

Decision of Independent Hearing Panel

appointed by Wellington City Council



APPLICATION BY:

THE WELLINGTON COMPANY LIMITED,
SHELLY BAY, SR 368659

31 October 2019

SUMMARY INFORMATION

<u>Site Address:</u>	232, 264, 270, 276, 277, 294, 296, 307 and 311 Shelly Bay Road, Maupuia
<u>Legal Description:</u>	Pt Sec 20 Watts Peninsula District, Sec 8-9 SO 339948, Sec 1 SO 37849, Sec 3 SO 339948, Sec 4-6 & 10 SO 339948, Sec 2 SO 339948 and Pt Lot 3 DP 3020
<u>Applicant:</u>	The Wellington Company Ltd
<u>Proposal:</u>	<p>Land Use (HASHAA): Redevelopment of the existing site including multi-unit residential, mixed use and non-residential buildings and activities, with associated earthworks</p> <p>Land Use (NES): Soil disturbance, change of use and subdivision of contaminated or potentially contaminated land</p> <p>Subdivision: 11 lot fee simple subdivision of land with road to vest</p>
<u>Owners:</u>	Shelly Bay Ltd and Wellington City Council
<u>WCC Service Request No.</u>	368659
<u>WCC File Reference:</u>	1039017
<u>Operative District Plan Area:</u>	Business 1 Open Space B
<u>Notations in Operative District Plan:</u>	<ul style="list-style-type: none">• Subject to Rule 34.3.7 (Development in Shelly Bay Business Precinct Area) – identified in Appendix 1 of Chapter 34• Partially within the Mataki-kai-poinga Landscape Feature Precinct• M3 meteorological designation – located on the northern point of the site• Designation G2 – Wellington International Airport Ltd Airspace Designation
<u>Operative District Plan Activity Classification:</u>	Non-Complying - Operative District Plan

DECISION REPORT

CONTEXT

1. This decision report has been prepared under the Housing Accords and **Special Housing Areas Act 2013 ("the HASHAA")** and the Resource Management Act 1991 ("**RMA**").
2. It relates to a continuation of Qualifying Development Application ("Application") by the Wellington Company Limited for resource consents to redevelop land at Shelly Bay, Wellington, as summarised on the Summary Sheet of this Decision Report.
3. The Application is principally for multi-unit residential activities with supporting mixed use and non-residential buildings and activities, with associated earthworks, infrastructure servicing and subdivision. The Application is for a qualifying development application under the HASHAA, in terms of the Shelly Bay Special Housing Area.
4. The Application **was granted by Wellington City Council ("WCC") on 18 April 2017**. **The WCC's** decision was subsequently quashed by the Court of Appeal in its decision issued on 3 December 2018. The Court ordered the Application to be remitted to the WCC for reconsideration.
5. WCC, on 5 April 2019, appointed a panel of three independent hearing commissioners ("**the Panel**") to reconsider the Application and to make a decision. This report records the decision of the Panel on our reconsideration of the Application.
6. This report is structured as follows:
 - HASHAA and the Shelly Bay SHA
 - The Site and Surrounding Environment
 - The Proposal
 - Consent Requirements
 - WCC Decision and Court of Appeal Decision
 - Appointment of Independent Panel
 - Our Decision-making Process
 - Statutory Framework for Evaluation
 - Overall Decision
 - Reasons for Decision
 - Decision 1 Subdivision, and conditions
 - Decision 2 Land Use, and conditions

HAASHA AND THE SHELLY BAY SHA

7. Wellington City Council is an 'Accord Territorial Authority' (as defined in section 10(5) of the HASHAA). It is also an 'Authorised Agency' with jurisdiction under section 23(2) of the HASHAA. The purpose of HASHAA is

to "enhance housing affordability by facilitating an increase in land and housing supply" in identified districts, which include Wellington City.

8. The WCC and the Government entered into the Wellington City Housing **Accord ("the Accord")** in June 2014. Under Sections 10 and 11 of the HASHAA, the Accord establishes the Council as an authorised agency under the HASHAA, and outlines how the Council will increase housing affordability and supply over the next three years. Under the Accord, the Government and WCC agreed to ensure that housing development provide a mix of house types, including a mix of more compact affordable homes that can be sold at different price points.
9. As part of the Accord, a Special Housing Area ("SHA"), was established at Shelly Bay, and the Application by Wellington Company Limited was subsequently lodged. WCC accepted the Application **as a 'qualifying development' in terms of the Shelly Bay SHA.**
10. The Application was deemed by WCC to have met the relevant criteria because it:
 - Is predominantly a residential development (with 352 dwellings) and also has other activities deemed to be ancillary (a brewery/café, commercial/community activities, and a boutique hotel);
 - Provides more than the minimum number of dwellings that must be built (10 required);
 - Does not exceed the maximum height of dwellings of 6 stories (or 27 metres).
11. In section 3 of the Application the applicant sets out the reasons why the proposal is still considered a qualifying development in terms of section 14 of HASHAA. The author of the section 42A report agrees with these reasons at section 4.1 of the report, and advises that the status of the application as a qualifying development was not found to be an issue by either Court¹. The Panel considers this is an aspect that we do not need to revisit in our re-consideration of the application.
12. The SHA was disestablished in part on 16 September 2016 with the remainder of the SHA having then expired on 10 December 2016. However, under the transitional provisions, any application that existed at that date can continue to be processed². The Panel has accordingly processed the Application as an application under HASHAA and the RMA.

THE SITE AND SURROUNDING ENVIRONMENT

13. Section 4 of the Application includes: the history of the site; general site details; an overview of district plan zoning; and a description of the surrounding environment. The author of the section 42A report agrees with the **applicant's site description.**

¹ Section 42A Report, page 8

² HASHAA, Schedule 3, clause 1(2)(a)

14. The Panel consider that the Application's **description is accurate and adopts** that description, in accordance with section 72(3) of the HASHAA (which cross references to s113 of the RMA).

THE PROPOSAL

15. The Application for resource consent is made under section 25 of the HASHAA. It was filed on 15th September, 2016.
16. Section 5 of the Application includes a full description of the proposal. The **author of the section 42A report adopts the applicant's description**. The Panel also adopts the description, in accordance with section 72(3) of the HASHAA.
17. In summary, the proposal is to comprehensively redevelop the site, which would include multi-unit residential (a mixture of apartments, townhouses and single residential dwellings), mixed use and non-residential uses and buildings. Some adaptive re-use of existing buildings is included. Subdivision and earthworks are required to facilitate development of the site. A contamination investigation will also be undertaken, with remediation taking place if contaminants are identified. The proposal includes some upgrading and replacement of off-site infrastructure to service the development.

CONSENT REQUIREMENTS

18. The section 42A Report outlines the various consents required for the Application **in terms of the operative Wellington City District Plan ("District Plan"), and the Resource Management National Environmental Standards for Assessing and Managing Contaminants to Soil to Protect Human Health) Regulations 2011 ("NES")**.
19. That description of consents required and activity status³ is adopted by the Panel, in accordance with section 72(3) of the HASHAA.
20. In summary:
- *NES* – the site is identified in the Wellington Regional Council's Contaminated Land Register (SLUR) as being potentially contaminated, and therefore the disturbance of soil is a Discretionary (Unrestricted) Activity.
 - *Subdivision* – under the District Plan the subdivision of land in the Business 1 Zone is a Discretionary (Restricted) Activity, and in the Open Space B Zone is a Discretionary (Unrestricted) Activity.
 - *Land Use* – under the District Plan the aspects deemed to be a Discretionary (Restricted) Activity include servicing; parking areas of more than 70 spaces; construction and conversion of buildings for

³ Section 42A report, sections 5.1 and 5.2

residential use in the Business Precinct Area; buildings exceeding standards for yards and noise insulation and ventilation; use of contaminated land; removal of indigenous vegetation; and earthworks. Structures in the Open Space B Zone require consent as a Discretionary (Unrestricted) Activity. Buildings exceeding height standards by more than 50% are a Non-Complying Activity.

21. Overall, the Application under the NES is a Discretionary (Unrestricted) Activity. The subdivision is a Discretionary (Unrestricted) Activity, and the land use is a Non-Complying Activity.
22. The first decision confirms that Plan Change 80 (General minor amendments to the District Plan text and maps V11) was considered as being part of the District Plan at the time of the first decision. There appear to be no substantive matters raised by that plan change, but it is recorded here for completeness.
23. Section 91 of the RMA applies to this Application, due to section 32 of the HASHAA. As noted in the section 42A report the WCC reporting officer had conferred with the Wellington Regional Council and considers there are areas of potential overlap between regional and district consents for earthworks, and work within the coastal marine area. The reporting officer considered that the nature and effects of the Application can be understood without additional regional consent applications being made.
24. The Panel asked a number of questions of the **applicant's representatives** at the meeting held on 21 August 2019 (as described in the section below on '**Decision-Making Process**'). **We were assured that the full extent of works** associated with development on the site, and for associated infrastructure and roading upgrades (including along the coastal margins of Shelly Bay Road), could be accommodated with resource consents required for only minor activities such as smaller scale earthworks or discharges. The reporting officer concurred with that advice.
25. Accordingly, we agree with the section 42A report that there is no need to defer this Application under section 91 of the RMA as it is not appropriate to defer the application for the purpose of better understanding the proposal.

WCC DECISION AND COURT OF APPEAL DECISION

26. The Application was granted by WCC on 18 April 2017 ("**first decision**"), with conditions, by a decision made by officers acting under delegated authority⁴. Notification of the Application was deemed to not be necessary.
27. Following an appeal by Enterprise Miramar Peninsula Incorporated, the first decision was subsequently quashed by the Court of Appeal (in paragraph

⁴ WCC ref: SR368659

100 of its decision), for reasons recorded in its decision issued on 3 December 2018⁵.

28. The Court of Appeal held that the Council erred in law in its consideration of the matters set out in section 34(1)(b)–(e) of HASHAA. This was because the WCC had applied the purpose of HASHAA to effectively neutralise all other considerations and prevent their being given due acknowledgement in the ultimate balancing under section 34.⁶ The Court ordered the Application to be remitted to the WCC for reconsideration⁷.
29. On 10 May 2019 the applicant confirmed that it wished the Council to reconsider the decision, as directed by the Court of Appeal. The applicant did not submit a new application but it provided updated information to enable its existing Application to be reconsidered. This included a revised expert planning assessment on the basis of the guidance provided by the Court on the way in which section 34 of HASHAA should be applied. It also included a range of expert assessments revised only to the extent necessary to provide updated factual information given the time that had passed since the Application was first lodged.
30. The Panel accepts that the Application, as described above, is within scope of the Application as lodged.

APPOINTMENT OF INDEPENDENT COMMISSIONERS

31. As a result of the Court of Appeal's **decision**, the WCC appointed three independent commissioners from its approved list of hearings commissioners (**Gary Rae (Chair), Helen Atkins and Ray O'Callaghan**) to consider and determine the Application.
32. The commissioners hold a delegation pursuant to section 76 of the HASHAA (which applies section 34A of the RMA) to exercise the necessary functions, powers and duties to carry out this reconsideration.

OUR DECISION-MAKING PROCESS

33. The Panel is aware that it is reconsidering an Application made under the HASHAA and it accordingly has needed to follow due process under the relevant provisions of that legislation. Independent legal advice has been taken to assist us in our task, as noted below. A key aspect is that a decision has already been made on the processing of the Application as non-notified (which we are not able to re-visit). This has meant there are no third parties to the Application from whom we are able to take advice. It also means that a hearing (i.e. in the sense of a normal RMA-type hearing with submitters present) is prohibited.

⁵ *Enterprise Miramar Peninsula Incorporated v Wellington City Council* [2018] NZCA 541, reasons in paragraphs [40] – [59].

⁶ *Enterprise Miramar Peninsula Incorporated v Wellington City Council*, above n4, at paragraph [94].

⁷ *Enterprise Miramar Peninsula Incorporated v Wellington City Council*, above n4, at paragraph [101].

34. Acknowledging that, we were also mindful of the high public interest in these proposals for Shelly Bay. Accordingly, we have attempted to be as transparent as possible by publishing information on the proposal, and on the process followed, on the WCC website (<https://wellington.govt.nz/your-council/projects/shelly-bay-development>). Our approach has also been to request further information where necessary, and to properly examine some aspects that were raised as issues of concern as part of the Court proceedings and which warrant particular attention (for example infrastructure and public road upgrade proposals).
35. During May – July of 2019, the Panel issued a series of seven Minutes to the parties (these being the applicant and WCC), and also posted these on a WCC web site page for the Shelly Bay proposal.
36. Minute 6 (issued on 9 July 2019) summarises the process, and advised:
- Independent Commissioners had been appointed, and were considering a range of information.
 - The Application **had not been required to be notified, and the Panel's** independent legal advice was that the process was not open to parties other than the applicant and the WCC reporting officer to participate in or to make comment.
 - Information was posted on the web page (the Application; background information on the Shelly Bay SHA; court proceedings and outcomes; section 42A report; previous Minutes issued by the Panel; and independent legal advice from Buddle Findlay, the Panel's lawyers).
 - Further information had been requested including:
 - (i) a Supplementary Section 42A Report to provide a more thorough assessment of all relevant objectives and policies, and all relevant assessment matters.
 - (ii) the Applicant to provide further information on public infrastructure upgrade works; the consenting framework for regional consents; and an assessment of appropriate minimum floor levels for buildings on the site.
 - (iii) the Reporting Officer and the **applicant's planner to confer** and provide a list of agreed recommended conditions.
 - A 'questions and answers' meeting was to be held to enable the Panel to ask questions of the applicant and the WCC reporting officers.
37. **The 'questions and answers' meeting was held on 21 August 2019** ("questions and answers meeting"). Minute 7 was issued on 22 August 2019, together with the agenda items, to advise the public of the meeting

and that a request had been made for some additional technical information.

STATUTORY FRAMEWORK FOR EVALUATION

Overall Approach

38. In its decision remitting the first decision back to the WCC the Court of Appeal set out the process it considered the WCC ought to have followed in considering and determining the Application. The Court held that the proper interpretation of section 34(1) of HASHAA requires a decision maker to assess the matters in subsections (1)(b) – (e) individually and uninfluenced by the purpose of HASHAA before standing back and weighing those matters alongside the purpose of HASHAA in accordance with the prescribed hierarchy⁸:

"The scheme and plain text of s34(1) requires individual assessment of the listed matters prior to the exercise of weighing them in accordance with the prescribed hierarchy. The matters listed in subs (1)(b) – (e) cannot properly be weighed alongside the purpose of HASHAA under subs (1)(a) if that purpose has first been used to effectively neutralise the matters listed in subs (1)(b) – (e)".

39. **The Panel has been guided by the Court of Appeal's** ruling and has followed the process set out by it. This process is to assess the matters in subsections (1)(b)-(e) first, before carrying out the weighing exercise required by subsection (1).

Section 34(1)(a) – The Purpose of the HASHAA

40. Section 34(1)(a) requires an authorised agency to have regard to the purpose of the HASHAA. This purpose is set out in section 4 and is to enhance housing affordability by facilitating an increase in land and housing supply in certain regions or districts that are identified as having housing supply and affordability issues. Wellington City is such a district. This matter is further addressed at the end of this section.

Section 34(1)(b) – The matters in Part 2 of the RMA

41. Section 34(1)(b) requires an authorised agency to have regard to the matters in Part 2 of the RMA, which comprise sections 5 to 8, and which set out the purpose and principles of the RMA.

Section 5

42. Section 5(1) states that the purpose of the RMA is to "*promote the sustainable management of **natural and physical resources***". The concept of 'sustainable management' is defined in section 5(2).

⁸ *Enterprise Miramar Peninsula Incorporated v Wellington City Council*, above n4, at paragraph [53]

43. Sustainable management means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and their health and safety, while:
- (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - (b) *Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
 - (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*
44. In terms of the matters in section 5 the consideration of these matters is set out in the Application and in the section 42A report. The Panel adopts the material from those documents, in accordance with section 72(3) of HASHAA, and by way of summary concludes the following on these matters.
45. Section 5(2)(a) refers to the potential to meet the needs of future generations with regard to natural and physical resources. The Panel acknowledges the proposed development will provide a physical resource (additional housing and related developments) in a way which will allow people to provide for their social and economic wellbeing. It is further acknowledged that access to housing including affordable housing, has been identified as a national issue, particularly in larger urban centres such as Wellington. The Panel was informed by the applicant at the meeting on 21 August 2019 that in the context of the local housing market, the proposed 350 dwellings will be a material contribution to the housing supply for the local community. To the extent that the proposal does this it will clearly assist the housing needs of future generations.
46. The Panel accepts the section 42A **report's advice that**, in terms of s5(2)(b), the proposal will not result in an outcome whereby the life supporting capacity of air, water, soil and ecosystems cannot be safeguarded.
47. With regards to s5(2)(c) (avoiding, remedying or mitigating adverse effects) the consideration of these matters is set out in the Application and the section 42A report. The Panel largely adopts the material from those documents in accordance with section 72(3) of HASHAA, and by way of summary concludes that the proposal has been designed (with appropriate conditions) to mitigate the adverse effects. More detail is included below.

Section 6

48. Section 6 lists the matters of national importance that are to be recognised and provided for in achieving section 5. The section 6 provisions of relevance to this proposal are:
- (a) *The preservation of the natural character of the coastal environment...and the protection of them from inappropriate subdivision, use, and development.*

- (b) *The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development.*
- (c) *The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.*
- (d) *The maintenance and enhancement of public access to and along the coastal marine area ...*
- (e) *The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*
- (f) *The protection of historic heritage from inappropriate subdivision, use, and development; and*
- (h) *The management of significant risks from natural hazards.*

49. Both the Application and the s42A report include an assessment of s6, which the Panel adopts under s72(3) of the HASHAA, and concludes as follows:

- a. In terms of s6(a), the proposal affects a particular part of the coastal environment that has been substantially modified, and the proposal is not considered inappropriate subdivision and development.
- b. In terms of s6(b), Shelly Bay sits within a wider outstanding landscape area but it has no outstanding natural features and landscapes. The experts are of the opinion that overall the proposal will have low adverse landscape effects on the site and surrounding area, as discussed further below.
- c. In terms of s6(c), there is some indigenous vegetation removal proposed but this is limited and the Applicant has proposed a vegetation protection methodology in relation to indigenous vegetation.
- d. In terms of s6(d), the proposal has been designed to ensure public access along the coastal marine area is enhanced with the inclusion of pedestrian promenades, roads and a pedestrian walkway.
- e. In terms of s6(e) the Cultural Impact Assessment ("**the CIA**") that accompanied the Application, and the **section 42A report's** assessment of this, is that the matters of national importance in terms of the relationship of Maori and their culture and traditions with their ancestral lands, water and sites have been recognised and provided for in the proposal.
- f. Section 6(f) requires decision-makers to recognise and provide for the protection of historic heritage from inappropriate subdivision and development. **The Applicant's expert has concluded that no significant** heritage sites will be impacted and the requirement of s6(f) is met. The WCC expert, Ms Chessa Stevens, essentially considers (for various reasons outlined in her report) that the proposal will have significant effects on historic heritage that cannot be avoided, remedied or mitigated. While acknowledging the concerns of Ms Stevens, Mr Garnett, the WCC reporting planner, considers that the adaptive reuse and relocation of buildings, the proposed conditions and the current

state of the buildings and infrastructure, mean that the proposal is not inappropriate but rather will result in a positive outcome for heritage overall. This matter is further discussed under the effects assessment below.

- g. In terms of s6(h) there are a number of geotechnical hazards in terms of slope instability, liquefaction and lateral spreading due to **liquefaction. The Applicant's design recommendations** (which have been converted into proposed conditions) have been reviewed by the **Council's expert** (Mr John Davies) who is satisfied that the risks can be managed. Likewise, the risks related to climate change and inundation can also be managed.

Section 7

50. Section 7 includes additional matters which particular regard must be given to. Those matters most relevant to this proposal include:

- (a) kaitiakitanga*
- (aa) the ethic of stewardship*
- (b) the efficient use and development of natural and physical resources*
- (c) the maintenance and enhancement of amenity values*
- (d) intrinsic value of ecosystems*
- (f) maintenance and enhancement of the quality of the environment*
- (g) any finite characteristics of natural and physical resources*
- (i) the effects of climate change*

51. The Application and s42A report include an assessment of s7 which the Panel adopts under s72(3) of the HASHAA. By way of summary, the proposal is consistent with:

- sections 7(a) and (aa) based on the CIA, the design features of the proposal and the proposed conditions around heritage and cultural matters;
- sections 7(ba) and (j) based on the infrastructure assessment report and the input from the relevant experts from the WCC;
- sections 7(c) and (f) based on the urban design and landscape assessments of both the Applicant and the WCC;
- sections 7(d) and (h) to the extent these matters are relevant; and
- section 7(i) in that the design guidance ensures the living levels of buildings are elevated to allow a contingency for sea level rise.

Section 8

52. Section 8 of the Act states:

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

53. As noted, a CIA has been undertaken on behalf of Taranaki Whānui Ki Te Upoko o Te Ika and The Port Nicholson Settlement Trust, and the proposal was not found to be inconsistent with the principles of the Treaty of Waitangi. The Panel did not receive any additional evidence related to Treaty matters.

Summary of Part 2 matters

54. The Panel agrees with the assessment and conclusions in the section 42A report that the proposal is, overall, consistent with Part 2 of the RMA.

Section 34(1)(c) – Any relevant proposed plan

55. The section 42A report advised the Panel that there are no relevant proposed plans in relation to this proposal, and this is accepted by the Panel.
56. In response to questions at the questions and answers meeting, Mr Garnett said that the proposed Natural Resources Plan for Wellington Region was not relevant to consideration of the proposal at this stage. He said the detailed design of buildings and approaches to controlling stormwater runoff will come later, and that consents for earthworks and discharges and any works in the coastal marine area may require resource consents from the Greater Wellington Regional Council which can be applied for and processed at the appropriate time.

Section 34(1)(d) – Assessment under Sections 104 to 104F of the RMA

Section 104D

57. The proposal is to be assessed as a non-complying activity overall, therefore the gateway test of section 104D must be considered. This means that the Panel needs to assess whether the adverse effects will be minor or that the proposal is not contrary to the objectives and policies of the District Plan.
58. As further considered below there are some adverse effects of the proposal (including in relation to natural character, landscape, visual and open space effects) and the Panel has assessed the visual and open space effects as being more than minor. There are also relevant objectives and policies relating to open space that the proposal has been assessed by the Panel as being contrary to. Accordingly, on the face of it, the proposal may not be able to **meet either limb of the “gateway tests”**. **This is further discussed** below in the context of the statutory framework set out in the HASHAA.

Actual and Potential effects (s104(1)(a))

59. Section 104(1)(a) of the RMA requires the Panel to have regard to any actual and potential effects on the environment of allowing the activity. This includes both the positive and the adverse effects.
60. The following effects have been discussed in the assessment below:
- Permitted baseline

- Cultural effects
- Heritage effects
- Landscape, natural character, and visual effects
- Open Space effects
- Urban Design
- Subdivision effects
- Effects on airspace designation
- Transportation effects
- Erosion sediment control and stability effects
- Infrastructure & servicing effects
- Inundation and sea level rise effects
- Construction effects
- Land contamination effects
- Positive effects

Permitted baseline

61. The section 42A report concludes that, as resource consent is required for construction of residential buildings in the Business 1 Shelly Bay Precinct Area, as does the construction of buildings in the Open Space B Area, there can be no permitted baseline for consideration of the new buildings proposed in this application. The same applies for the proposed subdivision, as consents are required for subdivision in the affected zones.
62. There is however a relevant permitted baseline available for consideration of the proposed removal of buildings that have some heritage value from the site to prepare it for redevelopment. The section 42A report notes that buildings are allowed to be removed or demolished provided they are not heritage items or within identified heritage areas, and there are no such listings on this site.⁹ This is further addressed below.

Cultural effects

63. **A Cultural Impact Assessment ("CIA") has been prepared on behalf of Taranaki Whānui Ki Te Upoko o Te Ika and The Port Nicolson Block Settlement Trust, and accompanies the Application.**
64. The CIA outlines that Marukaikuru/Shelly Bay is an important land and marine resource and considers the past and present usage and values with this area in relation to the proposal.
65. The CIA did not identify any cultural impediments to the development. There are a number of recommendations regarding the way in which the cultural history and significance of the area can be recognised, such as:
- Indigenous species should be used in landscaping and these species should be those that were originally on the site;
 - The pine and Pohutukawa trees should be more actively managed;

⁹ Rules 34.1.7, 17.1.5

- The development should adopt and use best practice environmental methods;
 - The buildings should be designed to incorporate Taranaki Whānui in meaningful ways to reflect their mana whenua and partner status;
 - Mana whenua is approached for advice and assistance in relation to planting to enhance the cultural landscape;
 - The development should include parks and play areas;
 - The building and street names should be based on original names from the area, in consultation with Taranaki Whānui.
66. The Applicant has considered these recommendations and incorporated them into the design guide, and further consideration will be given to cultural matters at detailed design stage.
67. The Panel agrees with the section 42A report that adverse cultural effects will be no more than minor.

Heritage effects

68. There are no buildings or structures on the Application site that are heritage listed under either the District Plan or by Heritage New Zealand. Notwithstanding that, a number of buildings on the site do hold heritage value and have been incorporated into the Shelly Bay Design Guide that was included with the application, as follows:
- The Hospital
 - Warehouse and stores (shed 8)
 - Submarine Mining Depot Barracks
 - Shipwrights Buildings
 - Officers Mess.
69. With regards to heritage, Guideline G1 of the Design Guide states:
- "The location and design of new building development should respect the character and location of any identified heritage buildings within Shelly Bay, with specific reference to the Submarine Mining Depot Barracks, including the possibility of its relocation closer to the water's edge so its original connections to the harbour is recognised."***
70. The proposal is that all identified (but not listed) heritage buildings, with the exception of the hospital, will be retained. The Submarine Mining Depot Barracks will be relocated to the Village Green which is closer to the water edge to reconnect this building to the harbour. The Officers Mess will also be relocated and will accommodate the boutique hotel. The Warehouse and stores (Shed 8) will remain in their current location and accommodate a yet unconfirmed commercial activity. The Shipwrights building will also remain in its current location and accommodate a microbrewery.
71. The adaptive re-use of these heritage buildings will likely require some minor exterior alterations, however given this proposal is to be implemented through a Masterplan approach, the exact nature of these is not yet known.

The applicant has subsequently volunteered a condition of consent requiring that a detailed design of works shall be submitted to WCC for approval prior to works commencing.

72. The former hospital located towards the north end of the northern bay is proposed to be demolished. The applicant has advised that the building is in a poor condition and not suitable for adaptive re-use or relocation.
73. As noted above, the proposal has been assessed by the Ms Stevens (an independent Heritage Advisor engaged by WCC) who considered that while there are no listed heritage items on the site, that does not diminish in any way the historic heritage values that Shelly Bay does have. Ms Stevens considered that Shelly Bay is one of, if not the most intact and cohesive collections of World War II base structures in New Zealand. Ms Stevens stated that there is still much to be understood about the significance of the site and its structures and that the site meets the definition of historic heritage under the RMA and therefore warrants recognition and protection.
74. The redevelopment includes the relocation of approximately 20 out of the 26 buildings and structures on the site. Ms Stevens was of the opinion that **the negative impact on the site's heritage values** is considerable. Ms Stevens considered that while the Masterplan and Design Guide advocate that the principles of the ICOMOS New Zealand Charter be followed with relation to treatment of the retained and relocated buildings, the overall redevelopment proposal is inconsistent with the Charter.
75. Ms Stevens recommended a number of conditions many of which have been incorporated in the set of conditions recommended by the WCC reporting **planner and the Applicant's planner**.
76. Mr Garnett accepted some of Ms Stevens' assessment but considered that taking into account the permitted baseline, namely that all the buildings on the site could be demolished and removed without a consent, and the details of the proposal and the suggested conditions, that there are no adverse heritage effects.
77. The Panel accepts that, whilst the existing buildings/structures are not listed by Heritage New Zealand or WCC they do hold some heritage value, for the reasons provided by Ms Stevens. However, on balance the Panel acknowledges the adaptive reuse of some of the buildings with heritage values, as part of an overall development of the site by a Master Plan process, has overall beneficial outcomes.
78. The section 42A report has relied upon a permitted baseline approach to come to the conclusion that there are no adverse heritage effects, noting that the demolition or removal of any of these buildings may occur without resource consent. For the reasons outlined above the Panel prefers to assess the adverse heritage effects as being no more than minor.

Landscape and Natural Character, and Visual effects

79. The Application and the section 42A report are accompanied by detailed assessments which address the landscape, natural character and visual effects of the proposal. The assessments of these aspects are all inter-related, however the Panel has separated these out for the purposes of our evaluation, and to assist with our assessment of the proposal in terms of the New Zealand Coastal Policy Statement (in a later section of this Decision Report).
- (a) Outstanding landscape
80. Ms McArthur for the Council informed us that the site is located within a wider **area of 'outstanding landscape'** as described in the Shelly Bay Design Guide in the District Plan, due to its visually prominent natural setting within **the Miramar Headland. The higher ridge is within a 'Ridgeline and Hilltop Overlay Area'** as shown on Wellington City Planning Map 61¹⁰.
81. Ms McArthur assessed the proposal as having **"some loss of landscape character due to the reduction in openness around the spur between the bays"**¹¹. Her evidence was also that there would be little actual effect in terms of physical change to the site due to modification of landforms or removal of significant vegetation. **Ms McArthur's evidence also outlined** what she described as a number of positive landscape effects, such as the development of new public spaces with amenity planting, street trees, village green and restoration planting at the toe of the escarpment, as well as removal of uncertainty around the future of Shelly Bay and further degradation of buildings and the site¹².
82. Overall, Ms McArthur assessed the proposal as having **"low adverse landscape effects on the site and surrounding area"**¹³.
83. **In her assessment of the proposal, the Applicant's Landscape Architect (Ms Nicole Thompson) acknowledged** that the density and height of the new development exceeds that which currently exists on the site. Ms Thompson considered, however, that the bulk, density, height and layout of the new **built form has been carefully designed to complement the site's existing character and landscape structure including the new public domain.**
84. The Panel acknowledges that the proposal does have the potential to adversely affect landscape values. However, we accept the evidence of both Ms McArthur and Ms Thompson that the built form has been carefully **considered to complement the site's existing landscape character and** will involve minimal change in terms of earthworks and vegetation removal. We accept that the proposal will have no more than minor adverse landscape effects on the site and surrounding area.

¹⁰ Section 42A Report, Appendix B, pages 75, 76, para 4.4

¹¹ Section 42A Report, Appendix B, page 81, para 6.3

¹² Section 42A Report, Appendix B, page 81, para 6.4.

¹³ Section 42A Report, Appendix B, page 81, para 6.5

(b) Natural Character

85. The basis for the Application is that the development is confined to an area of the coastal environment that is already modified by built development and, further that the natural character is protected by development being confined to below the existing coastal escarpments¹⁴.
86. Ms McArthur's evidence was, whilst Shelly Bay's setting is within a wider 'outstanding landscape' (as described above), the site itself "*has no outstanding natural features*"¹⁵. She considered there will be some adverse effects on natural character due to visual dominance of buildings and a reduction in open character around the spur, but she also noted that buildings are generally restricted to the landward side of Shelly Bay Road and the coastal edge will be enhanced with vegetation planting and public access maintained. Ms McArthur's evidence was that "*overall, the effects on natural character will be low*"¹⁶.
87. The Panel accepts the evidence that the Shelly Bay site has been modified substantially and the site itself does not have high or outstanding natural character. It is considered that the proposal will have adverse effects that are no more than minor on the wider natural character of the area.

(c) Visual Effects

88. The visual assessments from both experts are largely in agreement, but with some differences regarding specific viewpoints. The experts agree that the higher density proposed could be perceived as having a negative visual effect. Ms McArthur considered that there will be a high degree of change in visual character with respect to the bulk and dominance of proposed buildings adjacent to the narrow coastal edge. Ms Thompson considered that the visual effects are largely mitigated by the design and that, overall, the effects are low.
89. The author of the section 42A report, Mr Trevor Garnett, summarised the visual assessments and concluded that visual effects from many of the viewpoints considered will be moderate to high. Mr Garnett noted the **proposal's response to mitigate these effects** – the use of recessive material and colour palette and the hierarchy of built form stepping up towards the escarpment, quality public amenity and site planting. However, he considered that this mitigation did not mean that the visual effects will be no more than minor.
90. The Panel **agrees with Mr Garnett's assessment. We** acknowledge the positive design elements and the process by which buildings will be assessed in terms of the proposed Design Guide. However, we agree that, overall, the visual effects will be more than minor particularly given the visual impact of proposed buildings in exceedance of District Plan height standards.

¹⁴ AEE, page 56

¹⁵ Section 42A Report, Appendix B, section 7.2b, page 88

¹⁶ Section 42A Report, Appendix B, section 7.2a, page 88

Open space effects

91. As noted in the section 42A report new buildings are proposed to be located in the Open Space B Area. Some of these buildings extend to 27m height, which is a significant increase from the height and extent of the development contemplated by the District Plan.
92. Ms Bec **Ramsay, the Council's Open Space and Recreation Planning Manager**, has assessed the Application in terms of open space effects and has made a number of recommendations. Not all of **Ms Ramsay's** recommendations, such as not removing some of the pine trees and a covenant to vest the reserve, have been adopted by the Applicant. However, as Mr Garnett noted, the pine trees are not protected by the District Plan and with regards to the reserve the Applicant has offered a detailed condition on an Escarpment Vegetation Management Zone Strategy.
93. Mr Garnett noted **that the Open Space B Area contemplates only "minimal structures" relating to recreational use**, and considers that the proposal which provides for high apartment blocks does have more than minor adverse effects on the Open Space B Area. However, he considered it will not significantly affect the wider Open Space character.
94. The Panel agrees with Mr Garnett that the extent of the development, in particular the height of some of the buildings, will have a more than minor effect on the Open Space B Area.

Urban Design

95. The application was accompanied by an Urban Design Assessment by Mr Graeme McIndoe which describes the Shelly Bay Masterplan, and contains an assessment of the proposal against the objectives of the Shelly Bay Design Guide included with the application. It acknowledges the more permissive development aspirations of the SHA and explains the measures designed to ensure the proposal will capture and protect the natural and built characteristics of the local area (e.g. the waterfront, escarpment, prominent spurs, historic character buildings, wharf, existing Pohutakawa trees and rocky promontories). Those aspects all feature in the Masterplan and are relevant considerations in the Design Guide.
96. The Urban Design Assessment explains that the higher buildings will be integrated into their setting by their placement to the rear of other buildings and against the escarpment, and by the use of visually recessive colour treatments.
97. WCC's Urban Design Advisor, Mr Chad McMan, has reviewed the Masterplan and the Design Guide and considered that in terms of urban design, this project is excellent in terms of outcome. His evidence is that the proposed Masterplan for Shelly Bay is thorough, in depth, and builds on the inherent character of the place. He reiterated the views he expressed during

consideration of the Application as originally lodged **and states that, he "... remains confident this Masterplan can and will deliver an authentic community with a unique sense of place."**¹⁷

98. Mr McMan considered that it is conceivable that people may also wish to visit to for example fish from a wharf, use the proposed open spaces, picnic, or sit on the beach. He said all of these activities contribute to the interest and economic vitality of the place. Noting that free facilities are proposed such as toilets, water fountains, taps and showers to be provided in later stages, he recommended a condition of consent to require the toilet facilities to be in place at the completion of Stage 1.
99. Mr Garnett agreed **with Mr McMan's advice** but noted that his proposed condition regarding the provision of facilities at the completion of Stage 1 may be problematic due to construction activities. The proposed conditions (conditions 9 & 10) have been suggested to **reflect Mr Garnett's position**.
100. The Panel accepts the evidence of Mr McMan, and as supported by the section 42A report, that in terms of urban design adverse effects will be no more than minor.

Subdivision effects

101. The section 42A report stated that the proposed subdivision will allow for the rationalisation of the current ownership of the area included in the Application. It notes that all lots will be provided with sufficient infrastructure in terms of roading and reticulated servicing. Given the size and shape of the allotments, it is not considered that the allotments will preclude or hinder development within the site, and the recommended conditions will ensure the usual requirements for a subdivision of this type will be met.
102. The Panel accepts the evidence of Mr Garnett that any adverse effects of the subdivision will be less than minor.

Effects on airspace designation

103. The site is located within Designation G2 – Wellington International Airport Ltd Airspace Designation, within **what is termed 'transitional side surfaces'**. As noted in Appendix F of the District Plan, ***"The designation takes the form of airspace height restrictions, which limit the development of any structure including any building, aerial, antenna, or other object which may inhibit the safe and efficient operation of Wellington International Airport"***.
104. The Application included a diagram to demonstrate that proposed development on the site will comply with the airspace restrictions, and will not therefore affect aircraft safety. This was accepted in the section 42A report.

¹⁷ Section 42A Report, Appendix D, Council's Design Assessment, page 112.

105. Accordingly, the Panel accepts that this designation is not affected by the proposal.

Transportation effects

106. The Application is accompanied by a Transportation Assessment Report (TIR) by Stantec Ltd which confirms that, with the adoption of the **applicant's** proposed improvements to Shelly Bay Road between Shelly Bay and Miramar Avenue, and upgrades to the Miramar Avenue intersection as described, development of the site can occur without compromising traffic performance.
107. The expected minimum achievable upgrade of Shelly Bay Road was assessed by Calibre Ltd in their report appended to the Application. Calibre concluded that a carriageway width of 6m and a pedestrian/cycleway width of 1-1.5m was achievable without extending into the coastal area or necessitating notable excavation on the landward side of the road. That assessment was subsequently reviewed by Envelope Engineering Ltd which then stated a similar opinion, in their report dated 8th May 2019. Envelope Engineering Ltd noted that there are areas of road where they expect the pedestrian/cycle lane to be up to 3m wide.
108. **The Council's Chief Transport Advisor, Mr Steve Spence**, considered the proposed road layout changes to facilitate the development are acceptable in terms of transportation effects. He also made the following comments:

Although substantially below the relevant standards recommended in both the WCC Code of Practice for Land Development and the industry standard NZS 4404:2010 "Land Development and Subdivision Infrastructure" I accepted that based on physical practicality it would not be possible to achieve these "green field" standards without very major works to extend the road corridor into the harbour with the associated high costs and environmental issues this would raise in regard to obtaining resource consents from the regional council. Therefore for the purpose of assessing the 2016 Application I considered that the proposed practical improvements to the road corridor should be accepted.

I remain of this view and believe that the Calibre proposal should be seen as the minimum acceptable standard to be achieved if the development is to proceed. I am satisfied that it would provide adequate vehicular traffic capacity and would provide a good level of safety as Shelly Bay Road is already subject to a 40km/h speed restriction and has a number of traffic calming devices currently in place with the potential for further traffic calming if this was considered to be necessary at a future date.

In addition to providing a level of improvement for pedestrians and cyclists, the design should provide for the retention of recreational parking where possible at locations where the road reserve is wide enough to accommodate space for parking behind the pedestrian/cycling facility. This will help maintain the existing recreational use by families of the numerous small beaches along the route. Parking restrictions will be

required along this section of Shelly Bay Road to prevent stationary vehicles obstructing pedestrians and cyclists.¹⁸

109. At the meeting with the parties the Panel explored the issue of the 6m width carriageway and 1-1.5m width pedestrian/cycleway lane with Mr Spence, noting that **these dimensions are well below normal “green field”** development roading standards. Mr Spence stated that the majority of roads within Wellington City do not meet the standards and yet provide a satisfactory level of service. We accept his opinion that the proposed upgrade of Shelly Bay Road, between Miramar Avenue and the site, will provide an acceptable minimum level of service for this road.
110. The Panel was also concerned about the proposed timing of the upgrade works relative to the expected completion of the various stages of development, particularly as the existing road is not expected to be able to support significant construction traffic combined with increasing traffic from new residents. Following the questions and answers meeting, the applicant has volunteered conditions controlling the timing of the upgrades (conditions 41 – 43). Condition 41(i) requires the Shelly Bay/Miramar Avenue intersection to be upgraded prior to the first new building consent being issued. Condition 41(ii) requires the road to be upgraded prior to the code of compliance for the first building to be issued.
111. Overall, the Panel is satisfied that the proposed upgrade of the intersection at Miramar Avenue and Shelly Bay Road between the intersection and the development site, and the timing of these upgrades, are appropriate for the development, taking into account the physical constraints along the road corridor. We note that the conditions require a design approval process, prior to construction, and this process places an obligation on the design to achieve maximum widths where possible.
112. **We note from Mr Spence’s report his view that the proposed** scale of on-site parking may, in his view, be insufficient. His view on that was based on the allowance made in the Stantec report for visitor parking associated with the residential activity and with parking associated with the hotel and due to the lack of any allowance for employee parking. However, Mr Spence also notes in his report:

... the consequence of under provision will be likely to impact on the viability of the various land uses rather than impact on the functioning of the areas in public ownership, as these public areas will be able to be controlled by Council, including parking controls.¹⁹

The Panel is **therefore satisfied that this issue will, in effect, “self-manage”**.

113. In terms of alternative transport options, the Applicant commented at the meeting with parties that it had an expectation a ferry service may be established once demand is sufficient to support it. We also note that Council is intending to upgrade the pedestrian/cycleway system in Miramar

¹⁸ Section 42A Report, Council’s Transportation Assessment, page 124, paragraphs [10.7] – [10.9]

¹⁹ Section 42A Report, Council’s Transportation Assessment, page 121, paragraph [7.6]

Avenue at the intersection with Shelly Bay Road as part of an area wide upgrade. These may provide some positive alternative transport options for the site that would reduce the reliance on vehicle trips and parking demand.

114. The Panel noted that the traffic assessments had not included potential effects on the wider roading network. Mr Spence states in his report:

With regard to the wider impact on the city's transport network beyond the Miramar Avenue intersection, it should be acknowledged that there is an implicit assumption that the city will continue to grow and that this growth will impact on the transport network. This is addressed through a range of city, regional and national policies and programmes including the recently announced Let's Get Wellington Moving project which addresses the transport issues and solutions on the transport corridor between Ngauranga and Wellington International Airport.²⁰

115. From that advice, the Panel is therefore satisfied that the potential effects of traffic generated by the development on the wider network will be appropriately managed through changes to the wider transport network.

116. The upgrading of Shelly Bay Road will necessitate the removal of some existing vegetation and the loss of some existing informal parking on the seaward side of the road. The width of the pedestrian/cycleway lane will be undesirably narrow in some locations due to the constraints on available width between the toe of the hillside and the edge of the road platform adjacent to the beach/coastal edge. However, alternative options involving the construction of increased width at the confined areas could result in an overall worse outcome, due to potential adverse effects associated with excavation of the hillside or extension into the coastal area. Overall, we consider the proposed traffic solutions to service the development are acceptable, albeit at the lower end of the desirable level of service in some places along Shelly Bay Road.

117. **In that regard, the Panel acknowledges assurances given by the Applicant's** representatives that the roading improvements on Shelly Bay Road can be achieved without any works in the coastal marine area (i.e. no seawalls or retaining structures on the seaward side of the road, and no retaining or significant excavation on the landward side). We have also been assured that no consents will be required from the Greater Wellington Regional Council as a result of the Shelly Bay Road improvements, other than for stormwater discharges to be determined at the design stage.²¹.

118. Overall, the Panel concludes that the adverse transportation effects are no more than minor. Conditions of consent have been included to address timing of roading and infrastructure upgrades, minimum design issues, and expected outcomes. We also comment that in the longer term, if the popularity and vehicle use increase to an extent that safety and

²⁰ Ibid, page 122, paragraph [9.10]

²¹ Report from Envelope Engineering, and Memorandum from Applicant dated 31 July 2019, both in response to Minute 5

functionality are compromised then further improvements or speed restrictions (or both) could be implemented.

Erosion sediment control and stability effects

119. Earthworks are required for the construction of building platforms, access and formation of parks and public amenities. The scale of the earthworks are such that it is likely that the development will exceed District Plan standards.
120. While no volumes have been provided within the Application, the earthworks plans attached to the Application show the areas and depth of cut and fill. **The "flat" coastal fringe** land is shown to be filled up to 1m to achieve the design surface. At the meeting, the Applicant's **representatives** explained that there was a balance of cut to fill, which avoided the need to import or export material. As development progresses details of earthworks for each stage will accompany the development plans submitted to Council.
121. A geotechnical assessment has been undertaken by Aurecon Ltd and covers the following points:
 - Geological Investigation
 - Geological Model
 - Geohazard Assessment
 - Geotechnical Risk Register and Development Hazard Map
 - Design Recommendations
 - Additional Geotechnical Investigations.
122. The Panel considers it is really only the larger cut batters that create a potential adverse visual effect, as the raising of the land in the flat areas would be indistinguishable after completion of earthworks. The potential adverse effects of the cut batters are proposed to be mitigated through landscape planting and the construction of future buildings against and in front of many of the cut batters.
123. The main effects of the earthworks are the potential for adverse effects through erosion and sediment loss from the site, and localised geotechnical instability.
124. The WCC's **Earthworks Engineer, Mr Davies**, having reviewed the proposal, and the Aurecon report, said that while the sites have a relatively high risk of instability and liquefaction a set of design recommendations and geotechnical requirements are included in the Application and form part of the mitigation for any stability effects associated with the development. Mr Davies was satisfied that through compliance with the volunteered conditions, based on those recommendations, any instability effects can be controlled.
125. Conditions of consent as volunteered, require that an Earthworks Management Plan (EMP) or Construction Management Plan (CMP) be submitted to the Council for approval prior to the commencement of each

stage. Mr Davies considered this to be acceptable to mitigate sediment runoff and dust that potentially may arise as part of the development. Conditions 20 – 27 set out the requirements for the carrying out of earthworks.

126. Overall, the Panel considers that the adverse effects of earthworks associated with the proposal are no more than minor. The Panel also acknowledges that the earthworks are a necessary component for the construction of the development. While we are conscious that earthworks activity creates a potential for erosion, sediment runoff and instability of large cut batters, we consider that the conditions set out in the decision will provide appropriate control to minimise the risk, to an appropriate level, of these adverse effects occurring.

Infrastructure and servicing effects

127. Under the infrastructure requirements of HASHAA (i.e. pursuant to s34(2) and s34(3)) sufficient and appropriate infrastructure is required to support the qualifying development.
128. The Application is accompanied by a number of reports addressing servicing. These include:
- Shelly Bay Utilities - Review of Infrastructure Utilities, prepared by GHD Ltd
 - Shelly Bay Wellington - Servicing Feasibility, prepared by Calibre Ltd
 - Shelly Bay Wellington – Public Infrastructure Briefing, prepared by Calibre Ltd
 - Shelly Bay Infrastructure Assessment Report, prepared by Envelope Engineering Ltd.
129. Infrastructure issues have also been assessed by Wellington Water staff, as reported in the section 42A report. The various reports conclude that an appropriate water supply system can be constructed to service the development and the level of service would meet WCC standards and the NZ Fire Service requirements.
130. The reports describe the existing infrastructure at the site as old and inadequate and new infrastructure will be required. The reports, and the response given from Mr Aitchison (from Wellington Water) at the questions and answers meeting, all confirm it is expected that a new water main will need to be installed to service the site and a new reservoir may also be required. Mr Aitchison explained that Wellington Water was currently assessing various options to provide a wider zone upgrade, and that the final elements required for the Shelly Bay development could be influenced by the outcome of that assessment. He asked that flexibility be provided so that an optimum outcome for the wider water zone upgrade and the development site could be achieved.
131. The Panel is satisfied that a suitable water supply solution can be implemented to service the site to the required standards. Conditions 51-54 and 71-74 provide a sufficiently flexible, yet definable framework for the

design process to confirm the specific elements required to service the site that is compatible with other, zone wide, improvements that Wellington Water might implement.

132. As for the water supply, the existing wastewater reticulation at Shelly Bay is described in the various reports as being old, vulnerable to failure and of limited capacity. The local sewers drain to a wastewater pump station at the site which pumps the wastewater to the reticulation in Miramar Avenue. The development will construct new local wastewater drains within the development to a new wastewater pump station. The existing pumping main in Shelly Bay will be replaced with a new main to Miramar Avenue.
133. The Panel is satisfied that these elements of infrastructure could service the development to the required standards, but the timing of the new infrastructure is dependent on technical details that are currently unknown. Neither the applicant, nor Wellington Water, could confirm how much of the development might be able to be serviced by the existing wastewater pump station and pumping main as there are no 'as-built' plans available and the detailed assessment of pump life, wet well storage capacity, redundancy, emergency alarm monitoring and condition of the pumping main has not yet been reviewed or carried out. Notwithstanding this, all new infrastructure will be required to meet the WCC's **standards**, and so the conditions relating to wastewater have been structured to facilitate a pragmatic and efficient process for the timing of the various upgrades.
134. The proposed solutions for stormwater disposal are consistent with normal industry standards, and the Panel is satisfied that the relevant conditions will ensure the required outcomes are achieved.
135. The Applicant has confirmed that power, telecommunication and gas supply connections will be possible.
136. Overall, the Panel is satisfied that appropriate solutions for services can be implemented for the development. These solutions will meet the industry standards, and the conditions also provide sufficient flexibility for the applicant and Wellington Water to collectively refine the design for the specific pipework, pump stations and reservoirs that achieve a pragmatic, efficient and effective infrastructure solution.

Inundation and Sea Level Rise effects

137. A concern of the Panel was that the provision for protection from inundation from the sea was insufficient when considering possible future sea level rise. Whilst it is accepted that potential flooding on Shelly Bay Road may occur in extreme storm events associated with high tides, protection of dwellings and, to a lesser degree, commercial buildings is required by the Building Code.
138. In response to our Minute 5, the Applicant provided additional information on the assessment of likely maximum water level at the site and included

provision of 1m for potential future sea level rise, including an allowance for storm surge and for freeboard.

139. The design minimum floor level of Reduced Level (RL) 3.6m for the habitable buildings is above the minimum determined from the assessment, thus providing greater freeboard than the minimum required. The minimum floor level for the new commercial buildings is also above the minimum determined from the assessment.
140. The Panel is therefore satisfied that the minimum floor levels set out in condition 77 provide an appropriate means of protecting the properties from inundation, with a suitable allowance for possible future sea level rise.

Construction effects

141. As noted in the section 42A report, the reality of development on the scale proposed is that the localised effects of construction cannot be totally avoided. Accordingly, temporary effects from noise, dust and heavy vehicle movements will inevitably result from any such development on this site (given the size of development).
142. An Earthworks Construction Management Plan (ECMP) will be required prior to works commencing, and it will determine the management of earthworks, including erosion and sediment control of the areas affected by earthworks. The purpose of the ECMP is to set out the practices and procedures to be adopted to ensure compliance with consent conditions and to demonstrate how construction activities shall be managed to reduce discharges of sediment from the site onto adjoining roads and into adjoining waterways from areas affected by earthworks. The ECMP will also include work methods to ensure construction activities shall be managed so that noise and dust nuisance does not arise beyond the boundaries of site. The management plan is to be secured by conditions 18 & 19.
143. Mr Spence noted that while this is a significant proposal, the development may take a number of years to be completed and could require a number of construction management plans for the various elements of the development. Subject to these matters being secured via consent conditions, Mr Spence, and Mr Garnett, said they were satisfied that the adverse effects associated with construction on the transport network will be no more than minor.
144. Traffic management will be carried out in accordance with an approved Construction Traffic Management Plan (CTMP). The purpose of the CTMP is to set out how the effects of construction traffic on the surrounding environment are to be avoided, remedied or mitigated and the methods to be used to achieve this. The specific requirements of the Plan are defined by conditions 20 and 21.
145. **In relation to temporary construction noise, the Council's Environmental Noise Officer, Mr John Dennison, considered that a construction noise management plan approach is an appropriate method to manage**

construction noise. A Construction Noise Management Plan (CNMP) will be prepared prior to commencement of the construction. The CNMP will include specific details relating to methods for control of noise associated with construction works and will demonstrate how the CNMP controls adopt the best practicable option to reduce noise to a reasonable level. Conditions 35 & 36 set out the requirements of the CNMP.

146. Post construction noise is also considered acceptable by Mr Dennison subject to appropriate consent conditions. This is included as condition 79.
147. Overall, the Panel accepts the evidence of the WCC advisors and considers that subject to the proposed conditions of consent, the adverse effects arising during terms of construction will be no more than minor.

Land contamination effects

148. The site is identified on the Greater Wellington Selected Land Uses Register (SLUR) as having land that is contaminated (SN/05/059/02) given the past land uses that have occurred on the site. Accordingly, a Preliminary Site Investigation (PSI) undertaken by AECOM New Zealand Ltd was provided with the Application to establish the likely nature and extent of soil contamination.
149. The PSI identified that the site has been used for industrial and commercial activities since the 1940s mainly associated with the operation of the RNZAF base. The potential sources of contamination include the following:
 - a. Leaks and spills of hydrocarbon products to ground from the refuelling of vehicles and marine craft, and from the storage and the maintenance of transport vehicles.
 - b. Concentrations of metals and antifouling substances associated with the maintenance of marine craft and the operation of the slipway.
 - c. Localised impact from the wastewater treatment plant in South Bay, and metals in soil from the use of lead paint, coal ash and munitions residues.
 - d. Asbestos.
150. Notwithstanding the sources identified above, the AECOM report notes that the South Bay area mainly comprised residential facilities. As such, it concludes it is highly unlikely that there is a risk to human health from contaminants in the soil and groundwater within South Bay.
151. It is noted that the boiler house and septic tanks were located in North Bay, and that elevated arsenic levels were encountered within shallow fill at one location there. The AECOM report considers it highly unlikely there is a risk to human health under the proposed activity within North Bay. The report however does note that this does not cover the potential for asbestos in soils.
152. The section 42A report states that in reference to the Masterplan the majority of the site is proposed to be sealed or covered with buildings, and

so residents and workers will not likely come into contact with soil. The AECOM report does however note that in the limited areas where exposed soil will be present such as public green spaces or private gardens, then further investigation would be necessary.

153. In summary, the PSI submitted with the Application has identified a number of potential contaminants within the site however it has concluded that due to the level of hard surfaces, buildings and roads, it is unlikely a risk to human health will occur. Regardless, AECOM have recommended a suite of conditions such as requiring a Contaminated Soil Management Plan (CSMP) be approved prior to works commencing; any contaminated soil removed during the works to be disposed of at an approved facility; and that a validation report be submitted to the Council upon the completion of each stage of the proposed earthworks. Through imposing these conditions AECOM consider that any risk to human health can be mitigated. These matters are covered by conditions 31 – 34.
154. **The Panel accepts the AECOM evidence, and the section 42A report's** conclusion, that the adverse effects in terms of soil contamination will be no more than minor.

Positive effects

155. The section 42A report acknowledges there are positive effects outlined in the Application (in section 8.4.13 of the AEE), and these include:
- The construction of 352 new dwellings providing additional housing stock for Wellington.
 - The adaptive reuse of buildings with historical value.
 - The enhancement to public access to the coastal marine area.
 - A comprehensive redevelopment of the site whilst protecting the wider landscape features of Watts Peninsula.
156. The Panel accepts these as valid positive effects of the proposal.

Effects summary

157. The Panel concludes that with the exception of landscape and visual effects, and effects on the Open Space B Area, all of the other identified adverse effects on the environment of the proposal are no more than minor. We also accept that the proposal has positive effects.
158. The Panel also concludes that, despite the positive design elements and the process by which buildings will be assessed in terms of the proposed Design Guide, the visual and landscape effects will be more than minor particularly given the impact of proposed buildings in exceedance of District Plan height standards. We conclude also that the adverse effects of the proposed built development in the Open Space B Area are more than minor, particularly given the expectations for minimal built form in that area.

159. Therefore, the effects are finely balanced. Given that, the Panel prefers to take a conservative approach to the assessment of effects, in a similar manner to that of the reporting officer²², and has concluded that, overall, the adverse effects of the proposal are more than minor.

Relevant planning provisions – section 104(1)(b)

160. The Panel received evidence on, and has had regard to, relevant provisions of the following planning documents:

- National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health
- National Policy Statement on Urban Development Capacity
- New Zealand Coastal Policy Statement
- Wellington Regional Policy Statement
- Wellington City District Plan

161. The only relevant national environmental standard is the NES for Assessing and Managing Contaminants in Soil to Protect Human Health. This aspect has been addressed in the effects assessment (**refer to 'Land Contamination Effects'**). **The Panel is satisfied that the PSI that was undertaken has** appropriately identified potential sources of soil contamination, and that through appropriate conditions of consent any risk to human health can be adequately mitigated.

162. Section 4 of the National Policy Statement on Urban Development Capacity (NPSUDC) 2016 came into effect on 1 December 2016. It seeks to recognise the national significance of urban environments and the need to provide sufficient development capacity to meet the needs of people and communities and future generations in those urban environments. The NPSUDC directs decision making under the RMA to ensure that planning enables development through providing sufficient development capacity for housing and business.

163. The objectives most relevant to this proposal are:

- OA1 – Effective and efficient urban environments that enable people and communities and future generations to provide for their social, economic, cultural and environmental wellbeing.
- OA2 – Urban environments that have sufficient opportunities for the development of housing and business land to meet demand, and which provide choices that will meet the needs of people and communities and future generations for a range of dwelling types and locations, working environments and places to locate business.
- OA3 – Urban environments that, over time, develop and change in response to the changing needs of people and communities and future generations.

164. The section 42A report considers the proposal is consistent with, and aligns with, the above objectives, as well as with the policies relevant to Medium

²² Section 42A Report, section 8.4.2.16, page 47

Growth Areas, such as Wellington City²³. The Panel accepts and adopts that evidence under s72(3) of the HASHAA.

165. The section 42A report refers to the New Zealand Coastal Policy Statement 2010 (NZCPS) as relevant to the proposal, and it adopts the assessment undertaken by the Applicant. Ms McArthur has confirmed that the site is within the coastal environment and so the Panel accepts that the NZCPS is relevant²⁴.
166. Some key considerations in terms of the NZCPS are that the proposed development is confined to an area of the coastal environment that is already modified by built development; a CIA does not identify any cultural matters that would be an impediment to development; the wider character of the coastal environment is protected with development confined to below the existing coastal escarpments; vegetation removal is limited; and public accessibility of the coastal environment will be enhanced.
167. Whilst the Panel did not receive any direct evidence from the Applicant or the WCC experts on Policy 13 we note that, from our evaluation of natural character effects above, Shelly Bay is not in an area identified as having outstanding natural character. We consider further that the proposal will mitigate any adverse effects on other areas of the coastal environment that have outstanding natural character, and so is not in conflict with Policy 13.
168. Policy 15 requires us to protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use, and development including by avoiding adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment. From our evaluation of landscape effects above, we have accepted the evidence from the landscape experts that the proposal will have no more than minor adverse landscape effects on the site and surrounding area. Be that as it may, the directive in Policy 15 is that adverse effects on outstanding landscapes in the coastal environment are to be avoided which means there are to be no effects. As we have determined there are adverse effects it follows that the avoidance requirement in Policy 15 is not able to be achieved. We discuss the implications of this in our section on weighing below.
169. The section 42A report considers that Policy 23 is relevant as this promotes integrated catchment management and design options to reduce stormwater flows at source. The Panel accepts the proposal will achieve this by collecting stormwater from paved areas and treating it before discharge through a suitably sized network to new and upgraded outlets to Shelly Bay, noting that discharges may require regional consents.

Wellington Regional Policy Statement (WRPS)

170. The section 42A report considers the proposal accords with the general strategic direction of the WRPS, and it adopts the assessment undertaken

²³ Section 42A Report, section 8.4.3.1, page 48

²⁴ Section 42A Report, Appendix B, paragraph 4.4, page 75

by the Applicant. The Panel has considered the **Applicant's assessment of the WRPS²⁵** which is very thorough, and adopts it under s72(3) of the HASHAA.

171. In summary, the Panel considers that the proposal accords with key objectives and policies relating to promoting higher density and mixed-use development; managing effects on natural character in the coastal environment; managing effects on historic heritage values; achieving the **region's urban design principles; and public access to and along the coastal marine area.**

District Plan

172. The **section 42A report adopted the Applicant's assessment of the objectives and policies of the District Plan**, with the exception of the relevant provisions pertaining to the Open Space. In Minute 5, the Panel requested a Supplementary Report from the reporting officer to provide a more thorough assessment of the relevant objectives and policies, and the relevant assessment criteria, of the District Plan.

173. Having considered the Supplementary Report, and the responses received at the questions and answers meeting, the Panel is satisfied that this information provides a thorough and appropriate identification and discussion of all relevant objectives, policies and assessment criteria in the District Plan. Accordingly, that evidence is adopted by the Panel under s72(3) of the HASHAA.

174. In summary, the Panel considers the proposal accords with key objectives and policies relating to the following:
- enabling an appropriate range of activities to occur, and to redevelop, in the Business Areas which enhances amenity areas (Objectives 33.2.1, 33.2.2, 33.2.3, and 33.2.4);
 - maintaining an efficient and sustainable transport network (Objective 33.2.6);
 - ensuring adverse effects of new subdivisions are avoided, remedied or mitigated (Objective 33.2.8);
 - maintaining and enhancing access to the coastal environment adjoining Business Areas (Objective 33.2.10);
 - mitigating the effects of natural hazards (Objective 33.2.11);
 - facilitating *tino rangatiratanga* and *kaitiakitanga* by **Wellington's tangata whenua** and other Maori (Objective 33.2.13);
 - mitigating adverse effects of earthworks and associated structures (Objective 29.2.1); and
 - managing the development and subdivision of contaminated land (Objective 31.2.1).

175. The key point of difference between the Supplementary Report and the District Plan assessment in the Application concerns the relevant objectives and policies relating to:

²⁵ AEE, section 10.6.2, pages 57 - 58

- Maintaining, protecting and enhancing open spaces (Objective 16.5.1); and
- Maintaining and enhancing natural features (Objective 16.5.2).

176. The Supplementary Report notes that the Introduction, which precedes Objective 16.5.1, states that: "**Open Space B land is characterised by minimal structures, largely undeveloped areas, and open expanses of land**"²⁶. The report states that Objective 16.5.1 and Policy 16.5.1.1, when read in the context of the desired outcome for Open Space B land, envisage such land being kept in a largely unbuilt or natural state. The Open Space B Area is to have minimal structures and only buildings for recreational purposes less than 4 metres high are permitted (compared to 27 metres as proposed). Open Space B can be contrasted with Open Space A where the provision of large recreational structures is envisaged.

177. The Panel concurs with this advice. It also agrees with the point made regarding several positive open space effects of this development, including the improved quality and quantity of open space provided through the Masterplan, and that **the "usability" of, and access to, the open space is improved or at least maintained, for the reasons given by the applicant's** urban designer, Ian McIndoe. However, the Panel concurs there is a clear direction in Objective 16.5.1, as noted above, and overall it concludes the proposal is not consistent with this objective, and is contrary to it.

178. In relation to Objective 16.5.2, the Panel notes that **the applicant's** landscape expert (Ms Thompson) concluded that the natural coastal escarpment will retain the visually dominant landscape feature protecting the wider Open Space values. Her opinion was that the residential dwellings will not result in a significant visual obstruction to these wider landscape values. Whilst Mr Garnett has drawn attention to some adverse landscape effects (i.e. from construction of the larger buildings and some of the earthworks for the elevated stand-alone houses), we accept the evidence of Ms McArthur that overall there will be low adverse landscape effects on the site and surrounding area, and low adverse effects on natural character.

179. In conclusion therefore, the Panel considers the proposal is consistent with all relevant objectives and policies of the District Plan, with the exception of Objective 16.5.1, which we consider it is contrary to.

Other matters - section 104(1)(c) RMA and section 34(1)(d)(ii) HASHAA

Ngati Toa Rangatira Claims Settlement Act 2004

180. The section 42A report advises that, in accordance with Ngati Toa Rangatira Claims Settlement Act 2004, Ngati Toa were informed via email that an Application had been received on 29 September 2016 and a copy of the Application was sent to them. No comments were received.

²⁶ Supplementary Report, page 17

Port Nicolson Block (Taranaki Whānui Ki Te Upoko O Te Ika) Claims Settlement Act 2009

181. A Cultural Impact Assessment (CIA) was prepared on behalf of Taranaki Whānui Ki Te Upoko o Te Ika and The Port Nicholson Block Settlement Trust. In addition, the CIA states that this Application is supported by the Trust.

Code of Practice for Land Development

182. The Panel was advised that the 2012 Code of Practice for Land Development contains the current technical standards required by WCC for the design and construction of earthworks, roading, water supply, wastewater, stormwater, and public open spaces. The Panel agrees with Mr Garnett that whether the infrastructure will be vested with the Council or be a private asset, it is important that these assets are constructed to WCC's **current** standards.
183. With particular regard to water supply and wastewater, these standards must be met before WCC **will allow a property to be connected to the City's** water supply and wastewater system. However, we were informed that some flexibility is provided where the outcome will be a better quality living environment, and proposed alternative solutions for infrastructure design, other than for water supply and wastewater, can be negotiated with WCC to ensure that the basic requirements are met.
184. The relevant WCC and Wellington Water advisors were consulted on conditions proposed to ensure the proposal achieves the required Code of Practice standards, or will provide an acceptable alternative.

Section 241 of the RMA

185. The Applicant proposes to cancel in part the condition which requires the amalgamation of proposed lots 2, 3, 4, 5 and 900 in one Computer Freehold Register; Section 5 SO 339948 and proposed Lot 904 in one Computer Freehold Register; and, Proposed lots 9, 10, 11 and 903 held in one Computer Freehold Register, on a staged basis as it relates to each lot. The purpose of the amalgamations is to allow the subdivision to proceed in a staged manner as cross boundary building issues are resolved.
186. As the cancellation of the amalgamation condition will result in the proposed subdivided allotments under Decision One being realised the proposed cancellation of the amalgamation condition is considered acceptable.

Section 34(1)(e) – NZ Urban Design Protocol

187. The *New Zealand Urban Design Protocol (2005)* (Urban Design Protocol) identifies seven essential design qualities that together create quality urban design, being:
- Context – Seeing buildings, places, and spaces as part of whole towns and cities

- Character – Reflecting and enhancing the distinctive character, heritage and identity of our urban environment
- Choice – Ensuring diversity and choice for people
- Connections – Enhancing how different networks link together for people
- Creativity – Encouraging innovative and imaginative solutions
- Custodianship – Ensuring design is environmentally sustainable, safe and healthy
- Collaboration – Communications and sharing knowledge across sectors, professions and with communities.

188. Shelly Bay, as the Proposed Shelly Bay Design Guide notes, has a unique **character “including its separation and containment, its harbour edge location and engagement with nature, and the history of its occupation”**. Section 1.5 of this Design Guide notes several general principles that will ensure that a quality urban design is achieved and the Protocol met. These include:

- Establish a welcoming public waterfront
- Create a memorable public destination
- Deliver a liveable urban neighbourhood
- Provide residential amenity and choice
- Create a sense of public generosity
- Promote sustainable innovation for the future
- Achieve certainty of high quality.

189. The urban design matters are assessed above and it was concluded that the proposal is consistent with the relevant guidance. The Panel considers that the proposed layout of the development provides a variety of future housing choices and densities with pedestrian connections facilitating linkages to the wider road network. The design of the development strikes a balance between delivering high quality residential amenity while reflecting the context and general character of the wider landform.

190. Accordingly, the Panel considers the proposal is consistent with the seven essential design qualities of the Urban Design Protocol and therefore satisfies s34(1)(e) of the HASHAA.

Weighing Exercise

191. As noted above, and confirmed by the Court of Appeal, section 34(1) of HASHAA requires an evaluation of the proposal by having regard to the five matters identified and assessed above, giving weight to them (greater to lesser) in the order listed. This means that section 34(1)(a) (the purpose of HASHAA) has greater weight than the remaining matters in sections 34(1)(b) – (e).

192. This Decision Report records our assessment of the matters in sections 104 – 104F in making our findings above. As set out above, when assessed under section 34(1)(d) the proposal has more than minor visual effects, including those effects on the Open Space B zoned land. In addition, the proposal is contrary to one of the objectives in the District Plan. The

proposal will also not avoid effects on the outstanding landscape that the site sits within, and is therefore contrary to Policy 15 of the NZCPS.

193. Section 34(1)(d) is only fourth in the hierarchy of matters set out in the HASHAA. However, as noted by the Court of Appeal sections 104 – 104F of the RMA are still mandatory considerations which cannot be neutralised by reference to the purpose of HASHAA. We have adopted the approach that the Court of Appeal has mandated. We consider that while this development might not have been able to proceed under those provisions it can and should still be consented under s34 of HASHAA.²⁷
194. The Panel has reviewed the section 42A report which undertook a thorough and proper analysis, and weighing, of the relevant matters. We generally agree with that assessment and the weighing that was carried out. The overriding factor is that the purpose of HASHAA is given the most weight in the list of relevant matters under section 34(1).
195. In carrying out an overall weighing of these matters, the Panel finds it agrees with Mr Garnett that *"...the benefit of providing a considerable supply of new housing to the market for private occupation or rent outweighs the impact of the proposal in relation to landscape and visual effects."*²⁸ The proposal will deliver 352 new dwellings. This clearly meets the purpose of HASHAA in that it will enhance housing affordability by facilitating an increase in land and housing supply in a district that has been identified as having housing supply and affordability issues.
196. As well as providing a significant total number of dwellings, the proposal will also provide choice for the consumer with varied types and sizes of dwellings, including multi-level apartments, townhouses and individual dwellings. Whilst the primary purpose is for a residential development, the proposal is for a comprehensive development, and will also contain ancillary commercial, community and recreational facilities, consistent with the qualifying criteria for a HASHAA development. The Urban Design Assessment of Mr McIndoe, and the evidence from Mr McMan, has shown that this development will overall provide a high standard of residential amenity, and a high quality urban design outcome for residents of, and visitors to, Shelly Bay.
197. So, whilst we have concluded that the proposal may not meet either of the **'gateway tests' in section 104D, the Panel considers that** when the relevant matters are weighed in the order set out in section 34(1) of HAASHA, the Application should be approved.

Section 34(2) – Provision of sufficient and appropriate infrastructure

198. Resource consent for the proposal cannot be granted under HASHAA unless the Panel is satisfied that sufficient and appropriate infrastructure will be provided to support the qualifying development.

²⁷ *Enterprise Miramar Peninsula Incorporated v Wellington City Council*, above n4, at paragraph [54]

²⁸ Section 42A Report, page 55

199. In assessing this matter, the Panel is required to consider:

- (a) compatibility of infrastructure proposed as part of the qualifying development with existing infrastructure; and*
- (b) compliance of the proposed infrastructure with relevant standards for infrastructure published by relevant local authorities and infrastructure companies; and*
- (c) the capacity for the infrastructure proposed as part of the qualifying development and any existing infrastructure to support that development.*

200. As previously discussed in this report, Wellington Water, being the service provider for wastewater, storm water and water supply, has assessed the proposal and concluded that the proposed development can be supported and that sufficient capacity and capability can be provided to support the development. The Panel accepts **Wellington Water's** assessment and conclusion.

201. The Applicant has also confirmed that power, telecommunication and gas supply will be possible.

202. **The Council's** Chief Transport Advisor has assessed the proposal and considered that through the proposed changes to the road network, the impact on roading infrastructure will be minor. The Panel accepts Mr **Spence's** assessment and conclusion.

203. Section 34(2) is therefore deemed to have been satisfied.

Section 35 – sections 105 – 107 RMA

204. Sections 105 and 107 of the RMA relate to discharge permits and coastal permits in respect of which Greater Wellington Regional Council (GWRC) is the relevant consent authority/authorised agency. It is noted that GWRC is also an Authorised Agency with jurisdiction under Section 23(4) of the HASHAA. The applicant will need to obtain all necessary resource consents for the proposal from GWRC.

205. Section 106 of the RMA provides that the Council may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it considers that:

- (a) the land in respect of which a consent is sought, or any structure on the land, is or is likely to be subject to material damage by erosion, falling debris, subsidence, slippage, or inundation from any source; or*
- (b) any subsequent use that is likely to be made of the land is likely to accelerate, worsen, or result in material damage to the land, other land, or structure by erosion, falling debris, subsidence, slippage, or inundation from any source; or*

(c) *sufficient provision has not been made for legal and physical access to each allotment to be created by the subdivision.*

206. The Panel has considered the evidence in the section 42A report, and as informed by the technical report of Mr John Davies (WCC Earthworks Engineer). We accept that the land, and structures on the land, will not be subject to material damage by erosion, falling debris, subsidence, slippage or inundation from any source. The Panel also accepts that any subsequent use that is likely to be made of the land is not likely to accelerate, worsen, or result in material damage to the land, other land, or structure by erosion, falling debris, subsidence, slippage, or inundation from any source, and sufficient provision has been made for legal and physical access.

Sections 37 and 38 – Conditions of consent

207. Sections 37 and 38 of the HASHAA provide for resource consent conditions to be imposed in accordance with sections 108 to 111 and 220 of the RMA. Following the meeting with the parties, the Panel requested that the two expert planners (Mr Garnett for WCC, and Mr Will Dorset for the Applicant) confer to develop an agreed set of conditions for the consents we were considering. The Panel considers the conditions that were developed by the planners are appropriate, and they have been included as consent conditions.

Sections 50 and 51 – Duration and lapsing

208. The nature and duration of resource consents are provided for under section 50 of the HASHAA, which references sections 122 and 123 of the RMA.

209. Section 51 of the HASHAA relates to the lapsing of resource consents issued under the HASHAA. Significantly, section 51(a)(iii) of HASHAA amends section 125(1)(a) of the RMA in that the lapse period of the resource consent is reduced from 5 years to 1 year unless an extended lapse period is sought.

210. The Applicant has requested that the resource consents be granted with a 13 year lapse period due to the number of dwellings that will be delivered by this proposal. This is considered acceptable for the reasons set out below.

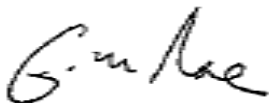
- Consent is sought for a Masterplan and the necessary detailed design is yet to be done.
- A road stopping process will take time to action.
- The scale of the development will require significant infrastructure to be constructed.
- The time to construct 300 residential units in addition to the ancillary non-residential components.

211. The Panel **questioned the Applicant's representatives about this at the** questions and answers meeting, and accepts their reasoning for a longer

lapse period, in particular it is accepted this is a large scale and multi-faceted development which will take quite some time to implement.

OVERALL DECISION AND REASONS

212. In conclusion, to reiterate what is set out in paragraph 197 above, while the Panel **concluded that the proposal may not meet either of the 'gateway tests' in section 104D, the Panel considers that when** carrying out the weighing exercise required under section 34(1) of HAASHA, the proposal should be granted consent.
213. The Panel is satisfied that sufficient and appropriate infrastructure will be provided to support the proposal.
214. Acting under delegated authority, and for the reasons set out in the assessment above, the Applications for resource consent are granted under section 36 of the HASHAA, subject to conditions imposed under sections 37 and 38 of the HASHAA.
215. The reasons for the decision are informed by the analysis above. The principal reasons for the decision are summarised as follows:
1. The proposal is for a qualifying development in a Special Housing Area that meets the purposes of the HASHAA.
 2. The proposal is acceptable with respect to the matters under sections 34 to 36 of the HASHAA.



Gary Rae
Independent Hearings Commissioner -
Chair



Ray O'Callaghan
Independent Hearings Commissioner



Helen Atkins
Independent Hearings Commissioner

DECISION ONE – Subdivision Consent:

That independent commissioners, acting under delegated authority, under sections 36 to 38 of the Housing Accords and Special Housing Areas Act 2013 (HASHAA), grant resource consent to the proposal for an 11 lot subdivision of land, with road to vest, at 232, 264, 270, 276, 277, 294, 296, 307 and 311 Shelly Bay Road, Maupuia (Sec 8-9 SO 339948, Sec 1 SO 37849, Sec 3 SO 339948, Sec 4-6, 10 SO 339948). Consent is granted with a lapse period of 1 year from the date of this decision, or within such an extended period of time pursuant to section 125 of the RMA, and is subject to the following conditions:

Conditions of Consent:

Survey Plan:

1. That the survey plan must conform to the subdivision consent proposal shown on the scheme plans by Harrison Grierson Consultants Limited:
 - a. **"Scheme Plan of Proposed Subdivision - Stage 1 Overall Layout & Stage Boundaries"**
 - b. **"Scheme Plan of Proposed Subdivision Stage 1A to 1C – Sheet 1"**
 - c. **"Scheme Plan of Proposed Subdivision Stage 1A to 1C – Sheet 2"**

All dated 10 June 2019 and submitted with Service Request No. 368659.

Note: This condition addresses an essential administrative matter.

2. Prior to certification under Section 223 the Consent Holder shall ensure that proposed Lots 900 and 901 are shown as Road to Vest on the survey plan/s approved under Condition [1] above.

Staging subdivision:

3. Individual certifications pursuant to sections 223 and 224(c) of the Resource Management Act 1991 can be issued for this proposal in stages that differ from those specified on the plan entitled "Scheme Plan of Proposed Subdivision - Stage 1 Overall Layout & Stage Boundaries" provided that the following criteria are met:
 - a. each individual allotment must be consistent with the proposal as approved and must have frontage, or legal access, to a legal road;
 - b. each allotment shown on any survey plan, including any balance allotment must be adequately serviced as required by and in terms of the relevant conditions set out in this notice of decision;
 - c. all engineering conditions and any development contribution payable pertaining to the allotments shown on the survey plan must be satisfied/paid prior to the execution of a certificate pursuant to section 224(c) of the Act.

Service Connection to Lots:

4. The Consent Holder shall provide certification from a suitably qualified chartered engineer or registered professional surveyor with experience in civil engineering/ land development that all allotments are serviced with telecommunication, power, water, stormwater and wastewater connections.

Note: For the avoidance of doubt, the certification must confirm that services are adequate for the current occupation of each allotment.

Future Buildings:

5. Future development of the allotment will require full utility servicing which meets the requirements of the WCC Code of Practice for Land Development or as otherwise specified in Conditions [55 – 74] of the Land Use Consent granted under Application no. SR.368659.

Note: Upon the issue of the certificate pursuant to section 224 or at such earlier time as may be required, a Consent Notice pursuant to section 221 will be issued. The Consent Notice will specify Condition [5] above and is to be registered against the Record of Title to issue in respect of Lots 1-11, 902, 904 and 905 of the subdivision.

Minimum floor levels:

6. Any new buildings constructed on an allotment must have the following minimum floor levels:
 - a. Minimum floor level of RL 2.64m (New Zealand Vertical Datum 2016) or RL 3.05m (WCC New City Datum) for any new non-habitable building;
 - b. Minimum floor level of RL 3.19m (New Zealand Vertical Datum 2016) or RL 3.60m (WCC New City Datum) for any new habitable building.

Note 1: condition [6] above does not include existing buildings that are to be retained in their original location or existing buildings to be relocated.

Note 2: Upon the issue of the certificate pursuant to section 224 or at such earlier time as may be required, a Consent Notice pursuant to section 221 will be issued. The Consent Notice will specify Condition [6] above and is to be registered against the Record of Title to issue in respect of Lots 1-11 of the subdivision.

Easements:

7. Any utility services serving an allotment within the subdivision, where contained within another allotment of this subdivision, must have appropriate easements duly granted or reserved.

Note 1: The easements, as necessary and subject to other conditions of this consent, are to ensure that the lots can be serviced for water supply,

drainage, domestic energy supply, and telecommunications (including broadband).

Note 2: This may be covered by a blanket easement over the entire site area of each lot, as preferred by the Consent Holder, without having to specifically locate the services.

Note 3: Provision for future public riser main sewer services as Easements in Gross may be covered by easements within Lots 4 and 5 or Lots 9 and 10 of the subdivision.

8. Rights of Way easement areas A-G as shown in the Memorandum of Easements on the subdivision plans approved under Condition [1] above are to be duly granted or reserved. Easement A shall be shown as an Easement in Gross in favour of Wellington City Council.
9. A temporary easement must be created over the existing road that extends through proposed Lots 901, 902 and 904 to ensure public access is retained.

Note 1: This condition will ensure that public access is retained.

Note 2: Upon the construction of road (900 and 901) required by land use condition [42], the temporary easement can be extinguished.

Amalgamation Condition:

10. The following amalgamation conditions are to be endorsed on the Digital Title Plan:

Stage 1A

Proposed lots 2, 3, 4, 5 and 900 must be held in one Record of Title. Refer to LINZ reference no. 1592249.

Stage 1C

Proposed lots 9, 10, 11 and 903 must be held in one Record of Title. Refer to LINZ reference no. 1592249.

DECISION TWO – Land Use Consent:

That independent commissioners, acting under delegated authority, under sections 36 to 37 of the Housing Accords and Special Housing Areas Act 2013 (HASHAA) AND pursuant to section 104B of the Resource Management Act 1991 (the Act), grant resource consent to the proposal for a site redevelopment including multi-unit residential housing, mixed use and non-residential buildings and activities, and with associated earthworks on a contaminated or potentially contaminated site, at 232, 264, 270, 276, 277, 294, 296, 307 and 311 Shelly Bay Road, Maupuia (Pt Sec 20 Watts Peninsula District, Sec 8-9 SO 339948, Sec 1 SO 37849, Sec 3 SO 339948, Sec 4-6, 10 SO 339948, Sec 2 SO 339948 and Pt Lot 3 DP 3020). Consent is granted with a lapse period of 13 years from the date of this decision, or within such an extended period of time pursuant to section 125 of the RMA, and is subject to the following conditions:

Conditions of Consent:

General:

1. Except where amended by the conditions of this consent, the development shall be in general accordance with the Assessment of Environmental Effects and plans submitted with the Application, any additional information and Approved Plans for Resource Consent Service Request No. 368659, as referenced as follows: 232, 264, 270 and 276 Shelly Bay Road, Maupuia, Continuation of Qualifying Development Application, prepared by William Dorset and supporting Appendices:
 - (i) Appendix Two – Shelly Bay Masterplan, March 2019, Revision 10, prepared by Architecture+, McIndoe Urban, and Wraight + Associates.
 - (ii) Appendix Three – Shelly Bay Design Guide, March 2019, Revision 23, prepared by Architecture+, McIndoe Urban, and Wraight + Associates.
 - (iii) Appendix Four – **Preliminary Site Investigation titled 'Former Shelly Bay RNZAF Base, Shelly Bay Road, Wellington', 15 February 2016**, Prepared by AECOM.
 - (iv) Appendix Five – Transportation Assessment Report, 18 April 2019, prepared by Stantec.
 - (v) Appendix Seven – Noise and Ventilation Mitigation Plan.
 - (vi) Appendix Eight – Engineering Drawings, 14 September 2016, 1098-01-R1, prepared by Envelope Engineering.
 - (vii) Appendix Nine – Scheme Plan, 142175-01-RC02-R2, 10 June 2019; 142175-01- RC03-R1, 15 August 2017; and 142175-01-RC04-R1, 15 August 2017, prepared by Harrison Grierson.
 - (viii) Appendix Ten – Shelly Bay Infrastructure Assessment Report, 8 May 2019, prepared by Envelope Engineering.
 - (ix) Appendix Twelve – Heritage Assessment and Assessment of Environmental Effects, May 2019, prepared by Archifact.
 - (x) Appendix Thirteen – Cultural Impact Assessment, September 2016, Prepared by Kura Moeahu, Peter Addis, and Lee Rauhina-**August on behalf of Taranaki Whānui Ki Te Upoko o Te Ika and The Port Nicholson Block Settlement Trust.**

- (xi) Appendix Fourteen – Shelly Bay Landscape & Visual Assessment, 30 April 2019, Prepared by Wraight + Associates.
- (xii) Appendix Fifteen – Shelly Bay Masterplan Urban Design Assessment Relative to the WCC Shelly Bay Design Guide, 8 March 2019, prepared by McIndoe Urban.
- (xiii) Appendix Sixteen – Shelly Bay Masterplan Urban Design Assessment Relative to the New Zealand Urban Design Protocol, 8 March 2019, prepared by McIndoe Urban.
- (xiv) Appendix Seventeen – Shelly Bay Development Preliminary Geotechnical Assessment Report, 19 January 2016, Prepared by AECOM.

Construction Timeframe:

2. That the development of the site must meet the following construction timeframe:
 - a) Construction of 50 residential units must be completed within 4 years of date of issue of this consent.
 - b) Construction of 150 residential units must be completed within 6 years of date of issue of this consent.
 - c) Construction of 200 residential units must be completed within 8 years of date of issue of this consent.
 - d) Construction of 250 residential units must be completed within 9 years of date of issue of this consent.
 - e) Construction of 300 residential units must be completed within 11 years of date of issue of this consent.
 - f) Construction of the remaining units must be completed within 13 years of date of issue of this consent.

Urban Design:

3. Prior to the commencement of construction of any buildings, structures, open spaces, car parking and/or the relocation and alterations to existing buildings, the consent holder shall establish a Shelly Bay Design Panel. The function of this panel shall be to ensure that the proposal meets the intent of the Shelly Bay Design Guide (version 3, dated 08.03.2019). The Shelly Bay Design Panel is a panel made up of three suitably qualified experts in the field of architecture and/or urban design/ landscape design. The consent holder shall invite Council's Team Leader Design Review to nominate one panel member and to jointly appoint a second panel member with the Consent Holder. The third panel member shall be nominated by the consent holder.
4. At least 10 working days prior to the first panel meeting, the consent holder shall provide Council's CMO, the name, contact details and accreditations / qualifications of the Shelly Bay Design Panel Members.
5. Prior to submitting detailed design plans for the development to Council for certification as required under Condition [6] below, at least ten working days prior to a Shelly Bay Design Panel meeting, the consent holder must submit design drawings to the Shelly Bay Design Panel for recommendation. The design plans and supporting information must illustrate how the design

is generally consistent with the masterplan, and include the following details:

- a) Connections
- b) Built Form
- c) Streets
- d) Public Realm and
- e) Planting and Retaining Strategy

Note 1: The detailed design of new buildings, structures, open spaces, car parking and/or the relocation and alterations to existing buildings required under Condition [5] above can occur in stages.

Note 2: All costs associated with the assessment by the Design Panel shall be borne by the consent holder.

6. Prior to the commencement of construction of any buildings, structures, open spaces, car parking and/or the relocation and alterations to existing buildings, the consent holder shall submit detailed design drawings of all proposed buildings, structures, open spaces, car parking and/or building **alteration works to the Council's Compliance Officer (CMO) for certification.** The plans must be accompanied with details regarding how the recommendations of the Shelly Bay Design Panel have been incorporated into the detailed design.

Note: The certification of the detailed design of new buildings, structures, open spaces, car parking and/or the relocation and alterations to existing buildings required under Condition [8] above can occur in stages.

7. All construction works and activities must be carried out in accordance with the certified detailed design drawings. Any proposed amendments to the detailed design drawings must be submitted to the CMO for certification and may not be implemented until certified by the CMO. The CMO will liaise with the Design Panel for their recommendation prior to implementation.

Note: It is acknowledged that other Council approvals for the works included in the detailed design drawings may require additional Council CMO certification under separate conditions of this land use consent.

8. Except where amended to ensure compliance with the consent conditions below and any applicable building standards and any applicable standards referenced in the below conditions or by any other regulatory or delegated authority, the detailed design must be implemented in accordance with the plans certified under Condition [6] above.

Note: Any proposed amendments to the detailed design drawings that do not directly relate to conditions of this consent that have been separately certified, such as changes to meet applicable building standards, should be submitted to the CMO who will decide after liaison with the Design Panel

whether further certification is necessary as required by Condition [7] above.

9. In addition to the requirements set out in conditions [3 to 8] above, prior to the commencement of construction of any proposed public open spaces, the consent holder shall provide detailed design drawings of the public toilets (male/ female/ accessible) to be constructed to service the **development to Council's CMO for certification in conjunction with Council's Urban Design advisors. The design** plans shall illustrate that the toilets are located generally in the vicinity of the proposed location identified on Shelly Bay Masterplan dated 8 March 2019 (Shelly Bay Master Plan Revision 10), 4.4 Site – Bulk and Form Shelly Bay Wharf Building 6, pg. 45 and Shelly Bay Wharf Building 10, pg. 49.

Note: The hours of operation are to match public facilities in similar locations (e.g. Oriental Bay and Scorching Bay).

10. The public toilets must be constructed in accordance with the certified detailed design drawings and be in operation prior to completion of the full development.

Note: It is anticipated that the Consent Holder will provide toilet facilities for public use at the commencement of the development. These facilities may be temporary or relocatable as the development progresses.

Earthworks:

General:

11. **The consent holder shall advise Council's CMO at least ten working days** before any work starts on site. This advice of commencement shall include the name, phone number and address of the main contractor and, if applicable, the same details for the earthworks company.
12. All construction noise shall comply with NZS6803:1999 Acoustics – Construction Noise.
13. Earthworks and construction, including the transport of excavated material from (or to) the site, must only occur within the following hours:
 - a) Monday to Saturday 7:30 am to 6 pm.
 - b) Monday to Friday quiet setting up of site (not including running of plant or machinery) may start at 6.30 am.
 - 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". The Standard applies in all other respects, including the permitted noise levels in Table 2 and all persons undertaking

earthworks and management of the site must adopt the best practical option to control noise to a reasonable level.

Geotechnical Assessment:

14. At least 10 days prior to the commencement of any earthworks on the site, **the consent holder shall provide evidence to Council's CMO** that a Geotechnical Professional has been appointed to carry out the design, monitoring and certification of the earthworks. The consent holder is to follow the recommendations of the report prepared by AECOM Ltd dated the 19 January, 2016 or as varied by the Consent Holders Geotechnical Professional (Reference 60480847).
15. The name and the contact details of the Geotechnical Professional must be **provided to the Council's Compliance Monitoring Officer, at the time the person is appointed.**

Note 1: A 'Geotechnical Professional' is defined as a Chartered Professional Engineer (CPEng) with specialist geotechnical skills and experience in the design and construction of excavation and retaining works in similar to those proposed and in similar ground conditions.

Note 2: The evidence required under Condition 14 above can be provided for the entire site or on a per lot or stage basis.

Construction Supervisor:

16. The consent holder shall engage a suitably experienced Construction Supervisor during the detailed construction phase of the project.

Note 1: A 'Construction Supervisor' is defined as a person with skills and experience in the construction of excavation and retaining works on steep slopes similar to those proposed and in similar ground conditions.

Note 2: There may be more than one 'Construction Supervisor' engaged on the development by stage.

17. The name and the contact details of the Construction Supervisor/s must be **provided to the Council's Compliance Monitoring Officer, at the time the person/s is appointed or ten (10) working days prior to the commencement of site works, whichever is the first.**

Earthworks and Construction Management Plan:

18. At least 10 working days prior to the commencement of earthworks for each stage of development, the Consent Holder shall submit an Earthworks **Construction Management Plan (ECMP) to the Council's CMO for review and certification.** The ECMP must be prepared by a suitably qualified and experienced practitioner relating to the proposed earthworks activity and must be prepared in conjunction with the Geotechnical Professional appointed under Condition [14] above. The purpose of the ECMP is to set out the practices and procedures to be adopted to ensure compliance with

consent conditions and to demonstrate how the following particular objectives will be met:

- i) Construction activities shall be managed to reduce discharges of sediment from the site into adjoining waterways from areas of exposed soil, excavated soil or stockpiled soil or from soil that is deposited on the site as part the construction;
- ii) Construction activities shall be managed so that noise dust nuisance does not arise beyond the boundaries of site; and
- iii) The consent holder shall ensure that sediment/debris is not carried onto Shelly Bay Road by construction vehicle movement.

The ECMP shall include specific information relating to the construction and management of all works relating to the development, including:

- a. Purpose and scope of the plan
- b. Relationship with other management plans
- c. Assign roles and responsibilities, including the appointment of a representative to be the primary contact person in regard to earthworks management
- d. A contact (mobile) telephone number(s) for the on-site manager, where contact can be made 24 hours a day / 7 days a week.
- e. A communication and complaints procedure for adjoining property owners/occupiers, or the general public.
- f. Details for appropriate local signage/information of the proposed work including the location of a large sign (greater than 1m² noticeboard on the site at each main entrance that identifies the name, telephone number and address for service of the site manager, including cell-phone and after-hours contact details
- g. Construction hours;
- h. Measures to ensure earthworks and construction will be managed to avoid and mitigate effects from dust, noise and vibration;
- i. Final Erosion and Sediment Control Plans to ensure sediment is prevented from discharging to the road and from entering any stream of waterway or sea. Erosion and sediment controls shall be **undertaken in accordance with Greater Wellington Regional Council's** erosion and sediment guidelines.
- j. The methods for managing and monitoring the ECMP controls.
- k. Measures for ensuring that sediment/debris are not carried by construction vehicles onto Shelly Bay Road and in any events where there is such an occurrence, details on the measures to clean and repair the Road;
- l. A finalised earthworks methodology including provisions for the reinstatement of the site at the completion of the construction works;
- m. Measures to be adopted to maintain the site in a tidy condition, including as to the disposal/storage of rubbish and unloading and storage of building materials.
- n. **The location of workers' convenience (e.g., portaloos).**
- o. Measures to ensure excavation and retaining structures are constructed incrementally to maintain stability of all the slopes.

- p. Other measures to ensure excavations and retaining structures remain stable, including measures to limit the exposure of unretained earthworks at any one time. Measures to be confirmed by a Geotechnical Professional.
- q. Measures to deal with any collateral damage to vehicles and property
- r. Any related occupation of the public footpath or carriageway for construction related purposes
- s. Details of the staging of work
- t. Any restrictions to public access to the site that may be required during the construction period, including the location and duration of any restrictions, and how the restrictions will be advised or advertised;
- u. Confirmation that the CMP has been peer reviewed by the Geotechnical Professional, to ensure that the methodology is in accordance with both the geotechnical assessment undertaken by AECOM Ltd dated 19 January, 2016 (Reference 60480847) and any additional geotechnical investigation undertaken as part of this condition;
- v. Measures for ensuring the security of any fuel storage and the provision of emergency spill kits at all times during construction;
- w. A complaints procedure that specifies actions to be taken following receipt of a complaint, including records to be kept and responses to any complaints including remedial action taken;
- x. A complaints procedure that specifies actions to be taken following the receipt of a complaint, including records to be kept and responses to any complaints including the remedial action taken;
- y. A monitoring regime for evaluating compliance with the objectives of the Earthworks and Construction Management Plan; and
- z. Procedures for the review and updating of the Earthworks and Construction Management Plan to address any issues.

Note: The ECMP prepared as part of Condition [18] above can be prepared for the entire site or on a per lot or per stage basis. Separate ECMPs for the separate stages of the development can be submitted and approved, or stages can be bundled into one ECMP.

19. All construction works shall be undertaken in accordance with the ECMP certified under Condition [18] above. The controls and measures outlined in the ECMP must be implemented for the duration of the works. Any proposed amendments to the ECMP once work starts must be authorised by the Construction Supervisor and the Geotechnical Professional, submitted to the CMO for certification, and may not be implemented until the CMO certifies the amendments.

Earthworks and Construction Traffic Management Plan

20. At least 10 working days prior to the commencement of construction works, the consent holder shall submit a Construction Traffic Management Plan (CTMP) prepared by a suitably qualified and experienced practitioner for

certification by Council's CMO. The purpose of the CTMP is to set out how the effects of construction traffic on the surrounding environment are to be avoided, remedied or mitigated and the methods to be used to achieve this. The CTMP shall include, but not be limited to, the following information, methods, measures and techniques to the achieve the purpose:

- a) Purpose and scope of the plan
- b) Relationship with other management plans
- c) Hours of construction traffic activity;
- d) A road cleaning plan for removal of spoil or debris from the public road and footpath.
- e) Temporary vehicular and pedestrian safety measures including directional signage where applicable.
- f) A limit on the days and hours of work for heavy vehicles, e.g. trucks may be restricted to operate outside commuter traffic peaks and school start and finish times.
- g) Estimated numbers and sizes of construction vehicles;
- h) Controlled internal and external access routes;
- i) General interactions with general traffic accessing the Shelly Bay area;
- j) Provision or closure of access to existing walking and bike trails;
- k) Parking locations for construction staff;
- l) Access and delivery locations, including swept path analysis for largest vehicles;
- m) Likely construction access routes to and from the site;
- n) Management of oversize loads;
- o) Liaison with Council and NZTA with regards to other local construction activities;
- p) Wheel cleaning and covering of loads; and
- q) Management of any complaints.

Note: The CTMP prepared as part of Condition [20] above can be prepared for the entire site or on a per lot or per stage basis. Separate CTMPs for the separate stages of the development can be submitted and approved, or stages can be bundled into one CTMP.

21. All earthworks and construction works shall be undertaken in accordance with the CTMP certified under Condition [20] above. Any proposed amendments to the CTMP shall be submitted to the Manager Resource Consents for certification, at least 10 working days prior to those amendments being implemented.

Sedimentation, Dust and Spillage

22. The Consent Holder must ensure that control measures are put in place to prevent muddy water flowing, or earth slipping, onto neighbouring properties or the legal road. Sediment, earth or debris must not collect on **land beyond the site or enter the Council's storm water system, or Wellington Harbour.**
23. The Consent Holder must ensure that dust created by earthworks, transport and construction activities is 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.

24. The Consent Holder must ensure that any earth, rock, vegetation or demolition material that falls on the road, footpath, berm or neighbouring property during work or transport be cleaned up immediately. The material must not be swept or washed into street channels or storm water inlets, or dumped on the side of the road.

Completion of Earthworks

25. Within one calendar month of the completion of the earthworks stage/s, the **Consent Holder must provide the Council's Compliance Monitoring Officer** with an As-built Plan/s of the completed earthworks for the particular stage/s. The plan must meet the requirements of A.7 and B.18 of the Code of Practice for Land Development 2012 and, as minimum, include the following:

- a) Extent cut and fill and depth of fill in the form of lines joining all points of equal depth of fill at appropriate vertical intervals of 1 metre or as appropriate
- b) Plans shall also show the type of fill material and any areas where buildings or foundations will require specific design together with any fill areas of low density not complying with this Code
- c) The position, type and size of all subsoil drains and their outlets shall also be shown
- d) Full sized As-Built drawings are to be supplied in AutoCAD (*.dxf or *.dwg), Microstation (*.dgn) or other agreed electronic format of all earthworks.
- e) All co-ordinates shall be in terms of the New Zealand map grid, NZTM (New Zealand Transverse Mercator), to $\pm 0.1\text{m}$ for all earthworked areas.
- f) All levels to be in terms of New Zealand Vertical Datum 2016 or WCC New City Datum.

26. Within 6 months of the completion of the earthworks stage/s, the Consent Holder must provide a Geotechnical Completion Report (GCR) prepared by a suitably experienced Geotechnical Professional, to the **Council's Compliance Monitoring Officer**. The document must include the following:

- a) State the earthworks have been completed in accordance with the earthworks scheme plans, approved under the resource consent;
- b) Provide evidence that the works have been completed in accordance **with the Council's Code of Practice for land development for earthworks (Part B)**
- c) Provide evidence that the land is suitable for the intended use including its ability to support services infrastructure such as roading, drainage, water supply and energy supply;
- d) A statement of professional opinion that any unretained cuts and/or

slopes are considered stable with respect to the future use, and provide details of how these unretained cuts and/or slopes will be treated to ensure the risk of instability is low as reasonable practicable . These details should include remedial action should any of these unretained cuts and/or slopes fail in the future.

- e) A Statement of Professional opinion on suitability of land for building construction, Schedule 2A of NZS4404: 2010
- f) A tabulated list of all test data and results that corresponds with test sites shown on the As-built plan in condition [25] above;

Note: It is expected that this data will form the basis for certification of each allotment for foundation requirements.

27. **The Consent Holder must provide a copy of the producer statement 'PS4 – Construction Review' and its accompanying documents for structures/buildings, prepared for the associated Building Consent process, must be provided to the CMO within one calendar month of the structures/buildings being completed.**

Vegetation Protection

28. At least 10 working days prior to the commencement of earthworks and construction for each stage of development, the Consent Holder shall submit **a Tree Protection and Construction Methodology (TPCM) to the Council's CMO** for review and certification in liaison with a Council Arborist. The TPCM must be prepared by a suitably qualified and experienced Arborist and shall be generally consistent with the Planting Strategy described on pages 97-100 of the Shelly Bay Masterplan, March 2019, Revision 10, and shall include specific information relating to the arborist works relating to each stage of the development, including:

- a) Suitable trees for transplanting
- b) Tree protection fencing for remaining trees
- c) Low impact excavation processes within the dripline of trees; and,
- d) Onsite arborist monitoring for any work within the fenced area of the trees.

29. At least 10 working days prior to the commencement of any tree removal works in the Escarpment Vegetation Management Zone (shown on page 98 of the Shelly Bay Masterplan, March 2019, Revision 10), the Consent Holder **shall submit a Vegetation Protection Methodology (VPM) to the Council's CMO for review and certification in liaison with the Council's ecologist.** The VPM must be prepared by a suitably qualified ecologist and shall detail the pine and other exotic species being removed and the species being protected within the Escarpment Vegetation Management Zone (EVMZ).

Note: Earthworks should be limited in the EVMZ to only that necessary to provide foundations or in mitigating any health and safety risk or loss of property for NBA 1 page 21 and NBH 1 page 19 on the Masterplan.

30. All vegetation protection works shall be undertaken in accordance with the methodologies certified under Condition [28 and 29] above. Any proposed amendments to these methodologies must be carried out by a qualified Arborist.

Contamination:

31. Prior to the commencement of earthworks on the site, the consent holder shall submit a Contaminated Soil Management Plan (CSMP) to the **Council's** Compliance Monitoring Officer for review and certification. The CSMP must be submitted and certified prior to the commencement of works on the site. The CSMP must include the following matters:
- a) Roles and responsibilities and contact details for the parties involved in implementing the Plan, including the identification of a suitably qualified and experienced practitioner (SQEP) to advise on contamination aspects, as required.
 - b) A process for identifying the presence of contamination during earthworks.
 - c) Onsite soil management procedures in the event that contaminated soil is encountered including procedures for consulting with the SQEP, and for the protection of workers, the environment, and future users.
 - d) Requirement for soil testing of gardens and public spaces.
 - e) Soil disposal locations for contaminated soil.

The CSMP must include provisions that would allow the SQEP to stop work on the site if contaminants are found that could affect public health, safety and the environment, and must include that the SQEP inform the CMO in writing of the stop work notice. The CSMP must include a requirement for the SQEP to prepare a report on remediation/containment measures and to have the report peer reviewed, and for the SQEP to implement the remediation/containment measures upon which the stop work notice can be uplifted.

32. The consent holder must undertake all earthworks and construction works in accordance with the CSMP certified under Condition [31] above.
33. In the unlikely event that any contamination materials need to be disposed of off-site, they shall be disposed of at a facility which can accept potentially contaminated materials. Advice in writing of the disposal, including its quantity, evidence of acceptance and copies of the tip tickets, shall be **submitted to Council's** CMO.
34. A Soil Validation Report (SVR) documenting the implementation of the CSMP shall be provided to the CMO within 2 calendar months of completion of each stage of the earthworks. The Validation Report shall:
- (a) Be prepared in general accordance with Contaminated Land

Management Guidelines No. 1: Guidelines for Reporting on Contaminated Sites in New Zealand (Revised 2011), Ministry for the Environment.

- (b) Include, but not be limited to:
- i) Summary of land disturbance works completed including figure illustrating area of disturbance.
 - ii) Results of the soil sampling including a summary of field methodologies, figure detailing sample locations and results compared against applicable human health and environmental guidelines.
 - iii) Summary of unexpected materials discoveries and actions taken. This includes alternatives to remediation where there are appropriate mitigation techniques to remediation.
 - iv) Copies of soil importation and disposal receipts (if relevant)
 - v) Commentary confirming that the site is suitable for the intended end use. This includes the standard of any remediation on completion.

Construction Noise Management Plan

35. Prior to the commencement of construction works, the Consent Holder must **submit a Construction Noise Management Plan (CNMP) to the Council's Compliance Monitoring Officer**. The CNMP must be prepared by a suitably qualified acoustic specialist and include the following:
- a) 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.
 - b) 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.
 - c) Specify details of complaint handling, communication procedures including notification and any necessary monitoring.

Note: The CNMP prepared as part of Condition [35] above can be prepared for the entire site or on a per lot or per stage basis. Separate CNMPs for the separate stages of the development can be submitted and approved, or stages can be bundled into one CNMP.

36. All site works shall be undertaken in accordance with the CNMP certified under Condition [35] above. Any proposed amendments to the CNMP once work starts must be submitted to the CMO for certification and may not be implemented until the CMO certifies the amendments. The CNMP

must be amended, where directed by the CMO, to address proven deficiencies in its operation.

Accidental Discovery Protocol:

37. If during any site works involving excavation any kōiwi (human skeletal remains), ovenstones, worked stones, middens, charcoal, other Māori cultural material, or any evidence of early European occupation are unearthed, work must cease immediately to enable the project archaeologists to carry out a detailed examination of the area.

Note: The subject property is a known place of historic habitation pre-1900. In addition, this proposal will affect a recorded archaeological site, being R27/593 (Torpedo boat shed and slipway), and one pending site (R27/592: Shelly Bay Depot). 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.

Heritage recording:

38. The Consent Holder shall engage a suitably qualified heritage professional to undertake detailed recording on structures as identified in Councils Shelly Bay Design Guide as historic buildings of reference. Upon the completion of the demolition, removal and relocation works, all recordings shall be **provided to the Council's Compliance Monitoring Officer for Council record.** The recording structure will be as follows:
- a) Title page – name of place, SR number, full site address, key author, date of submission and where the record has been lodged
 - b) Contents page
 - c) Narration – including short explanation of purpose of record, short description of the site and significance, description of methodology used (i.e. sequence of photos) and any limitations e.g. rooms not able to be accessed/cleared.
 - d) Selected images printed in hard copy
 - e) Index sheet - with number or file name of each photo, description of subject, site name, time and date, photographers name
 - f) Key plans with appropriate title blocks showing the camera position and direction photos were taken from, noting that as of 16 April 2018, no further key plans are required.

Note 1: Condition [38] above was offered by the Applicant.

Note 2: Historic buildings as identified within the WCC Shelly Bay Design Guide include The Hospital, Warehouse and Stores (Shed 8), Shipwrights Building, Submarine Mining Depot Barracks and Officers' Mess.

Transportation and access:

39. Prior to the commencement of construction works being carried out on the public road between the Shelly Bay Road / Miramar Avenue intersection and the development, and the Miramar Avenue / Shelly Bay Road intersection, and within the development site, the consent holder shall provide the following plans and information for certification by **Council's CMO in conjunction with Council's Chief Advisor Transport & Infrastructure**. **The detailed design plans shall demonstrate compliance with Council's Code of Practice for Land Development 2012** except where alternative solutions may be certified for those aspects where the standards of the Code of Practice are unable to be met.
- a) Detailed design plans of the road improvement works to be undertaken between the Shelly Bay Road/Miramar Avenue intersection and the development. The improvements must be designed to meet the minimum standard defined in the Transport Assessment Report, dated 18 April 2019, prepared by Stantec, being, a 6m carriageway plus a 1-1.5m width for use by pedestrians and cyclists and intersection upgrades as proposed unless otherwise mutually agreed to between the Applicant and CMO. The plans shall be accompanied with confirmation that, where the pedestrian, cycleway is between 1-1.5m in width, one or more of the following exemptions applies, noting that the width to be provided for use by pedestrians and cyclists shall wherever practical be 1.5m:
- i. Any structural works are required, including reclamation and/or seawall construction in the Coastal Marine Area and/or earthworks and retaining structures landward side of the road;
 - ii. Environmental impacts will be generated in the Coastal Marine Area, including indigenous ecosystems;
 - iii. The works would impact on the natural character of the Coastal Marine Area.
 - iv. The works would impact on the current recreational activities undertaken on the road route.
- b) Detailed design plans of the upgrade to the Shelly Bay and Miramar Ave intersection accompanied with confirmation from an appropriately qualified traffic engineer that the intersection will, achieve typical weekday PM level of service of no worse than the existing levels of service detailed in the Stantec Transportation Assessment Report (Table 7.1, Page 21). An independent SIDRA calculation must be carried out and must accompany the detailed design plans to certify the resulting level of service and delay results for the intersection of Shelly Bay Road and Miramar Avenue.

Note: The Council is proposing to make changes this year, to the existing intersection to enhance cycling facilities, and the consent holder will need to take account of this new intersection layout in its design of the improvements required to accommodate the additional traffic loading resulting from the completed Shelly Bay development.

- c) Detailed design plans of all proposed additions and alterations to the public roads including footpaths, kerb and channel, carriageway alterations including stormwater controls, levels and materials.
- d) Detailed design plans of all traffic calming measures including speed limit signs, give-ways signs, stops signs, textural surface changes and visibility splays on the shared lanes. These traffic calming measures are to control the internal traffic flow and ensure public safety when exiting the shared lanes onto Shelly Bay Road.
- e) Detailed design plans of all street lighting, utility services alteration, signage and road markings.
- f) Detailed design plans of bus turning and manoeuvring areas.
- g) Design, location and formation of pedestrian crossings.
- h) Detailed design plans of all signage proposed within the road corridor, road markings and details of any traffic/parking restrictions required to ensure the safe and efficient operation of public roads and for the management of parking.

Note: Consideration may be given to the temporary use of existing transport infrastructure if capacity is available and its condition is sufficient for the construction of residential and commercial buildings/ uses until such time as full transport infrastructure works are undertaken. Detailed plans, calculations, and specifications of existing transport infrastructure capacity or proposed interim measures must be provided to the CMO in conjunction with Council's Chief Advisor Transport & Infrastructure if the use of existing transport infrastructure is to be considered.

- 40. All works and activities must be carried out in accordance with the design drawings certified under Condition [39] above. Any proposed amendments to the design drawings must be submitted to the CMO for certification and may not be implemented until certified by the CMO.
- 41. The improvement works certified under Condition [39] above must be carried out; as follows:
 - (i) Miramar Intersection upgrade works, prior to the first new building consent being issued by WCC
 - (ii) The Shelly Bay road upgrade, prior to receiving code of compliance of any new building within the development.
- 42. The new road to vest (Lots 900 and 901 shown on "**Scheme Plan of Proposed Subdivision - Stage 1 Overall Layout & Stage Boundaries**" drawing 142175-01-RC02 Rev1) as required by Subdivision Condition [2] above must be constructed prior to receiving code of compliance for any new building onsite. All construction shall be completed generally in accordance with the certified design plans except for final surfacing works which may be completed under bond or cash deposit.

43. The Right of Way areas A to G within both the legal road and the private property must be constructed prior to receiving code of compliance for any building within that stage. All construction shall be completed generally in accordance with the approved construction plans except for the final surfacing works which may be completed under bond or cash deposit. Right of Way area A is to include a formed pedestrian footpath that links with the Village Green. This footpath must extend from Shelly Bay Road up to the site boundary with Part Section 3 Watts Peninsula District.
44. The traffic calming measures certified under Condition [39(d)] above must be implemented prior to the use of any internal road upon which it relates.
45. Within six calendar months of completion of the certified works, the consent holder must prepare and submit to Council's CMO As-built plans that meet the requirements of the Code of Practice (A.7 As-built Details and A.8 Certification) for roading and vehicle access and street lighting.

Note 1: These plans may be submitted to Council's CMO in stages upon the completion of each stage.

Note 2: The depth of the AC (Asphaltic Concrete) should be 40mm, water proofing layer (chip seal) should be added between AC and basecourse.

46. The Consent Holder must make good any damage to the public road from Miramar Ave and Shelly Bay intersection to the site which is directly attributed to their site works activities. A survey of the **road's condition must** be undertaken prior the commencement of any site works and the results of the survey provided to the CMO.

Note 1: 'Site works' relates to all redevelopment activities and includes demolition, earthworks and construction.

Note 2: This condition does not alleviate Councils obligation to complete and undertake routine and planned road maintenance activities through the course of the development works.

Vehicle Parking:

47. Prior to the construction of the aged care facility, the consent holder shall engage a suitably qualified traffic engineer to prepare a carparking assessment and plan/s to demonstrate that the provision of parking for this facility complies with AS/NZS.1:2890 Part 4. The Carparking assessment and plan/s must be **provided to Council's CMO for** certification.

Note: In certifying the assessment and plan/s the CMO will liaise with Council's Transport Engineer.

48. Vehicle parking must be implemented in accordance with the assessment and plan/s certified under Condition [47] above prior to receiving code of compliance for any new building related to the aged care facility.

Servicing:

49. Prior to receiving code of compliance for any new commercial building or residential building containing more than one household unit, the Consent Holder shall prepare a Servicing Management Plan/s (SMP) for the **development. The SMP/s must be certified by Council's CMO in consultation with the Council's Transport Engineer. The Plan shall detail how the delivery of goods, collection of refuse and other routine operational needs of the development will be managed.**

Note: Separate SMPs for each stage of development can be prepared and certified in stages. The SMP may be based on the individual needs of each commercial or residential building rather than on the development as a whole.

50. The Consent Holder must implement the measures in the SMP certified under Condition [49] above.

Reticulated services:

51. The Consent Holder shall comply with the design, construction and as-built requirements of the Wellington City Council Code of Practice for Land Development. These are the land development engineering standards for mitigating adverse effects on the environment from earthworks, traffic (roading and vehicle access), wastewater and stormwater drainage, water supply and utility structures.

Other alternative solutions may be certified for those aspects where the standards of the Code of Practice are unable to be met or can be achieved in a different way.

Note 1. This Application has been assessed to ensure that three waters services infrastructure will be able to be provided. Final detailed design plans will be provided and certified in accordance with Conditions [55-74] set out below.

Note 2. Council advises that a number of the items of infrastructure (including a potential combined reservoir and wastewater pump station) may be provided for as part of growth-related upgrades for the Miramar Peninsula. To minimise delays please engage early with Wellington Water to agree cost share and design requirements for these works. In the event that a new pump station and associated rising main is required (from the Miramar Cutting to Shelly Bay), this pump station and rising main will be vested to Wellington City Council. Sizing and design of this pump station and rising main will require input and approval at all stages from Wellington Water. The preferred alternative from Wellington Water is to find a route for a future wastewater rising main to serve the Shelly Bay Development and the Mount Crawford Development area. The reason for this alternative is to provide a longer design life and link with the Mount Crawford Development.

Note 3. Council advises that consideration may be given to the temporary use of existing infrastructure if capacity is available and the condition is

sufficient for the construction of residential buildings until such time as full infrastructure works are undertaken. Detailed plans, calculations, and specifications of existing infrastructure capacity must be provided to and certified by Wellington Water if the use of existing infrastructure is to be considered in accordance with Conditions [55-74] set out below.

52. Design and Construction documentation of wastewater and stormwater drainage and water supply certified under Conditions [55-74] below, must be submitted to the Council, prior to any works relating to of wastewater and stormwater drainage and water supply starting, and its certification obtained.

53. All wastewater and stormwater drainage and water supply construction plans required to be provided under Conditions [55-74] below must be certified by Wellington Water prior to commencement of any construction on the site.

Note: Wastewater and stormwater drainage and water supply construction plans prepared as part of Conditions [55-74] below can be prepared for the entire site or on a per lot or per stage basis.

54. At the conclusion of each stage the engineering works, **'as-built' plans must** be supplied to and certified by the Council, that meet the requirements of the Code of Practice for Land Development (A.7 As-built Details) and the Wellington City Council Interim As-built Specification for wastewater, stormwater drainage, and water supply. These must be certified as having been constructed in accordance with the certified plans by a suitably qualified person.

Stormwater Connections:

55. Prior to the installation of stormwater connections, the consent holder shall provide detailed construction plans illustrating that the development will be provided with stormwater connections in accordance with the specifications of the Wellington City Council Code of Practice for Land Development and the locations of these connections for certification by the Wellington Water Land Development Team.

Note 1: The Wellington City Council Code of Practice for Land Development – Regional Standard for Water Services, requires that each proposed building on a lot shall be serviced by a separate connection to the public network at a location approved by the Wellington Water Land Development Team. This will be a pre-requisite requirement for any future subdivision(s) of the development.

Note 2: stormwater drainage construction plans prepared as part of condition [55] above can be prepared for the entire site or on a per lot or per stage basis.

56. The installation of stormwater connections must be carried out in accordance with the detailed design plans certified under Condition [55] above.

57. Within one calendar month of completion of the installation of the stormwater connections certified under condition [55] above, an as-built drawing/s, which conforms to the Wellington City Council Interim As-built Specification, must be provided for certification to the Wellington Water Land Development Team. This must be certified as being correct by a technically qualified person as set out in the Wellington City Council Code of Practice for Land Development.

Public Stormwater Networks:

58. Prior to the installation of a new public stormwater network and/or upgrade to the existing public stormwater network, the consent holder shall prepare detailed construction plans illustrating that the development will be provided with a public gravity stormwater network and submit to the Wellington Water Land Development team for certification. The plans shall demonstrate compliance with the Wellington City Council Code of Practice for Land Development 2012, Regional Standard for Water Services, and Regional Specification for Water Services.

Note: The public stormwater network and/or upgrade construction plans prepared as part of Condition [58] above can be prepared for the entire site or on a per lot or per stage basis.

59. The installation of a new public stormwater network and/or upgrade to the existing public stormwater network must be carried out in accordance with the plans certified under condition [58] above.
60. Within one calendar month of completion of the of the Public stormwater work certified under condition [58] above, an as-built drawing/s, which conforms to the Wellington City Council Interim As-built Specification, must be provided for certification to the Wellington Water Land Development Team. This must be certified as being correct by a Registered Drainlayer or a technically qualified person as set out in the Wellington City Council Code of Practice for Land Development.

Note 1: The extension of the public gravity stormwater network should take into account the overall level of development proposed for the site to ensure that there is sufficient capacity.

Note 2: Scheme and other indicative layout plans submitted as part of the Application will be taken by Council as being for information purposes only. These plans will not be used for granting approval. Approvals will only be given on detailed construction plans.

Note 3: Any alterations or additions to the existing public stormwater network needs to be carried out under a Public Drainage Permit (as distinct from a Building Consent) to be issued by the Wellington Water Land Development team and fees paid. All Public Drainage work needs to be carried out by a suitably experienced Registered Drainlayer; who is

employed by a contractor who has an approved Health and Safety Plan and Public Liability Insurance.

Note 4: The Public Drainage Permit Application needs to include a copy of the Safety in Design documentation generated in response to the legal requirements under the Health and Safety at Work Act (2015) section 39.

Note 5: The Public Drainage Permit holder is to submit a compliant as-built drawing to the Wellington Water Senior Drainage Inspector and arrange for a final inspection to be carried out within 1 month of completion of the main drainage works and/or before vesting of assets.

61. Should the Consent Holder seek to utilise the existing public stormwater outfalls it must assess the ability of the outfall to accommodate any proposed increase in stormwater runoff associated with the development and provide documentation to Wellington Water Limited for certification.
62. The consent holder will undertake any works required to upgrade the existing outfall to accommodate any increase in stormwater runoff associated with any new development (if required) as confirmed by a suitably qualified infrastructure/ land development engineer.

Stormwater Quality:

63. Prior to the construction of any buildings containing bare, unpainted or untreated materials that can leach contaminants such as lead, copper and zinc, the consent holder shall submit stormwater treatment solutions to be installed to mitigate stormwater contamination to **Council's CMO** for certification.
64. The stormwater treatment solutions certified under Condition [63] above must be installed in conjunction with the construction of any new buildings containing these materials.

Note: Compliance with conditions [63] and [64] above will be assessed at building consent stage.

Wastewater Connections:

65. Prior to the installation of new wastewater connections, the consent holder shall prepare detailed construction plans illustrating that the development will be provided with wastewater connections in accordance with the specifications of the Wellington City Council Code of Practice for Land Development and at locations approved by the Wellington Water Land Development Team.

Note 1: The Wellington City Council Code of Practice for Land Development – Regional Standard for Water Services, requires that each proposed dwelling on a lot shall be serviced by a separate connection to the public network at a location approved by the Wellington Water Land Development Team. This will be a pre-requisite requirement for any future subdivision(s) of the development.

Note 2: In order to ensure that there will be sufficient capacity to serve the development, the connections should be appropriately sized.

Note 3: The public wastewater network and/or upgrade construction plans prepared as part of

Condition [65] above can be prepared for the entire site or on a per lot or per stage basis.

66. The installation of new wastewater connections must be carried out in accordance with the plans certified under condition [65] above.
67. Within one calendar month of completion of the of the works certified under condition [65] above, an as-built drawing/s, which conforms to the Wellington City Council Interim As-built Specification, must be provided for certification to the Wellington Water Land Development Team. This must be certified as being correct by a Registered Drainlayer or a technically qualified person as set out in the Wellington City Council Code of Practice for Land Development.

Public Wastewater:

68. Prior to the installation of a new public wastewater network or upgrade or replacement to the existing network, the consent holder shall prepare detailed construction plans illustrating that the development will be provided with a public gravity wastewater network in accordance with the Wellington City Council Code of Practice for Land Development 2012, Regional Standard for Water Services, and Regional Specification for Water Services.

Note: The public wastewater network or upgrade or replacement construction plans prepared as part of Condition [68] above can be prepared for the entire site or on a per lot or per stage basis.

69. The installation of the new wastewater network must be carried out in accordance with the plans certified under Condition [68] above.
70. Within one calendar month of the completion of the works certified under Condition [68] above, an as-built drawing/s, which conforms to the Wellington City Council Interim As-built Specification, must be provided for certification to the Wellington Water Land Development Team. This must be certified as being correct by a Registered Drainlayer or technically qualified person as set out in the Wellington City Council Code of Practice for Land Development.

Note 1: The replacement of the public gravity wastewater network should take into account the level of development proposed to ensure that there is sufficient capacity.

Note 2: Scheme and other indicative layout plans submitted as part of the Application will be taken by Council as being for information purposes only. These plans will not be used for granting approval. Approvals will only be given on detailed construction plans.

Note 3: Any alterations or additions to the existing public wastewater network should be carried out under a Public Drainage Permit (as distinct from a Building Consent) to be issued by the Wellington Water Land Development team and fees paid. All Public Drainage work needs to be carried out by a suitable experienced Registered Drainlayer; who is employed by a contractor who has an approved Health and Safety Plan and Public Liability Insurance.

Note 4: The Public Drainage Permit Application needs to include a copy of the Safety in Design documentation generated in response to the legal requirements under the Health and Safety at Work Act (2015) section 39.

Note 5: The Public Drainage Permit holder is to submit a compliant as-built drawing to the Wellington Water Senior Drainage Inspector and arrange for a final inspection to be carried out within 1 month of completion of the main drainage works and/or before vesting of assets.

Water Supply:

71. Prior to the commencement of any new residential or commercial buildings the consent holder shall prepare detailed construction plans illustrating that the development will be provided with water supply which meets the specifications of the Wellington City Council Code of Practice for Land Development; at locations approved by the Wellington Water Land Development Team. The plans shall be accompanied with:
- a) Calculations that confirm that there is sufficient pressure and flow for the development to meet the Code of Practice for Land Development requirements. All calculations and designs, including structural elements related to water supply, must be endorsed by an appropriately qualified chartered engineer and submitted with a design statement.
 - b) A design statement shall confirm that the design of the water mains and services complies with the Wellington City Council Code of Practice for Land Development and current Wellington City Council Water Supply Specification.

Note 1: Scheme and other indicative layout plans submitted as part of the Application will be taken by Council as being for information purposes only. These plans will not be used for granting approval. Approvals will only be given on detailed construction plans.

Note 2: The water supply construction plans prepared as part of Condition [71] above can be prepared for the entire site or on a per lot or per stage basis.

72. The installation of the water supply network must be carried out in accordance with the plans certified under Condition [71] above.
73. Within one calendar month of the completion of works certified under Condition [71] above an as-built drawing/s, which conforms to the

Wellington City Council Interim As-built Specification, must be provided for certification to the Wellington Water Land Development Team. This must be certified as being correct by a Registered Drainlayer or technically qualified person as set out in the Wellington City Council Code of Practice for Land Development.

74. The as-built drawings required under Condition [73] above must be accompanied by a completion certificate that covers the construction of the works. The completion certificate shall be signed by a suitably qualified professional and shall certify that the construction work pertaining to the water supply infrastructure has been carried out in accordance with the consent conditions. The developer shall have new hydrants tested for compliance against SNZ PAS 4509:2008 and the certified results submitted with the completion certificate. In the case of a failed test for flow or pressure the suitably qualified professional is to provide an upgrade solution to the water supply in order to achieve compliance against SNZ PAS 4509:2008. The applicant will then need to rectify works to ensure compliance following a failed test.

Landscaping:

75. At least 20 working days prior to the commencement of any construction, the consent holder shall submit a final Landscape Management Plan (LMP) prepared by a suitably qualified and experienced practitioner for certification by the CMO **in conjunction with Council's Landscape Advisor**. The purpose of the LMP is to integrate the proposal into the surrounding landscape and urban context and to illustrate the landscape design element of the project. The LMP shall generally consistent with the Planting Strategy identified in Section 7.2 Planting Strategy, pages 97-100 of Shelly Bay Masterplan March 2019.

The LMP shall include, but not be limited to, the following information, methods, measures and techniques to achieve the purpose:

- i. Purpose and scope of the plan
- ii. Relationship with other management plans
- iii. Relationship with vegetation protection methodologies
- iv. Relevant standards and guidelines
- v. Summary of landscape values
- vi. Summary of actions to avoid, remedy and mitigate environmental effects
- vii. Relevant consent conditions
- viii. Management of construction effects
- ix. A final landscape plan including a planting schedule relating to the public realm (shown on page 83 of the Shelly Bay Masterplan date March 2019, version 23)
- x. A final landscape plan including a planting schedule relating to the shared lanes and parking mews (shown on page 75 of the Shelly Bay Masterplan date March 2019, version 23)
- xi. A final landscape plan showing mitigation planting details along the Escarpment Vegetation Management Zone (shown on page 98 of Shelly

Bay Masterplan date March 2019, version 23)

- xii. Landscape management post-construction
- xiii. Management of operational effects
- xiv. LMP review procedures

Once certified the landscaping must be completed by the Consent Holder within 3 months of completion of construction within the area to which the LMP relates. The consent holder shall monitor plantings for 18 months from time of planting in order to allow for plant establishment to the satisfaction of the CMO. Within this period monitoring includes the removal of weeds within the vicinity of the plantings and the replacement of plants that die, or are removed unlawfully, with plants of the same species and original size. Any plants that fail must be replaced at the expense of the consent holder. All plantings must continue to be maintained thereafter.

Note 1: the LMP can be prepared for the entire site or on a per lot or per stage basis.

Note 2: The landscape plan shall include a mix of species as recommended in Ecological Zone 09 – Rocky Coastal in the Wellington Regional Native Plant Guide.

(Refer to: <http://www.gw.govt.nz/assets/Be-the-Difference/Biodiversity/Wellington-Regional-Native-Plant-Guide-Revised-Edition-2010-Web.pdf>)

Note 3: Myoporum laetum (Ngaio) should be considered as an alternative to Ulmus parvifolia (Chinese elm) due to its ability to tolerate the conditions.

Note 4: The best quality pohutukawa listed for removal will be transplanted and used for the new street trees, where practicable, at the Consent Holders discretion.

76. Prior to the commencement of the LMP certified under condition [75] above, a pre- construction meeting must be held with the construction manager, consulting arborist, monitoring arborist and a Council arboriculture representative. At the meeting, the construction manager must consult with the consulting arborist, monitoring arborist and Council arboriculture representative about:
- The methodology and timing of the planting and landscaping works
 - Site access and areas for manoeuvring vehicles and machinery
 - Areas for storing and/or stockpiling materials, spoil and equipment
 - The care needed when working around trees

The construction manager must read and sign the Wellington City Council's Working around Trees Guidelines.

Minimum Floor Levels:

77. Any new buildings constructed on an allotment must have the following minimum floor levels:
- a) Minimum floor level of RL 2.64m (New Zealand Vertical Datum 2016)

- or RL 3.05m (WCC New City Datum) for any new non-habitable building;
- b) Minimum floor level of RL 3.19m (New Zealand Vertical Datum 2016) or RL 3.60m (WCC New City Datum) for any new habitable building.

Lighting of Roads and Public Spaces:

78. All outdoor lighting to public roads and outdoor public spaces available for use during the hours of darkness shall be designed and installed in accordance with AS/NZS 1158.3.1:2005 and any amendments in accordance with District Plan standard 34.6.1.7.2.

Noise emissions limits post construction:

79. Noise emission levels from activities in Business Areas when measured at or within the boundary of any site to be used for a noise sensitive use or containing a residential building which has not been sound insulated to meet the minimum noise insulation standard (refer District Plan Rule 34.6.2.10.1) and excluding Masterplan buildings SBW B1, SBW B2, SBW4, SBW B7 and SBW B9 as shown on Noise and Ventilation Mitigation Plan Appendix 7 Wellington Company Limited Application dated May 2019, shall not exceed the noise limits specified in the District Plan.

Monday to Sunday	7am to 10pm	50dB LAeq (15 min)
Monday to Sunday	10pm to 7am	40dB LAeq (15 min)
Monday to Sunday	10pm to 7am	70dB LAFmax

Monitoring and review:

80. **The Consent Holder shall contact the Council's Compliance Monitoring Officer (CMO) at least 48 hours prior to any physical work commencing on the site and give notice of the date upon which such works will commence. This notice shall quote the RC number of this consent and the address of the site and shall be either by telephone (801 4017), facsimile (801 3165) or email (rcmonitoring@wcc.govt.nz).**
81. The conditions of this resource consent must be met to the satisfaction of **the Council's Compliance Monitoring Officer. The Compliance Monitoring Officer** 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 Resource Management Act 1991. 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.
- * Please refer to the current schedule of Resource Management Fees for guidance on the current administration charge and hourly rate chargeable for Council officers.

82. The consent holder shall provide a copy of this consent and any documents referred to in this consent to each operator or contractor undertaking works authorised by this consent before that operator or contractor starts any works.
83. The consent holder shall ensure that a copy of this consent is kept in the site office at all times and presented to any Wellington City Council officer on request.

DECISION THREE – CANCELLATION OF AMALGAMATION CONDITION:

That independent commissioners, acting under delegated authority from the Wellington City Council (the Council) and pursuant to section 241(3) of the Resource Management Act 1991 (the Act), agree to cancel in part the condition which requires the amalgamation of proposed lots 2, 3, 4, 5 and 900 in one Computer Freehold Register; Section 5 SO 339948 and proposed Lot 904 in one Computer Freehold Register; and, Proposed lots 9, 10, 11 and 903 held in one Computer Freehold Register, on a staged basis as it relates to each lot, subject to the following:

1. That any existing buildings which straddle any new boundaries on completion of the subdivision have been relocated or demolished as it relates to that specific lot so that no buildings straddle new boundaries.
2. That Rights of Way B and C have been constructed to ensure that the lots being served have physical and legal access. The Council would accept a bond against final surfacing of the Rights of Way.

ADVICE NOTES:

1. The survey plan must be submitted for approval in accordance with sections 223 & 224 of the Resource Management Act 1991 (RMA) (as modified by section 51 of the HASHAA) and given effect to within 1 year of the granting of this consent, or within such extended period of time pursuant to section 125 of the RMA as the Council may allow.
2. Under section 51 of the HASHAA and the RMA, the land use consent approved under Decision Two must be given effect to within 13 years of the granting of this consent, or within such extended period of time pursuant to section 125 of the Resource Management Act 1991 (RMA) as the Council may allow.
3. Additional fees will be required by the Council with the Application(s) for the section 223 and 224 certificates. The section 224 certificate will be issued following compliance with all conditions of consent set out above, and payment of any development contribution that may be payable.
4. Where appropriate, in relation to the land use consents, the Council may agree to reduce the required monitoring charges where the Consent Holder will carry out appropriate monitoring and reporting back to the Council.
5. This resource consent is not consent to build. A building consent may be required under the Building Act 2004 prior to commencement of construction.
6. This resource consent does not authorise any works that also require consent from the Greater Wellington Regional Council (GWRC). If necessary, separate resource consent(s) will need to be obtained prior to commencing work.

7. The Consent Holder is advised to consult with GWRC if it is likely that discharges will occur from soil disturbance works that exceeds 5000m², if any bore/piling work is to be undertaken, or if any work is to be undertaken within the Coastal Marine Area.
8. Vehicle access bylaw consents are required for the construction of kerb crossings, driveways and parking facilities under Part 5, Section 16 of the **Council's Consolidated Bylaw 2008**.
9. Vehicle crossings which service more than 6 household units or any commercial vehicle crossing need to be constructed as heavy vehicle crossings in accordance with the Code of Practice for Land Development 2012.
10. It is suggested that the Consent Holder reviews the proposed parking provision, in particular the matter of visitor parking for the residential developments, parking associated with the proposed hotel, and parking provision for employees. It will be important to ensure that the appropriate mix of parking is provided so that such parking as will be provided is effectively targeted to the various land use parking demands and that any shortfall in parking does not result in inappropriate parking pressure at locations within the development. This will include the proposed angle parking within the legal road which the Council will be responsible for managing.
11. It is recommended that a Staff Travel Plan/s (STP/s) for the development be prepared prior to occupation of any buildings to be utilised for non-residential purposes. The STP/s should detail how employees working at Shelly Bay can travel to and from the site so as to minimise the need for individual workers to use their own transport. The plan/s could include the extent of staff parking to be provided, together with other transport arrangements, to ensure staff can safely and conveniently travel to and from what is a relatively isolated site. The STP/s could relate to either individual businesses or combinations of businesses seeking to reduce overall individual staff vehicle use and associated parking demand. Council would be happy to review any such STP/s.
12. Given the northern point of the site has a meteorological designation (ref: M3) with the Requiring Authority being Meteorological Service of New Zealand Limited, its approval under s176(1)(b) will be required prior to any works being undertaken in this area.
13. Landowner approval is required for any construction of buildings or structures on, or use of land owned by the Wellington City Council. Landowner approval must be obtained prior to any use or construction commencing.
14. As far as practicable all construction activity related to the development must take place within the confines of the site. No buildings, vehicles, materials or debris associated with construction may be kept on Council land, including the road, without prior approval from the Council. Please

note that landowner approval is required under a *separate approval process* and that this must be sought and approved prior to any works commencing. For more information on the traffic management process and what further separate land owner approvals may be required in relation to the logistics of working within the legal road either contact the Transport Asset Performance team or visit this link:

<http://wellington.govt.nz/~media/services/parking-and-roads/roadworks/files/traffic-management-process-2013.pdf>

15. Construction noise is managed through the construction noise controls set out in NZS 6803: 1999 and adoption of a best practical option approach in accordance with section 16 of the Act, to ensure that the emission of noise from the site does not exceed a reasonable level.
16. A Vodafone mobile site is currently located within the site, approved under SR 75875, and it is recommended that the Consent Holder liaises with Vodafone in terms of the effects of this proposal if this has not already been undertaken.
17. In accordance with the Health and Safety at Work (Asbestos) Regulations 2016, a person conducting a business or undertaking (PCBU) with management or control of a workplace must ensure the following:
 - (a) Work is not to be carried out until the structure has been inspected by a competent person to determine whether asbestos or asbestos containing materials (ACM) are fixed to or installed in the structure.
 - (b) That all asbestos that is likely to be disturbed during any demolition or refurbishment is identified and that removal, so far as is reasonably practicable, is carried out by an asbestos removalist licensed to carry out the work.
 - (c) That a competent person carries out air monitoring of the area where asbestos-related work is being done if the airborne contamination standard for asbestos could be exceeded.
 - (d) For further information contact: WorkSafe New Zealand Phone 04 897 7699.
18. Rights of objection to this decision are set out at section 81 of the HASHAA. Any objection shall be made in writing, setting out the reasons for the objection within 15 working days of this notification or within such extended period as the Council in any special case may allow.