side of Lambton Quay along the middle of Johnston Street towards the harbour and the hills beyond. Shed 1 and the hills are highly prominent in the viewshaft. The recital identifying the location of the viewpoint in the District Plan states that *Views along the Golden Mile to the waterfront are important* (Lambton Quay being *the Golden Mile*). PC 48 defines the Focal Elements of the viewshaft as being *Roseneath, Inner Town Belt/Te Ranga a Hiwi Precinct* and the Context Elements as being *North Queens Wharf and built up ridgeline of Roseneath*. These descriptions of Focal Elements and Context Elements are slightly different to those of the operative District Plan



which identifies the Focal Elements as being *Inner Harbour, Roseneath* and the Context Elements as being *Queens Wharf and built-up ridgeline*. The Hilton building will remove about half of the existing views of Roseneath and the Roseneath ridgeline from this viewpoint.

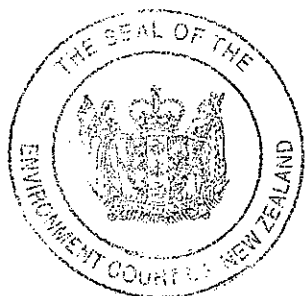
[299] In endeavouring to assess the significance of intrusion of the Hilton into the viewshaft (beyond the extent of the Shed 1 building) we have considered various provisions of the District Plan and the protection which the District Plan seeks to give viewshafts. Relevant provisions to which we have had regard are:

- Policy 12.2.2.7 which is to:

Protect, and where possible enhance, significant vista views of the harbour, hills and townscape features from within and around the Central Area;

The commentary for this policy states that the Council seeks to preserve specific views of the harbour, local hills and townscape features which are . . . *an important element of the cityscape.*

- Rule 13.1.2.6 is a ***view protection*** standard applicable to permitted activities. It provides (in summary), that buildings which impinge into viewshafts are not a permitted activity. Discretionary activity consent is required for such buildings. The Rule contains a comment that it does not apply to buildings or structures within the coastal marine area however that appears to simply reflect the jurisdictional reality that such buildings are not within the control of the District Plan.
- Rule 13.3.2.16
This is the Rule applicable to consideration of discretionary activity applications for buildings which impinge into viewshafts in the District. It sets out the criteria to be applied in determining whether or not consent ought be granted. There are three particularly applicable criteria in that regard.
 - 13.3.2.16.2 *Whether the development breaks up the view vertically or horizontally. This in general will be unacceptable unless the intrusion is minor.*
 - 13.3.2.16.3 *Whether the central core of the view is impinged upon. This in general will be unacceptable unless the intrusion is minor.*



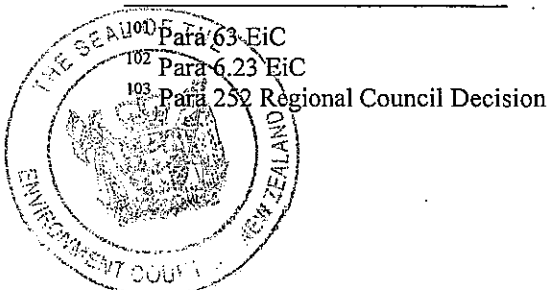
- 13.3.2.16.4 *Whether the development intrudes upon one or more of the views focal elements. This in general will be unacceptable.*

We were advised by Ms O'Callahan that these criteria are now included in policy 12.2.6.7 of PC 48. We were not provided with a full copy of PC 48 however we did not understand that change to make significant alterations to the relevant considerations.

[300] Mr McIndoe, Ms O'Callahan and Ms Popova all gave consideration to the adverse effects of the Hilton building on the two viewshafts and concluded that they were minor. There was some difference of opinion between them as to whether or not the building would have the same effect on the Johnston Street viewshaft as Shed 1 on a horizontal basis. Mr McIndoe considered that there would be a slight reduction in the horizontal intrusion of Shed 1 into the viewshaft. Ms O'Callahan said that because of the effect of the stair tower at the northern end the horizontal intrusion of the Hilton building would be no greater than Shed 1 (but by implication that there would be no reduction). We do not think that anything turns on that. Even on the basis of Mr McIndoe's opinion that there will be a slight widening of the horizontal view we consider that his own evidence demonstrates that widening to be insignificant.

[301] All three of these witnesses assessed the impact of the intrusion as on the Johnston Street viewshaft as *acceptable*. Mr Thresher disagreed with that position and considered that the intrusion was not acceptable. He identified the importance of the viewshafts to the city and that the Hilton proposal neither protects nor enhances them.

[302] We had difficulty with the approach to assessment of effect on this viewshaft adopted by Mr McIndoe and Ms Popova. Mr McIndoe considered that the value of the viewshaft would not be *significantly downgraded*¹⁰¹ by the presence of the hotel building and Ms Popova considered that the view would remain at an *acceptable level*.¹⁰² Policy 12.2.2.7 seeks to protect and enhance these significant views not to downgrade or reduce them. The witnesses' approach seems a recipe for the effect noted in the Hearings Commissioners decision¹⁰³ of important viewshafts being eroded over time by a series of minor intrusions.

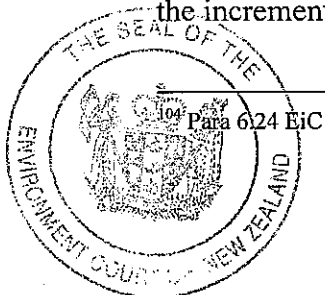


[303] We concur with Mr Thresher's view. We think that when the criteria contained in the District Plan and PC 48 are referred to, the Hilton building's intrusion into the Johnston Street viewshaft falls into the *unacceptable* category. In that regard we note:

- The intrusion into the viewshaft will be at both vertical and horizontal levels. Vertical because of the height of the Hilton building over the height of shed 1 and horizontal because of the loss of effect of the sloping roof of Shed 1 which provides a triangular increment to the viewshaft between the corner of the building and the top of the roofline which will be lost.
- The central core of the view will be impinged upon. To the extent that Shed 1 is part of that central core, such impingement may be of little moment although Mr Thresher considered that the change of the character of the building was itself detrimental to the view. In any event, to the extent that Roseneath is part of that central core the impingement is significant.
- Finally, Roseneath is identified as one of the view's focal elements and the Hilton building will substantially intrude into that focal element. All of the views of Roseneath presently available above the roofline of Shed 1 will be lost.

[304] The Brandon Street viewshaft currently provides a considerably less expansive view of the waterfront and the hills behind than does the Johnston Street viewshaft. In this instance the effect of construction of the Hilton will be to remove any remaining view of the built up ridgeline of Roseneath which is one of the context elements of the viewshaft. Ms Popova describes this as . . . *a glimpse to the top of the built up ridge of Roseneath*¹⁰⁴. We consider that description somewhat understates the importance of the view of the ridgeline. However when regard is had to the already limited nature of the view and particularly to removal of the ridgeline from the focal content of the viewshaft, we accept that (on balance) its loss is of less significance than the loss of a large portion of the Johnston Street viewshaft.

[305] In summary we consider that the impact of the Hilton building on the Johnston Street viewshaft is significant and of a kind which the criteria in the District Plan and PC 48 describe as *unacceptable*. Any impact on the Brandon Street viewshaft is less significant and might be regarded as *acceptable*, although we have reservations in that regard arising out of the incremental effect of minor intrusions to which we have referred.



[306] In her evidence-in-chief Ms Popova commented:

*While the development will have some impact of (sic) identified viewshafts, it is important that this is considered in the overall context of the proposal and in relation to the contribution it will make to the city as a whole*¹⁰⁵.

We agree with that comment. However that goes to the assessment which the Court must make under s5 RMA where the Court takes a broad overall view of the proposal to assess whether the purpose of sustainable management is achieved should consent be granted. Insofar as consideration of effects on public views is concerned, our s5 assessment will be undertaken on the basis that the Hilton proposal has a significant adverse effect on public views in respect of the Johnston Street viewshaft and a minor adverse effect on the Brandon Street viewshaft.

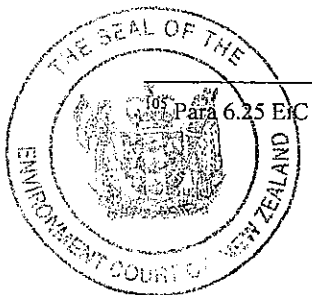
Construction Effects

[307] It is estimated that construction of the proposed hotel and its associated works will be undertaken over a two year period. Obviously, during this period there will be considerable disruption to use of the promenade in this vicinity and the Outer T by members of the public generally and other waterfront businesses.

[308] It appears to the Court that such disruption is an inevitable consequence of any development on the Outer T. Doubtless some less substantial form of development might be completed over a shorter time frame and involve less disruption by traffic etc, however unless such a limited development justified construction of a tunnel it might have a more disruptive traffic effect (albeit over a shorter period) than the Hilton development, some of whose traffic will access the site through the tunnel once it is constructed.

[309] Condition 8 of the Conditions of Consent imposed by the Regional Council requires the preparation and approval of a Construction Management Plan addressing a wide range of matters specified in the condition, including specific conditions as to times of access by heavy traffic on the Shed 6 route.

[310] Over recent years the Wellington waterfront has been the site of various development projects. There was no evidence before us to suggest that these had not been satisfactorily



managed. The evidence of Mr Pike was that in fact such projects had been satisfactorily managed¹⁰⁶.

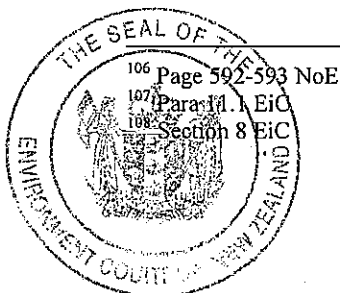
[311] The Court accepts that there will be disruption to other activities on the waterfront should the Hilton development proceed. Such disruption will however be temporary and is the inevitable consequence of any development on the Outer T. It is important that construction effects are properly managed, however we consider that such effects are adequately mitigated by the imposition of a condition such as that proposed in the Regional Council's Conditions of Consent.

Maritime Character/ Berthage Effects

[312] One of the acknowledged effects of establishment of the Hilton on the northern end of the Outer-T is that some vessels which, in the past have have used, or are currently using the Outer-T for berthage will be unable to continue to do so. As we understand it the primary reason for that is that such vessels create a vibration effect on the wharf structure in certain weather and sea conditions by banging against and pulling away from the wharf. We were told by Mr Thornton¹⁰⁷ that these vibration effects are not acceptable for hotel operations.

[313] Because the northern end of the Outer-T is to be structurally separated from the rest of the wharf the vibration from vessels tied up to the southern end of the Outer-T will not be transmitted through to the northern end. However the southern end of the Outer-T can only accommodate vessels 130 metres or less in length. The effect of this limitation is that vessels exceeding 130 metres in length which previously tied up at the Outer-T will no longer be able to do so if the hotel proceeds.

[314] The vessels mainly affected by the 130 metre limitation are cruise ships which presently berth at Queens Wharf from time to time. Mr Pike discussed this in his evidence¹⁰⁸. He identified that over the last six years between five and fifteen cruise ships per year had berthed at Queens Wharf and that the number of those ships longer than 130 metres had ranged from one to four per annum. Of the fourteen cruise ships booked for berthage at Queens Wharf over the 2007/2008 year only one is longer than 130 metres.



[315] Mr Pike's view was that the impact on cruise ship berthage from establishment of the Hilton would be limited as any cruise ships less than 130 metres in length can continue to be accommodated at the southern end of the Outer-T. Those larger than 130 metres would have to be accommodated at Aotea Quay. Mr Pike said that larger cruise ships already prefer to berth at Aotea Quay for other reasons in any event.

[316] Queens Wharf is presently used for berthage by naval vessels and again these vessels which are less than 130 metres in length can continue to berth at the southern end of the Outer-T.

[317] What become more apparent during the course of the hearing is that the 130 metre limit is only one of the limitations which will apply to the berthage of vessels. A much more significant limitation on every day use of the Outer-T by vessels was identified in the evidence of Mr Thornton. His evidence was:

*Vessels which do not cause any discernable vibrations will be able to continue to be berthed directly against the northern portion of the Outer-T. These are likely to be vessels weighing 300 tonnes or less, although I note that this is a very conservative estimate and that the precise tonnage that can continue to be accommodated on the northern portion of the Outer-T will need to be confirmed by way of trial and error*¹⁰⁹

[318] It appears that the possibly conservative 300 tonne limitation identified by Mr Thornton would have a significant effect on the range of vessels which can presently berth at the northern end of the Outer-T but will no longer be able to do so. Mrs Allan identified¹¹⁰ that of the range of NZ naval vessels which presently use the wharf, the vast majority exceed the 300 tonne limit by substantial margins.

[319] Mr Pike provided usage details¹¹¹ showing use of Queens Wharf by a wide range of naval vessels from both NZ and overseas. Although he provided details of their lengths, no tonnage information was provided. On the basis of Mrs Allan's evidence it seems that many if not all of the vessels identified in Exhibit 3 would be excluded from the northern end of the Outer-T also. Mrs Allan also identified that two other vessels which currently use the wharf, Atlantic Elizabeth (661 tonnes) and Tangaroa (648 tonnes) would no long be able to use the



northern end of the Outer-T. Another vessel which she identified (Kahura) was on the borderline at 300 tonnes. We understand it is likely that the limitation would apply to a wide range of fishing and other vessels which could currently use the Outer-T for berthage.

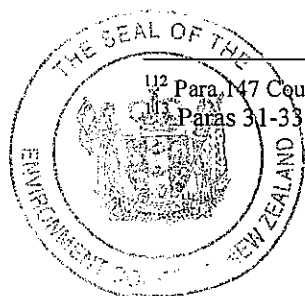
[320] We are uncertain as to whether or not the Hearings Commissioners were aware of the extent of the effect of the hotel on vessel berthage. We note that the Regional Council decision¹¹² stated that berthing at the northern end of the Outer-T would be restricted to vessels of 1000 tonnes or less. The restriction identified in Mr Thornton's evidence to the Court is considerably wider than that.

[321] We will return to this effect when we discuss relevant provisions of the Regional Coastal Plan and the District Plan. It is however apparent that there will be a significant adverse effect on the ability of vessels to use the Outer-T for berthage if the hotel proceeds. Mr McIndoe stressed in his evidence¹¹³ the need to retain the maritime/ industrial character of the waterfront. He did that largely in the context of cruise vessels. In our view the impact of the Hilton on other vessels is more significant and adverse. A wide range of naval, fishing, research and other vessels will be excluded from the northern end of the Outer-T. Such vessels could presumably use the southern end of the T, but there would be a substantial reduction in the berthage space available at Queens Wharf.

Shading

[322] Two witnesses gave evidence as to the shading effects of the Hilton building on its surroundings. Those witnesses were Mr A J Doherty (for the Applicant) and Mr H L Moody (for Intercontinental Hotel).

[323] At first glance there seemed to be some considerable differences between the two witnesses. On closer examination it became apparent that this was not necessarily the case. The principal difference between Mr Doherty's evidence and that of Mr Moody is that in undertaking his assessment of shading effects Mr Doherty used what is known as the *shadow casting* method whereas Mr Moody used what is known as the *sun transit method*. Furthermore Mr Doherty's brief was limited to assessing additional shading from the Hilton building between the hours of 9 am to 4 pm (NZ standard time). Mr Moody's assessment of shadowing effects went outside of those hours.



[324] The Court requested that Messrs Doherty and Moody met to discuss the differences between them and if possible reach a common position. That request resulted in the filing of a memorandum signed by Messrs Doherty and Moody which stated that it was in the method of presentation of their results where differences lay between them. The mathematical accuracy of their respective assessments was not disputed.

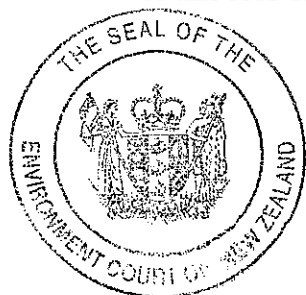
[325] Mr Moody assessed the effect of the additional shading from the Hilton on the Queens Wharf area having regard to four view points. Those four view points were:

- At the north eastern corner of Shed 5 (Viewpoint 1);
- At the outdoor table area towards the southern end of Shed 5 (Viewpoint 2);
- On the promenade in the middle of the stem of Queens Wharf (Viewpoint 3);
- In Queens Wharf Square in front of the shade sail (Viewpoint 4).

[326] Mr Moody's conclusions as to additional shading caused by the Hilton in respect of these viewpoints was as follows:

- Viewpoint 1. There would be losses of sunlight at this viewpoint in the order of 50/60 minutes of sun per day in the early morning from mid August through to the beginning of May. These effects will occur over a range of times between 7 am and 9.20 am.
- Viewpoint 2. The assessed loss of sunlight at this viewpoint ranged from 30 minutes to 1 hour 10 minutes throughout the entire year with the common extent of loss being in the order of 50 minutes. These effects will occur over a range of times between 7.20 am and 9.40 am.
- At Viewpoint 3 loss of sun occurred at only limited times of the year for times ranging between 20 minutes and 1 hour 10 minutes. These effects will occur over a range of times between 7 am and 9.20 am.
- At Viewpoint 4 additional shading occurred for between 20 and 40 minutes during late autumn, the winter and early spring. These effects will occur over a range of times between 7.10 am and 9 am.

Mr Moody did not attempt to assess the significance of these incidents of shading, he merely identified what they were. His identification was accepted as accurate. It is the significance of this loss of sunlight which was in dispute.



[327] The area in question covers approximately 100 metres of the promenade. Mr Moody's evidence establishes that this particular area will be subject to additional shading from the Hilton building for the periods and during the times identified. It should be noted that this shading effect does not extend over the full 100 metres uniformly during these times. Although there will be times when the shading does extend over the whole area there will be times when some parts are shaded and others not.

[328] In his cross-examination of Mr Moody and in his closing submissions, Mr Churchman made the point that the sunlight protection provisions of the District Plan seek to maintain direct sunlight access in the Lambton Harbour Area between 10 am and 4 pm, being the times of the day when this area was most heavily used.

[329] We think that Mr Churchman was quite right when he contended that during the times of additional shading identified by Mr Moody people are more likely to be moving through the area on their way to work and the like as compared to later in the day when they might wish to sit down, enjoy their lunch in the sun or just sit and relax. Mr McIndoe made a similar point.¹¹⁴

[330] Both Mr Aburn and Ms O'Callahan made the point that the 100 metres or so of promenade which would be affected by the additional shading was only a small portion of the overall length of the promenade. That view led Ms O'Callahan to the conclusion that although the effect of shading on the shaded area itself was more than minor, when assessed against the promenade overall the effect was in fact minor.

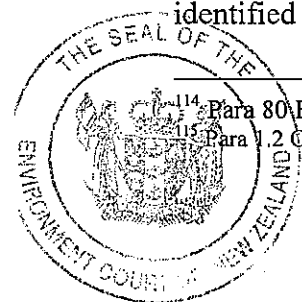
[331] We think that is a fair assessment. The additional shading in this area caused by the height of the Hilton building over and above that of existing Shed 1 is an adverse effect of the proposal. However we consider that when regard is had to the restricted times of day, restricted periods of the year and restricted extent of the shaded area in relation to the full length of the promenade, the overall effect of the additional shading is minor.

RMA Documents

[332] We have agreed with Mr Churchman's submission¹¹⁵ that the *primary focus* in considering this application is its actual and potential effects on the environment. We have identified and discussed those effects in the preceding paragraphs in this decision.

¹¹⁴ Para 80 EIC

¹¹⁵ Para 1.2 Closing Submissions



[333] It is however necessary for us to also have regard to a range of planning documents in reaching our decision. We have previously referred to the Agreed Statement of Planning Experts, dated 11 April 2007 which was lodged with the Court and signed by the four planners who gave evidence before us, Mr Aburn, Mrs Allan, Mr Leary and Ms O'Callahan. The Agreed Statement identified the following relevant documents in terms of s104(1)(b) and (c) RMA, namely:

- The New Zealand Coastal Policy Statement (NZCPS);
- The Regional Policy Statement for the Wellington Region (RPS);
- The Regional Coastal Plan for the Wellington Region (the Regional Coastal Plan);
- The Wellington City District Plan (the District Plan);
- The Wellington Waterfront Framework (the Waterfront Framework).

We have already made reference to some of these documents in the earlier sections of this decision.

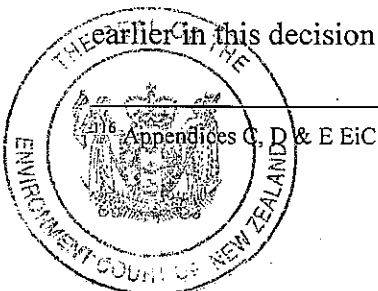
[334] Attached to the Agreed Statement were extracts from the various documents identifying provisions which all of the planners agreed may be relevant to our considerations in this case. The list is quite extensive and the planners referred to many of these during the course of their evidence. Mr Aburn provided¹¹⁶ a detailed commentary on objectives and policies which the Court found to be a helpful reference. We will endeavour in this decision to concentrate on those aspects of the documents which we see as being of particular relevance in this case.

NZCPS and RPS

[335] We do not propose to discuss these two overarching policy documents in this decision. We consider that the relevant policy issues come down to narrower considerations than the somewhat broad brush approach of NZCPS and the RPS.

Regional Coastal Plan

[336] This is the primary document relevant to this application. It contains objectives and policies which are specific to the Lambton Harbour Area as well as a range of more general objectives and policies which have some relevance. We have referred briefly to some of them earlier in this decision but now consider them in more detail.



[337] The starting point for our considerations in terms of the Regional Coastal Plan is Objective 4.1.24 which is that:

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

This objective makes it clear that there is to be *comprehensive development* in the Lambton Harbour Area.

[338] The policy which flows from this objective is one which all of the planners agreed was central to our considerations of this application. That is policy 4.2.45 which provides:

4.2.45. *In the Lambton Harbour Development Area to*

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

(The policies in question are each accompanied by an associated explanation. We will refer to those explanations in the succeeding paragraphs of this decision.)

[339] The planners who gave evidence in support of the Hilton proposal (Mr Aburn and Ms O'Callahan) both considered that the Hilton proposal met these policies. The planners who gave evidence in opposition to the proposal (Mrs Allan and Mr Leary) both considered that the proposal did not meet these policies. We will consider the various individual policy provisions in each case having regard to its associated explanation.



[340] *Provide for a wide range of activities appropriate to the harbour/city interface*

Explanation The intention of bullet point one is to limit activities only if their effects make them incompatible with other activities appropriate to their location, or if they detract from the amenities of the area.

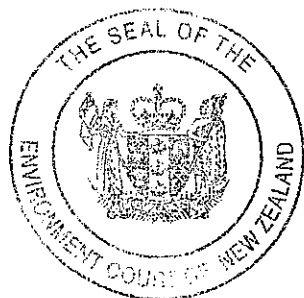
[341] This policy anticipates a wide range of activities being undertaken in the Lambton Harbour Development Area. That wide enabling policy is however subject to the caveats that the activities to be undertaken must not be incompatible with other activities appropriate to the location nor detract from the amenities of the area.

[342] In this instance we find that the Hilton proposal satisfies neither of the caveats contained in the explanation. It will be clear from our discussion of effects that we consider that the Hilton will dominate the public space on the Outer-T because of its bulk and will reduce public open space because of the intrusion of its decks into that space. It will create a vehicle precinct on the stem of the Outer-T and interfere with the amenity of buildings which presently have wide and unobstructed views of the inner harbour as well as other important public views. We consider that the Hilton is in direct conflict with this policy.

[343] *To Provide for development compatible with the urban form of the city*

Explanation Bullet point two refers to urban forms. The overall urban form of the city provides for an enhancement of the amphitheatre where the built form reflects the stepping-down of the topography from the Kelburn area to the sea. As a result, development in the Lambton Harbour Development Area will generally be lower than the adjacent city centre.

[344] This policy was the matter of considerable debate. Mr Anastasiou in particular promoted the view that the policy required that development on the Outer-T should be lower than those parts of Queens Wharf closer to the city. We disagree. The policy is much more widely based than that. What the policy seeks is that development in the Lambton Harbour Area is lower than in the adjacent city centre. At a macro level the Hilton may meet that policy. By city centre standards it is a comparatively low building. We do not consider the Hilton to be in breach of this policy.



[345] We do however refer to our earlier findings¹¹⁷ about the nature of the Queens Wharf character area referred to in the District Plan¹¹⁸ which, as a matter of fact, does step down from Jervois Quay to the water's edge. We have commented on the effect of putting the tallest building in this character area on its most prominent site and most seaward point but that is a different matter to the issue identified in this policy.

[346] *Recognise the heritage, character, development and associations of the area*

Explanation *Bullet point three refers to the retention of buildings and other features which have recognised heritage value.*

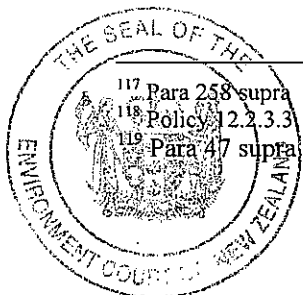
[347] We refer to our earlier discussion on heritage matters. The Hilton will not physically interfere with the existing heritage buildings (Shed 5, Dockside, Bond Store, Harbour Board Offices) in this vicinity. What we have found however is that because of its bulk it will dominate and change the character of the environment within which the heritage buildings are situated. We consider that the Hilton development is in direct conflict with this policy.

[348] *Develop and have particular regard to any design guides for the area which are contained in any proposed or operative Wellington City District Plan*

Explanation *Design guides have been prepared for the Lambton Harbour Development Area and point four requires that new development be assessed against those guides.*

[349] At the time this policy was drafted the Waterfront Framework did not exist nor was it even contemplated. We refer to our earlier comments on the Waterfront Framework which is a policy document and provides little reference or guidance in terms of design criteria. To the extent that General Provision 3.2.4.2.4 of the District Plan¹¹⁹ can be regarded as a design guide, the Hilton proposal does not satisfy a number of the identified requirements.

[350] *Provide for a range of public open spaces, access and through-routes and to ensure that their nature, purpose and function is maintained*



Explanation Bullet point five recognises that the Lambton Harbour Development Area provides the main area of open space near the City Centre, and that such open space should be retained.

[351] In terms of its footprint the Hilton occupies a similar area to Shed 1 but its decks extend into open space presently forming part of the public area around Shed 1 and restrict the amount of public space on the northern half of the Outer-T. We consider that the most dramatic effect on open space is brought about by the attraction of traffic to the Outer-T which will be generated by the Hilton proposal. We refer to our earlier finding that the Hilton will in effect create a vehicle precinct in this area and public open space will be diminished. We consider that the Hilton development is in direct conflict with this policy.

[352] *Ensure that the effects of development and activities do not detract from peoples' enjoyment of the area*

Explanation Bullet point six recognises that the Lambton Harbour Development Area is primarily a "place for people". This point must be given due weight when considering development proposals.

[353] We refer to our earlier findings as to the effects which we consider will be generated by the building's dominance, associated vehicle activity etc. Those findings are equally pertinent in regard to this policy. We find that the Hilton development is in direct conflict with this policy.

[354] *Ensure that the area is an integral part of the working port of Wellington.*

Explanation The Lambton Harbour Development Area draws much of its character and present activity from its port related functions, structures and open space. This is recognised in bullet point seven which provides for the area to continue to be used for port related activities.

[355] We refer to our earlier findings as to the restriction which establishment of the Hilton will impose on the ability of a wide range of vessels to use the northern end of the Outer-T for berthage. We consider that the Hilton development is in direct conflict with this policy.



[356] In addition to the specific provisions of Policy 4.2.45 referred to in the preceding paragraphs there are a number of general objectives and policy provisions in the Regional Coastal Plan which are also of some relevance. We refer to these below.

[357] Objective 4.1.10 of the Regional Coastal Plan is that:

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

[358] That general objective is reflected in Structures Policy 6.2.9 which is:

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

The explanation to this policy provides (inter alia) . . . *The district plan may have controls to protect important views to the coastal marine area. These will be taken into account when assessing the application and deciding on any conditions that might be placed on a resource consent.*

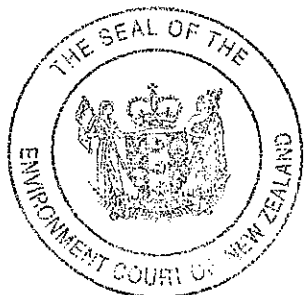
[359] We refer to our earlier discussion regarding the Johnston Street and Brandon Street viewshafts. Those viewshafts from the Golden Mile are described as *important* in the District Plan. They are views which Objective 4.1.10 seeks to retain and to which Policy 6.2.9 requires the Regional Council to have *particular regard* when assessing an application for a structure in the coastal marine area.

[360] We have found that the Hilton development will have a significant adverse effect on the Johnston Street viewshaft. To that extent it is in direct conflict with Objective 4.1.10 and Policy 6.2.9.

[361] Finally we refer to Policy 6.2.1 which is (inter alia):

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

- *The use and development of structures in the Lambton Harbour development area.*



[362] This policy recognises that there will be development in the Lambton Harbour Area and that structures associated with that are appropriate. The policy must be read together with Policy 6.2.2 the relevant parts of which provide (inter alia):

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

Significant adverse effects on:

- *Amenity values;*
- *Existing lawful public access;*
- *Views to and from the coastal marine area;*
- *Recreational uses or;*
- *Structures of architectural or historic merit*

Unless such adverse effects can be satisfactorily mitigated or remedied.

[363] It will be apparent from our earlier findings that we consider that the Hilton development will have significant adverse effects on a number of identified features and is accordingly in direct conflict with this policy. In particular the reference to views to and from the coastal marine area is not restricted to the *important views* which are the focus of Objective 4.1.10 but extends to the protection of other views to the coastal marine area.

District Plan

[364] Variation 22 inserted into the District Plan an objective and a series of policies relevant to the Lambton Harbour Area. The Variation was intended to incorporate the provisions of the Waterfront Framework into the District Plan at a policy level. The following objective was inserted by Variation 22.

12.2.11 To ensure that the development of the Lambton Harbour Area, and its connections with the remainder of the city's Central Area, maintains and enhances the unique and special components and elements that make up the waterfront.

[365] A series of policies follow to achieve the objective, we will refer only to those which we see as particularly relevant. In a number of cases they are similar to the provisions of policy 4.2.45 of the Regional Coastal Plan. As with the Regional Coastal Plan the policies are accompanied by a supporting commentary which clarifies what the policies are endeavouring to achieve and we refer to that also.



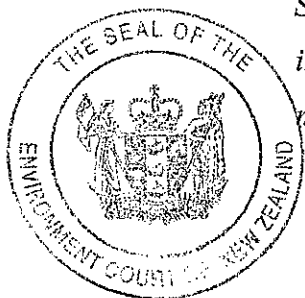
[366] ***12.2.11.1 Maintain and enhance the public environment of the Lambton Harbour Area by guiding the design of new open spaces and where there are buildings ensuring that these are in sympathy with their associated public spaces***

The main focus of the Lambton Harbour Area is to reinforce its role as a primary open space on the waterfront. A series of different open spaces – some green, some sheltered and some paved – that cater for diverse uses and activities will predominate. Furthermore, there will be a network of paths through the area, including a promenade along the length of the waterfront, predominantly at the water's edge. Buildings will support the open spaces, both in their design and their associated uses and activities. The ground floors of buildings will be predominantly accessible to the public and buildings will have "active edges". Particular consideration will be given to providing for equitable access to the water's edge and all other facilities on the waterfront by older people and all others with mobility restrictions.

[367] We consider that the Hilton development and in particular the vehicle precinct which it will create on the outer stem of Queens Wharf is contrary to the focus of the Lambton Harbour Area which is *a primary open space on the waterfront*. We accept that the ground floor of the Hilton through its restaurant/bar area, whose decks will open on to the public areas around existing Shed 1, will be accessible to the public and will have an *active edge* in that the hotel decks will protrude into the public space. The decks will however, clearly be hotel space and diminish the open space available to the public. We do not consider that the building is in sympathy with the public space because of its dominating bulk in this particular context.

[368] ***12.2.11.2 Ensure that a range of public open spaces, public walk ways and through routes for pedestrians and cyclists and opportunities for people, including people with mobility restrictions, to gain access to and from the water are provided and maintained.***

Substantial and varied areas of open space near and adjacent to the water are important to ensure that an uninterrupted public access to the water's edge is maintained and enhanced. Some water-based activities (such as rowing) require



vehicular access and short term parking. There will be a public walkway/promenade along the length of the waterfront, predominantly at the water's edge. A series of different open spaces that cater for diverse uses and activities will predominate. In addition to Frank Kitts Park there will be a second large green open space at Chaffers.

[369] We do not consider that the Hilton proposal satisfies this policy. Again it is predominantly the effect of creating of a vehicle precinct to service the Hilton at the outer extremity of the stem of Queens Wharf which we see as being in direct conflict with the policy.

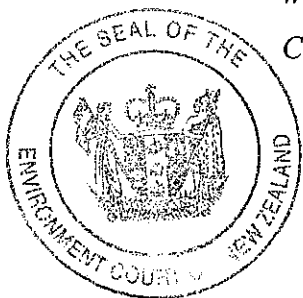
[370] ***12.2.11.3 Encourage the enhancement of the overall public and environmental quality and general amenity of the Lambton Harbour Area.***

The fundamental aim of future development in the Lambton Harbour Area is the achievement of a high quality public environment that provides and supports a range of public spaces and opportunities for vibrant activities, exciting uses and imaginative developments, which in turn encourage an improvement of the amenities of the waterfront for use and enjoyment by the public.

[371] This policy makes it clear that the *fundamental aim* of development in the area is the *achievement of a high quality public environment*. We consider that in this case the public environment is detrimentally affected by the reduction of space around Shed 1, the creation of a vehicle precinct and the establishment of a building whose bulk dominates the surrounding public space. The proposal is in direct conflict with this policy.

[372] ***12.2.11.4 Maintain and enhance the heritage values associated with the waterfront***

Heritage and the history of the waterfront are important parts of the identity of the waterfront. There is a range of aspects to the pre and post-colonial history of the waterfront, including maritime, social and economic aspects, and all these stories need to be told. Heritage buildings are an important aspect of the history of the waterfront and should be restored and reused under the guidance of a Conservation Plan.



[373] We do not consider that the Hilton development is in accord with this Policy. We consider that it does nothing to maintain and enhance the heritage values associated with the waterfront. We have rejected the contention that use of the footprint achieves this policy as we consider that the bulk of the building on this site leads to it dominating the area and intruding upon the scale of past development.

[374] ***12.2.11.7 Maintain and enhance the Lambton Harbour Area as an integral part of the working port of Wellington.***

Parts of the Lambton Harbour Area remain a working port and the area draws much of its character and present activity from port related functions, structures and open space. These functions, including the use of wharfs for cruise ships, fishing boats, pleasure boats and other vessels, will be encouraged to continue. Design which relates to the maritime location and port functions will also be encouraged.

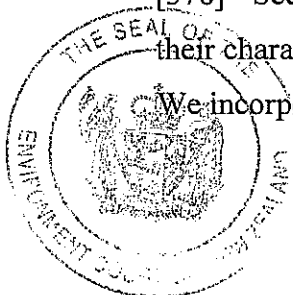
[375] We consider that the Hilton proposal is in direct conflict with this policy because of the restrictions it will impose on the use of the northern end of the Outer-T particularly in terms of naval vessels, fishing vessels, research vessels and the like. It seemed to us somewhat ironic that the Sumich Architect's photomontages that we were provided with show a range of vessels tied up next to the hotel when those vessels will almost certainly be excluded from that part of the wharf.

The Waterfront Framework

[376] We have already expressed our views as to the limitations of the Waterfront Framework. However we have indicated that we will have regard to it as an *other matter* albeit of limited weight.

[377] Section 3 of the Waterfront Framework is headed ***Values, principles and objectives***. We do not propose to itemise those here as we consider that largely these have been taken into account in preparation of Variation 22.

[378] Section 4 identifies the individual areas contained within the waterfront and describes their character. Those areas are the same as the character areas described in the District Plan. We incorporate the description of the Queens Wharf area as it gives some context to a number



of issues which have been earlier discussed in this decision. Queens Wharf is described as follows:

4.2 *Queens Wharf*

Queens Wharf is the heart of the waterfront. The nature of the working wharf and its mercantile history is paramount in this area. The primary symbolic entry to the waterfront from the city is through the Queens Wharf gates. The Outer-T of Queens Wharf is a special and unique site – a focus for the waterfront and for vessels entering the inner harbour. A structure that reflects this “iconic” nature could be located on the Outer-T.

A competition should be held to explore options for the Outer-T. The competition brief will require all proposals to respect the general principles of the framework including public access and the importance of the view out to the harbour. All proposals should take into account that the Outer-T is a berth for cruise liners and other vessels.

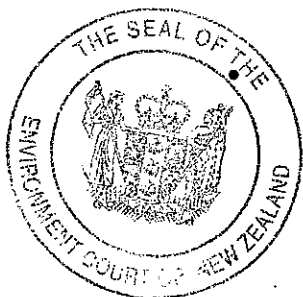
The Group notes that the existing Shed 1 provides shelter for the water space and the Shed 5 and Dockside buildings. This aspect of shelter must be considered in any proposals, particularly for the northern end of the Outer-T, but also possibly for the southern end. An integrated approach is important. The impact of the investigation development licence held by Waterfront Investments in respect of the whole of the Outer-T needs to be assessed in the context of this framework.

[379] We do not propose to comment on the matter of a competition to design a structure for the Outer-T. We think that all parties to these proceedings accepted that was a matter outside of our jurisdiction.

[380] The description above identifies the following significant features of Queens Wharf:

- The *paramount* importance of the working wharf and its mercantile history.
- The special and unique nature of the Outer-T.
- The need for any development to respect the principles of public access and the importance of the view out to the harbour.
- The need for any development proposal to take into account the fact that the Outer-T is a berth for cruise liners and other vessels.

The shelter aspect of Shed 1 in terms of water space, Shed 5 and Dockside.



[381] We consider that the Hilton proposal diminishes a number of the aspects of Queens Wharf's character which are identified in the Waterfront Framework. In particular the working wharf and berthage dimensions of Queens Wharf which the framework identifies as being important features are substantially diminished by the Hilton proposal which excludes vessels of quite modest dimensions from the northern end of the Outer-T. The identification of these aspects of Queens Wharf gives some context to the provisions of both the Regional Coastal Plan and the District Plan which we have previously identified and which seek to ensure that that the working wharf character is retained.

The Regional Council's Decision

[382] Section 290A RMA requires us to have regard to the Regional Council's decision in making our determination. We have done so and have referred to some aspects of that decision in the preceding sections of this decision. In a number of matters we have reached different conclusions to the Hearings Commissioners. That is not uncommon in this jurisdiction as the Court often has the advantage of a wider range of witnesses than the Council at first instance as well as the benefit of cross-examination of those witnesses.

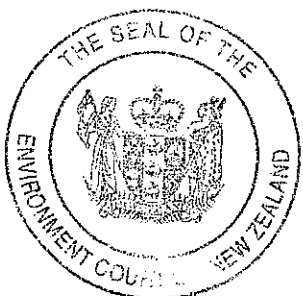
Outcome – Part 2 RMA

[383] In the light of our findings above we now turn to consider whether or not consent ought be granted to the application. That requires consideration and application of s5 RMA, informed by the matters set out in sections 6 and 7.

[384] Section 5 RMA provides:

5 Purpose

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—*
 - (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*



- (b) *Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

[385] Queens Wharf is a natural and physical resource which . . . *includes land, water, air, soil, minerals, and energy, all forms of plants and animals (whether native to New Zealand or introduced) and all structures*¹²⁰.

[386] The question before us in this instance is whether or not the development of Queens Wharf as proposed promotes sustainable management. In reaching that decision we must apply the *overall broad judgment* identified in *North Shore City Council v Auckland Regional Council*.¹²¹ That broad judgment requires us to make a comparison between conflicting considerations and assess their relevant significance in the ultimate decision which we arrive at. In undertaking that exercise RMA attributes particular significance to a number of matters which it identifies in ss6 and 7 and we consider those matters now.

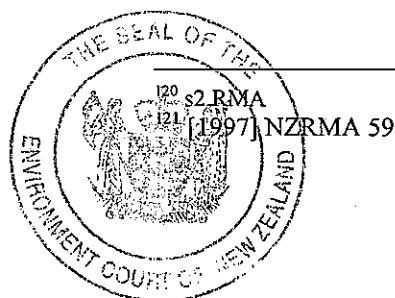
Matters of National Importance

[387] Section 6 RMA identifies matters which are of national importance and are to be *weighted* accordingly in our considerations. Section 6 provides as follows:

6 *Matters of national importance*

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

- (a) *The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*
- (b) *The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*



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

We consider those parts of section 6 which are relevant to these proceedings below.

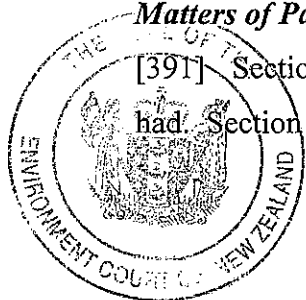
[388] *The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision use and development.* Because Queens Wharf is part of a longstanding commercial/industrial wharf complex we have not placed any significance on the application of s6(a) in this case although some of the parties touched briefly on it.

[389] *The maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers.* We consider that the Hilton proposal is in conflict with this matter. The reduction of promenade space around the edge of Shed 1 and the creation of an environment dominated by the large hotel building and related activities on the Outer-T neither maintains nor enhances public access. Some aspects of the proposal such as the upgrade of wharf structures, and provision of seating might contribute to maintenance and enhancement but in our view those positive aspects are substantially outweighed by the negatives.

[390] *The protection of historic heritage from inappropriate subdivision, use and development.* We refer to our discussion about the effects of the proposal on its historic context. We consider that the Hilton proposal is in conflict with this matter.

Matters of Particular Regard

[391] Section 7 RMA sets out a number of other matters to which particular regard is to be had. Section 7 provides as follows:



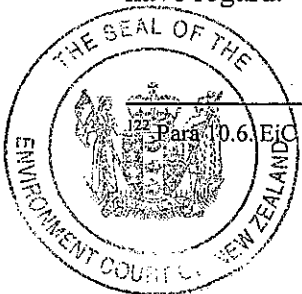
7 Other matters

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

- (a) *kaitiakitanga:*
- (aa) *the ethic of stewardship:*
- (b) *the efficient use and development of natural and physical resources:*
 - (ba) *the efficiency of the end use of energy:*
- (c) *the maintenance and enhancement of amenity values:*
- (d) *Intrinsic values of ecosystems:*
- (e) *repealed.*
- (f) *maintenance and enhancement of the quality of the environment:*
- (g) *any finite characteristics of natural and physical resources:*
- (h) *the protection of the habitat of trout and salmon.*
- (i) *the effects of climate change:*
- (j) *the benefits to be derived from the use and development of renewable energy.*

Again we identify what we consider are the relevant s7 matters for our consideration.

[392] *The efficient use and development of natural and physical resources.* The Applicant contended that use of the Outer-T for the hotel development is an efficient use of natural and physical resources. Mr Aburn considered that the Outer-T is *underutilised at present*¹²². He was of the view that the Hilton development would bring economic benefits and that accordingly it constitutes efficient use and development of the Outer-T. That may be true in an economic sense. Mr Copeland testified that use of the Outer-T by the Hilton will almost certainly provide a greater economic return than the existing Shed 1 activity. That could probably be said about any substantial, commercially driven development. Accordingly we accept that the Hilton proposal is almost certainly a more economically efficient use of the Outer-T than its present use but agree with Mr Copeland's observation that economic benefit is very difficult to weigh against the broader environmental factors to which we must also have regard.



[393] *The maintenance and enhancement of amenity values.* We consider that the development will adversely affect amenity values in a number of respects. We include amongst those the dominance of the building in its context, the reduction of public space, the creation of a vehicle precinct on the Outer-T, the loss of public and private views, the reduction in berthage which gives the area much of its character and additional shading on the surrounding areas. We have classified some of those adverse effects as significant and some as minor. We acknowledge that the addition of dining and entertainment facilities to the Outer-T may be seen by some persons as enhancing amenity values. Many people would hold contrary views and value the Outer-T for its existing qualities.

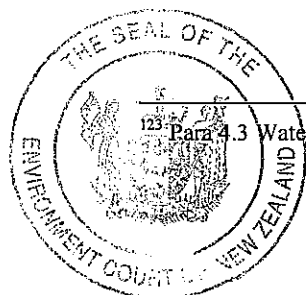
[394] *Maintenance and enhancement of the quality of the environment.* We refer to our comments under para 393 above. Many are applicable in this context also.

[395] *Any finite characteristics of natural and physical resources.* We see that as being a significant matter in this case. The Waterfront Framework identifies the Outer-T as *a special and unique site*¹²³. We think it is apparent that it is those special and unique characteristics which make it attractive to a hotel operator such as the Hilton. That is entirely understandable. It is not for the Court to allocate the use of this finite resource. However in exercising our functions we consider that we are obliged to ensure that those qualities which make this site special and unique are not lost in its development. We do not consider that the Hilton proposal achieves that.

Outcome

[396] We have taken all of the above factors into account in reaching our decision. We acknowledge that the Hilton development will enable its developer and the hotel operator to promote their economic wellbeing. It will provide economic benefits to the wider community. The Hilton will provide five star accommodation facilities for those who choose to stay in it. It may attract additional tourists. There will be dining and socialising opportunities for those who choose to use the restaurant and bar facilities.

[397] Regrettably we consider that those positive effects are achieved at the expense of



many of the qualities which make this site special and unique. The hotel building will dominate the public space due to its bulk and reduce the public access area around the Outer-T. The scale of historic development will be disrupted and the new building will dominate the heritage buildings around it. The stem of the Outer-T will become a vehicle precinct. We were not told how this would be safely managed. The amenity value of the area will be reduced. The use of the Outer-T as a working wharf and a place of berthage for a wide range of vessels will be substantially diminished. Views of the harbour and beyond from private buildings in the city and from at least one important viewpoint in the city will be significantly reduced.

[398] We do not consider that the adverse effects of the proposed development which we have identified can be adequately avoided, remedied or mitigated.

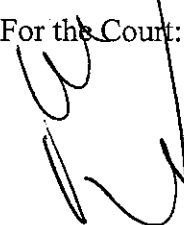
[399] Taking all of those matters into account we have reached the conclusion that the proposed Hilton development does not constitute sustainable management of the Outer-T of Queens Wharf. We accordingly uphold the appeals against the grant of consent. The decision of Wellington Regional Council granting consent to the application is quashed and consent is declined.

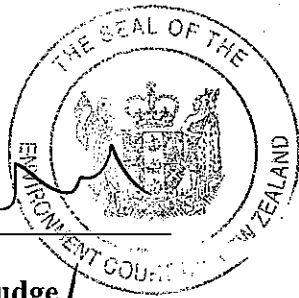
Costs

[400] Costs are reserved. Our initial view is that costs should lie where they fall. However, if any party wishes to make an application, they should do so within 10 working days of the date of this decision. Any replies are to be lodged within a further 10 working days. Any applicant for costs may then respond, within a further 5 working days, to any relevant matter raised for the first time in the reply.

DATED at WELLINGTON this 14th day of March 2008

For the Court:


B P Dwyer
Environment Judge




J R Mills
Environment Commissioner

