

BEFORE THE EXPERT CONSENTING PANEL CONCERNING A MOLESWORTH STREET OFFICE DEVELOPMENT CONSENT APPLICATION

IN THE MATTER

of the COVID-19 Recovery (Fast-Track Consenting) Act 2020 (the FTA) and the deliberations and final decision of the Expert Consenting Panel appointed under Clauses 2, 3, and 4 of Schedule 5 of the COVID-19 Recovery (Fast-Track Consenting) Act 2020 to consider an application for consent for an Office Development at 55-61 Molesworth Street, Wellington

Expert Consenting Panel:

Duncan Laing (Chair)

Lindsay Daysh (Member)

Juliane Chetham (Member)

Legal Representation:

Ian Gordon,

Barrister,

Wellington.

Expert Planning Advisor

Mark St Clair, Hill Young Cooper

Comments received under Clause 17(4) of Schedule 6 to the FTA:

On or before 22 July 2021

Details of any hearing if held under Clause 21 of Schedule 6 of the FTA:

No hearing was held (refer Clause 20, Schedule 6 to the FTA)

Date of Hearing if held:

Nil

Date of Decision:

12 November 2021

Date of Issue:

12 November 2021

RECORD OF DECISION OF THE EXPERT CONSENTING PANEL UNDER CLAUSE 37 SCHEDULE 6 OF THE FTA

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PART A: EXECUTIVE SUMMARY

- [1] This is an application for resource consent by Primeproperty Group Limited (**Prime or the Applicant**) to develop a 12 storey office building at 55-61 Molesworth Street, Wellington (**the Development**).
- [2] The Molesworth Street Office Development is a referred project under Schedule 5 of the COVID-19 Recovery (Fast-Track Consenting) Referred Projects Order 2020.
- [3] Following lodgement of the application, it was referred by the Minister for the Environment to this Expert Consenting Panel (**Panel**) under the COVID-19 Recovery (Fast-Track Consenting) Act 2020 (**the FTA**). In so doing, the Minister accepted that the purpose of the FTA would be met by the Development.
- [4] The Panel initially considered the application and identified parties that it would invite comment from.¹ Comments were duly received from 15 persons or organisations.²
- [5] Members of the Panel have visited the site and surrounding areas.
- [6] The Panel has sought expert assistance on planning and legal matters.
- [7] The Environmental Protection Authority (**EPA**) commissioned expert reports on urban design, heritage, wind, and traffic, and received comments on these reports from the Applicant.
- [8] The EPA made a number of further information requests from the Applicant.
- [9] The Panel sought comments on draft conditions and all responses received were carefully considered in arriving at the final set of conditions.
- [10] The Panel also requested expert conferencing between the expert urban design consultants.
- [11] The Panel has assessed the effects of the Development as being no more than minor.
- [12] The Panel grants the application subject to the conditions in Appendix 3.
- [13] Pursuant to clauses 37(7) and (8) of Schedule 6 to the FTA, the date on which the resource consent granted in this decision lapses, unless first given effect to, is 2 years from the date of commencement of the resource

¹ See Panel Minute No 1.

² See the summary of comments at Appendix 1 of this decision.

consent as defined in clause 37(9) of that Schedule.

PART B: INTRODUCTION AND PROCEDURE

Introduction

- [14] The land is owned by 61 Molesworth St Limited, a subsidiary company of Prime.
- [15] Features of the proposed office development as sought in Prime's application were:
- (a) a 13 storey office building (12 floors plus ground floor) when viewed from Molesworth Street;
 - (b) a basement carpark with an entrance from Molesworth St;
 - (c) a ground floor level, and entry plaza, retail/café space, lobby loading bays and end of trip facilities; and
 - (d) the façade of the building is stepped back on the side facing the Wellington Cathedral of St Paul (**Cathedral**).
- [16] In Prime's response of 15 October 2021 to the expert urban design report commissioned by the Panel (and prepared by Andrew Burns of McIndoe Urban), a lower 11 storey office block was provisionally put forward for the Panel's consideration.³ We refer to the original proposal outlined in [14] above as the **Higher Tower Scheme** and the lower 11 storey proposal as the **Lower Tower Scheme**.

Procedure

- [17] The Panel records the following matters:
- (a) the Panel, in Minute 3, extended the time to issue its final decision to 30 September 2021;
 - (b) subsequently Prime sought suspension of the application as from 3 September 2021 and this was granted in the Panel's Minute 5;
 - (c) following a request from Prime, processing of the application was resumed as from 11.59pm on 19 October 2021 as recorded in the Panel's Minute 6.

3 Email to the EPA of 15 October 2021 accompanied by JASMAX's response to the Urban Design Peer Review.

Meetings/Site visits

- [18] The Panel conducted a visit to the site and surrounding area on 26 October 2021.
- [19] The Panel conducted meetings by Zoom on:
- (a) 29 June 2021;
 - (b) 6 July 2021;
 - (c) 4 August 2021;
 - (d) 25 August 2021;
 - (e) 22 October 2021;
 - (f) 4 November 2021;
 - (g) 8 November 2021;
 - (h) 9 November 2021;
 - (i) 10 November 2021.

Invitations to comment on Prime's application

- [20] By Minute 1 of 30 June 2021, the Panel invited comments on the Development from those parties listed in Clause 17(6) of Schedule 6 of the FTA.
- [21] The Panel also invited comments from additional persons under Clause 17(6) of Schedule 6 of the FTA.⁴
- [22] Comments were required by 22 July 2021. All comments received were sent to Prime and, in accordance with Clause 19 of Schedule 6 of the FTA, the Panel required its response by 29 July 2021. Prime's response is dated 28 July 2021 and is on the EPA's website.
- [23] The Panel was appreciative of the time and effort that was put into all the comments received by it.
- [24] The comments received and Prime's response to those comments have all been considered by the Panel. The comments are referred to in some detail below in Part E: Evaluation of Effects and elsewhere, and many of

⁴ As already mentioned, a summary of comments received is contained at Appendix 1 to this Decision.

the matters raised have been addressed in the conditions in Appendix 3.

Requests for Further Information from Prime

- [25] On 6 July 2021, the Panel requested the EPA to send a request for further information from the Applicant seeking information on a number of matters including:
- (a) wind mitigation measures;
 - (b) an assessment against Central Area Design Guide, an assessment as to whether the Development achieves design excellence;
 - (c) whether the Development can comply with Rules 13.6.3.1.9 and 13.6.3.1.10;
 - (d) seeking advice whether Heritage New Zealand Pouhere Taonga (**HNZPT**) had been consulted;
 - (e) whether there is or is likely to be any stormwater discharges during construction; and finally
 - (f) an assessment of the development against certain objectives and policies.
- [26] The Applicant responded to this request on 16 July 2021.
- [27] On 9 August 2021, the Panel requested the EPA to send a second request for further information from the Applicant seeking the following:
- (a) the potential impacts arising from the use of Collina Terrace for construction purposes and what use of the Terrace was in fact being contemplated during the construction period;
 - (b) details of contingency measures to protect “the brick sewer” identified in the comments received;
 - (c) how the Applicant was going to address cultural matters raised by The Port Nicholson Block Settlement Trust;
 - (d) provision of an assessment as to the likelihood of the presence of pre-1900 European activity that occurred when Wellington was developing as a colonial settlement;
 - (e) details of any arrangements with the Diocesan Board of Trustees in terms of landscaping the areas of Board land adjoining the southern end of the Development site.
- [28] On 19 August 2021, the Panel received a response from the Applicant in

relation to the EPA's second request of 9 August 2021.

- [29] On 20 August 2021, the Panel requested the EPA to send a third request for further information from Prime seeking additional information in relation to the wind report, requested by Dr Michael Donn.
- [30] On 24 August 2021, the Panel received a response from the Applicant in relation to the EPA's third request of 20 August 2021.
- [31] A fourth information request dated 28 October 2021 was sent to the Applicant seeking new sets of architectural drawings, plans, and other clarifying information.
- [32] On 7 November 2021, the Panel received a response from the Applicant in relation to the EPA's fourth request of 28 October 2021. The Applicant also included some further information that was discussed at expert conferencing (see below).
- [33] A fifth further information request dated 9 November 2021 was sent to the Applicant seeking additional detail in relation to plans and minor corrections to plans.
- [34] On 11 November 2021, the Panel received a response from the Applicant (dated 10 November 2021) in relation to the EPA's fifth request of 9 November 2021.

Independent Expert Reports

- [35] The Panel requested the EPA to commission specialist reports in relation to traffic, urban design, wind, and heritage. We have included reference to these reports in Part E and elsewhere below.
- [36] The expert report on traffic was received on 23 August 2021, the expert reports on heritage and urban design were received on 26 August 2021, and the expert report on wind was received on 20 October 2021.
- [37] The specialist reports are all available on the EPA website.⁵
- [38] By Minute 4, the Panel requested comments on the expert reports on traffic, heritage and urban design by 6 September 2021. Following the suspension of the processing of the application, and then a request to "unsuspend" the application, the Applicant provided comments by email dated 15 October 2021, on the traffic, urban design, and heritage reports. Again, the applicant's response is referred to in Part E and elsewhere below.

5 <https://www.epa.govt.nz/fast-track-consenting/referred-projects/molesworth-street-office-development/reports-and-advice/>

- [39] By Minute 7, the Panel invited comments on the expert report on wind by 29 October 2021. The Applicant responded on 7 November 2021 noting that it did not have any particular comments on the wind report which it regarded as largely favourable.

Hearing

- [40] The Panel decided that a hearing was not required on any issue.

Expert conferencing

- [41] The Panel by Minute 9 requested that the Panel's expert advisor on urban design matters (Andrew Burns) conference with the urban design experts from JASMAX on behalf of the Applicant. The resultant Joint Statement by Mr Burns and Mr Robinson has been of considerable assistance to the Panel in reaching its decision and it thanks those experts for engaging in the conferencing at short notice.⁶

Assistance with District Plan matters

- [42] The EPA commissioned Mark St Clair of Hill Young Cooper to assist with some planning aspects of the application, including the draft conditions and a memorandum dated 27 October 2021. His assistance has been very valuable to the Panel.

Assistance with legal matters

- [43] The Panel took expert legal advice from Ian Gordon, Barrister, on some of the issues relating to the definition of "site" and "site area" in the Wellington District Plan. It has also placed reliance on advice from Brookfields Lawyers provided to the Kohimarama Expert Consenting Panel concerning the application of the *RJ Davidson*⁷ case to applications under the FTA.

Draft Conditions

- [44] As already mentioned, the Panel sought assistance from Mark St Clair in relation to the formulation of draft conditions.

⁶ <https://www.epa.govt.nz/fast-track-consenting/referred-projects/solesworth-street-office-development/expert-conferencing/>
⁷ *R J Davidson Family Trust v Marlborough District Council* [2019] NZCA 57.

- [45] By the Panel's Minute 8, an invitation to comment on draft conditions by 3 November 2021 was made and 2 responses were received for consideration by the Panel (one from the Applicant and one from HNZPT).
- [46] The responses are summarised in Appendix 2.
- [47] Clause 36(5) of Schedule 6 of the FTA requires the Panel to have regard to all comments received in relation to draft conditions. As is evident from Parts E and elsewhere of this decision, all the comments made in respect of the draft conditions contributed to the final conditions which are attached as Appendix 3.

PART C: LEGAL CONTEXT

- [48] The role of an expert Panel appointed under the FTA, has been described in some detail in the decision on a Matawii Water Storage Reservoir at Kaikohe dated 27 October 2020. However, the Matawii decision was in respect of a listed project.
- [49] This project is a referred project. A referred project is one that is referred to a Panel by an Order in Council decision by the relevant Ministers⁸ taking into account the criteria and related matters at sections 18 and 19 of the FTA.
- [50] As the project was referred to the Panel, it must be assumed that the Minister was satisfied that the project would be consistent with the purpose of the FTA. However, the Panel is not bound by the referral decision and it must independently determine if the application should be granted.
- [51] Section 12 of the FTA sets out the relationship between the FTA and the Resource Management Act 1991 (the **RMA**). The process for obtaining a consent under Schedule 6 of the FTA applies in place of the process for obtaining consent under the RMA, but it remains subject to Part 2 of the RMA, as we discuss below.
- [52] In respect of referred projects, clause 31 of Schedule 6 sets out the matters to which a Panel must have regard:
- (1) When considering a consent application in relation to a referred project and any comments received in response to an invitation given under section 17(3), a panel must, **subject to Part 2 of the Resource Management Act 1991 and the**

⁸ In this case, the decision was by the Minister for the Environment alone as no part of the Project is in the coastal marine area - see section 16(1) of the FTA.

purpose of this Act, have regard to-

- (a) any actual and potential effects on the environment of allowing the activity; and
 - (b) any measure proposed or agreed to by the consent applicant to ensure positive effects on the environment to offset or compensate for any adverse effects that will or may result from allowing the activity; and
 - (c) any relevant provisions of any of the documents listed in clause 29(2); and
 - (d) any other matter the panel considers relevant and reasonably necessary to determine the consent application.
- (2) In respect of the matters listed under subclause (1), a panel must apply section 6 of this Act (Treaty of Waitangi) instead of section 8 of the Resource Management Act 1991 (Treaty of Waitangi).
- (3) If a consent application relates to an activity in an area where a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011 applies, a panel must have regard to any resource management matters in that document until all obligations under section 93 of the FTA have been met by the relevant local authority.

[53] Clause 31(4) of Schedule 6 provides:

- (4) When forming an opinion for the purposes of subsection (1)(a), a panel may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.

[54] Clause 31(5) lists the matters that a Panel must not have regard to, none of which are relevant to this Project.

[55] Importantly for the present case, under clause 31(7), a Panel may grant a resource consent on the basis that the activity concerned is a controlled, restricted discretionary, discretionary or non-complying activity regardless of what type of activity the application was expressed to be for.

[56] Returning to clause 31(1), it has significant similarities to section 104 RMA, but with the addition of scope to consider offset benefits and compensation and that consideration is subject not just to Part 2 of the RMA but also the purpose of the FTA.

[57] A Panel must bear in mind the need to achieve the overarching purpose of the FTA. While the Minister has to be satisfied as to this matter in respect of the present application, it does not, as already mentioned, absolve the Panel from also satisfying itself on this issue.

[58] That purpose is:⁹

The purpose of this Act is to urgently promote employment to support New Zealand's recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources.

[59] Whilst the FTA process involves a duality of purpose as reflected in section 4 of the FTA, it should not be overlooked that clause 31(1) of Schedule 6 of the FTA requires that the Panel shall have regard to all of Part 2 of the RMA – the principles in sections 7-8 as well as the section 5 purpose, but section 8 RMA is to be replaced by section 6 FTA as mentioned above.

[60] Turning to the question of whether the Panel is required to consider Part 2 of the RMA, the issue was helpfully summarised by the Expert Consenting Panel in the *Kohimarama* decision as follows:

“We have considered the Court of Appeal’s decision in *RJ Davidson Family Trust v Marlborough District Council*¹⁰ in terms of whether the Panel should consider Part 2 of the RMA.

Whilst an overall Part 2 assessment may not be necessary in a *Davidson* sense, a Panel must bear in mind the need to achieve the overarching purpose of the FTA. That the Minister has found the purpose to be satisfied for an application to be referred¹¹ does not absolve a Panel from its obligation in this regard.”

[61] Turning to section 4 of the FTA, we accept for reasons later given that the Project is readily able to support New Zealand’s recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand. Nevertheless, we must still consider whether the Project will promote the sustainable management of natural and physical resources.

[62] The evaluation of effects under clause 31(1) against an operative district plan, and higher order documents is also the same as under the RMA, but is subject to the purpose of the FTA as well as to the purpose and principles of the RMA.

[63] The approach to the Treaty of Waitangi is similar and includes any Treaty Settlements.¹² Engagement on the Project has been carried out with the Port Nicholson Block Settlement Trust. Related matters are discussed under Part D (Mana Whenua) below.

[64] Unlike listed projects, the Panel has a wide discretion to consent or

9 Section 4 of the FTA.

10 *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316.

11 Section 19 FTA.

12 Clause 31(2) Schedule 6 and section 6 of the FTA.

decline a referred application, as required under the sections incorporated from the RMA, including sections 104A – 104D.¹³

- [65] Adopting the well accepted approach of the Environment Court, we see this as a spectrum which, subject to the purpose of the FTA being achieved, enables us to consent acceptable component parts of the application if necessary but decline unacceptable components to the extent that a meaningful project remains without being rendered nugatory.

PART D: MANA WHENUA

Iwi Authorities

- [66] The relevant iwi authorities are Taranaki Whānui ki te Upoko o te Ika (**Taranaki Whānui**) and Ngāti Toa Rangatira.
- [67] Taranaki Whānui and Ngāti Toa Rangatira hold overlapping areas of interest in Wellington City. The Iwi Authorities representing these iwi are the Port Nicholson Block Settlement Trust and Te Runanga o Toa Rangatira Inc respectively.

Other Relevant Iwi Authorities

- [68] The Te Atiawa ki te Upoko o te Ika a Māui Pōtiki Trust and Ngāti Tama are associated with the area in which the Development is to take place and this is discussed further below.

Statutory Requirements Relating to Iwi Authorities

- [69] Section 6 of the FTA requires all persons performing functions and exercising powers to act in a manner that is consistent with the principles of Te Tiriti o Waitangi (**the Treaty**) and Treaty settlements. All applications require specific information under clause 9 of Schedule 6 of the FTA, namely:
- (a) clause 9(1)(i) regarding information about Treaty settlements;
 - (b) clause 9(5) which requires applications for resource consent to include a CIA or a statement of reasons given by the relevant iwi

13 See Clause 32(1) in Schedule 6 of the FTA.

authority for not providing a CIA;

- (c) clause 9(6)(b) regarding customary marine title groups; and
- (d) clause 10(1)(h) regarding protected customary rights.

Te Tiriti o Waitangi and Treaty Settlements

[70] There are two Treaty settlements that are of relevance to the site due to the respective iwi groups having an interest over the area in which the site is located, namely:

- (a) Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Act 2009; and
- (b) Ngāti Toa Rangatira Claims Settlement Act 2014.

[71] The EPA's Section 17 Report outlines the relevant provisions in the Treaty settlements for resource consent applications within their respective areas of interest. In this case, no statutory acknowledgements or co-governance arrangements either relating to cultural or commercial redress apply to the site.

Cultural Impact Assessment

[72] The Applicant's assessment¹⁴ describes consultation undertaken with mana whenua. The Applicant consulted with the Port Nicholson Block Settlement Trust and commissioned a Cultural Impact Assessment (**CIA**) prepared by Morris Love.¹⁵

[73] Mr Love's overall assessment was that the proposed development does not raise particular cultural issues and is unlikely to contain Māori archaeological material.

[74] The CIA provides historic background to the site at 61 Molesworth Street and surrounds, noting it was part of the Pipitea Pā garden cultivations developed by Taranaki Whānui in the Haukawa (Thorndon) area.

[75] From the 1840s onwards, Pipitea Pā transformed rapidly as Thorndon became the centre of the new colonial town of Wellington. The CIA highlights the areas strong connection to the colonial history of Wellington, the establishment of the centre of Government, key churches,

14 Section 1(g), page 15, Information Required by Schedule 6 - Clause 9 of the Covid-19 Recovery (Fast Track Consenting) Act (**Schedule 6 Information**).

15 Cultural Impact Assessment. Proposed Building at 55-61 Molesworth St, Kaiota, Wellington.

and courts, and that Māori history is intertwined with the formation of these institutions in New Zealand.

- [76] While the CIA does not identify any Māori sites of significance at 61 Molesworth Street and considers the site unlikely to contain Māori archaeological material, the cultural values of the wider area remain, with a focus on Pipitea Marae. This is on the original site of Pipitea Pā and has been significantly restored and landscaped to reflect the traditional and contemporary values of Pipitea.
- [77] The CIA recommendations did not seek an archaeological examination of the site with respect to Māori archaeology nor did it require an accidental discovery protocol condition for the site.
- [78] The Panel did however receive comments on the application from Heritage New Zealand Pouhere Taonga (HNZPT) and the Minister for Arts, Culture and Heritage on these matters which are discussed in Part E.
- [79] Port Nicholson Block Trust provided comments supporting the cultural narrative contained in the CIA and seeking to have cultural interpretation elements included in the design to reflect the area's history. This is discussed further in Part E below.

Customary Marine Title and Protected Customary Rights

- [80] An assessment of planning documents prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011 is not required in this instance as there are no Customary Marine Title or Protected Customary Rights Applications which affect the Development site.

Iwi Management Plans

- [81] There are no relevant Iwi Management Plans for this application.

PART E: EVALUATION OF EFFECTS

Urban Design and visual impacts

- [82] Since the first Wellington District Plan under the RMA was prepared, there has been increasing attention to the necessity, particularly for Central Area buildings, to have appropriate attention to achieving a

quality design response.

[83] The Applicant provided a Design Statement by JASMAX (subsequently revised) that encompassed a description of the site and its context including in respect of adjoining heritage items. It also included the Applicant's Design Response in respect of:

- (a) Design Drivers;
- (b) Visualizations;
- (c) Design Coherence;
- (d) Relationship to Context;
- (e) Massing, Height and Scale;
- (f) Edge Treatment;
- (g) Façade Composition and Building Tops; and
- (h) Materials and Details.

[84] The Design Statement included supporting Design Studies regarding:

- (a) Elevations;
- (b) Photomontages ;
- (c) Ground Floor Access.

[85] In light of the importance of urban design matters in the assessment of this application, the Panel commissioned an Urban Design Peer Review by Mr Andrew Burns of McIndoe Urban. Mr Burns confirmed many of the JASMAX conclusions, but raised several matters, most notably concerns about height, bulk/visual dominance and compatible relationship to the Cathedral.

Comments Received

[86] The Applicant then made subsequent revisions to the proposal including providing the option, (if the Panel was minded to), of considering the Lower Tower Scheme.

[87] Two submitters commented on urban design matters. The Royal Thai Embassy commented that:

The Embassy feels it is important that the new building design has an appearance, colour, style and shape that will supplement, complement and blend in with the existing structures in the neighbourhood in a way that enhances and improves the local environment.

- [88] Wellington City Council (**WCC**) also commented on design principles that should apply to the site:

Given the prominence of the site in the Capital Precinct, its proximity to St Paul's Cathedral (a landmark heritage building), nationally significant institutions and buildings (including the National Library, High Court buildings), and the Parliamentary Precinct (a nationally significant heritage area), and the expressed intentions to call on the opportunities to exceed height and mass rules (design excellence), the following principles should guide the development on this site. These principles reference heritage and urban design guidance as per the objectives and guidelines of the District Plan.

1. *Respect: The development should respect the context and setting. In terms of urban design and heritage, the values of St Paul's Cathedral and the Parliamentary Grounds Heritage Area need to be respected. This includes respect for their landmark values and their current prominence in the wider setting. The ensuing principles will ensure that this key principle is met.*
2. *Alignment: The building footprint should be sensitively aligned with the cathedral. This includes stepping the eastern extent of the building back to align with the eastern extent of the cathedral's tower, which will also achieve alignment with the buildings to the north of Hawkestone Street.*
3. *Curtilage: There should be sufficient space provided around the building to give the cathedral space to retain its significant presence. This can be achieved by shifting the bulk, mass and height of the building further away from the cathedral, towards the north-west corner.*
4. *Reference: A building that is intended to present a gateway building (as described by Jasmox) between the civic precinct (of which the Parliamentary Precinct and St Paul's Cathedral are key features) and the commercial area of Pipitea should reference some of the key architectural features of buildings within the immediate vicinity.*

- [89] As there was a significant difference of view between the Applicant and Mr Burns that particularly centred around the necessity or otherwise of setting the building back from Molesworth Street, the Panel requested that the urban design experts conference and prepare a Statement (**Joint Statement**) outlining the areas of agreement and disagreement. Of the seven matters discussed, six were generally agreed:

1. Frequency of entrances and flexibility for subdivision at ground level along the eastern edge.
2. Address the eastern glazed façade at the ground level and establish balance with the heavy stone plinth above. Consider the introduction of vertical solid elements to promote connection with the ground.

3. Effects of the exposed blank ground level of the northern façade at the connection with Collina Terrace. Service/parking access impacts on Molesworth St are to be mitigated.
4. Introduction of references to the Cathedral's primary horizontal nave structure in the design of building form and façades.
5. Reconsideration of the east and west facade design.
6. Composition and form of the building's top.

[90] The seventh issue being *Setback to relate to the Molesworth St western edge building alignment north of Hawkestone Street and continued at the eastern edge of the Cathedral* was still unresolved as between the experts.

[91] In respect of our own assessment of relevant effects, we have considered the evidence and information in relation to:

- (a) effects in the wider context;
- (b) effects on surrounding public streets and spaces and ground floor including ground floor treatment;
- (c) effects on neighbouring properties;
- (d) visual amenity effects;
- (e) outdoor amenity and landscaping

Effects in the wider context

[92] The site is prominent within the city being located north of Parliament Buildings and adjoining the Cathedral. It is also in an area of other public buildings (the National Library and the Court of Appeal). There are also a number of commercial offices and businesses in the general vicinity some of which are of a substantial scale.

[93] We are also mindful of the 43.8 metre height standard and the fact that a lower building with less massing and setback from Molesworth Street existed on the site until demolished after the November 2016 Kaikoura earthquake.

[94] It is also clear from the photomontages that a building of substantial scale is proposed that exceeds the height and massing Standards directly abutting Molesworth Street. The Lower Tower proposal also has a number of the same design components as the Higher Tower Scheme albeit with a lesser overall height.

[95] From the Joint Statement, wider effects were considered and some were

able to be resolved in relation to the wider context being the longer distance views of the building and the relationship of the proposed building to the Cathedral. Particular attention was given to references to the Cathedral's primary horizontal nave structure in the design of building form and façades, the east and west facade design and the composition and form of the building's top.

- [96] The primary matter that still remains is the location of the building adjacent to the Molesworth Street frontage. The Applicant's urban design expert, Mr Robinson, was of the view that the setback was not necessary, and there was no practical requirement for it.
- [97] In addition, he did not agree that there was an apparent existing "street wall" in Molesworth Street due to the significant break at Magyar Park, directly north of the application site on the corner of Hawkestone Street.
- [98] Conversely, Mr Burns in the Joint Statement did not agree, stating *that a building setback that conforms to the Molesworth Street setback pattern is sought by the CAUDG and is a key matter to achieve Design Excellence.*
- [99] In addition, he considered *that Part 2 of the Guide calls for proposals to "recognise the unique qualities of every urban setting" (02.1) and at G2.1 and G2.3 to maintain consistency with neighbourhood patterns and to complement the existing built context by "compositional relationship or similarity of siting and alignment of walls in plan".*

Panel findings and conditions imposed

- [100] We are of the view that a substantial building can be built on the site and recognise the general agreement on most matters from the urban design experts. Aside from the setback from Molesworth Street, the proposal is much improved, particularly through recognition that the site adjoins the Cathedral and there are improvements to the horizontal form and treatment of the top of the building.
- [101] In respect of the building setback, we are minded to accept the Applicant's view. While there is strong linear building line north of Hawkestone Street, the pattern of strong linear building form is not as apparent south of Hawkestone Street with Magyar Park and the Red Cross building being setback considerably from the street frontage and the Cathedral building also having setbacks that include some carparking and also external grassed and landscaped areas.
- [102] We also are of the view that if a setback was required, the setback land may have limited utility as a hard or soft landscaped strip.
- [103] We consider that while the revised design is well thought out, it does maximise the bulk of the building with the overall height being of lesser

concern than the massing. Therefore, we see no difference in terms of urban design effects of the Higher Tower Scheme than the Lower Tower Scheme.

[104] We have also been mindful of the views of the urban designers where there is disagreement on whether the proposal is consistent with Policy 12.2.5.5 relating to design excellence. In our view, this is a subjective assessment and, subject to urban design effects being acceptable as a whole, the Policy can be met. We discuss this further below in Part J: Objectives and Policies.

[105] In respect of agreed matters, we have imposed conditions (for example Condition 2) that relate to matters of design detail and associated plans for certification to the compliance monitoring officer. These have generally been agreed by the Applicant.

Effects on surrounding public streets and public spaces

[106] The issue of the Molesworth Street setback also applies to the public environment and for reasons outlined above, we consider that the proposal is acceptable in this instance. Public access with a verandah is provided for along Molesworth Street and there has been specific attention in the amended plans to addressing concerns about the relationship with the glazed ground floor of the building as well as the primary entrance at the south east corner.

[107] Magyar Park is to the north of the building and there is no discernible shading effect. From an urban design effects perspective, we do not consider that the park is affected to any material degree. Similarly, the same view applies to the rugby union park opposite.

Panel findings and conditions imposed

[108] Having carefully considered the improvements to the ground floor and the entrance way and with design detail to be addressed through conditions, we consider that direct urban design effects to the public environment have been addressed.

Effects on immediately neighbouring properties and comments received

[109] We considered comments from immediately adjoining or adjacent owners and occupiers covering a broad range of matters as part of our consideration of the application. While a number of comments were received, only one (aside from WCC) related to what the building would actually look like. The remainder of comments broadly related to construction effects or the use of Collina Terrace which are subsequently considered in this decision.

Panel findings and conditions imposed

- [110] The building proposed is a substantial office building that would be the workplace for a significant number of people. We are satisfied that the applicant has considered the market for such a structure and would provide a building that meets modern workplace expectations for onsite amenity.
- [111] The property most directly affected is the Cathedral which is discussed separately in respect of heritage matters and above in relation to wider context effects. The properties with frontage to Collina Terrace will also be affected by construction activities and in relation to ongoing effects from the building, but these are acceptable particularly considering the design improvements.
- [112] In any event, the proposal is on a site that can be anticipated to be developed with a substantial building considering the permitted height standard for this part of Molesworth Street.

Visual amenity effects

- [113] Visual amenity effects are largely covered elsewhere. However, we paid attention to visual matters on our site visit, informed by the photomontages, of the street environment and the various views that could be had of the building. We also had particular regard to the northbound view from the street with the Cathedral being in the foreground of views of the building.

Panel findings and conditions imposed

- [114] The proposal is undoubtedly a substantial building in the context of the existing environment and will be prominent in a number of views. We have already discussed our findings on the setback from Molesworth Street and also note that visual amenity around the site is a key component of wider context effects. We also note that based upon the Joint Statement all other urban design matters lead to an acceptable outcome, particularly the design changes to better address the relationship of the building to the Cathedral.
- [115] We consider that while the building will be prominent from the footpaths of Molesworth Street, this prominence reduces the further you are from the application site.

Outdoor Amenity and Landscaping (External Plaza)

- [116] In the original application, there was much uncertainty around the form and function of the entrance plaza. Mr Burns also considered this matter as this is the key interface between the building, the Cathedral and the public realm. We also note design changes proposed which are now largely agreed.

Comments received

- [117] The Wellington Diocesan Board of Trustees indicated in its comments that it would like to be part of a conversation about potential shared space at the Cathedral's north end.

Panel findings and conditions imposed

- [118] We consider that for the small amount of the site that is not within the footprint of the building that outdoor amenity has been addressed. We also consider that it is important that design detail relating to the entrance plaza be added to conditions noting the specific requirement to ensure that planting is appropriate and that the amenity structures, ground surfaces and overall layout provide high quality, usable outdoor spaces. Further, the condition requires consideration of lighting and CPTED outcomes to be submitted for certification.
- [119] We have noted the comments from the Diocesan Board of Trustees but the question of landscaping the "shared space" is outside our jurisdiction.

Shading*Potential effects*

- [120] As the Applicant noted, any structure on the site will result in some shading of adjoining properties and the District Plan's emphasis is on protection of sunlight to public places.
- [121] The JASMAX design statement accompanying the application included sun shading statements¹⁶ for 21 December and 21 June. For 21 December, JASMAX concludes that the proposed building casts shadow onto Molesworth St only in the afternoon during summer.
- [122] It found no impact on Magyar Millennium Park and William Colenso Square but that there was a moderate impact to public space in front of Rugby Union building from 2pm onwards.
- [123] For 21 June, similar conclusions were reached with most shading to public open space being from other buildings.

Comments received

- [124] Impacts on sunlight was raised by the Wellington Diocesan Board of Trustees in its comments on the application.

Panel findings and conditions imposed

- [125] The Applicant has provided a sun shading assessment as part of the

application. While there will be some additional shading created by the building, the vast majority of the effects on the public spaces to the east and north would be created by a building that meets the building height and massing standards in any event. Therefore, effects of sunlight and shading to the public space are considered to be less than minor. No condition is required.

Operational Traffic Impacts

Potential effects

- [126] Traffic Concepts Ltd provided a Transportation Impact Assessment (TIA) in support of the application. The TIA describes the existing transport environment in the vicinity of the site, an assessment of the development against the provisions of District Plan and an assessment of the proposed network effects including access assessment and parking.
- [127] The TIA concluded that there are three areas of non-compliance with the District Plan, namely, the 500mm shortfall in pedestrian splays, the site access from Molesworth Street and its proximity to the adjacent intersection of Pipitea Street. Overall, their assessment is that potential effects will be less than minor on other road users and the development can be accommodated within the surrounding road network.
- [128] The Panel commissioned Beca to undertake a peer review of the TIA in relation to District Plan compliance, site access design and location, car-parking layout and servicing, the use of Collina Terrace for construction purposes, and guidance on potential conditions of consent for traffic management.
- [129] The Beca report identified two other areas of non-compliance with the District Plan in addition to those stated by the Applicant, specifically, the quantum of carparks to be provided and servicing issues such as insufficient loading depth and height clearance for waste collection trucks.
- [130] Beca recommended that conditions be imposed in respect of parking to confirm the design of the carpark will comply with AS/NZS 2890.1, to require tracking to confirm that vehicle manoeuvring is feasible, and to ensure visitor parking is not allocated to any car parks where access is restricted by columns.
- [131] With regard to servicing, they recommended conditions to ensure the loading bay is designed to provide sufficient depth and space for the emptying of waste bins without trucks impacting the two access ways to and from the basement car park, and to provide for height clearance of the ground level of preferably 4.6m as per District Plan requirements or

at minimum, a 4.0m clearance.

- [132] As regards vehicle and pedestrian access and safety, Beca agreed that Traffic Concepts had correctly identified the issues with access off Molesworth Street – as a primary street, as well as the site’s proximity to the Pipitea Street intersection.
- [133] Beca concurred with the Applicant that Collina Terrace was too narrow to adequately provide access to the building and that given Molesworth Street is one-way, the left in left out access configuration will minimise safety issues for vehicles.
- [134] For pedestrians, installation of additional safety measures such as a judder bar to reduce vehicle speed coupled with a system to warn pedestrians of exiting vehicles was recommended for inclusion in conditions.
- [135] Mr Clark from Traffic Concepts provided a response to the peer review on behalf of the Applicant. He largely agreed with the Beca report and accepted or adopted the recommendations with some minor amendments proposed for the wording of conditions.

Comments received

- [136] Comments received from invited parties related primarily to construction traffic impacts which are discussed below. WCC identified traffic and pedestrian safety associated with the location of the site access as a potential effect and Thorndon Residents Association sought clarification around the inclusion or lack thereof of certain streets (eg. James Street, Murphy Street) in the Construction Management Plan and TIA.
- [137] The Applicant has confirmed that the incorrect reference to James Street has been corrected in the CMP and we consider the issues raised by WCC have been dealt with by Beca and the Applicant as set out above.

Panel findings and conditions imposed

- [138] The Panel considers that the TIA together with advice received by Beca provides an appropriate assessment of operational traffic impacts and that subject to proposed conditions any potential effects will be less than minor.
- [139] Operational traffic matters are covered in condition 8 which deals with cladding materials, carpark design and safety measures. Conditions 10-11 require certification and implementation of a Servicing Management Plan detailing how servicing will be provided for each tenancy in terms of waste management, deliveries, visitor and staff parking. These conditions are accepted by the Applicant. Condition 14 contains requirements for warning signage to alert vehicles and pedestrians to ensure the safe use of the Molesworth Street access and footpath. The

Applicant suggested a slight change to this condition and this has been accepted in part.

Construction Traffic Impacts

Potential effects

- [140] The Applicant has provided a draft Construction Management Plan (**CMP**) which confirms that site access during construction will be via Molesworth Street rather than Collina Terrace which is too narrow for this purpose. This was also confirmed in the Beca peer review.
- [141] The proposed CMP will include a Construction Traffic Management Plan (**CTMP**) as significant construction related traffic is anticipated, given that earthworks will require transport of around 2700m³ of material and take approximately 340 truckloads to remove. According to the CMP this work can typically be done outside of peak hour traffic.

Comments received

- [142] Construction traffic and associated impacts was a concern raised by WCC and by a number of neighbouring property owners in comments received.¹⁷ Occupants and owners of Collina Terrace were particularly concerned about the potential effects of construction related traffic on their access and operations.
- [143] In light of the comments received as outlined above, the Panel requested further information from the Applicant to gain clarity on whether the Applicant proposed to utilise Collina Terrace for construction related purposes, and if so, what measures would be employed to mitigate construction related impacts on the other landowners and users of Collina Terrace and to remedy any damage.
- [144] In response, the Applicant confirmed that Collina Terrace is too narrow to be useful for construction site access and therefore all site access will be from Molesworth Street.¹⁸ Access through Collina Terrace will be maintained for all parties to a similar degree as it is currently used.
- [145] While Mr Leary on behalf of the Applicant considered some of the matters raised by neighbours were civil matters that could be dealt with outside of this process, he confirmed that the Applicant was committed to undertaking a condition survey of the road surface of Collina Terrace and that it would be reinstated, at least to its current standard.
- [146] In its peer review Beca commented that if Collina Terrace is required at

¹⁷ Hughes King Investments Ltd, New Zealand Deerstalkers Association Limited Partnership, Thorndon Residents Association and Wellington Diocesan Board of Trustees.

¹⁸ Email from Ian Leary 19th August 2021.

all for construction purposes, consultation with the affected parties must be undertaken and the CTMP will need to explain how this will operate safely, suggesting a stop-go operation during construction will likely be required and tracking will need to be checked. Beca agreed that any damage to the pavement will also need to be reinstated and proposed conditions to reflect these matters.

Panel findings and conditions imposed

- [147] Taking into account the comments received, the TIA, Beca peer review and information received from the Applicant, the Panel is confident that with appropriate conditions, construction traffic effects can be minimised.
- [148] We have imposed a number of conditions to manage the potential effects. Condition 9 specifies that Collina Terrace must not be used for site construction access and loading and unloading. Condition 28 (former draft Condition 27) requires the repair of any damage to kerb, footpath or road and infrastructure on Molesworth Street or Collina Terrace.
- [149] The Applicant sought a slight change to Condition 9 and this has been accepted with some wording changes. The Applicant did not oppose Condition 28.
- [150] Condition 30 covering construction liaison requires a pre-construction meeting with neighbouring tenants and building owners and will assist in keeping neighbours informed of the construction schedule and establishing points of communication. The objective of the CTMP set out in Condition 41 is to outline methods to avoid, remedy or mitigate adverse construction traffic effects during the earthworks and construction phases of development of the site. Both Conditions 30 and 41 were accepted by the Applicant.

Protection of Existing On-site Infrastructure

Potential effects

- [151] The Schedule 6 Information provided by the Applicant indicated that there was an “old brick sewer” traversing the site from east to west as well as other services on the site.¹⁹
- [152] The Panel sought comment from Moira Smith from the Heritage Practice about the “old brick sewer” and from her research it appears that this sewer (interceptor) may be of later origin, but if brickworks were to be discovered at any point along the route of the sewer, then it could indicate an earlier construction date that might be prior to 1900. This in turn would require analysis by an archaeologist to establish the presence of

¹⁹ As shown on Figure 7 at Page 12 of the Schedule 6 Information forming part of the Application.

archaeological material.²⁰

Comments received

- [153] The McAuley Trust in its comments on the application expressed concerns “about the old brick sewer that traverses the site”. It mentioned that the Applicant’s statement that it was well below the level of foundations did not necessarily give assurance that the earthworks required would not cause damage.
- [154] The Applicant in response to a request for further information made the following comments:
- (a) It did not consider that the McAuley Trust submission needed a response as the sewer is a public asset and is currently managed by Wellington Water Limited (**WWL**).
 - (b) WWL would generally comment on a consent and it was presumed that WCC’s submission would have included any comments from WWL, who already had the opportunity to comment in a present application lodged with the Council.
 - (c) The sewer, its location, and requirements, are well understood by the design team and the structural engineer.
 - (d) The diagrams provided by the Applicant showed a reasonably good “margin of safety”. The effect of the sewer would be covered off in the building consent process. In the worst case, there would be a reduction in the area of the basement or alternatively the relocating of the sewer.
 - (e) These matters are not typically covered in the resource consent process as it is detailed engineering design.

Panel findings and conditions imposed

- [155] We disagree with the Applicant that the protection of the sewer is simply a building consent matter as opposed to a resource consent issue. The potential for damage to the sewer is in our view an effect that can and should be addressed by the Panel. There is the related issue about the age of the sewer and the prospect that there may be archaeological material present associated with the sewer cannot be discounted.
- [156] The fact that neither WCC or WWL have commented on the issue does not mean that it should be ignored as part of our deliberations. We therefore proposed Condition 29 as part of the draft conditions of consent. The Applicant’s comments on the draft conditions indicated that

Condition 29 is accepted.

Construction Noise and Vibration Impacts

Potential effects

[157] The Schedule 6 Information provided by the Applicant proposed that the hours of *earthworks* would be set out in the conditions of consent and were expected to be limited to:

- (a) Monday to Saturday, 7.30am to 6.00 pm;
- (b) quiet setting up of the site may start at 6.30am; and
- (c) no work to be carried out on Sundays or public holidays.

[158] In our view, a restriction on the hours of work is appropriate for *all* construction work to mitigate noise impacts and a condition to that effect is a necessary and reasonable measure. We comment further on the hours of operation below.

[159] The Applicant has taken a restrictive approach to conditions concerning earthworks consistent with its assertion in the Assessment of Effects²¹ that general construction effects are outside the matters relevant to the land use consent and that only the effects of erosion/dust and transportation of excavated material can be considered by the Panel.

[160] For reasons that we elaborate on elsewhere in this decision, we disagree as on a “bundling basis” the activity status for both the Higher and Lower Tower Schemes is Discretionary (Unrestricted). Accordingly, we are able to impose whatever reasonable conditions that are necessary to mitigate such effects.

[161] The Applicant also proposed a noise control condition requiring compliance with NZS6803:1999 and adoption of a best practical option approach in accordance with Section 16 of the RMA to ensure that the emission of noise from the site does not exceed a reasonable level.²²

Comments received

[162] A number of the persons and organisations invited to comment on the application commented on construction noise and vibration effects,²³ including the proposed hours of construction work on a Saturday.

[163] The Wellington Diocesan Board of Trustees raised ground stability

²¹ Section 4(a) of the Schedule 6 Information at page 33.

²² Section 1(j) of the Schedule 6 Information at page 18. Also see page 7. See new condition [40].

²³ Wellington City Council, Royal Thai Embassy, McAuley Trust, and National Library of New Zealand (Department of Internal Affairs).

effects during construction and this specific issue is dealt with below under General Construction effects. However, it is possible that their comments were intended to also cover vibration effects.

- [164] The Panel received comments from the Applicant on draft Condition 39 (now Condition 40) relating to a Construction Noise and Vibration Management Plan. Mr Leary on behalf of the applicant commented that he had not previously encountered such a condition requiring consideration for vibration. Regardless, the condition was accepted.
- [165] With regard to Conditions 47-49, we had required in the relevant draft condition the engagement of a geotechnical professional for provision of advice and monitoring of the detailed design and construction phases of the project. We consider the applicant's suggestion to refer to an "Engineering Professional" rather than a "Geotechnical Professional" is appropriate and we have amended Conditions 47-49 accordingly.
- [166] We have included Condition 50 relating to hours of work. This was accepted by the Applicant.

Panel findings and conditions imposed

- [167] It is inevitable that any construction project of the scale of the Development will create construction noise and vibration impacts. However, with appropriate conditions including restricting the hours of construction work, these effects can be adequately mitigated during construction hours.
- [168] McAuley Trust commented that Saturday construction hours during early stages of construction work would significantly impact residential residents. On balance, we consider that the Saturday hours are reasonable and there is no compelling reason to reduce them.
- [169] We have therefore required Conditions 40 and 50 as set out in Appendix 3. These conditions must also be read in light of the other construction management conditions that we have required.

General Construction Effects (including Earthworks management)

Potential effects

- [170] As already mentioned, it appears that the Applicant did not provide a general assessment of construction effects or propose general construction management conditions, because of its stated position as to relevance of those effects to our consideration of the application. It did however accept that effects arising from erosion/dust and the transportation of excavated material from the site could be considered by the Panel and conditions imposed in respect of these matters.

- [171] Again, and as already mentioned, the Panel disagrees with this position given its conclusions as to the “bundled” activity status of the application. It considers that it must consider all relevant construction effects and what mitigation measures may be necessary and appropriate to be imposed by way of conditions.
- [172] We have already discussed some construction effects above and in particular construction traffic, noise, and vibration effects. However, a development of this nature can be expected to generate a number of wider potential construction impacts including dust, erosion, and water-borne sediment, particularly associated with earthworks which will cover the whole site and while will involve approximately 2700m² of material being removed from the site.²⁴

Comments received

- [173] A number of submitters commented on construction earthworks impacts including noise and dust.²⁵ The National Library of New Zealand raised concerns not only in relation to noise and vibration that has been discussed above, but also water ingress into the basement of Rugby House where it has storage facilities.
- [174] Hughes King Investments Ltd and the New Zealand Deerstalkers Association Limited Partnership (**NZDA**), raised the potential for damage to Collina Terrace and interference with access to their properties along Collina Terrace, and in respect of carparking. Concern was also raised by the NZDA about loss of potential rental income, and physical damage to its property.
- [175] The Wellington Diocesan Board of Trustees raised ground stability issues during demolition of existing concrete remnants and during construction of the new building.²⁶ We have dealt with this issue above under the heading of noise and vibration effects.
- [176] The Applicant responded to these concerns in its response of 28 July 2021 to the EPA. It pointed out the new building is set back 1 m from the boundary with the Board’s land, the depth of excavation is likely to be in the order of 8.0 to 8.5 m and can be achieved by a variety of measures and that construction works can be carried out in a way that ensures the stability of adjoining land and Collina Terrace.
- [177] There were a number of construction related conditions sought by those commenting on the application. In particular, NZDA sought conditions requiring compensation, reimbursement or payment in respect of a number of matters. We consider that such conditions go beyond our

²⁴ Schedule 6 Information at page 7.

²⁵ Wellington City Council, Royal Thai Embassy, Thorndon Residents Association, New Zealand Deerstalkers Association Limited Partnership, and National Library of New Zealand (Department of Internal Affairs).

²⁶ Given the separate distance between the Wellington Cathedral of St Paul and the Applicant’s site, we apprehend that the issue raised by the Trust Board may relate in part or in whole to vibration effects.

jurisdiction on this application and are either civil liability matters or for enforcement proceedings under the RMA.

- [178] NZDA also sought the resealing of Collina Terrace at the conclusion of construction. We do not consider that it is appropriate to impose a condition of this nature especially given that it would apply irrespective of whether the consent holder had damaged Collina Terrace in the course of construction activities. We consider that Condition 28 adequately addresses the potential issue of damage to Collina Terrace (and Molesworth Street).

Panel findings and conditions imposed

- [179] Having carefully considered the Applicant's Schedule 6 Information, and the comments received on the application, we consider that with the imposition of appropriate conditions, construction effects on the whole, but specifically possible stability and damage effects, will be minor. For reasons already set out above, we do not have jurisdiction to impose all of the construction related conditions sought in comments on the application.
- [180] We gave some thought to the water ingress issue raised by the National Library of New Zealand (Department of Internal Affairs). It is not clear to us how this could in practice occur even assuming that water escaped from the site during construction. In the absence of any obvious pathway for water ingress, we do not consider that this is a matter that we can take into account.
- [181] The Applicant's comments on the majority of construction related conditions have either previously been discussed or were not specifically commented on and accepted by the Applicant.
- [182] In terms of construction related conditions that we have jurisdiction to impose:
- (a) Condition 9 restricts the use of Collina Terrace for access purposes.
 - (b) Repair or damage to Molesworth Street and Collina Terrace is dealt with by Condition 28.
 - (c) The protection during construction of stormwater and wastewater infrastructure through the site is covered by Condition 29.
 - (d) The suggestion there should be liaison with the consent holder over construction activities is addressed by Condition 30 which requires a meeting with neighbouring tenants and building owners. There is also a complaints procedure provided for in Conditions 51 and 52, and a procedure for monitoring and review in Conditions 53-55.

The Panel did not consider that an on-going liaison group was necessary in the present circumstances given the other available avenues for redress.

- (e) A Construction Management Plan is provided for in Conditions 32 to 39. This includes the Construction Noise and Vibration Plan (Condition 40), and the Construction Traffic Management Plan (discussed earlier) at Condition 41 and an Earthworks Management Plan provided for in Condition 42.
- (f) Condition 47 requires an Engineering Professional to be engaged to monitor earthworks and construction of retaining works, and to advise on best methods to ensure:
 - (i) the stability of the land;
 - (ii) the work does not cause damage, or have the potential to cause damage to neighbouring land or buildings, including Collina Terrace;
 - (iii) the design and construction of earthworks, retaining structures and drainage are consistent with current engineering standards and best practice.

The consent holder is required to follow the advice of the Engineering Professional in a timely manner.

- (g) The hours of construction work are provided for in Condition 50.
- (h) Conditions 45 and 46 relate to run-off and dust nuisance.

Discharge of Water during Construction

Potential effects

[183] The Applicant has indicated the water table is well below the level of earthworks and dewatering will not be required during the course of construction.²⁷ The Applicant has also advised that a written approval from Wellington Water Limited (**WWL**) was not required given that the site will not need dewatering and that WWL approval is “not required for small scale sites of this nature”.

Comments received

[184] As mentioned above, the National Library of New Zealand in its comments referred to the possibility of the water ingress into the

basement of Rugby House.

Panel findings and conditions imposed

- [185] Despite the position as outlined by the Applicant, the Panel considers that there remains the potential for run-off from the site including muddy water. For this reason, it has considered that this contingency should be recognised by the imposition of Condition 45 as discussed earlier.²⁸

Contaminated Land

Potential effects

- [186] The Applicant identifies that the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 (**NESCS**) applies to the earthworks to be undertaken on the site. The analysis provided in the AEE of the policy framework determines a discretionary activity resource consent for the works associated with areas of potential contamination is required.
- [187] Pattle Delamore Partners Ltd (**PDP**) provided a report on NESCS matters dated 6 November 2020. According to WCC records, the rear part of the former building's basement contained a small vehicle workshop, petrol tanks, two petrol pumps and a fuel oil tank. A substation still exists in this location.
- [188] PDP consider the substation and former fuel storage is not expected to have resulted in significant ground contamination and any residues remaining will be removed during excavations, or, if they extend below the intended depth of excavation, will not be a risk as there will be no complete exposure pathway. As such, a ground investigation prior to development works is unnecessary, rather a ground inspection following removal of the existing concrete slab is recommended, the results of which will dictate any further sampling and removal requirements in accordance with the NES Soil regulations.

Comments received

- [189] A comment was received from WCC noting that a resource consent is required under the NES Soil. We note that this matter has been appropriately identified and assessed in the application documentation which includes the report from PDP. No other comments were received pertaining to site contamination issues.

Panel findings and conditions imposed

- [190] After considering the assessment provided by the Applicant and the PDP

²⁸ Condition 45 also regulates the cleaning up of earth or debris falling outside the site.

report, the Panel is satisfied that any potential risk to human health in relation to soil contamination can be appropriately addressed through the conditions of consent imposed. Any effects will be no more than minor.

- [191] Conditions 17-23 require preparation and certification of a Contaminated Site Management Plan, with condition 24 setting out the process for a site investigation. Conditions 25-26 set out the process for a Contaminated Soil Discovery Protocol and a Site Validation Report with Condition 27 dealing with the disposal of soil removed from the site.

Risks and Hazards on neighbouring property

Potential effects

- [192] The Assessment of Effects which forms part of the Schedule 6 Information notes that the Development is specifically designed to address the risks and hazards in any building development.

Comments received

- [193] As already mentioned above, a number of comments on the application concerned construction effects on adjoining property.

Panel findings and conditions imposed

- [194] The issues relating to construction impacts and risks are dealt with elsewhere. We do not have any reason to disagree with the Applicant's assessment of the post-construction risks.

Light Spill and Glare

Potential effects

- [195] The key effects that we have identified relate to possibility of glare off the building impacting on the view of Molesworth Street and adjoining buildings.

Comments received

- [196] We have not identified any comments on this issue.

Panel findings and conditions imposed

- [197] We consider that with the procedure for design detail to be certified under condition 2, any possible glare effects will be minor or less than minor.

Eco-systems

Potential effects

[198] The Assessment of the Environmental Effects²⁹ states that there are no effects on any important or unique eco-systems.

Comments received

[199] No relevant comments were received.

Panel findings and conditions imposed

[200] We agree with the Applicant's assessment and no specific conditions are necessary.

Historic Heritage/Archaeological Values

[201] A Heritage Assessment by Ian Bowman was undertaken for the development. Mr Bowman listed buildings in the vicinity of the proposal subject to statutory recognition and heritage values.³⁰

[202] He also undertook an assessment of relevant regulatory controls of the Wellington City Council District Plan's Central Area Rules and used other best practice criteria from Heritage New Zealand Heritage Guidance Sheet 16 "Assessing Impacts on the Surroundings associated with Historic Heritage" and the ICOMOS³¹ New Zealand Charter to aid his assessment.

[203] His assessment primarily focused on the Cathedral due to the potential for it to be affected both physically and visually. The assessment concluded that the magnitude of impacts of a new 12 storeyed building to the immediate north of the Cathedral on its heritage values and setting are neutral and the significance of effects less than minor.

[204] He considered that the greatest magnitude of impact on the heritage values of other more distant buildings was assessed as minor. The new design was considered to generally follow accepted national and international guidelines for a compatible new design adjacent to heritage buildings.

Comments Received

[205] Comments were received from HNZPT stating that the application and draft conditions did not adequately provide for the potential effects on

29 Section 4(a) of the Schedule 6 Information.

30 See section 2.2 Assessment of Environmental Effects – "New Development 61 Molesworth Street June 2020 by Ian Bowman (Attachment 5 of Application).

31 The International Council on Monuments and Sites.

historic heritage, and that an archaeological assessment relating to pre-1900 activity was required to inform earthworks conditions.

- [206] HNZPT highlighted a lack of information in the application on the depth of excavations undertaken during the construction of the previous building and that the draft earthworks condition relating to archaeology was limited to consideration of the potential for Māori pre-1900 activity.
- [207] HNZPT was unsupportive of a condition relating to an Accidental Discovery Protocol (**ADP**) unless the potential for all archaeological material is assessed as negligible or nil and therefore advised the Applicant to commission an archaeological assessment to determine whether an archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA 2014) is required.
- [208] A condition and advice note was proposed by HNZPT for inclusion in the Earthworks Management Plan as follows:

“Archaeological Monitoring

- (a) *The consent holder shall undertake an archaeological assessment prior to the commencement of excavations.*
- (b) *If the archaeological assessment concludes that an Archaeological Authority is required for all or part of the site, and if it is then granted by Heritage New Zealand Pouhere Taonga, monitoring and discovery protocols will be detailed as part of the Archaeological Authority documentation in an Archaeological Management Plan (AMP).*
- (i) *The contractor/s will have access to the AMP and these conditions on-site and follow the procedures specified in the AMP should archaeological material, or suspected archaeological material, be uncovered as part of the works.*
- (c) *If the Archaeological Assessment concludes that an Archaeological Authority is not required for all or part of the site then an Accidental Discovery Protocol (ADP) will be prepared in case of any archaeological, or suspected archaeological, discoveries that occur during construction in areas not covered by an Archaeological Authority.*
- (ii) *Any ADP will be prepared in consultation with Heritage New Zealand Pouhere Taonga;*
- (iii) *The contractor/s will have access to the ADP and these conditions on-site and follow the procedures specified in the ADP should archaeological material, or suspected archaeological material, be uncovered as part of the works.*

Advice Note: All archaeological sites are protected under the Heritage New Zealand Pouhere Taonga Act 2014. An archaeological site is defined as a place associated with pre-1900 human activity, where there may be evidence relating to the history of New Zealand. This includes pre-1900 sites associated with Māori and non-Māori activity. The Heritage New Zealand Pouhere Taonga Act 2014 makes it unlawful to modify, damage or destroy any archaeological site, where an archaeological assessment has indicated potential for archaeological material and whether the site is recorded or not. Application must be made to Heritage New Zealand Pouhere Taonga for an Authority to modify, damage or destroy an archaeological site. The Act provides for substantial penalties for unauthorised destruction or modification.”

- [209] We note that a letter from the Minister of Arts, Culture and Heritage supporting HNZPT's proposed conditions was received on 20 July 2021.
- [210] WCC also provided comments during a pre-application process application³² noting the site's location in close proximity to the nationally significant Parliamentary Precinct and a number of civic and listed buildings.
- [211] WCC referred to the heritage listed Cathedral to the immediate south and the importance of the proposal design recognising and responding to these contextual elements. In particular, WCC consider the building should defer to the heritage cathedral and not detract from its setting/context. These matters also overlap with urban design effects which are referred to elsewhere in this decision.
- [212] A response to HNZPT comments was received from the Applicant on 28 July 2021. As regards the archaeological assessment, the Applicant advised their intention to apply for the necessary authority prior to the commencement of the earthworks on site, noting that this matter was subject to other legislation (Heritage New Zealand Pouhere Taonga Act 2014 (**HNZPT Act**)) and outside of the resource consent process.
- [213] In light of comments received, the Panel requested further information from the Applicant on the 9 August 2021, seeking an assessment of the likelihood or otherwise of material relating to pre-1900 activity and any specific information regarding the depth of excavations undertaken during construction of the previous office building.
- [214] The Applicant responded confirming that it had engaged Capital Heritage to submit an application for an archaeological authority under the HNZPTA 2014. As regards the original building, plans and specifications from the building were provided indicating that the lowest level extended well below the ground level existing at the time it was built in the 1960's. The Applicant considered that the archaeological authority application would address statutory requirements under the HNZPT Act 2014 and therefore the comments provided by HNZPT.
- [215] At the Panel's request, Moira Smith of the Heritage Practice carried out an independent review of Ian Bowman's heritage assessment. This included a review of the application and various correspondence to and from the Panel, comments received and further reports and advice (including the independent urban design report) where relevant to effects on heritage areas, buildings and objects.
- [216] Ms Smith identified some issues with the methodology employed in the Applicant's assessment of heritage effects, noting the assessment lacked a direct assessment of the District Plan heritage provisions such as the

32 Note their comments were dated prior to our process starting ie. from March 2021 on the form that is for local authorities to provide comments to the Minister for the Environment on the referral decision.

Central Area objectives and policies on height and mass that consider effects on heritage.³³

- [217] In her view, Mr Bowman's use of the ICOMOS guidance on heritage impacts for World Heritage Properties to assess effects for locally listed heritage items has the potential to downplay the effects on local or regional heritage.
- [218] Ms Smith noted that the proposed building has a significantly greater mass and height than the Cathedral and will constitute a visually dominant element in the streetscape and potentially affect the landmark qualities of the Cathedral.
- [219] She generally considered the heritage effects of the proposed development to be greater than the assessment provided by Mr Bowman. However, due to the Cathedral's corner site location, its relatively large and bulky design, and principal elevation and entrance oriented to the south, it was her opinion that the heritage significance of the Cathedral will not be substantially diminished.
- [220] Similarly, she noted the other listed heritage items in the vicinity (eg. the statue of Sir Keith Jacka Holyoake) are some distance from the site which would generally be partially screened from view by the Cathedral.
- [221] As such, while she concluded that the proposed development will change the setting of the listed heritage items in the vicinity, particularly in relation to the way the Cathedral is experienced when viewed from the north and east, Ms Smith considered the effects of the proposed development will be acceptable on heritage grounds.
- [222] Ms Smith had some residual concerns about the contrast between the new building and its heritage listed neighbour and recommended that this matter should be taken into consideration in the Urban Design assessment as to whether the application meets the threshold for design excellence.
- [223] At the Panel's request, Ms Smith, in her general capacity as a heritage expert, also provided comment on the potential effects on archaeology. This was in respect of the "old brick sewer" that was described in comments received from the McAuley Trust, and the potential generally for discovery of pre-1900 material on the site associated with the European settlement of Thorndon.³⁴
- [224] Her analysis noted that the site is generally considered to be an archaeological site, as all of Wellington that is shown on the c.1890s

33 See Fast-track Consenting - Molesworth Street Office Development Application Heritage Review - Appendix 1: Assessment against the Central Area objectives and policies and the relevant heritage provisions of the CAUDG.

34 The Applicant's Schedule 6 Information at page 12 states that an "old brick sewer main" is shown on WCC's GIS and is further shown on Figure 7 at page 12.

Thomas Ward maps is recorded as “Central Wellington R27/270” by the New Zealand Archaeological Association. Ms Smith considered that the Thomas Ward map evidences pre-1900 human activity on the site and there is some potential for undisturbed ground at the eastern edge of the site to contain archaeological material.

- [225] Following discussions with WCC regarding the sewer main, her view is that it is unlikely to have been constructed before 1900. However, should site excavations reveal it to be a brick structure, then an archaeological assessment may be required to establish whether it meets the definition of archaeological material.
- [226] We have elsewhere discussed protection of existing on-site infrastructure, we have outlined the EPA’s request for further information from the Applicant specific to the “brick sewer” and the Applicant’s response.
- [227] As previously mentioned, Mr Leary also advised that Capital Heritage had been engaged to carry out an archaeological assessment including an application for an authority under the HNZPTA 2014; however, the assessment was unlikely to be completed prior to this decision being issued. He concluded that obtaining the archaeological assessment and authority will ensure the statutory requirements raised by NZHPT in their submission are adhered to.
- [228] Ms Smith’s conclusions generally accord with Mr Leary’s comments in this regard, as she states there is no evidence to suggest that there may be items on site with “significant” archaeological values as set out in the Greater Wellington Regional Council (**GWRC**) Regional Policy Statement (**RPS**) and that any archaeological values of the site are likely to be reasonably managed by the Archaeological Authority process under the HNZPT Act 2014.
- [229] She recommended that any earthworks conditions take HNZPT’s comments into consideration and suggested the following advice note:

“This proposal may affect a recorded archaeological site, being R27/270. Work affecting archaeological sites is subject to a consent process under the Heritage New Zealand Pouhere Taonga Act 2014. An archaeological authority (consent) from Heritage New Zealand Pouhere Taonga (HNZPT) must be obtained for works to proceed if the archaeological site has the potential to be modified or destroyed. It is illegal to modify or destroy an archaeological site without obtaining an archaeological authority. The applicant is advised to contact HNZPT for further information prior to works commencing.”

Panel Findings

- [230] With regard to the potential effects of this Proposal on archaeological and heritage matters, we generally agree with much of Mr Bowman’s heritage assessment, but we have been greatly assisted by Ms Smith’s review

and prefer her views as to the *overall level* of heritage effects where they differ from Mr Bowman. Both experts did not however identify any significant potential adverse effects on heritage.

- [231] Ms Smith's recommendations concerning the Applicant taking the opportunity to reduce the contrast between the Cathedral and the proposed building are considered as part of our findings on urban design effects above. We have also imposed condition 2 (which includes a requirement for revised design) to ensure that the Development does not detract from the Cathedral and in particular its heritage setting and fabric.
- [232] Overall, we conclude that the Development does not materially impact on heritage values of the Cathedral or more generally and that accordingly the effects on heritage are acceptable.
- [233] Specifically, in relation to archaeological effects, we concur with Ms Smith that these are likely to be low and manageable through the HNZPTA processes.
- [234] In response to our invitation to comment on our draft conditions, we received a response from HNZPT. The response indicated that draft Condition 15 (now final Conditions 15 and 16) relating to the accidental discovery protocol should only apply to the areas of the site (if any) not included within the archaeological authority that the Applicant intends to apply for.
- [235] HNZPT also indicated that the proposed condition was deficient and does not reflect the requirements of the HNZPT Act, and put the Applicant at risk of breaching that Act. HNZPT put forward a revised condition 15 and advice note.
- [236] The Applicant was asked for any comments it might have on HNZPT's comments. In response My Leary on behalf of the Applicant did not have any comments and noted that an archaeological authority will be lodged with HNZPT.
- [237] After careful consideration of the matters raised by HNZPT, we have concluded that we should require the amended Condition 15 and new Condition 16 and advice note prepared by HNZPT as being better aligned with the relevant legislation. It is of course a matter for the Applicant to make an application for an archaeological authority, and we do not have any control over that process.
- [238] With the Applicant's confirmation that an archaeological assessment will be undertaken, including an application for an authority from HNZPT and the imposition of Conditions 15 and 16 we consider that the potential effects on archaeology will be less than minor.

Cultural Effects

Potential effects

[239] No potential adverse effects on cultural values were identified in the CIA prepared by Morris Love on behalf of The Port Nicholson Block Settlement Trust.

Comments received

[240] Kelvin Davis (Minister for Crown Māori Relations – Te Arawhiti) provided a letter on 22 July 2021 confirming he had no comments to make in relation to the application.

[241] The Port Nicholson Block Settlement Trust commented that they support the CIA but sought the incorporation of cultural elements into the building design, such as installation of pou whenua, artworks and interpretive signage to represent Mana Whenua and inform the public of the rich cultural history of the site.

[242] The Port Nicholson Block Trust noted their willingness to provide guidance in these matters to ensure consistency with the history of Pipitea Pā as described in the CIA and that any design elements were appropriately displayed and placed.

[243] In the EPA's further information request dated 9 August 2021, the Panel asked the Applicant whether it intended to respond to The Port Nicholson Block Trust's comments. In its response on 19 August 2021, the Applicant confirmed its intention to provide for the recommendations of the Port Nicholson Block Trust and that consultation with the Trust had been initiated.

[244] The Applicant has proposed an additional condition which states:

"In consultation with the Port Nicholson Block Settlement Trust (PNBST), the applicant shall:

- *Display pou whenua / other cultural structures and artwork to represent Mana Whenua; and*
- *Install information posts / signage to inform the public of the cultural history of the site.*
- *The applicant should incorporate these cultural features into the design of the building and the consultation shall ensure/confirm with the PNBST that they are acceptable and appropriate."*

Panel findings and conditions imposed

- [245] The conclusions of the CIA and comments from Port Nicholson Block Settlement Trust find support for the proposal and do not identify any potential adverse cultural effects. We consider that the incorporation of Condition 5 which slightly amends the Applicant's proposed wording above, will enable the outcomes sought by Port Nicholson Block Settlement Trust to be achieved and assist in retaining and enhancing the mana of Pipitea Pā for future generations.
- [246] We also consider we would be acting consistently with the principles of the Treaty of Waitangi (and relevant Treaty settlements) in imposing Condition 5.

Wind Impacts

- [247] The application was accompanied by a JASMAX design statement that included section 2.4 relating to wind driven design.³⁵ It referred to the wind tunnel testing carried out by WSP with six building shapes being put into the wind tunnel tent to find the best performing building shape for the site. In the result, option 5 with the stepped corner had the best performance in the wind.
- [248] That Wind Tunnel Study³⁶ prepared by WSP reached the conclusion that while there were increases and decreases identified in the gust speeds and frequency of occurrence data, the study showed overall the new building would cause a net improvement in wind conditions in pedestrian areas around the site.³⁷
- [249] In terms of Gust Speeds, there were 10 locations where gust speeds were reduced with the Development as compared to four locations where the gust speeds were increased over the 20m/s District Plan Safety Criteria. These locations were around the south-eastern corner of the proposed building. Of the 10 locations where speeds were reduced, six of these were where existing speeds were greater than the 20m/s safety criteria.
- [250] Turning to Frequency of Occurrence – Cumulative Effects Criteria, there were eight locations where the increase in the amount of time that the 2-5m/s Cumulative Effect Criteria thresholds exceeded 20 days/year. WSP concluded that this was more than offset by the 17 locations where the decrease exceeded 20 days/year and one of the significant areas of improvement was adjacent to the Cathedral.

35 Pages 18-20.

36 WSP Report No 20-529K78.00.

37 Page 19.

- [251] The EPA made a further information request to the Applicant's advisers as to whether any specific wind mitigation measures were proposed in the vicinity of the south-eastern corner of the building.
- [252] The Applicant in its response noted that the design of the building had been driven by wind performance and the effects of wind on pedestrian movement referred to the stepped design that became the proposed.
- [253] In terms of further mitigation measures, the Applicant stated additional wind mitigation measures included the design of a large canopy and podium roof structure to protect the ground floor pedestrian environment from down walling of wind from above. Vegetation and screening had also been incorporated into the design to provide shelter to pedestrians and reduce adverse effects of wind in these locations.
- [254] We subsequently commissioned an independent assessment of wind effects from Dr Michael Donn. His report is dated 20 October 2021 and was subsequently amended.
- [255] Dr Donn noted in his report that the focus of the wind rules is on public places, and so the open space that is part of the public entry to the Rugby Union Building is not technically open space and therefore no wind speeds were reported there.
- [256] He also mentioned that the space between the Development and the Cathedral is also not tested but the wind accelerations in a prior wind tunnel test were shown to accelerate above the safety criterion. However, the stepped design represented an improvement.
- [257] Dr Donn summarised his position by saying that the wind tunnel testing demonstrates that with entry provisions described in the supplementary wind report, the grounds of the District Plan wind rules were met.
- [258] He expressed two caveats: Firstly, in the vicinity of the plaza at the entrance to the building, it seems unlikely that trees will grow as illustrated, and cannot be considered wind mitigation measures as such. Secondly, previous building schemes at 55-61 Molesworth Street had to resort to a screen placed along the street edge of the park at the entry to the Rugby Union building. However, the likely wind in that vicinity with no building at the Development site was potentially much worse than would result from no building at all.

Comments received

- [259] Comments on wind were received from WCC and the Wellington Diocesan Board of Trustees.

Panel findings and conditions imposed

- [260] Overall, we consider that the wind effects can be effectively mitigated.

The Development will result overall in an improvement in wind current both in terms of the safety and cumulative effects criteria.

[261] In terms of two key areas of concern:

- (a) at the southern side of the building around the main entrance wind effects, are now adequately mitigated by design features; and
- (b) as already mentioned, the wind effects in the public space in front of the Rugby Union Building are better with the Development than without it. Further, we cannot impose a wind mitigation condition in respect of that space.

[262] With the imposition of Conditions 3-4 and 6, we consider that the wind effects will overall be minor having regard to the intent of the District Plan provisions. The Applicant has indicated acceptance of these conditions.

Positive effects

[263] The Panel must have regard to the positive effects of the Project.

[264] Prime provided an expert report on economic benefits. The Panel has considered that report.³⁸

[265] The Applicant identified that the Development would provide significant social and economic benefits to the Applicant and the wider community. It also noted the provision of high quality office and commercial space, which greatly exceeded the minimum structural safety standards required for new buildings.³⁹

[266] The Applicant also identified positive construction effects assessed at approximately \$144 million, and around 200 jobs being involved during the course of construction.

[267] Finally, the Applicant noted the site is currently undeveloped, and the construction of a building would increase the efficiency of the use of the site by a considerable degree.

Panel findings

[268] We find that there are a number of positive effects as described by the Applicant including those contained in its expert report.

38 See Appendix 4 to the Application.

39 Schedule 6 Information at page 15.

General Summary of Effects

[269] The Panel has assessed the effects of the Development as being no more than minor overall.

PART F: NATIONAL POLICY CONSIDERATIONS

[270] The only National Policy Statement referenced to by the Applicant is the National Policy Statement on Urban Development 2020 (**NPSUD**). We accept no other National Policy Statements need to be considered in respect of the Development.

National Policy Statement on Urban Development 2020

[271] The NPSUD came into force on 20 August 2020.

[272] We accept that we are required to consider the relevant NPSUD objectives and policies applicable at the present time, but at present WCC as a territorial local authority is yet to implement plan changes and other documents required to give effect to Part 3: Implementation of the NPSUD.

[273] We have considered the NPSUD in relation to the Development and accept that some of its objectives and policies are advanced by it. These include:

Objective 1: New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.

Objective 2: Planning decisions improve housing affordability by supporting competitive land and development markets.

Objective 3: Regional policy statements and district plans, enable more people to live in, and more business and community services to be located in, areas of an urban environment in which one or more of the following apply.

(a) the area is in or near a centre zone or other area with many employment opportunities

(b) the area is well-serviced by existing or planned transport

- (c) there is high demand for housing or for business land in the area, relative to other areas within the urban environment.

Objective 4: New Zealand's urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities and future generations.

Objective 5: Planning decision relating to urban environments, and FDSs, take into account the principles of the Treaty of Waitangi.

Objective 6: Local authority decisions on urban development that affect urban environments are:

- (a) integrated with infrastructure planning and funding decisions; and
- (b) strategic over the medium term and long term; and
- (c) responsive, particularly in relation to proposals that would supply significant development capacity.

Objective 7: Local authorities have robust and frequently updated information about their urban environments and use it to inform planning decisions.

Objective 8: New Zealand's urban environments:

- (a) support reductions in greenhouse gas emissions; and
- (b) are resilient to the current and future effects of climate change.

[274] The NPSUD contains 11 Policies.⁴⁰ A number of these policies are directed at local authorities in terms of implementing the NPSUD through district and regional plans but the following have some relevance to the current application:

Policy 1: Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:

- (a) have or enable a variety of homes that:
 - (i) meet the needs, in terms of type, price, and location, of different households; and
 - (ii) enable Māori to express their cultural traditions and norms; and
- (b) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and
- (c) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and
- (d) support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and
- (e) support reductions in greenhouse gas emissions; and
- (f) are resilient to the likely current and future effects of climate change.

Policy 6: When making planning decisions that affect urban environments, decision-makers have particular regard to the following matters:

- (a) the planned urban built form anticipated by those RMA planning documents that have given effect to this National Policy Statement
- (b) that the planned urban built form in those RMA planning documents may involve significant changes to an area, and those changes:
 - (i) may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities, and future generations, including by providing increased and varied housing densities and types; and

- (ii) are not, of themselves, an adverse effect
- (c) the benefits of urban development that are consistent with well-functioning urban environments (as described in Policy 1)
- (d) any relevant contribution that will be made to meeting the requirements of this National Policy Statement to provide or realise development capacity
- (e) the likely current and future effects of climate change.

Policy 9: Local authorities, in taking account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) in relation to urban environments, must:

- (a) involve hapū and iwi in the preparation of RMA planning documents and any FDSs by undertaking effective consultation that is early, meaningful and, as far as practicable, in accordance with tikanga Māori; and
- (b) when preparing RMA planning documents and FDSs, take into account the values and aspirations of hapū and iwi for urban development; and
- (c) provide opportunities in appropriate circumstances for Māori involvement in decision-making on resource consents, designations, heritage orders, and water conservation orders, including in relation to sites of significant to Māori and issues of cultural significance; and
- (d) operate in a way that is consistent with iwi participation legislation.

Policy 11: In relation to car parking:

- (a) the district plans of tier 1, 2, and 3 territorial authorities do not set minimum car parking rate requirements, other than for accessible car parks; and
- (b) tier 1, 2, and 3 local authorities are strongly encouraged to manage effects associated

with the supply and demand of car parking through comprehensive parking management plans.

- [275] Again, we take the view that to the extent that these parts are of relevance to the present application, they are consistent with it.
- [276] The NPSUD is intended to be a directive to regional councils and territorial authorities to make provision in district plans and other planning documents, to enable the intensification of the use of suitable land for housing and business purposes.
- [277] The development is well located in the central area and is well connected to transport and services and the building will be efficient and sustainable. It will also be a highly resilient building.
- [278] Overall, it must be concluded that the proposal is consistent with the direction set out under the NPSUD.
- [279] We note in passing that the NPSUD is yet to be fully implemented by the *notification* of a new Wellington District Plan, although a draft plan is open for consultation. However, all objectives, policies and rules that require minimum off-street parking have been removed from the operative District Plan as from 20 August 2021.
- [280] In our view, the present proposal is not inconsistent with the NPSUD 2020 and we accept that some of its objectives and policies are advanced by it.

PART G: NATIONAL ENVIRONMENTAL STANDARDS

- [281] The NESCS applies to this proposal. The site is on the HAIL list.⁴¹
- [282] Regulation 11 makes the current activity a discretionary activity (unrestricted).
- [283] We have reviewed the PDP report.⁴² We consider overall that the proposal can be considered to be consistent with the NESCS, with appropriate conditions in place including for a Contaminated Site Management Plan and a Contaminated Soil Discovery Protocol.⁴³ We are satisfied as already noted above that any contamination effects can be appropriately managed through the implementation of a contaminated

41 To be completed.

42 Appendix X to the Application.

43 See condition 17 to 27 in Appendix 3 (if application were to be granted).

site management plan and other measures required by Conditions 17-27.

PART H: REGIONAL POLICY STATEMENT

[284] The Applicant has identified a number of relevant objectives and policies of the Regional Policy Statement (**RPS**).⁴⁴

[285] In particular, Objective 22 outlines the outcomes to be achieved in respect of regional form. The relevant components of this objective are:

Objective 22

A compact well designed and sustainable regional form that has an integrated, safe and responsive transport network and:

- (a) a viable and vibrant regional central business district in Wellington city;*
- (d) development and/or management of the Regional Focus Areas identified in the Wellington Regional Strategy;*
- (e) urban development in existing urban areas, or when beyond urban areas, development that reinforces the region's existing urban form;*
- (h) integrated public open spaces;*
- (k) efficiently use existing infrastructure (including transport network infrastructure);*

[286] This is supported by Policy 54:

Policy 54: Achieving the region's urban design principles – consideration

When considering an application for a notice of requirement, or a change, variation or review of a district or regional plan, for development, particular regard shall be given to achieving the region's urban design principles in Appendix 2.

[287] The Panel agrees that the relevant documents have been identified and agrees that in most respects the application is consistent with those objectives and policies. In particular, Policy 54 relates to achieving the region's urban design principles. This policy is met by the proposal for reasons outlined above in relation to urban design effects and below in relation to the more specific and directive objectives and policies contained within the District Plan.

⁴⁴ Schedule 6 information at pages 21 to 22.

PART I: REGIONAL PLANS

[288] No consents are sought under these documents.

PART J: WELLINGTON DISTRICT PLAN RULES

[289] Prior to our assessment of the Development against the Objectives and Policies of the District Plan, we discuss the Central Area rules and the relevant Design Guide that applies.

[290] The application sets out in Table 4⁴⁵ an assessment of the Development against the Central Area Standards in Chapter 13 of the District Plan. The Traffic Concepts Report forming part of the application sets out a Table 2 commenting on compliance or otherwise with the standards in Chapter 13 relating to vehicle parking, servicing and site access for vehicles.

[291] The application also provides commentary on the application of other relevant rules and standards.

[292] Rather than reproducing Table 4, and Table 2 in the Traffic Concepts Report, we comment below where we have a different view as to compliance, in relation to activity status, or otherwise where we consider that some explanation is required of our approach to the interpretation of the rules and standards. We also comment on the other rules and standards referred to in or applicable to the application.⁴⁶

[293] Central Area Rule 13.1.1 provides that any activity is a Permitted Activity provided it complies with the standards in sections 13.6.1 and 13.6.2 (except those various excluded activities listed in 13.1.1). The exclusions include any activity that disturbs or alters the ground of a contaminated site.

[294] The activity status rules relating to buildings in the Central Area are complex, but as a starting point we agree with the Applicant that the following aspects of the Development do not comply with the Central Area standards as set out in Table 4 and their activity status is *of itself* Discretionary (Restricted):

- (a) Site access (13.6.1.3.16).

45 Pages 30 - 32.

46 At pages 32 - 33.

- (b) Building Height (13.6.3.1.1).
- (c) Building Mass (13.6.3.2.1).
- (d) Wind (13.6.3.5).

[295] However, there are some further actual or potential compliance issues that we need to specifically address.

[296] Turning to Table 2 in the Traffic Concepts Report, we firstly note that there are differences in compliance assessment between this Table and Table 4 in the Application. In particular, Table 2 (Traffic Concepts Report) states (contrary to Table 4) that the Development does not comply with Site Access for vehicles standards 13.6.1.3.11 and 13.6.1.17. Having taken expert advice from Beca, we agree with the Table 2 assessment in that respect. In addition, Beca advises that the following standards referenced in Table 2 are not complied with:

- (a) Vehicle Parking (13.6.1.3.2).
- (b) Servicing (13.6.1.3.8).

Adjacent Residential Area. Rules 13.6.3.1.9 and 13.6.3.1.10

[297] Table 4 in the application states that these rules do not apply to the application. However, if the site as defined in the District Plan⁴⁷ was to include Collina Terrace, then it would mean that the site would have a boundary adjoining the Residential Area.

[298] The EPA made a further information request noting that while the Panel was yet to consider the definitions of site and site area and requesting elevations to determine whether the application can comply with Standards 13.6.3.1.9 and 13.6.3.1.10 (if applicable).⁴⁸

[299] The Applicant in response to the further information request provided further information including a Figure 1, and concluded that full compliance with Rule 13.6.3.1.9 is achieved and no breach of Rule/Standard 13.6.3.1.10 would occur.

[300] As already mentioned above, the Panel sought legal advice from Ian Gordon, Barrister.⁴⁹ He relevantly concluded that the site cannot reasonably:

- (a) include Collina Terrace (Lot 5) but if it were included, neither calculation as to the extent of the Site Area or building mass would

47 Chapter 3, page 48 of 57.

48 6 July 2021.

49 His advice is on the EPA's website.

be affected;⁵⁰ but

- (b) if both Lot 1 DP 23575 and Collina Terrace (Lot 5) form the *site* then Rules 13.6.3.1.9 and 13.6.3.1.10 would apply and the effect of those Rules would apply across both lots as far as the rules require.

[301] We accept this advice and adopt it for the purposes of this decision. We reject the Applicant's contentions in this regard. However, we do return to this issue below in light of further representations that were made to us on behalf of the Applicant by way of an email of 7 November 2021.

Design, External Appearance, Siting and Building Mass

[302] Under Rule 13.3.4, the construction, alteration of, and additions to buildings and structures in the Central Area are Discretionary Activities (Restricted) in respect of:

- (a) 13.3.4.1 - design, external appearance and siting; and
 (b) 13.3.4.2 - the placement of building mass.

[303] There is a marginal note to Rule 13.3.4 which states in part:

Building work covered by rule 13.3.4 will be assessed against the provisions of the Central Area Design Guide. Note, section 3.2.4 requires a Design Statement to accompany any application for resource consent that is to be assessed against a Design Guide. If the proposal does not comply with standards for buildings and structures in 13.6.1 or 13.6.3, Rule 13.3.8 applies in addition to this Rule.

[304] Clause 3.2.4 in Chapter 3 of the District Plan requires any application for a resource consent that is to be assessed against a Design Guide to be accompanied by a Design Statement. Clauses 3.2.4.1 and 3.2.4.2 set out the General and Specific Requirements of a Design Statement.

[305] The requirements of the Design Guide is found in volume 2 of the District Plan. The intention of the Design Guide is stated to be:

To achieve high quality buildings, places and spaces in the Central Area of the city:

This will be achieved by ensuring they:

- are coherently designed
- make a considered response to context
- address heritage values
- establish positive visual effects

50 Paragraph 5.2 at page 2.

- provide good quality living and working environments
- integrate environmental sustainability principles, and
- provide conditions of safety and accessibility

[306] Then there is a section about using the Design Guide, which includes the following:

Application

This Design Guide should be read in conjunction with the objectives and policies contained in Chapter 12, and the rules contained in Chapter 13 of the District Plan.

The guide applies to new buildings, and additions and modifications to existing buildings in the Central Area. Specific and detailed design objectives are set out in each section, followed by related generic guidelines. Appendices cover identified heritage areas, and other areas of special character in the Central Area.

Relevance

Good design is site and programme specific, and not all of the generic design guidelines in this design guide will necessarily apply to every site. However, every guideline that is relevant to the project site, type and scope must be considered, and every relevant design objective satisfied.

Relevant guidelines can be identified by the designer and confirmed with WCC design reviewers in pre-application meetings.

Design flexibility and responsiveness to site

Sometimes, a design objective may be best achieved by means not anticipated in these guidelines. In this situation, it is justifiable to depart from a guideline if it can be demonstrated that the alternative design solution better satisfies the associated design objective.

Prioritisation

Every design proposal is a response to a unique mix of requirements and circumstances. Sometimes, they are in competition. While each development should demonstrably satisfy all applicable objectives, the unique conditions of each location may mean some objectives are more important than others. Priority should be given to satisfying those guidelines that are most critical to the overall intentions of this guide. Priorities can be identified by the designer and confirmed with WCC design reviewers in pre-application meetings.

Explanation

Throughout this guide, italicised explanatory text provides further assistance on the proper application and interpretation of the guidelines.

The illustrations in the Guide are intended to support the text by explaining

principles. They are not intended to represent actual design solutions.

Information requirements

Chapter 3 of the District Plan lists all the information required to be submitted with each application. This includes a design statement describing how the proposal satisfies relevant design guidelines and objectives. A heritage assessment will also be required for heritage items and heritage areas, in accordance with the provisions of Chapters 20 and 21 of the District Plan.

[307] The Design Guide then goes on to deal with objectives and guidelines under six different headings:

- (a) Design Coherence;
- (b) Relationship to Context;
- (c) Siting, Height, Bulk and Form;
- (d) Edge Treatment;
- (e) Façade Composition and Building Tops; and
- (f) Material and Detail.

[308] For each of these headings there is an opening statement, then an objective or objectives, and finally a guideline or guidelines.

[309] These matters have been covered in detail in the various expert assessments in terms of the Design Guide, but there are some parts of the Design Guide that are particularly relevant to the situation where firstly a proposed building is to be located next door to an individual heritage building including heritage buildings in heritage areas/precincts, and secondly the height of a building exceeds the relevant height standard.

[310] Under the heading *Relationship to Context* (Section 2), Objective O2.2 is to:

...maintain or enhance the quality of the settings of individual heritage buildings, including those in heritage areas.

[311] The related Guidelines state (amongst other things):

Maintain consistency with defining and valued neighbourhood patterns. Contrasts should be created only if the development is significant on a district or city-wide scale and/or accommodates a unique or publicly significant function.

...

New development should attempt to complete, improve and enhance the setting of heritage areas and individual buildings or groups of buildings listed as heritage items in the District Plan.

[312] Section 3 headed *Siting, Height, Bulk and Form* starts as follows:

Height and bulk are both relative concepts. Buildings of greater height or bulk can easily overwhelm their immediate surroundings. Where the length, width and/or height of a new development conflicts with the physical scale and texture of its surroundings, various design techniques may be employed to modify and mitigate the visual impacts.

Height

...Building height becomes a particular issue when a building is elevated significantly above its neighbours, creating potential problems such as visual domination, shading of public open spaces, and wind effects. When the building extends above the height limit, the risk of excessive shading of neighbours also becomes relevant. As new building extends above its neighbours, an increasingly skilled and sophisticated design response is required to achieve a satisfactory result. Conversely, a building that is much lower than its neighbours can break the coherence of the street edge.

[313] Objectives O3.1 and O3.2 are to:

...complement existing patterns of alignment, and achieve a positive scale relationship with adjoining buildings and public spaces.

...

...respect the setting of heritage items and identified heritage areas

[314] The guideline related to these Objectives includes the following:

Street edge definition and building alignment

G.3.1 Site and align building forms to reinforce the local street grid, and the local system of public open spaces with common alignment and construction generally to the street edge.

Fronts of buildings should generally be built to the edge of the streets and other spaces, and large or random edge setbacks should be avoided.

Height and scale relationship

G.3.5 Ensure new buildings do not dominate lower adjacent public spaces and neighbouring buildings by moderating their height at and close to the street edge. This will achieve a scale transition between the higher and lower buildings/spaces.

This can be done by techniques including:

- *boundary setbacks at high level;*

- *secondary forms of similar dimension to those of the lower buildings, placed to act as transitional volumes;*
- *physical separation of large tall buildings from those that are much lower;*
- *reduced height adjacent to much lower buildings or spaces where shading is problematic, and;*
- *significantly reducing the site area for the tallest components of the building, while potentially retaining full site coverage at lower levels.*

Where a new development adjoins a heritage building that is four storeys or less, its height should be not more than one storey above the heritage building, over an area extending approximately 5-8 metres along and back from the street frontage at the common boundary with the heritage building. Where the heritage building is six storeys high, new building should be restricted to not more than two storeys higher at the boundary in order to avoid visual dominance and achieve a scale transition. Where a heritage building is proportionally higher or lower than these references, the extent of increased height relative to the heritage building increases or decreases respectively.

- G 3.6 Provide a generous ground-to-first floor height.
- G 3.7 Reduce the proportion of the site area covered by parts of buildings that are significantly higher than existing surrounding buildings.
- G 3.8 Mitigate the visual impact of building bulk, while a building is large relative to its neighbours and to other nearby buildings.
- G 3.11 Deal with wind effects within the site boundaries and in a way that does not compromise the coherence and compositional integrity of the building.

[315] In terms of Section 4 *Edge Treatment*, the Objectives are:

- O4.1 To create building edge conditions that support pedestrian activity and enhance the visual interest, legibility, safety and comfort of streets and public spaces.

[316] Under the Guidelines part of Section 4, there are separate paragraphs dealing with *Building fronts* (G4.1), *Active edges* (G4.3, G4.4, and G4.5), *Servicing and Car Parking* (G4.6 and G4.7), and *Shelter and building entrance enhancement* (G4.8).

[317] Section 5 relates to *Façade composition and building type* and Objective O5.1 includes the following:

To ensure that façade and building top design is coherently resolved.

- [318] The Guidelines that follow include *Relation to neighbouring buildings* (G 5.1 and G 5.2), *Shopfronts* (G 5.4 – G 5.6), and *Building tops and roofscape* (G 5.7 – G 5.10).
- [319] Finally, Section 6 deals with *Materials and Detail*.
- [320] We have found the issue as to the Development's consistency with the Design Guidelines to be of considerable complexity and has ultimately involved us having to make our own decisions in light of the competing views of experts in the area of urban design.
- [321] However, we have approached the resolution of this issue in light of the following high-level considerations:
- (a) We place considerable weight on the **Intent** of the Design Guidelines (page 2).
 - (b) As the Design Guide notes, it needs to be read in conjunction with the objectives and policies contained in Chapter 12 and the rules in Chapter 13 of the District Plan (page 2). These Objectives and Policies have been discussed above in Part K and the Rules in Chapter 13 are considered elsewhere in this Part J.
 - (c) Again, as noted in the Design Guide, a design objective may be best achieved by means not anticipated in the guidelines (page 2).
 - (d) The requirement and circumstances of a design proposal may sometimes be in competition and while each development should demonstrably satisfy all *applicable* objectives, the unique conditions of each location may mean some objectives are more important than others (page 3).
 - (e) Priority should be given to satisfying *those guidelines* that are most critical to the overall intentions of this guide (also at page 3).
- [322] In light of these factors, we consider that we need to take a holistic approach to the question as to whether there is consistency with the Design Guide (and in relation to design excellence).
- [323] We record that the reports and materials available to us include:
- (a) The Design Statement and the Assessment against the Design Guide provided by the Applicant.
 - (b) The Urban Design Peer Review undertaken by Mr Andrew Burns of McIndoe Urban dated 26 August 2021.
 - (c) The Architects Response to the Urban Design Peer Review dated 17 September 2021.

- (d) The Joint Statement of Experts in the Field of Urban Design dated 2021.
- (e) A revised 61 Molesworth Street Resource Consent Design Statement for 13 and 11 Storey Towers.
- (f) An email of 7 November 2021 Mr Leary on behalf of the Applicant in which he made representations to us in relation to design excellence and consistency of the Development with the Design Guide. While we did not seek his comments, we have nevertheless considered them in reaching our conclusions.

[324] As already mentioned, we were originally confronted by sharply divergent views put forward by the respective urban design experts on the Development's consistency with the Design Guide and the related issue of design excellence.

[325] For this reason, we asked the urban design experts to carry out expert conferencing. This led to the Joint Statement that considerably narrowed the areas of disagreement between them.

[326] We mean no disrespect to the urban design experts that we do not summarise in a comprehensive way their respective views, and we do not in any event consider that this would be worthwhile, given the defined nature of the areas of agreement and in one case disagreement between the urban design experts in the Joint Statement.

[327] Rather, we provide below our own assessment on the question of consistency under each of the six headings in the Design Guide, but at the same time we have regard to the intention of the Design Guide (page 2) and the other introductory material referred to above.

[328] As a starting point however we note that the issues identified in the joint statement by the urban design experts relating to achieving design excellence were:

- (a) Setback to relate to the building frontage alignment along the west side of Molesworth Street north of Hawkestone Street.
- (b) Composition and form of the building's top.
- (c) Reconsideration of the east and west façade design.
- (d) Introduction of references to the Cathedral's primary horizontal nave structure in the design of form and facades.
- (e) Effects of the blank ground level of the northern façade at the connection with the eastern end of Collina Terrace.

[329] The Joint Statement then went on to identify 6 issues that were agreed

(essentially in relation to Issues 2-5 of the identified design excellence issues) and one issue that was not agreed (setback of the building from the road frontage). We note that building height was not specifically mentioned in the Joint Statement and we consider that it is reasonable to infer that this was no longer an issue of contention between them.

Design Coherence

[330] We accept that the Development's overall massing approach relates well to the Cathedral, but as indicated in McIndoe Urban Peer Review Report, improvements were desirable in terms of:

- (a) introduction of references to the Cathedral's primary nave structure in the design of form and façade;
- (b) ground level glazing and massing; and
- (c) create levels of interest for the east/west facades.

[331] Having reviewed the revisions made by the Applicant relating to building design, we consider that the *Design Coherence* objective has been met. We refer in particular to the joint statement that notes:

- (a) the issue of the frequency of entrances and flexibility for ground floor subdivision being resolved;
- (b) the added vertical solid elements and the "cut-out" openings (with a preference for no further supporting structure in the south-eastern corner);
- (c) the articulation and spacing of the stone base to allow for pedestrians connecting and views along the ground level frontage that mitigate the negative effects of the service entrance;
- (d) the introduction of references to the Cathedral's primary horizontal nave structure in the design of building form and facades. The final patterning/expression of the bottom "third" is provided for in Condition 2;
- (e) the reconsideration of the east and west façade design. Again this will be subject to Condition 2; and
- (f) composition and form of the building's top. Again this will be subject to Condition 2.

Relationship to Context

[332] There is overlap between the issues identified under this heading and those that relate to *Design Coherence*, and we do not repeat what we have said above of these issues that in turn more or less respond to the

issues agreed in whole or in part by the urban design experts. This leaves two key issues as to whether:

- (a) There should be a setback on the Molesworth Street frontage to align with the buildings north of Hawkestone Street and the eastern edge of the Cathedral (the belfry).
- (b) The building should be reduced in height. As we have noted above, we now have Higher and Lower Tower Schemes before us.

[333] Turning to the setback issue, we have found the competing matters raised by the respective urban design experts to be finely balanced, but ultimately we have reached the view that a setback is not required to achieve consistency with the Design Guide and to achieve design excellence.

[334] The setback would enhance views of the Cathedral at *some* points north of the Cathedral, and to the south there would be less of the building seen against the background of the Development when viewed at certain viewing points.

[335] However, we do not consider that the Development in either the Higher or Lower Tower Schemes materially impacts on the qualities and sense of place of the urban setting. Rather, we consider that in some respects they will be enhanced.

[336] In terms of neighbour patterns, we do not consider that there is any consistent set back pattern along Molesworth Street in the vicinity of the site that *needs to be respected*. We of course accept that there are varying setbacks along Molesworth Street and these may well relate to earlier road widening proposals, but those setbacks vary considerably in scale, and as we note under the next heading there are competing considerations in terms of street edge definition and building alignment.

[337] We generally agree with Mr Robinson's views in the joint statement in this respect, including the fact a setback could at the very least create some challenges in terms of the use of that area, the need to make provision for shelter and some related design challenges.

[338] Turning to the height of the building, we have reached the view that with the changes proposed and commented upon in the joint statement of experts, height does not negatively impact to any degree on the setting of the Cathedral. As already mentioned, height was not a matter raised in the Joint Statement.

[339] We have had the benefit of plans and photomontages for the Higher and Lower Tower Schemes and we ultimately consider that the Higher Tower Scheme is acceptable in terms of relationship to context and may in fact reflect a better urban form and composition rather than the more "box-

like” shape of the Lower Tower Scheme.

Siting, Height, Bulk and Form

- [340] Essentially for the reasons that we discuss above, and in light of the changes to building design proposed (as outlined in the joint statement of experts) we consider that the objectives for *Siting, Height, Bulk and Form* are met overall.
- [341] As already mentioned under *Relationship to Context*, we have needed to reach a view on the question of building set back and one of the factors referred to in relevant Guidelines is G3.1 *Street Edge Definition and Building Alignment*. Another and competing consideration is what is said about *Height and scale relationship* under G3.5 where a new development adjoins a smaller heritage building.
- [342] We must read section 3 and the Design Guide as a whole, and we do not consider in this particular case that there is a compelling reason for requiring a set back from the Molesworth Street frontage departing from G 3.1.
- [343] We do not consider that such a setback is required in this case to ensure that the Development does not dominate the Cathedral. While the development is much higher than the Cathedral, the physical separation between the two buildings, the setbacks on the tower levels of new building and the plinth at ground and first level all work to prevent any undue dominance.
- [344] As Mr Burns indicated in the joint statement of experts, the setback is only one element of a wide range of Design Guide factors to be considered in respect of a building project of the scale, type and location contemplated.
- [345] Returning to the five Objectives under *Siting, Height, Bulk and Form*, we consider that the Development is consistent with those objectives.
- [346] In particular, the Development will in our view complement existing patterns of alignment and will achieve a positive scale relationship with adjoining buildings. It will also respect overall the setting of the Cathedral.
- [347] In terms of Objective 03.5, we consider that the pedestrian network will be enhanced more by aligning the Development with the Molesworth Street frontage than with a setback while at the same time not to any significant degree impacting on the Cathedral setting.
- [348] Finally on this topic, we have not overlooked the assessments provided by Moira Smith of the Heritage Practice in her peer review report in relation to the consistency with the Design Guide.
- [349] We have carefully reviewed that assessment and we consider that the

matters that were raised by Ms Smith as requiring attention to achieve design excellence have been largely addressed and where they have not been addressed, we respectfully have reached a different view as outlined above.

Edge Treatment

- [350] Having considered the relevant objective O4.1 and accompanying guidelines, we consider the proposal as amended creates building edge conditions that support pedestrian activities and enhance visual, safety and comfort of Molesworth Street.
- [351] With the changes proposed, the entry points and verandah enhance the amenity of Molesworth Street. The blank northern façade and the service area have been significantly improved.
- [352] We are able to conclude that this relevant Objective has been met.

Façade Composition and Building Tops

- [353] There were a number of issues identified by McIndoe Urban under this heading, including that façade design takes few clues from the Cathedral, a lack of coherence in the east and west curtain wall facades, and a poor façade design along Molesworth Street detracting from the pedestrian experience.
- [354] The experts in Joint Statement agree in part of in whole that these matters have been improved and our overall view is that Objective O4.1 has been achieved. Condition 2 of the Conditions of Consent deal with these matters.

Materials and Detail

- [355] Prior to the Joint Statement, there were some areas of agreement between the urban design experts with some residual areas of disagreement. However, these matters appear to have been resolved between the experts to a large degree and with condition 2 in place, we consider that objectives O6.1 and O6.2 are met.

Rule 13.3.8

- [356] Turning to Rule 13.3.8, this is relevant because the construction, or alteration of, and addition to buildings and structures which are Restricted, Controlled or Discretionary (Restricted) Activities that do not meet one or more of the specified standards outlined to section 13.6.1 (Activities, Buildings and Structures) and 13.6.3 (Buildings and Structures) are Discretionary Activities (Restricted) under that Rule.
- [357] The rule goes on to state that unless otherwise noted below in the Rule, discretion is limited to the effects generated by the standard(s) not met.

[358] For present purposes, the relevant matters listed in Rule 13.3.8 are as follows:

(a) 13.3.8.4A height where discretion is limited to the effect of building height on:

- the amenity of surrounding streets, lanes, footpaths and other public spaces; and
- the historic heritage value of any listed heritage item in the vicinity; and
- the urban form of the city; and
- the character of the surrounding neighbourhood, including the form and scale of neighbouring buildings; and
- any adjacent Residential Area.

(b) 13.3.8.5 mass (standard 13.6.3.2) where discretion is limited to the effect of building mass on:

- the amenity of surrounding streets, lanes, footpaths and other public spaces; and
- the historic heritage value of any listed heritage item in the vicinity; and
- the character of the surrounding neighbourhood, including the form and scale of neighbouring buildings; and
- whether the proposed building will have on-going access to daylight; and
- any adjacent Residential Area.

(c) 13.3.8.8 wind (standard 13.6.3.5);

[359] The various provisions listed to Rule 13.3.8 are subject to compliance with the following conditions:

maximum building height assessed under 13.3.8.4.A and 13.3.8.4.B must not be exceeded by more than 35 percent, and the building mass standard must not be exceeded; or

maximum building height must not be exceeded by more than 15 percent, and the building mass standard must not be exceeded by more than 15 percent.

[360] The marginal note opposite Rule 13.3.8.14 states as follows:

For the purpose of condition 13.3.8.14 the 15 percent increase in building mass shall be calculated using the total building mass for the site (see section 13.6.3.2).

[361] Rule 13.6.3.2.1 relates to building mass:

No building (or buildings) shall have a mass in excess of the total building mass (volume) for the site. Total building mass (volume) is calculated using the following formula:

A. In areas where building heights are measured above ground level:

Total mass = site area x height x .75

[362] One of the matters that determines total building mass (volume) is the *site area*. The definition of site area is also dealt with in the legal opinion provided by Mr Ian Gordon, who notes that there are two potentially relevant definitions of *site area* in the District Plan. Mr Gordon concluded as follows:

In conclusion, the relevant definition of Site Area for the application is that found in rule 13.6.3.2. That definition requires the inclusion of the total area of sites which form part of the development. Taking a purposive approach, that definition cannot include Collina Terrace/Lot 5, because Lot 5 is an Access Lot that cannot be built on, and therefore is not a site that can form part of the development.⁵¹

[363] Again, we agree with Mr Gordon's conclusions and adopt them for the purpose of this decision. On the basis that we consider that Collina Terrace must be excluded from the definition of *site area* (and *site*), the massing calculation (whether for the Higher or Lower Tower Schemes) would need to exclude Collina Terrace, which has an area of 438m².

[364] The Applicant's calculation in the design statement⁵² is as follows for the Higher Tower Scheme:

MASSING CALCULATIONS

- Allowable Building Mass Volume	83,537m ²
- 15% Design Excellence Allowance	12,530m ²
- Total Allowable Massing	96,067m ²
- Massing Achieved	98,724m ²

[365] In contrast, the allowable building mass calculation for the Higher Tower Scheme (as calculated by the Panel) would be in reliance on advice from

51 Paragraph 55, page 13.

52 Attachment 4 to the Application at page 39.

Mr St Clair:⁵³

$$2105\text{m}^2 \times 43.8 \times .75 = 69,149.25\text{m}^3$$

$$15\% \text{ for design excellence is } 10,372.4\text{m}^3$$

$$\text{Total Allowable mass is } 79,521.63\text{m}^3$$

$$\text{Mass achieved is } 88,724\text{m}^3$$

- [366] The revised calculation set out above is on the assumption for present purposes that the 15% Design Excellent Allowance should be included. We discuss this elsewhere in this decision.
- [367] On the basis of the revised calculations above, the Higher Scheme would not meet condition 13.3.8.14 and would therefore default to Rule 13.4.10 as a Discretionary Activity (Unrestricted).
- [368] Rule 13.4.10 is also subject to compliance with the condition that maximum building height must not be exceeded by more than 35%.
- [369] For completeness, we turn to the Lower Tower Scheme. The Panel recently commissioned its special planning advisor, Mark St Clair of Hill Young Cooper, to advise on the activity status of the Lower Tower Scheme.⁵⁴
- [370] Mr St Clair's report dated 27 October 2021⁵⁵ noted that the height of the Lower Tower Scheme was 42.2m and therefore complied with the applicable height limit of 43.8m above mean ground level. Mr St Clair used the mass calculation in Rule 13.6.3.2.1A as did the Applicant.
- [371] He differed from the Applicant in that he relied on the interpretation of *site area* for the mass calculation as set out in Mr Ian Gordon's legal opinion dated 5 August 2021. Accordingly, Mr St Clair concluded that the area to be used was 2105m (excluding the area of Collina Terrace).
- [372] Mr St Clair then carried out a review of the relevant district plan rules and concluded on the basis of his massing calculations that the application would therefore fall to be considered as a Discretionary Activity (Restricted) under Rule 13.3.8.
- [373] In our Minute 10, we invited the Applicant to provide a response to Mr St Clair's memorandum by 5pm on Friday 5 November 2021.
- [374] Mr Leary in an email to the EPA of 7 November 2021 on behalf of the Applicant provided comments on Mr St Clair's memorandum to the Panel

53 See Mr St Clair's memorandum to the Panel dated 27 October 2021.

54 This was offered in the alternative by the Applicant in its email of 15 October 2021.

55 <https://www.epa.govt.nz/assets/Uploads/Documents/Fast-track-consenting/Molesworth-Street/reports-and-advice/Final-Memo-Lowered-Tower-Scheme-at-27-10-21.pdf>

dated 27 October 2021.

[375] To summarise Mr Leary's comments:

- (a) He notes WCC's officers agreed with the mass calculation to include Collina Terrace in a Section 95A-95F report for SR41743 dated 20 December 2018.
- (b) He refers to Policy 2.2.5.2, commenting that in the explanatory note "*The policy is clearly discussing the placement of mass, adjacent to buildings directly on the boundary*". He expressed the view that there is no potential for buildings to be placed right against the boundary of adjoining buildings to the north and west due to presence of Collina Terrace and so in his view it is not illogical for Collina Terrace to be used to calculate overall mass.
- (c) Also as to the policy explanatory note, he noted the following discussion text under the same policy:

Because building mass is calculated using the area of the development site, care must be taken to ensure that overall development potential is not increased through manipulation of property boundaries. For this reason, in instances **when a development site comprises multiple titles (or computer freehold registers), consideration will be given to the need to amalgamate into one title (or computer freehold register)** all of the land parcels that were used to calculate the maximum mass of the development. Similarly, there may be occasions when it is necessary to register a consent notice on a vacant or developable lot to maintain compliance with the building mass standards across the site.

- (d) My Leary on behalf of the Applicant disagreed with the legal opinion as to the Site Area definition. In his experience, the exclusion of right of ways has never been applied in the Central Area.
- (e) The District Plan envisages that the site area is to be on record of titles in the Central Area and that it is legally and logically sensible to interpret the site area for the application as has been done in the application.

[376] We have considered Mr Leary's comments, but they do not change our reliance upon Mr Gordon's legal advice. In particular:

- (a) The fact that WCC or its officers have taken a different position in the past on pre-application consultation on a resource consent or for notification decision purposes for the current site or indeed on previous occasions, does not bind us in reaching a decision on the current application. We do not ultimately find the views expressed in those documents to be persuasive.

- (b) We could find no reference in the explanatory notes to policy 12.2.5.2 to the words “*directly adjacent*” as asserted by Mr Leary in his email. We also do not consider that such an inference can be drawn from this passage in the explanatory notes.
- (c) Further while Collina Terrace provides a set-back on the northern and western sides, on the southern side of the Development, the Cathedral site is directly adjoining.
- (d) It appears that the Applicant agrees that the definition of *site area* in Chapter 13 overrides the more general definition in Chapter 3, but it has a fundamental disagreement about how *site area* should be interpreted in Chapter 13. As already mentioned, we prefer the considered legal advice of Mr Ian Gordon.
- (e) Finally, we note that if the Applicant’s position in terms of the interpretation of site area and therefore the mass calculations were correct, each of the other properties adjoining Collina Terrace could similarly use that interpretation to allow for a very significant and disproportionate increase in mass

[377] Before leaving this topic, we should mention that notwithstanding our views on the massing calculations, the presence of Collina Terrace is relevant in our view to the overall effects of the proposed building’s mass. This has been discussed above.

[378] Turning to the application of Rules 13.3.4 and 13.3.8 to development proposals generally, some useful guidance is provided by the High Court’s decision in the *Sydney St Substation case*.⁵⁶ One of the matters giving rise to challenge in that case was that the Council’s planner had based parts of his analysis on a comparison between the type of the development that could be expected on the site within the relevant height provision and the actual height of the new building.

[379] The High Court went on to say:⁵⁷

[70] As Mr Keenan rightly acknowledged, however, the 35.4 metre height standard could never be a “permitted baseline” because there are no permitted new buildings in the Central Area; the effect of r 13.3.4 is that a new building will always be a restricted discretionary activity. But, he said, Policy 12.2.5.10 encourages consideration of the anticipated development informed by the building height and mass standards in the Plan.

[71] I can see the logic of this approach when considering r 13.3.8. The point is a simple one. Had the Proposed Building not breached the 35.4m height standard, then consideration of r 13.3.8 would not have been required. So when consideration is required to be given to the effects of a departure from that standard (and whether those

56 *Sydney St Substation Limited v Wellington City Council* [2017] NZHC 2489 (Ellis J).

57 Footnotes omitted.

effects are adverse) it makes sense to consider the extent of the departure. The smaller the deviation, the less serious its effects are likely to be. This appears to have been Mr Keenan's thinking. And he is, of course, also right that one of the matters which must be considered under r 13.3.8 is the effect of height on the historic heritage value of any listed heritage item.

[72] But this logic is not so obvious in relation to a consideration of r 13.3.4, which is not concerned with height per se, but with design, external appearance, siting and placement of building mass. And as that rule makes clear, it is those matters which are particularly required to be considered by reference to the CADG. And when the CADG talks about height, it does so in terms of relationships with other buildings and in specific contexts, which specifically include the "setting of heritage items".

...

[73] It is therefore (in my respectful view) overly simplistic and potentially wrong to judge r 13.3.4 matters (and the matters covered by the CADG) by reference to a 35.4m baseline. Indeed to use that baseline when considering the CADG risks rendering the "over-arching" CADG requirement to consider the relationship between a proposed development and its specific context, meaningless. So although Mr Keenan was correct to observe that Ms Smith had not used an "anticipated development model" (based on a 35.4m height baseline) when assessing the effect of the proposal in relation to the Substation against the CADG, I consider she was right not to do so.

[380] While it is also dealt with elsewhere, in the present context we also mention the High Court's discussion (relating to design excellence):

[80] As noted earlier, Policy 12.2.5.5 requires design excellence for any building that is higher than the height standard specified for the Central Area. It is clear from the passage from the report set out at [64] above that Mr Keenan regarded this Policy, too, as being qualified by the "anticipated development model". To the extent that the design excellent requirement is triggered solely by the height breach I accept that that approach is arguable.

[81] But what the decision report does not mention is that Policy 12.2.5.5 does not simply require design excellence for buildings that are higher than the height standard, but also for "buildings that are tall in relationship to the surrounding neighbourhood". And that appears to me to be a r 13.3.4 (and CADG) matter, in relation to which the model is less relevant (if at all).

[82] I also accept, however, that like the Guidelines, the Part 12 policies cannot have direct legal the force. **But like the Guidelines, the policies may give rise to a legitimate expectation, from which reasons for departure should be given. And here, the reasoning contained in the report for accepting a design that was (on the view of both Mr Gjerde and Mr Burns) not "excellent" is marred by the preoccupation with the extent of the height breach. Again, that is quite plain from the reasoning I have set out at [64] above.** As I have said, that focus was

understandable in relation to the height breach per se but less so in relation to the issue of contextual height (which appears to have been considered by Dr Gjerde, but in in relation to the Thistle Inn).

[Emphasis added]

Earthworks Standards

- [381] Permitted activity standard 30.1.3 is also not met in this case as the cut area exceeds 250m².⁵⁸ Consent is therefore required as a Discretionary Activity (Restricted) with discretion limited to erosion, dust and sediment control and the transportation of material.

Contaminated Site Rules

- [382] Given that the site contained a fuel storage tank, the site is a potentially contaminated land as defined in Chapter 3 of the District Plan. Rule 32.2.1 is applicable and is as follows:

32.2.1 The remediation use, development and subdivision of any ...potentially contaminated land (unless it has been confirmed as not being contaminated through investigations in a report forwarded in accordance with Rule 32.1.3.1), is a discretionary activity (restricted) in respect of:

32.2.1.1 The level, nature and extent of contamination in relation to the proposed use, development of subdivision

32.2.1.2 The methods to address the risks posed by contaminants to public health and safety

32.2.1.3 The effects of contamination on built structures, ecological and amenity values, soil quality and the wider environment

32.2.1.4 The approach to the remediation and/or on-going management of the contaminated land and the mitigation measures (including monitoring) proposed to avoid adverse effects on public health, safety and the environment including the provision of a Remediation Plan or a Site Management Plan

- [383] As already noted, a Discretionary Activity (Unrestricted) consent is required under regulation 11 of the NESCS.

Wind Rules

- [384] Rule 13.6.3.5.1 provides for wind standards in the Central Area. The

⁵⁸ Permitted activity standard 30.1.3 also requires that the cut is retained by a structure or building authorised by a building consent and there is no evidence of settled dust beyond the boundary.

development does not apply with Rule 13.6.3.5.2 and in this respect the activity status is discretionary activity (restricted) under Rule 13.3.8.8.⁵⁹

[385] Rule 13.6.3.5.2 provides in respect of buildings over 18.6 metres in height that they must comply with standards for Safety, Cumulative Effect, and Comfort. The Comfort Standard only applies to specified public spaces and is not relevant here. This leaves the Safety and Cumulative Standards.

[386] The opening words of Standard 13.6.3.5.2 state “*new buildings ... above 18.6m in height will be designed to comply with the following standards:*” The applicable safety standard is that:

The maximum gust speed shall not exceed 20 m/s. If the speed exceeds 20 m/s with the proposed development, it must be reduced to 20 m/s or below.

(Emphasis added)

[387] The references to “*will be designed*” and “*with the proposed development*” suggest that there should be a causative relationship between the new building and the generation of maximum gust speeds greater than 20 m/s in terms of safety standard, although the Standard is far from clear and to the Panel’s knowledge, the correct interpretation of the Standard has been a matter of contention in other cases.

[388] However, in the present case this Standard is not met on any possible interpretation having regard to the Wind Tunnel Study prepared by WSP for the Applicant and forming part of the Schedule 6 Information.⁶⁰

[389] Turning to the Cumulative Effect Standard (Rule 13.6.3.5.2(b)) any proposed development must meet the requirements for both Strong and Moderate wind strengths at each measurement location. Again, from our understanding of Tables 2 and 3 at pages 14-15 of the WSP report, these requirements cannot be met, although we note that Rule 13.6.3.5.2(c) provides that the overall impact of a building on wind conditions must be neutral or beneficial.

General Construction Effects

[390] The Applicant states that general construction effects are outside of the matters relevant to the present land use consent application. The Panel does not accept this position for the reasons that are set out elsewhere, and the overall status of the application must be regarded as a Discretionary (Unrestricted) Activity as discussed below.

59 This is accepted by the Applicant - see page 31 of the Schedule 6 Information under the heading of Table 4: Assessment of Central Area Standards.

60 See in particular Table 1 at Page 12 under the heading of 5.1 Results.

General Activity Status

- [391] Some aspects of the Higher Tower Scheme which we approve in this Decision involve Discretionary (Restricted) Activities while other aspects identified above have a Discretionary (Unrestricted) status.
- [392] In our view, this is an appropriate case to apply the principle that the most stringent activity classification should be applied to the Development proposed in its entirety.⁶¹ This is not a case where we could sensibly deal with separate parts of the proposal separately.⁶²
- [393] The areas of discretion for the activities that have a Discretionary (Restricted) status overlap at least in part with factors that have Discretionary (Unrestricted) status and contain matters that are quite ranging over which discretion is reserved.
- [394] In the event, the Applicant has ultimately accepted conditions that may have been beyond what could have been able to be imposed if the overall status of the application was Discretionary (Restricted).

PART K: WELLINGTON DISTRICT PLAN – OBJECTIVES AND POLICIES

- [395] The site is in the Central Area of the District Plan. The relevant objective and policies are found in Chapters 12 (Central Area), Chapter 29 (Earthworks) and Chapter 31 (Contaminated Land).
- [396] Turning first to the evaluation of objectives and related policies in the Central Area, there are 16 objectives that have specific policies and methods described for achieving each objective. 7 objectives and a number of policies are not relevant to the site.

Objective – Containment and Accessibility

Objective 12.2.1 To enhance the Central Area's natural containment, accessibility, and highly urbanised environment by promoting the efficient use and development of natural and physical resources.

Policy 12.2.1.1 Define the extent of the Central Area in order to maintain and enhance its compact,

61 *Newbury Holdings Ltd v Auckland Council* [2013] NZHC 1172.

62 *Brookers Resource Management* Volume 1, A104.03 (16) at pages 1-944 to 1-944(a).

contained physical character

Policy 12.2.1.2 Contain Central Area activities and development within the Central Area.

- [397] The proposal is entirely consistent with this objective. It is an efficient use of a Central Area site that previously contained a high rise office building. The proposal is also on a site which has a District Plan permitted height limit of 43.8 metres which in itself can promote a building of scale. We are of the view that the site is capable of containing a significant building with the principal matter for consideration being the form of the building design itself, including massing in particular.

Objective - Activities

Objective 12.2.2 To facilitate a vibrant, dynamic Central Area by enabling a wide range of activities to occur, provided that adverse effects are avoided, remedied or mitigated.

Policy 12.2.2.1 Encourage a wide range of activities within the Central Area by allowing most uses or activities provided that the standards specified in the Plan are satisfied.

- [398] The proposal contains an office use which is an anticipated use in the Central Area. In respect of activity standards with conventional design processes and adherence with construction related conditions, it is considered that the proposal is consistent with Policy 12.2.2.1.

Policy 12.2.2.2 Ensure activities are managed to avoid, remedy or mitigate adverse effects in the Central Area or on properties in nearby Residential Areas.

Policy 12.2.2.4 Control the adverse effects of noise in the Central Area.

Policy 12.2.2.5 Ensure that appropriate on-site measures are taken to protect noise sensitive activities that locate within the Central Area from any intrusive noise effects.

- [399] The site is in proximity of a remnant pocket of Inner Residential with a small part of Collina Terrace adjoining a residentially zoned property being the car park adjoining the Red Cross Building on Hawkestone Street. It is not anticipated that there will be operational noise effects that cannot be mitigated through conditions of consent relating to fixed plant operation.

- [400] In relation to construction related noise, there is a detailed requirement for a Construction Noise Management Plan in Condition 40 that dictates measures to keep noise to reasonable level. When combined with standard central city construction hours of operation, noise effects on adjacent properties can be appropriately managed as we have noted above.

Objective – Urban Form and Sense of Place

Objective 12.2.3 To recognise and enhance those characteristics, features and areas of the Central Area that contribute positively to the City's distinctive physical character and sense of place.

Policy 12.2.3.1 Preserve the present 'high city/low city' general urban form of the Central Area.

Policy 12.2.3.2 Promote a strong sense of place and identity within different parts of the Central Area.

- [401] The proposal is for a 50.3 metre high building where the low city height standard for the site is 43.8 metres. It is also recognised that the Applicant has provisionally put forward a two storey lower building for our consideration (The Lower Tower Scheme) that is lower than the permitted height standard.
- [402] Overall our view is that the Higher Tower Scheme is still an acceptable outcome as the concerns expressed by Mr Burns, the expert urban design adviser to the Panel, relate very much about the bulk of the building and its relationship to Molesworth Street and the Cathedral, rather than overall height or the concept of not meeting the high city/ low city urban form.
- [403] We further note that the Applicant has made some design improvements to address concerns about the architectural form of the top of the building as well as improvements to the entrance, the provision of an entrance plaza, and the ground floor interface with the Molesworth Street pedestrian space.
- [404] We also consider that the proposal can add to the sense of place of the Molesworth Street area of the Central City by providing employment and also providing interest at ground level through the use of glazing to the public areas of the building.
- [405] It is our view that the proposal does preserve the 'high city/low city' general form and can contribute to the sense of identity in this part of the Central Area. As noted previously, we consider that the site is capable of providing for a building of scale.

Objective – Effects of New Building Works

Objective 12.2.5 Encourage the development of new buildings within the Central Area provided that any potential adverse effects can be avoided, remedied or mitigated.

Policy 12.2.5.1 Manage building height in the Central Area in order to:

- reinforce the high city/low city urban form;
- ensure that new buildings acknowledge and respect the form and scale of the neighbourhood in which they are located; and
- achieve appropriate building height and mass within identified heritage and character areas.

[406] In relation to adverse effects in Objective 12.2.5, we consider that the building as modified is acceptable. While the building height for the Higher Tower Scheme is above the Central Area Height Standard, it is within the discretionary allowance relating to height.

[407] We also consider that the building can reinforce the high city/low city urban form. As outlined under the section on urban design effects, we do not believe that the Lower Tower Scheme has any significant advantages over the Higher Tower Scheme, noting that the Applicant's urban design adviser and Mr Burns have no specific issue with the overall height proposed.

Policy 12.2.5.2 Manage building mass to ensure that the adverse effects of new building work are able to be avoided, remedied or mitigated on site.

Policy 12.2.5.3 Manage building mass in conjunction with building height to ensure quality design outcomes.

[408] In our view, the massing of the building was the key issue and agree that the modifications proposed by the applicant are a significant improvement on what was originally lodged. These improvements relate to the juxtaposition of the proposed building to the Cathedral, the form of the very top of the building and to the ground floor public environment at the south eastern part of the site.

[409] We also recognise that six of the seven matters relating to massing, form

and design of the building were largely agreed by the urban designers through their Joint Witness Statement.

- [410] The seventh matter not agreed is in relation to a ground floor setback onto Molesworth Street. This has a direct relationship with the above massing policies as adverse urban design effects need to be considered and there is an emphasis on ensuring quality design outcomes.
- [411] As outlined in our assessment of urban design effects in relation to the building setback, we are minded to accept the Applicant's view. The reasons are that there is strong linear building line north of Hawkestone Street, the pattern of strong linear building form is not as apparent south of Hawkestone Street with Magyar Park and the Red Cross building being setback considerably from the street frontage, and the Cathedral building also having setbacks that include some carparking and also external grassed and landscaped areas.
- [412] For those reasons, we consider that the massing policies in the District Plan can be met.

Policy 12.2.5.4

To allow building height above the specified height standards in situations where building height and bulk have been reduced elsewhere on the site to:

- Provide an urban design outcome that is beneficial to the public environment, or
- Reduce the impact of the proposed building on a listed heritage item. Any such additional height may be treated in such a way that it represents an appropriate response to the characteristics of the site and the surrounding area.

- [413] We also consider that these policies can be met. The improvements to the entrance plaza mean that there is some benefit to the public environment. We also recognise the improvements that have been made in respect of the relationship of the proposal to the Cathedral notably items 4 to 6 of the Joint Statement being:

- [4] Introduction of references to the Cathedral's primary horizontal nave structure in the design of building form and façades.
- [5] Reconsideration of the east and west facade design.
- [6] Composition and form of the building's top.

Policy 12.2.5.5 Require design excellence for any building that is higher than the height standard specified for the Central Area.

- [414] We have paid much attention to urban design throughout this decision because of the directive design excellence policy that applies to buildings over the Central Area Height Standard. In simple terms, the higher a building the “better” it needs to be in respect of design quality with the District Plan objectives and policies being considered alongside the Central Area Design Guide. A more detailed discussion on the Design Guide is included in Part J above.
- [415] On the policy itself, we note that whether a proposal meets design excellence has a large measure of subjectivity to be applied. We also found navigating the relevant policies and the Design Guide somewhat confusing in terms of the key criteria and any weightings to be applied.
- [416] As outlined previously, while the building is substantial in relation to height, it is also substantial in relation to massing and the combination of the two are key matters in relation to achieving design excellence. We note the disagreement of the Molesworth Street building setback between Mr Robinson and Mr Burns and as such there is a consequential disagreement about whether the proposal meets design excellence.
- [417] On the basis that we consider that urban design effects have been addressed, and the proposal can generally meet the Design Guide and the related District Plan objective and policies, we consider that the proposal can contribute to design excellence.
- [418] Mr Leary on behalf of the Applicant in his email of 7 November 2021 volunteered some of his own observations about the Joint Statement and related issue of design excellence. We cannot place any undue weight on his views given that he is not an urban design professional.
- [419] However, Mr Leary noted that in previous applications for the current site, and in other proposals, he has had resilience and sustainability confirmed as elements that can be included in the overall assessment of design excellence. We find little support for this position in the Design Guide and we would take some persuading to accept that the general concept of design excellence extended to such matters. Ultimately we have reached our own view on design excellence, and do not need to consider Mr Leary’s position further.

Policy 12.2.5.6 Ensure that buildings are designed to avoid, remedy or mitigate the wind problems that they create and where existing wind conditions are dangerous, ensure new development improves the wind environment as far as reasonably practical.

- Policy 12.2.5.7 Ensure that the cumulative effect of new buildings or building alterations does not progressively degrade the pedestrian wind environment.
- Policy 12.2.5.8 Ensure that the wind comfort levels of important public spaces are maintained.
- Policy 12.2.5.9 Encourage consideration of wind mitigation measures during the early stages of building design and ensure that such measures are contained within the development site.

[420] In our view, wind effects can be appropriately managed. The Applicant has carried out wind tunnel testing that particularly considers the interface of the building with the public spaces that are in the vicinity of the site. As already mentioned, this assessment has been peer reviewed by Dr Donn who has concluded that:

The design proposal makes the case that the proposed design meets the intentions of the WCC wind rules to ensure that through design, not tack on amelioration:

- a) *the pedestrian spaces in the city meet the safety criterion; and*
- b) *the wind speeds in pedestrian areas do not generally deteriorate.*

The wind tunnel test demonstrates that, with the entry provisions described in the supplementary wind report, these goals are met. The changes in winds above the safety criterion and the changes in general windiness are balanced by changes where these wind speeds are lowered. The conclusion that can reasonably be reached is that the existing wind in the street is moved around in the street, thus meeting the city's performance goals

[421] While there are minor differences in opinion, these are matters of firstly design detail around the building's entrance which we consider can be resolved through detailed design required through the conditions.

[422] Secondly, Dr Donn also suggests additional wind mitigation of the public space opposite the site in front of what is known as the Rugby Union building. We cannot impose a condition on the application for such works as the Applicant has no control over that space.

[423] Based on this advice and the imposition of conditions that require detailed design of the wind environment and measures to reduce wind effects to a reasonable level, we are of the view that the intent of these policies can be met.

- Policy 12.2.5.10 Provide for consideration of 'permitted baseline' scenarios relating to building height

and building bulk when considering the effect of new building work on the amenity of other Central Area properties.

[424] The explanation to the policy states that:

The height and mass standards in the District Plan anticipate further buildings of significant scale across the Central Area. The scale of buildings and their proximity to each other mean that it is impractical to require that all of the potential adverse effects of new buildings be restricted to the site.

[425] We have taken into account permitted baseline scenarios which have been informed by the building height and mass standards in the Plan and whether the building is an appropriate design response to its location within the Central City.

[426] We consider the difference in effects between a building with permitted height and mass compared to both of the Applicant's proposals (42.4m v 53.4M) to be an important factor. When considering the differences in height, we find that there is an inconsequential difference between the permitted height scenario and the site can readily assimilate the additional height.

[427] In relation to massing in as much as it relates to Molesworth Street setback, we recognise that there is no alignment between the urban design experts, but we have concluded that the footprint and overall design is appropriate in this location.

[428] When considering the effects of height and mass of new buildings in the Central Area on the amenity of surrounding properties, we have been guided by the recognition from all of the surrounding property owners that the site is suitable for development of a large structure considering its zoning, the permitted height in the District Plan and the existence of a multi storey office building on the site before 2016. As outlined previously, any additional effects beyond what is anticipated for the site are considered to be minor.

Objective – Buildings and Public Amenity

Objective 12.2.6 To ensure that new building works maintain and enhance the amenity and safety of the public environment in the Central Area, and the general amenity of any nearby Residential Areas.

Policy 12.2.6.1 Enhance the public environment of the Central Area by guiding the design of new building development and enhancing the accessibility and usability of buildings.

[429] In respect of the amenity and safety of the public environment, there was significant attention in the Urban Design assessment contained within the application and the revisions that were prompted by Mr Burns' peer review on behalf of the Panel. There was concern raised about the entrance corner and the interface with the Cathedral carpark that adjoins the site to the south as well as the ground floor treatment where it adjoins the Molesworth Street footpath.

[430] As outlined in our effects assessment, the issue of the Molesworth Street setback also applies to the public environment and we particularly outlined that we consider that the proposal is acceptable in this instance. Public access with a verandah is provided for along Molesworth Street and there has been specific attention in the amended plans to addressing concerns about the relationship with the glazed ground floor of the building as well as the primary entrance at the south east corner.

Policy 12.2.6.2 Require high quality building design within the Central Area that acknowledges and responds to, the context of the site and the surrounding environment.

[431] We consider that the building proposed acknowledges and responds to, the context of the site and the surrounding environment. This is outlined further in our assessment of urban design effects, in the other related policies considered above, and in our detailed assessment of the proposal against the Design Guide.

Policy 12.2.6.3 Ensure that new buildings and structures do not compromise the context, setting and streetscape value of adjacent listed heritage items, through the management of building bulk and building height.

[432] As stated above in respect of potential effects of this proposal on archaeological and heritage matters, we agree with the heritage assessment and the review by Ms Smith. Both experts did not identify any potential significant adverse effects on heritage. In addition, the Applicant's expert, Mr Robinson, and the independent expert Mr Burns, have specifically considered the contextual relationship between the two buildings.

[433] Ms Smith's recommendations concerning the Applicant taking the opportunity to reduce the contrast between the Cathedral and the proposed building have been addressed/are discussed in the findings on urban design effects. Therefore, the proposal in our view meets the intent of this policy.

Policy 12.2.6.4 Protect sunlight access to identified public spaces within the Central Area and ensure

new building developments minimise overshadowing of identified public spaces during periods of high use.

Policy 12.2.6.5 Advocate for new building work to be designed in a way that minimises overshadowing of any public open space of prominence or where people regularly congregate.

[434] The Applicant has provided a sun shading assessment as part of the application. While there will be some additional shading created by the building the vast majority of the effects on the public spaces to the east and north would be created by a building that meets the building height and massing standards in any event. Therefore, effects of sunlight and shading to the public space are considered to be less than minor.

Policy 12.2.6.8 Ensure that pedestrian shelter is continuous on identified streets where there are high volumes of pedestrians, and on identified pedestrians access routes leading to the Golden Mile from the outskirts of the Central Area.

Policy 12.2.6.10 Encourage the provision of pedestrian shelter along streets and public spaces throughout the Central Area (including within the Pipitea Precinct).

[435] The application provides for continuous pedestrian shelter along Molesworth Street.

Policy 12.2.6.12 Maintain and enhance the visual quality and design of ground floor level developments fronting on to streets, parks and pedestrian thoroughfares throughout the Central Area.

Policy 12.2.6.13 Maintain and enhance the commercial character and visual interface of ground floor level developments facing the public space along identified frontages within the Central Area.

[436] We have outlined above our assessment of the effects of the proposal upon the street environment and adjacent public spaces. We conclude that the amendments proposed by the Applicant have satisfactorily addressed the previous concerns regarding the ground floor and the entrance plaza area adjoining the Cathedral. There is also a much improved ground floor environment and relationship with the Magyar Park

to the north.

Policy 12.2.6.15 Improve the design of developments to reduce the actual and potential threats to personal safety and security.

[437] We agree that all actual and potential threats to personal safety have been addressed through the application.

Policy 12.2.6.20 Require that where Central Area buildings or structures adjoin a Residential Area, they satisfy additional standards.

[438] Collina Terrace adjoins the Inner Residential Area, but in our view the application site does not. The residentially zoned properties on Hawkestone Street are located to the north west and are not significantly more affected by shading, loss of light or building bulk from the proposal than a complying building height and massing standard development.

Objective - Building Amenity

Objective 12.2.7 To promote energy efficiency and environmental sustainability in new building design.

Policy 12.2.7.1 Promote a sustainable built environment in the Central Area, involving the efficient end use of energy and other natural and physical resources and the use of renewable energy, especially in the design and use of new buildings and structures.

Policy 12.2.7.2 Ensure all new buildings provide appropriate levels of natural light to occupied spaces within the building.

[439] The intent of this objective and the related policies can be met.

Objective – Natural and Technological Hazards

Objective 12.2.13 To avoid or mitigate the adverse effects of natural and technological hazards on people, property and the environment.

[440] There are no specific natural or technological hazards relating to the site. We note that it would also be built to very stringent seismic standards that apply in Wellington City.

Objective - Access

Objective 12.2.15	To enable efficient, convenient and safe access for people and goods within the Central Area.
Policy 12.2.15.6	Manage the supply of commuter car parking.
Policy 12.2.15.9	Require the provision of servicing or loading facilities for each site in the Central Area.
Policy 12.2.15.10	Ensure that the design and location of servicing or loading facilities is appropriate having regard to the nature of the development and the existing or likely future use of the site.
Policy 12.2.15.11	<p>Consider waivers from the servicing or loading requirements:</p> <ul style="list-style-type: none"> • where suitable alternative off-street provision can be made; or • where site access restrictions apply and there is no suitable alternative means of access; or • where it is necessary to protect any listed heritage item., • Where the topography, size or shape of the site, the location of any natural or built features on the site, or other requirements such as easements, rights of way, or restrictive covenants impose constraints which make compliance impractical.
Policy 12.2.15.12	<p>Manage the creation of new vehicle accessways along identified roads in the Central Area, to ensure:</p> <ul style="list-style-type: none"> • efficient, convenient and safe movement of pedestrians, vehicles and public transport; and • continuity of key commercial frontages.
Policy 12.2.15.13	Require all vehicular access to sites to be safe.

[441] The Applicant provided a comprehensive Transportation Impact Report and this has been reviewed by the Panel's expert traffic adviser, Beca,

as well as by WCC in its comments to the Panel. There are several aspects under the policies which in our view have been comprehensively assessed by both advisers as being acceptable and we note that Beca's additional or altered conditions relating to traffic and transport matters have been accepted by the Applicant. These matters include:

- (a) Specific attention to vehicle and pedestrian safety around the vehicle entrance/exit onto Molesworth Street and the adjoining existing access to Collina Terrace.
- (b) The workability of basement parking and loading.
- (c) Construction Traffic Management.
- (d) The continued use of Collina Terrace during and after construction.

[442] Overall the traffic and transport effects are considered to be less than minor subject to the imposition of agreed conditions of consent.

Objective – Tangata Whenua

Objective 12.2.16 To facilitate and enable the exercise of tino rangatiratanga and kaitiakitanga by Wellington's tangata whenua and other Maori.

Policy 12.2.16.1 Identify, define and protect sites and precincts of significance to tangata whenua and other Maori using methods acceptable to tangata whenua and other Maori.

Policy 12.2.16.3? In considering resource consents, Council will take into account the principles of the Treaty of Waitangi/Te Tiriti o Waitangi.

[443] The conclusions of the Cultural Impact Assessment and comments from Port Nicholson Block Settlement Trust find support for the proposal and do not identify any potential adverse cultural effects.

[444] We have also considered the applicability of objectives and policies that relate to historic heritage and note the specific advice of Mr Bowman for the Applicant and Ms Smith as expert peer reviewer for the Panel. The provisions of Chapter 20 do not apply in our view as the site does not contain any listed heritage item. Our consideration of effects on adjacent historic heritage is considered under Central Area Policy 12.2.6.3 where specific attention is required to effects on adjoining historic heritage.

Earthworks

Objective 29.2.1 To provide for the use, development and protection of land and physical resources

while avoiding, remedying or mitigating any adverse effects of earthworks and associated structures on the environment.

- Policy 29.2.1.2 Provide for minor earthworks to allow the use and development of land where the risk of instability is minimal.
- Policy 29.2.1.3 Ensure that earthworks are designed to minimise the risk of instability.
- Policy 29.2.1.4 Require earthworks to be designed and managed to minimise erosion, and the movement of dust and sediment beyond the area of the work, particularly to streams, wetlands and coastal waters.
- Policy 29.2.1.7 Ensure that earthworks and associated structures are designed and landscaped (where appropriate) to reflect natural landforms and to reduce and soften their visual impact having regard to the character and visual amenity of the local area.
- Policy 29.2.1.10 Ensure the design of structures used to retain or stabilise landslips, reflect the character and visual amenity of the local area.
- Policy 29.2.1.11 Ensure the transport of earth or construction fill material, to and from a site, is undertaken in a way that is safe and minimises adverse effects on surrounding amenity and the roading network.
- Policy 29.2.1.12 Protect koiwi (human remains), Taonga, Maori and Non-Maori material ...

[445] There is nothing in the objectives and policies that cannot be met by the proposal. The site has been developed before and there are detailed conditions of consent that apply to earthworks management of the site during construction.

Potentially Contaminated Land

- Objective 31.2.1 To manage the remediation, use, development and subdivision of contaminated and potentially contaminated land so as to avoid or mitigate the risk of adverse effects on human health and the

environment.

- | | |
|-----------------|---|
| Policy 31.2.1.1 | Work with the Regional Council and landowners to identify all contaminated and potentially contaminated land in the city and to assist to compile a register of all potential and confirmed contaminated and remediated land in the city. |
| Policy 31.2.1.2 | Minimise and control the adverse effects that may arise from the use, development and subdivision of any contaminated or potentially contaminated land. |
| Policy 31.2.1.3 | Encourage the remediation and/or ongoing management of contaminated or potentially contaminated land as is appropriate for any likely future use of the land. |
| Policy 31.2.1.4 | Ensure that the exposure from the ongoing use of land affected by soil contaminants is managed in a manner that avoids or mitigates the risk of adverse effects on human health and the environment. |

[446] We are satisfied that any contaminated land effects can be managed and note the imposition of a requirement for a Contaminated Land Management Plan through the conditions of consent.

PART L: CONDITIONS

[447] The conditions that we have required are set out in Appendix 3. They refer to replacement sets of plans and photomontages provided by the Applicant on 7 and 11 November 2021.

PART M: RMA 1991, PART 2

[448] This is not a case where there is a lack of clarity about the relevant District Plan Objectives and Policies, or what they set out to achieve. We have carefully assessed the Development against the Objectives and Policies, but it was not an exercise that left us in any doubt about the purpose of the District Plan or whether it had been competently prepared. In our view, the District Plan provisions have been competently prepared and further reference to Part 2, RMA would not add anything to the evaluative

exercise.⁶³

- [449] That said, Schedule 6, Clause 9(1)(g)(i) provides that every application for a referred project must include an assessment of the activity against Part 2 of the RMA. The matters to which we must have regard when considering a referred application for consent are expressed as being subject to Part 2,⁶⁴ therefore, for the sake of completeness we have undertaken our own assessment of relevant Part 2 matters.
- [450] The Applicant briefly addressed Part 2 of the RMA at pages 14-15 of the Schedule 6 Information (Section 1(b)).
- [451] Having fully evaluated the application, we are satisfied that with the conditions of consent, effects will be appropriately managed to an acceptable level and in a manner that is consistent with the purpose of the RMA.
- [452] Overall, we are satisfied that the proposal sits well with Part 2 of the RMA and promotes the sustainable management of resources, particularly by developing further office accommodation in Central Wellington and making use of an otherwise underutilised site. The consent as granted will enable provision for people's social, economic, and cultural wellbeing while ensuring that the effects of the development itself are appropriately managed.

PART N: FTA, SECTION 4

- [453] As set out above when we are considering this application we must do so subject to Part 2 of the RMA, and also the purpose of the FTA contained in Section 4.
- [454] We derive from Section 4 three key directives to us:
- (a) promotion of employment;
 - (b) supporting investment certainty; and
 - (c) continuing to promote sustainable management of natural and physical resources as required under the RMA.
- [455] The Panel in the *Kohimarama* Decision referred to above accepted that it is a cornerstone of the FTA's dual purposes that, given its short duration, the short-term economic benefits of a project should not result in bad long-term planning outcomes. We agree and adopt that approach

63 *RJ Davidson Family Trust v Marlborough District Council* [2018] 3 NZLR 283.

64 Schedule 6, clause 31(1) of the COVID-19 Recovery (Fast-track Consenting) Act 2020

here.

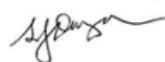
- [456] As noted above, we consider that the grant of the application will promote employment both through the construction phase and through its operation. We accept in this respect the findings of economic benefits as set out in the report prepared by Keyway Construction Limited and forming part of the Schedule 6 Information.
- [457] Equally, the granting of the consent will support the certainty of ongoing investment across New Zealand by making sure that the Applicant can with some certainly plan to carry out this development.
- [458] Lastly, in achieving the purpose of the FTA, we note the duality of purpose in Section 4 of that Act being to continue to promote sustainable management of natural and physical resources. We have devoted some time above to explaining our understanding of how the grant of these consents will promote that important matter, which forms not only the purpose of the RMA but also a component of the purpose of the FTA.

PART O: FINAL DECISION

- [459] The Panel by way of final decision under Clause 37 of Schedule 6 of the FTA grants the application for resource consent subject to the conditions set out in Appendix 3. In so doing, it has had regard to all relevant matters in Clause 31 of Schedule 6.
- [460] As required by Clause 38 of Schedule 6 of the FTA, the Panel refers to Clause 45 of the same Schedule which provides a 15-day working period for appeal after the persons entitled to appeal (referred to in Clause 44) are notified of this Decision.



Duncan Laing (Chair)



Lindsay Daysh (Member)



Juliane Chetham (Member)

APPENDIX 1

Summary of Comments Received on application

Name/organisation	Summary of comments
Wellington City Council	<p>Urban design / townscape – including effects associated with the building height</p> <p>Effects on heritage, including the Cathedral of St Paul and the Parliamentary Precinct</p> <p>Traffic and pedestrian safety associated with the location of the site access (opposite Pipitea Street)</p> <p>Contamination – the site is contaminated land</p> <p>Wind – there will be localised wind effects, in particular within Molesworth Street and the privately owned publicly-accessible park outside the NZ Rugby Union building on the opposite (eastern) side of Molesworth Street</p> <p>Construction earthworks and noise impacts</p> <p>Construction traffic</p>
Hughes King Investments Ltd	<p>Existence of James Street</p> <p>Damage to the Collina Terrace road surface</p> <p>Collina Terrace access to remain</p>
New Zealand Red Cross	<p>Support the consent</p>
Heritage New Zealand Pouhere Taonga	<p>Potential effects on historic heritage</p> <p>Lack of archaeological assessment</p> <p>Does not support condition relating to Accidental Discovery Protocol</p>
Thorndon Residents Association	<p>Comprehensive traffic management plan be developed as well as a comprehensive construction plan (including progress dates).</p> <p>Seeks regular meetings with developers.</p> <p>Clarified that there is no James Street in the area.</p> <p>Questions the identification of Molesworth Street as a Collector Road and Mulgrave Street as a Principal Road with no mention of Murphy Street.</p>
Royal Thai Embassy	<p>Construction traffic</p> <p>Construction noise and dust</p> <p>Disturbances to Embassy's staff, families and guests</p> <p>Construction and operations of completed development should not conflict with Embassy's activities in and outside the Embassy</p> <p>Building design to compliment current area</p>
New Zealand Infrastructure Commission Te Waihanga	<p>Elected not to offer any comments on the application</p>
Minister for Arts, Culture and Heritage	<p>Insufficient archaeological survey and assessment</p>
New Zealand Deerstalkers Association Limited Partnership	<p>Access to the building for our staff, NZDA members, volunteers, and the public.</p> <p>Access to our car parks and potential loss of rental income if access is disrupted.</p> <p>Interruption to meeting space rental.</p> <p>The effect of dust, dirt etc on our newly completed building, our HVAC systems, newly planted gardens and our newly sealed car park.</p> <p>Potential for damage to our property during construction.</p> <p>Damage to the Collina Terrace road surface</p>

Name/organisation	Summary of comments
McAuley Trust	Old brick sewer that traverses the project site – is it to be replaced? Saturday hours of construction should be modified
Minister for Maori Crown Relations	Elected not to offer any comments on the application
Port Nicholson Block Settlement Trust	Supports cultural impacts assessment Ensure mana of Pipitea Pā is retained with cultural artwork/structures and information posts
Property Council New Zealand	Supports the application
National Library of New Zealand	Construction dust and vibration, and water ingress into the basement of Rugby House
Wellington Diocesan Board of Trustees	Ground stability during demolition of the existing concrete remnants and during construction of the new building. Wind impact on surroundings buildings. Visual impact and impact on sunlight levels. Wellington Diocesan Board would like to discuss potential shared space on the Cathedral's north end identified in the proposal.

APPENDIX 2

Summary of Comments on Draft Conditions

Summary of comments from the Applicant

Condition 1: This will need to be amended to refer to the modified/updated plans attached to this response. It will also be conditional on whether the 11 or 13 storey version is approved.

Condition 2: No comments and accepted.

Condition 3: No comments and accepted.

Condition 4: This is a relatively unusual condition for the Wellington City Area. It is the applicant's intent to preserve the external plaza and there is no intent to modify that area. I doubt that any condition itself can obligate owners to maintain a feature of a building in perpetuity. The intent would appear to require that any change to this area would require change of conditions under s127 of the Act. But I note that any changes to a Central Area building would currently require a resource consent anyway. So I am unsure that any such condition is required. That said, the applicant does not oppose the condition.

Condition 5: The applicant has proposed this condition and accepts it.

Condition 6: No comments and accepted.

Condition 7: No comments and accepted.

Condition 8: No comments and accepted.

Condition 9: We suggest a minor modification to this condition. The Consent Holder must not use Collina Terrace for site construction access and loading and unloading except where agreement from other owners of Collina Terrace is obtained. Any use of Collina Terrace by; i) heavy vehicles during construction must be avoided; and ii) light vehicles during construction must be minimised. Emergency access arrangements, including the need for unimpeded access to Collina Terrace must be detailed in the Traffic Construction Management Plan. The applicant does not intend to use Collina Terrace. However, the wording would allow use of Collina Terrace by agreement should it be needed for unforeseen circumstances.

Condition 10: The condition as stated is: Prior to occupation of the building, the Consent Holder must submit a final Servicing Management Plan (SMP) to the CMO for certification. At a minimum, the SMP must detail how servicing will be provided for each tenancy within the building in terms of waste management, deliveries, visitor parking and staff parking. The SMP must be available at all times for review by the Council and updated or changed when tenants change and to address any increase in reported vehicle related accidents or conflicts with users of Collina Terrace directly resulting from servicing the building. The loading area complies with the District Plan standards and there is no subdivision proposed which prevents use by all tenants' access to the loading area. Typically, under the RC process this would be outside of the discretion available for the officers to consider given the compliance. It is accepted this is an alternative process. The condition needs to be amended to delete reference to visitor and staff parking. There is no

requirement for visitor or staff parking. The applicant would accept the condition if the panel are adamant, but this is not a matter typically controlled by WCC.

Condition 11: Comments as above.

Condition 12: No comments and accepted.

Condition 13: No comments and accepted.

Condition 14: The condition is generally accepted. Though there is a question in relation to the height of the loading area, which will be resolved at the time of detailed design. More than 3.6 metres may be available. Therefore, a minor change is requested. A "3.6 metre relevant minimum height clearance (metres) sign must be erected at the entrance ramp at a height of 3.6m the appropriate height. The sign must be visible so that oncoming vehicles can be adequately warned of the height clearance.

Condition 15: No comments and accepted. It is noted that the Archaeological Permit is about to be/has been lodged with NZ Heritage following consultation with the relevant Iwi authorities.

Condition 16 to 23: No comments and accepted.

Condition 24 to 26: No comments and accepted.

Condition 27: These are not generally matters dealt with in the resource consent process in Wellington. Nonetheless the applicant is not opposed to the condition.

Condition 28: We are not aware of any stormwater infrastructure within the site. But the conditions is otherwise accepted.

Condition 29: A neighbours liaison group is not typically required under the resource consent process in Wellington City and it would normally be outside of the relevant matters of discretion. The applicant however accepts the condition.

Condition 30: Comments as above.

Condition 31 to 38: Typically the conditions of consent in Wellington City, relate only to the construction effects of earthworks, given the typical discretionary restricted activity classification. The applicant would accept the condition in this instance.

Condition 39: I have never encountered a consent condition in Wellington where consideration is required for vibration. It will be doubtful that WCC officers will have the expertise to assess. There is unlikely to be much local expertise to address the matter given that this is not imposed on other consents to my knowledge. Nonetheless the applicant will accept the condition. The condition with regard noise is relatively standard.

Condition 40: No comments and accepted.

Condition 41 to 43: No comments and accepted.

Condition 44 and 45: No comments and accepted.

Condition 46 to 48: I am not aware of any reports which suggest that it is necessary

to retain a geotechnical engineer to do the detailed design of the earthworks and structures. Once a geotechnical report is prepared, a suitably qualified structural engineer would be likely be better able to do the design and monitor the works given the complex nature of the proposed structure. The condition itself is largely irrelevant as foundations will require specific engineering design under the Building Act. I would suggest the condition is reworded to state: suitably qualified engineer, rather than geotechnical engineer as this is potentially introducing a redundant requirement. If the site conditions are such that a geotechnical engineer is required to design the earthworks, the "suitably qualified engineer" is adequate. It is unlikely that a geotechnical engineer would design the retaining on this site.

Condition 49: No comments and accepted.

Condition 50 and 51: No comments and accepted.

Condition 52 to 54: No comments and accepted.

Summary of comments from NZ Heritage Pouhere Taonga

Delete condition 15 and replace with the following condition and advice note:

Archaeological conditions

(a) This condition applies only to any areas of the site not covered by an archaeological authority. In the event that an unidentified archaeological site is located during works, the following applies:

1. Work shall cease immediately at that place and within 20m around the site.
2. The contractor must shut down all machinery, secure the area, and advise the Site Manager.
3. The Site Manager shall secure the site and notify the Heritage New Zealand Regional Archaeologist. Further assessment by an archaeologist may be required.
4. If the site is of Maori origin, the Site Manager shall notify the Heritage New Zealand Regional Archaeologist and the appropriate iwi groups or kaitiaki representative of the discovery and ensure site access to enable appropriate cultural procedures and tikanga to be undertaken, as long as all statutory requirements under legislation are met (Heritage New Zealand Pouhere Taonga Act, Protected Objects Act).
5. If human remains (koiwi tangata) are uncovered the Site Manager shall advise the Heritage New Zealand Regional Archaeologist, NZ Police and the appropriate iwi groups or kaitiaki representative and the above process under 4 shall apply. Remains are not to be moved until such time as iwi and Heritage New Zealand have responded. 3
6. Works affecting the archaeological site and any human remains (koiwi tangata) shall not resume until Heritage New Zealand gives written approval for work to continue. Further assessment by an archaeologist may be required.

7. Where iwi so request, any information recorded as the result of the find such as a description of location and content, is to be provided for their records.

8. Heritage New Zealand will determine if an archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014 is required for works to continue.

(b) The consent holder will ensure that contractor/s are briefed on and have access to the archaeological authority and these conditions onsite, and follow appropriate procedures should archaeological material, or suspected archaeological material, be uncovered as part of the works.

Advice Note: *All archaeological sites are protected under the Heritage New Zealand Pouhere Taonga Act 2014. An archaeological site is defined as a place associated with pre-1900 human activity, where there may be evidence relating to the history of New Zealand. This includes pre-1900 sites associated with Māori and non-Māori activity. The Heritage New Zealand Pouhere Taonga Act 2014 makes it unlawful to modify, damage or destroy any archaeological site, where an archaeological assessment has indicated potential for archaeological material and whether the site is recorded or not. Application must be made to Heritage New Zealand Pouhere Taonga for an Authority to modify, damage or destroy an archaeological site. The Act provides for substantial penalties for unauthorised destruction or modification.*

APPENDIX 3

Conditions of Consent

General

1. The proposal must be in general accordance with the information provided with the application dated 27 May 2021, responses to requests for additional information dated 16 July 2021, 15 October 2021, 7 November 2021, and 11 November 2021 and the following plans prepared by JASMAX, Project Title: '61 Molesworth Street':

- RC-0005, Grid Setout, Rev.E, dated 05/11/21
- RC-0101, Location Plan, Rev.E, dated 05/11/21
- RC-1012, Site Plan - Existing, Rev.E, dated 05/11/21
- RC-0103, Site Plan - Proposed, Rev.E, dated 05/11/21
- RC-1000, Floor Plan – Basement, Rev.E, dated 05/11/21
- RC-1001, Floor Plan – Ground Floor, Rev.E, dated 05/11/21
- RC-1002, Floor Plan – Level 1, Rev.E, dated 05/11/21
- RC-1003, Floor Plan – Level 2, Rev.F, dated 05/11/21
- RC-1004, Floor Plan – Level 3, Rev.C, dated 05/11/21
- RC-1005, Floor Plan – Level 4, Rev.E, dated 05/11/21
- RC-1006, Floor Plan – Level 5, Rev.E, dated 05/11/21
- RC-1007, Floor Plan – Level 6, Rev.E, dated 05/11/21
- RC-1008, Floor Plan – Level 7, Rev.E, dated 05/11/21
- RC-1009, Floor Plan – Level 8, Rev.E, dated 05/11/21
- RC-1010, Floor Plan – Level 9, Rev.E, dated 05/11/21
- RC-1011, Floor Plan – Level 10, Rev.E, dated 05/11/21
- RC-1012, Floor Plan – Level 11, Rev.E, dated 05/11/21
- RC-1013, Floor Plan – Level 12, Rev.F, dated 05/11/21
- RC-1020, Roof Plan, Rev.E, dated 05/11/21
- RC-1100, Zone Plan – Ground – E.O.T, Rev.E, dated 05/11/21
- RC-3000, Elevation South, Rev.E, dated 05/11/21
- RC-3001, Elevation East, Rev.E, dated 05/11/21
- RC-3002, Elevation North, Rev.E, dated 05/11/21
- RC-3003, Elevation West, Rev.E, dated 05/11/21
- RC-4000, Section – E-W 01, Rev.E, dated 05/11/21
- RC-4001, Section – E-W 02, Rev.E, dated 05/11/21
- RC-4002, Section – E-W 03, Rev.E, dated 05/11/21
- RC-4006, Section – N-S 01, Rev.E, dated 05/11/21
- RC-4007, Section – N-S 02, Rev.E, dated 05/11/21
- RC-4100, Section Detail – Façade East - 3D, Rev.E, dated 05/11/21
- RC-4101, Section Detail – Façade East, Rev.E, dated 2020-07-17
- RC-4105, Section Detail – Façade South - 3D, Rev.E, dated 05/11/21
- RC-4106, Section Detail – Façade South, Rev.E, dated 2020-07-17
- RC-4111, Section Detail – Podium – 3D, Rev.E, dated 05/11/21
- RC-4112, Section Detail – Podium, Rev.E, dated 2020-07-17
- RC-4113, Section Detail – Podium Transition, Rev.F, dated 11/10/21
- RC-9000, Area Schedule – GFA, Rev.E, dated 2020-07-17
- RC-9001, Area Schedule – NLA, Rev.E, dated 2020-07-17

Except as amended by the following conditions.

Urban Design:

Detail Design:

2. At least fifteen (15) working days prior to lodging an application for building consent, the Consent Holder must submit the following design details and associated plans, for certification, by the Council's Compliance Monitoring Officer (the CMO). Such information is to be generally consistent with the documents and plans referred to in Condition 1, and is to include the final exterior façade designs (including materials, detailing and lighting specifications).

The objective of this condition is to ensure that;

- a) the type and quality of external materials and façade detail appropriately reflect and reinforce the design intent of the proposed building and do not create potential 'glare' effects.
- b) the lower third of the glazed area be more distinctive to offer a stronger visual relationship to the horizontality and patterns of the cathedral nave (Resource Consent Design Statement, 13 Storey Tower, Rev F, dated 10 November 2021, page 37).
- c) the upper two floors of the glazed area include fins or filagree to the facade system on the top of the building on the western and eastern facades in order to create a distinctive top to the building (Resource Consent Design Statement, 13 Storey Tower, Rev F, dated 10 November 2021, page 37).

Once certified, the development must be constructed in accordance with such plans and details. Following certification, any material amendments to the plans are to be submitted to the CMO for certification in the same manner as above.

Note:

- *The CMO will liaise with the Council's Urban Design Advisor to confirm the materials and façade detail are appropriate.*

External Plaza

3. Prior to lodging an application for building consent, a Landscape Plan must be submitted to the CMO for certification that the proposed plantings and associated structures in the Proposed External Plaza (as shown in Resource Consent Design Statement, 13 Storey Tower, Rev F, dated 10 November 2021, page 38) are appropriate. The Landscape Plan must detail the proposed planting and all associated structures, including the following:
 - i) Planting, including species and plant grades
 - ii) Amenity structures, such as seating
 - iii) Ground surfaces, such as paving, grassing etc
 - iv) Wind mitigation structures (both location, height and materials)
 - v) Lighting

vi) CPTED measures incorporated through the external plaza.

The objective of this condition is to ensure that:

- a) The planting is appropriate for the context in which it is located (species growth rate, size etc)
- b) The amenity structures, ground surfaces and overall layout provide high quality, usable outdoor spaces.
- c) Lighting achieves positive amenity and CPTED outcomes
- d) The plaza avoids the creation of potentially unsafe spaces through the incorporation of CPTED design principles.

Once certified, the proposed landscaping plan must be implemented prior to occupation of the building. Following certification, any material amendments to the plaza plans are to be submitted to the CMO for certification in the same manner as above.

Note:

- *The CMO will consult with the Council's Urban Design Advisor and Landscape Architect to confirm the proposed plantings and associated structures are appropriate; and*
- *Plant species should be locally sourced from the Wellington region (if available).*

4. The proposed external plaza area as shown on Resource Consent Design Statement, 13 Storey Tower, Rev F, dated 10 November 2021, page 38, is to remain as a permanent feature of the development, and must be maintained for the life of the building. The Consent Holder must ensure the ongoing maintenance of the external plaza area, including the removal of any graffiti, and any damaged hardscaping and furniture. Any plants that die or are damaged must be replanted as soon as practicable, but not later than the following planting season.
5. Following consultation with the Port Nicholson Block Settlement Trust (PNBST), the Applicant must incorporate cultural features into the design of the building, that:
 - i) Display pou whenua / other cultural structures and artwork to represent Mana Whenua; and
 - ii) Install information posts / signage to inform the public of the cultural history of the site.

Wind:

6. Prior to lodging an application for building consent, the following wind mitigation details, prepared by a suitably qualified person, must be submitted to, and certified by, the CMO:
 - The dimensions in height, length and placement of the screen(s) in and around the External Plaza, confirming they match or are equivalent in their provision of shelters and screens tested in the wind tunnel test analysis by WSP,

dated 31 July 2020 and the JASMAX memoranda dated 14 July 2021.

The purpose of this condition is to ensure safe walking conditions on and within the external plaza and the adjoining footpaths.

Once certified, the wind mitigation shelters and screen(s) must be constructed in accordance with the details as certified and maintained by the Consent Holder. Following certification, any material amendments to the wind mitigation details will be submitted to the CMO for certification in the same manner as above.

Ground floor frontages:

7. The Consent Holder must, at all times, ensure views into the display windows at the ground floor of the building fronting on Molesworth Street and northwards to the vehicle parking ramp are provided and maintained.

Note: The intention of this condition is to provide for active integration between the inside of the building, the street and Collina Terrace.

Traffic:

8. Prior to lodging an application for building consent, plans and details that address the following matters must be prepared by a suitably qualified person and provided to the CMO for certification:
 - i) Details of the cladding materials to ensure reflectivity will not pose a safety risk to motorists travelling towards the site;
 - ii) Install a judder bar at the access to slow vehicles exiting and entering across the footpath;
 - iii) Visitor parking must not be allocated to car parks where access is restricted by columns.
 - iv) Design of carpark is to comply with AS/NZS 2890.1; or
Tracking to be undertaken of vehicles manoeuvring in and out of non-compliant car parking spaces and where there are pinch points to demonstrate that manoeuvring is feasible; and

The proposal must be constructed in accordance with the plans and details as certified. Following certification, any material amendments to the plans and details are to be submitted to the CMO for certification in the same manner as above.

Note: Any structures on legal road will require approval from Council's Encroachment Team, which is required before construction commences. The Consent Holder is strongly advised to engage with the Encroachments team in the early stages of the design of such structures.

9. The Consent Holder must not use Collina Terrace for site construction access and loading and unloading, except where written agreement from all other owners of Collina Terrace is obtained. Any use of Collina Terrace by;
 - i) heavy vehicles during construction must be avoided; and
 - ii) light vehicles during construction must be minimised,

Emergency access arrangements, including the need for unimpeded access to Collina Terrace must be detailed in the Traffic Construction Management Plan. Where the Consent Holder has obtained the written agreement of all the owners of Collina Terrace under this condition, copies of all those written agreements shall be made available to the CMO, on request.

Servicing Management Plan

10. Prior to occupation of the building, the Consent Holder must submit a final Servicing Management Plan (SMP) to the CMO for certification. At a minimum the SMP must detail how servicing will be provided for each tenancy within the building in terms of waste management, deliveries, visitor parking and staff parking. The SMP must be available at all times for review by the Council and updated or changed when tenants change and to address any increase in reported vehicle related accidents or conflicts with users of Collina Terrace directly resulting from servicing the building.
11. Upon occupation of the building the Consent Holder must ensure to the extent reasonably practicable that the occupants of the separate tenancies implement the SMP, as certified and as may be updated under Condition 10 above, to the satisfaction of the CMO.

Fixed Plant

12. All fixed plant equipment including heating, cooling and ventilation plant must be located, designed and operated so that noise emission levels when measured at or within the land parcel, or the outside wall of any building on any site, other than the building or site from which the noise is emitted do not exceed the following limits:
 - At all times 55dB LAEQ (15 MIN)
 - 10pm to 7am 70LAFmax
13. Prior to, or at the time that, an application is made for Building Consent, detail of design specifications for the control of noise for any fixed plant and equipment, including any proposed noise mitigation measures must be provided to the CMO.

Signage

14. The Consent Holder must install warning signage to alert vehicles and pedestrians to ensure the safe use of Molesworth Street, including the footpath adjacent to the site. Maintenance of the signage to ensure it is working at all times is the responsibility of the Consent Holder (building/property owner or nominee). This signage must include:
 - a) An electronic 'Vehicle Coming' sign erected on the external face of the building to alert pedestrians to instances of vehicles exiting the site. The alert must also be audible.

- b) A 'No Entry - Loading Area Full' sign erected on the external façade of the building that is visible to approaching drivers. This signage shall be located to advise approaching drivers of instances when the loading area is occupied.
- c) Internally within the building on the exit ramp, a 'No Right Turn' sign erected in a position visible to exiting drivers to reinforce the required left-turn-only movement, recognising the one-way arrangement of Molesworth Street.
- d) A 'Give Way to Pedestrians' sign erected in a position visible to drivers exiting the site of the possible presence of pedestrians using the footpath.
- e) An appropriate "height clearance" sign must be erected at the entrance ramp at a minimum height of 3.6m. The sign must be visible so that oncoming vehicles can be adequately warned of the height clearance.
- f) A RG -14 "One Way" left-hand sign erected on the white parking sign pole on the eastern side of Molesworth Street opposite Collina Terrace and the vehicle parking ramp.

At least fifteen (15) working days prior to lodging an application for building consent, the Consent Holder must submit the design details and associated plans including the location of the signs, for certification, by the Council's Compliance Monitoring Officer (the CMO).

Construction:

Accidental Discovery Protocol

15. This condition applies only to any areas of the site not covered by an archaeological authority. In the event that an unidentified archaeological site is located during works, the following applies:
 - a) Work shall cease immediately at that place and within 20m around the site.
 - b) The contractor must shut down all machinery, secure the area, and advise the Site Manager.
 - c) The Site Manager shall secure the site and notify the Heritage New Zealand Regional Archaeologist. Further assessment by an archaeologist may be required.
 - d) If the site is of Māori origin, the Site Manager shall notify the Heritage New Zealand Regional Archaeologist and the appropriate iwi groups or kaitiaki representative of the discovery and ensure site access to enable appropriate cultural procedures and tikanga to be undertaken, as long as all statutory requirements under legislation are met (Heritage New Zealand Pouhere Taonga Act, Protected Objects Act).
 - e) If human remains (koiwi tangata) are uncovered the Site Manager shall advise the Heritage New Zealand Regional Archaeologist, NZ Police and the appropriate iwi groups or kaitiaki representative and the above process under d) shall apply. Remains are not to be moved until such time as iwi and Heritage New Zealand have responded.
 - f) Works affecting the archaeological site and any human remains (koiwi tangata) shall not resume until Heritage New Zealand gives written

- approval for work to continue. Further assessment by an archaeologist may be required.
- g) Where iwi so request, any information recorded as the result of the find such as a description of location and content, is to be provided for their records. Heritage New Zealand will determine if an archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014 is required for works to continue.
16. The consent holder will ensure that contractor/s are briefed on and have access to the archaeological authority and these conditions onsite, and follow appropriate procedures should archaeological material, or suspected archaeological material, be uncovered as part of the works.

Note: All archaeological sites are protected under the Heritage New Zealand Pouhere Taonga Act 2014. An archaeological site is defined as a place associated with pre-1900 human activity, where there may be evidence relating to the history of New Zealand. This includes pre-1900 sites associated with Māori and non-Māori activity. The Heritage New Zealand Pouhere Taonga Act 2014 makes it unlawful to modify, damage or destroy any archaeological site, where an archaeological assessment has indicated potential for archaeological material and whether the site is recorded or not. Application must be made to Heritage New Zealand Pouhere Taonga for an Authority to modify, damage or destroy an archaeological site. The Act provides for substantial penalties for unauthorised destruction or modification.

Contaminated Site Management Plan

17. Prior to conducting any ground disturbance works on site, a Contaminated Site Management Plan (CSMP) must be prepared by a suitably qualified and experienced practitioner (SQEP) and submitted to the CMO for certification. The objective of the CSMP is to set out the management approach to any discovery of contaminated materials during excavation and earthworks. The CSMP must include, but not be limited to:
- a) Relevant legislative requirements;
 - b) Procedures for the control of all aspects of excavation, earthworks and construction involving contaminated material;
 - c) Procedures for monitoring contamination levels during construction and excavation works;
 - d) Procedures for the safe storage, treatment and disposal of identified contaminated material, including dust, silt, stormwater, groundwater, and odour; and
 - e) Details of personnel, roles and responsibilities for assessing and disposing of contaminated material, including the SQEP.
18. The CSMP must be submitted to the CMO for certification at least fifteen (15) working days before works commence on the site.
19. Certification (or withholding certification) is based on whether the CSMP meets the requirements of the conditions of this resource consent, with specific focus on Condition 17.

20. The Consent Holder must undertake the construction activities, remedial and/or management actions on site in accordance with the certified CSMP at all times.
21. The CSMP may be amended or updated without the need for certification where:
 - a) The amendment is an administrative change, including nominated personnel; and
 - b) The revised CSMP is provided to the CMO and, within five (5) working days of receiving the revised CSMP, the CMO has not advised in writing that the amendment must be certified under Condition 17 on the basis that the amendments do not meet the requirements of clause a) of this Condition.
22. Except as provided for in Condition 19, amendments to the CSMP and any appendices must be certified in writing by the CMO acting in a technical certification capacity prior to the commencement of any works to which the amended CSMP relate.
23. Certification (or withholding certification) is based on the CMO's assessment of whether the amended CSMP meets the requirements of the conditions of this resource consent.
24. Upon the removal of the existing concrete slab, a site investigation must be undertaken by a SQEP in accordance with the Ministry for the Environment (MfE) Contaminated Land Management Guidelines requirements. The site investigation should include an investigation of any underground storage tanks, and sampling at the three locations identified in the report prepared by Pattle Delamore Partners dated 6 November 2020.
 - a) If the site investigation in this Condition 24 confirms that the proposed site occupation is acceptable based on recognised accepted standards and the proposed end use, the SQEP will provide written confirmation to the satisfaction of the CMO stating that the proposed site occupation is acceptable based on recognised standards and identified risks; or
 - b) If the investigation under this Condition 24 confirms the presence of contamination on site, then Conditions 25 to 27 below will apply.

Contaminated Soil Discovery Protocol

25. In the event that the activities authorised by these resource consents discover or disturb unexpected soil conditions, such as staining, odorous material or evidence of potentially asbestos containing materials, works in that area must cease and;
 - a) The SEQP must be notified immediately and instructed to monitor further work;
 - b) Council must be immediately notified; and

- c) the procedures described in the CSMP must be immediately implemented;
26. On completion of the remedial and/or management actions in the CSMP, a Site Validation Report (SVR) will be prepared by the SQEP. The SVR must be submitted to and approved by the CMO in consultation with a Contaminated Land Advisor. The SVR will include, but not be limited to, the following:
- Summary of land disturbance works carried out including a figure illustrating areas of disturbance and sampling;
 - Records of any unexpected contamination encountered during works, including a summary of how this contamination was managed;
 - Results of the soil sampling, including the validation sampling and/or management actions;
 - Confirmation that the site is suitable for the intended end use set out in this consent;
 - Copies of disposal receipts or tracking of impacted material around the site; and
 - An appendix detailing a Site Management Plan (SMP) detailing ongoing maintenance of remedial controls to ensure potential effects from site contamination are acceptable in the context of the proposed site use. If the SQEP deems that no further actions or site management is necessary once remedial actions are undertaken, this may be replaced with a written statement to that effect.
27. Any excavated soil that is removed from the site must be disposed to a suitable disposal or treatment facility licenced to accept waste. The Consent Holder must maintain records of disposal/treatment quantities and locations, which must be provided to the CMO.

Repair Damage to Kerb, Footpath or Road and Infrastructure

28. The Consent Holder must repair any damage to Molesworth Street or Collina Terrace including the existing kerb and channel, footpath or roadway (including removal of concrete slurry from footways, roads, kerb and channel and stormwater gullies and drainlines) and reinstate existing traffic signs and pavement markings that have been removed or damaged on Molesworth Street and Collina Terrace during any works carried out in association with the development.
29. The Consent Holder must take all reasonable steps to protect the existing stormwater and wastewater infrastructure through the site including the sewerage interceptor drain.

Construction Liaison

30. The Consent Holder must make arrangements for a meeting of nearby tenants and building owners who may be affected by construction activities, prior to the commencement of construction. The Consent Holder must advise the Council's CMO of:
- the date of the meeting;

- a full list of all parties engaged and a list of representatives who agree to participate; and
- evidence of an invitation to participate in the meeting if any of the parties listed below do not wish to participate.

In addition to the Consent Holder and their nominated contractors(s)/subcontractors, those to be invited will consist of, but is not limited to, representatives from the following parties (who agree to participate):

- New Zealand Red Cross;
- New Zealand Deerstalkers Association Limited Partnership
- Hughes King Investment Ltd;
- McAuley Trust;
- National Library of New Zealand
- Royal Thai Embassy;
- Wellington Diocesan Board of Trustees; and
- Thorndon Residents Association.

31. The meeting must be held no less than fifteen (15) working days before construction commences onsite. The meeting must be minuted and these must be distributed to all representatives of the invitees and forwarded to the CMO.

Construction Management Plan

32. Prior to works commencing on the site, a Construction Management Plan (CMP) must be prepared by a suitably qualified and experienced person (which may, subject to conditions 40, 41 and 42 include the lead contractor) and submitted to the CMO for certification. The objective of the CMP is to establish acceptable performance standards regarding public safety and amenity protection during the construction phase of the development and to ensure compliance with the conditions of this consent. The CMP must include, but not be limited to:
- i) The Construction Noise and Vibration Management Plan (CNVMP) as required by Condition 40 below;
 - ii) The Construction Traffic Management Plan (CTMP) as required by Condition 41 below;
 - iii) The Earthworks Management Plan (EMP) as required by Condition 42 below;
 - iv) The roles and responsibilities of construction management staff, including the overall manager responsible for environmental compliance,
 - v) Identification and contact details of personnel responsible for the management, maintenance and operation of any erosion and sediment control measures,
 - vi) Details of emergency contacts who have authority to authorise immediate response actions,
 - vii) Hazardous Substance and Spill Response Procedures,

- viii) Procedures for the management of dust,
 - ix) Processes for monitoring.
33. The CMP must be submitted to the CMO for certification at least fifteen (15) working days before works commence on the site.
 34. Certification (or withholding certification) is based on whether the CMP meets the requirements of the conditions of this resource consent, with specific focus on Condition 32.
 35. No work may commence on site until the CMP is certified by the CMO.
 36. The Consent Holder must undertake the construction activities, remedial and/or management actions on site in accordance with the certified CMP at all times.
 37. The CMP may be amended or updated without the need for certification where:
 - a) The amendment is an administrative change, including nominated personnel; and
 - b) The revised CSMP is provided to the CMO and, within five (5) working days of receiving the revised CSMP, the CMO has not advised in writing that the amendment must be certified under Condition 34 on the basis that the amendments do not meet the requirements of clause a) of this Condition.
 38. Except as provided for in Condition 37, amendments to the CMP and any appendices must be certified in writing by the CMO acting in a technical certification capacity prior to the commencement of any works to which the amended CMP relate.
 39. Certification (or withholding certification) is based on the CMO's assessment of whether the amended CMP meets the requirements of the conditions of this resource consent.

Construction Noise and Vibration Management Plan

40. Prior to works commencing, a CNVMP must be prepared by a suitably qualified and experienced acoustic specialist and submitted to the CMO for certification. The objective of the CNVMP is to set out the steps to be taken to ensure that any construction noise and vibration complies with the conditions of this consent. The CNVMP must include, but not be limited to:
 - i) Specify hours of operation, a description of the main stages of work proposed, the equipment to be used and the predicted noise levels for receivers at sensitive nearby boundaries.
 - ii) Include specific details relating to methods for control of noise

associated with construction works. Demonstrate these controls adopt the best practical option to reduce noise to a reasonable level in accordance with section 16 of the Resource Management Act 1991 and at all times be formulated to, so as far as practicable, comply with the recommended upper limits for construction noise specified in NZS 6803:1999, Acoustics - Construction Noise when assessed in accordance with this standard.

- iii) Include specific details relating to methods for control of vibration associated with construction works. Demonstrate these controls comply with the recommended upper limits for vibration specified in *ISO 4866:2010 Mechanical vibration and shock – Vibration of fixed structures – Guidelines for the measurement of vibrations and evaluation of their effects on structures*.
- iv) Specify details of complaint handling, communication procedures including notification and any necessary monitoring.

The certification, amendments, including where deficiencies are identified, of the CNVMP are to follow the same process as CMP as set out in Conditions 33 to 39 as set out above.

Construction Traffic Management Plan

41. Prior to any works commencing on site a CTMP must be prepared by a suitably qualified and experienced traffic engineer and submitted to the CMO for certification. The objective of the CTMP is to outline methods to avoid, remedy or mitigate adverse construction traffic effects during the earthworks and construction phases of development of the site. The CTMP must include, but not be limited to, the following matters:
 - i) Temporary pedestrian safety measures, including directional signage (where applicable);
 - ii) Locations where construction vehicles will park and carry out loading and unloading of material;
 - iii) Locations where construction materials would be stored;
 - iv) Expected volume and frequency of vehicle movements specific to the construction and earthworks phase, with details of the proposed hours and days of week. Construction vehicle movements associated with the construction works should be restricted during peak traffic times (7.00am – 9.00am and 4.00pm – 6.00pm weekdays) when pedestrians, cyclists and vehicular flows are high;
 - v) Confirmation of the transportation routes and measures to minimise effects on the local traffic network; and
 - vi) Methods for the public to contact the site manager for complaints. There should be a 1m² sign facing the public footpath with the site manager's contact details.

The certification, amendments, including where deficiencies are identified, of the CTMP are to follow the same process as CMP as set out in Conditions 33 to 39 as set out above.

Earthworks Management Plan (EMP)

42. Prior to works commencing on the site, an Earthworks Management Plan (EMP) must be prepared by a suitably qualified and experienced person and submitted to the CMO for certification. The objective of the EMP is to identify the overarching erosion and sediment control principles and procedures to be implemented to achieve compliance with the relevant conditions of consent. The EMP must include, but is not limited to, the following matters:
- i) An illustrated plan that records the key features of the EMP including the approved area of earthworks (including the approved earthworks plan).
 - ii) A description of the broad approaches to be used to prevent erosion, and minimise problems with dust and water-borne sediment.
 - iii) Stabilisation of the site entrance(s) to minimise the tracking of earth by vehicles onto the adjoining roads.
 - iv) The type and location of silt fences to control water-borne sediment.
 - v) Methods for protecting stormwater sumps from the infiltration of water-borne sediment.
 - vi) Measures to ensure that the discharge of dust created by earthworks, construction and transport activities are suitably controlled to minimise dust hazard or nuisance.
 - vii) Covering of soil or other material that is stockpiled on the site or transported to, or from, the site, to prevent dust nuisance or erosion by rain and stormwater (creating water-borne sediment).
 - viii) The methods for managing and monitoring the EMP controls.
 - ix) Nomination of a site person responsible for the implementation and administration of the EMP.
43. The certification and amendments, including where deficiencies are identified, of the CTMP are to follow the same process as CMP as set out in Conditions 33 to 39 as set out above.
44. The erosion, dust and sediment control measures put in place must not be removed until the site is remediated to the satisfaction of the CMO. 'Remediated' means the ground surface of the areas of earthworks have been stabilised (no longer producing dust or water-borne sediment), and any problems with erosion, dust or sediment that occur during the work have been remedied. If necessary, the CMO may require changes to the implementation of the EMP, to address any problem that occurs during the work or before the ground surface is stabilised.

General Earthworks Conditions

45. Run-off must be controlled to prevent muddy water flowing, or earth slipping

onto neighbouring properties or the legal road. Sediment, earth or debris must not fall or collect on land beyond the site or enter the Council's stormwater system. Any material that falls on land beyond the site during work or transport must be cleaned up immediately (with the landowner's permission on land that isn't public road). The material must not be swept or washed into street channels or stormwater inlets, or dumped on the side of the road.

Note: As a minimum, 100 mm clarity is required to allow water to be discharged offsite. If clarity is less than 100mm then the water is considered to be muddy and must be captured and treated on site.

46. Dust created by earthworks, transport and construction activities must be controlled to minimise nuisance and hazard. The controls must be implemented for the duration of the site works and continue until the site stops producing dust.

Engineering Professional

47. An Engineering Professional must be engaged for the detailed design and construction phases of the project. An 'Engineering Professional' is defined as a Chartered Professional Engineer (CPEng) with specialist skills and experience in the design and construction of earthworks and retaining works similar to those proposed and in similar ground conditions.
48. The name and contact details of the Engineering Professional must be provided to the CMO, at least fifteen (15) working days prior to any work commencing.
49. The Engineering Professional will monitor the earthworks and construction of the retaining works. The Engineering Professional will advise on the best methods to ensure:
 - a. The stability of the land
 - b. The work does not cause damage, or have the potential to cause damage, to neighbouring land or buildings, including Collina Terrace
 - c. The design and construction of the earthworks, retaining structures and drainage are consistent with current engineering standards and best practice.

The Consent Holder must follow all the advice of the Engineering Professional in a timely manner.

Hours of work

50. Construction, including earthworks and associated works, including the transport of excavated material from (or to) site, must only occur within the following hours:
 - a. Monday to Saturday 7:30 am to 6.00 pm

- b. Monday to Friday quiet setting up of site (not including running of plant or machinery) may start at 6:30 am (not on Saturdays)
- c. No work is to be carried out on Sundays or public holidays

Note: These hours have been selected from Table 2, NZS 6803: 1999 "Acoustics – Construction Noise".

Complaints Management

- 51. A notice board displaying to the road will advise the public that the site manager is the appropriate person to contact, should they wish to register a complaint. The notice board which must be between 1m² and 2m² in area, must be placed near the entrance to the site. The notice board must contain the contact details for the site manager, including a cell phone number that is contactable at all times of the day.
- 52. A permanent register of any complaint received regarding the construction activities authorised by these resource consents must be maintained at all times that physical works are being undertaken.
 - a) The register must include:
 - i. the name and contact details (if supplied) of the complainant;
 - ii. the nature and details of the complaint;
 - iii. the location, date and time of the complaint and the alleged event giving rise to the complaint;
 - iv. the weather conditions and wind direction at the time of the complaint, where relevant to the complaint;
 - v. other activities in the area, unrelated to the Project, that may have contributed to the complaint;
 - vi. the outcome of the Consent Holder's investigation into the complaint; and
 - vii. a description of any measures taken to respond to the complaint.
 - b) Council must be notified of any complaint received that relates to the activities authorised by these resource consents as soon as reasonably practicable and no longer than two (2) working days after receiving the complaint.
 - c) The Consent Holder must respond to any complainant as soon as reasonably practicable and within five (5) working days by advising Council and the complainant of the outcome of the Consent Holder's investigation and all measures taken, or proposed to be taken, to respond to the complaint.

Monitoring and Review

- 53. Prior to starting work the Consent Holder must advise the CMO of the date when work will begin. This advice must include the address of the property

and the Service Request number and be provided at least 48 hours before work starts, either by telephone on 04 801 4017 or email to rcmonitoring@wcc.govt.nz.

54. The conditions of this resource consent must be met to the satisfaction of the CMO. The CMO will visit the site to monitor the conditions, with more than one site visit where necessary. The Consent Holder must pay to the Council the actual and reasonable costs associated with the monitoring of conditions (or review of consent conditions), or supervision of the resource consent as set in accordance with section 36 of the Act. These costs* may include site visits, correspondence and other activities, the actual costs of materials or services, including the costs of consultants or other reports or investigations which may have to be obtained. More information on the monitoring process is available at the following link: <http://wellington.govt.nz/services/consents-and-licences/resource-consents/resource-consent-monitoring>.

*Please refer to the current schedule of Resource Management Fees for guidance on the current administration charge and hourly rate chargeable for Council officers.

55. Pursuant to ss 128 and 129 of the Resource Management Act 1991, the Council may, at any time, serve notice on the Consent Holder of its intention to review the conditions of the consent in order to:

(a) respond to any adverse effect on the environment which may arise from the exercise of the consent and which it is most appropriate to deal with at a later stage. These effects include, but are not limited to, those that may arise in relation to:

- i. dust management during construction;
- ii. On street parking and obstructions during construction, including Collina Terrace;
- iii. noise during construction;
- iv. stormwater management; and
- v. landscaping.

(b) deal with any unanticipated adverse effects on the environment which may arise from the exercise of the consent, which it is appropriate to deal with at a later stage; and

(c) ensure that the conditions are effective and appropriate in managing the effects of the activities authorised by this consent.