

BEFORE THE ENVIRONMENT COURT  
I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No. [2018] NZEnvC 179

IN THE MATTER of the Resource Management Act 1991  
AND of a Notice of Motion under s 87G of the Act  
requesting the granting of resource consents  
for the necessary infrastructure and related  
activities associated with holding the  
America's Cup in Auckland  
BETWEEN PANUKU DEVELOPMENT AUCKLAND  
LIMITED ('PANUKU')  
(ENV-2018-AKL-000078)  
Applicant  
AND AUCKLAND COUNCIL  
Regulatory Authority

Court: Principal Environment Judge L J Newhook  
Environment Judge D A Kirkpatrick  
Environment Commissioner A C E Leijnen  
Environment Commissioner D J Bunting  
Environment Commissioner R M Bartlett  
Deputy Environment Commissioner G Paine

Hearing: 10 and 11 September 2018

Appearances: D A Nolan QC, W S Loutit and K M Stubbing for the Applicant  
M C Allan and C E Adams for the Regulatory Authority  
B S Carruthers, M J Doesburg and G A Cameron for the Crown  
B J Matheson and K F T Stolberger for SeaLink  
J D K Gardner-Hopkins for Ngāti Paoa Trust Board  
R B Enright for Mana Whenua in Support, Ngāti Whatua Ōrakei  
Whaia Maia Limited, Ngāti Paoa Iwi Trust and Te Kawerau Iwi Tribal  
Authority  
C A van Camp in Person  
A G W Webb for Emirates Team New Zealand, America's Cup Event  
Limited and Challenger of Record America's Cup 36  
R J Gladwell for Sail World New Zealand  
D J Sadlier for Sanford Limited  
D A Allan for Viaduct Harbour Holdings Limited and Kiwi Property  
Group Limited  
A H C Warren for Mana Whenua groups of Tāmaki Makaurau made  
up of Ngāti Maru, Ngāti Tamaoho, Ngāti Tamaterā, Ngāti Te Ata  
Waiohua, Ngaati Whanaunga, Te Ākitai Waiohua, Te Patukirikiri and  
Ngāi Tai ki Tāmaki



Date of Decision: 25 September 2018

Date of Issue: 25 SEPTEMBER 2018

DECISION OF THE ENVIRONMENT COURT CONCERNING APPLICATION FOR  
CONSENTS FOR AMERICA'S CUP BASE FACILITIES

- A: Consent granted, subject to conditions as now approved and attached as Appendix C.
- B: Costs reserved, although unlikely to be an issue amongst parties.

**Explanatory Note:** This decision exceeds 150 pages in length (and attaches extensive approved conditions as Appendix C). It is of such length for several reasons. As a direct referral, the application was heard by the Court at "first instance", rather than on appeal. The Court's decision on it is therefore the first and only "merits" consideration. The Court is directed by s87G RMA to apply section 104<sup>1</sup>. There were 83 submitters to the council whose submissions the Court is required to have regard to, and 41 parties under s274, who collectively raised a great many issues. The application triggered reference to a considerable number of provisions of the Auckland Unitary Plan, itself a sizeable and complex document.

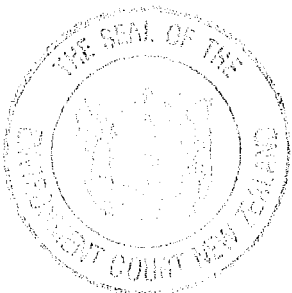
**Contents**

Introduction..... 8

Site Details ..... 9

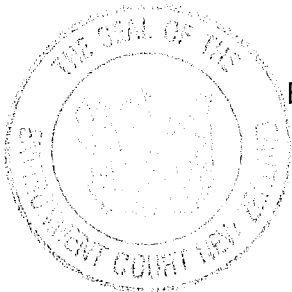
Application Process ..... 9

The Proposal..... 11



<sup>1</sup> As held by the Environment Court in *Progressive Enterprises Ltd v Rodney District Council* [2010] NZEnvC 221, the Court is accordingly required to evaluate the merits of the application, rather than focus mainly on issues unresolved by the commencement of the hearing (of which there were remarkably few in this case).

Overview of the proposal .....	11
Material supporting the application.....	14
Issues in Contention .....	15
In opposition: .....	16
In support (including qualifications and questions raised): .....	17
Neutral submissions (with comments included): .....	18
Background .....	19
Planning History.....	19
Previous Applications.....	19
The Site and Surrounding Environment.....	19
Description of Site.....	19
The Surrounding Environment .....	20
Reasons for Consent Being Needed.....	21
Introduction .....	21
Viaduct Harbour Precinct .....	22
Wynyard Precinct.....	23
Business – City Centre Zone (Chapter H) .....	27
Auckland Wide Provisions (Chapter E).....	27
Coastal – General Coastal Marine Zone (Chapter F) .....	31
National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health.....	32
Overall Activity Status / Bundling.....	32
Statutory Considerations Generally .....	32
Section 104(1)(a) – Assessment of actual and potential effects on the environment....	33
Navigation.....	33
Groundwater .....	37
Land Contamination .....	39
Air Contamination .....	42
Earthworks and Sediment.....	44

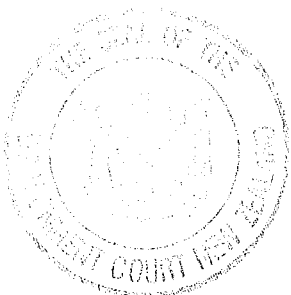


Coastal Processes .....	46
Coastal Ecology and Water Quality .....	52
Tree Removal .....	56
Lighting .....	58
Landscape and Visual Effects, Character and Amenity Values, Urban Design .....	61
Architectural Design and Urban Design.....	66
Servicing .....	83
Water Supply .....	83
Wastewater .....	84
Stormwater.....	84
Power and Telecommunications.....	85
Findings .....	86
Hazardous Substances Risk.....	86
Existing Environment .....	86
Evidence .....	86
Stolthaven North Tank Farm .....	89
Sanford Fish Processing Plant .....	91
Conditions.....	92
Finding on Hazardous Substance Risks.....	92
Security More Generally .....	93
Mana Whenua Issues .....	93
Traffic and Transport .....	97
Evidence .....	97
Construction Phase.....	98
Operational Phase .....	99
Event Phase .....	100
Parking for Waterfront Theatre.....	102
Auckland Transport Considerations .....	103
Finding on Traffic and Transportation.....	104

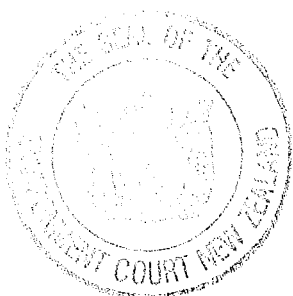




Historic Heritage .....	104
Natural Hazards.....	105
Sea Level Rise.....	105
Stormwater and Flooding .....	106
Land Stability .....	106
Tsunami Risk.....	107
Finding on Natural Hazards.....	107
Noise and Vibration.....	107
The Evidence .....	107
Construction Noise and Vibration.....	107
Noise Events.....	109
Discussion and Findings on Noise and Vibration.....	113
Numbers of Bases Needed, and Duration of Consents.....	114
Protection of legacy for future events?.....	116
Positive Effects.....	117
Summary of Assessment of Actual and Potential Effects.....	118
Section 104(1)(b)(i) Assessment .....	118
The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 .....	118
The National Environmental Standards for Air Quality.....	118
Section 104(1)(b)(iv) Assessment.....	119
The New Zealand Coastal Policy Statement 2010 (NZCPS) .....	119
Hauraki Gulf Marine Park Act 2000 (HGMPA).....	120
National Environmental Standard for Assessment and Managing Contaminants In Soil To Protect Human Health ("NES").....	120
Section 104(1)(b)(v) Regional Policy Statement Assessment (Auckland Unitary Plan: Operative in Part) .....	120
Urban Growth and Form .....	121
Infrastructure, Transport and Energy.....	121
Natural Heritage.....	122



Built Heritage and Character.....	122
Mana Whenua.....	122
Natural Resources .....	123
Coastal Environment.....	124
Environmental Risk.....	125
Section 104(1)(b)(vi) Relevant Provisions of the Relevant Regional/District Plans	
Objectives and Policies.....	126
Auckland Wide Provisions Chapter E.....	126
Natural Resources .....	126
E23 Signs.....	129
E24 Lighting .....	130
E25 Noise and Vibration.....	131
E27 Transport.....	131
E30 Contaminated Land.....	133
E31 Hazardous Substances .....	134
E33 Industrial and trade activities .....	134
E36 Natural Hazards and Flooding.....	134
E40 Temporary Activities.....	135
CMA – Chapter F .....	137
H8 Business – City Centre Zone .....	140
I211 Viaduct Harbour Precinct .....	140
I214 Wynyard Precinct.....	142
Conclusion on Objectives and Policies.....	146
Designations.....	147
Section 104(1)(c): Any other matters considered relevant and reasonably necessary to determine the application.....	147
The Auckland Plan 2012.....	147
City Centre Masterplan 2012.....	147
The Waterfront Plan 2012.....	148



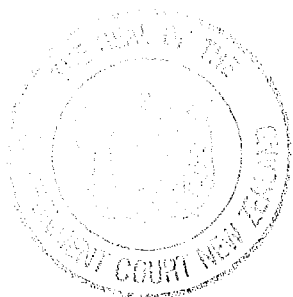
Submissions ..... 149

Consultation post-consent ..... 149

Section 104D – Particular Restrictions for Non-Complying Activities ..... 150

Proposed Conditions ..... 151

Consideration of Part 2 (Purpose and Principles) of the RMA, exercise of discretion, and decision reached ..... 152



## REASONS

### Introduction

[1] An application for resource consents was lodged with Auckland Council ("the council") by Panuku on 13 April 2018.<sup>2</sup>

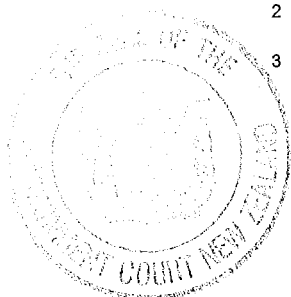
[2] Applications were made for the following consents (in the round called "the application" or "the proposal") on land and water located mainly in the Wynyard Precinct and the Viaduct Harbour Precinct near the Auckland CBD:

- (a) A land use application for the establishment of structures associated with the America's Cup, and for the "Event" itself<sup>3</sup>. Consent was also sought for associated land disturbance activities, including earthworks and tree removal, also infringement of the noise and vibration standards.
- (b) An application for the discharge of contaminants to land and water in consequence of storage of the dredged material and potential use in construction.
- (c) An application for the diversion of ground water associated with ground stabilisation works.
- (d) An application for the diversion and discharge of stormwater runoff associated with the impervious areas for Bases C to G.
- (e) An application for structures within the coastal marine area including infill deck areas to Wynyard Wharf, a 74m extension to Hobson Wharf, four new breakwaters, and wave attenuation panels on Hobson Wharf (including the extension) and Halsey Wharf.
- (f) An application for the occupation of the common marine and coastal area in association with those structures.
- (g) An application for capital works dredging within the coastal marine area to increase navigable depths for the boats.

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<sup>2</sup> This application was in replacement of one lodged earlier in the year, now withdrawn.

<sup>3</sup> As will be seen in the section of this decision entitled "*Overview of the Proposal*", the "Event" describes the activities of the Prada Cup racing, Christmas Regatta, the America's Cup racing, heritage yacht racing, festivities, entertainments, and associated events, during a 6-month period December 2020 to May 2021. This collection of activities is referred to in this decision as the "Event" with a capital "E".



- (h) An application for the America's Cup events to be held within the coastal marine area.
- (i) An application for the discharge of contaminants to air associated with storage of the dredged materials and use of cement during construction.
- (j) An application for the discharge of industrial or trade activities.
- (k) An application for other discharges of contaminants.
- (l) An application for disturbance of contaminated land under the NES regulations.

### Site Details

[3] Details of the properties concerned can be found in **Appendix A** to this decision, along with details of map reference, site area, zones in the Auckland Unitary Plan (Operative in Part) ("AUP"), zoning and precincts, together with relevant overlays, controls, special features and designations.

### Application Process

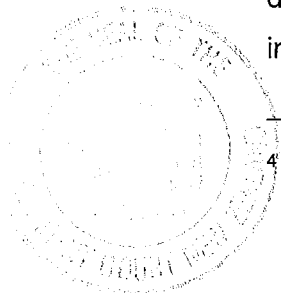
[4] Panuku requested that the application be publicly notified, which occurred on 30 April 2018. The submission period ended on 28 May 2018. 83 submissions were received by the council: 33 in opposition; 45 in support (including 11 which were conditional in their support); and 5 neutral.

[5] On 17 April 2018, Panuku requested under section 87D (1) RMA that the council allow the application to be determined by the Environment Court.

[6] The council granted that request pursuant to section 87E RMA, on 7 May 2018.

[7] On 25 June 2018 Panuku applied to the Court under s 87G RMA for an order that its substantive application be decided by the Environment Court on direct referral. The Court granted that application on 26 June 2018.<sup>4</sup>

[8] The processing of the application by the council and later by the Court, has been done under considerable urgency because the timeframe for construction of infrastructure required to host the 36<sup>th</sup> America's Cup is extremely tight. The supporting



infrastructure to accommodate yacht racing syndicates is required to be ready from late 2019, evidently necessitating a decision by the Court on the substantive application by mid-late-October 2018 if construction targets are realistically to be achieved.

[9] Because of these timeframes, but at the same time acknowledging the need in the public interest for quality input from parties before and after notification of the application, the council started seeking directions and waivers in early May this year. The Court issued a first directions decision on notice of motion brought by the Council, on such matters.<sup>5</sup>

[10] The Court has also regularly received memoranda and reports from parties; held a pre-hearing conference in open court on 18 July 2018; appointed two process advisors to assist submitters; and set up a clearly sign-posted page on the Court's website exhibiting all applications, notices, directions, decisions, information about mediation and joint expert witness conferencing, memoranda, joint witness statements, and importantly the contact particulars for the court appointed process advisors.

[11] Prior to the commencement of processing of the application by the Court, the council had received 83 submissions. By s 87G (4) the Court is required to have regard to those submissions whether or not the submitters become parties under s 274 RMA. This we have done.

[12] Within the period allowed for the lodging of notices under s 274 RMA, 41 submitters became parties in this proceeding.

[13] In the early stages of the case under management by the Court, it appeared that many issues would be highly contentious and the hearing likely very time-consuming. We set aside 2 weeks for the hearing, commencing 10 September.

[14] The Court appointed 3 of its experienced Commissioners as mediators and facilitators of expert conferences, Commissioners Prime, Dunlop and Buchanan. After their processes were largely undertaken, it became clear to members of the hearing panel that the three had succeeded in catalysing constructive engagement among parties, setting the scene for much continuing hard work among most of them. Possibly assisted by robust case management by us in succeeding weeks, the momentum built, and by the commencement of the hearing, issues unresolved were reduced to a very



small number, and capable of being heard in Court in less than 2 hearing days. We express our gratitude and congratulations to the mediators/facilitators and the parties for producing such a notable turn-around. We also record gratitude to our Process Advisors to Submitters, planning consultants Brian Putt and David Wren, for their excellent work assisting self-represented submitters to work with the complex processes.

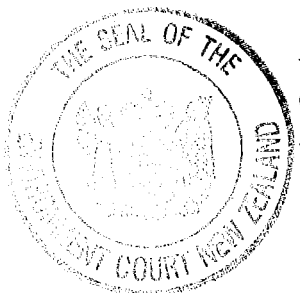
## The Proposal

### *Overview of the proposal*

[15] The proposal is detailed in section 5 of the Assessment of Environmental Effects (“**AEE**”) dated 13 April 2018<sup>6</sup>, and is described in summary and in some detail in the evidence in chief for Panuku of Mr RM Marler, Director Design and Place, of the company<sup>7</sup>. The application seeks consent for the establishment of infrastructure to support the America’s Cup 36 (“**AC36**”) defence, the Event itself, and any subsequent defender races within the next ten years. Attached as **Appendix B**, for ease of understanding the site and its locality, is a drawing “MARINE WORKS CIVIL DRAWING 1 OVERALL LAYOUT GENERAL ARRANGEMENT LAYOUT PLAN”, Revision E, dated 20 August 2018.

[16] The infrastructure would include the following elements in summary:

- A 74m extension to Hobson Wharf which would contain a syndicate base building (Base B) to have a life span of 10 years, at which point the building would be removed. The building would be approximately 15 metres in height and would be a “double base” (two racing vessels) to accommodate up to 110 staff and 300 guests. To the south of this building would be an area of hardstand adjoining the water-space where berthage would occur for boats associated with the operations.
- Four breakwaters to achieve calm water conditions for the race boats, with an 81m breakwater east of Wynyard Wharf, a breakwater attached to Halsey Wharf extending initially 39m to the north of Halsey Wharf and then 84m to the north-west, a 35m breakwater east of Hobson Wharf, and a 42m breakwater to the south of Hobson Wharf.

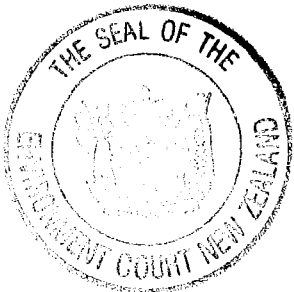


<sup>6</sup> Application Document 4.

<sup>7</sup> EIC RM Marler, sections 3 and 4.

- Wave attenuation panels would be installed on the breakwaters and on Hobson Wharf, including the proposed extension, and on Halsey Wharf.
- Deck infills would be inserted over the water-space between Wynyard Wharf and Brigham Street on Wynyard Point. (50% of the infill would be removed at the end of the 10-year consent duration). The infill, along with the stopping of Brigham Street (which is to occur through another process) would be to accommodate 5 syndicate base buildings. These bases are identified in the application as Bases C to G and would consist of two double bases (Bases C and D) and three single bases (Bases E to G). Each building would be approximately 15m in height and would be served by an area of hardstand on its eastern side, adjoining the water-space. Vehicle access would be enabled by 6m wide lanes situated between Bases D and E, and Bases F and G. The double bases would accommodate a work force of up to 110 people and the single bases, 70. During the events, the double bases would accommodate up to 300 guests, and the single bases up to 100. Subsequently during the progress of the case, increased to 500 in total per base ON Bases C to G at the suggestion of Emirates Team New Zealand (“**ETNZ**”), confirmed by condition 171 in its final form.
- The Emirates Team New Zealand (“**ETNZ**”) base, Base A, would be housed in the existing Viaduct Event Centre (“**VEC**”) on Halsey Street Extension Wharf. To accommodate the operational needs of ETNZ the existing public access ramp along the outer eastern side of the building would be removed, and a lift would be installed on the western side to provide access to a public viewing deck. Large door openings would be created in the eastern façade for vessel and equipment access. A mezzanine floor would also be installed towards the northern end for a sail loft. The base would be expected to accommodate 110 staff and up to approximately 500 guests during the event phase. The wharf deck to the east of the building would be utilised for access to the adjoining water-space and incorporate any parking of associated vehicles. Hence, public access to the area would be restricted during event periods.

[17] Construction would occur over a 19 to 21-month period, 24 hours a day, 6 or 7 days a week. The number of construction workers would average between 35 and 190, with short-term peaks of up to 290. Construction details were fully described in the





applicant's Physical Infrastructure Technical Report<sup>8</sup>, however to summarise here, the works would involve the following:

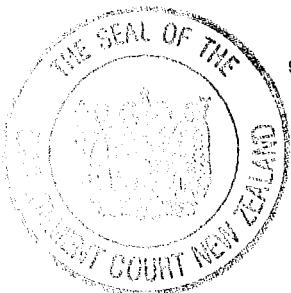
- Establishment of construction site areas.
- Construction of the new wharf and breakwater structures.
- Repair and strengthening of Wynyard Wharf and the existing Wynyard Point seawalls.
- Dredging of 87,000m<sup>3</sup> (including material from bored pile holes) over a 5 to 7-month period within the Wynyard Wharf South water-space, the Outer Viaduct Harbour and the Viaduct Harbour access channel.
- Clearance of land on Wynyard Point with installation of a hardstand sealed area to provide building platforms for Bases C to G, without the need for remediating the underlying contaminated land at this stage.
- Extension of earthworks on Wynyard Point would extend over an area of 23,100m<sup>2</sup> with a volume of 10,607m<sup>3</sup>, to create paved surfaces, landscaped areas and building foundations.
- Removal of 7 street trees (including 3 on Brigham Street and 4 on Hamer Street) and one private tree (90 Brigham Road), to enable the development.

[18] The AC36 Event period would be 6 months, including provision for pack-in and pack-out for related infrastructure, from December 2020 to May 2021. The Event period would incorporate a challenger series and regatta, including heritage J-class yachts racing prior to the main AC36 regatta. Race-boats and support craft would be accommodated in the water-space immediately adjoining the bases and provision would also be made for visiting superyachts and the J-Class yachts<sup>9</sup>. During the Event period, there would be associated activities both on land and water, together with entertainment activities throughout the 6-month Event period. Consent is sought for a ten-year period

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<sup>8</sup> Document 9 of the application (America's Cup Wynyard Hobson Physical Infrastructure Technical Report, prepared by Beca, dated April 2018).

<sup>9</sup> Mr Marler's evidence is that up to 17 superyachts might be accommodated in the immediate vicinity, with others berthed at "other existing locations" around the downtown area. See RM Marler EIC, paragraph 4.6.



for the proposal to accommodate any future defence of the Cup by ETNZ. A ten-year consent period would also enable subsequent challenges within a 2-to-3-year timeframe following the completion of AC36.

[19] Following the 10-year consent period, syndicate Bases B to G would be removed and the VEC building would revert to its original use as an events centre. The application asserts that the following “legacy” benefits could arise from the proposed development<sup>10</sup>:

- Removal of bulk liquid operators from the southern part of Wynyard Wharf.
- The 74-metre extension to Hobson Wharf available for public use.
- An extension to the waterfront pedestrian network around Hobson and Halsey Wharves and breakwaters.
- New sheltered water-space to enable water-based activities to occur.
- The upgrade of Wynyard Wharf and sea wall.

***Material supporting the application***

[20] The application included documents numbered 1 to 33, together with drawing sets DS1 to DS5.

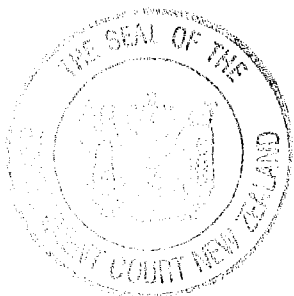
[21] Documents 9 to 29 contained technical reports submitted with the application. Panuku also provided a set of conditions it proposed be imposed (Document 7), subsequently amended and refined many times as the case progressed.

[22] In addition to the application documents, the council received responses from Panuku to its several subsequent requests under s 92 RMA.

[23] The council lodged a comprehensive and helpful report under s 87F RMA on 22 June 2018. Attached to it were detailed peer-reviewed expert reports on marine ecology, water and sediment quality, coastal processes, geotechnical matters, landscape and visual issues, urban design, stormwater discharge and industrial trade activities, noise and vibration, hazardous substances, and ground contamination.

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<sup>10</sup> Legacy Report, Document 30 in the application, page 2.



## Issues in Contention

[24] Distilled from the s 274 notices, and with input from the council in two reports that we directed be lodged on 17 July and 2 August 2018, the issues in the case at those stages were broadly as follows:

- (a) Consent duration (timing of removal of buildings and other matters)
- (b) Construction effects and management plans:
  - (i) Use of management plans generally
  - (ii) Water quality
  - (iii) Noise and vibration
  - (iv) Traffic (including pedestrian safety, carparking and access to properties)
  - (v) Identification of stakeholders and conditions
- (c) The Event:
  - (i) Integration with existing facilities (including access to properties)
  - (ii) Noise
  - (iii) Traffic and parking
  - (iv) Public access and conductivity
- (d) Legacy issues (other than with Hobson Wharf)
- (e) Cultural issues:
  - (i) Mana Whenua support for proposal
  - (ii) Mana Whenua concerns with process, and opposition to proposal
- (f) Design of base buildings
- (g) Hobson Wharf and Base B:
  - (i) Functional need for extension and structures in the CMA



(ii) Need for 10m public access

(iii) Legacy issues

(h) New structures in Wynyard Wharf south water space (including potential visual effects of new breakwaters, wharves, balustrades and vessels, viewed from North Wharf)

(i) Relocation of existing activities:

(i) Displacement during construction and event

(ii) Relocation of fishing industry and ferries

(j) Risk issues

[25] Because by s 87G (4) we are to have regard to submissions that were lodged with the council, we have read them and done so. Many (but not all) of the topics found their way into the subsequent s274 notices. The following are lists of topics raised in submissions in opposition, in support, and neutrally:

In opposition:

- (a) Encroachment into the harbour
- (b) Visual effects from the extension to Hobson Wharf and associated buildings and advertising on the syndicate bases
- (c) Construction effects
- (d) Use of public land
- (e) Duration of the consent – “10 years too long”
- (f) Management Plans and consultation with parties
- (g) Berthing space to be made available for heritage vessels
- (h) Treaty claims, mandate and jurisdictional issues
- (i) Design Guidelines: unduly rigid or not rigid enough
- (j) Transport (traffic and pedestrian movement and car parking)
- (k) Mana whenua engagement
- (l) Fishing and ferry relocation
- (m) Heritage effects
- (n) Public access
- (o) Hazards from the tank farm
- (p) Integrity of the Waterfront Plan.



In support (including qualifications and questions raised):

- (a) Manoeuvring area for the Spirit of New Zealand vessel be retained
- (b) Impact on pedestrian and vehicular traffic on Princes Wharf
- (c) More berthage for super yachts
- (d) Ensure that 'Site 18' is retained as a marine maintenance centre
- (e) Traffic effects in the Wynyard Precinct, including access to sites, parking, movement of traffic
- (f) Incorporate designs that recognise tangata whenua
- (g) Noise effects on surrounding residents and questions about the noise assessment submitted with the application
- (h) Ensure that any new buildings can withstand hazards
- (i) VEC building to be permitted to be decorated with associated bunting/flags/lighting
- (j) The 10-year timeframe not justified and the sites should be cleared sooner
- (k) Provide infrastructure that can be used permanently for later events
- (l) Public access and movement around the area should be maintained with any restrictions kept to a minimum
- (m) Retain open spaces and create a green passage from Victoria Park to a future Headland Park
- (n) Alternative berthage be found for the heritage William C Daldy tug, and for other heritage vessels
- (o) Land and waterfront access for the operation of the marine industry to be safeguarded
- (p) The need/demand for the extension to Hobson Wharf
- (q) Adequacy of the management plans to be submitted under conditions of consent
- (r) Parties to be consulted during the drafting of management plans
- (s) Visual effects
- (t) Construction effects
- (u) Satisfactory arrangements to be made for the relocation of the ferry and fishing industry
- (v) Lack of consideration for security measures
- (w) Media centre required for the events
- (x) Breakwaters inadequate to create calm water space required
- (y) Maintain and enhance facilities for cyclists
- (z) Use of the proposed Design Guidelines
- (aa) Relocation of a leopard seal.



Neutral submissions (with comments included):

- (a) Protection of Vector's assets and infrastructure in the project area (including maintaining unrestricted access to them)
- (b) Support for transplanting of trees recommended for removal, in particular, tree number 1
- (c) Culturally appropriate design solutions be incorporated into the development to offset adverse effects on the mauri of the Waitemata and to celebrate Maori culture
- (d) Impose conditions to maintain 24hr/7 day roading access for cement vehicles via Hamer Street/Beaumont Street
- (e) Impose conditions that restrict the number of truck and vehicle movements to those detailed in the Beca report
- (f) Impose conditions for measures to separate pedestrians from Hamer Street/Beaumont Street.

[26] Written approval was obtained from Stolthaven New Zealand Limited (Stolthaven), subject to construction activities being sequenced and managed to provide adequate vehicle access to its sites on Wynyard Point, and that recommendations in the Sherpa Report<sup>11</sup> be appropriately incorporated into any resource consent granted.

[27] Written approval was also obtained from Ports of Auckland as operator of the commercial port, provider and manager of marine services, and as the holder of a coastal permit under section 384A RMA for the water space that the syndicate base infrastructure and event infrastructure would occupy.<sup>12</sup>

[28] The applicant received approval in principle from Regional Facilities Auckland ("RFA") which owns and operates the VEC on Halsey Wharf and the New Zealand Maritime Museum on Hobson Wharf.<sup>13</sup> As the letter was an 'approval in principle' and recorded that RFA had not seen detailed plans or assessments, we decline to disregard any effects on the Maritime Museum. Nothing however turned on this as at the conclusion of our hearing. The VEC is in effect vacating its premises in favour of ETNZ, so effects on it barely come into the equation.



<sup>11</sup> Appendix 14, Volume 2 of the Application.

<sup>12</sup> Document 33, Volume 3

<sup>13</sup> Document 33, Volume 3.

## **Background**

### ***Planning History***

[29] The waterfront area concerned (approximately 26 hectares), is quite large, so understandably there has been an extensive consent history relating to activities and development both in the CMA and on land. This was summarised in section 4.3 of the AEE and in Document 32 of the application.

[30] The comprehensive record of previous consents in Document 32 lists, among other consents, the resource consent for the VEC granted by the Auckland Regional Council in 2009. The AEE clarifies that the consent to use the VEC as a syndicate base will sit as an additional / overlapping consent, alongside the existing VEC consent.

### ***Previous Applications***

[31] On 15 January 2018, the applicant lodged a resource consent application for a different scheme for AC36 ("previous scheme"), together with a separate but related application for a Ferry and Fishing Industry Relocation Facility ("FFIRF"). The applications for both the previous scheme and the FFIRF were publicly notified, however the former was withdrawn upon acceptance of the present application for processing. The FFIRF is on hold at the request of the applicant, and is not before the Court in these proceedings.

[32] The main difference between the present "Wynyard-Hobson" proposal and the previous scheme is that this one has greater emphasis on land-based development at Wynyard Point, and less intrusion into water space. The previous scheme included an extension to Halsey Wharf to accommodate four syndicate bases. That was foregone because of land becoming available on Wynyard Point south, to follow the removal of bulk liquid storage activities. The existing VEC is to be "repurposed" as ETNZ's syndicate base (Base A). The Wynyard-Hobson proposal retains a base (Base B) on an extension to Hobson Wharf. The number of syndicate bases was reduced from 8 to 7 in the new application.

## **The Site and Surrounding Environment**

### ***Description of Site***

[33] Sections 8.3 to 8.6 of the AEE provide a description of existing activities, buildings and public access, and describe existing occupation permits, ownership and lease



arrangements, summarised below.

[34] The subject site partly surrounds Viaduct Harbour, extending from Wynyard Point in the west to Hobson Wharf in the east.

[35] Wynyard Point is currently dominated by bulk liquid terminal facilities, with those located on the southern part of the Point to be removed to give way to syndicate Bases C to G. On the south-eastern corner of Wynyard Point is the SeaLink ferry operation including a building, loading, unloading and hardstanding area, and docking facilities. Immediately to the north of the SeaLink operation is the Auckland Seaplanes base. Further north again is a fuel tanker berth.

[36] To the east of Wynyard Point is Halsey Street Wharf which is partly used to support the Auckland fishing fleet. Next to the east is Halsey Street Extension Wharf, on which is found the VEC, with vehicle access and fishing boat berthage along the western side, and an area of hardstanding to the north predominantly utilised by fishing industry and other vessels. The area is also used to support temporary events, such as recently for the Volvo Round the World stopover base. Public access is provided around the perimeter of this wharf, except on occasion along the eastern side to support events in the VEC.

[37] Next east is the Wynyard Crossing pedestrian/cycling lifting bridge linking Halsey Street to Te Wero "Island" and the now fixed-in-place heritage rolling bridge, the Eastern Viaduct area, Hobson Wharf and the Auckland Waterfront.

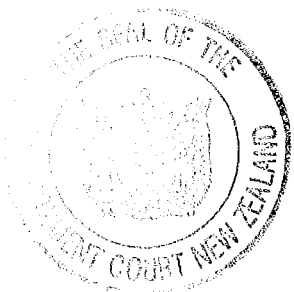
[38] Hobson Wharf contains the Maritime Museum with a breakwater at the end extending in a westerly direction, accessible to the public and used for vehicle parking. There is however no public access to the northern end of Hobson Wharf, which is fenced off and used for staff facilities for the adjoining National Maritime Museum.

[39] Pedestrian access along the waterfront, collectively called the Te Wero Walkway, provides linkages between all 4 wharves. Along this route are public amenities such as seats, art works, restaurants and cafes.

[40] Viaduct Harbour is used as a base for the Auckland charter vessel fleet, and for berthage of large private domestic and international vessels.

### ***The Surrounding Environment***

[41] A description of the area has been usefully summarised by the council's urban





design peer-reviewer, Ms R A Skidmore, in the following terms<sup>14</sup>:

While the mixed-use environment of the Viaduct Basin has been established for some time, the Wynyard Precinct is far from seeing its full transformation or capacity and regeneration. ... A strong waterfront axis has been created that is enjoyed by many people at different times of the day and throughout the year. While the public realm amenity at the eastern end of the axis has been compromised to a degree by large areas of surface carparking on the Eastern Viaduct (until recently) and Te Wero Island, the lifting bridge connection from the Viaduct Basin to the Wynyard Precinct and the high - quality design of the public realm along the waterfront axis through the precinct has created a distinctive and well-used axis. To date, North Wharf has been developed as a hospitality precinct that reinforces the waterfront axis. Wynyard Wharf along the eastern side of Wynyard Point is still primarily used for marine industry and is not publicly accessible. The car ferry leaves from the base area of this wharf where it intersects with North Wharf. The start of the green axis has been implemented with the creation of a linear park adjacent to Daldy Street at its northern end.

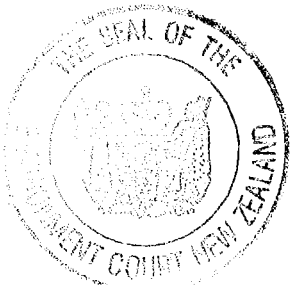
... The area as a whole has a strong maritime character with the visual links to the marine environment and a mix of commercial and recreational boats moored around the perimeter of the land and wharf structures. While the western edge of the Wynyard Precinct retains a strong marine industry focus, the fishing fleet is dispersed through the area and contributes to the authenticity of the environment as a working waterfront and provides both visual interest and contributes to the area's character.

## Reasons for Consent Being Needed

### *Introduction*

[42] The AEE records:

- *Resource consent is potentially required under the following statutory planning documents, as further identified below:*
- *Auckland Unitary Plan (Operative in Part) "AUP"*
- *Plan Change 4 to the Auckland Unitary Plan*
- *National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health*
- *Auckland Council Regional Plan: Coastal section*



[43] We address each of these in turn.

[44] Plan Change 4 to the AUP is an administrative Plan Change that aims to correct technical errors and anomalies in a number of the AUP's existing policies, rules, overlays and precincts, and in its GIS Viewer. A decision on submissions concerning Plan Change 4 was notified on 14 June 2018, and 2 appeals have been lodged with the Court. Plan Change 4 appears to us not of itself to trigger the need for additional resource consents for the proposal.

[45] As to the legacy Auckland Regional Plan: Coastal, the AEE states:

The Auckland Unitary Plan was made operative in part on 15 November 2016 however the Regional Coastal Plan (which forms part of the Unitary Plan) requires approval from the Minister of Conservation pursuant to Section 152(2)(b) of the Local Government (Auckland Transitional Provisions) Act 2010 and Clause 18(3) of Schedule 1 of the RMA. The provisions of the Regional Coastal Plan are beyond challenge and have been forwarded to the Minister for approval however, at the time of writing, the approval has not been confirmed.

This report includes an assessment under the ARP:C. ...

[46] The Minister has subsequently approved the Regional Coastal Plan (RCP) components of the AUP under clause 19 of Schedule 1 RMA, and its provisions have been made "operative in part" by the council under clause 20. Accordingly, the provisions of the former Auckland Regional Plan: Coastal are now of no effect for the purposes of this application.

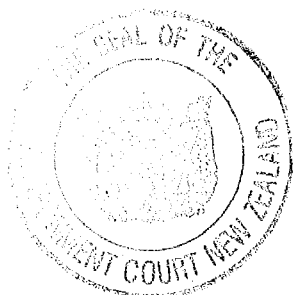
[47] As to the AUP, the applicant assessed reasons for consent being needed at section 9.2 of the AEE. Many of those matters will be analysed in detail in later sections of this decision; but we list the provisions triggered by this application below.

#### ***Viaduct Harbour Precinct***

[48] Under Rule I211.4.1(A6) consent is required as a restricted discretionary activity for the proposed capital dredging within the CMA to provide appropriate water depths for the boats.

[49] Under Rule I211.4.1(A27) consent is required as a restricted discretionary activity for the wave attenuation devices to be installed on Hobsons Wharf, including the existing and proposed structures.

[50] Under Rule I211.4.1(A30) consent is required as a restricted discretionary activity



for pile moorings to be established for berthage in the Outer Viaduct Harbour.

[51] Under Rule I211.4.1(A35) consent is required as a discretionary activity for the extension to Hobson Wharf and the syndicate base building B to be located on it.

[52] Standard I211.6.1 refers to temporary activities within the Viaduct Harbour precinct and restricts noise levels, duration and frequency of noise events. During the six months of the America's Cup Event phase, activities are proposed not to comply with these standards in relation to duration and noise levels, requiring consent as a restricted discretionary activity pursuant to rule C1.9(2).

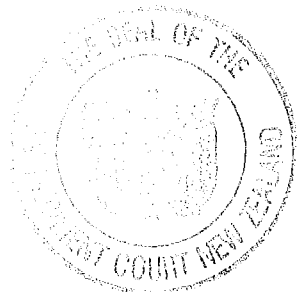
[53] It seems technically that consent is required as a restricted discretionary activity under rule I211.4.1(A28) for the creation of observation areas, viewing platforms and boardwalks (e.g. on the Hobson South breakwater). While the proposal provides further wharf extensions and breakwaters that will enable viewing of the harbour and aspects of the events, no specific "observation area, viewing platform or boardwalk" is proposed. However, because people could stand on the wharf extensions and breakwaters to view the harbour, they could arguably be considered "viewing platforms", requiring such consent.

[54] On page 84 of the AEE, it was suggested that consent is required as a restricted discretionary activity in relation to a potential infringement of I211.6.4 Building Height. The building to be located on Hobson Wharf is a discretionary activity and while it would exceed the 18m height above mean sea level restriction provided for in standard I211.6.4 (by reference to Precinct plan 3), as noted in rule C1.9(1) of the AUP it is only permitted, controlled and restricted discretionary activities that must comply with all the standards. Given that the building is a discretionary activity, consent is not triggered for the height infringement of itself, but, as provided in rule C1.8(2), regard should be had to the standards for permitted activities as part of the assessment of effects.

### ***Wynyard Precinct***

[55] Under rule I214.4.1 (A8) consent is required as a non-complying activity for the hosting of events within syndicate base buildings C to G whilst hazardous facilities are still operating in Sub-Precinct F. An entertainment facility is defined in Chapter J1 of the AUP as a "facility used for leisure or entertainment", and 3 examples are given: nightclubs, theatres and concert venues.

[56] During the America's Cup, team sponsors would be holding corporate events. It



is possible that the part of each syndicate base building used for hosting such events would fall within the definition of an 'entertainment facility', and require consent as a non-complying activity in this location.

[57] Consent is being sought under rule I214.4.1(A11) as a non-complying activity for events and associated buildings and structures that attract "no more than 1000 people at any one time". As the events are expected to attract greater numbers, it would appear consent might be required under rule I214.4.1(A12) as a non-complying activity for events which attract more than 1000 people at one time, or which have a duration greater than 21 days (subject to resolving whether the "event" is the 6-month regatta, or each corporate hosting), noting again that the activities would in sub-precinct F at a time when not all hazardous industries have ceased operating.

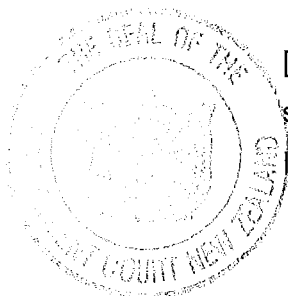
[58] Under rule I214.4.1(A12), similar issues arise of consent being required as a restricted discretionary in Sub-Precinct E and Area 6.

[59] Table I214.4.1(A13) provides for "major marine events" within the CMA on Halsey Street Extension Wharf and the Western Viaduct Wharf as a permitted activity for a duration of 60 days. The Event (regatta) duration being six months, would exceed this, and the applicant has sought consent as a discretionary activity under to rule C1.7. As there is no provision for major marine events within the CMA exceeding 60 days it is possible that the proposal for Base A on the Halsey Street Extension Wharf can be assessed against the provisions in E40 Temporary activities, rather than as a discretionary activity under rule C1.7. Sub-clause I214.4(5)(a) provides that the requirements in E40 apply to temporary activities on the Halsey Street Extension Wharf.

[60] Marine and port activities, which would include storage, servicing, maintenance and repair of vessels associated with syndicate bases, and any related buildings and structures; would require consent as a restricted discretionary activity in Sub-Precinct F, pursuant to rule I214.4.1(A19).

[61] Public amenities in Sub-Precinct F (excluding Wynyard Wharf), such as the landscaping and planting proposed on Wynyard Point, require consent as a non-complying activity pursuant to rule I214.4.1(A25), as hazardous industries will continue to operate in this sub-precinct.

[62] Public amenities on Wynyard Wharf, such as landscaping and a kiosk at the southern end of Wynyard Wharf, require consent as a non-complying activity pursuant to I214.4.1(A26), as hazardous industries will continue to operate in Sub-Precinct F.



[63] On page 85 of the AEE, Document 4 of the application, it was suggested that consent is required as a discretionary activity under rule I214.4.1(A35) for any activity not listed as a permitted, controlled, restricted discretionary or non-complying activity which has a functional need to be located in the CMA. This might not actually be the case.

[64] Under rule I214.4.1(A39), consent is required as a restricted discretionary activity for capital-works dredging required to create appropriate depths for navigation within the Wynyard Precinct CMA.

[65] Buildings and structures associated with marine and port facilities require consent as a restricted discretionary activity pursuant to rules I214.4.2 (A41) and (A51). The syndicate bases would constitute such activities, thereby requiring resource consent as a restricted discretionary activity for any associated building and structure within the CMA, and for their occupation within the CMA (A41); with the buildings and structures on land requiring consent as a restricted discretionary activity (A51).

[66] The syndicate base buildings C to G would be demolished 10 years from commencement of the consent. Under rule I214.4.2(A47) consent would be required as a controlled activity. Consent is also being sought under this rule for the removal of any existing buildings or structures required to facilitate the development. (The demolition or removal of CMA structures is a permitted activity in the Wynyard Precinct).

[67] Under rule I214.4.2(A49), consent is required as a restricted discretionary activity for the infill deck to Wynyard Wharf and the upgrading works required to improve the condition of the existing structure. Consent is also required under this rule for modification to the VEC building to accommodate Base A.

[68] A new connector road is proposed to the north of Bases C to between Brigham and Hamer Streets. Lanes between Bases C and D, D and E, and F and G, require consent as a restricted discretionary activity under rule I214.4.2(A52). Works are proposed in the existing Brigham Street road corridor, however as the road will be stopped by Act of Parliament, those works would not need to be considered under this rule.

[69] The Wynyard Precinct plan 6 details indicative lanes and viewshafts. Indicative lanes are shown on the Applicant's plans between syndicate Bases C and D, D and E, and F and G. Precinct plan 6 shows lanes in these locations, extending in a east-west direction between the waterfront and Hamer Street. The lanes would be available for public use in all circumstances between the hours of 7am and 11pm, however would be



temporarily closed to the public at certain times during events, the latter requiring consent as a non-complying activity pursuant to rules I214.4.2(A60) and I214.6.12(5).

[70] Standard I214.6.6(1) states that any building must not exceed the heights specified on Precinct plan 5, with Bases C to G being subject to height restrictions of variously 15m and 27m. Whilst the proposed base buildings will have a maximum height of 15m, it is expected ground levels will rise by 1m due to the placement of fill, so consent would be required for a 1m exceedance as a discretionary activity under rules I214.4.2(A61) and I214.6.6.

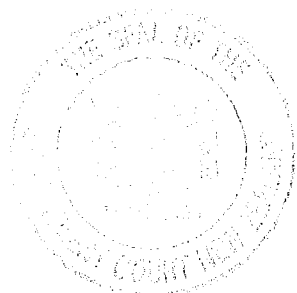
[71] Under rule C1.9(2) consent is sought as a restricted discretionary activity to infringe the noise standards in rule I214.6.4 during the Event periods.

[72] Standard I214.6.8 states that 'H8.6.25 building frontage alignment and height' applies except where the maximum building height is less than the minimum frontage height requirement in Map H8.11.5 of the Building – City Centre Zone. Bases C to G are identified in Map H8.11.5 as requiring a minimum frontage height of 13m and 19m. Map H8.11.5 identifies a minimum 19m frontage height along the boundary with Brigham Street and a minimum 13m frontage height on frontages to be created through the implementation of the Waterfront Plan 2012. The configuration of the base buildings does not entirely align with the frontages as shown on Map H8.11.5 and the base buildings do not provide for a contiguous minimum height frontage for a depth of 6m given they will have a maximum height of 15 to 16m, requiring consent as a restricted discretionary activity pursuant to rule C1.9(2).

[73] Consent is sought under standard I214.6.11(4) as a restricted discretionary activity to exceed a 50% crossing width restriction for any front and corner site on both Brigham Street and Hamer Street. Brigham Street is to be legally stopped, and along Hamer Street the plans do not show vehicle crossings exceeding 50% of the frontage, hence consent not required.

[74] Consent is sought as a restricted discretionary activity under rule C1.9(2) to infringe standard I214.6.12(7) which restricts structures and buildings from the coastal viewshafts on Precinct plan 6. Berthing facilities for the racing yachts and their supporting boats are shown in the viewshafts to the east and south-east of Wynyard wharf, requiring consent as a restricted discretionary activity.

[75] Consent is sought as a restricted discretionary activity pursuant to rule C1.9(2) to infringe standard 'I214.6.13.1 Public access ways – wharves' as public access will be



restricted along the eastern edge of Wynyard Wharf, the southern edge of the Western Viaduct and on the eastern edge of Halsey Street Extension Wharf.

[76] Consent is required as a restricted discretionary activity pursuant to rule C1.9(2) to infringe standard I214.6.15 to enable temporary structures associated with the 6-month Event period to be erected beyond 60 days and to restrict access for more than 60 days in a 12-month period to the east of the VEC during event periods.

***Business – City Centre Zone (Chapter H)***

[77] Standard H8.6.26 would require a minimum 3m width veranda along the frontage of base buildings C to G. No verandas are proposed, requiring consent as a restricted discretionary activity pursuant to rule C1.9(2).

[78] The proposed development does not comply with the minimum frontage height requirements in standard H8.6.25, requiring consent as a restricted discretionary activity, pursuant to rule C1.9(2).

***Auckland Wide Provisions (Chapter E)***

[79] Under Rule E4.14.1(A15) discretionary activity consent is sought for the discharge of contaminants to land, as dredged material will be stockpiled on land prior to being moved to a landfill facility or utilised in the construction process.

[80] As part of the ground improvement works groundwater diversion would be required as a restricted discretionary activity under rule E7.4.1(A20).

[81] During construction, groundwater diversion for stabilisation works would not comply with the permitted activity standards, with piles being greater than 1.5m in diameter; the natural groundwater level being reduced by more than 2m on the boundary of an adjoining site; further, the groundwater works might impede the flow of groundwater greater than a distance of 20m; and structures associated with stabilisation would extend more than 2 metres below groundwater level. Consent required as a restricted discretionary activity under rule E7.4.1(A28).

[82] Under rule E8.4.1(A10) consent is required as a discretionary activity for the diversion and discharge of stormwater from the impervious areas associated with Bases C to G.

[83] Under rule E11.4.1(A9) consent is required as a restricted discretionary activity



for earthworks which exceed 2,500m<sup>2</sup> within a sediment control protection area (23,100m<sup>2</sup> area is proposed).

[84] The AUP provides that any regional earthworks activity should be undertaken in accordance with standards noted in section E11.6. E11.6.1(2)(d) provides that upon any discovery of a protected New Zealand object as defined in the Protected Objects Act 1975, works shall cease, the area be secured, and relevant parties informed of the discovery to enable inspection. The applicant seeks consent to infringe this standard as a restricted discretionary activity pursuant to rule C1.9(2), by proposing a discovery protocol as a condition of consent.

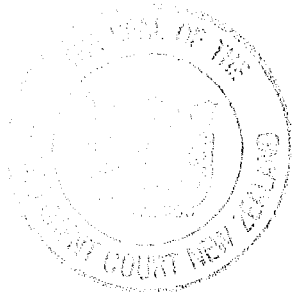
[85] Consent is sought under rule E12.4.1 (A6) and (A10) as a restricted discretionary activity for district earthworks greater than 2500m<sup>2</sup> in area and 2500m<sup>3</sup> in volume (10,607m<sup>3</sup> over an area of 23,100m<sup>2</sup>).

[86] Any district earthworks activity should be undertaken in accordance with the standards noted in section E12.6. E12.6.1(2)(d) states that upon any discovery of a protected New Zealand object as defined in the Protected Objects Act 1975, works on the site shall cease with the area secured and relevant parties informed of the discovery to enable inspection. The applicant seeks consent to infringe this standard as a restricted discretionary activity pursuant to rule C1.9(2), proposing a discovery protocol as a condition of consent.

[87] Consent is sought under rule C1.9(2) to infringe standard E12.6.2(1) for general earthworks greater than 5m<sup>2</sup> and 5m<sup>3</sup> within a coastal protection yard, also standard E12.6.10 for earthworks involving contaminated material.

[88] Consent is sought on a conservative basis for earthworks related to the construction, maintenance and repair of public roads given the level of contaminants in the land is unknown, under rule E14.4.4 (A83 – although noted as A82 in the AEE) as a restricted discretionary activity. Minor works will occur in Hamer Street, creating new, or removing, vehicle crossings. As Brigham Street is expected to be stopped, no consent would be needed. The proposed northern connector road would not be vested as a public asset and therefore works in association on it would not trigger the need for consent under this rule.

[89] Consent might be required as a restricted discretionary activity under rule E14.4.4 (A77) because cement might be used in the construction process within a 'high air quality – dust and odour area'.





[90] Consent is required as a restricted discretionary activity under rule E15.4.1 (A21) for the removal of 'Tree 1' as identified in the Arboricultural Assessment Report contained in Document 18 of the application, given it is more than 3m in height and is within 20m of mean high water springs.

[91] Consent is required as a restricted discretionary activity under rule E17.4.1(A10) for the removal of trees numbered 15 to 17 located in the Hamer Street road reserve as identified in the Arboricultural Assessment Report, as they are more than 4m in height and have girths greater than 400mm.

[92] Not all trees within the subject area are to be removed and given that construction methodologies have not yet been confirmed, consent is also sought as a restricted discretionary activity to undertake works within the root zone of retained trees, under rule E17.4.1(A8).

[93] Comprehensive development signage is defined in Chapter J1 of the AUP (by reference to the definition in the Auckland Transport/Auckland Council Signage Bylaw 2015) as any "signage relating to a new building or the alteration of an existing building where the building or alteration requires a resource consent and/or building work to the value of at least \$100,000, assessed at the time a building consent is lodged with the council". The syndicate base buildings are expected to exceed \$100,000 in value and will have signage associated with team sponsors, therefore requiring consent as a restricted discretionary activity under rule E23.4.2(A53).

[94] Construction works and 'Noise Events' during the event periods would exceed the noise standards for the General Coastal Marine Area zone and the Business – City Centre zone, requiring consent as a restricted discretionary activity under rule E25.4.1(A2). Construction activity is also expected to exceed the vibration standards at certain stages of the project, also requiring consent as a restricted discretionary activity subject to rule E25.4.1(A2).

[95] While there are general rules in the AUP permitting earthworks, any undertaken for infrastructure should be in accordance with standards in section E26.7.5.1. Standard E27.5.1(2)(d) provides that upon any discovery of a protected New Zealand object as defined in the Protected Objects Act 1975, works shall cease, the area secured, and relevant parties informed of the discovery to enable inspection. The applicant seeks consent to infringe this standard as a restricted discretionary activity pursuant to rule C1.9(2) and has proposed a discovery protocol as condition of consent.



[96] Standard E27.6.4.2.1 states that there shall be a minimum separation distance of 6m between vehicle crossings serving the same site. A 5.5m separation distance between crossings on Hamer Street is proposed, requiring consent as a restricted discretionary activity pursuant to rule C1.9(2).

[97] Standard E27.6.4.2.2 provides that the width of a vehicle crossing must meet the requirements noted in Table E27.6.4.3.2. A one-way vehicle crossing is required to be between 3-3.5m in width and a two-way crossing 5.5m in width. Three one-way vehicle crossings exceeding the maximum 3.5m width are proposed, and two two-way crossings exceeding the 5.5m restriction, requiring consent as a restricted discretionary activity under rule C1.9(2).

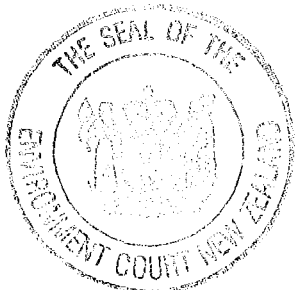
[98] Given the historical use of the site, the land is known to be contaminated and given that the levels are not yet fully known, and compliance with appropriate standards cannot be demonstrated, consent is sought for the discharge of contaminants to air, water and land as a discretionary activity subject to rule E30.4.1(A7).

[99] Each of the syndicate bases would likely store and use hazardous substances. However, as the volumes associated with each base are not yet known, Panuku is unable to demonstrate compliance with specified thresholds, so consent is required as a discretionary activity under Rule E31.4.1(A7).

[100] Boat or ship construction, repair or maintenance facilities greater than 5000m<sup>2</sup> are considered a 'high risk' industrial trade activity under Table E33.4.3. The proposed activity when considered holistically would result in an area greater than 5000m<sup>2</sup>, discretionary activity consent being required for the discharge of contaminants from a new industrial or trade activity area listed as high risk, pursuant to rule E33.4.2(A24).

[101] Buildings and structures are proposed within the coastal erosion hazard area (land which is at an elevation less than 7m above mean high water springs if the activity is within the Inner Harbour and 40m of mean high water springs if it is in the Inner Hauraki Gulf), requiring consent as a restricted discretionary activity under rule E36.4.1(A4).

[102] A "hard protection structure" is a structure that has the primary purpose or effect of protecting an activity from a coastal hazard, including erosion. Consent is sought under E36.4.1(A20) for a restricted discretionary activity for the stabilisation works that would occur to the existing wharf structures to maintain the stability of the coastal edge. Rule (A20) refers to extensions to existing structures that would increase the area of occupation. The ground improvement works would not increase the area of occupation



and are considered a permitted activity under E36.4.1(A19), which provides for the repair, maintenance or minor upgrade of lawfully established hard protection structures.

[103] An overland flow path is shown running through the Base G site and along Brigham Street, on Council GIS maps. Consent is sought as a restricted discretionary activity pursuant to E36.4.1(A42) for buildings and structures located within or over an overland flow path. While the GIS maps show a flood prone area within the site adjacent to Brigham Street, this in fact is the area of water space between Wynyard Wharf and Brigham Street, so consent not required.

[104] Chapter E40 provides for temporary activities subject to meeting certain standards. While Chapter E40 provides for temporary activities of shorter duration, they also regulate events of longer duration. Rule E40.4.1(A6) provides for temporary activities in public places and on private land and for more than 21 consecutive days within the area of the City Centre, as a restricted discretionary activity. If the event periods are six months in duration and do not comply with the noise standards, they would require consent as a restricted discretionary activity. Chapter E40 also provides for "noise events" within public places as a permitted activity (E40.4.1(A12)). Noise events are restricted in terms of duration and frequency (see E40.6.5). Panuku considered it possible that restricted discretionary consent would be necessary (rule E40.4.1(A24)).

#### ***Coastal – General Coastal Marine Zone (Chapter F)***

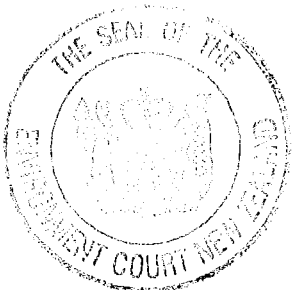
[105] Under rule F2.19.2(A10), consent is required as a discretionary activity for the temporary deposition on the seabed of material extracted during piling and the construction of structures.

[106] Under rule F2.19.4(A37), consent is required as a discretionary activity for disturbance of the foreshore in association with the stabilisation and construction works.

[107] Discretionary activity consent is required under rule F2.19.8(A84) for occupation of the CMCA for areas to the north and south of Hobson Wharf to accommodate the 74m wharf extension and floating pontoons.

[108] Consent is required under rule F2.19.8(A94) for any parking associated with the syndicate bases located on the coastal marine structures, as a discretionary activity.

[109] Underwater noise generated by impact or vibratory piling associated with the wharf extensions could include impact piling, requiring consent as a restricted



discretionary activity under rule F2.19.8(A114).

[110] Consent is required under rule F2.19.10 (A121) for wave attenuation structures in the Wynyard Precinct as a discretionary activity.

[111] Discretionary activity consent is sought under rule F2.19.10(A142) for hard protection structures whose primary purpose is protection from a coastal hazard. The structures proposed are for wharf extensions to accommodate buildings, and structures for water calming measures. Consent was sought out of caution.

[112] Discretionary activity consent is sought under rule F2.19.10(A143) for observation areas, viewing platforms and boardwalks, which (as previously noted) might not strictly be required.

***National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health***

[113] Wynyard Point contains contaminated soil from historical land uses. Given that land disturbance is to occur for the construction of Bases C to G, discretionary activity consent is required under Regulation 11 for disturbance of soil on land which has previously had Hazardous Activities and Industries List (“HAIL”) activities conducted and where the level of soil disturbance exceeds permitted thresholds and no detailed site investigation has been undertaken.

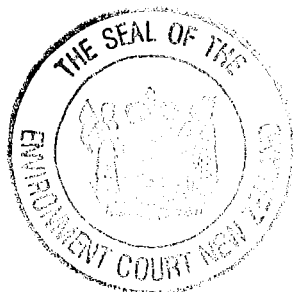
***Overall Activity Status / Bundling***

[114] In the context of such a large-scale integrated proposal where so many of the effects of the various activities overlap, and as accepted by the applicant, it is appropriate to bundle the consents in terms of rule c1.5 of the AUP and consider them together on a comprehensive basis as a non-complying activity overall.

***Statutory Considerations Generally***

[115] Section 87G (6) RMA concerning direct referrals, provides that “*if considering a matter that is an application for a resource consent, the Court must apply sections 104 to 112 and 138A as if it were a consent authority*”.

[116] In considering any application for resource consent and any submissions received, a consent authority must, subject to Part 2, have regard to the following matters in section 104(1):



- (a) *Any actual and potential effects on the environment of allowing the activity; ...*
- (b) *Any relevant provisions of national policy statements, New Zealand coastal policy statement; a regional policy statement or proposed regional policy statement; a plan or proposed plan, a national environmental standard (NES), or any other regulations; and*
- (c) *Any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

[117] By s 104(3)(a)(i) RMA, we must not have regard to trade competition or the effects of it. No allegations of this kind appeared in submissions.

[118] The applicant has provided written approvals by certain parties. By s 104(3)(a)(ii) RMA, effects on such persons must not be had regard to. As previously recorded, we have declined to disregard effects on RFA (Maritime Museum) because of the somewhat equivocal expression of approval by that body. Effects on Stolthaven and Ports of Auckland Limited can however be disregarded.

[119] We will assess of the proposal in terms of section 104(1) RMA, then in terms of section 104B, section 104D and Part 2 RMA.

[120] Because we are acting as a first instance consent authority under direct referral, we must consider and make findings on all matters required by the statute, not just those unresolved prior to the hearing. We will however naturally focus more on those that were in greater contention up until the days before the hearing and at it. Some of the matters that were contentious at early stages became less so, with many even fully resolved in the processes described in paragraph [14] of this decision. We have nevertheless taken care to describe them and the manner in which they were narrowed or resolved, before making our own findings as required by the Act.

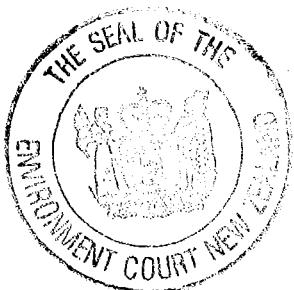
### **Section 104(1)(a) – Assessment of actual and potential effects on the environment**

[121] We will consider these topic by topic. Reference to the Contents pages at the start of this decision will assist the reader find topics among the considerable number of items.

#### **Navigation**

[122] This topic was at all stages relatively uncontentious.

[123] Section 10.10 of the AEE and Documents 19 and 20 of the application addressed



navigation and safety issues in the surrounding water space, during the construction period and throughout the Event.

[124] The evidence in chief of Mr GRP Bermingham, an experienced marine engineer called by Panuku, focussed on maritime safety, risk, and utility aspects of the proposal. He provided us a detailed look at relevant facts and context, marine environment and activities, development design factors (shelter from wind, vessel turning areas, channel width, tug manoeuvring areas, tanker safety area, access to mooring lines, impacts of vessel main engine wash, aids to navigation, manoeuvring visibility, care around existing berthing areas, and need for pontoons).

[125] He considered superyacht berthing requirements (there will likely be many of these vessels attracted to the regatta), construction effects, effects on existing maritime users including ferries, fishing vessels, tankers, heritage boats in the area, and the Maritime Museum<sup>15</sup>.

[126] Mr Bermingham approved of relevant conditions of consent attached to the evidence in chief of Panuku's planning witnesses Mr V N Lala and Mr K P Cook<sup>16</sup>, and confirmed that there were no matters not agreed at the expert witness conference of himself and representatives of Panuku, Sanford, Sealink, and the Auckland Deputy Harbourmaster Mr C Moss<sup>17</sup>.

[127] Mr Bermingham expressed confidence that during the construction phase, dredging and increased harbour traffic can be managed appropriately by the proposed Navigational Safety Management Plan ("NSMP") in consultation with the Harbourmaster and other uses of the water space<sup>18</sup>. Mitigation measures to ensure ongoing usability and safety of the harbour would include communications on construction operations, placement of buoys and temporary beacon lights. He considered that in terms of the Event, a water space has been designed that will achieve the required water depths and tranquillity for the race boats, and berthing arrangements that can provide appropriate manoeuvring for them, associated regatta boats, superyachts and other vessels. He anticipated that during the Event there would be an increase in recreational and commercial boat traffic in the Waitemata Harbour, but this would be managed as

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<sup>15</sup> Bermingham EIC, paragraphs 8, 10, and 13.

<sup>16</sup> Bermingham EIC, paragraph 14.

<sup>17</sup> Bermingham EIC, paragraph 15.

<sup>18</sup> Bermingham EIC, paragraphs 5.2, 6.3, 9.2.



previously for other water-based events in the Harbour<sup>19</sup>.

[128] Mr C Moss, the Deputy Harbourmaster for Auckland Council, was called by the council in its regulatory capacity. He had previously presented a report in support of the council's s 87F report, and participated in expert conferencing with Mr Bermingham and others listed below.

[129] He confirmed the contents of his earlier report, and considered in detail the report that had been provided by Mr Bermingham in support of the AEE. He had regard to Auckland Council navigation bylaw 2014, the New Zealand Port and Harbour Marine Safety Code and relevant provisions of the Maritime Transport Act 1994. He considered the statement of evidence in chief by Mr Bermingham, and the evidence of Mr Lala and Mr Cook, including their proposed conditions of consent.

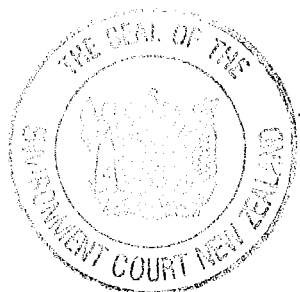
[130] Mr Moss confirmed the agreements reached in the joint witness conference. He said that in his opinion Panuku had addressed the primary navigation safety outcomes for the proposal overall, and that any navigation and safety concerns could be appropriately managed by adherence to the proposed conditions of consent – in particular the preparation of a navigation safety management plan ('NSMP') during the construction period to alleviate a number of submitter concerns.

[131] Of some importance Mr Moss said that he generally agreed with the summary of effects on existing maritime users that had appeared in Mr Bermingham's report for the AEE, and was reiterated in his evidence.

[132] Submissions raised concerns with the following:

- (a) Prioritisation of the lifting Te Wero bridge to be given to boats rather than pedestrians.
- (b) Manoeuvring space needed for the Spirit of Adventure Trust vessel.
- (c) Potential impact on navigation safety in the event the Sealink ferries and the fishing fleet are relocated to a site within the Westhaven fairway.

[133] Sealink Travel Group Limited (Sealink), a s 274 party, called the evidence of a nautical consultant Mr R J Hawkins. He described the vehicular ferry vessels operated by the company from its current terminal at the eastern inner end of Wynyard Wharf,



<sup>19</sup>

Bermingham EIC, paragraph 11.

running services to Great Barrier and Waiheke Islands. The vessels are large, often heavily loaded, and for various reasons often difficult to manoeuvre, especially in conditions of high wind and low boat speed.

[134] There is a proposal under discussion between Sealink and Panuku about possible relocation of the terminal to a site on the Western side of Wynyard Point.<sup>20</sup> Given that an alternative berthing location will require time to gain consent and be built, Sealink will be operating from its existing terminal for some time, in particular during much of the time of construction of the bases and infrastructure for AC36.

[135] Consultations, negotiation and witness conferencing among the parties has been robust and constructive, and resulted in full agreement on proposed conditions of consent.

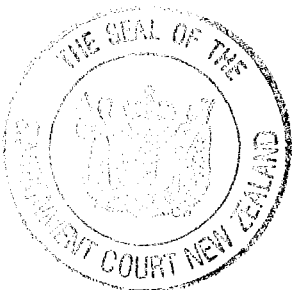
[136] Joint witness conferencing occurred among Mr Bermingham, Mr Hawkins, Mr Moss, two other representatives of SeaLink, Mr G de Rouvroy and Mr C Ross, and Mr C Williams for Sandford. Complete agreement was reached, importantly in relation to the management of construction works while Sealink maintains access to the existing terminal. This management will focus on construction of the proposed Wynyard breakwater and the Halsey Street Extension wharf breakwater, including deferral of much of the latter for a time.

[137] As with other management plans being created pursuant to conditions of consent, considerable discussion and drafting has been done already. This has had the benefit of providing a high level of knowledge to the parties, and informing the framing of conditions of consent.

[138] By the conclusion of the proceedings, we considered that the detailed work by Mr Bermingham, Mr Moss, maritime safety representatives of major parties, and submitters, had been satisfactorily dealt with through proposed conditions of consent (subject to some revisions we directed at various stages now undertaken and approved by us), such that adverse effects of ongoing safety and access for existing and future users of the water space, would be no greater than minor.

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<sup>20</sup> Evidence of Mr M T Gibson, CEO of SeaLink.





**Groundwater**

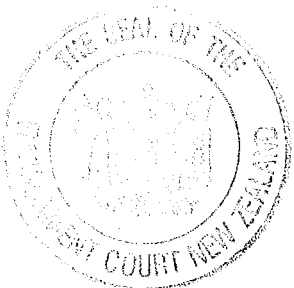
[139] This was another area relatively free from contention.

[140] Ground improvement works are required over approximately 230m of Brigham Street, likely to incorporate columns extending to a depth of 10-15m placed in a lattice pattern 20m landward of the existing seawalls. The ground improvement works would extend approximately 13m below natural groundwater level and require consent for the diversion of groundwater.

[141] Section 10.18 of the AEE and Document 26 of the application addressed the effects associated with groundwater diversion. The groundwater technical report in Document 26 stated that ground improvements would be parallel or at an oblique angle to the direction of groundwater flow, and therefore damming would be unlikely to occur. Previous stabilisation works in the Wynyard Quarter indicate that less than a 0.2m groundwater level rise (known as mounding) has occurred in terms of changes to ground water. If the proposed stabilisation works were to result in 0.2m of mounding, the groundwater levels would remain at a depth that would be unlikely to impact on buried services. Conditions of consent were proposed by the applicant that would require monitoring of any groundwater changes and require appropriate contingency plans to be put in place in the event groundwater level changes exceed the thresholds in Document 26.

[142] In his evidence for Panuku, Mr P J Ware, a scientist specialising in hydrogeology and contaminated site investigations, described the existing groundwater levels and flow patterns as complex, a result of the heterogenous nature of the fill and the presence of seawalls that result in varying local conductivities, tidal lags and tidal ranges over relatively small distances. The main controls on groundwater levels under Wynyard Wharf are either the harbour (where the outer reclamation walls are permeable) or local soil conditions, including the presence of service trenches that may act as preferential flow paths. Groundwater levels are typically in the range 1.4 m to 3.0 m below ground level, based on a typical ground level of 3 m RL. The direction of flow is generally to the north or northeast, however with significant local variation likely.

[143] Ground improvement works are the activities most likely to affect groundwater movement. These are required to mitigate the potential for liquefaction around structures on or adjacent to the Wynyard Point reclamation. Mitigation may include cement stabilised columns to likely depths of 10-15 m in a lattice pattern extending to



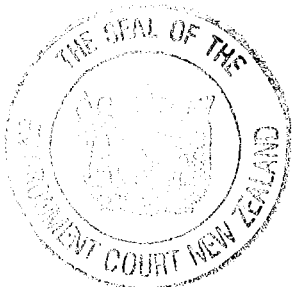
approximately 20 m landward of the existing seawalls, a cement-stabilised raft over the same area within the top few metres of the soil profile, and piling at a diameter of up to 2m. Stabilisation of ground under the existing road may be required over a width of at least 5 m and a similar depth. The effects of such works could change the groundwater levels and directions of flow, and could result in a local mounding. Mr Ware's view was that:

- (a) Likely there would be negligible change in overall direction of flow or mounding of groundwater, as groundwater can still discharge to the coast.
- (b) Previous monitoring in Wynyard Quarter during ground improvement has not indicated mounding that could be attributed to those works.
- (c) If such mounding did occur it would likely be less than 0.2 m, and hence indistinguishable from background variations. If this did occur, the groundwater levels would remain deeper than 1.2 m below ground level and no buoyancy effects on services or structures would be expected.
- (d) Should mounding occur above the expected levels, drainage works could be used to mitigate.

[144] Conditions were proposed about avoidance of damage to structures and services, groundwater alert level thresholds and alert level actions. Mr Ware considered that these, along with the proposed groundwater monitoring, would be sufficient to avoid potential (and, he said, negligible) adverse effects on groundwater.

[145] Mr R J Simonds, the council's groundwater specialist, reviewed the application (Appendix N of the s 87F report) and concurred with the findings in the technical report in Document 26. He reiterated his findings in his evidence in chief called by the council, including that:

- (a) There have been adequate on-site geotechnical investigations to provide appropriate and suitably conservative geotechnical and groundwater level data for adequate assessment of effects.
- (b) A Groundwater Management and Contingency Plan is required to ensure that groundwater levels remain within the predicted envelope.



- (c) The effects of the proposed take and diversion of groundwater will be less than minor for neighbouring buildings, structures and services and less than minor for the environment.

[146] Expert conferencing was conducted on groundwater issues (in conjunction with contaminated land, earthworks and air discharge issues) and there was no disagreement between Mr Ware and Mr Simonds. They agreed that any effects could be mitigated via the controls put forward in the Construction Environmental Management Plan and the Remediation Action Plan required by the proposed conditions of consent.

[147] No submissions were received on groundwater matters.

[148] Our finding on groundwater diversion is that the effects on stabilisation and buried services will be no more than minor so long as the conditions we have approved, are followed.

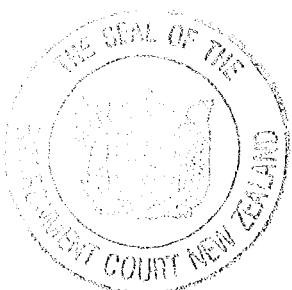
#### ***Land Contamination***

[149] The development area is known to have contamination issues arising from historical land use activities, notably the handling and storage of petroleum hydrocarbons, and the disposal of gasworks wastes in the reclamation fill. To a lesser extent, inorganic compounds such as copper, cyanide and lead are also present in the soils and groundwater in the area. Measurable thicknesses of separate phase hydrocarbons (SPH) are known to be present over approximately 50% of the development area.

[150] Panuku provided a Preliminary Site Investigation (PSI) in Document 27 of the AEE, which outlined previous investigations undertaken on the land, and background information on historical uses of the land.

[151] To mitigate any contaminant discharge during the land disturbance works Panuku prepared a draft Remediation Action Plan (RAP) which outlined the following proposed measures:

- (a) Undertaking a Detailed Site Investigation (DSI) to gain a better understanding of the types and levels of contaminants prior to commencing land disturbance activities, and updating the RAP to reflect the findings of the DSI.
- (b) Disposal to an authorised facility of all material which is unsuitable for retention on site following testing of contamination levels.



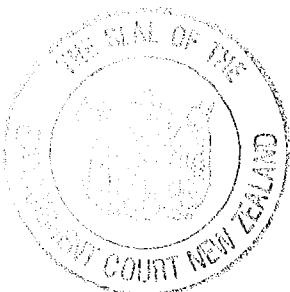
- (c) Ensuring that any truck leaving the site carrying contaminated material is covered prior to departure and dirt brushed off the wheels to avoid any tracking of soil outside the site.
- (d) The placement of any stockpiled material onto impervious material only, and in locations where runoff can be controlled. The stockpiles would also be covered to minimise leachate.
- (e) Ensuring that any surface water runoff is directed towards catch-pits where contaminants can be contained.
- (f) In the event of encountering groundwater, managing any contaminated groundwater should dewatering be required.
- (g) Any petroleum-impacted areas to be managed accordingly with the oil/water mix to be removed from the site.

[152] Mr P J Ware, previously mentioned, summarised and confirmed in evidence in chief, the assessment made in the PSI. Mr Ware noted that the likely type and distribution of contamination can be anticipated with a high degree of certainty following previous works nearby. Some additional investigations were also being carried out concerning groundwater levels, and contaminant concentrations in soils, sediment and groundwater, to build on the current understanding. This work is expected to continue through the entire construction period and beyond. The depth of soil to be disturbed is restricted to the top 1 m of material, which would limit the types of effects that could occur.

[153] Mr Ware's conclusions and assumptions about the site contamination can be summarised as follows.

[154] The concentrations of contaminants are such that where soils are to be disturbed, management controls are required to mitigate risks to human health and the environment. It is anticipated that measures to mitigate the effects of disturbing soils containing SPH will be required (subject to the results of further investigation currently taking place).

[155] Some stabilised dredged materials might be used as fill materials to establish the required ground levels, and testing has been carried out to establish whether contaminants are present in those materials. Apart from one asbestos sample, no results showed concentrations above the relevant human health or environmental criteria. Mr Ware considers that the low levels of asbestos and other contaminants could be adequately managed within a RAP. If the materials are mixed with cement to become mudcrete as has been proposed, the risk of contaminant-leaching would be further reduced as mudcrete is effectively impermeable.



[156] Concerning potential effects of contaminants discharging to air during earthworks, Mr Ware considered the main concern would be from dust, including the potential mobilisation of asbestos fibres. We discuss those issues subsequently.

[157] Mr Ware pointed to the use of harbour sediments of fill material being used in reclamation over more than a century, with the mudcrete stabilisation technique used since 1993 providing a now proven practice with highly predictable outcomes and manageable effects. A table in Mr Ware's evidence set out the main means by which contaminants could be exposed. His view was that the proposed conditions, which require an updated RAP to be submitted prior to the works commencing, are appropriate to manage the potential contaminated land effects. He said the risk-based management approach detailed in the RAP, which includes the appointment of a suitably qualified environmental practitioner to oversee the work, is in line with the approach taken in other Wynyard Quarter earthworks and improvement projects since 2010.

[158] Mr Ware's conclusions about the assessment parameters and 'status quo' approach to contamination, which he reviewed in the light of new data that was not available at the time of the original assessment, seemed very appropriate for the project. He considered that updating the draft RAP again after completion of a detailed site investigation would be an effective process to allow all information to be used in mitigation planning.

[159] The PSI and draft RAP were reviewed by Council's contamination specialist Ms M Jukic, in her report (Appendix K to the s 87F report). She concluded at paragraph 4.1.5:

The proposed mitigation measures are considered to be appropriate to control the potential contaminant discharges from the proposed land disturbance works. It is considered that any effects of the proposed activity on the environment will be appropriately managed and mitigated, based on implementing the proposed measures to avoid, remedy or mitigate effects in accordance with the application documents.

[160] Ms Jukic confirmed those conclusions in her evidence in chief for the council. She concurred generally with the description of contaminants, potential effects and management methods described by Mr Ware. She reviewed the draft RAP and considered that it would provide mitigation measures that would adequately manage, mitigate or remedy any potential adverse effects of contaminant discharge during the proposed land disturbance works and the re-use and stockpiling of the cement-stabilised dredge material on land.

[161] Ms Jukic and Mr Ware took part in the multi-disciplinary expert witness



conferencing that included groundwater, contamination, geotechnical and engineering topics. Ms Jukic reported that they agreed minor changes to the 27 July 2018 version of the proposed conditions of consent. She was satisfied that these changes had found their way into the revised conditions attached to the evidence of Mr Lala and Mr Cook.

[162] In her evidence Ms Jukic recommended changes to the wording of two clauses of section 6.6 of the draft RAP to include more formal reference to the *Contaminated Land Management Guidelines No.5 Site Investigation and Analysis of Soils (MfE, revised 2011)*, including reference to sampling being undertaken by a suitably qualified and experienced practitioner.

[163] She concluded that aside from the amendment to section 6.6 referred to above, Panuku had proposed the best practicable option for the control of contaminant discharges at the site. She considered that the net potential adverse effects of the disturbance of contaminated material and the re-use and stockpiling of soil, as proposed, would have effects on the environment that were no more than minor.

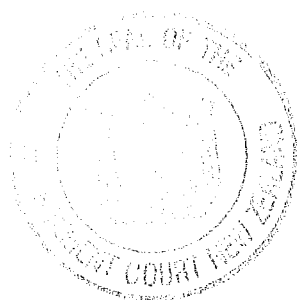
[164] Mr R A van de Munckhof, an environmental engineer also called by the council, reviewed the PSI and draft RAP against the 'National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health' (NES Soil) (Appendix J to the s87F report). His view was that, provided the controls and mitigation measures outlined in the draft RAP along with any updates to reflect the outcome of the DSI were implemented, there would be negligible effect on human health arising from the disturbance and future occupation of the land. Mr van de Munckhof confirmed those findings in his evidence in chief. He noted that he had attended the multidisciplinary expert conference with Mr Ware and Ms Jukic and others, and confirmed that there were no matters of disagreement amongst them.

[165] There were no submissions raising land contamination issues.

[166] We find that the measures proposed when undertaking land disturbance activities will be entirely appropriate, in particular to ensure that contamination of the surrounding land and the adjoining Waitemata Harbour will not occur during the construction period. Further, that there would be negligible effects on human health during construction and after occupation of the land.

### ***Air Contamination***

[167] Contaminated soil is expected to be present as discussed above. During

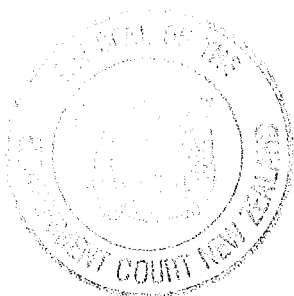


construction, there is potential for discharges of dust, some of which could be contaminated. Also, objectionable odours or vapour, some of which could be in close proximity to sensitive receivers. Furthermore, construction activities would likely involve the storage and handling of cement for mud-creting and grouting, where again there is potential for objectionable air discharge.

[168] The 'Draft Remediation Action Plan' (RAP) included in Document 27 of the application and attached to the evidence in chief of Panuku's contaminated land witness Mr Ware, addresses dust, vapour and odour management (sections 9.9 and 10.4). Dust control during construction would be managed by best practice guidelines, such as covering stockpiles, dampening exposed soils, maintaining low traffic speeds and having regard to wind directions. Offensive odours could potentially occur with soil disturbance or when underground infrastructure is disturbed, as has occurred previously during work on Daldy Street, Jellicoe Street and Halsey Street. Apparently, high levels of hydrocarbon contamination were encountered at depths close to the groundwater table. Odour monitoring is proposed and the RAP sets out a continuum for perceived odour intensity and associated proposed actions which range from continuing work without modification, to ceasing work immediately with the implementation of odour abatement measures. As to petroleum-impacted areas, monitoring devices will be utilised for excavation areas and if explosive vapour levels are reached, evacuation procedures would occur until levels dropped to a safe level.

[169] In his evidence in chief, Mr Ware described the potential for disturbance of contaminated land to result in contaminated discharges to air. He considered there to be limited potential for vapours to be released from the contaminated fill materials and pose a risk to human health, but the RAP includes measures to prevent such vapours entering buildings, using a variety of well-established design solutions. These include use of HDPE vapour barriers and active venting to the outside of the buildings. Mr Ware also alluded to the potential for dust generation to release asbestos fibres to the air. He considered that the conditions proposed for the RAP would provide appropriate mitigation measures to manage all aspects of land contamination including air discharges.

[170] Mr P E Crimmins, an environmental scientist specialising in these matters, employed by the council, confirmed his agreement with the proposed conditions as discussed at the expert conference on 27 July 2018. Having in his evidence reviewed the draft RAP and draft CEMP of 3 August 2018, Mr Crimmins considered that the draft RAP contained sufficient measures to monitor and mitigate potential discharges of odour and



volatile organic compounds arising from disturbance of contaminated land, such that is it unlikely health effects and offensive or objectionable odour effects would arise. However, he recommended some further detail should be included in the CEMP in section 6.14 and 8 to define a criterion or action level and routine monitoring procedures for dust in accordance with proposed condition 33(u). The management plans are not the subject of certification by us. That is for council officers later. Our focus is on setting objectives through conditions that will be implemented by the plans. Nevertheless, we have been greatly assisted by the plans having been developed by the Project Alliance to the extent that they have been already, and we are encouraged in our approval of the relevant conditions on this subject by noting agreements among witnesses on detail being developed in the plans.

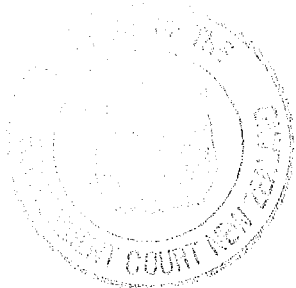
[171] Mr Crimmins agreed with the draft conditions attached to the evidence of Mr Lala and Mr Cook, and concluded that the actual and potential air discharge effects of the activities would be adequately controlled such that significant effects would be unlikely.

[172] There were no specific references to air discharge in submissions, however there were some concerns expressed about potential dust effects during construction. Those submitters operate cafes adjoining North Wharf, with outdoor seating areas. Given the low likelihood of significant air discharge effects arising from this proposal, neither the applicant's nor council's witnesses considered that additional conditions were necessary.

[173] Given the mitigation measures proposed by Panuku, and agreements reached among the experts, we are satisfied that dust, odour and contaminant discharges would not adversely affect the surrounding activities, and effects on air quality overall would be no more than minor, subject to compliance with conditions.

### ***Earthworks and Sediment***

[174] Earthworks are proposed to be undertaken on Wynyard Point up to 10,607m<sup>3</sup>, over an area of approximately 25,400m<sup>2</sup>. These are for ground improvement works, construction of new services, piling, creation of building platforms and re-paving. Great care would be needed because of the historical land contamination. The works would include preparation of the locations for the five syndicate bases, a new access road, an access and carpark area to the rear of the bases, and a landscaped area. The land to be disturbed is generally flat with a mostly impervious surface.





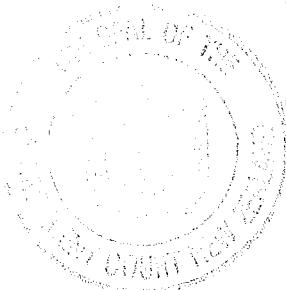
[175] Panuku proposed to undertake the earthworks in accordance with erosion and sediment controls in Auckland Council's Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region, Guideline Document 2016/005 (GD05) and proposed the following mitigation measures:

- (a) Acknowledging the contaminated nature of the soils and directing dirty water to retention facilities where flocculation will occur to reduce levels of total suspended solids to improve water quality levels before being discharged.
- (b) Stabilised construction entrances and possible wheel washes to reduce sediment tracking onto the surrounding road network.
- (c) Installation of clean water diversion bunds around the area of works.
- (d) Protection of surrounding stormwater cesspits from by use of geotextile filter cloth and silt socks or the capping of existing stormwater infrastructure.
- (e) Stockpiles of soil to a height no greater than 3m, to be covered with polythene.
- (f) Progressive stabilisation of the works to limit the extent of exposed areas.

[176] Mr S J Priestley, a civil engineer specialising in port and coastal projects, gave evidence on behalf of Panuku which offered details of the construction works, mitigation and stormwater control.

[177] Although the earthworks would be at a small scale, Mr Priestley recommended an active response strategy to mitigate potential adverse effects from the contaminated land. Both Mr Priestley and Mr Ware confirmed the need for a construction management plan, a construction environmental management plan, an erosion and sediment control plan and an emergency response plan, as required by the proposed conditions. The management approach adopted in the plans has been used successfully on other projects in the Wynyard Quarter, and if implemented the experts agreed would produce an outcome that construction-related effects would be no more than minor.

[178] Mr M C Byrne, an environmental scientist called by the Council, referred in his evidence to previous recommendations for changes to the proposed conditions made in the Council's report on earthworks (Appendix Q to the s 87F report). He recorded that he and Mr Ware had reviewed a revised draft of the conditions during expert conferencing. They confirmed the revised draft conditions as satisfactory, and recorded no matters of disagreement. Mr Byrne reviewed the evidence relating to land contamination, the draft erosion and sediment control plan and the draft remediation action plan of 3 August 2018. He concluded that although site-specific drawings had not



yet been provided, the detail presented in the two plans was sufficient to demonstrate that effects associated with potential sediment discharges could be appropriately managed.

[179] No submissions were received on this topic.

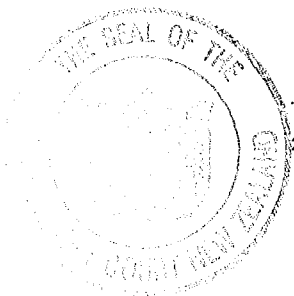
[180] The extent of earthworks is small in comparison to the overall site area. Although the excavation activities would be close to the coastal edge, appropriate erosion and sediment control techniques can be utilised throughout the period of works. Provided the management measures proposed in the sequence of management plans listed by Mr Ware and Mr Priestley are implemented, we accept that the potential for sediment discharge into the receiving environment would be minimised, and adverse effects arising from the earthworks activity would be no more than minor.

### ***Coastal Processes***

[181] The site is in Freemans Bay, a heavily modified coastal environment. The original natural shoreline varies between 650 and 1300m landward of the existing line of mean high water springs (MHWS) because of previous reclamation and associated structures.

[182] The elements of the proposal which would impact the CMA include dredging, installation of four breakwaters, temporary infill to Wynyard Wharf, the extension to Hobson Wharf, installation of wave attenuation panels to Hobson and Halsey Wharf, and temporary marine and port structures and facilities within the Wynyard Wharf South water space and Outer Viaduct Harbour, and placement of mudcrete. The applicant provided a technical report by Beca (Document 16 to the Application) which addressed effects on coastal processes arising from the development, including tidal currents, wave and wake climate, basin flushing, sedimentation, dredging and sea level rise. The assessment related to three specific areas of water space, called the Outer Viaduct Harbour, Wynyard Wharf South and the Inner Viaduct Harbour.

[183] Setting the scene for the assessment of effects on coastal processes, the evidence in chief of Panuku's witness Mr S J Priestley described the hydraulic features of the site as follows<sup>21</sup> :



<sup>21</sup>

S J Priestley EIC paragraph 4.14.

- (a) A spring and neap tidal range of 3.0 m and 1.90 m respectively;
- (b) Low tidal currents;
- (c) Storm surges (i.e., a weather-related increase in water level up to 0.7 m);
- (d) Wind waves up to a significant wave height of 1.6 m in the main channel;
- (e) Vessel wakes up to 0.5 m in height;
- (f) From a position in the centre of the Viaduct harbour the flushing time is 50 hours for spring tides and 70 hours for neap tides. From the innermost point of the Viaduct harbour the flushing time is 110 hours for spring tides and 145 hours for neap tides. (96 hours (4 days) is considered "good" flushing, 96 to 240 hours (4 to 10 days) is "fair" flushing and greater than 240 hours (10 days) is "poor" flushing).
- (g) The mean sediment concentration in the harbour is about 10 g/m<sup>3</sup> which represents relatively non-turbid water conditions. Because many of the berth areas have been artificially created they are subject to sedimentation. Sedimentation levels vary from about 30mm/year in Viaduct Harbour to more than 100mm/year in the deeper Wynyard port basin; and
- (h) Infrequent and relatively small tsunami.

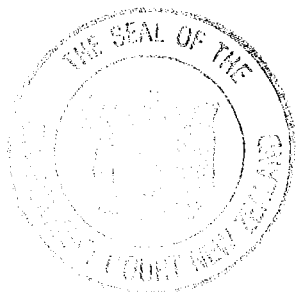
[184] Hydrodynamic modelling of tidal flows in the lower Waitemata Harbour were undertaken for Panuku, to determine the likely extent of effects on tidal flows and currents from the proposed coastal structures. The results concluded that the main harbour current velocities would not likely be affected by the proposed infrastructure. The Outer Viaduct Harbour, Wynyard Wharf South and the Inner Viaduct Harbour would be subject to lower velocities.

[185] In his evidence Mr Priestley<sup>22</sup> explained that the existing tidal eddy formations in the Outer and Inner Viaduct Harbour currently encourage good flushing of the Viaduct basin. However, to achieve the tranquillity criteria required in the berthage area (wakes of less than 0.1 m), wave panels under Hobson Wharf, on breakwaters and on the seaward edge of Wynyard Wharf South Water Space, would be required. These would inhibit the tidal flow through the Outer Viaduct Harbour and would lengthen flushing time

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<sup>22</sup>

S J Priestley, EIC, paragraph 7.3.



in the Inner Viaduct Harbour as well.

[186] Mr Priestley considered that flushing times in the Viaduct Harbour would likely remain in the “good” or “fair” categories seen currently. The exception would be the mid-Inner Viaduct Harbour which might change from “good” to “fair”. The changes in flushing times were considered a moderate to minor adverse change compared with the beneficial change in berth tranquillity in the Outer Viaduct harbour and Wynyard Wharf South water space. As to the effect of decrease in flushing rate on water quality in the Viaduct Basin, Mr Priestley deferred to the evidence of Mr Kennedy, which we return to in the Coastal Ecology section below.

[187] The focus of wave and wake modelling was on the selection of locations for the wave panels and breakwaters to meet tranquillity criteria, however the extent of any changes in the wave/wake climate due to reflection from those structures was also considered. Mr Priestley concluded that the wave/wake climate would be better than the existing situation, including in the Maritime Museum basin<sup>23</sup>.

[188] Dredging would be required to provide a depth of -5.5m for AC36 vessels with a draft of 5 m. Application was made to dredge the superyacht berths to a depth of -5.5 m CD but this has subsequently been revised to -4.5m CD. Mr Priestley noted that as a result, the volume of proposed dredging reduced from the 87,000 m<sup>3</sup> applied for, to 73,000m<sup>3</sup>, including pile workings<sup>24</sup>.

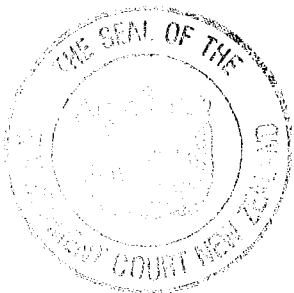
[189] The dredging operation would increase sediment plumes which would become more diffuse as they drift away from the dredger. Modelling has shown that adverse effects of the dredging plumes would be less than minor, with localised and temporary increases in suspended sediment less than 200 m from the dredger. The depth of sediment depositing from the plume to the sea floor at any one location was expected to be undetectable.

[190] Mr Priestley reviewed historical sedimentation rates from before and after development of the Outer Viaduct Harbour in the late 1990s, to predict further sedimentation rates in the Viaduct harbour and Wynyard Wharf South water space. He expected that sedimentation would continue in the more tranquil location at a similar scale to the existing sedimentation rates. As a result, potential adverse results were

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<sup>23</sup> S J Priestley, EIC paragraph 7.13.

<sup>24</sup> S J Priestley, EIC, paragraph 8.3.



expected to be minor and could be managed using existing maintenance dredging practices under the exist consents.

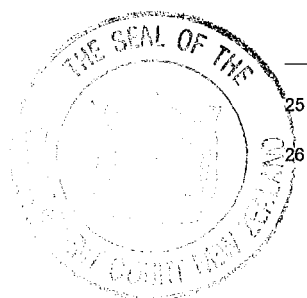
[191] Mr S C Morgan, a specialist in coastal science and management called by the council, summarised his assessment of the Beca modelling and technical report made as part of the s87F RMA report (Appendix C). In general, he said that there had been significant alteration of the coastal features in the project area over many years of construction, and hence the coastal processes have changed. He considered that the proposed works would be similar in nature the existing structures<sup>25</sup>. He highlighted that the intent of constructing new wharves, pontoons, piled breakwaters and carrying out dredging is to create suitable environments to berth boats. Hence further changes to the existing coastal processes should be anticipated.

[192] Mr Morgan identified the most critical aspect of the proposed changes as being the flushing time of existing and created basins. He expressed no concern about basin flushing, although he recommended that continued monitoring of the situation should occur through the development of a monitoring and management plan to be required by a condition of consent.

[193] Sedimentation rates would likely increase within the basins due to reduction in tidal velocities, notably within the Wynyard Wharf South water space, due to the creation of a more tranquil environment for the boats. Mr Morgan noted<sup>26</sup> :

Overall, the proposal will result in increased sedimentation as a result of diminished water velocities. Sedimentation will predominantly occur in water space managed by the applicant and they will be responsible for maintaining appropriate water depths. The area is currently subject to a maintenance dredging programme. In a worst-case scenario, the frequency of maintenance dredging may need to be increased slightly. Overall, the impact of increased sedimentation in these areas is considered to be less than minor.

[194] Part of the proposal for achieving suitable access and berthing, would be the dredging of 73,000 m<sup>3</sup> in the Wynyard Wharf South water space, the Outer Viaduct Harbour and the access channel. There is the potential for a localised sediment plume to be created during dredging and disposal of dredged materials, and the frequency of dredging (arising from increased sedimentation rates in the created "sink") can raise



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<sup>25</sup> S C Morgan, EIC, paragraph 7.2.

<sup>26</sup> S C Morgan, paragraph 3.6.7 of Appendix C.

similar issues. Mr Morgan noted that potential impacts of the works would be controlled through a monitoring and management plan (as a condition of consent).

[195] Dredged material could be used for mudcrete, some of which material might be contaminated. The identification of contaminated dredge spoil is intended to be addressed in a Management Plan for the Dredging and Placing of Mudcrete. Mr Morgan<sup>27</sup> considered that placing of the remaining dredged material at an approved offshore site east of Great Barrier Island, would be appropriate and would have less than minor effects.

[196] He considered that the proposed structures' location and scale would not increase the potential impact of sea level rise. In the event of future sea level rise, Panuku proposes the use of wharf piles that can be extended to adjust the height of wharf deck.

[197] Mr Morgan and Mr Priestley took part (with others) in expert conferencing on the topics of coastal processes, stormwater, geotech and engineering, and were involved in the development of the JWS. There were no matters of disagreement among the experts.

[198] Submissions were lodged which recorded the following about coastal processes:

- (a) Requesting changes to design to utilise areas within the Viaduct rather than extending Hobson Wharf.
- (b) Cumulative effects arising from further development in the harbour.
- (c) Provision for new berthage for the Tug William C Daldy at another location with additional fender piles to allow for safe berthage.
- (d) The proposed breakwater would not create the calm waters required for the boats.

[199] Mr Priestley responded to the above points (b) and (d) in his evidence as summarised below:

- (b) Cumulative effects relate to the capability of a natural system to withstand changes. This can be addressed by assessing whether any thresholds have been exceeded that could allow the natural system to degrade to a significant degree. Using the effects of building the breakwaters as an example, the



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S C Morgan, EIC, paragraph 7.2.

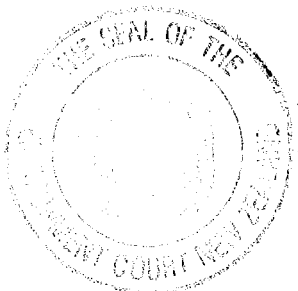
flushing periods in the Inner Viaduct Harbour would remain generally in their "good" or "fair" categories and none change to the "poor" category. The project has been assessed against the existing environment which includes historical reclamations and extensions into the harbour.

- (d) From a practical perspective, the breakwater locations and extent are constrained by navigational requirements related to clearances for vessels berthing at Wynyard North and the width of the opening between the breakwaters. Nevertheless, the tranquillity criteria are generally met within this water space. Mr Priestley discussed the matter with the submitter.

[200] In response to all 4 submissions, Mr Morgan noted the following<sup>28</sup>:

- (a) While utilising such areas might be a viable option, there would need to be further detailed investigation to ensure the potential impacts (particularly flushing times) would not be more than minor.
- (b) This increase in development is minor and within an area of existing development. The more critical issue is that the proposal does not extend beyond current development nodes, which would ultimately encroach on new areas of the harbour.
- (c) While the works are not part of the application, given the scale of the work that would be required for to provide safe berthage for the historic vessel it is unlikely this would present effects that would be any more than minor.
- (d) The presence of concrete wave panels below the critical places in the proposed new section of wharf would mean that tranquillity would likely meet design requirements. They would dampen wave energy to an extent that would provide sufficient calming of the water.

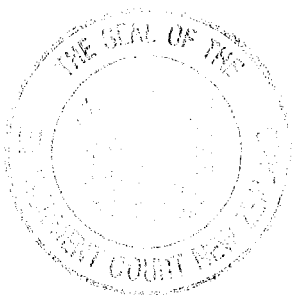
[201] We conclude that the proposed works would result in only minor changes to coastal processes. The site is in a low energy environment and as a result the changes would be unlikely to affect adjoining structures or the broader marine area. On the totality of the evidence and the complete level of agreement among the experts, we find the potential effect on coastal processes to be no more than minor.



***Coastal Ecology and Water Quality***

[202] The development would include works within the CMA, including dredging, the construction of wharf extensions and breakwaters, the installation of wave attenuation panels and the use of mudcrete in sea-floor construction. Section 10.9 of the AEE and Document 17 of the application addressed effects on coastal ecology. The applicant's conclusions concerning effects on coastal ecology are summarised below, along with additional comments made in the evidence of Mr P C Kennedy, its ecologist witness:

- (a) The extension to Hobson Wharf and the Wynyard Wharf infill along with the proposed pontoons would reduce light levels to the seabed; however, due to the nature of the current ecology, this would not have adverse effects greater than minor. New communities would be expected to form on the new structures reflective of the new levels of light. The intertidal biota on the existing structures has a significant non-indigenous component, and future colonising communities can be expected to be similar.
- (b) The dredging works would result in changes to the benthic habitat, however given that this area of the CMA is currently subject to maintenance dredging and vessel movements, ecological values are low and the benthic environment is dominated by tolerant communities that can withstand these conditions.
- (c) The dredging would not result in local increases to concentrations of suspended solids to an extent that is expected to change water clarity; and any release of contaminants during dredging is unlikely to have an adverse effect on water column quality due to contaminant levels and dilution factors.
- (d) The proposal would increase vessel movements within the harbour, both during the construction period and during events. There is the potential for vessel movement to increase the infestation of unwanted and/or biosecurity risk species, so the works should be undertaken in accordance with a 'Biosecurity Management Plan'.
- (e) A small number of seabird species is found in the area, with no known nesting sites and limited roosting sites. Two 'at risk' species present in the wider area (red-billed gull and white-fronted tern) are found through much of the lower Waitemata Harbour, as well as widely elsewhere. They do not roost or nest at the site.
- (f) No fish species are dependent on the habitat within the harbour and the area of proposed construction.





- (g) Additional lighting to be installed on the new structures would have no more than minor effects on the birds or fish in the area.
- (h) Marine mammals found at times in the Waitemata Harbour and wider Hauraki Gulf include bottlenose and common dolphins, orca, fur seals and leopard seals. The main potential effect of the proposed development on these animals would be noise from dredging and vibratory piling, as described in the section on noise in this decision. Effects range from changes in breathing, feeding, nursing, vocalisation, navigation and avoidance. It is concluded that marine mammals would avoid the construction area when piling or other underwater noise is occurring; an observer would be stationed on site, surveying the waters near piling works to ensure that any marine mammals present are identified prior to works occurring and ensuring that the works do not occur if the animals are present; all as set out in the construction noise and vibration management plan. As a result, any effect on these animals will be short term only.
- (i) "Mudcrete" would be used in the placement of new wave panels onto the seabed and would comprise local sediment similar in quality to that in the area. It is expected to contain trace element contaminants. The addition of cement to the mud causes it to solidify to a soft rock (not unlike sandstone) which benthic species can be expected to colonise. The alkaline nature of the mudcrete immobilises most trace elements to the point where any changes in water quality locally would be undetectable. As a result, the use of mudcrete would have no more than minor effects on contaminant movement or marine ecology
- (j) New stormwater treatment is proposed for the AC36 bases on Wynyard Point and for the Hobson Wharf Extension and Halsey Street Extension Wharf which would result in improved water quality in the immediate environment of the structures, compared to the current status in which stormwater discharges are not managed or treated.
- (k) Modelling of the post-development water-circulation in the Inner and Outer Viaduct Harbour waters has indicated the Inner Viaduct Harbour may flush more slowly once the new Hobson Wharf Extension, breakwaters and wave panels are installed, as described in the "Coastal Processes" section of this decision.

[203] The potential for a change in flushing rates has the potential to affect water quality in the inner parts of the development, in particular the inner and outer Viaduct Harbour areas. Based on the modelling results, Mr Kennedy considered that adverse effects on water quality and ecology of the Inner Viaduct Harbour are unlikely. He recommended monitoring to identify whether any changes to water, sediment quality or ecology occur



after the change in flushing rates, along with follow-up actions if any adverse effect is identified<sup>29</sup>.

[204] Details of potential effects on water quality of increased flushing times had previously been reported (page 37 in Document 17 appended to the applicant's AEE). but were not included in Mr Kennedy's evidence. We summarise those findings here as they provide some specificity as to the current status of water quality prior to any change in flushing rate.

[205] Data on water quality for the Wynyard Wharf South water space and the outer and inner Viaduct Harbours have not been collected on a routine basis in the past, but five samples were collected at each of four sites in November and December 2017. Two sites were within the inner Viaduct Harbour, one in the outer Viaduct Harbour and one in the outer Wynyard Basin. Secchi depth (a water clarity measure), turbidity and total suspended solids were measured. The results showed that the inner Viaduct sites had greater clarity and lower turbidity than the outer Viaduct and outer Wynyard Basin sites, and all sites were within the range of turbidities recorded at the Chelsea Sugar Refinery and at other long-term Port and Waitemata Harbour monitoring sites during previous surveys. Water quality at the Chelsea site was reported as being "excellent". This indicates that the current flushing rates (variably "good" and "fair" in the inner and outer Viaduct Harbour) allow maintenance of good (or even excellent) water quality in those areas, similar to the water quality in the main body of the Waitemata Harbour.

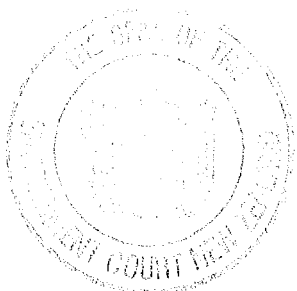
[206] Mr Kennedy addressed submissions that raised potential cumulative effects of the proposed changes on the Waitemata shoreline. He said the key historical changes happened in the 1800s and 1900s, with relatively smaller changes in the latter part of the 1900s and since 2000. The current project would result in further small changes in the physical nature of the man-made harbour shoreline within Freemans Bay. Mr Kennedy concluded that the overall change would have no more than minor effects on natural resources of the harbour.

[207] Dr K Sivaguru, marine ecologist called by the council, reviewed the technical reports on coastal ecology matters (Appendix B to the s 87F report of Council) and corroborated her statements through her evidence in chief as follows:

In terms of changes and loss of habitat, while the proposal would result in increased

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<sup>29</sup> P C Kennedy, EIC, paragraph 9.9.



shading, the effect on benthic communities would not be significant as the area is already impacted by a reduction in light and increased sedimentation rates, and the benthic communities are likely to be tolerant to these changes.

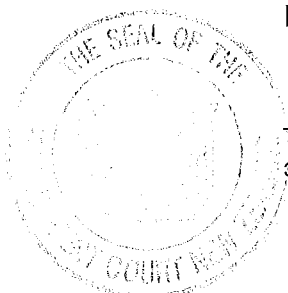
[208] Dr Sivaguru found that the placement of piles could be expected to result in the loss of an area of subtidal benthic habitat, however the structures themselves would provide hard substrate for encrusting organisms, mainly non-native species as elsewhere in the Freeman's Bay area. There are no flora in the area that could be affected by the change in shading. Given that the existing environment is already highly disturbed, any additional minor effects of contamination and sedimentation were considered to be acceptable.

[209] Dr Sivaguru and Mr Kennedy participated in expert witness conferencing and noted no matters of disagreement between them. Dr Sivaguru concluded<sup>30</sup> *"that any potential adverse effects on marine ecology including avifauna, marine mammals, sediment and water quality resulting from the proposal would be minor, subject to adherence to the Proposed Conditions"*.

[210] A submission was lodged which expressed concern about potential environmental damage from the pouring of concrete during construction of the Hobson Wharf Extension. Dr Sivaguru considered that the proposed 'Construction Environmental Management Plan' required by conditions concerning discharge to the CMA, would manage any such effects during construction.

[211] A submission was received from the Westhaven Marina Users Association Inc. suggesting that two leopard seals occasionally seen in the area of works should be relocated. Dr Sivaguru recommended that in the event of these seals being sighted in the area, that the applicant inform the Department of Conservation which could manage the issue in accordance with the Wildlife Act 1955 and Marine Mammal Protection Act 1982.

[212] Despite agreement having apparently been reached between the witnesses in conference, Mr Kennedy commented on a few minor matters raised in Dr Sivaguru's evidence, in his rebuttal. He recommended, and we understand from him Dr Sivaguru agreed, some minor changes to conditions requiring an Inner Viaduct Harbour Environmental Management Plan. The changes have been made and we approve the



relevant conditions.

[213] Mr Kennedy lodged a supplementary statement on 5 September answering some questions from the Court about monitoring; and he and Mr Priestley assisted us with some further questions during the hearing, again mainly about proposals in the conditions for monitoring. No changes to conditions were seen to be necessary after considering Mr Kennedy's statement and answers given in that session.

[214] Overall, we find that the existing environment is already highly modified. Taking into account the information provided and conclusions reached by Mr Kennedy and Dr Sivaguru we find that the effects on the ecological functioning of the coastal environment in the subject area during and after construction will be no more than minor.

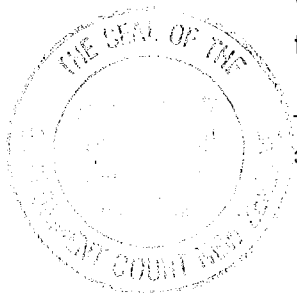
### ***Tree Removal***

[215] This is another relatively uncontentious feature of the proposal, albeit that we consider Panuku and the council have taken matters beyond what is needed for this vegetation in this environment.

[216] Land disturbance works would include the removal of up to seven trees growing in the road reserves of Brigham and Hamer Street, together with an additional unprotected tree and a group of shrubs at 90 Brigham Street. The location and value of the trees were described in section 10.7 of the applicant's AEE and in the arborist's report (Document 18 to the application).

[217] Three of the trees in the Brigham Street road reserve would need to be removed as they conflict with the location of Bases C to G. Four trees in the Hamer Street road reserve are outside the footprint of any of the base buildings and it might be possible to retain some or all of them, however without knowing the detailed construction details their retention cannot be guaranteed, so consent was sought for their removal. Works would also need to be undertaken in the root zone of up to 14 street trees.

[218] Panuku did not provide arboricultural evidence, but proposed through its construction witness Mr K A Grant that a suitably qualified arborist be appointed by the project Alliance to direct all works within the dripline or vicinity of the trees to be retained during the works<sup>31</sup>. He offered draft conditions that would require transplanting of some trees; otherwise replacement of trees removed with trees at least 5 m tall, on a one-for-



<sup>31</sup>

K A Grant, EIC, paragraph 3.5.

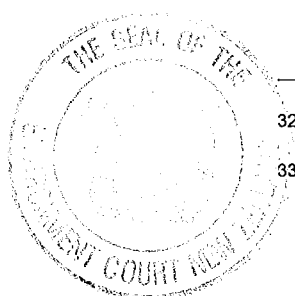
one basis, arboricultural maintenance of the trees for a minimum of two years after planting, and replacement of any trees that die within two years of planting with similar trees.

[219] Panuku's landscape witness Mr J L Goodwin noted that some "native semi-mature single vegetative elements" were to be removed from Brigham Street and Hamer Street road reserve and pointed out that the redevelopment of publicly accessible open space in Hamer Street and to the west and south of bases C to G would provide opportunities for new planting in the area<sup>32</sup>. While he agreed with the idea of retaining or transplanting the trees in Hamer Street, he would give preference from a landscape and visual amenity perspective, to the pohutukawa trees over the exotic willow myrtle trees<sup>33</sup>.

[220] A council consultant arborist Mr A Lamont reviewed the application details including Document 18 in his report Appendix R to the Council's S 87F report, and reviewed the planning evidence of Mr Lala and Mr Cook. In his subsequent evidence-in-chief, Mr Lamont concluded that the proposal affecting protected trees would give rise to only minor adverse effects which could be adequately mitigated under the conditions proposed by the Applicant. He considered that except for Tree 1, the protected trees have poor shape and form due to extensive pruning, and make only a modest contribution to the visual amenity of the area. While they do add to the visual amenity values of the area, and the streetscape, the conditions the applicant was offering, including the replacement planting, would ensure that in future the road reserve would have elements of green to provide relief from the built environment. The tree protection measures to be installed around trees to be retained, were expected to ensure their ongoing health and well-being.

[221] It was Mr Lamont's view that, once detailed analysis was carried out, the benefits of transplanting trees 16, 17 and 18 would not justify the costs and effort. However, he thought that tree 1, a better-quality specimen in good health and not structurally or visually compromised by powerline pruning, could be suitable for transplanting. It was the stated intention of the applicant to transplant this tree, and any others if deemed suitable for transplantation.

[222] A submission from The Tree Council supported the transplanting of trees upon



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<sup>32</sup> J L Goodwin, EIC, paragraph 12.24.

<sup>33</sup> J L Goodwin, EIC, paragraph 13.8.

removal, tree 1 particularly.

[223] Conditions Mr Lamont had proposed in his report were adopted in draft conditions attached to the planning evidence of Mr Lala and Mr Cook. In his evidence Mr Lamont concurred with their summary<sup>34</sup> of the proposal's potential effect on trees as follows:

Considering the proposed conditions of consent, we consider that the potential adverse effects on the identified trees will be appropriately managed throughout the construction period and will be no more than minor. And the proposal is considered to be consistent with the objectives and policies in E15 and E17 of the AUP for the reasons set out in the AEE.

[224] The values of the trees to be removed being limited in terms of their contribution to ecological, hydrological, stability and amenity values, and the parties having agreed the means by which those trees that could be retained will be protected during construction and appropriately managed thereafter, we find that the effect of the proposed tree removal will be minor.

[225] We do however find that their value is very low, and that adverse effects on the environment would still have been no more than minor if there had been less retention and transplanting. Panuku has nevertheless agreed to retain and carefully protect or transplant them, even though the cost and difficulty of doing so would be considerable. We would have replaced these conditions with a simple requirement for appropriately-located new trees and landscaping. However, after putting these views to the parties at the end of the hearing, the council urged us to keep the agreed conditions in place. We have done so with some reluctance.

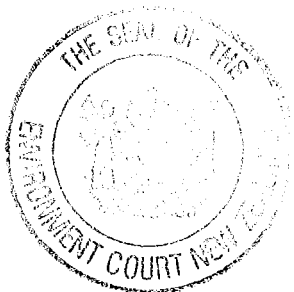
### ***Lighting***

[226] During the construction period, it is intended that work occur through the night, so temporary lighting would be required. Construction lighting would be provided around the working areas on poles 12 to 18m in height, with zero-tilt floodlights. Lighting for the extension to Hobson Wharf and the syndicate bases would be provided consistent with existing surrounding lighting fixtures, generally consisting of lighting poles 8m in height with zero-tilt luminaires.

[227] Event lighting has yet to be developed however it is anticipated that temporary lighting will be installed around the primary entertainment areas including Eastern

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<sup>34</sup> In their Planning Evaluation, Attachment B.



Viaduct, Te Wero Island, North Wharf, Jellicoe St carpark and Silo Park. Prior to an event, the applicant offers a condition of consent that a Lighting Management Plan be submitted to the council detailing lighting layout in relation to surrounding light-sensitive areas, and demonstrating compliance with the AUP lighting standards.

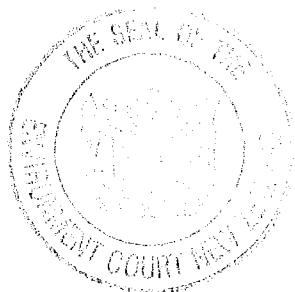
[228] Light-sensitive locations were identified in the technical report prepared by Mr G Wright for the Council (Appendix O). He made particular reference to nearby hotels, the closest being the Park Hyatt and the Hilton, also existing and under-construction apartment complexes. The applicant proposes that during construction and through the event phase, lighting will comply with the relevant standards in the AUP, as contained in Standard E24 'Lighting'. Mr Wright concluded that provided the final design and installation of the proposed lighting complies with the relevant conditions of consent, its effects will be "less than minor" and no adverse effects on ecological resources in Freemans Bay would be expected to occur.

[229] Panuku does not seek to infringe any lighting standards. We find that effects on surrounding light-sensitive uses and the marine habitat would be no greater than what could arise from a permitted activity. Lighting standard E24.6.1(6) states that the added illuminance from the use of any artificial lighting of any site must not exceed either the horizontal and vertical illuminance levels as specified at any point on the boundary, or the vertical illuminance levels at the windows of habitable rooms of a lawfully established dwelling. While the rule is framed on an either/or basis, it appears to deal with two different considerations: illuminance at the boundary of a site, and illuminance at the windows of dwellings. Mr Wright reported that, based on the type of lighting proposed, it can be designed to meet both standards. However, assessing the level of effects experienced by an occupier of a residential unit, the level experienced at the windows of dwellings would be in his opinion, a better indicator of the magnitude of effects. He accordingly recommended a condition requiring compliance with E24.6.1(6)(b).

[230] Two submissions included comment on lighting. The Point Body Corporate sought to be consulted on the conditions during the drafting of various management plans, and specifically noted being adversely affected by lighting.

[231] As the applicant is not proposing to infringe the lighting standards it is considered that adverse effects of lighting would be no greater than what could occur from a permitted activity.

[232] Submission #13 recommended that lit flags are installed on the VEC building.



The applicant did not propose this. Mr Wright considered it could be obtrusive.

[233] In addition to evidence provided by Mr John McKensey for Panuku and Mr Wright for the council, we considered their **JWS** dated 30 July 2018. They recorded that there were no areas of disagreement between them. They also recommended revised wording for Conditions 113 (a), 183(K) (b), 183K (d), and 183K (h). Each of these revisions has been incorporated in the 12 September 2018 condition set (with the 183K conditions having been renumbered 183M).<sup>35</sup>

[234] In his evidence which was prepared after the two experts had conferenced,<sup>36</sup> Mr Wright wrote that:

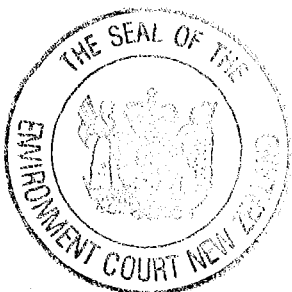
Appendix A to Mr McKensey's evidence depicts the relevant light sensitive areas. I note that Mr McKensey's "Light Sensitive Areas" drawing identifies additional light sensitive areas in addition to those originally identified in Figure 1 to my Report (Sofitel Hotel, Latitude 37 Apartments, 120 Customs Street Apartments and M Social Hotel). I agree that Mr McKensey's drawing accurately identifies the relevant light sensitive locations.

[235] Having said in this statement that he agreed with Mr Mckensey on the extent of light sensitive areas, Mr Wright then went on to propose alternative wording for the definition of light sensitive areas in Condition 113 (a) (iii).

[236] In his rebuttal evidence dated 4 September 2018, Mr Mckensey said that he agreed with the wording in the latest version of the proposed conditions of consent which he understood had been agreed between Panuku and the Council and that he did not support the alternative wording sought by Mr Wright.

[237] In answer to a question from the Court about this difference of opinion on the wording of the condition, Mr M Allan for the Council advised that the two experts had subsequently reached a consensus on the wording based on the rationale provided by Mr McKensey in his rebuttal evidence.

[238] With the wording for this condition in the 11 September 2018 condition set having been agreed between the experts, there remain no areas of disagreement about Construction Lighting (Conditions 111-113), Permanent and Temporary Event Illuminated Signage (Condition 202) and Business as Usual Lighting (Condition 203). In these terms, adverse effects on the environment will be no more than minor.



<sup>35</sup> While the final wording in some of the conditions is slightly different from that recommended by the experts, the intent and meaning of each has not changed.

<sup>36</sup> Wright EIC at [8.6].



### **Landscape and Visual Effects, Character and Amenity Values, Urban Design**

[239] We have created the above subheading deliberately to encompass at least three related topics, while recognising that each is usually thought to be a topic in its own right. Some of the expert witnesses tended, particularly to blend landscape and visual effects with effects on character and amenity values. There is no great issue in this case with them having done that, because the issues were relatively uncontentious at least among the experts. The debates in the evidence tended to emerge in the third subtopic, urban design, involving allegations of undue prescriptivity in the formal Design Requirements that had been agreed by expert witnesses, allegedly being likely to cause difficulty for syndicates establishing bases on all but Base A.

[240] Panuku called the evidence of Mr J L Goodwin, an experienced landscape architect with more than a decade of specific experience in relation to the Wynyard Quarter. His detailed evidence broadly concerned natural character, landscape and visual effects of the proposal, with commentary on location and waterfront context; relevant statutory planning context; natural character effects; landscape effects; visibility, viewing audiences and sensitivity; visual amenity effects; review in relation to statutory provisions; comments on the Auckland Council s 87F report; comments on matters raised in submissions by s 274 parties; and the Design Requirements.

[241] Concerning the three broad issues, Mr Goodwin highlighted the context offered by the water's edge, valued public access to the area, views into the Viaduct Harbour, and the visual connection to the wider Waitemata Harbour.<sup>37</sup>

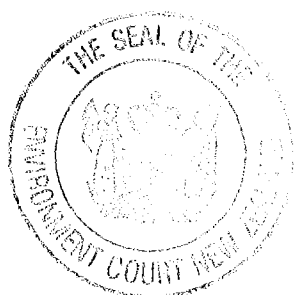
[242] He described the mix of activities in and around the area, including the various blocks of apartments, hotels, hospitality establishments, and commercial activities.<sup>38</sup>

[243] Mr Goodwin described the changes that would be brought by the proposal in preparation for AC36, during the Event, and during legacy activities after cup-related buildings and infrastructure might be removed. He referenced the proposed Design Requirements, the plans drawn by Moller Architects, and the enabling quality of the Design Requirements to accommodate structures that departed from the Moller drawings

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<sup>37</sup> J L Goodwin, EIC, para 3.1. (This and subsequent footnotes reference Mr Goodwin's Summary; we have considered the detailed paragraphs found later in his evidence, but because of the lack of controversy amongst the experts about much of his evidence on these topics, have not needed to analyse them in more detailed paragraphs in this decision).

<sup>38</sup> J L Goodwin, EIC, para 3.2.



but would provide adequately for the bases.<sup>39</sup>

[244] In terms of natural character, Mr Goodwin considered that the proposal would have very low adverse effects on the abiotic and biotic level of naturalness, due to the highly modified nature of the marine environment; and that there would be low adverse effect in the area associated particularly with the 74m Hobson Wharf Extension and Base B temporary building.<sup>40</sup>

[245] In terms of landscape effects, Mr Goodwin identified the potential for there to be a range.<sup>41</sup>

- Low to very low adverse effects on the landscape elements and features within Freemans Bay, Viaduct Harbour and Wynyard Wharf south water space.
- Up to a moderate – high beneficial effect on the recreational values on Viaduct Harbour and Wynyard Wharf south associated with the AC36 activities.
- Low adverse effects on the wider character of the Waitemata Harbour during the period the bases and buildings are in place.
- Very low adverse effects in relation to the landscape character of the City Centre.

[246] Mr Goodwin considered that during construction of Base B that there would be moderate adverse visual amenity effects from public viewpoints for those who associate the Hobson Wharf Extension and building activity with the intrusion into Freemans Bay and the perceived loss of views of the Waitemata Harbour, North Shore and landform features beyond. On the other hand, he considered that others would be likely to perceive this activity, and the construction of Bases C to G on Wynyard Wharf, as neutral or even beneficial, due to a positive association with the Event.<sup>42</sup> During AC36, he considered that it would be more likely that when viewed from the public standpoint, the visual effects would be considered beneficial due to the interest in the Event, association with the competition yachts and participants, and event atmosphere. Following AC36 and between any subsequent events, those positive perceptions could wane due to the reduced activity associated with the bases, and become more neutral once the buildings on Bases B to G are removed – and in the case of Base B, once the more open views to the north are re-established from the main north-east promenade and other locations to

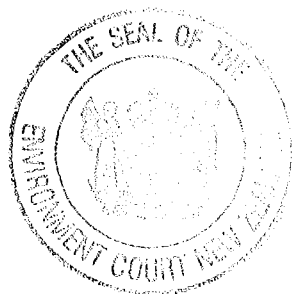
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<sup>39</sup> J L Goodwin, EIC, paras 3.3 and 3.4.

<sup>40</sup> J L Goodwin, EIC, para 3.5.

<sup>41</sup> J L Goodwin, EIC, para 3.6.

<sup>42</sup> J L Goodwin, EIC, para 3.7.



the south. Once the Base B building is removed, the Hobson Wharf Extension would be able to accommodate other legacy activities and provide for ongoing public access with associated temporary activities and structures as provided for in the proposed conditions. With that in place, he considered that the visual amenity effects from public locations would be no more than low adverse.<sup>43</sup>

[247] Mr Goodwin considered viewers looking from public locations and from the various fringing apartments, might consider the Hobson Wharf Extension and construction of Base B to be adverse, as indicated by several submissions and s 274 notices. However, his professional opinion was those effects would be no more than moderate to low adverse, and after removal of the bases, visual effects from private residential locations would be generally very low and no greater than moderate to low from some Princes Wharf apartments which would look directly down onto the wharf extension.<sup>44</sup>

[248] Overall, he considered that the adverse natural character, landscape and visual effects (including cumulative effects) from the proposal would be less than minor, apart from specific residential locations where visual effects would be up to a minor level in nature.<sup>45</sup> Mr Goodwin considered that the proposal would not be contrary to relevant statutory provisions which he considered in detail in his evidence, nor in relation to natural character of the coastal environment and landscape character of the Viaduct and Wynyard Precincts and the City Centre Zone; and that the proposed buildings would meet the relevant design provisions during AC36. He considered that the buildings would marginally reduce the visual connections from the city to the harbour, and some landform features and the North Shore. After removal of Base B buildings on the Hobson Wharf extension, the views to the north would be restored, and overall the proposal would maintain and enhance the visual amenity values of the area by providing for additional waterfront public space, with opportunities for further visual connections to the Waitemata Harbour and landscape features to the north and west.<sup>46</sup>

[249] An important plank of Mr Goodwin's evidence was that opportunities for public access would be enhanced by the proposal, particularly around the Hobson Wharf

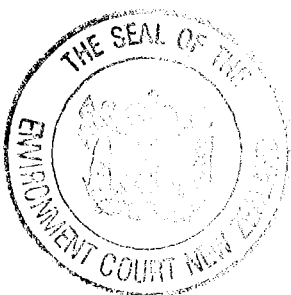
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<sup>43</sup> J L Goodwin, EIC, para 3.8.

<sup>44</sup> J L Goodwin, EIC, paras 3.9 and 3.10.

<sup>45</sup> J L Goodwin, EIC, para 3.11.

<sup>46</sup> J L Goodwin, EIC, paras 3.12 and 3.13.



extension, the northern end of Halsey Street Extension Wharf, and a new breakwater off Wynyard Wharf to be accessible when ships are not berthed at the northern end of Wynyard Wharf.<sup>47</sup>

[250] The council called the evidence of another experienced landscape architect Mr P N Kensington who had reported on landscape, natural character and visual effects in support of the Council's s 87F report. Although his evidence was titled "Landscape and Visual Effects", it also assessed effects on natural character before moving into design aspects as well.

[251] Mr Kensington's evidence on these matters was very similar to that of Mr Goodwin. They had worked together as the proposal was advanced, and participated in the expert conferencing on these matters and on urban design, leading to development of the "Design Requirements".

[252] A key plank of Mr Kensington's opinions was that the proposal would result in an acceptable outcome in terms of landscape, natural character and visual amenity effects, while at the same time being consistent with relevant planning instruments, dependent upon confirming the proposed design requirements and the settling of appropriate and enforceable conditions of consent.<sup>48</sup>

[253] The Design Requirements had been preceded by "Design Guidelines", which Mr Kensington considered did not provide sufficient certainty, or provided too much flexibility of outcome.<sup>49</sup>

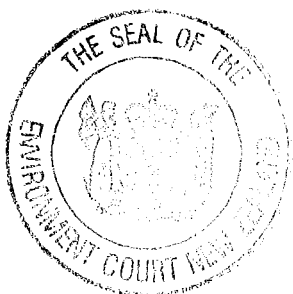
[254] Mr Kensington concurred with Mr Goodwin's assessment of levels of effect from various viewpoints, with one small variance from a private viewpoint, Princes Wharf Shed 23, Level 5, Apartment 63, where he considered that there would be moderate adverse visual amenity effects resulting from the proposed extension to Hobson Wharf in "legacy mode". He considered that this could be mitigated by a requirement for the Wharf's base to be "activated" through provision of temporary structures such as seating, that would provide for passive recreation "activation" of the Wharf area, rather than being left as a

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<sup>47</sup> J L Goodwin, EIC, para 4.2.4.

<sup>48</sup> P N Kensington, EIC, paras 6.1 – 6.3 (and the more detailed subsequent paragraphs underpinning those summaries).

<sup>49</sup> P N Kensington, EIC, para 7.2.



vacant space for a period.<sup>50</sup>

[255] Possibly of some importance from among Mr Kensington's observations were that the area is not static; there are many comings and goings; a different pace to that of the Wharf space east of Princes Wharf; elements such as the Viaduct Harbour lifting bridge and to the visually dynamic nature of the area; sun angle, time of day, tide and sea state are all factors that influence views both to and from the water; the open nature of the water space that is generally located to the north of Halsey Wharf Extension is an important element in the foreground of existing land based views, and providing a transition to the more enclosed inner Viaduct; Hobson Wharf Extension is located in a visually discreet position that enables expansion without resulting in adverse visual effects; the new temporary base buildings have been positioned in locations where they will not block any significant views or result in existing views being compromised to any significant level.<sup>51</sup>

[256] Mr Kensington considered aspects of natural character, landscape and visual amenity effects in relation to matters raised in submissions – from Princes Wharf; from elsewhere; ensuring legacy solutions; allowing flexibility for base building design; cultural design response; loss of amenity (outlook – or view) from North Wharf; and loss of amenity (visual and urban design in the vicinity of the ASB Building).

[257] We shall come to the design aspects later in relation to the other matters, but Mr Kensington largely supported the conclusions of Mr Goodwin, reinforced by the outcome of the landscape architects' expert witness conference which we shall describe now.

[258] Mr Goodwin, Mr Kensington, and Mr Nick Rae met in a facilitated expert conference about landscape and visual effects. Mr Rae was advising The Point Apartments, a s 274 party, but did not present evidence.

[259] The participants considered the then state of draft conditions of consent in reaching their conclusions, and found a high level of agreement.

[260] They agreed that public access around Base B as proposed was appropriate to enable public views of the Event activities in the Harbour, and to mitigate removal of the

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<sup>50</sup> P N Kensington, EIC, para 7.6.

<sup>51</sup> P N Kensington, EIC, parts of para 7.8.



existing public access on Hobson Wharf.<sup>52</sup>

[261] The participants agreed that wharf edges were generally expected to be used for mooring boats, which would add activity – a desirable outcome.

[262] They agreed from a landscape and visual effects perspective that a suggestion for the removal the northern 10m portion of the Hobson Wharf Extension would not alter the level of effects to any more than a very limited extent.

[263] They placed some emphasis on temporary future activities being organised, and that Hobson Wharf should not be left as a vacant unactivated space for a period beyond three months.

[264] The participants discussed the approach to developing design guidelines, which we shall discuss shortly in the relevant portion of this decision.

### ***Architectural Design and Urban Design***

[265] Many expert and non-expert witnesses discussed this aspect of the case; some as an extension of landscape visual and character evidence as just discussed, but many of them as a discrete subject. It was where the main debate centred.

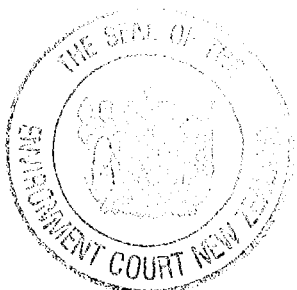
[266] The scene was set by the evidence in chief of Mr R M Marler, Director, Design and Places of Panuku, qualified in architecture and business administration. Among other things, he described the project, and the setting up of Panuku's technical advisory group ("TAG").<sup>53</sup> He described the requirement for syndicate bases, and their general configuration and size requirements; and that the TAG as an independent panel of experts would undertake design reviews and provide assurance to the Panuku Board about matters of design, as it does more widely on the waterfront.

[267] Mr Marler described the proposed infrastructure by reference to a drawing by Beca, including the proposed 74m extension to Hobson Wharf, four new breakwaters and their dimensions, wave attenuation panels on the relevant wharves, the infilling of a gap in Wynyard Wharf, modifications to the existing VEC building for Base A, base buildings and certain port structures in the Wynyard Basin and outer Viaduct Harbour.

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<sup>52</sup> While the westerly extension of the existing Hobson Wharf provides public access, an area of the Wharf to the north of the National Maritime Museum is actually fenced off for what appears to be private use by staff of the museum.

<sup>53</sup> R M Marler, EIC, paras 6.1 – 6.5.



He deferred to the Panuku's architect Sir Gordon Moller for details about design for bases and other infrastructure.<sup>54</sup>

[268] Mr Marler also described the proposed Event, and legacy activities during the balance of the 10 years of the requested consent with or without the America's Cup being held by the defender.

[269] Sir Gordon Moller is a very experienced architect in New Zealand and around the world. He has for some years been involved in Council initiatives for the Wynyard Quarter and Auckland Waterfront more generally. He was appointed by Panuku to help determine the requirements for the bases for AC36, and proceeded to develop dimensioned designs to accommodate boats in buildings and in yards, and to develop launching facilities, staff and equipment facilities, entertainment facilities, and the like. He developed sketches and designs of possible bases to assist the visual landscape and urban design assessments, and undertook the drawing of design alterations to the VEC to accommodate ETNZ. His firm worked closely with civil engineers, planners, traffic engineers, coastal and maritime consultants, Panuku, and its legal advisors.<sup>55</sup>

[270] Base A, for ETNZ, would act as the "anchor" and centre-point of the village waterfront. Base B would be set up on the 74m extension to Hobson Wharf to give operational space and required building footprint for a two-yacht base, with publicly accessible open space and connections; suitable in legacy mode for longer term use as a competitive yachting base, youth maritime centre, or possible extension to the Maritime Museum.

[271] Five temporary bases would be constructed on Wynyard Point, capable of meshing to stage with later development of Wynyard Point, coinciding with termination of existing maritime and industrial leases.

[272] Sir Gordon produced an architectural drawing set and supporting documentation for the application.

[273] He described the dimensions, determined in collaboration with ETNZ, all but two bases being "double bases", and the remaining two, single. Each would have a boatshed, a rigging bay, and a sail loft of given dimensions. Berthage, lifting and access

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<sup>54</sup> R M Marler, EIC, para 4.9 – 4.14.

<sup>55</sup> G D Moller, EIC, paras 2.1 – 2.4.



arrangements were a critical part of the designs.<sup>56</sup> Base A, (the existing VEC) has its dimensions set by the existing building and surrounds. At Base B, for the Challenger of Record, there would be another “double base” of marginally greater dimensions than those on Wynyard Point.

[274] Panuku called the evidence of Mr G R McIndoe, an experienced architect and urban designer, and a member of Panuku’s TAG. He has been involved with planning and development of the Wynyard Quarter for over a decade. He provided Panuku with urban design advice through all stages of the preparation of the project, including as to option assessment, general design advice and critique, urban design assessment, workshopping, and co-authorship of the Design Guidelines. He prepared a detailed report supporting the application; was involved in the development of the Design Guidelines into Design Requirements, and participated in mediation and expert conferencing on urban design matters. He reported that at an early stage he recognised the need for certainty and robustness in design control, but with some recognition of the temporary nature of the bases, and the primarily industrial setting of Bases C to G, where there should be potential for some design variation and flexibility.<sup>57</sup>

[275] Mr McIndoe considered the Unitary Plan, and what he considered to be some highly important non-statutory instruments, a City Centre Master Plan 2012, the Waterfront Plan 2012, and the Wynyard Precinct Urban Design Framework 2014.<sup>58</sup>

[276] Referring to his detailed report, Mr McIndoe provided evidence about urban form and structure (in which importantly he considered the proposed buildings were consistent with city urban form aspirations, buildings, wharf extensions and breakwaters that would be related to the established waterfront alignments). His views were strongly informed by the area being entirely reclaimed and constructed, characterised by wharves, enclosed water spaces and large buildings on wharves as well as on reclamations.<sup>59</sup>

[277] Mr McIndoe described existing waterfront activity in the area with particular reference to the existing ferry terminal and fishing fleet, such that the proposed change in maritime industrial character would in his view be negligible, with the America’s Cup

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<sup>56</sup> G D Moller, EIC, sections 6, 7 and 8.

<sup>57</sup> G R McIndoe, EIC, para 2.2.

<sup>58</sup> G R McIndoe, EIC, paras 4.1 – 4.3.

<sup>59</sup> G R McIndoe, EIC, paras 5.1 – 5.3.





marine activity compensating for temporary fishing fleet and permanent ferry relocation.<sup>60</sup>

[278] He offered illustrated information about access and connections – both vehicular and pedestrian, in and around Wynyard Point, North Wharf, Halsey Wharf, Wynyard Quarter and the Viaduct area. He discussed the proposed stopping of part of Brigham Street to enable the Wynyard Wharf bases, but indicated continuing vehicular and pedestrian connections, including provision of public access to the water's edge subject to occasional closures for syndicate launching retrieval activities, and the berthing of the occasional ship to the north on the eastern side of Wynyard Point. He offered illustrated information as well about the generous public open spaces through these areas, and indicated his strong support for the changes.<sup>61</sup>

[279] Mr McIndoe provided detailed evidence about building location and design, using the Moller drawings as a reference point, offering appropriate marine industrial aesthetic, form, scale and type that he considered appropriate. He considered that the precise articulation of the structures in the drawings would provide a level of aesthetic design quality that was necessary in these prominent locations.<sup>62</sup>

[280] He considered that if the designs were followed, there would be no adverse effects, given the nature of the waterfront location and development, comparative character, scale and design quality, making them acceptable in this location.<sup>63</sup>

[281] Of importance to the debate on this topic, Mr McIndoe noted that some syndicates might want to depart from the Moller designs, and in that event, it would be important for the Design Requirements to be in play to deliver equally satisfactory outcomes.<sup>64</sup> These described generic design principles and both generic and location-specific requirements to ensure that matters unique to each Base site were addressed. This provided a robust and proven approach allowing a wide range of alternative solutions while remaining inherently about principle and identifying some minimum or maximum quantitative requirements, particularly a maximum height of 15m and maximum extent of envelope at

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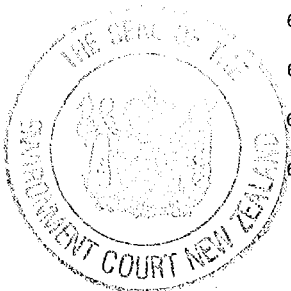
<sup>60</sup> G I McIndoe, EIC, paras 5.4 and 5.5.

<sup>61</sup> G I McIndoe, EIC, paras 5.13 – 5.22.

<sup>62</sup> G I McIndoe, EIC, para 5.23.

<sup>63</sup> G I McIndoe, EIC, para 5.24.

<sup>64</sup> G I McIndoe, EIC, para 5.25.



ground or wharf level.<sup>65</sup>

[282] It is clear from Mr McIndoe's evidence, and others, that the design guidelines which became Design Requirements, were heavily referred to in mediation amongst parties and conferencing among experts. It is clear that many parties set considerable store in them; to the extent that a high level of agreement was reached among many parties that consent could be granted, so long as conditions of consent required close adherence to the Design Requirements.

[283] The Council, through its witness Ms Skidmore, gained confidence concerning design of open spaces around two wharves, strengthening of reference to mana whenua, bicycle parking, and signage; also, indicative design for temporary open spaces on Wynyard Point being linked into the Requirements.

[284] Concerns of VHHL and other s274 parties and submitters (which we shall come to) gained coverage in the Design Requirements in terms of such things as control of waste, roof form and profile of the Base B building, enclosure design, wharf edge safety barriers and light spill to the harbour. The results were largely determined by reference to, and calibration against, the Moller designs for footprint, volumetric limits, overhangs, flag pole numbers and height, and visual permeability of barriers and enclosures.<sup>66</sup>

[285] Mr McIndoe addressed arguments by various parties about variously, "too much flexibility" and "need for more flexibility" in the Design Requirements. VHHL was initially concerned about the former, but has recently accepted the finally negotiated form, as we shall describe. ETNZ, America's Cup Event Limited, Royal New Zealand Yacht Squadron, and CoR36 (the Italian syndicate intended to occupy Base B) submitted for more flexibility, and continued to make a case for that, as we shall discuss. Mr McIndoe's response was that the design guidelines (later Design Requirements) had been informed by the Unitary Plan, but calibrated to relate specifically to the project, the site and the fact that the buildings might not stay for more than 10 years.<sup>67</sup> Mr McIndoe described some of the negotiations about expressions of temporary nature and marine – industrial flavour.<sup>68</sup> He recently proposed some words to achieve that, including reference to potential for use of pop-up and demountable building types on the Wynyard Wharf sites,

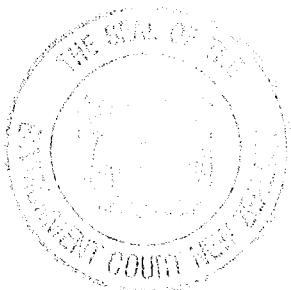
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<sup>65</sup> G I McIndoe, EIC, paras 6.1 and 6.2.

<sup>66</sup> G I McIndoe, EIC, paras 6.3 – 6.7.

<sup>67</sup> G I McIndoe, EIC, para 6.19.

<sup>68</sup> G I McIndoe, EIC, para 6.20.



such as shipping containers. He placed some illustrated examples in his evidence.<sup>69</sup>

[286] Some of these matters became agreed among the parties by the time of the hearing; others were not.

[287] Ms Skidmore had provided a report in support of Council's s 87F report. Subject to recommendation of several detailed conditions, Ms Skidmore generally supported the evidence and earlier report of Mr McIndoe. In particular, she advised that she had come around to agree that the proposed Hobson Wharf Extension would be suitable for a range of destination activities and therefore would provide a positive legacy.

[288] Ms Skidmore participated in the urban design joint witness conference and was a signatory to the largely agreed outcome. She thought that some additional wording could be included as an explanatory note, to highlight the differing contexts of Base B in comparison to Bases C to G, however she otherwise did not consider it necessary to utilise the other amendments suggested by Mr McIndoe in his evidence on the issue of flexibility.

[289] Viaduct Harbour Holdings Limited ("VHHL") engaged Mr I C Munro, urban designer, to critique and provide evidence in chief on design matters unresolved as at 21 August 2018 (not a full assessment of the proposal).<sup>70</sup>

[290] VHHL had over some years been instrumental in arranging for development of the Wynyard Quarter, aiming for high standards of architectural and urban design by developers. It has taken a close interest in these proceedings, seeking to protect that high amenity.

[291] On its behalf, Mr Munro placed significant store on the importance of the Design Requirements, and considered that so long as they were adhered to for development other than pursuant to the Moller plans, urban design effects for the period of up to 10 years would be acceptable and otherwise unlikely to be more than minor. His assessment was strongly influenced by that duration.<sup>71</sup>

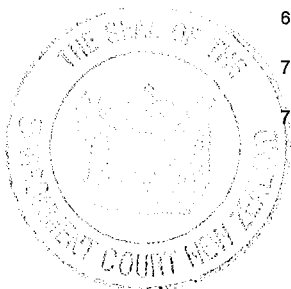
[292] Mr Munro noted the additional flexibility proposed by Mr McIndoe, particularly the allowance for signage on yard fences, increased allowable height of external yard fences

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<sup>69</sup> G I McIndoe, EIC, paras 6.23 – 6.26.

<sup>70</sup> I C Munro, EIC, para 1.3.

<sup>71</sup> I C Munro, EIC, paras 2.1, 2.2., 3.5.



for Base B, and greater allowances for the other bases. His reasons included the viewing distances being shorter in relation to Base B, and the availability of views across Viaduct Harbour between Te Wero Bridge and Hobson Wharf.<sup>72</sup>

[293] Mr Munro considered that provisions in the Design Requirements for buildings and yards, with the flexibility previously built in to them, would ensure that adverse urban design effects would be at worst minor for Bases C to G and yards A and C to G, and unlikely to be more than minor for Base and yard B, in the context of a maximum 10-year timeframe for the event.<sup>73</sup>

[294] The added visibility of Base B, led Mr Munro to propound some quite particular urban design controls for it in relation to signs, openings and availability of passive surveillance and activation in an adjoining relatively secluded public open space. He was also motivated by particular rules in the Unitary Plan. To support his views, he provided a coloured-up set of the Draft Design Requirements showing matters not relevant, matters particularly relevant, and respective types of language (from permissive to directory) that he considered should be applicable.<sup>74</sup>

[295] He proceeded variously to agree or disagree with Mr McIndoe's proposals for further flexibility, once again differentiating between Base B and the others; acceptable for the latter but not for the former.<sup>75</sup>

[296] VHHL also called the evidence of Ms A J Bull, a lawyer with expertise in resource management and property law, currently the CEO of Tramco Group which includes the VHHL property portfolio. She has been in that role since early 2016.

[297] Ms Bull explained why VHHL as a substantial landowner in the Viaduct and Wynyard precincts, had been closely involved in master planning them for many years, to achieve a high amenity mix of commercial office, residential and hospitality uses, with high quality public spaces and a focus on the unique connection to the Auckland waterfront. It seems to us almost unarguable that the results seen in these precincts, speak for themselves in this regard.

[298] VHHL entered the proceedings supporting the application so long as there would

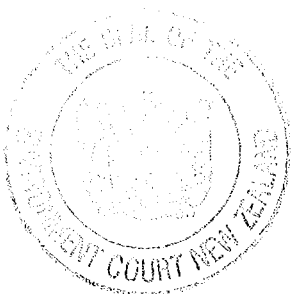
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<sup>72</sup> I C Munro, EIC, paras 2.4 – 2.6 and 3.5 – 3.9.

<sup>73</sup> I C Munro, EIC, para 3.10.

<sup>74</sup> I C Munro, EIC, paras 3.11 – 3.14.

<sup>75</sup> I C Munro, EIC, paras 4.1 – 4.6, and 5.1.



be strong conditions of consent as exhibited to the evidence of its planning consultant Mr V A Smith, and the Design Requirements attached to the expert witness statement of 7 August 2018.

[299] VHHL participated vigorously but constructively to get to that point.

[300] One notable feature of Ms Bull's evidence related to Base B whereby, although the AC36 events seek consent for a 10-year duration, the consent for occupation of water space by the wharf extension is for 35 years, that is, 25 years beyond the expiry of the AC36 consents. VHHL considered it important to support the conditions about proposed legacy use options so that regard is had to future uses in the hosting of similar events.<sup>76</sup>

[301] For reasons she gave, Ms Bull supported keeping the Design Requirements relatively tight, particularly on Base B. She discussed conditions proposed for maintenance of vessel access in the eastern Viaduct. Also construction and traffic effects and Event effects.

[302] Mr D O Ramsay, an owner and resident of apartments on Princes Wharf, provided evidence on behalf of owners and residents in Sheds 19, 20, 22, 23 and 24 there.

[303] The group supported grant of resource consents for AC36, if subject to the annotated conditions attached to the evidence of VHHL's Mr V Smith.<sup>77</sup>

[304] Mr Ramsay said that the group relied on the approach taken in evidence by Mr Munro for VHHL, on design issues, noting that the group had a particular concern about the retention and ongoing use of the Base B building and the Hobson Wharf Extension after the America's Cup.<sup>78</sup>

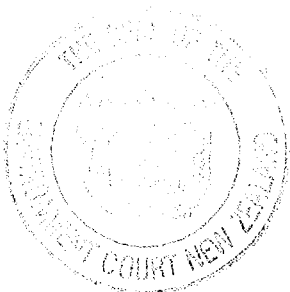
[305] The Chair of City Centre Residents' Group, Ms N Buckland, communicated with the Court concerning their submission, supporting five temporary bases on Wynyard Point on a more tightly controlled basis, but opposing the extension to Hobson Wharf and suggesting an alternative of reclamation behind the current breakwater to the west of Hobson Wharf, among other things. There was some apparent urban design emphasis in their submission, which seemed supportive of events that created atmosphere such as boat races, boat shows, summer concerts, winter movies, food trucks, seating, shade

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<sup>76</sup> A J Bull, EIC, para 4.6.

<sup>77</sup> D O Ramsay, EIC, para 5.

<sup>78</sup> D O Ramsay, EIC, paras 2.3 and 7.



and planters, small pools and waterfalls for children, steps into the harbour, swimming places in the harbour etc.

[306] On 29 August Ms Buckland wrote to the Court advising that the Group's concerns had largely been met by newly-proposed conditions relating to consent duration and legacy issues, in particular the moving of Bases B to G six months after any loss of the Cup during the 10-year period. They also supported the proposal of the Crown for a legacy-use options plan and draft conditions 198B and 198C, as a means of providing a more robust public process for future use of public space.

[307] The group maintained concerns about the extension of the northern end of Hobson Wharf, but signalled that they would not be attending the hearing.

[308] Ms C A van Camp, a s 274 party, provided evidence that was directed more to lack of necessity, as she saw matters, for the extension to Hobson Wharf, but she included concerns about likely lack of quality of public space beside Base B.<sup>79</sup>

[309] Ms F A Stead lives in an apartment in Customs Street West, in the Viaduct Quarter. She has a long background in business and says she is passionate about the city of Auckland, in particular the Viaduct Harbour area. Like Ms van Camp, she seemed primarily concerned about lack of a need for Base B, but we inferred from reading her lengthy submission to the council, that she was more concerned about visual intrusion of a Hobson Wharf Extension into the harbour, and the construction of a large "industrial shed" on it. She referred as well to the "reindustrialisation" of the Viaduct Harbour area, in particular Hobson Wharf, noting that the major attraction of the Viaduct Harbour area is uninterrupted wide views of the Waitemata Harbour and of Rangitoto's volcanic cone. She considered the possible "shed" to be "visual pollution", and disruptive of harbour views. She believed it should shift to Wynyard Point.

[310] Ms Stead has been travelling overseas during the last few months, so was unable to attend the mediation or the hearing. The Court endeavoured to link her to the hearing by audio visual link (AVL), however she was unavailable on the first two days of the hearing, and the hearing did not extend to a third. She emailed the Court subsequently, expressing gratitude for that attempt and for keeping her well updated throughout. In her email, she recorded that she believed progress had been made during the hearing, and that the points she wished to cover if attending by AVL, were already covered in her

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<sup>79</sup> C A van Camp, EIC, para 7(c).



original written submission. She simply wished to emphasise that as a businesswoman she was used to having to adapt plans if it became apparent that revenue streams were going to be significantly lower than originally anticipated, something she saw as akin to ETNZ not having enough challengers to occupy all the bases. She was gracious enough to accept however that the present situation is not a straightforward business one, but she remained concerned about taxpayers' and ratepayers' funding for the project. She reiterated her concern about visual pollution.

[311] Ms Stead has been disadvantaged by not being able to engage with the other parties, and gain a better understanding of the points of views of others. Of some importance, we doubt that she has taken on board the rationale for the number of bases put forward by Mr R L H Green in his evidence in chief and rebuttal. Neither does she appear to have taken account of the potential economic benefits for the Auckland and New Zealand economies, focussing instead on ratepayer and taxpayer cost. Regrettably, we cannot place much weight on her expressions of concern which we infer were somewhat driven by her concerns about visual outcomes around Base B.

[312] The expert witness conference on urban design and landscape architecture took place between 26 July and 7 August 2018. Participants were Mr McIndoe, Mr Goodwin, Ms Skidmore, Mr Kensington, Mr Rae and Mr Munroe. It took note of the outcome of the separate landscape architecture expert conference, and focussed on the document previously called "building and public space design guidelines" to guide developments not undertaken in accordance with the Moller plans.

[313] This later conference converted the guidelines into the Design Requirements, which document was subsequently presented to a key mediation session on 30 July 2018. Between that date and 7 August, the experts agreed some minor updates and clarifications, but of importance to what we understand to be the outcomes from mediation, there were no significant changes until later in the process, after the Court posed some questions by Minute on 27 August 2018.

[314] The document in its then form (6 August) strongly underpinned the outcomes from mediation.

[315] The group of six experts confirmed that adherence to the Design Requirements would be sufficient to ensure an acceptable urban design and landscape outcome in terms of effects and consistency with Unitary Plan provisions; they also confirmed that the Moller drawings in the application would implement them.



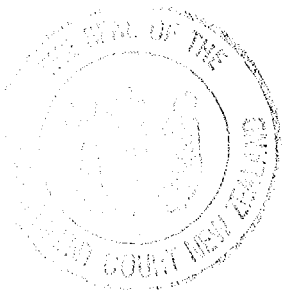
[316] The JWS recorded that at the second mediation on 30 July 2018, an alternative condition relating to certification of design of buildings, yards and public open spaces, was presented by Panuku, seeking further design flexibility. The experts tested a range of methods to see whether the suggested condition was appropriate, but were unable to reach agreement on the day.

[317] They attached to their JWS the Design Requirements as at 6 August 2018, a 12-page document providing for:

- a general design objective
- overarching design principles (including design coherence and Te Aranga Māori design principles)
- generic building and yard design requirements including building edge activation
- base signage and branding
- amenity lighting
- waste, recycling and service storage provision
- building and yard-specific design requirements to apply to Base B on the one hand and Bases C to G on the other, including building form, façade design, materials, amenity lighting, and in the case of Bases C to G, inter-base boundary fencing.
- general public open space design requirements, including provisions for public open spaces in general, wharf and breakwater edges, public interface yard enclosures, furniture, wharf edge safety barriers
- location-specific public open space design requirements, including for Hobson Wharf, Halsey Wharf, and Wynyard Point.

[318] Some requirements (for instance concerning signage, fence dimensions, yard dimensions, glazing dimensions, passive surveillance opportunities and numbers and dimensions of flag poles), were quite specific; others (particularly for the Wynyard Wharf bases and places) were more generic (for instance Clause 5.7A provides that public open spaces on Wynyard Point would have surface finishes that are fit-for-purpose, simple and economical to provide for a range of predominantly public uses.

[319] Mr R L H Green, the Legal and Rules Advisor to ETNZ wrote that it has sole responsibility for conduct of AC36 defence, including organisation of the event. His evidence in chief of 7 August 2018, called by Panuku, was principally about ETNZ winning the right to defend in AC36, and its planning for holding of the event since last year. He provided background information to the planning for the syndicate bases,





including the need for infrastructure, base and building requirements, the need for calm water conditions for launching and retrieving boats, and yard operational requirements.<sup>80</sup>

[320] Challengers will be provided with an asphalted flat base area with services, and be expected to build their own buildings. The structures will be entirely temporary, as is acknowledged in the draft conditions of consent.<sup>81</sup> If ETNZ were to win the cup in 2021, some challengers would retain some level of operation until AC37 two years later. If it were to lose the cup, six months would be the realistic time for syndicates to remove their developments.<sup>82</sup>

[321] Mr Green had become aware of the outcome of expert conferencing and mediation, and of the Design Requirements. He was very concerned that the document did not reflect the reality that the buildings would be temporary and should be similar in style to the temporary buildings and bases seen in 1999 – 2000 for the Cup in Auckland, and seen at the last Cup event in Bermuda. He considered that the Design Requirements appeared to contemplate permanent buildings. The syndicates should be focussed on sailing, not building. He considered that the Design Requirements would be a barrier to entry for some teams, particularly latecomers who might be on a tight budget. He complained that ETNZ and the Challenger of Record (CoR36) had not had a chance to comment on the Design Requirements at the time they were produced.<sup>83</sup>

[322] Mr Green filed evidence in chief called by ETNZ and ACE on 21 August 2018, and took up the design theme that he had foreshadowed in his earlier evidence. He criticised the Design Requirements as unclear and confusing, overly-prescriptive, and placing unreasonable restrictions on syndicates. As a result, ETNZ and ACE engaged expert assistance from experienced architect Mr Patrick Clifford to critique them and provide evidence.

[323] Mr Green stressed again that the team bases would be temporary; that the three main syndicate challengers would occupy the double bases B, C and D and be needing to set up in short order, just for the two summer periods; and that the remaining bases E, F and G on Wynyard Point would be likely to be taken up by later arrivals with just one boat and small budgets. They would require their bases for little more than the three to

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<sup>80</sup> R L H Green, EIC, para 6.1 – 6.10.

<sup>81</sup> R L H Green, EIC, para 7.1 and 7.2.

<sup>82</sup> R L H Green, EIC, paras 7.3 and 7.4.

<sup>83</sup> R L H Green, EIC, paras 7.5 – 7.7.



4-month period of AC36.<sup>84</sup>

[324] Mr Green expressed concerns about limitations in the Design Requirements on signage and branding on team base buildings, and the size and location of flagpoles and flags. He considered the restrictions unreasonable. He proposed a solution, making a distinction between “applied” and “integrated” branding; also, the possibility of applying different restrictions for permanent branding and flagpoles and flags (for the duration of the consent); and temporary branding and flagpoles and flags present only for the AC36 event window from October 2020 – October 2021.

[325] As just mentioned, experienced architect Mr P T Clifford was asked by ETNZ and ACE to provide evidence in chief. He has been involved in design issues in the Wynyard Quarter since 2002 for Ports of Auckland Limited, and more recently for Panuku. He has also been involved with other America’s Cup regattas, a public open spaces project for Auckland Council in the 2000 defence, and supplier to ETNZ on base designs for Valencia (2007), San Francisco (2013) and Bermuda (2017).

[326] Mr Clifford provided more information on requirements for design for team bases, and structures on public places, as temporary buildings connected with the regatta. As such they would be different from permanent structures being built in the Wynyard Quarter to which usual design guidelines would apply. He considered that syndicates should be able to construct appropriate temporary buildings, and that some of them would not be very well funded.<sup>85</sup>

[327] Noting that the greater prominence of Base B should see a requirement for better design input than on Bases C to G, Mr Clifford proceeded to analyse clauses in the Design Requirements setting out general design principles, generic building requirements, and specifics on Hobson Wharf and Wynyard Point.

[328] As to the general design principles, while he considered that there should be some link between the requirements and the mana whenua engagement plan process, he noted that in other America’s Cup regattas, team bases usually reflected the cultures of their countries of origin rather than the country they were visiting.<sup>86</sup>

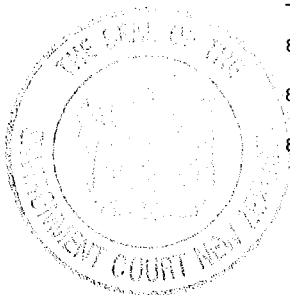
[329] Concerning general building requirements, he considered that clauses 2.1 and

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<sup>84</sup> R L H Green, EIC (2), paras 3.1 – 3.8.

<sup>85</sup> P T Clifford, EIC, paras 3.1 – 3.5.

<sup>86</sup> P T Clifford, EIC, para 4.1(a).



2.2 of the Design Requirements were overly prescriptive, and that the scale and visual interest could be expressed more simply and still achieve the same outcome.<sup>87</sup>

[330] Mr Clifford expressed concern about strict limitations on signage and branding and lighting, at least during cup events.<sup>88</sup>

[331] On Hobson Wharf Mr Clifford considered that there should be differentiation between permanent and temporary equipment; that there should be further refinement of the amount and location of glazing to strike an appropriate balance between passive surveillance and functional design; and about interpretations of what materials would comply, especially for a temporary building.<sup>89</sup>

[332] On Wynyard Point, Mr Clifford expressed concerns about restrictions on portal and entrance canopies, size and location of balconies, and restrictions on fencing around bases.<sup>90</sup>

[333] Mr Clifford was critical of restrictions on sizes and numbers of flagpoles, noting that flags are an important part of a Cup experience and offer valuable branding for the event. He considered that there should be different restrictions, perhaps as between permanent and temporary flagpoles.

[334] Mr M Groeschner, a Director of the Challenger of Record ("CoR") (Luna Rossa Syndicate, destined for Base B) gave evidence acknowledging the course of development of the Design Requirements, and strongly critical of them as overly prescriptive and significantly limiting of design possibilities of syndicates. He was concerned about whether COR 36 would still be able to achieve all its objectives for spectacular and innovative design of structures on the waterfront.<sup>91</sup>

[335] Mr Groeschner's concerns were similar to those of Mr Clifford, but more detailed, particularly as to the flagpole issue; size of glazing elements, materials (which would only be temporary, albeit aesthetically appealing); carparking within or near the base; size and

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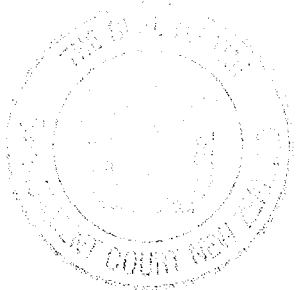
<sup>87</sup> P T Clifford, EIC, para 4.1(c).

<sup>88</sup> P T Clifford, EIC, para 4.1(d).

<sup>89</sup> P T Clifford, EIC, para 4.1(e) – (h).

<sup>90</sup> P T Clifford, EIC, para 4.1(i) – (l).

<sup>91</sup> M Groeschner, EIC, paras 2.1 – 3.4.



locations of balconies; significant disincentives to lesser-funded syndicates.<sup>92</sup>

[336] The council's witness Mr Kensington supported the need for the Design Requirements and in particular that they should be less flexible than the predecessor documents, the guidelines. Indeed, he considered that the Design Requirements allowed appropriate flexibility within limits.<sup>93</sup>

[337] Mr Kensington expressed concern that some of Mr McIndoe's suggested amendments for flexibility would introduce an element of undue subjectivity that might create difficulties for the Council in monitoring and compliance.<sup>94</sup> He conceded nevertheless that there could be some adjustments to them to provide better for the possibility that "pop-up container type base buildings" might be constructed on Bases C to G. He agreed with Ms Skidmore (her para 8.7) that an explanatory note could be added to the Design Requirements describing the different contexts of Base B compared to Bases C to G. He proceeded to suggest some possible refinements to the relevant conditions of consent.<sup>95</sup>

[338] The Court acknowledges that the many parties interested in these topics made considerable strides through negotiation, expert conferencing, and mediation, to narrow the issues considerably.

[339] We acknowledge that the high level of agreement on design issues after exchanges of evidence had been largely based on "landing" the Design Requirements. However, while pre-reading evidence, we were somewhat concerned about allegations of prescriptivity by user groups (syndicates); we also had an impression that the parties might be talking past each other. Accordingly, we issued a Minute on 27 August, which among other things provided:

[3] There are some areas where further work would be better done prior to the hearing than during it or afterwards, and might benefit from some tentative early guidance from us now.

[4] Prime amongst these are probably the design issues. We gain the impression that there was probably considerable agreement reached in mediation, and a moderately

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<sup>92</sup> M Groeschner, EIC, para 3.7(a) – (m).

<sup>93</sup> P N Kensington, EIC, para 8.1 – 8.6.

<sup>94</sup> P N Kensington, EIC, para 8.7.

<sup>95</sup> P N Kensington, EIC, paras 8.10 – 9.3.



high level reached in expert conferencing, possibly due to tightening up of the design guidelines and turning them into design requirements. This has however produced something of an adverse reaction (albeit carefully phrased), from witnesses to be called by ETNZ.

[5] The Design Requirements do look quite prescriptive, and are lengthy, and we can understand that those qualities might be somewhat off-putting to users (i.e.. Racing syndicates).

[6] We recommend that the parties take stock in the following way. The landowners and occupiers in the Wynyard and Viaduct Precincts might need to be a little more open to understanding that the proposed activities are temporary, and, particularly in relation to bases C - G, not likely to be producing buildings with the longevity and high standard of design found in the residential and commercial developments in the two precincts to date (and no doubt planned for the future). At the same time, the syndicates might need to be a little more aware that they are seeking to be hosted in a high quality and high-profile part of town.

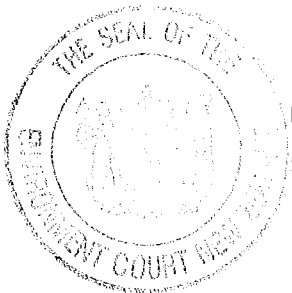
[7] Other factors might be at work. Some design principles might not have the importance they otherwise would. For instance, passive surveillance might not be so critical because no doubt the area will be bristling with security cameras, and probably police and security guards, for the duration of the events.

[8] Other requirements might be thought perhaps to be a bit pedantic in the context of relatively temporary activities.

[9] We want to see further work amongst experts and parties interested in these issues, taking practical and sensible account of some of the concerns of Mr Clifford, Mr Green, and Mr Groeschner, while noting the basis of the agreement amongst experts on the design requirements being as they are, no doubt underpinned by the thinking of witnesses such as Mr Munroe, Mr Ramsay, Mr V Smith, Ms Bull, and others. Some practical engagement and agreement on allowing more choice in matters such as numbers and placement of flagpoles and advertising for a temporary and colourful sporting event, and the somewhat precise dimensions of windows and balconies etc, could be a good thing.

[10] Tentative thinking here is that small refinements might close the gaps, and that a major re-writing of the design requirements should not be needed. We do not think anybody has time to undertake such a comprehensive exercise anyway; mediation outcomes might significantly be based on them; and we currently do not think it should be attempted.

[340] The relevant expert witnesses conducted a further conference to discuss these matters, and included ETNZ's witness Mr Green, and Mr B Bourke for CoR. They



prepared a new JWS, and agreed a further updated version of the Design Requirements agreed among the experts, notably including Mr Clifford for ETNZ. This JWS, dated 31 August 2018, was said by the experts to be consistent with the Court's requests, and Mr Kensington expressly confirmed his view as expert engaged by the council that the wording of condition 6A(e) would be appropriate.

[341] Of importance, emphasis was placed on the "Overarching Design Principles" that the buildings on the bases would be short term temporary maritime – industrial and event buildings. Also concerning the characteristics of the physical setting, that surrounding Bases C to G being acknowledged to be more industrial than the location of Base B. Also expressly acknowledging the potential to use pop-up and demountable building types on Bases C to G, consistent with all applicable parts of the Design Requirements. Other express clarifications were included clarifying the (allegedly quite generous) signage requirements, increasing the numbers of flagpoles and flags during the tenure of the bases, and explaining or clarifying some other design elements on the bases.

[342] By the time of the hearing, ETNZ accepted the position reached, but the CoR did not. Counsel for both those parties, Mr Webb, presented submissions on behalf of the latter, and explained that their witness Mr Groeschner could not attend the hearing but could only express its concerns through submissions and would therefore need to abide the decision of the Court. He very fairly acknowledged that this approach by CoR might result in the Court placing less weight on its concerns.<sup>96</sup>

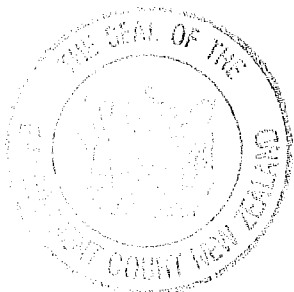
[343] The position of the CoR was essentially that it wished to have relative freedom of design in order to achieve a great architectural outcome on Base B. It accepted that some control must be imposed over structures; acknowledged that its expert Mr Clifford had agreed to the latest version of the Design Requirements, but stressed that the CoR as representative of all challengers for AC36, still felt that the restrictions would be too great.

[344] Mr Webb's acknowledgements were very proper. In particular, CoR's design witness Mr Clifford has agreed to the final version of the Design Requirements acting independently and impartially as an expert witness must. We acknowledge the frustration of CoR at the situation it finds itself in, in the host country, where planning processes are ordained in considerable detail by the RMA and planning instruments. We are simply left with no evidentiary basis to offer CoR any further relief.

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Submissions on behalf of Challenger of Record, 10 September 2018.



[345] Of importance, we accept that our tentative criticisms in the Minute of 27 August, have been very constructively and appropriately answered.

[346] A s274 party, Mr R Gladwell of Sail World NZ Limited, presented a statement at the hearing supporting the CoR criticism of the Design Requirements as too restrictive, and drawing to our attention his own earlier evidence to that effect<sup>97</sup>. Mr Gladwell has had extensive media involvement in many America's Cup regattas and other international yachting events. He presented as a knowledgeable enthusiast for the sport, but we felt that he was focussed too exclusively on the sailing and media aspects. Unlike almost all other parties with an interest in the design issues, he seemed unable to accept other contextual requirements and points of view.

[347] Overall, we find that the proposed development will add to the character and vibrancy of the Auckland waterfront. The development will result in built form that responds well to the water and public open spaces. Public access within the locality will be maintained for the enjoyment of recreational water users, pedestrians and cyclists, and in some cases, will be enhanced beyond what is presently available. Existing marine-based industries will be able to continue operating to contribute to the authenticity of the area as a working waterfront. A very appropriate and constructive balance between acknowledgment of the physical qualities of the host environment, and syndicates' needs to be cost-efficient in setting up temporary bases, has been well achieved. In the result, we hold that adverse effects on the environment in landscape, character, visual, amenity and design, will be no more than minor. This is based strongly on our approval of conditions (23-25A in particular), and the Design Requirements.

### ***Servicing***

[348] Each of the syndicate bases will need to be serviced with water, wastewater, stormwater and telecommunications infrastructure as discussed in section 10.15 of the AEE and as outlined in more detail within Document 28 of the application.<sup>98</sup>

### *Water Supply*

[349] Water will be required at each base for personal use, boat wash-down and firefighting with the Hobson Wharf Extension to be supplied through a new main, the Halsey Street Extension Wharf through an existing main and each of the Wynyard Point

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<sup>97</sup> R Gladwell, EIC paragraphs 8 (m) to (q).

<sup>98</sup> We have addressed lighting in a separate section of this decision.



bases through a dedicated pipeline connecting the base to the existing main in Brigham Street.

*Wastewater*

[350] Each base will be connected to one of the existing public mains for the disposal of wastewater with the super yacht berths being serviced with a pump-out facility. Mr Khan, Development Engineer for the Council, advised that he had consulted with Watercare which had given its approval in principle to what was proposed and confirmed that the public network has sufficient capacity, subject to its approval of the final designs.

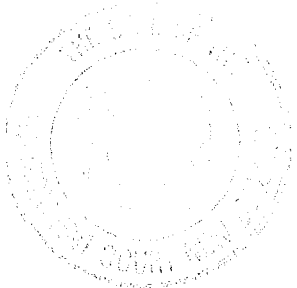
*Stormwater*

[351] Stormwater runoff from each of the proposed development areas will be collected and discharged to the sea through new drainage systems. These systems, including the outfall structures, are to remain in private ownership. As no new stormwater would be discharged into the existing public network, there would be no additional loading to the network. The new systems would be designed for a 10-year return period in line with the Council's Engineering "Code of Practice for Land Development and Subdivision, Chapter 4 - Stormwater".

[352] As the boat maintenance and repair associated with each base is considered an 'Industrial or Trade Activity' (ITA), Ms Chuah and Ms Johnston, technical specialists for the Council, assessed the proposal in terms of the ITA provisions in the AUP. To ensure that the discharge of any contaminants to the environment from the maintenance of the boats was appropriately addressed, they proposed the following procedures and controls for the bases:

- (a) *No refuelling allowed at any of the bases.*
- (b) *Only water to be used for washing the boats.*
- (c) *Only authorised personnel allowed within the base areas containing ITA activities.*
- (d) *All chemicals to be stored and used in undercover areas compliant with the Hazardous Substances and New Organisms Act.*
- (e) *A base specific spill response plan to be implemented.*
- (f) *Stormwater from any uncovered ITA areas to be captured and discharged into an approved proprietary filtration device.*

[353] These controls and procedures are reflected in the conditions which require approved stormwater treatment devices to be installed (Conditions 136, 137 and 148-





150), the preparation of ITA Environmental Management Plans (Conditions 138-141), the preparation of ITA Emergency Spill Response Plans (Conditions 142-145), reporting to the Council on compliance with the ITA Management Plans (Conditions 146-147) and a comprehensive set of conditions around operations and maintenance requirements, the scheduling of pre-and post-construction meetings and the preparation of as-built drawings (Conditions 155-168).

[354] Ms Chuah and Ms Johnston concluded that the proposed stormwater quality regime was feasible for the site and that the effects of stormwater discharging to the receiving environment would be suitably mitigated. Also, that due to the location of the site adjacent to the harbour, there would be no downstream adverse effects.

[355] The St Mary's Bay Association lodged a submission about its stormwater quality concerns. It ultimately sought leave not to appear at the hearing, indicating that its concerns had been considered and to a degree met by conditions of consent.

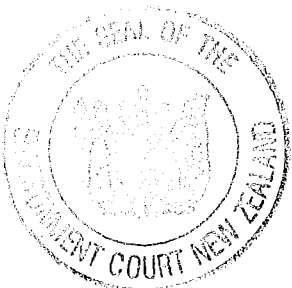
#### *Power and Telecommunications*

[356] Power, telecommunication and fibre optics are to be provided to each syndicate base through connections to existing services.

[357] Vector is the owner and operator of a range of utilities infrastructure and assets in the vicinity of the site. In its 3 September 2018 memorandum to the Court, it confirmed that, based on the amended conditions of consent (and the CLG conditions in particular), and through its ongoing direct discussions with Panuku and the Wynyard Edge Alliance, it was comfortable that its assets and infrastructure would be provided for and protected. Overall, Vector was neutral about the proposal and sought the addition of itself to the relevant condition about consultation with the parties during the finalisation of the Construction Environmental Management Plan.

[358] Chorus confirmed that based on its discussion with Beca on 30 November 2017, subject to a more detailed review of its existing and planned infrastructure, it would be able to support the anticipated connections to its existing fibre networks.

[359] This advice from Vector and Chorus was confirmed in the s87F report which recorded that the utility companies were supportive of the America's Cup event(s) and had indicated that in principle there should be sufficient capacity to accommodate the anticipated power and telecommunication demands.



### ***Findings***

[360] Our findings are that the proposed development can be appropriately serviced without placing undue demand on the capacity of existing public reticulated networks, and that provided there is effective implementation of the conditions of consent, the adverse effects on the quality of the water in the harbour from the discharge of stormwater from the bases will be no more than minor.

### **Hazardous Substances Risk**

#### ***Existing Environment***

[361] The existing environment includes the Wynyard Precinct of the AUP. This area covers the Western Reclamation and Wynyard Point. Reclamation north of Fanshawe Street started in the late 1800s – early 1900s and was completed by 1931. For much of its history this was an area of industrial, mostly port-related, activities including timber yards, produce markets, fishing operations and petroleum and chemical terminals on Wynyard Point.

[362] For the America's Cup regattas in 2000 and 2003, extensive renewal and some clean-up of the area, including the Viaduct Basin, occurred. Since 2003, there has been widespread conversion of the precinct from industrial activities to current uses including offices, entertainment facilities and residential and travellers' accommodation. As part of this, most of the industrial activities have now closed and left the area, but some remain. Notably there are three tank farms, one at the northern end and two at the southern end of Wynyard Point operated by Stolthaven New Zealand Ltd and Bulk Storage Terminals Ltd, and a fish processing plant on Madden St operated by Sanford Ltd. The hazardous materials stored or used at these facilities include flammable, toxic and corrosive liquids at the tank farms and ammonia at the fish processing plant.

[363] As part of the planning for this proposal, agreement has been or is anticipated to be reached with Stolthaven and Bulk Storage Terminals for those companies to vacate the two southern tank farms, making way for Bases C – G. This will significantly reduce the risks that would otherwise attach to undertaking activities in the vicinity.

#### ***Evidence***

[364] Expert evidence on the risks associated with existing facilities where hazardous substances are stored or used was provided by:



- (a) Jenny Polich of Sherpa Consulting Pty Ltd, Sydney, for Panuku; and
- (b) Robert Van de Munckhof of Tonkin & Taylor Ltd, Auckland, for the Council.

As well as primary statements of evidence in chief, following conferencing the two experts also provided a JWS dated 1 August 2018

[365] In preparing her evidence Ms Polich relied on two previous quantitative risk assessments (**QRAs**) which she had prepared:

- (a) *Wynyard Quarter - Results Summary Report - Risk Profile June 2010 – prepared for Sea + City Ltd - dated 29 July 2010 (Sherpa 2010 report).*
- (b) *America's Cup Proposal Wynyard Hobson Option - Effect of Discontinuing Stolthaven Hamer St and BST Operations - Land Use Safety Planning Implications - dated 6 April 2018 (Sherpa 2018 report).*

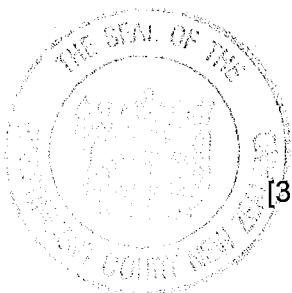
[366] Mr Van de Munckhof's evidence was based on his risk report on the hazardous substance risk-related aspects of the proposal which was attached to the Council's section 87F report. He reviewed the Sherpa 2018 report, the 4Sight Impact Assessment - Hazardous Substances Regulations (which included an assessment of the potential impacts associated with the operation of a dangerous goods tanker) and the Beca Fire and Evacuation Assessment (which considered the potential for safe evacuation in the event of an incident including a release of a hazardous substance or a fire).

[367] Mr Van de Munckhof also presented evidence about compliance with the NES for Assessing and Managing Contaminants in Soil to Protect Human Health.

[368] As there are no specific risk assessment guidelines in New Zealand, the assessment approach adopted by the experts generally followed the methodologies in the New South Wales Department of Planning guidelines, including:

- (a) *Hazardous Industry Planning Advisory Paper No 3 - Risk Assessment; and*
- (b) *Hazardous Industry Planning Advisory Paper No 4 - Risk Criteria for Land Use Safety Planning; and*
- (c) *Hazardous Industry Planning Advisory Paper No. 6 - Guidelines for Hazard Analysis.*

[369] Two aspects of risk need to be considered:



- (a) individual risk, which considers the acceptability of a particular level of risk to an exposed individual; and
- (b) societal risk, which takes into account society's aversion to accidents which can result in multiple fatalities.

[370] The QRAs were based on the consideration of both individual risk and societal risk. These terms were described in the Sherpa 2010 report as follows:

#### **Individual Risk**

Individual risk represents the probability of a specified level of harm (usually fatality or injury) occurring to a theoretical individual located permanently at a particular location, assuming no mitigating action such as escape can be taken, hence it is considered to cover vulnerable individuals such as the very young, sick or elderly.

The criteria values have been set so that the risk level posed by industry (regarded as an involuntary risk exposure) is low in comparison to the voluntary risk exposures people accept in everyday life.

#### **Societal Risk**

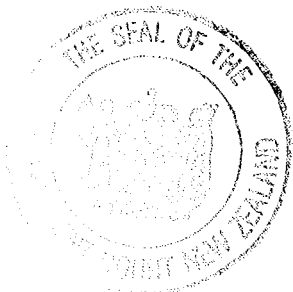
Societal risk is a measure of the probability of incidents affecting an actual population (rather than a theoretical individual as in individual risk). It is usually presented in the form of an 'f-N' curve which is a graph indicating the cumulative frequency of fatality (f) of a population of size 'N or more' people.

Generally societal risk is considered in three regions:

- 'Intolerable Region' which is represented by an upper criterion line above which the activity would be regarded as unacceptable in proximity to a population.
- 'Negligible' represented by a lower criterion line below which the activity would be regarded as posing acceptable risk levels.
- Region in between where the risk may be acceptable depending on the benefits of the activity, but risk reduction measures should be implemented to reduce the risks where practicable. This is known as the 'ALARP' or 'as low as reasonably practicable' region.

[371] Sherpa's societal risk assessment considered the following input parameters:

- The location of the facility
- The number of occupants present in daytime
- The number of occupants present at night-time
- The number of days of occupation per year
- The hours of daytime occupation
- The hours of night-time occupation



- The probability of occupation for each of these times on an annual basis

### ***Stolthaven North Tank Farm***

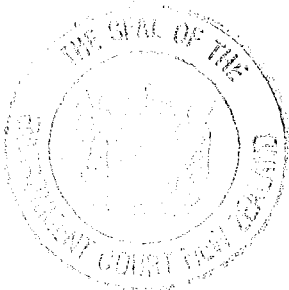
[372] The evidence before us focussed on the risks if there were a release of toxic substances from the tank farm that will remain at the northern end of Wynyard Point.

[373] With the proposed closing and removal of the two southern tank farms to accommodate the present development option, the Sherpa 2018 report presented findings from updated assessments of the risk profiles identified in previous QRAs. These assessments confirmed that the Viaduct Events Centre (the proposed site of Base A) and the proposed Hobson Point Extension (Base B) were both outside of the most extensive individual fatality risk contour from the remaining tank farm at the northern end of Wynyard Point. As a result, populations in these areas had no impact on the assessed societal risk. The risks of a hydrocarbon fire or flammable gas cloud were not seen by the experts as being as significant.

[374] While the Sherpa 2018 report was based on an assessment of 410 daytime occupants for each of the bases, subsequently Ms Polich confirmed that the effect on societal risk from an increase in the number of occupants from 410 to 500 did not alter her conclusions or recommendations, with the societal risk being close to negligible.

[375] Based on the findings of her societal risk assessment, Ms Polich made a number of recommendations for emergency measures to be put in place for use of and activities on Wynyard Point:

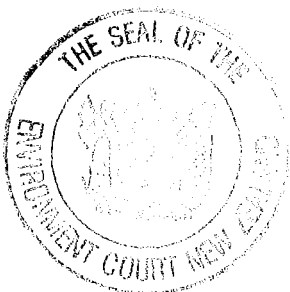
- (a) Access to the new piled breakwater can only occur when there is no dangerous goods ship at Wynyard Point, and no access to be allowed north of this location either on Wynyard Point itself or on to the north part of Brigham St adjacent to the remaining Stolthaven Wynyard (North) Terminal.
- (b) An Emergency Evacuation Plan be prepared and implemented prior to the bases being occupied and all team members accommodated within the bases should be inducted and trained in the Emergency Evacuation Plan.
- (c) Adequate access for emergency service vehicles is maintained to the whole area, specifically ensuring access to the remaining Stolthaven Wynyard (north) terminal is retained.



- (d) Public access to the area in the vicinity of the Stolthaven Wynyard (North) Terminal in the north part of Wynyard Point, (ie on Brigham St and Hamer St north of the new access road located between the bases and the remaining Stolthaven North operations) be discouraged by way of measures including but not limited to parking restrictions, bollards, no provision of pedestrian walkways, lookout points or other similar facilities that may have the effect of attracting the public to the area.
- (e) Pre-planning with terminal operator to avoid coincident discharge of ships to terminals (which is the highest risk activity) with expected peak population timing (for example race finals).

[376] In their JWS, Ms Polich and Mr Van de Munckhof recorded that there were no areas of disagreement between them. In doing so, they noted the following agreements and further recommendations:

- (a) The proposed bases for AC36 do not substantially change the current individual fatality risk and societal risk levels on Wynyard Point.
- (b) The main risks from the storage of hazardous substance at the Stolthaven North Terminal are associated with a toxic release and not a hydrocarbon fire or a flammable gas cloud. No special conditions for fire resistance of buildings are required.
- (c) Intensification of populations in the northern part of Wynyard Point should not occur. Steps should be taken to restrict public access to the area north of Base C during events until the bulk chemical storage facility at Stolthaven North is removed.
- (d) While restricting public access to the south of the northern edge of Base C is not considered necessary, activities which would encourage the public to congregate (such as food and drink stalls) should not be undertaken in the area north of Silo Park.
- (e) In the event of a toxic discharge, the limited egress from the Wynyard Point Breakwater would make safe evacuation difficult. Unless it could be demonstrated that the public could be safely evacuated from the breakwater, control measures should be put in place to minimise the numbers congregating on the breakwater particularly during events.



[377] Even though the super yacht berths in the Wynyard Wharf South Water Space area and the Halsey Point Breakwater appear to be within the most extensive individual fatality risk contour, Ms Polich's societal risk assessment does not refer to event day occupation of these areas. We do note, however, that under Condition 176, prior to berthage of the super yachts, the current emergency evacuation plan for North Point is to be updated to ensure egress/evacuation arrangements are in place to respond to a potential ammonia release from the Sanford facility or a toxic vapour release from the Stolthaven North Terminal. Logically this should also include evacuation of the Halsey Point Breakwater.

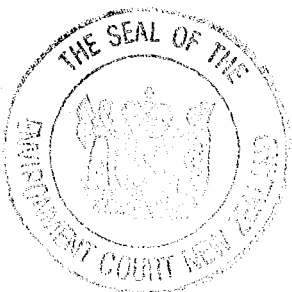
[378] While the most extensive individual fatality risk contour also extends over the marine area around Wynyard Point, there was no comment in the evidence about whether there would be any toxic release risk implications for marine craft in this area on event days. When finalising its emergency response plans, we suggest that Panuku, in conjunction with the Harbourmaster, considers whether these plans need to include any provisions for the emergency dispersal of craft moored in this area.

#### ***Sanford Fish Processing Plant***

[379] The experts did not provide any specific comment about the risks of toxic releases from the fish processing plant in their evidence as this was addressed in the Sherpa 2010 Report. The primary objective of that report was to provide hazardous risk assessment information to assist the then Auckland City Council with its land use planning for the Auckland waterfront in the Wynyard Precinct and Viaduct Harbour. In preparing this report, Sherpa undertook a QRA which investigated the risks from hazardous materials handled at the tank farms and the fish processing plant, all of which had potential land use safety planning implications.

[380] Reference was also made to a previous QRA in 2004 which specifically assessed the fish processing plant (*Auckland Western Reclamation Area – Sanford Risk Assessment Final Report April 2004 – Sherpa 2004 report*) and the inputs of that QRA were the basis for the Sherpa 2010 report as it was regarded as still being current in 2010.

[381] The Sherpa 2004 report concluded that there are areas in the immediate vicinity of the fish processing plant which are not suitable for residential or sensitive land uses. It was noted that the Sanford operation had undergone a series of risk reduction programmes over the years, including reduction of total ammonia on site and area of use,



detection systems with automatic isolation, shutdown and water deluge and isolation valves on external pipework. The one source of risk is an ammonia leak which would produce very strong odour, hence being readily detectable. Overall, the risk is considered to be reduced to as low as reasonably practicable.

[382] While Ms Polich made no specific reference to risk from a potential ammonia release from the Sanford facility there is a requirement for the Event Emergency Management Plan required by conditions 183H – 183J to include methods and procedures for evacuating this and other affected areas in the event of a release of ammonia from the Sanford facility.

### ***Conditions***

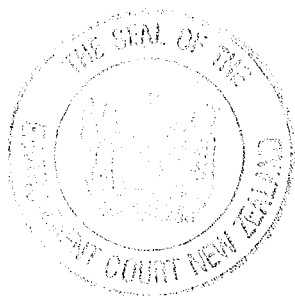
[383] At the Court's suggestion, the Applicant amended earlier versions of the conditions to better integrate the requirements for emergency evacuation procedures for the Wynyard Point Bases, the Wynyard Point South water spaces and the overall Event Emergency Management Plan.

[384] Under Condition 183H, the consent holder is required to prepare an Event Emergency Management Plan in consultation with Auckland Civil Defence and Emergency Management Group. We were advised that this Group works closely with its partners, including the New Zealand Police, Fire and Emergency New Zealand and St John Ambulance to coordinate activities related to hazard and emergency management in the region.

[385] Following questions from the Court during the hearing, a new condition 183J(d) has been added requiring that the Event Emergency Management Plan includes confirmation that the Governor-General of New Zealand has declared the Event to be a 'major event' in accordance with section 7 of The Major Event Management Act 2007 and include a copy of the relevant Order in Council.

### ***Finding on Hazardous Substance Risks***

[386] Provided the Wynyard Point Bases Emergency Evacuation Plan (Conditions 174-175), Wynyard Wharf South Water Spaces Area (Conditions 176-176A) and Event Emergency Management Plan (Conditions 183H -183J) are fully implemented, our finding is that the risks from potential releases of hazardous substances from the Sanford and Stolthaven North facilities during each Event can be managed at an acceptable level.





### Security More Generally

[387] Elsewhere in this decision, we have indicated approval of various conditions of consent that are to be implemented through management plans, including in relation to emergency management and emergency evacuation. A concern expressed but not supported by independent expert evidence, came from Mr R Gladwell of Sail World NZ Limited, an international yachting media operator.

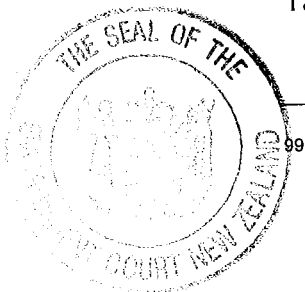
[388] In a section of his statement to the hearing headed "*Security and free movement of media during the event*", he offered several criticisms that we found rather internally inconsistent. He suggested there was no provision of a Media Centre in the current application (unlike the first application which was withdrawn), while at the same time expressing concern about how media personnel would move around the area, on and off water, with or without a secure pathway, and requiring security scanning. He said that photographers worked to exacting deadlines, and delays in the transition from the racecourse to the media centre could have significant consequences for regatta coverage. He expressed concern that the media might not be consulted during further planning for AC36.

[389] In reply at the close of the hearing, counsel for Panuku submitted that the concept plan for the Event included in the application<sup>99</sup> showed the indicative location for the media centre and hospitality buildings and structures on Halsey Wharf. Counsel also pointed out that as a s 274 party, Mr Gladwell was invited to join the Community Liaison Group ("CLG") for consultation about the Event Management Plan among other things. Counsel also indicated that Panuku would welcome Mr Gladwell's assistance with media security matters, no doubt utilising his knowledge from having been involved in many international yachting events in the past.

[390] We have no evidential basis for finding other than that effects on the environment under this head will be no more than minor.

### Mana Whenua Issues

[391] The Waitematā is a taonga of the people who have lived around it for centuries. It has been and is a significant waterway over which people have travelled to land at Tāmaki Makaurau. The waters of the harbour and the land around the harbour include



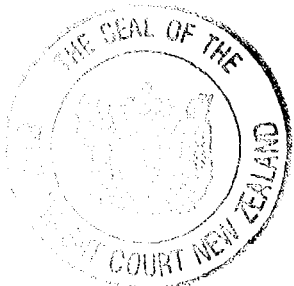
numerous places of significance and value to tangata whenua. The harbour and surrounding waters had and may, with care, have abundant seafood providing sustenance for many people. The Waitematā is undoubtedly a focus of the ancestral connections that Māori have in this area and of the desire of iwi and hapū each to exercise kaitiakitanga according to their own tikanga, including respect for cultural heritage values of mauri, mana, wāhi tapu, korero tūturu, rawa tūturu and whakāronui o te wā.

[392] Of the 19 iwi who have a formal role in the governance of the Auckland region (identified in the AUP as mana whenua<sup>100</sup>), 11 have participated in this application process to the point of being parties to the hearing before the Court:

Ngāi Tai ki Tāmaki  
 Ngāti Maru  
 Ngāti Pāoa  
 Ngāti Tamaoho  
 Ngāti Tamaterā  
 Ngāti Te Ata Waiohūa  
 Ngāti Whanaunga  
 Ngāti Whātua Ōrākei  
 Te Ākitai Waiohūa  
 Te Kawerau ā Maki  
 Te Patukirikiri

[393] Three of these iwi, Ngāi Tai ki Tāmaki, Ngāti Pāoa and Ngāti Whātua Ōrākei, lodged submissions in support of the application. The other eight lodged submissions in opposition. The focus of all iwi was on cultural issues and they shared concerns to ensure that there was appropriate recognition of their cultural values by Panuku and the Council. The differences among the iwi and the focus of the submissions in opposition arose principally from concerns regarding engagement with iwi in the consultation, application and related processes and in adequate recognition of iwi and the anticipated effects on their cultural values and interests.

[394] At a very late stage, Ngāti Pāoa Trust Board lodged a notice under s 274 of the Act together with an application for waiver of time. That application was not opposed by any other party on terms which took into account a wider agreement among the parties discussed below. The application is the subject of a separate determination by the Court



<sup>100</sup> Chapter B6 AUP; see Part 7 Local Government (Auckland Council) Act 2009.

granting a waiver on strict terms<sup>101</sup> and so we do not rehearse the content of it further.

[395] It is apparent from the evidence filed with the Court that iwi had reasonable grounds on which to criticise the engagement process undertaken by the applicant, especially after the first version of the proposal was withdrawn and the amended version, now essentially the version before the Court, was produced. It must be acknowledged that the whole of this process has taken place under time constraints resulting from the desire to construct facilities for the holding of the America's Cup event in 2021. On that basis, it is understandable that the applicant and the Council pursued a very tight timetable in which to design the facilities and seek the necessary resource consents for them and for the event itself.

[396] But sometimes more haste can result in less speed. Equally it must be acknowledged that there has been widespread interest from the public, not least from Māori, in the likely and potential effects (including metaphysical or intangible effects) of the various activities on the environment (including the social, aesthetic and cultural conditions which affect people). In that context, and notwithstanding the constraints an applicant or local authority may face, it is nevertheless important also to recognise that the participation of affected persons is a cornerstone of the resource management process, the evident policy of the Act being that decisions about resources are best made by allowing public participation in a process in which applications are publicly contested.<sup>102</sup>

[397] It is also correct that there is no requirement under the Act that an applicant for resource consent consult with any person before making or as part of their application. However, as the Court has previously noted, it is difficult to see how relevant issues arising from an application, particularly those relating to the matters that must be addressed in terms of Part 2 of the Act, can properly be assessed where there has been no or inadequate consultation.<sup>103</sup>

[398] At the hearing, counsel for Panuku confirmed that in the mediation sessions the applicant had apologised to the mana whenua groups for what had occurred, or not occurred, in relation to the revised proposal, and stated that this apology had been accepted. In turn, counsel for the mana whenua who had raised these concerns

<sup>101</sup> *Panuku Development Auckland Ltd v Auckland Council* [2018] NZEnvC 173.

<sup>102</sup> *Murray v Whakatane District Council* [1999] 3 NZLR 276, [1997] NZRMA 433, (1997) 3 ELRNZ 308.

<sup>103</sup> *Te Runanga o Ngai Te Rangi Trust v Bay of Plenty Regional Council* [2001] NZEnvC 402 at [460].



confirmed that this had occurred and said that acknowledgement of it in open court was helpful and powerful.

[399] Counsel for mana whenua raising these concerns also stated that the applicant's acknowledgement had played a significant part in moving the parties to the point where they could reach the wider agreement referred to above. This agreement was presented to the Court in a joint memorandum which set out revised conditions dealing with engagement with mana whenua and with the circumstances in which the resource consent might be reviewed in the future.

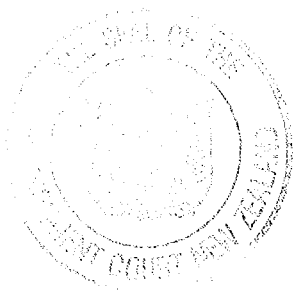
[400] The particular amendments are:

- (a) To require the establishment of a project-specific forum, open to all of the 19 mana whenua groups in the Auckland region, to prepare a kaitiaki engagement plan, rather than to use the existing Auckland Council forum for that purpose (conditions 5 and 5A – 5F); and
- (b) To include in the review condition provision for a review to be required following the granting of a customary marine title or protected customary right or the vesting of ownership over any part of the foreshore or seabed in the Project area or the outcome of any Treaty negotiations involving the Waitematā Harbour.

[401] On the basis of this agreement and the imposition of the agreed conditions, counsel for mana whenua who had been in opposition to the application advised that his clients did not now assert that there were adverse effects on cultural values that would prevent the grant of consent in those terms.

[402] We have reviewed the amended conditions carefully. We are satisfied that it is appropriate to amend the conditions as agreed by the parties. The provision of a project-specific forum will enable more focused attention to be given to the special circumstances and particular concerns relating to this project and the Waitematā, which might otherwise be diluted if left to the regional forum. The amendment of the review condition ensures that the consent does not impede or prevent the ongoing processes relating to the rights and interests of mana whenua under the Marine and Coastal Area (Takutai Moana) Act 2011 or the Treaty of Waitangi Act 1975.

[403] We also note, with approval, that participation in the forum is for iwi as listed in condition 5(c). No specific entities are listed. It is a matter for tangata whenua themselves to determine how they will participate.



## **Traffic and Transport**

[404] The applicant's traffic and transport report at Document 21 of the application provided a detailed description of land use activities and the transport environment within the development area, including streets, pedestrian and cycle networks and public transport facilities. The assessment of transport effects covered 3 phases of the development, the construction phase, the operational phase limited to the use of the bases and superyacht activity, and the events themselves over a 6-month period.

[405] In summary, the applicant is proposed the following changes to the existing transport infrastructure:

- (a) The stopping of Brigham Street (noting that this is occurring through a separate process);
- (b) A one-way lane to the north of Base C referred to as the 'Northern Connector Road' to provide access between Brigham Street and Hamer Street for south-travelling vehicles;
- (c) Removal of the ASB car park on Wynyard Point and on-street parking spaces on Hamer Street and Brigham Street;
- (d) The construction of a new footpath on the eastern side of Hamer Street between the Northern Connector Road and Silo Park;
- (e) A new north-south link to the west of Bases C to G internal to the site, to operate as a shared space for pedestrians, cyclists and low speed vehicles;
- (f) Vehicle access to the 5 syndicate bases via 3 vehicle accesses from Hamer Street and one from the Northern Connector Road.

[406] Access to Base A in the VEC building would not change, hence there would be no changes to the transport network on the Halsey Street Wharf Extension. Although Hobson Wharf would be extended and have Base B constructed on it, access would remain as at present, being from the Eastern Viaduct, joining Quay Street at its intersection with Lower Hobson Street.

## **Evidence**

[407] Expert evidence on traffic and transport was submitted by Joe Phillips (for Panuku), Bronwyn Coomer-Smit (for the Council), John Parlane (for Viaduct Harbour Holdings Limited, Kiwi Property Group, ASB Bank and the Auckland Theatre Company), Leo Hills for Firth and Mitchell Tse for Auckland Transport.



[408] The following is a summary of the proposed changes to the transport network provided by Ms Coomer-Smit:

The changes to the transport network associated with the Application include the permanent closure of the southern part of Brigham Street (the stopping of Brigham Street is a separate process and does not form part of the Application, although the effects of the stopping have been assessed as part of the Application), the construction of the new Northern Connector Road, a new footpath on the eastern side of Hamer Street between Silo Park and the Northern Connector Road and new vehicle access to the Wynyard Point bases from Hamer Street, together with the removal of approximately 34 parking spaces on Brigham Street and nine parking spaces on Hamer Street. In addition, the Application includes the construction of a new Access Lane serving the Wynyard Point bases.

[409] Following conferencing the experts prepared a JWS in which they addressed traffic and transport issues under three phases:

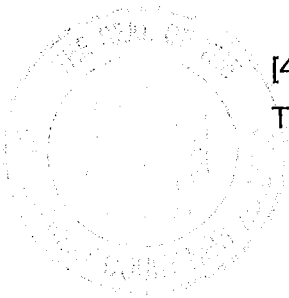
- the construction phase,
- the operational phase covering the period between when construction of the base buildings was complete and the start of the Event as well as any periods of occupation of the bases outside of the Event period(s) during the 10-year term of the consent,
- during the Event, itself.

***Construction Phase***

[410] The construction period is anticipated to extend over 20 to 24 months (including 6 to 7 months of enabling works), during which time works would be occurring 24 hours per day, 6 to 7 days per week. Construction would typically generate up to 30 to 34 truck movements a day on Beaumont Street, equating to 3 to 4 truck movements per hour, plus 1 to 2 truck movements per hour on Halsey Street and Quay Street/Lower Hobson Street. During periods of concrete pours at night, there could be 60 truck movements per night on Beaumont Street, and 22 truck movements per night on Halsey Street and Quay Street/Lower Hobson Street. Three construction sites would be established which will manifest the following possible staff movements:

- (a) Wynyard Point construction site: 100 to 300 person movements per day
- (b) Halsey Wharf construction site: 20 to 130 person movements per day
- (c) Hobson Wharf construction site: 35 to 200 person movements per day.

[411] Condition 103 requires that construction traffic be managed under a Construction Traffic Management Plan (CTMP) which is to be prepared in consultation with the CLG.



Condition 104 sets out the objectives for the CTMP and Condition 105 (a) –(z) the details of what the management plan is to include.

[412] In their JWS, the experts recorded that the draft CTMP dated 23 July 2018 had been prepared by the Wynyard Edge Alliance in consultation with Auckland Transport, the Council and Panuku. With two exceptions, they agreed that this draft CTMP would enable construction transport effects to be satisfactorily managed and mitigated.<sup>104</sup>

[413] The first of the exceptions was that the experts agreed that there should be a condition requiring that heavy construction vehicles should not reverse to or from a public road. This was subsequently provided for in Condition 105 (y).

[414] The second matter not agreed by the experts during conferencing was that Mr Parlane considered that each off-street carparking space lost in the Wynyard Precinct (the ASB carpark off Hamer Street) and the Viaduct Precinct (on the Eastern Viaduct) during the construction phase (and the other two phases) should be replaced with another carparking space in the vicinity.

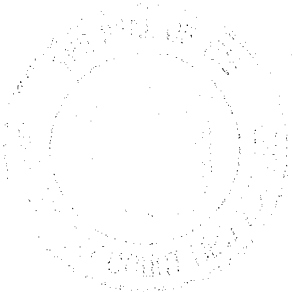
### ***Operational Phase***

[415] The operational phase encompasses the use of the syndicate bases by sailors, staff, associated servicing and deliveries, and some visitors and guests. It also encompasses use of the superyacht berths. During the operational phase, it is expected that the combined staff numbers on the Wynyard Point bases would be 430, with 110 on Halsey Wharf and 110 on Hobson Wharf. Staff parking would consist of 20 spaces to be shared among the five Wynyard Point bases, 18 staff parking spaces on Halsey Wharf and no staff parking on Hobson Wharf. Each syndicate base would generate up to 30 service/delivery movements a day. No parking would be provided for superyachts; however, each superyacht would be expected to generate 4 vehicle trips a day for deliveries or servicing.

[416] The experts agreed that the conditions provided an appropriate framework to enable the development of the proposed Syndicate Staff Travel Plan, the Viaduct Events Centre Syndicate Base Traffic Management Plan, the VEC Syndicate Marine & Fishing Industry Management Plan, the Hobson Wharf Servicing Delivery and Guest Transport

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<sup>104</sup> In the JWS the experts also referred to the objectives identified in the mediation record of 19 July 2018. While this record has not been sighted by the hearing panel, we assume that what was agreed at the mediation is fully reflected in the draft CTMP which is dated five days after the mediation date.



Plan and the Wynyard Point Servicing Delivery and Guest Transport Plan.

[417] The experts agreed also that the implementation of these Plans would allow the transport effects during the operational phase to be satisfactorily managed and mitigated.

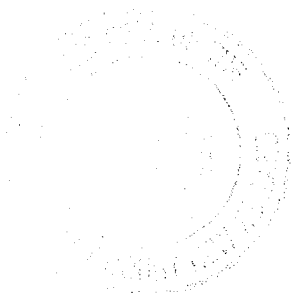
### ***Event Phase***

[418] Any event phase would be for a 6-month period, the first of these to commence in December 2020, with subsequent events to be held if ETNZ retain the Cup. During an event phase additional traffic would be generated, above that occurring in the operational phase, from spectators and guests to the syndicate bases. Considering the expected movements of staff and guests, and assuming that the ASB car park spaces, fishing industry and the VEC spaces would all be removed, it is expected that there would be an increase in daily vehicle movements of more than 1,300 on Wynyard Point, 500 on Halsey Wharf and 340 on Hobson Wharf.

[419] In terms of pedestrian capacity during the events, up to 3000 people can be accommodated on Halsey Wharf and 1000 people on Hobson Wharf.

[420] The experts agreed that the effects on traffic and transportation during the Event should be managed under three Scenarios, described in Mr Phillips evidence and the draft ETMP as follows:

- **Scenario 3** or the **low scenario** would typically be a non-racing day or weekday racing day for the Christmas Cup or a non-racing day for the Prada Cup, expected to operate on an about 41 days over the Event period and to attract between 15,000 to 20,000 spectators (up to 35,000 people on busy days across the day). It will generally represent 'business as usual' for residents and businesses in the Wynyard and Viaduct Harbour Precinct.
- **Scenario 2** or the **medium scenario** would involve the Christmas Cup Weekend Race Days, Prada Cup Race Days and the America's Cup Match on weekdays and is expected to attract between 45,000 to 65,000 spectators to watch races on around 32 days during the Event period. These events are likely to create some disruption to transportation networks within the immediate vicinity of the North Wharf / Jellicoe Street and the Eastern Viaduct.
- **Scenario 1** (and 1+) or the **high scenario** would involve the Opening and Closing Ceremonies at the Race Village, as well as weekend racing during the America's Cup Match in March 2021 each expected to attract between 65,000 to 200,000 spectators This scenario would require the managed closure of Quay Street from Lower Hobson Street to Commerce Street, under Scenario 1





the northern side and under Scenario 1+ the full width. Scenario 1/1+ is anticipated to occur for up to eight days with seven of these days during March 2021 plus the possibility of three additional days. There will be several road closures in the Wynyard Precinct involving managed access for authorised motor vehicles being those travelling to and from properties for which access needs to be maintained.

[421] Overall for the 106 days between the opening and closing ceremonies, Scenario 1, 2 or 3 activities are expected to occur on 83 days of these days.

[422] The experts agreed also that the Event Transport Management Plan conditions which they had reviewed should be sub-divided as follows:

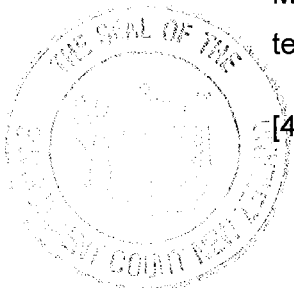
- Primary Heading
  - Event Transport Management Plan(ETMP)
- Sub-Headings
  - Events and Public Transport Management Measures (EPTMM)
  - Pedestrian and Cyclist Management Measures (PCMM)
  - Traffic and Parking Management Measures (TPMM)

[423] The conditions were subsequently amended to suit, with the ETMP conditions being those set out in Conditions 183 and 183A, the EPTMM in Conditions 183B and 183C, the PCMM in Conditions 183D and 183E and the TPMM in Conditions 183F and 183G.

[424] The experts agreed that there should be a mechanism for monitoring the effectiveness of the overall ETMP. This has been provided for in Condition 183A (k) which requires that active monitoring is to be undertaken of Event transport to inform the management of the Event on the day as well for the planning and management of future events.

[425] Agreement was also reached that the conditions should include definitions for three levels of road closures (full, partial and managed) as well as the meaning of authorised vehicles all of which have now been included in the Definitions section of the conditions. In addition, should the need be identified for a full, partial or managed road closure during the Event, Condition 183G (c) requires that a Site-Specific Traffic Management Plan must be prepared on a case by case basis with this to include temporary parking restrictions.

[426] Ms Coomer-Smit noted in her evidence that a number of the amendments which



had been agreed at the conferencing had not been included in the conditions including Fig 5-1, a schematic showing how traffic is to be managed during the Event phase. However, by the time she had prepared her rebuttal evidence this figure had been added to Condition 183 and following her further consideration of the wording in general objective 181(j), she was satisfied that no further changes to the conditions were required.

### ***Parking for Waterfront Theatre***

[427] The outstanding unresolved issue (until just prior to the hearing) was Auckland Theatre Company (ATC) concerns about the adverse effects of the loss of nearby parking spaces for its Waterfront Theatre patrons following the planned closure of the ASB Hamer Street carpark and the non-availability during the Event of the Jellicoe Street carpark.

[428] ATC's expert, Mr Parlane, explained that under an arrangement with ASB, the Hamer Street carpark is currently available for ATC staff and patrons to use when attending evening and weekend performances at the theatre with 150 parking spaces being set aside for this purpose. When purchasing tickets for a production, patrons can include a ticket for this carpark and at the carpark itself, there is a guard who controls entry and exit and provides security for the vehicles when patrons and staff are at the theatre.

[429] In addition, the nearby Jellicoe Street carpark is a public facility with around 170 parking spaces.

[430] With the planned closure of the Hamer Street carpark, ASB and Panuku have reached agreement for a new carpark to accommodate 100 vehicles for ASB staff at Site 18 on the corner of Beaumont Street and Jellicoe Street. Spaces will also be available in the Downtown Carpark for the balance of the ASB staff who currently use the Hamer Street carpark.

[431] Mr Parlane explained that ASB is to make available 50 of its 100 spaces at the Site 18 carpark for ATC use after business hours. This was 100 fewer parking spaces than are currently provided for at the Hamer Street carpark. This would be compounded during the Event through the non-availability of the Jellicoe Street carpark.

[432] Mr Phillips pointed out that ATC's website has a map which shows that ATC theatre goers have parking options which include the Downtown Street Car Park (1,922 spaces) and Fanshawe Street Car Park (509 spaces) shown as being 8 minutes and 11



minutes walking time from the theatre (although he considers that these times are more like 10 minutes each).

[433] He noted also that parking is available in the Viaduct Car Park and the Maritime Carpark to give a combined capacity of some 3,180 parking spaces within about a 10-minute walk from the theatre. In his opinion, the adverse effects of parking spaces not being available for theatre goers within the Jellicoe Street carpark during the Event would be of a minor nature.

[434] Ms Coomer-Smit commented that the Hamer Street carpark is a 7-minute walk and the Jellicoe Street carpark a 3 to 4-minute walk to the theatre. The new Site 18 carpark would be about a 6-minute walk and the additional time to walk from the Downtown and Fanshawe Street carparks would only be 3 or 4 minutes more and not significant in the context of the overall journey time to the theatre.

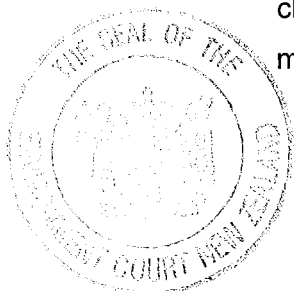
[435] In its memorandum dated 6 September 2018, ATC advised that it had resolved its outstanding concerns with Panuku about the loss of the existing parking spaces for its patrons and staff. We understand that the basis of this resolution is that Panuku will use its best endeavours to make car parks available for ATC patrons and staff when theatre productions are on.

[436] We accept ATC's advice that this issue has been resolved and take this matter no further.

[437] We hold, that with adherence to the conditions of consent as approved by us, adverse effects on the environment under this head, will be no more than minor.

### ***Auckland Transport Considerations***

[438] Mr Tse (for Auckland Transport) (AT) said that his evidence should be read in conjunction with that of Ms Coomer-Smit which he had relied on for his assessment of traffic and transport-related effects. He explained that AT was responsible for managing the road corridors and the transport network and that any construction activities requiring works or closure of the road corridors would require a CAR permit from AT. Also, an additional event permit would be required from the Council. He said that AT would work closely with the Event's MEOC during the event operation to implement additional mitigations to manage any escalation of the events.



### ***Finding on Traffic and Transportation***

[439] Mr Phillips concluded that the objectives and measures identified in the Conditions implemented through the delivery of the EMP and ETMP would enable traffic and transport in each of the three phases to be satisfactorily managed and that, given their extent and duration, overall the adverse effects would be minor or less.

[440] With her suggested amendments to the conditions having been made, Ms Coomer-Smit's position was that the transport effects during each of the three phases would be satisfactorily managed and mitigated and the potential adverse traffic effects would be minor, and acceptable.

[441] Following the resolution of the ATC parking issue, we understand Mr Parlane's position to be consistent with those of Mr Phillips and Ms Coomer-Smit.

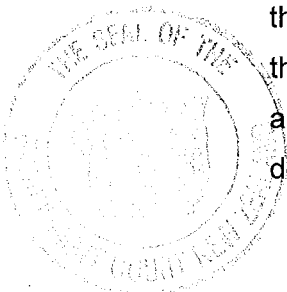
[442] We find no reason to disagree with the common position of each of these experts which we summarise as being that "*...traffic and transport effects during each of the construction, operational and Event phases can be satisfactorily managed and mitigated through the agreed conditions and the relevant management plans and that overall, the potential adverse effects of traffic and transportation will be less than minor*".

### **Historic Heritage**

[443] There is no identified heritage scheduled item within the area of works, however nearby are AUP-scheduled item #02068, the Western Viaduct lift-bridge, abutments and control shed and item #1916, the Wind Tree sculpture on Jellicoe Street. The works are not expected to affect these items.

[444] On Wynyard Point, and Hobson Wharf and the Te Wero walkway there are several historic structures and maritime sites identified on the Cultural Heritage Inventory (CHI), which indicates that there is historic heritage material contained within and adjacent to the application area.

[445] Given that the works do not extend to any historic heritage item scheduled within the AUP, and having regard to the shallow depths of the proposed earthworks, no heritage impact assessment (HIA) has been provided by the applicant. In the event that the works uncover any heritage item as defined under the Protected Objects Act 1975 the applicant puts forward a 'Protected New Zealand Objects Protocol' which establishes a procedure for any construction works that reveal protected New Zealand objects as defined under that Act. This protocol would sit alongside the accidental discovery rules



within the AUP that apply to any other sensitive material, archaeological sites, Maori cultural artefacts/taonga tuturu and lava caves greater than 1m in diameter. The protocol is not designed to override any other requirements of other legislation which protects heritage items.

[446] The Council's heritage specialist, Ms Eaves, reviewed the application and raised some minor concerns about lack of HIA and with the proposed protocol. Ms Eaves noted that information in the application clearly identified historic heritage items located in and adjacent to areas of proposed activity and considered that some elements of the proposal might have negative effects on these historic heritage remains; and with the absence of HIA it might be difficult to assess the degree of effect.

[447] We have looked closely at the conditions proposed concerning accidental discovery<sup>105</sup>. We consider that Panuku has adequately assessed potential effects, and through the conditions, offered a robust response to avoidance and mitigation. We find that with adherence to the conditions, adverse effects on historic heritage will not be greater than minor.

[448] Although not a land-based fixture, the tug William C Daldy is a notable heritage item in Auckland. It was the subject of much input as to where it might berth in future, after it moves to allow extension of Hobson Wharf. Mr Keith Ingram of The Tug William C Daldy Preservation Society Inc., participated in mediation and negotiations. The society ultimately sensed that some agencies were endeavouring to assist, and excused itself from the hearing.

### **Natural Hazards**

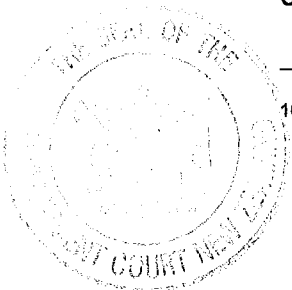
[449] Sea level rise, flooding and land stability have been identified as the primary natural hazards which need to be considered in the design of the infrastructure for the proposed development. In addition, there is the potential risk of a tsunami.

### **Sea Level Rise**

[450] An appendix to the s87F report on Coastal Processes records that the effects of sea level rise will not be an issue during the 10-year term of the consent. However, in recognition that sea level rise is likely to impact on the usability of the wharf deck space over the longer term, Condition 27 (a) requires that the new wharf piles are to be designed

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<sup>105</sup> Conditions 45, 45A AND 45B.



to accommodate a 1m rise over the next 100 years. This 1m rise has been selected based on recommendations in the MfE 2017 Coastal Hazard and Climate Change guideline which have predicted sea level rise to 2120 as being in the range from 0.55m to 1.36m.

### ***Stormwater and Flooding***

[451] Currently there are three overland flow paths from within the Wynyard Point area discharging stormwater across Brigham Street and into the harbour. Under the proposal, all stormwater from Wynyard Point will be treated and discharged into the ocean through three new outfalls.<sup>106</sup> A 10-year return period has been chosen for the design which is in line with the Council's "Code of Practice for Land Development and Subdivision, Chapter 4 - Stormwater".

[452] Overall, the development will reduce the potential for flooding because:

- all development is at the downstream end of the catchment;
- there are no affected flood prone areas or floodplains;
- the Wynyard Point pavement is to be graded so that if there are flows in excess of the 10-year design capacity of the underground reticulation system, these will flow overland into Hamer or Brigham Streets prior to discharging directly into the harbour;
- at low points on the eastern edge of Brigham Street overflow points will be provided directly to the harbour.

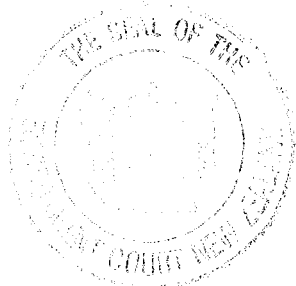
### ***Land Stability***

[453] Condition 135B (a) requires the consent holder to obtain certification by the Council of a Project Geotechnical Design Report. This Report is to include a detailed geotechnical assessment for the design of structures and earthworks and demonstrate stability and appropriate performance in accordance with the Auckland Council "Code of Practice for Land Development and Subdivision" for the intended design life. The works are then to be carried out in accordance with the certified Report.

[454] In addition, Condition 135B (c) requires all geotechnical related earthworks to be

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<sup>106</sup> Stormwater and Services Technical Report prepared by Beca, April 2018 (CB33).



managed to prevent uncontrolled instability or collapse within the site and on neighbouring properties.

### ***Tsunami Risk***

[455] Condition 183J (h) lists a series of provisions which are to be included in the Event Emergency Management Plan Condition to respond to the potential risk of the site being affected by a tsunami.

### ***Finding on Natural Hazards***

[456] We find Panuku to have taken a thorough approach to the planning of the proposed infrastructure and the subsequent Event management all of which, when reflected in the Conditions, respond appropriately to the identified natural hazard risks of sea level rise, flooding, land stability and tsunami.

[457] Adverse effects on the environment from these matters would be no more than minor.

### **Noise and Vibration**

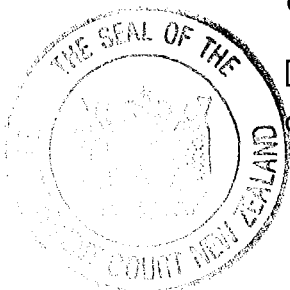
[458] Noise effects associated with the proposal would arise in two ways, those occurring during the construction phase (including airborne and underwater noise effects), and those in the event phase. It is expected that outside of event activities such as public entertainments, noise from operational activities would comply with the relevant noise standards.

### ***The Evidence***

[459] Expert evidence on the effects of noise and vibration was submitted by Mr C Fitzgerald for Panuku, Mr J Styles for the Council and Mr R Finley for The Point Body Corporate. The three experts also produced a JWS dated 25 July 2018 which addressed the piling methodology selected to limit the adverse effects from noise and vibration during piling operations, the construction noise and vibration effects on marine mammals, and for Noise Events, whether crowd noise should be assessed and what low frequency noise limits should apply for High Noise Events.

### ***Construction Noise and Vibration***

[460] The experts agreed with the daytime and night-time construction noise limits set out in Condition 109 which Mr Fitzgerald said were generally aligned with AUP Rule



E25.6.28 for construction in the Business City Centre Zone as modified by Mr Styles. However, they agreed that there would be times when these limits would be exceeded particularly during piling and when there was concrete cutting.

[461] Initially it had been proposed by Panuku to install impact-driven steel piles for the Hobson Wharf Extension and its breakwaters, the Halsey Wharf and Wynyard Wharf breakwaters and the Wynyard pontoon structures. Later, based on submitter feedback and the desire to minimise the extent of adverse construction noise (and vibration effects) on the occupants of nearby buildings, an alternative cast-in-place piling method was chosen to limit these effects.

[462] Mr Fitzgerald said that noise levels generated during the initial vibratory and impact-driving phase of these pile installations were predicted to exceed the 75 dB LAeq daytime limit at the façade of the Maritime Museum (up to 85 dB LAeq), at the Hobson Wharf bars and restaurants (up to 85 dB LAeq) and at the North Wharf restaurants (up to 80 dB LAeq).

[463] For construction vibration, the agreed standards agreed between the experts which are aligned with AUP rule E25.6.30(1) are set out in Condition 109A.

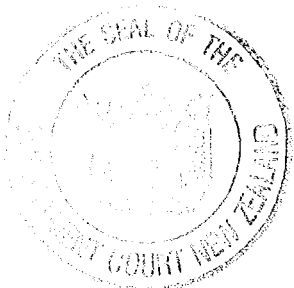
[464] As for construction noise, Mr Fitzgerald predicts that the impact and vibratory piling phase of the pile installations has the potential to exceed the vibration standards for brief periods at the Maritime Museum, at the restaurants on Hobson Wharf, at the North Wharf restaurants and at occupied offices between Brigham and Hamer Streets.

[465] Given these predicted exceedances, Condition 110B (m) requires that within 30m of any occupied buildings (including on Hobson Wharf), impact and vibratory piling is to be scheduled between 8am and 10am unless agreed otherwise with the building occupants. This timing has been chosen to mitigate the effects on residents, avoid the Maritime Museum opening hours<sup>107</sup> and avoid the typically busy periods for bars and restaurants.

[466] In addition, Condition 110B (n) requires that any impact piling within 100m of any occupied building on Princes Wharf should be restricted to between the hours of 7am and 7pm unless the Council certifies that impact piling outside of these hours is consistent with the BPO. Again, we note that this is to limit adverse effects on the amenity of the

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<sup>107</sup> Written approval has been provided by Regional Facilities Auckland for the New Zealand Maritime Museum.





occupants of Princes Wharf.

[467] While Mr Fitzgerald predicts compliance with the construction noise and vibration standards in the wider project area, he said that there is always inherent variability in the levels of construction noise and vibration depending on equipment selection, methodology and operator care and skill.

[468] Condition 109, requires that construction noise should be measured and assessed in accordance with the provisions of New Zealand Standard NZS 6803:1999 "Acoustics - Construction Noise" and comply with the Project Standards listed in the condition, with this being qualified with the addition of the words "*..unless otherwise provided for in any CNVMP (refer to Condition 110)*".

[469] Likewise, Condition 109B states that vibration shall comply with the Category A standards in Condition 109A "*... unless otherwise provided for in any CNVMP (refer Condition 110).*"

[470] Condition 109C states that vibration may exceed Category B standards at existing buildings located on Hobson Wharf "*... and only subject to compliance with the management procedures set out in the CNVMP required by Condition 110).*"

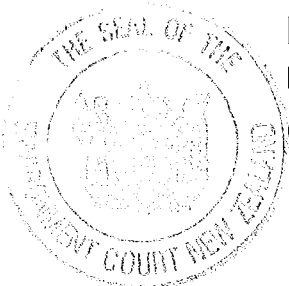
[471] As can be seen from the wording of these conditions, exemptions to the specified standards are permitted if provided for in any CNVMP.

[472] With respect to underwater noise, Condition 110C requires that piling work may not commence until the absence of marine mammals inside the effects management zones identified in the CNVMP is confirmed visually and that all piling work must cease if a marine mammal is detected within these zones.

[473] During the hearing, we pointed out that this condition appeared to be inconsistent with Condition 110B (j) which stated that the CNVMP would include management and mitigation options to allow piling to be undertaken when marine mammals are present inside the management zones. In response, Panuku and the Council advised that Condition 110B (j) had been amended to provide this consistency.

### **Noise Events**

[474] Noise Events are defined in the Conditions as the planned use of a space or building involving amplified sound being broadcast to people where the noise levels (excluding crowd noise) will not comply with the normal daytime and night-time noise



limits in Condition 168A.

[475] In their JWS, the experts agreed on the noise limits which should apply for Medium Noise Events but could not agree on the conditions which should apply for managing crowd noise and low frequency noise limits during High Noise Events.

[476] As recorded in the JWS, Mr Finley said that combining amplified noise with crowd noise was reasonable and appropriate. Mr Fitzgerald and Mr Styles did not agree. They said that it would not be possible for the consent holder to control general crowd noise in public spaces and in any case, the contribution of crowd noise to the total noise level was likely to be negligible.

[477] Mr Fitzgerald and Mr Styles agreed that minimizing crowd noise following a concert was important and that there should be provisions in the conditions for efficient crowd dispersal. In this context, we note that Condition 183O (d) includes an objective for the NEMP to identify the BPO for the management of noise during and after Noise Events such as “... *crowd noise management (particularly late at night)*...” and that Objective (181(h) in the conditions for the Event Management Plan is to “...*minimise disruption from Event-related traffic and gathering of crowds on occupants in the Wynyard and Viaduct Precincts including the dispersal of crowds.*”

[478] In the following table, we summarise the AUP limits and the Event noise limits originally sought by Panuku:<sup>108</sup>



108

Fitzgerald EIC at [7.4].

<b>AUP Wynyard Limits<sup>109</sup></b>	<b>AUP Viaduct Limits<sup>110</sup></b>	<b>Limits Proposed by Panuku for both Precincts</b>
<b>Medium Noise Events</b>		
75 dB LAeq and 80 dB LA01	72 dB LAeq and 80 dB LA01	72 dB LAeq and 80 dB LA01
No limit	76 dB at 63 Hz*	76 dB at 63 Hz**
No limit	76 dB at 125 Hz*	76 dB at 125 Hz**
*Note: Low frequency limits apply to the Viaduct Precinct only		**Note: Low frequency limits would apply to both the Viaduct and Wynyard Precincts
<b>High Noise Events</b>		
85 dB LAeq and 90 dB LA01	82 dB LAeq and 90 dB LA01	82 dB LAeq and 90 dB LA01
No limit	76 dB at 63 Hz*	86 dB at 63 Hz**
No limit	76 dB at 125 Hz*	86 dB at 125 Hz**
*Note: Low frequency limits apply to the Viaduct Precinct only		**Note: Low frequency limits would apply to both the Viaduct and Wynyard Precincts

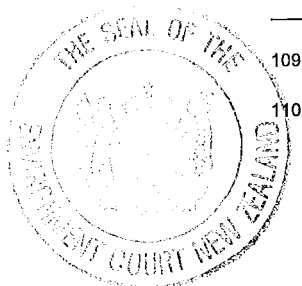
[479] As can be seen from this table concerning the Viaduct Precinct, the limits proposed by Panuku for Medium Noise Events are the same as those provided for in the AUP, while low frequency limits for High Noise Events would be 10 dB above the AUP limits (86 dB vs 76 dB).

[480] There are no low frequency limits in the AUP for the Wynyard Precinct for Medium Noise Events or High Noise Events.

[481] In their evidence, Mr Fitzgerald and Mr Styles supported the High Noise Event low frequency noise limits proposed by Panuku applying at both precincts. They considered that restricting the levels to the AUP limits in the Viaduct Precinct would prohibit the kind of events that are proposed because the low frequency levels would be too low and would significantly control the character of the sound such that it would not serve its intended entertainment purpose.

<sup>109</sup> CBD195, page 4928.

<sup>110</sup> CBD 196 page 4964.



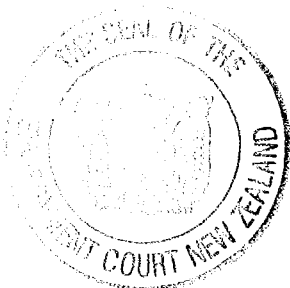
[482] In response, Mr Finley said he would support the following:

- for Medium Noise Events, the noise limits proposed by Panuku (which are the same as in the AUP for the Viaduct Precinct.)
- for High Noise Events, the noise limits proposed by Panuku with the low frequency limits at both 63 Hz and 125Hz reduced from 86dB to 76 dB (as provided for in the AUP for the Viaduct Precinct).

[483] He added that he would also agree to an alternative condition for High Noise Events in which the broadband limit was reduced from 82dB to 75dB with no restrictions on the low frequency noise

[484] The parties eventually reached agreement on the following noise limits:

Originally Proposed By Panuku for both Precincts	Agreed Limits for Wynyard Precinct	Agreed Limits for Viaduct Precinct
<b>Medium Noise Events</b>		
72 dB LAeq and 80 dB LA01	72 dB LAeq and 80 dB LA01	72 dB LAeq and 80 dB LA01
76 dB at 63 Hz**	No low frequency limits to apply in either precinct	
76 dB at 125 Hz**		
<b>High Noise Events</b>		
82 dB LAeq and 90 dB LA01	82 dB LAeq and 90 dB LA01	80 dB LAeq and 90 dB LA01
86 dB at 63 Hz**	No low frequency limits to apply in either precinct	
86 dB at 125 Hz**		
<b>Medium Noise Events:</b>		
<ul style="list-style-type: none"> <li>• <b>Original Panuku condition</b> was for 6 hours maximum between 12 noon and 10 30pm on all days with no more than 12 Medium Noise Events per calendar year in each of the two precincts.</li> <li>• <b>Agreed condition</b> is for 6 hours maximum between 12 noon and 10 30pm with no more than 18 Medium Noise Events during any Event in the Viaduct Precinct and no more than 12 Medium Noise Events within a calendar year in the Wynyard Precinct.</li> </ul>		
<b>High Noise Event</b>		
<ul style="list-style-type: none"> <li>• <b>Original Panuku condition</b> was for 3 hours maximum between 12 noon and 10pm with no more than 3 High Noise Events per calendar year in each of two precincts.</li> <li>• <b>Agreed condition</b> is for 3 hours maximum between 12 noon and 10pm with no more than 3 High Noise Events during any Event in the Viaduct Precinct and no more than 3 High Noise Events within a calendar year in the Wynyard Precinct.</li> </ul>		
<b>Concerts Stages</b>		
<ul style="list-style-type: none"> <li>• <b>Original Panuku and Agreed Condition 183S</b> limits the number of outdoor stages to two, one in Silo Park and one on Te Wero Island.</li> </ul>		



***Discussion and Findings on Noise and Vibration***

[485] During the hearing, we sought feedback from Panuku and the Council about whether the conditions should rely on the CNVMP in situations where the specified construction noise and vibration standards might be exceeded. We were advised that the way in which the conditions have been framed followed extensive consultation during mediation<sup>111</sup> and that the CNVMP had been specifically designed to work in concert with the conditions if there were exceedances based on the application of BPO (best practicable option).

[486] The standard approach normally adopted when formulating conditions is that they should be stand-alone without the need to revert to management plans to allow specified standards to be exceeded. For this application, we acknowledge the detailed consultation which has taken place between Panuku, the Council, the contractor and affected parties, particularly about the potential adverse effects of noise and vibration during piling. We acknowledge also the advice we have been given that all affected parties have a clear understanding about how the conditions will work in practice and have given their approval.

[487] Further, Mr Fitzgerald's evidence was that the piling methodology proposed represents the BPO because it minimises the duration of piling works, minimises the use of impact and vibratory piling methods, and uses appropriate timing to avoid sensitive periods as far as practicable.

[488] We accept that evidence and find that the conditions proposed by Panuku for limiting the adverse effects of construction noise and vibration are appropriate for this Application.

[489] As to the earlier contested issue of crowd noise, we note that this has been resolved through the agreed conditions for Medium and High Noise Events, with crowd noise to be excluded.

[490] As to the earlier contested issue about the low frequency noise limits to apply during High Noise Events, we accept that the final conditions lodged by Panuku have been agreed by the experts and all affected parties. Accordingly, we find this issue to

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<sup>111</sup> Note that, in accordance with the Court's Practice Note on ADR, the hearing panel was not privy to any of the Mediation Agreements.



have been satisfactorily resolved.

[491] Potential adverse effects on the environment under these heads can now be held to be no more than minor.

### **Numbers of Bases Needed, and Duration of Consents**

[492] A small number of submissions questioned the numbers of bases intended to be provided (seven). Their focus appeared to be on the visual prominence of the extension to Hobson Wharf and a structure on it to provide for Base B. They noted from evidence of ETNZ and Panuku that not all seven bases were yet spoken for.

[493] A s274 party Ms C A van Camp, for instance, considered that Base B should be created last, and only if needed after other bases had been subscribed for.

[494] Ms van Camp's approach also appeared driven by policy somewhat beyond the regime of the RMA, for instance saving tax and ratepayers money (she said "*large base and berthage for an Italian's superyacht on Hobson Wharf before base space is filled at Wynyard Point [which] seems financially irresponsible*").<sup>112</sup>

[495] Ms van Camp said that she understood "the rush is on to start piling for the Wharf Extension", but she said that she was not convinced of urgency having seen piling repairs done at a boat club which took only a few weeks.<sup>113</sup> We do not understand Ms van Camp to have expertise in engineering and construction.

[496] She next recorded that she suggested to Panuku combining Bases E and F on Wynyard Point and putting the Italians next to the UK and US bases which would leave one single spare for another challenger to appear; but "*after my walkabout realised that would be unworkable*". She remained of the view however that she could not see any reason why the Hobson Wharf Extension could not be moved to be last on the list for construction when Challengers 5 or 6 sign up.<sup>114</sup>

[497] She proceeded to offer some design and layout suggestions for Hobson Wharf, again based on a negative expression of view about a superyacht being berthed there.

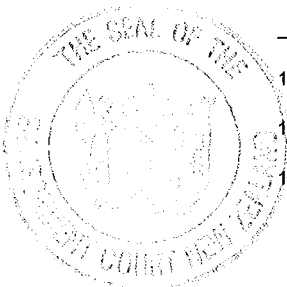
[498] Ms Stead, a s 274 party, recorded that she fully supports the hosting of AC36 in

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<sup>112</sup> C A van Camp, EIC, para 7(a).

<sup>113</sup> C A van Camp, EIC, para 7(b).

<sup>114</sup> C A van Camp, EIC, para 7(c).



Auckland, but having researched "previous accepted practice" and using her business experience and expertise to review the application versus other options available, she did not believe its granting would be in the best interests of the environment or Auckland. We read her very detailed submission to the Council, as well as her evidence in chief, and noted from the conclusion to her evidence that her stance appeared gradually to move from consent being declined, to grant of consent on conditions including allowing for the extension for Hobson Wharf only when all space at Wynyard Point was fully utilised; furthermore that the consent should only relate to AC36 in 2021; and that any structure on top of Hobson Wharf would be dismantled within 90 days of completion of that regatta.

[499] Ms Stead had made a study of the previous two regattas in San Francisco and Bermuda, and noted the requirements of governing authorities that structures be temporary and be removed immediately after the events.

[500] Ms Stead's concerns expressed in her submission, were cost to taxpayers and ratepayers, environmental damage from concrete being "poured into the harbour", visual eyesore and pollution from a large industrial shed being built on Hobson Wharf, and the limited number of syndicates presently signed up for the event. She offered many pages of detail in support of these views.

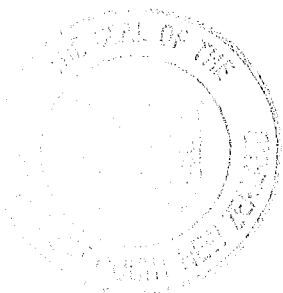
[501] Mr Green, Legal and Rules Advisor to ETNZ gave evidence in chief called by Panuku, amongst other things, as to the requirement for several bases.<sup>115</sup> He said that no defender can ever be sure how many entries there will be for an America's Cup event, particularly when there is a new class of boat, as now. There are presently three strong challengers.

[502] In past America's Cups, it was easy to challenge, but there was often a high dropout rate once entry fees were due to be paid. This year's protocol requires payment of a \$1m entrance fee on acceptance on the challenge by the Challenger of Record (COR). The initial entry period closed at the end of June 2018, when the three current challenges were confirmed. There is a late entry period closing at the end of November 2018, with a further entry fee being required along with a performance bond.

[503] Mr Green indicated that there were several other prospective challengers looking to raise funding and enter AC36. The details are presently confidential, but ETNZ has

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<sup>115</sup> R L H Green, EIC, paras 5.1 – 5.11.



had direct contact with these groups and has been answering their questions. There are five such parties. Mr Green did not expect all of them to proceed and could not say with certainty how many would. However, he believed that the worst thing would be to remove the opportunity for those teams to enter, by not providing infrastructure for a sufficient number of bases. The availability and cost of a base is always a key issue for challengers, as it has been for ETNZ when it has competed overseas in the past.

[504] Beyond the end of November, there is still the possibility of late entries being received if ETNZ and the COR decide to amend the Protocol. ETNZ has already publicly stated its willingness to do this if necessary. The arrangements in place apparently authorise ETNZ or any existing challenger to sell a design to a new challenger, such that the latter could, with or without further refinement, enter and be competitive, even with a one boat campaign.

[505] Mr Green said that ETNZ was of the view that further challengers remain a viable prospect. Its preference is to encourage them, rather than limit numbers artificially.

[506] Mr R J Gladwell previously mentioned, a yachting journalist of considerable experience who has been involved with previous America's Cups and other international yachting contests, offered evidence about the history of the contest in the last two decades, as to why it had seen a reduction in interest, but might now be reviving.<sup>116</sup>

[507] He considered that, based on his evidence about the history of the event, it would be naive to plan for the coming contest on the basis that currently there are only four announced teams, and therefore reduce the number of bases. He considered that the longer-term situation must be considered, for AC37 and beyond, as well as for other events such as the Volvo Ocean Race in which New Zealand has considerable involvement.

[508] The questions and assertions by Ms van Camp and Ms Stead were not backed by independent expert evidence, and cannot hold sway against the information offered by ETNZ and Panuku, especially when viewed in the mix with our findings about visual effects of Hobson Wharf Extension and Base B being acceptable.

#### **Protection of legacy for future events?**

[509] Mr Gladwell questioned whether the proposed conditions adequately provide for

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<sup>116</sup> R J Gladwell, EIC, para 8.2.





long-term marine event hosting in Auckland beyond AC36. He was obviously concerned that the sites used for earlier AC events had been swallowed up by building developments. Counsel for Panuku correctly submitted in opening <sup>117</sup> that such legacy matters are appropriately addressed through conditions requiring Panuku to prepare a "Legacy Use Options Plan" prior to re-purposing of any AC36 infrastructure.

[510] We are aware that the Crown shares Mr Gladwell's concerns to some degree, and we understand them. The Court is not a planning authority, and cannot ordain permanence of availability of the facilities for any particular activity. There might be other avenues, including a Change to the AUP, but it is beyond our powers to direct such things on the hearing of this application.

### **Positive Effects**

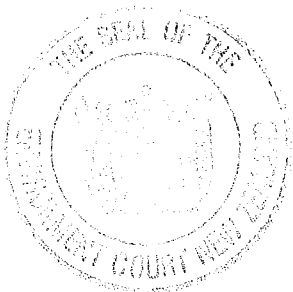
[511] Panuku has recorded that the proposal is expected to generate economic benefits associated with an increase in business activity, particularly for the marine industry during the day-to-day operations of the syndicate bases and with the increased number of superyachts visiting the harbour. It is expected that hospitality services on and near the waterfront would also benefit during the events, from increased numbers of patrons drawn to the area as spectators.

[512] We have no reason to doubt the detailed evidence in chief of Panuku's director Mr R M Marler, and its witness Mr C G Jones, chairman of the AUT Tourism Advisory Board and member of the New Zealand Recreation Association and the New Zealand Events Association. No serious challenge was offered to their facts and opinions by any party or witness. Mr Jones had undertaken detailed research into potential legacy use of spaces and wharf areas, and interviewed many people and organisations in the tourism area. In his evidence in chief, he wrote about on-water recreation and infrastructure, combined land and water events on Auckland's waterfront, and what he called "the legacy canvas", especially on Hobson Wharf if extended. He liberally illustrated his ideas for the time of AC36 and beyond.

[513] Additional coastal structures, including the breakwaters and extension to Hobson Wharf, would provide improved berthage to support maritime activities, would create greater public access to the harbour, and would increase the pedestrian and cycle network along the waterfront. The proposed public open spaces would also benefit

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<sup>117</sup> Opening submissions 10 September, paragraph 5.2.



recreational use of the area by providing further green areas in this part of the city.

[514] The events themselves would clearly generate a high level of tourism activity in Auckland, and potentially throughout New Zealand as spectators might venture further out of Auckland on non-racing days.

[515] Removal of the tank farms from the southern part of Wynyard Point and any land remediation undertaken, would increase the amenity of this area.

[516] Many submissions were lodged identifying potential positive benefits. Reference may be made to the earlier section of this decision listing submissions and s274 notices in support, to gain an understanding of the extent of potential positive benefits. None of them were seriously challenged, especially through probative evidence, and they need not be discussed here in detail. They have been weighed in our deliberations and decision-making, and offer powerful support for granting the application.

#### **Summary of Assessment of Actual and Potential Effects**

[517] We will not needlessly extend the length of this decision by listing effects topics again here. We have made findings on each of them in turn already. Conditions were proposed and have been refined through much close attention by parties, such that potential adverse effects on the environment can be held in the round to be overwhelmingly "no more than minor" in all relevant contexts.

#### **Section 104(1)(b)(i) Assessment**

##### ***The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011***

[518] As has been noted, parts of the site contain contaminated materials. We have already made reference to these regulations in several sections of this decision about effects related to soil, groundwater and air, and content ourselves here with recording that, with implementation of conditions we have approved, the proposals will be consistent with this instrument.

##### ***The National Environmental Standards for Air Quality***

[519] The same pertains for this topic, as for the last.



### Section 104(1)(b)(iv) Assessment

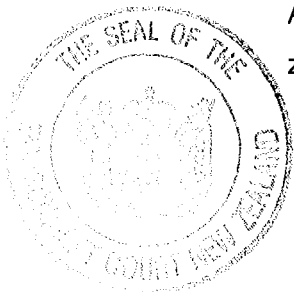
#### *The New Zealand Coastal Policy Statement 2010 (NZCPS)*

[520] The purpose of the NZCPS is to state policies to achieve the purpose of the RMA concerning the coastal environment of New Zealand. Broadly, the relevant objectives and policies of the NZCPS seek:

- (a) to safeguard the integrity, form and functioning and resilience of the coastal environment including ensuring the interdependent nature of natural biological, ecological and physical functioning of the coastal environment is recognised, maintained or enhanced including relevantly here, the maintenance of coastal water quality and enhancement where it has degraded;
- (b) that natural character and features of the coastal environment are preserved and through recognition protected;
- (c) to take account of the principles of the Treaty of Waitangi, by most of most relevance here, the role of tangata whenua as kaitiaki is provided for;
- (d) to maintain and enhance public open space and recreation opportunities of the coastal environment;
- (e) coastal hazard risks are managed in three stated ways, taking account of climate change;
- (f) enable people and communities to provide for their social, economic and cultural wellbeing, recognising that protection does not preclude development in appropriate places and forms within appropriate limits and that some uses depend on resources within the coastal environment functionally and may be important to social, economic and cultural wellbeing.

[521] Regional policy statements, regional plans and district plans must give effect to the NZCPS. The AUP combines these three lower-order instruments in one, and provides an integrated approach to their production. It is a newly-minted document and is operative to a substantial extent. The provisions of relevance to this application are operative. The position of all planning witnesses was that for the purposes of this application, the AUP does give effect to the NZCPS.

[522] The planning and technical evidence therefore focused on the provisions of the AUP which employs a framework starting at a high level of direction (RPS) through to zoning, the more particular characteristics of precincts, and specific activity-based rules.



***Hauraki Gulf Marine Park Act 2000 (HGMPA)***

[523] The consent authority must have regard to sections 7 and 8 of the HGMPA when considering an application for resource consent for the Hauraki Gulf, its islands, and catchments. The site is within the relevant area. Those sections are to be considered a NZCPS. Section 7 recognises national significance, while section 8 outlines the objectives of the management of the Hauraki Gulf, its islands and catchments. The objectives seek to protect, maintain and where appropriate enhance the life-supporting capacity of the environment of the Hauraki Gulf and its islands.

[524] The outcomes sought by the HGMPA are consistent with those of the NZCPS, and there was no suggestion that should the proposal be appropriate under the AUP it would not be consistent with the HGMPA. We address the national policy matters again in our summary conclusion on the statutory and regulatory framework relative to the proposal.

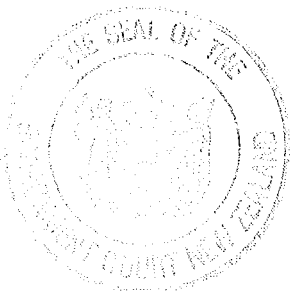
***National Environmental Standard for Assessment and Managing Contaminants In Soil To Protect Human Health (“NES”)***

[525] The same position pertains as for the 2011 Regulations and the Air Quality NES mentioned above.

**Section 104(1)(b)(v) Regional Policy Statement Assessment (Auckland Unitary Plan: Operative in Part)**

[526] Chapter B of the AUP sets out the Regional Policy Statement (“RPS”) strategic framework for managing the use, development and protection of the natural and physical resources of the Auckland region in an integrated and co-ordinated manner, and organises the framework into the following categories; the objectives and policies relevant to each of these discussed below (with the exceptions noted):

- B2 Urban growth and form
- B3 Infrastructure, transport and energy
- B4 Natural heritage
- B5 Built heritage and character
- B6 Mana Whenua
- B7 Natural resources
- B8 Coastal Environment
- B10 Environmental Risk



### ***Urban Growth and Form***

[527] The objectives and policies from the following sections can be considered relevant to this proposal:

- B2.3 A quality built environment
- B2.5 Commercial and industrial growth
- B2.7 Open space and recreation facilities
- B2.8 Social Facilities.

[528] The objectives and policies about urban growth and form generally ordain that new urban development is located within an area zoned appropriately and which has infrastructure to support anticipated growth; any new development should result in built form that offers a high-quality outcome and results in a layout which provides connectivity and facilities for people to meet their recreational and social needs; commercial growth should occur in identified areas in an efficient manner, and recognise the locational requirements of some industries while managing conflicts between incompatible activities.

[529] There was little debate that the proposal would be consistent with the relevant objectives and policies for urban growth and form. The proposed buildings and the activities have a functional need to be located adjacent to the harbour, and are the subject of a more detailed analysis under the finer-grained Precinct controls in the district plan.

### ***Infrastructure, Transport and Energy***

[530] The objectives and policies from the following sections are relevant:

- B3.2 Infrastructure and B3.3 Transport.

[531] The provision of infrastructure supports efficient development and land use; consideration of integration, functional requirement and reverse sensitivity are matters relevant to this proposal. Effective, efficient and safe transport that facilitates choice and recognises the differing needs of all sectors of the community should be provided. Of relevance to the proposal is the need to enable the movement of people, goods and services and ensure accessibility to sites, and also to provide effective pedestrian and cycle connections. These matters are particularised in the Wynyard and Viaduct Harbour Precinct provisions.



### ***Natural Heritage***

[532] The objectives and policies from the following sections are considered relevant:

- B4.3.1 and B4.3.2 Viewshafts.

[533] Significant public views to the coastal environment, ridgelines and other landscapes are to be protected from inappropriate development. There are no outstanding natural features or landscapes within the subject area. The E10 Mt Eden Volcanic cone view shaft passes over the site, and the buildings proposed will not affect this.

### ***Built Heritage and Character***

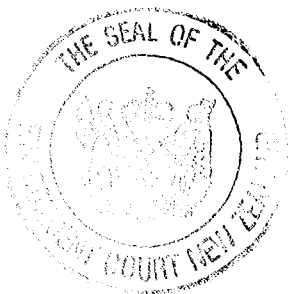
[534] The objectives and policies in this chapter refer to the protection of the region's distinctive historic heritage and special character areas. The development does not affect any built heritage items or special character areas identified in the AUP, so these provisions are not relevant.

### ***Mana Whenua***

[535] The objectives and policies from the following sections are considered relevant:

- B6.2 Recognition of Treaty of Waitangi/Te Tiriti o Waitangi partnerships and participation
- B6.3 Recognising Mana Whenua values
- B6.4 Maori economic, social and cultural development
- B6.5 Protection of Mana Whenua cultural heritage

[536] Development within the Auckland region must take into account Mana Whenua values. These provisions direct that opportunities for Mana Whenua to play a role in environmental decision-making, governance and partnerships shall be increased. This is to provide opportunities for their relationship with natural resources to be recognised through consultation, protection of cultural and historic heritage sites, incorporating cultural elements into developments and providing facilities that cater to Maori economic, social and cultural development. These provisions essentially flow from ss6(e) and (g), 7(a) and 8 RMA, and should inform the governance relationship between the council and Mana Whenua. The proposal has involved the council and the Crown working collaboratively to deliver the infrastructure required to facilitate the staging of AC36, regarded as of economic importance locally, regionally and nationally. These policies



ordain a proactive path to be followed with Mana Whenua in resource consent decision-making.

[537] Panuku undertook consultation with Mana Whenua prior to the first (January 2018) application being lodged. Unfortunately, the consultative approach was not continued while the second (present) application was being prepared and lodged, resulting in the unhappiness and poor outcomes reported in the section of this decision on Maori issues, resolved only days before the hearing. Ultimately, as recorded there, the relevant objectives and policies have been satisfied.

### ***Natural Resources***

[538] The objectives and policies in the following sections are considered relevant:

- B7.2 Indigenous biodiversity
- B7.4 Coastal water, freshwater and geothermal water
- B7.5 Air

[539] The chapter records that historical development, and land, coastal and freshwater management practices have placed increasing pressure on land and water resources, reduced air quality and increased demand for mineral resources. Freshwater management practices and demand for mineral resources are relevant to this application. Any new development must ensure that significant indigenous biodiversity values are protected and if not significant maintained.

[540] Coastal water quality is to be maintained where it is excellent or good, and progressively improved over time where it is degraded. Specifically, Mana Whenua values mātauranga and tikanga associated with coastal waters are to be recognised and provided for, including traditional and cultural uses and values. This involves among other things for this project, best practices for stormwater management, waste water discharges and sediment runoff.

[541] The Wynyard and Viaduct Harbour Areas have been significantly modified by much reclamation and are at the interface for run-off to the sea where coastal water has been identified as degraded by human activity.<sup>118</sup> The proposal is specifically designed to influence coastal processes to create calm water for vessel berthage, launching and retrieval through the creation of wave breaks and breakwaters. A consequence of this is

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<sup>118</sup> AUP Chapter B7 Figure B7.4.2.1.



that flushing times will decrease in the inner parts, potentially affecting water quality.

[542] We have concluded that the potential for water quality to decrease in some areas is minor and can be mitigated and that the proposed conditions will achieve the policy directives. Further, when balanced with improvements through attenuation and treatment of stormwater which until now has entered the sea without mitigation, there will be a movement towards improvement in water quality, which (although difficult to quantify), is positive, recognising that this is a manmade operational vessel harbour. These provisions also require that air contaminant discharges are managed to maintain air quality at appropriate levels, a matter on which we have made findings in the relevant section of this decision.

[543] The site does not contain any highly valued indigenous taxa or vegetation and there are no significant ecological values attributed to the marine or terrestrial area. Further, we were not alerted to any specific air quality concerns other than those potentially requiring management through the construction process (e.g. dust and emissions from the movement of contaminated ground). Our conclusions related to those specific effects are set out elsewhere but they are transient short-term effects which can be managed. A positive outcome might result from the removal of some areas of potential contaminated discharge due to removal of materials.

### ***Coastal Environment***

[544] The objectives and policies in the following sections are considered relevant:

- B8.2 Natural character
- B8.3 Subdivision, use and development
- B8.4 Public access and open space
- B8.5 Managing the Hauraki Gulf/Te Moana Nui o Toi/Tikapa Moana

[545] The RPS is consistent with the national policy directives as already indicated. Development in the coastal environment must protect areas of outstanding natural character values from inappropriate use and development and avoid significant effects on, or remedy, or mitigate all other effects on natural character in the coastal environment. On the other hand, there is recognition that some development has a functional need to be in a coastal location. Provisions to the effect that development should maintain and enhance public access to the coast, recognise the importance of the Hauraki Gulf and support the social and economic well-being of the communities within the Gulf, are quite strongly met.





[546] These matters have been previously discussed and are dealt with more particularity when we consider the regional and district aspects of the AUP., Of importance, we find that the site and surrounding area is a highly modified coastal environment and does not contain high natural character values.

[547] Consistent with Objective B8.3.1(4) in particular, where *rights to occupy parts of the coastal marine area are generally limited to activities that have a functional need to locate in the coastal marine area, or an operational need making the occupation of the coastal marine area more appropriate than land outside of the coastal marine area*, the development is marine-based and has a functional need to be located adjacent to the harbour.

[548] Further, it involves the repatriation of land used for industrial storage not necessarily requiring this location, to be used for marine-based activities and public access at Wynyard wharf. Overall the proposal will increase public access to the coastal edge and harbour through the provision of infrastructure which is intended to provide enhanced calm waters for boats and public access.

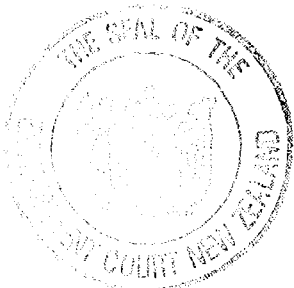
[549] Although access to the water's edge is to be restricted through the construction period and some events, primarily for public safety, the restrictions will be temporary, and in the long term there will be additional public access at Wynyard Wharf and at Hobson Wharf. There may be some opportunities to allow such access during the 10-year period if bases are vacant for any period of time, and conditions have been prepared to provide for this possibility. As we have concluded elsewhere, the evidence of potential adverse environmental effects is limited to local effects, and the proposal will not adversely affect the ecological functioning of the Haruaki Gulf, or the economic, social, ecological or landscape values attributed to the islands within the Gulf. Overall, it is considered that the proposed development will be consistent with these objectives and policies.

### ***Environmental Risk***

[550] The objectives and policies from the following sections are considered relevant:

- B10.2 Natural hazards and climate change
- B10.3 Land – hazardous substances
- B10.4 Land – contaminated.

[551] The objectives and policies in these sections seek to ensure that development responds to natural hazards and climate change, hazardous substances are managed in



a way which protects the health and safety of people working and living near to them and the natural environment, and contaminated sites are identified, assessed, managed and remediated to minimise risks to public health and the environment.

[552] The wharf extensions and the buildings will be designed to take account of stability constraints and sea level change. The hazardous materials in the ground beneath the syndicate bases will be stored in a manner that will minimise risk to the health and safety of people near them, During the event phase, measures are to be taken to prevent public access to the northern part of Wynyard Wharf where the storage of hazardous substances will continue, and a tanker will berth. Because of previous land use activities, the ground is known to be contaminated so the earthworks will be undertaken in accordance with a RAP to minimise risk to public health and the environment. Discharges associated with this contamination will be managed on the site. Because this has not been the case in the past, this will be an environmental improvement. For these reasons, we find that the proposed development will be consistent with these objectives and policies.

[553] We discuss effects on the environment from fuel storage and fish processing activities established in the Wynyard Quarter, elsewhere in this decision. For reasons recorded in that section, the proposal will be consistent with the hazardous substances provisions.

#### **Section 104(1)(b)(vi) Relevant Provisions of the Relevant Regional/District Plans Objectives and Policies**

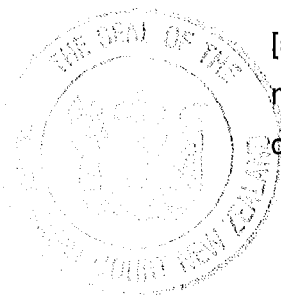
[554] The relevant regional and district provisions of the AUP applicable to this proposal are discussed in this section.

#### ***Auckland Wide Provisions Chapter E***

##### ***Natural Resources***

[555] The generally more relevant sections are E1, 2, 4, 7, 8, 11, 12 relating primarily to freshwater quality, integrated management, discharges of contaminants, water diversion, stormwater discharge, land disturbance and earthworks.

[556] Specifically, the objectives and policies of chapter E1 aim to ensure an integrated management approach to land use activities occurs to avoid or minimise adverse effects on water quality within freshwater systems and integration with the coastal environment.



[557] In this location, there are existing stormwater discharges into the CMA. The land is reclaimed and the soils are contaminated by past above ground use and potentially by materials used in the reclamation. This means that freshwater contamination exists, currently largely unmanaged.

[558] Development of Bases C to D would improve the management of contamination of stormwater before it reaches the CMA and prevent stormwater flowing through the contaminated materials in the sites. These are positive outcomes consistent with the relevant objectives and policies.

[559] The proposal is to adopt best practice management during earthworks and land formation to capture and remove contaminated sediment and water and to provide new enduring stormwater capture and filtration system prior to discharge. We discuss the detail and approach to this elsewhere in the decision.

[560] Currently a stormwater outfall at Daldy Street discharges stormwater into the harbour at the southern end of Wynyard Wharf where it disperses into Waitemata Harbour. No change is proposed to the quantity or quality of stormwater from this outlet or its management. However, we understand that improvements are part of the council's plans for this catchment and we understand an application for resource consent for the work is imminent.<sup>119</sup>

[561] The movement pattern of the stormwater plume from Daldy Street outlet (diluting as it disperses), includes some of the plume passing under Halsey Street Extension and into the Viaduct Harbour. The plume extends to include the area adjacent to the existing Karanga plaza and "beach" steps which are used for swimming. With the development in place, this stormwater plume would take longer to get to the Viaduct Harbour and go slightly deeper into that basin. Flushing the residue plume from Viaduct Harbour would then take slightly longer.

[562] We have accepted the evidence that the water quality will remain good in the Viaduct Harbour and Wynyard Wharf South Water Space, and that overall the quality of water in Freemans Bay will improve as a result of the new catchment and filter systems to be employed for the Wynyard Wharf remediated sites and base design. Ongoing water quality, sediment quality and ecological monitoring would take place and results would

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<sup>119</sup>

Memorandum of Counsel for Auckland Council regarding the Courts questions dated 4 September concerning stormwater and ecological monitoring dated 5 September.



be examined to ensure remediation occurs if necessary to improve localised effects

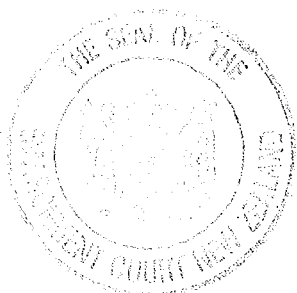
[563] These sections of the AUP integrate the RPS objectives addressing kaitiakitanga and the effects the proposal might have on mana whenua values, particularly the restoration or enhancement of mauri and the special place the Waitemata holds for Mana Whenua. Improvement (not just maintenance<sup>120</sup>) to water quality and therefore management of discharges is required to be consistent with the objectives. As we have found, overall the proposal will achieve this objective. The consent conditions specifically provide for kaitiaki responsibilities to be achieved, and inform both the process of construction and the legacy outcome (Conditions 5 through to 5 F set).

[564] Chapter F AUP specifically deals with water quality in the CMA and discharges to the CMA among other things. We address that section later.

[565] Air quality is specifically addressed in Chapter E14 where objectives and policies seek maintenance of high air quality, and improvement in those parts of the region that are subject to low to medium air quality. Human health, property and the environment are to be protected from the effects of the discharge of contaminants to air, and incompatible uses and development are separated from each other. Air quality is a potential issue only in relation to the construction phase of the proposal, and we have addressed that outcome in our assessment of the environmental effect of that phase. As we have indicated above, the issue pertains primarily to odour from materials removed in site preparation for Bases C to G, dust, and in the mixing of cement with dredge material to produce mudcrete.

[566] Best practice management techniques are to be adopted through construction and disturbance and the sustainable future of the environment will be improved as a result of the removal of contaminated materials and capping with the new hardstand areas. There is little risk that the proposal will not be consistent with these objectives and policies. Chapters E15 through to E17 deal with vegetation management and biodiversity, trees in open spaces and trees in roads. The objectives and policies in E15 relate only to terrestrial and coastal vegetation and biodiversity values. There are no aspects of the proposal relevant to these provisions.

[567] However, there are some street trees at Wynyard wharf which will be removed and replaced, and others potentially adversely affected through construction proposed to



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<sup>120</sup> AUP (RPS provision) B7.4(2).

be protected and retained. The trees proposed for removal are not located within a sensitive environment and do not contribute to any ecological corridor. There would be no inconsistency with these objectives and policies.

[568] In the section of this decision on this subject, we have expressed doubts about the need for Panuku to go as far as requested by the council.

[569] All the trees to be removed are found in the road corridor. The objectives and policies in Chapter E17 specifically address trees in roads and seek to balance the safe and efficient management of the roading network with providing tree cover to contribute to cultural, amenity, landscape and ecological values of an area.

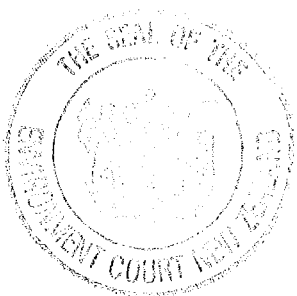
[570] The proposal is to remove via relocation or replacement one for one, for every tree removed. Although the trees are in a coastal area, it is very much industrial in nature and does not exhibit high amenity values. The trees do provide some visual amenity value, but the proposed approach does not appear to have been conceived as a coordinated regime to maximise their contribution to the streetscape. They have been neglected and are mainly in poor condition.

### *E23 Signs*

[571] Signs, including billboards and comprehensive development signage could contribute to the social and economic wellbeing of communities by providing identification, direction and advertisements of goods and services. Signs should be managed so that they do not significantly detract from the profile or appearance of the building, do not create clutter, maintains any heritage or visual amenity values and does not cause any transport safety issues.

[572] The definition of “temporary activity” in the AUP specifically excludes signs. Most signs other than billboards and “comprehensive development signage” are managed under Auckland Council Bylaws. The term “comprehensive development signage” used in this chapter is as defined under the bylaw and refers to building signage. Panuku, ETNZ and CoR36 have submitted that signage is an important component of the temporary activity, as recognition of sponsorship, country and culture will form elements of this international event. The duration of the temporary activity will also influence how long signage might stay in place and therefore the likely impact it will have on the environment.

[573] There were no specific details for signage in the application, but the Agreed



'Building, Yard and Public Space Open Design Requirements'<sup>121</sup> includes team and event branding and legibility and states:

Base signage and branding

2.3. Signage for teams and their sponsors is anticipated as a positive attribute and will be positioned within the building envelope and sized to positively complement the architectural qualities of the building to which it relates. No freestanding or other signage is provided for, except for as provided in the Event Management Plan or specified below.

[574] Signage has been considered in a comprehensive manner through a condition putting in place Design Requirements which include syndicate base building and signs and fittings and design for open spaces as an integrated whole. These Design Requirements are discussed in our consideration of the landscape and visual effects. There has been a significant amount of analysis and consultation undertaken as to the potential nature of signage required to meet event expectations how this might be balanced in the local environment.<sup>122</sup> The Court has been presented with a largely agreed position, the method for which we conclude will meet the provisions of Chapter E23.

#### *E24 Lighting*

[575] The objectives in Chapter E24 refer to artificial lighting enabling outdoor activities, the security and safety of people and property, the adverse effects of outdoor lighting on the environment, and the safety of road users. The policies address (among other things), provision for appropriate levels of artificial lighting to enable safe and efficient outdoor activities, including night time working, recreation and entertainment. They also control intensity, location and direction of artificial lighting to avoid significant glare and light spill onto adjacent sites, maintain safety for road users and minimise the loss of night sky viewing.

[576] We have considered the technical evidence and the concerns raised by those potentially adversely effected by the proposal. Lighting is required during the construction phase, event phase and as a legacy "business as usual" consideration for public amenity and safety. The control and management of lighting has been addressed through management plans and as a legacy situation that will meet the AUP standards. We conclude that the proposed regime is consistent with the objectives and policies of



<sup>121</sup> Attachment 2 to the Statement of Agreed Issues (Urban design and Landscape Architecture).

<sup>122</sup> The residual concerns of CoR36 are discussed elsewhere in this decision.

chapter E24.

*E25 Noise and Vibration*

[577] The objectives and policies for this chapter refer to the effects that noise and vibration might have on amenity values, and seek to minimise them together with effects on human health, and to protect existing noise activities from reverse sensitivity effects. Of particular relevance to this application as it relates to construction activities is objective E25.2(4) which provides:

Construction activities that cannot meet noise and vibration standards are enabled while controlling duration, frequency and timing to manage adverse effects.

[578] Also, policy E25.3(10) which provides:

Avoid, remedy or mitigate the adverse effects of noise and vibration from construction, maintenance and demolition activities while having regard to:

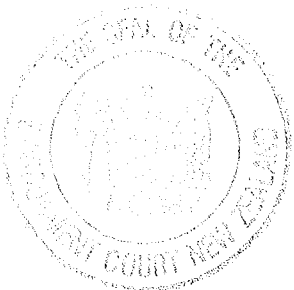
- (a) The sensitivity of the receiving environment; and
- (b) The proposed duration and hours of operation of the activity; and
- (c) The practicability of complying with permitted noise and vibration standards.

[579] The AUP provides for construction activities to occur which cannot meet noise and vibration standards, however they must be undertaken in a manner which minimises effects on nearby sensitive receivers.

[580] We have considered the technical evidence and methodology proposed by the applicant and council and experts engaged by s274 parties. There are proposed conditions and a management plan which has been developed to a stage of quite some specificity prior to the hearing of this matter, to a point where full agreement has been reached. Our conclusion on the assessment of environmental effects associated with this is that these effects can be appropriately managed through the proposed conditions, and therefore the objectives and policies of this chapter will be met.

*E27 Transport*

[581] The provisions of this chapter seek to support and manage effects on the operation and development of an integrated transport network, including managing adverse effects of traffic generation on the transport network, providing appropriate levels of parking and access and ensuring that there are public transport and pedestrian and cycle facilities.



[582] Of some note, there is no requirement for activities or developments to provide parking in the Business – City Centre Zone which covers the subject sites. Instead, a maximum limit has been set on the amount of parking that can be provided on a site. In the background to this chapter, it is explained that this approach *supports intensification and public transport and recognises that for most of these areas, access to the public transport network will provide an alternative means of travel to private vehicles.*

[583] The explanation also indicates that standalone (non-accessory) parking facilities will be individually assessed but that it might be appropriate to facilitate rationalisation of centre-based parking resources to support activities in the centre and improve design outcomes. The background explanation helpfully sets a context for the objectives and policies which follow and are relevant to expectations for parking within the subject area and the focus on pedestrian and cycle connectivity.

[584] The following specific objectives and policies are considered generally more relevant to this proposal:

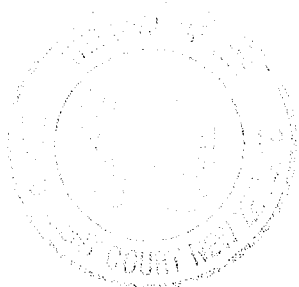
Objectives:

- (1) Land use and all modes of transport are integrated in a manner that enables:
  - (a) the benefits of an integrated transport network to be realised; and
  - (b) the adverse effects of traffic generation on the transport network to be managed.
- (2) An integrated transport network including public transport, walking, cycling, private vehicles and freight, is provided for.
- (4) The provision of safe and efficient parking, loading and access is commensurate with the character, scale and intensity of the zone.
- (5) Pedestrian safety and amenity along public footpaths is prioritised

Policies:

- (4) Limit the supply of on-site parking in the Business – City Centre Zone to support the planned growth and intensification and recognise the existing and future accessibility of this location to public transport, and support walking and cycling.
- (20) Require vehicle crossings and associated access to be designed and located to provide for safe, effective and efficient movement to and from sites and minimise potential conflicts between vehicles, pedestrians, and cyclists on the adjacent road network.

[585] Overall this chapter does not specifically address traffic related to events, but read together with the other chapters about the Business - City Centre Zone, Temporary Activities and the Wynyard and Viaduct Harbour Precincts, it is clear that the intent is for significant reliance on public transport and alternative modes of walking and cycling (by inference this might include a range of personal electric modes such as scooters, skate





boards, and the like). As previously discussed the adverse effects on the transport network during the event phase, based on the current information before us, are considered to be more than minor, and potentially significant, particularly on race days when visitor numbers are likely to be high and the bases are hosting guests but this is not a situation which is unexpected by these provisions of the AUP. Rather, there is an expectation that these effects should be appropriately managed.

[586] This chapter does not exist in isolation of other provisions in the plan such as the Temporary Activity chapter (E40) and the Wynyard and Viaduct Harbour Precinct provisions which focus events in this area. Specifically for temporary activities, Objective (4) requires that events which involve large numbers of people should occur in the Business - City Centre zone, which is the location of the proposal.

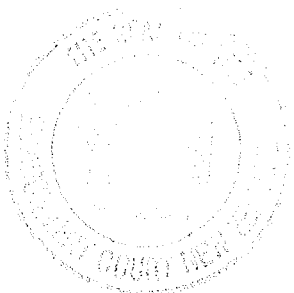
[587] We find that the methods proposed to address construction traffic and minimise construction staff vehicles through encouragement of alternate transport modes will be effective in mitigating effects through this period. The requirement for integration with other construction projects in the CBD will also assist.

[588] As set out in the relevant AUP references, traffic for events is anticipated as a part of life in this area of the city. The proposal responds to potential impacts expected for AC36 through proactive traffic management prior to, during and at the completion of events. Management appropriate to the number of visitors expected on any day is required with appropriate communication regimes to prepare and respond to likely adverse effects. We have addressed traffic effects and considered the mitigation provided and we conclude that mitigation and management is consistent with the objectives and policies of this chapter of the AUP.

[589] As to the legacy situation, the design of linkages (pedestrian and cycle) promotes safety, a high level of amenity and potential for these options to be favoured by visitors and those working in the area. The efficient functioning of the street network remains largely unchanged in legacy mode.

#### *E30 Contaminated Land*

[590] The objectives and policies in this chapter seek to ensure that the discharge of contaminants from contaminated land into air, into water, or onto land are managed in such a way as to protect the environment and human health, and to enable land to be used for suitable activities now and in the future.



[591] As previously noted, some of the land is subject to land contamination from historic activities. Prior to the works commencing a DSI will be carried out to ascertain the extent of contamination and a RAP will be formulated to manage the effects and ensure that the works can be carried out in accordance with controls and mitigation measures that will protect human health and prevent contamination of the surrounding land and maintain the water quality of the Waitemata Harbour. With conditions of consent that we have ultimately approved, the proposal will be consistent with these objectives and policies.

### *E31 Hazardous Substances*

[592] The objectives and policies of this chapter acknowledge the place in society of hazardous substances but aim to minimise the risks of such to people, property and the environment.

[593] The application acknowledges the existence of hazardous uses on Wynyard Point and the potential risk issues around holding events in Bases C to G and also having an increased number of members of the public within the locality during events. We have addressed this above in our discussion on the RPS B10 chapter. The shift in the risk profile based on the existing situation is minor. We refer to our findings in the Hazardous Substances section of this decision. We are comfortable that the proposal is consistent with these objectives and policies.

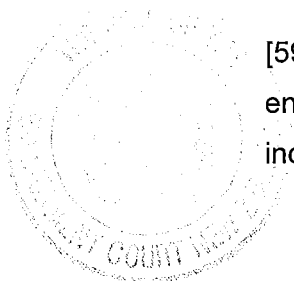
### *E33 Industrial and trade activities*

[594] Chapter 33 aims to manage industrial and trade activities to avoid or minimise adverse effects on land and water from environmentally hazardous substances and discharge of contaminants. This chapter provides greater detail about these matters which we have addressed above and considered in our assessment of the evidence.

[595] The development has been considered against the ITA provisions and the proposed structural and procedural controls for each of the bases will ensure that the base activities will minimise any environmental hazardous substance from discharging to land and water and will be consistent with the objectives and policies in this chapter.

### *E36 Natural Hazards and Flooding*

[596] Development within urban areas needs to take account of natural hazards and ensure that the risk to people, buildings, infrastructure and the environment are not increased overall and take into account the long-term effects of climate change.



Development should also safely maintain the conveyance function of floodplains and overland flow paths.

[597] The buildings are temporary and given their life span of ten years we do not expect that they will be subject to effects of climate change. The Hobson Wharf Extension would have a longer life expectancy and be constructed in a manner that would allow it to be raised in height to take account of any sea level changes that might occur in future. All works would be undertaken in accordance with recommended geotechnical design guidelines to maintain land stability. The existing discharge from an overland flow path on Brigham Street directly into the harbour will be maintained and will not result in the displacement of water. With the proposed conditions of consent, the proposal will not result in increased risk from natural hazards and overall will be consistent with these objectives and policies.

#### *E40 Temporary Activities*

[598] Chapter E40 recognises the importance of temporary activities to the vibrancy of a place and enhancement of the social, environmental, economic and cultural well-being of communities. However, any temporary event must be located and managed to mitigate adverse effects on amenity values, communities and the natural environment. This chapter is particularly relevant to the AC36. The background to this chapter includes the following statement:

Temporary activities may restrict public access and have adverse effects on amenity values, communities and the natural environment. To manage these effects the Plan contains rules for temporary activities on land and in the coastal marine area, and the particular effects of various activities are managed through bylaws. Events on public land or water must also obtain an event licence or permit under the relevant bylaws.

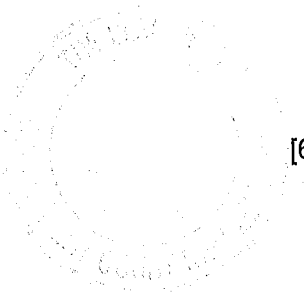
[599] Objective E40.2 (4) is:

Temporary activities involving large numbers of people predominantly occur in the Business – City Centre Zone, ...

[600] As we have noted earlier, this part of the city is a focus for temporary activities. By definition, a temporary activity is one that:

- *is outside the normal expected use of a site (or area within the coastal marine area); and*
- *has a start and end date and time.*

[601] As defined in the AUP, a temporary activity includes among other things:



- activities accessory to a building or construction project, such as scaffolding, fencing, offices or storage sheds;
- carnivals;
- concerts;
- fairs;
- festivals and events;
- public meetings;
- parades;
- special events;
- sporting events;
- overflow parking;
- structures accessory to temporary activities.

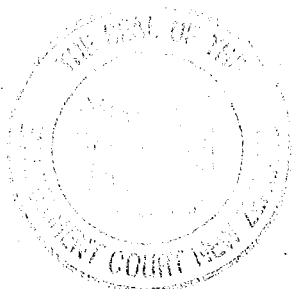
It excludes among other things:

- markets;
- temporary structures within the coastal marine area; and
- temporary signs.

[602] In addition to Objective (4) above, Objective 1 anticipates that events contribute to a vibrant city, and enhance social, environmental, economic and cultural wellbeing. Other objectives relate to minimising adverse effects on amenity values, communities, the natural environment and the use and enjoyment of open space. These are picked up in the Policy section.

[603] The more relevant policies are:

- (1) Enable temporary activities and associated structures, provided any adverse effects on amenity values are avoided, remedied or mitigated, including by ensuring:
  - (a) noise associated with the activity meets the specified standards;
  - (b) activities on adjacent sites that are sensitive to noise are protected from unreasonable or unnecessary noise;
  - (c) noise from outdoor events using electronically amplified equipment is controlled through limiting the times, duration and the frequency of events;
  - (d) waste and litter are effectively managed and minimised; and
  - (e) any restrictions on public access or other users of open space areas are minimised, and any adverse effects are mitigated.
- (3) Control traffic generated by a temporary activity, including heavy traffic, so that it does not detract from:
  - (a) the capacity of the road to safely and efficiently cater for motor vehicles, pedestrians and cyclists; and



- (b) the well-being of residents and reasonable functioning of businesses on surrounding sites.
- (5) Require temporary activities involving large numbers of people to locate in areas where there is:
  - (a) capacity to safely host large numbers of people;
  - (b) sufficient parking where necessary;
  - (c) sufficient road network capacity for the event;
  - (d) capacity in the public transport network to service the event, or the ability for (d)the event to be temporarily serviced by mass passenger transport; and
  - (e) the ability to avoid, remedy or mitigate adverse effects on the environment.

[604] The Event is expected to enhance the vibrancy of the area by attracting spectators not only to view the racing yachts, but also engage with the syndicate bases and other associated entertainment and hospitality facilities. During the 6-month Event period of 6 months levels of activity in the area would vary, with peak activity periods expected to coincide with race days. The AUP provides for events longer than 21 days as restricted discretionary activities, so such events are at least anticipated. With appropriate conditions of consent supported by a range of event management plans to minimise effects, it can be expected the adverse effects on amenity values, communities and the natural environment will be adequately mitigated in their context and for their circumstances.

### ***CMA – Chapter F***

[605] All the relevant sea area (generally Freemans Bay, Viaduct Harbour and Hobson Wharf), fall within the Coastal-General Coastal Marine Zone (GCM zone). This zone covers the majority of Auckland's coastal marine area (CMA). The purpose of this zone is to provide for uses and developments in the coastal marine area, particularly for those that have a functional need to be in it. However, any development must protect any cultural, heritage, ecological, landscape and character values of the area while also maintaining and enhancing public access, open space, recreational use and amenity values to, and along the CMA.

[606] Objectives and Policies are identified against anticipated activities in the zone. The more relevant are found at F2.4 Dredging, F2.5, Disturbance of the foreshore and seabed, F2.11. Discharges, F2.14. Use, development and occupation, F2.16. Structures, F2.18. Underwater noise.

[607] Although the project overall is bundled to be considered as a non-complying



activity because of the development of the bases on Wynyard Point, it should be recorded that the works proposed in the CMA are anticipated in the AUP, and in themselves dredging for capital works and the new structures (breakwaters and Hobson Wharf Extension), are discretionary activities. There are specific Objectives and Policies set out for them.

[608] The more controversial aspect of this proposal early in the life of the application, was the extension of Hobson Wharf. The Background to the section dealing with structures includes the following statement which clearly applies to the situation of this proposal:

Structures and buildings in the coastal marine area are necessary to provide for people's social, economic and cultural well-being. They can enhance the use of the coastal marine area as well as access to and from it. This can be for a range of activities including: social, cultural, recreational and commercial.

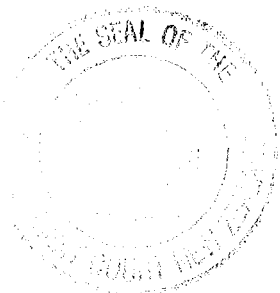
The coast is a finite resource which is under pressure for use and development. To ensure efficient use is made of coastal space, and because the coast is a public resource, structures need to have a functional need for a coastal location and to provide for multiple uses where practicable, taking into account the purpose and use of the structure. However, it is also recognised that certain activities, such as some infrastructure, may have operational needs that make a location in the coastal marine area appropriate.

The growth of Auckland and people living next to the coast means there is an ongoing demand for new structures in the coastal marine area. These can adversely affect natural character, coastal process, landscape, and public access and coastal processes and result in adverse effects from a proliferation of structures.

[609] While structures are generally limited to those which have a functional need to be located in the CMA, multiple use is encouraged. Proposals must be designed to minimise adverse environmental effects and, adverse cumulative effects, taking into account the number of structures in the immediate area.

[610] However, the policies also enable the extension or alteration of existing structures in locations where they will:

- (a) not have significant adverse effects on other uses and values;
- (b) result in greater, more efficient, or multiple use of the structure; or
- (c) reduce the need for new structures elsewhere.



[611] Other more relevant policies require structures to:

- minimise impacts on other coastal activities provided for or enjoying resource consents;
- be the minimum size reasonably necessary to provide for the proposed use;
- be multi use;
- minimise impacts on natural character and amenity;
- fit with the character of existing built elements; and
- in the case of buildings, be of a scale, location and design that is appropriate to their context.

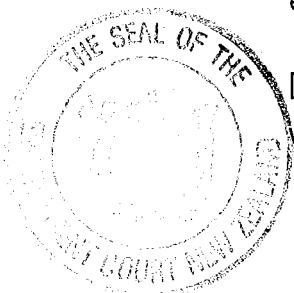
[612] Structures are enabled where they will provide or enhance public access, use and amenity, and there should be integration with land use so that landward components of the activity can be appropriately provided for. Specifically, applications for structures in the coastal marine area are required to *demonstrate how any significant adverse effects on the use of adjoining land, including reverse sensitivity effects on existing use or development of that land, can be avoided, remedied or mitigated.*

[613] We have assessed all these matters in the section of this decision on such effects, and visited the area to assist us in understanding the likely impacts of the proposal. We also note the alternative proposal that was advanced by the applicant prior to the present application. As discussed in that section of this decision, we have noted the high levels of agreement in the relevant joint expert witness statements, and the conditions refined and now proposed. By the conclusion of hearing the unresolved issues related only to the size of the Hobson Wharf Extension (Ms Van Camp and Ms Stead, and their consequent requests that such works be deferred or abandoned), and the design requirements proposed for temporary Syndicate Bases (Challenger of Record).

[614] We find that the size of the wharf is a balance of the need to efficiently accommodate the marine-related activity as well as provide public access during event mode, while limiting the extent of the new structure. It fits within the existing wharf infrastructure relying on existing (and to be improved) protected harbour waters.

[615] We find that the Design Requirements agreed among the experts support the AUP policies specific to the anticipated temporary use of the wharf extension, its enablement for hosting the AC36 and future events and provision of public open space.

[616] Similarly, the other marine structures comprising breakwaters and additional wave attenuation under existing structures, build logically on the existing harbour context.



Together with the proposed targeted dredging, these structures will enable greater use and protection of waters providing for enhanced use of an already existing man-made harbour for multiple vessels and marine-based purposes.

[617] Overall, in relation to Chapter F2, and based on reasons recorded previously concerning the NZCPS and the regional policy statement provisions to similar effect, we find that the proposal will be consistent with the objectives and policies within this chapter.

### ***H8 Business – City Centre Zone***

[618] As previously noted, the site is located within the Business–City Centre Zone. Of particular relevance to this application is Policy 15a about enhancing the vitality, vibrancy and amenity of the city centre which includes providing for entertainment and events and high-quality visitor experiences as well as for commercial and residential activities. Policy 19 specifically seeks to provide for a wide range of activities along the waterfront, while continuing to provide for those activities requiring a harbour location.

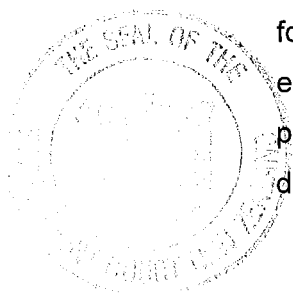
[619] The Event, due to its maritime nature, is required to be in a waterfront location and, with appropriate control by conditions, will be compatible with surrounding marine-based industries and uses. The events themselves will generate much activity and will create a vibrant atmosphere within the city centre, particularly on race days. We find that with appropriate controls, the proposal will be consistent with these specific policies, and the overall objectives and policies generally.

[620] Although the site is located within the Business–City Centre Zone the development is entirely within and principally governed by the Wynyard and Viaduct Harbour precinct provisions as these are described as having their own distinct features, character and /or function.

### ***I211 Viaduct Harbour Precinct***

[621] The Viaduct Harbour Precinct incorporates the Viaduct Harbour water space and the land fronting it and Hobson Wharf and the water area proposed for the location of the extension to this wharf.

[622] To build upon and reinforce the Viaduct Harbour's attributes, provision is made for a level of development and a range of activities including recreation, leisure, retail, entertainment and community/cultural, and events which take advantage of the positioning adjacent to the water's edge and central city location. Buildings should be designed in a manner that exhibits well-defined edges to public spaces, a sense of



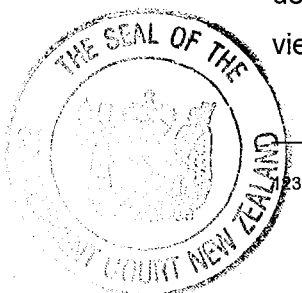


enclosure at the built edges of public space, and a visual transition in the height of built form extending from the water's edge of the Viaduct Harbour to the established commercial area of the city centre. The precinct also aims to provide an open space network which connects to other areas of the city and provides for varying recreational needs.

[623] The Viaduct Harbour Precinct is broken down into a number of sub-precincts. Hobson Wharf is within the GCM zone, Te Wero and the Eastern Viaduct and the eastern edge of the Lighter Basin and inner Viaduct Harbour including Market Square and Waitemata Plaza, are classified as Sub-Precinct B, being the open space network catering for varying recreation needs. The permanent residential population is described as providing character, vitality, safety and amenity in Sub-Precinct C (the residential units surrounding the Lighter Basin and Inner Viaduct Harbour). This is to be maintained to create an attractive place to live. Balanced against these objectives is Policy 5 which specially encourages *"the development of a diverse range of high-quality visitor experiences including promenading, coastal recreation, community and cultural activities and temporary activities"* which include Events.

[624] We gain some understanding of the policy directions and how they are implemented through the rules as part of the process of assessment of environmental effects. Amongst the rules there is a CMA viewshaft aligned with the end of Market Square from the Eastern Viaduct facing directly to the left arm of Hobson Wharf. It is set at a plane measured 5m above the existing wharf deck level. Rule 1211.6.11 Viewshafts, indicates that its purpose is to *"manage development to maintain significant views of the water and adjacent areas within, and to, the Viaduct Harbour precinct"*. While temporary buildings are permitted within the landward viewshaft and over those parts of the coastal marine area structures and water space, the duration of the temporary consent has led to the need to examine the impact of what is proposed. We have concluded that the anticipated effects are acceptable in the context of these provisions and the proposed conditions requiring later removal of temporary buildings, and the Design Requirements, providing an appropriate method of implementing the policy expectations.

[625] The activity table for this precinct includes land-based and water-based development including provision for wave attenuation devices (RD<sup>123</sup>) observation areas, viewing platforms and boardwalks (RD) and consistent with the underlying zone provides



Restricted discretionary activity.

for the wharf structure and buildings on it as Discretionary Activities. Capital Dredging is also provided for (DA<sup>124</sup>). Marinas and marina berths are permitted activities. Events (Temporary Activities), are the subject of explicit standards (12111.6.1) in this precinct. The standards set the number, duration and noise standards which apply to events which exceed the general noise limit in Chapter E25 Noise and Vibration.

[626] In addition, consistent with the underlying zone for the land, no parking is permitted on the wharf unless it is ancillary to marine and port activities. Parking generally is not required but maximum rates are set. We assume that these standards (in addition to others) set an expectation for the character of amenity and activity expected in the precinct. It is a complex area of the city where balancing of effects is required so that the full range of anticipated activities across the land and water can take place.

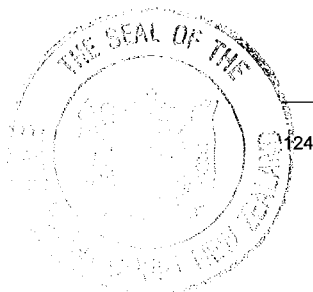
[627] We find that the proposal incorporates buildings that are of a similar scale and style to existing surrounding built development, and appropriately continues the transition in height of buildings from the commercial area of the city centre to the water edge. Further, the buildings will have defined edges to public space and the open space network would be improved by an additional access route along the wharf extension. We have concluded that the temporary effects associated with the AC36 event can be managed to meet the objectives and policies for the precinct due to the carefully-crafted proposed conditions which have been arrived at through a significant effort by parties. Use of the legacy wharf will be subject to permitted activities and it is intended that before the 10-year temporary consent term expires, any alternative use will have been addressed as proposed in the condition 198 set (provision of a Legacy Use Options Plan).

### ***1214 Wynyard Precinct***

[628] The Wynyard Precinct represents the largest “brownfield” area in the city centre, and its purpose is to provide for comprehensive and integrated redevelopment while enabling the continued operation of the marine and hazardous industries.

[629] Objectives (summarised and being those generally more relevant to this proposal), include:

- (a) Social and economic: Development/redevelopment should be undertaken in a manner that manages conflict between different uses to create a high-quality visitor destination with a mix of activities and experiences for all people, areas of



124

Discretionary activity.

public open space that provides for the enjoyment of the coast and area for events and entertainment, maintains and enhances navigation and the economic functioning of the marine industries. Specific related policies include:

- (11) Enabling a diverse range of activities, high quality visitor experiences, entertainment, events and development to occur, while recognising and maintaining the economic importance of the marine and fishing industry, the bulk liquid industry and Hauraki Gulf Islands maritime passenger operations to the Auckland Region.
  - (12) Recognise the significant local and regional socio-economic benefits associated with providing high-quality waterfront public open space and events activity while also providing for the operational and access requirements of the marine and fishing industries, other industrial activities and maritime passenger operations.
  - (13) Ensure that sufficient and suitably located land, wharf, waterspace and appropriate, convenient and adequate navigation and berthing facilities are provided to accommodate the current and future operation and growth of the marine and fishing industries and maritime passenger operations, including Sub-precinct C, North Wharf, the southern face of the Western Viaduct Wharf and the western face of the Halsey Street Extension Wharf together with the adjacent waterspace for use primarily by the fishing industry.
- (b) Built form: Consists of an integrated urban environment that has high-quality built form which complements its location between the water edge and the city centre and achieves appropriate form and scale to public open spaces and view shafts. This includes the integration of built form with the existing and proposed public open space network on a comprehensive land area basis, rather than a site by site (Policy 2).
- (c) Open space: Contains a significant area of waterfront public park space. with a complementary hierarchy of interconnected, high quality, public open space for current and future residential and commercial occupants and visitors.
- (d) Risk and public safety: Manages the environmental effects and risks presented by hazardous or dangerous activities or facilities within the precinct. Policy (26) requires *"new activities, buildings and works to be designed, located, and managed to avoid unacceptable levels of risk"*. This policy is reflected in rule I214.6.9 Special Industrial Frontage, depicted on Precinct plan 8. Its purpose is *"to avoid unacceptable levels of human injury risk associated with accidental ammonia release from the fish processing plant"*. Accommodation buildings must not incorporate opening windows or balconies.
- (e) Remediation: Adverse effects of contaminated sites and materials are managed.

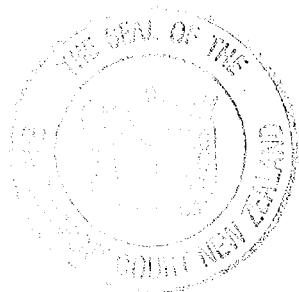


- (f) Reverse sensitivity and amenity: Conflicts between different uses are managed to ensure the efficient operation of marine industry and fishing industry, other industry and regionally significant transport infrastructure while enabling the marine events centre and public spaces to be used for a range of public events
- (g) Pedestrian access, street quality and safety: safe, convenient and interesting and optimises pedestrian and cycling use and improves connectivity.
- (h) Transport: Maintains and if appropriate, enhances the safety and capacity of the transport network. Policies include:
  - (34) constrain and manage private vehicle travel in and out of Wynyard Precinct, particularly during peak travel periods.
  - (35) Encourage walking, cycling and the provision of passenger transport services and facilities compatible with the character and amenity of the area.
  - (38) Protect the safe and efficient operation of Fanshawe Street as a key arterial route connecting the central city area with wider Auckland and an important element of Auckland's frequent and rapid transit network.

[630] As with the Viaduct Harbour Precinct, the Wynyard Precinct includes Sub-precincts. Proposed Bases C to G fall within Sub-Precinct F. The waterspace, Halsey wharf and the Western Viaduct are described as Wynyard Precinct CMA and included in the overall Precinct. This latter area is particularly addressed in Policy 13 which we have referred to above.

[631] Sub-Precincts F, E and C, are within Noise Area 1 (as is the area from North Wharf to Madden Street and Karanga plaza) and have a higher noise level permissive standard. To address reverse sensitivity an internal acoustic amenity standard is in place for occupants of new accommodation buildings in these areas. Silo Park which is intended as a focus for concerts associated with AC36, is located in Sub-Precinct E. A noise standard, duration and number of noise events have been agreed by the parties in the recommended consent conditions to accommodate this part of the event. We accept this is an appropriate way of managing noise effects to address the amenity objectives for the Precinct.

[632] Events are anticipated in Sub-Precinct F as well as (relevantly) E and G. As for the Viaduct Harbour, exceedance of the usual noise standards is anticipated and similar controls apply. These matters have been specifically addressed and agreed with the parties most likely to be affected by the noise events as the standards are not well placed to address an intensive event period which straddles 2 calendar years.



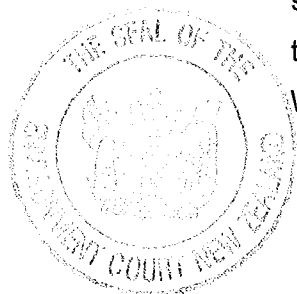
[633] Lanes and viewshafts are identified (Precinct Plan 6) in anticipation of progressive redevelopment of Wynyard Precinct. The purpose of these is set out at I214.12 of the precinct provisions and they rely upon the existing grid pattern of streets. Requirements for additional connections are "*designed to enhance the visual connections of the precinct with the harbour, other features of the surrounding landscape, the CBD and artworks*". The proposed base layout albeit temporary will generally support these vistas and as a legacy provide potential permanent public access to them. In this way, the outcomes proposed for this part of the city are progressed via the proposal.

[634] We consider that the proposal will be generally consistent with the objectives and policies of this precinct for the following reasons:

- (a) We are satisfied that the proposal has found an appropriate balance between providing for the diverse range of activities envisaged in the precinct. This balance addresses private and public interests, economic and social benefits locally and regionally. The requirements of the fishing and other local industries as well as transport operators are also satisfactorily addressed. In this case too, there are national economic and social benefits associated with the AC36 international event. Further, the legacy facilities will enhance the wharf, waterspace and convenience of berthing facilities as a legacy for existing and future anticipated activities consistent with the policy directives.
- (b) The buildings proposed are reflective of the maritime environment and will complement existing built development within the precinct.
- (c) Events are not anticipated in Sub-Precinct F but are (relevantly) provided for in E and G. The extension of this event into Sub-Precinct F is the reason that the proposal falls to be considered as a non-complying activity.

[635] In saying this, while the policy framework generally supports events the explanation supporting the Activity Table (I214.4 specifically (5) and (6)) provides some clarification as to the reasoning behind the non-complying activity status in the Base location.

[636] There is a sliding scale of events from permitted to RDA. The larger events and those of a longer duration such as AC36, fall into the RDA category around the likely spectator area of North wharf and Karanga Plaza (Sub-Precincts E and G). This relates to the proximity of hazardous industry currently located in Sub Precincts F and D (ie Wynyard point and the Sanford plant).



[637] This proposal will see a significant reduction of hazardous industry in Sub-Precinct F. Thus, the potential risk derived from this area is shifted north and signifies a significant change to land use since the provisions were put in place. In accordance with the policy directives, a specific emergency and evacuation management plan and controls on public access are set out in conditions to address the Base locations. This includes the Wynyard Point Bases Emergency Evacuation Plan (conditions 174 and 175).

[638] We understand there is already an event evacuation plan in place for the North Wharf and the Karanga Plaza area where public are most likely to congregate for the AC36 event. This is to be updated to ensure it includes the new infrastructure and associated activity provided for in this proposal (conditions 176 and 176A). In addition, we note that an integrated approach to public safety and evacuation requirements across the event, is reflected in the proposed conditions of the consent (Event Emergency Management Plan, Condition set 183).

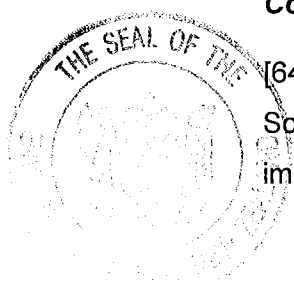
[639] As we have discussed elsewhere, the conditions relating to the production of this latter plan contain a confirmation requirement from the Governor-General to declare the AC36 event a "Major Event". This raises the management to the highest level. We have concluded that the proposal can manage the environmental effects and risks presented by hazardous activities in the area to avoid unacceptable levels of risk to individuals, or society.

[640] Additional areas of public open space and pedestrian and cycle access ways will be created which link to the existing network of access along the waterfront. We are satisfied the access to and along the water's edge will be enhanced and appropriately managed.

[641] A scaled and appropriate management regime is to be in place to manage traffic effects through construction and events. The conditions together with the management plans, provide for adaptive management and review, consultation and input from all stakeholders, which include business owners, residents, traffic management and enforcement agencies, emergency services, and event organisers and key participants.

### ***Conclusion on Objectives and Policies***

[642] Most of the objectives and policies are met in a complete way by the proposal. Some inconsistencies with objectives and policies have required careful thought and imposition of stringent conditions. With attention to those matters through conditions



which have been honed during the pre-hearing and hearing processes, we find the proposal consistent with the objectives and policies of the AUP in the round.

### **Designations**

[643] The location of Bases C to G is on land partially subject to a designation for public open space/road by Auckland Council. On Wynyard Point is a large designation for public open space, the designating Authority again being Auckland Council. Approval for the proposed works has been provided by the council under section 176(1)(b) RMA. The proposal effectively provides progressive support for those designations.

### **Section 104(1)(c): Any other matters considered relevant and reasonably necessary to determine the application**

[644] Section 104(1)(c) requires that any other matter the consent authority considers relevant and reasonably necessary to determine the application be considered. We have considered the following, which are largely "non-statutory" instruments not created under the RMA.

#### ***The Auckland Plan 2012***

[645] The Auckland Plan is a long-term (30 year) strategic plan to assist Auckland to "become the world's most liveable city", setting out bold aspirations about accelerating the prospects of Auckland's children and young people; committing to environmental action and green growth; establishing an outstanding public transport; radically improving the quality of urban living; substantially raising living standards for all Aucklanders with a focus on those most in need; significantly lifting Maori social and economic wellbeing.

[646] To assist in creating Auckland as the most liveable city the Plan identifies a 'City Centre' initiative which includes reference to the waterfront and seeks to unite it with the city centre and its parks; and for Auckland to become a "water city", a city closely connected to the harbour and coast. We believe the proposal would be consistent with these aspirations, so far as we can pin them down and understand them.

#### ***City Centre Masterplan 2012***

[647] The Auckland City Centre Masterplan (CCMP) is developed in accordance with the Auckland Plan and establishes a 20-year vision for development of the Auckland City Centre to provide a 'cultural and economic heart' to the city.



[648] One of the opportunities to enhance the attributes of the City Centre is the creation of an attractive waterfront with an active harbour and connections between the City Centre and the waterfront to bring them together.

[649] The CCMP also recognises the role in which the Wynyard Quarter and Viaduct Harbour can play in strengthening the city centre and making it a more attractive destination. As the leases held by the bulk liquid industries and others on Wynyard Point expire in coming years, the land is to be redeveloped to provide for mixed uses alongside continued operation of some marine and fishing industries. The Viaduct Harbour is to continue providing a mix of residential, retail and dining activities within a high quality built environment with waterfront promenades and open spaces.

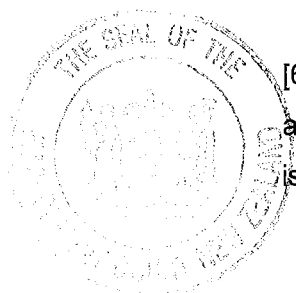
[650] The proposal seems generally in accordance with the vision and outcomes sought by the CCMP. It seeks to encourage or facilitate the early departure of some bulk liquid storage activities from Wynyard Point. Over the 10-year consent period, the syndicate bases will add to the mix of marine-related industries, and upon their departure, the land on Wynyard Point could be utilised to create the Headland Park anticipated for this area. The operational and event activity should also add to the vibrancy of the Viaduct Harbour and particularly during the event phase, will attract more people to this area. The Hobson Wharf Extension, and its syndicate base building should, with appropriate controls through conditions, be of a design and quality to complement existing built development and be capable of a legacy use consistent with the direction of this plan.

### ***The Waterfront Plan 2012***

[651] The Waterfront Plan is a framework that provides a strategic approach to development across the waterfront of the Auckland city centre and has the following five goals at its core:

- A blue-green waterfront
- A public waterfront
- A smart working waterfront
- A connected waterfront
- A liveable waterfront.

[652] The Plan aims to create an area that accommodates a range of activities which add to the character and sense of place that is also well connected to the wider city, and is an area that can be used by all members of the public.





[653] The proposal appears to us to be in line with the objectives of this Plan, as it will create greater employment and business opportunities on the waterfront, on the syndicate bases and in industries serving the racing boats and others including superyachts. It will also create additional public open spaces on the waterfront and public access ways.

### **Submissions**

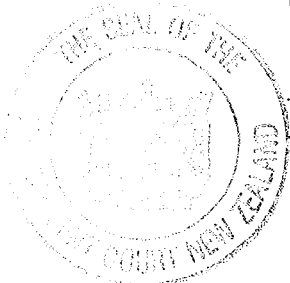
[654] As noted earlier in this decision<sup>125</sup> that by s 87G (4) we are to have regard to submissions lodged with the Council, not just to the contents of the subsequent s 274 notices. Also in an earlier part of this decision we have listed in summary the topics in submissions and s 274 notices. We confirm that we have had regard to all matters and submissions and s 274 notices. Logically, persons who have become parties in the proceedings before the Court and have exchanged evidence, will generally have provided the Court with a stronger basis for consideration by offering their views and information and making them available for testing by other parties or the Court. In the event, because of the high level of agreements reached among the parties, there was virtually no questioning of witnesses in the brief hearing we conducted.

### **Consultation post-consent**

[655] A number of submitters, particularly those who live or operate businesses within the development area have requested recognition as 'stakeholders' through operation of conditions of consent, during both the construction and events stages. They sought the opportunity to be consulted and have input into the drafting of management plans, and implementation and review of any consent granted.

[656] The draft conditions of consent placed before us contained a section about the establishment and operation of a Community Liaison Group ('CLG'). These were conditions 22 – 22C, and by the time of the hearing were in a form agreed amongst parties that we find need no further refinement.

[657] Within one month of the commencement of consent, the consent holder is to establish the CLG which is to comprise representatives of the consent holder, Auckland Council and its CCOs, and be open to interested supporters and s 274 parties, and bodies corporate of the apartments in the Viaduct Harbour and Wynyard Precincts.



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<sup>125</sup> In paragraph [25].

[658] Objectives of the CLG are appropriately stated in condition 22B, including enablement of opportunities for concerns and issues to be reported to and responded to by the consent holder, and for provision of feedback on the development of several of the management plans.

[659] Condition 22C provides for consultation with the CLG on the development and content of those management plans and on the Legacy Use Options Plan ('LUOP') to the extent required in applicable conditions of consent.

[660] One of the few issues left in contention by the time of the hearing, was a concern by submitter Mr Gladwell that it appeared the news media might not be included in consultation on the proposed Event Management Plan. Counsel for Panuku rightly pointed to the relevant conditions of consent, and noted that as Mr Gladwell is a submitter and s 274 party, he will be among parties invited to participate in the CLG.<sup>126</sup>

#### **Section 104D – Particular Restrictions for Non-Complying Activities**

[661] Section 104D RMA restricts the ability of a consent authority to grant resource consent for a non-complying activity unless at least one of two gateways is passed.

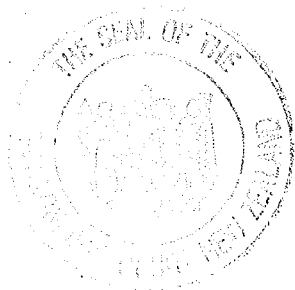
[662] The provision reads:

##### **104D Particular restrictions for non-complying activities**

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

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<sup>126</sup> Panuku submissions in reply, 11 September 2018, para 17.



[663] As can be seen from our findings in relation to s 104(1)(a) about actual and potential effects on the environment and s 104(1)(b) relevant provisions of certain statutory instruments, the proposal will satisfactorily pass through both gateways in s 104D, when made subject to conditions of consent we have approved.<sup>127</sup>

[664] Accordingly, we find we have jurisdiction to grant resource consents for the proposal.

### **Proposed Conditions**

[665] The agreements reached among the parties on the great majority of topics in the case, resulted in a very hands-on iterative approach to refining conditions of consent.

[666] The Court had some residual concerns about a small number of the draft conditions, and just prior to the hearing issued to the parties a table of comments and questions.

[667] The Court's comments and questions were considered by witnesses for Panuku and Auckland Council (mainly planners), who in their turn presented the Court with a further column to the table containing their responses.

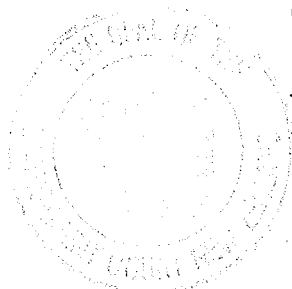
[668] In most of their responses, the witnesses agreed with the tentatively expressed indications of the Court. Some of the relatively short hearing time was taken up with discussion between the bench and parties on those that were not subject to agreement. Counsel for Panuku and the Council offered some inputs in their submissions, and the planners were sworn in as a group to assist with final consideration of matters in contention. Stormwater witnesses Messrs Priestly and Kennedy were also sworn in to assist with some matters of water quality and related areas like contaminated land management and contingency planning for groundwater.

[669] The Court found the answers on those last matters satisfactory, and some small further changes were made to conditions of consent that now meet with the approval of the Court.

[670] Members of the Court put it to Panuku and the Council that we felt that the conditions proposed concerning tree protection went beyond what was really necessary

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<sup>127</sup> Intriguingly, while s 104D matters are called "gateways" in the decisions of the Courts, it is logically necessary to make findings on the policy matters and effects on the environment separately and first, in order to know whether one or both gateways are passed.



to serve the purpose of the Act; the Council was insistent that the conditions remain as presented, and as recorded in the relevant section of this decision, we have accepted that, albeit with some reluctance.

[671] All conditions of consent became acceptable to us at one stage or another in the lead up to the hearing, at the hearing, or subsequently. They are now approved subject to our list of minor edits at the end of this decision, and form part of our decision to grant consent which follows.

**Consideration of Part 2 (Purpose and Principles) of the RMA, exercise of discretion, and decision reached**

[672] We have found that the application has passed both the s 104D RMA thresholds, and in terms described in some detail earlier in this decision, has, to our satisfaction, met the matters in s 104 RMA that we are to have regard to.

[673] We now discuss the extent to which we should have regard to Part 2 RMA.

[674] Many recent decisions of the Court have acknowledged the debates and uncertainty about extent of regard being required for Part 2 by decision makers, after the decisions of the Environment Court and the High Court in *R J Davidson Family Trust v Marlborough District Council*.<sup>128</sup>

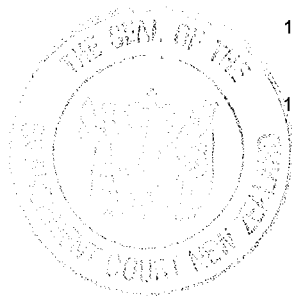
[675] Thankfully, decision-makers have now been provided with a definitive statement of the legal position in this regard, the Court of Appeal having recently released its decision *R J Davidson Family Trust v Marlborough District Council*.<sup>129</sup>

[676] The definitive clarification is found in the following passages:

[74] It may be, of course, that a fair appraisal of the policies means the appropriate response to an application is obvious, it effectively presents itself. Other cases will be more difficult. If it is clear that a plan has been prepared having regard to pt 2 and with a coherent set of policies designed to achieve clear environmental outcomes, the result of a genuine process that has regard to those policies in accordance with s 104(1) should be to implement those policies in evaluating a resource consent application. Reference to pt 2 in such a case would likely not add anything. It could not justify an outcome contrary to the thrust of the policies. Equally, if it appears the plan has not been prepared

<sup>128</sup> *R J Davidson Family Trust v Marlborough District Council* [2016] NZEnvC 81; *R J Davidson Family Trust v Marlborough District Council* [2017] NZHC 52.

<sup>129</sup> *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, particularly at [74] and [75].



in a manner that appropriately reflects the provisions of pt 2, that will be a case where the consent authority will be required to give emphasis to pt 2.

[75] If a plan that has been competently prepared under the Act it may be that in many cases the consent authority will feel assured in taking the view that there is no need to refer to pt 2 because doing so would not add anything to the evaluative exercise. Absent such assurance, or if in doubt, it will be appropriate and necessary to do so. That is the implication of the words "subject to Part 2" in s 104(1), the statement of the Act's purpose in s 5, and the mandatory, albeit general, language of ss 6, 7 and 8.

[677] Possibly as a result of the extent of agreements reached among parties in this case, we were faced with no debate about whether resort should expressly be had to Part 2. We find that it is not necessary to do so on this occasion. As noted by counsel for Panuku in their opening submissions,<sup>130</sup> the AUP has only recently been made operative, so can in a general sense be considered to offer provisions prepared having regard to Part 2, and a coherent set of policies designed to achieve clear environmental outcomes. Interestingly, the AUP being an instrument containing the Regional Policy Statement, the Regional Plan, and the District Plan for the Auckland Council area, it contains both higher and lower order instruments.

[678] Having regard to our findings earlier in this decision assessing the proposal against all relevant provisions of those instruments, we find that an assessment against Part 2 would not add anything to the evaluative exercise, and is not necessary. This is particularly so because grant of resource consent would not be contrary to the relevant objectives and policies.

[679] Probably on a "belt and braces" basis, counsel for Panuku advised in their opening submissions,<sup>131</sup> that in any event the evidence of Mr Cook and Mr Lala had undertaken an assessment of the application against Part 2 in their evidence in chief, and had confirmed in their rebuttal evidence that the application not only measured up in terms of s 104 RMA, but also met Part 2.<sup>132</sup>

[680] Counsel for the Council supported the opening submissions of Panuku, with their own reasons, including a reference to paragraph [82] of the decision of the Court of



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<sup>130</sup> Opening legal submissions on behalf of Panuku, 10 September 2018, paras 8.4 – 8.6.

<sup>131</sup> Panuku opening submissions, 10 September 2018, para 8.6.

<sup>132</sup> Cook and Lala Rebuttal, para 9.1.

Appeal in *R J Davidson Family Trust*. There, the Court of Appeal said:<sup>133</sup>

[82] Having regard to the foregoing discussion we agree with Cull J's conclusion that it would be inconsistent with the scheme of the Act to allow regional or district plans to be "rendered ineffective" by general recourse to pt 2 in deciding resource consent applications, providing the plans have been properly prepared in accordance with pt 2. We do not consider however that King Salmon prevents recourse to pt 2 in the case of applications for resource consent. Its implications in this context are rather that genuine consideration and application of relevant plan considerations may leave little room for pt 2 to influence the outcome. That was so in the present case because of both the NZCPS and the Sounds Plan.

[681] Of relevance, counsel for the Council also referred to the NZCPS as an example of another "qualifying competently-prepared [instrument] containing a coherent set of policies".

[682] Having regard to our analysis of the proposal against the provisions of the NZCPS earlier in this decision, we find once again that there is no call to resort to the provisions of Part 2 of the Act.

[683] Drawing together all of our relevant findings required by s 104, s 104D, s 108; and having found that we have no need to bring the provisions of Part 2 RMA into consideration; and having considered and made findings on the very limited number of issues in consideration at the hearing earlier this month (substantially favourable to Panuku); and having considered several iterations of draft conditions of consent in great detail and worked with the parties before, during and after the hearing to refine the conditions, we find that all matters will be appropriately managed under the proposed conditions of consent as finally refined and approved by us, especially through the detailed management plans required under those conditions. It is accordingly our decision that consent is granted to the proposal subject to the conditions, which are attached as **Appendix C**.

[684] When finally checking off all conditions, we noted some infelicities of drafting. We list here the changes we direct to cure them. None affect substantive outcomes at all, so we have not directed that they be written into the set before we issue this decision.

(a) Condition 1(i) – Definition of Terms: "Damage":

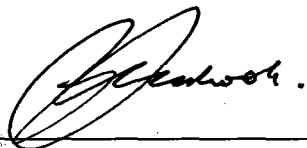


- i) Delete the introductory words and replace with: “means building damage as described in the table below, including Aesthetic, Serviceability, and Stability Damage but does not include Category 0 Negligible Damage.”.
  - ii) Amend the text for Category 4 – Severe so that the last sentence finishes with the words “number of cracks”.
- (b) Condition 1(r) – Definition of Terms: Amend “Noise Event” by inserting the following words at the end of the definition: “but are subject to condition 183Q and the NEMP”.
- (c) Condition 21 – Management Plan Certification Process: Delete the words “No works shall commence until written certification of a Management Plan has been received ...” and replace with “No works or activities covered by an individual Management Plan shall commence until written certification of that Management Plan ...”
- (d) Condition 44 – Implementation – Advice note:
  - i) Delete “to arrange this meeting” as these words are redundant;
  - ii) Replace “monitoring@aucklandcouncilgovt.nz” with “monitoring@aucklandcouncil.govt.nz”.
- (e) Condition 95(b) – Alert level actions: Insert “groundwater levels at” after “Re-measure” and before “all Monitoring Stations”.
- (f) Condition 95(e) – Alert level actions: Insert “groundwater levels at” after “Measure and record” and before “all Monitoring Stations”.
- (g) Condition 96B(g) – Groundwater Monitoring and Contingency Plan: Delete “may” and replace with “shall”.
- (h) Condition 100(d) – Contingency Actions: Delete “the consent holder shall” as these words are redundant.
- (i) Conditions 120 to 135A – Trees:
  - i) In condition 121, insert “qualified and” after “suitably” and before “experienced”.
  - ii) Make consistent the references to “Appointed arborist” throughout;
  - iii) Replace references to “consent holder’s nominated arborist” with “Appointed arborist” – see esp. conditions 121A, 125A, 127, 128, 129(c), and 135A; and



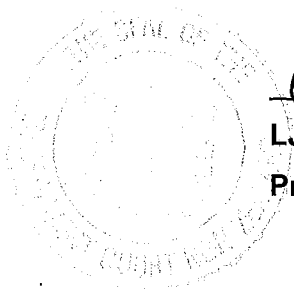
- iv) In condition 125, delete “a suitably qualified and experienced arborist” in both places and replace with “the Appointed arborist”.
- (j) Condition 135B(a) – Geotechnical conditions: delete “135(a)” and replace with “135B(a)”.
- (k) Condition 139(a) – Industrial and Trade Activities Environmental Management Plans: delete apostrophe in “ITAs”.
- (l) Condition 180 – Event Management Plan: In the second paragraph, insert “Event” before “Emergency Management Plan”.
- (m) Condition 183J(h)(iv) – Event Emergency Management Plan:
  - i) delete “EEP” and replace with “the WPBEEP”;
  - ii) delete the words “as identified in Condition 174” so that all other emergency management plans are taken in to account, wherever they may be located.
- (n) Condition 183O – Noise Events Management Plan: delete “Rules I211.6.1(1) and I214.6.4(4)” and replace with “Condition 183Q”.
- (o) Condition 186(a) and (b) – Syndicate Staff Travel Plans: Insert “spaces” after “parking” in all four places.

For the court:



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**LJ Newhook**  
**Principal Environment Judge**



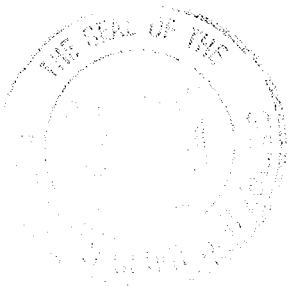


# List of Appendices

**Appendix A – Application and Property Details**

**Appendix B – Site and Locality**

**Appendix C – Conditions of Consent**



## APPENDIX A – Application and Property Details

<b>Site Address:</b>	11-99 Brigham Street 1 Brigham Street 9 Brigham Street 8-34 Brigham Street 51E Brigham Street 58 Brigham Street 90 Brigham Street 49-63 Brigham Street 65-75 Brigham Street 37-55 Madden Street 141-177 Halsey Street 155-161 Halsey Street 220 Quay Street 149-159 & 161-173 Quay Street 149 Quay Street
<b>Applicant:</b>	Panuku Development Auckland Ltd
<b>Legal description:</b>	Part Lot 37 DP 131568 and PT Harbour WAITEMATA Lot 36 DP 131567 Lot 1 DP 119658 Lot 4 DP 119658 Lot 45-48 DP 27998 Lot 49-58 DP 27338 SEC 4 SO 415995 Lot 2 DP 119658 SEC 5 SO 415995 SEC 10 SO 415995 SEC 6 SO 415995 SEC 8 SO 415995 SEC 9 SO 415995 Lot 3 DP 74831 Lot 2 DP 74831 Lot 2 DP 25871 Lot 3 DP 25871 Lot 4 BLK II DP 25871 Lot 1 DP 25871



Lot 7 BLK II Deeds Reg 226  
Lot 8 BLK II Deeds Reg 226  
Lot 9 BLK II Deeds Reg 226  
Lot 10 BLK II Deeds Reg 226  
Lot 11 BLK II Deeds Reg 226  
Lot 1 BLK II Deeds Reg 226  
Lot 2 BLK II  
Section 5 SO 427663  
Section 3 SO 427663  
Section 1 SO 427663  
Section 1 SO 404153  
Part Lot 34 DP 131567  
Lot 1 DP 436625  
Lot 2 DP 436625  
Lot 3 DP 436625  
Lot 1 DP 338555  
Lot 2 DP 338555  
Lot 4 DP 153316  
Lot 3 DP 153316  
Lot 1 DP 179758

Copies of the Certificate of Titles are contained in Appendix Three of Volume One of the Application, April 2018.

<b>NZTM map reference:</b>	mE1756965 mN5921502
<b>Site area:</b>	Approximately 26 hectares
<b>Auckland Unitary Plan (Operative in part)</b>	
<b>Zoning and precinct:</b>	Business City Centre Zone General Coastal Marine Zone Wynyard Precinct (sub-precincts E, F, G and the CMA) Viaduct Harbour Precinct (sub-precincts A, B and the CMA)
<b>Overlays, controls, special features, designations, etc:</b>	Natural Heritage: Regionally Significant Volcanic Viewshafts and Height Sensitive Areas Overlay – E10, Mount Eden, Viewshafts Controls: Coastal Inundation 1 per cent AEP Plus 1m control – 1m sea level rise Controls: Macroinvertebrate Community Index Designation: 505 Public Open Space (Auckland Council)

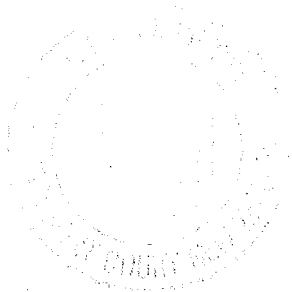


Designation: 506 Road and public open space - Gateway Plaza (Auckland Council)

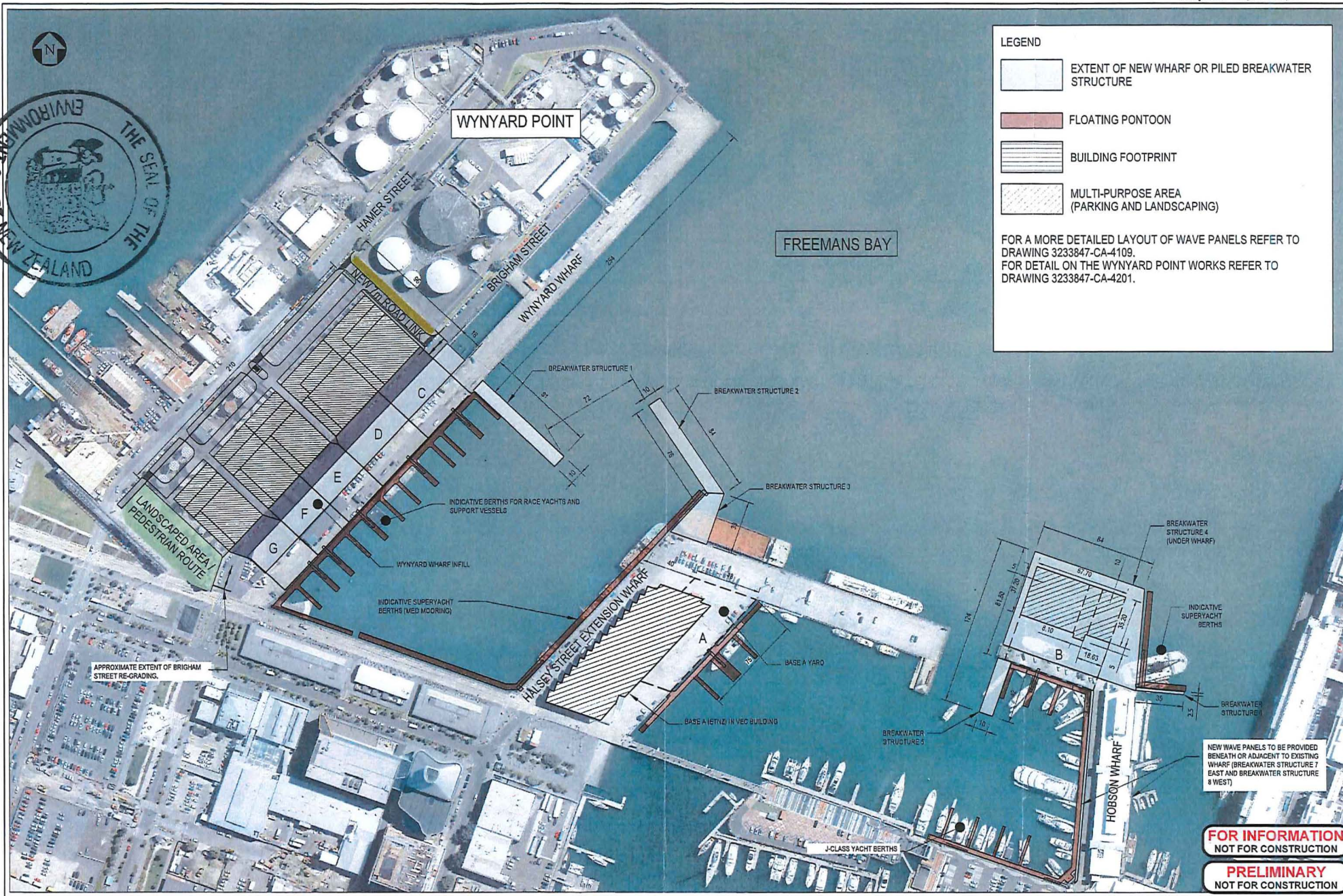
Designation: 509 Public Open Space (Auckland Council)

Designation: 510 Public open space (Auckland Council)

Designation: 512 Public open space/road (Auckland Council)







**FOR INFORMATION  
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**PRELIMINARY  
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No.	Revision	By	CHK	Appd	Date
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D	REVISED FOR CONSENT	TT	SJP	SJP	7.08.18
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B	ISSUED FOR CONSENT	JPG	SJP	SJP	10.04.18

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Project: AMERICA'S CUP WYNYARD HOBSON

Ministry of Business, Innovation & Employment  
HUIKURA WHAKATUTUHI

Title: MARINE WORKS CIVIL DRAWING 1  
OVERALL GENERAL ARRANGEMENT LAYOUT PLAN

Discipline: CIVIL

Drawing No.: 3233847-CA-4101

Rev: E

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DO NOT SCALE

IF IN DOUBT ASK.

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# APPENDIX C - Conditions of Consent

\* Note the Court's minor edits in paragraph [684] of the decision.

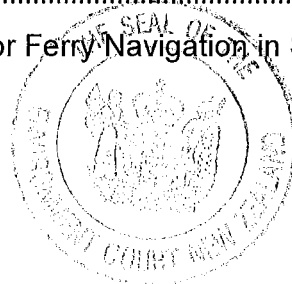
America's Cup Wynyard Hobson



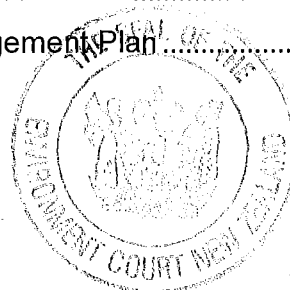
Applicant's Proposed Conditions – Updated Reply Version Including Responses  
Proposed during questioning

12 September 2018

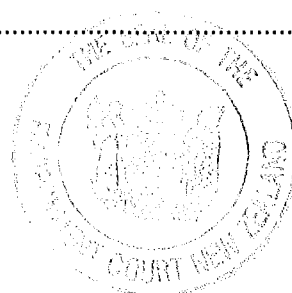
Table of Contents	Page
List of Annexures .....	iv
Glossary of Terms .....	iv
<b>General .....</b>	<b>1</b>
Definition of Terms .....	1
Commencement & Duration of Consents .....	3
Mana Whenua Engagement .....	5
Removal of Structures/Reinstatement .....	7
Access to the Site .....	9
Monitoring .....	9
Review Condition .....	9
Development in Accordance with Plans .....	10
Management Plan Certification Process .....	10
<b>Pre-construction Conditions .....</b>	<b>11</b>
Community Liaison Group .....	11
Base Design - Buildings, Signage/Branding and Yard Areas .....	12
Public Space Design .....	13
Roading Design and Layout .....	13
Detailed Engineering Drawings and Details .....	14
As-Built Drawings .....	14
Construction Environmental Management Plan .....	15
Construction Quality Assurance .....	16
Construction Works Programme .....	17
Site Management .....	17
Implementation .....	18
Accidental Discovery Condition .....	19
Restrictions on Breakwater Construction for Ferry Navigation in Situ .....	19



Restrictions on Construction of Superyacht Berthage on Existing Halsey Wharf .....	20
Navigation and Safety Notifications and Documentation .....	20
Dredging and Placement of Mudcrete in the CMA.....	21
Management Plan for Dredging and Placement of Mudcrete in the CMA .....	21
Water Quality Monitoring for Dredging of North Wharf and Placement of Mudcrete in the CMA - Sampling.....	22
Water Quality Monitoring for Dredging and CMA Mudcrete – Trigger Levels and Contingency Plan .....	24
Aerial Photography Monitoring for Dredging .....	24
Reporting for Dredging and Placement of Mudcrete in the CMA.....	25
Erosion and Sediment Control Plan .....	25
Contaminated Land Management .....	28
Detailed Site Investigation and Remediation Action Plan .....	28
Site Management.....	30
Groundwater.....	30
Damage Avoidance .....	30
Alert Levels .....	30
Alert Level actions.....	31
Groundwater Monitoring and Contingency Plan .....	31
Groundwater Monitoring .....	33
Contingency Actions.....	33
Reporting .....	34
Notice of Completion .....	34
Construction Traffic.....	34
Construction Traffic Management Plan .....	34
Construction Staff Travel Plan .....	37
Construction Noise and Vibration .....	38
Construction Lighting Management Plan.....	40
Biosecurity Management Plan.....	41
Inner Viaduct Harbour Environmental Management Plan .....	42
Trees.....	43
Geotechnical Conditions .....	46
Hobson Wharf Base B Construction Management Plan.....	46



<b>Post-Construction Requirements.....</b>	<b>47</b>
Industrial and Trade Activities .....	47
Stormwater Treatment Devices .....	47
Industrial and Trade Activities Environmental Management Plans.....	47
Industrial and Trade Activities Emergency Spill Response Plans.....	49
Reporting.....	49
Stormwater Management.....	50
Stormwater Systems and Treatment Devices .....	50
Pre-construction meeting.....	51
Post-construction meeting .....	51
As-Built Drawings.....	51
Operation and Maintenance Plan.....	52
Maintenance Contract .....	52
Maintenance Report .....	52
<b>Pre-Occupation and Event Conditions .....</b>	<b>53</b>
Noise.....	53
Wynyard Point Bases Design and Management.....	54
Location of Base Buildings .....	54
Detailed Design .....	54
Occupant Numbers.....	54
Pedestrian Access .....	54
Wynyard Point Bases Emergency Evacuation Plan.....	54
Wynyard Wharf South Water Space area.....	55
Servicing, Delivery and Guest Transport Plans.....	56
Event Management Plan.....	58
Event Transport Management Plan .....	59
Event Emergency Management Plan .....	63
Event Lighting Management Plan .....	63
Noise Events Management Plan .....	64
Noise Events .....	65
Syndicate Staff Travel Plans .....	66
Wynyard Point Traffic Measures.....	67





VEC Syndicate Base Traffic Management Plan.....	67
VEC Syndicate Base Marine and Fishing Industry Management Plan.....	69
Public Access.....	69
Use of and Buildings on Wharf Extensions and Infill.....	69
Legacy Use Options.....	70
Illuminated Signage.....	71
BAU Lighting.....	71

### List of Annexures

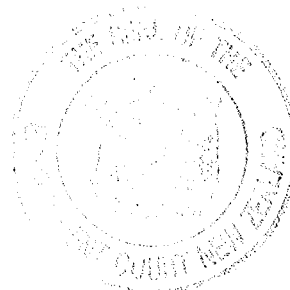
Annexure A	Drawings and Documents (refer to Condition 13)
Annexure B	Management Plans
Annexure C	America's Cup Wynyard Hobson Building, Yard and Public Open Space Design Requirements
Annexure D	Protected Objects Protocol

### Glossary of Terms

ACKEP	America's Cup Kaitiaki Engagement Plan
BMP	Biosecurity Management Plan
BPO	Best Practicable Option
CCOs	Council-Controlled Organisations
CEMP	Construction Environmental Management Plan
CLG	Community Liaison Group
CLMP	Construction Lighting Management Plan
CMA	Coastal Marine Area
CMCA	Common Marine and Coastal Area
CNVMP	Construction Noise and Vibration Management Plan
CPTED	Crime Prevention Through Environmental Design
CSTP	Construction Staff Travel Plan
CTMP	Construction Traffic Management Plan
DSI	Detailed Site Investigation
EEmMP	Event Emergency Management Plan
ELMP	Event Lighting Management Plan
EMP	Event Management Plan
EPTMM	Event and Public Transport Management Measures
ETMP	Event Transport Management Plan
ESCP	Erosion and Sediment Control Plan
GWMCP	Groundwater Monitoring and Contingency Plan
HWMP	Hobson Wharf Base B Construction Management Plan
ITA ESRPs	Industrial and Trade Activities Emergency Spill Response Plans
ITA HSEMPs	Industrial and Trade Activities Hazardous Substances and Environmental Management Plans
IVHEMP	Inner Viaduct Harbour Environmental Management Plan
MEOC	Major Events Operations Centre
MPDPM	Management Plan for Dredging and for Placement of Mudcrete in the



	CMA
NEMP	Noise Events Management Plan
NSMP	Navigation and Safety Management Plan
PCMM	Pedestrian and Cyclist Management Measures
PGDR	Project Geotechnical Design Report
RAP	Remediation Action Plan
RMA	Resource Management Act 1991
SDGTPs	Servicing, Delivery and Guest Transport Plans
SQEP	Suitably Qualified Environmental Practitioner
SSTMPs	Site-Specific Traffic Management Plan
TAG	Panuku Development Auckland's Technical Advisory Group
TMP	Traffic Management Plan
TPMM	Traffic and Parking Management Measures
VEC	Viaduct Events Centre
VEC SB MFIMP	VEC Syndicate Base Marine & Fishing Industry Management Plan
VEC SB TMP	VEC Syndicate Base Traffic Management Plan
WPBEEP	Wynyard Point Bases Emergency Evacuation Plan



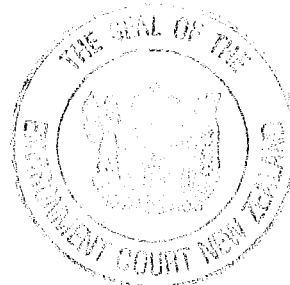
# General

## Definition of Terms

1. In these conditions:

- a) "Alert Levels" means specific groundwater levels at which actions are required as described in the conditions;
- b) "Authorised Vehicle" means vehicles travelling to and from properties to which vehicle access needs to be maintained;
- c) "certify", "certification" and "certified" in relation to plans or management plans means assessed by Council staff acting in a technical certification capacity, and in particular as to whether the document or matter is consistent with, or sufficient to meet, the conditions of this consent in terms of the matters set out in the conditions;
- d) "Commencement of Construction" means commencement of any construction works for the Project or (as the case requires) commencement of any construction works for a part or stage of the Project. For the avoidance of doubt, it excludes site investigations, fencing, and any activities that do not need resource consent / are permitted activities.
- e) "Commencement of Dewatering/Stabilisation" - means when ground improvements commence;
- f) "Completion of Dewatering /Stabilisation" means when all ground improvements are complete;
- g) "consent holder" means Panuku Development Auckland;
- h) "Council" means the Auckland Council;
- i) "Damage" means - including Aesthetic, Serviceability, Stability, but does not include Negligible Damage as described in the table below:

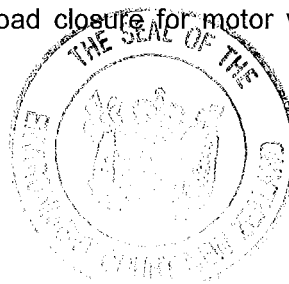
<b>Building Damage Classification</b>			
<b>Category of Damage</b>	<b>Normal Degree of Severity</b>	<b>Description of Typical Damage</b> <i>(Building Damage Classification after Burland (1995), and Mair et al (1996))</i>	<b>General Category</b> <i>(after Burland – 1995)</i>
0	Negligible	Hairline cracks.	<b>Aesthetic Damage</b>
1	Very Slight	Fine cracks easily treated during normal redecoration. Perhaps isolated slight fracture in building. Cracks in exterior visible upon close inspection. Typical crack widths up to 1mm.	



2	Slight	Cracks easily filled. Redecoration probably required. Several slight fractures inside building. Exterior cracks visible, some repainting may be required for weather-tightness. Doors and windows may stick slightly. Typically crack widths up to 5mm.	
3	Moderate	Cracks may require cutting out and patching. Recurrent cracks can be masked by suitable linings. Brick pointing and possible replacement of a small amount of exterior brickwork may be required. Doors and windows sticking. Utility services may be interrupted. Weather tightness often impaired. Typical crack widths are 5mm to 15mm or several greater than 3mm.	<b>Serviceability Damage</b>
4	Severe	Extensive repair involving removal and replacement of walls especially over door and windows required. Window and door frames distorted. Floor slopes noticeably. Walls lean or bulge noticeably. Some loss of bearing in beams. Utility services disrupted. Typical crack widths are 15mm to 25mm but also depend on the	
5	Very Severe	Major repair required involving partial or complete reconstruction. Beams lose bearing, walls lean badly and require shoring. Windows broken by distortion. Danger of instability. Typical crack widths are greater than 25mm but depend on the number of cracks.	<b>Stability Damage</b>

Note: 'Description of Typical Damage' applies to masonry buildings only. The 'General Category' applies to all buildings.

- j) "Event" means the use and operation of land and water space associated with 36th America's Cup event to be held in the six month period from 1 November 2020 to 30 April 2021 (including pack in and pack out of land based and water based activities/structures) and any subsequent America's Cup event(s) held during the ten (10) year period from the commencement of consent with a six month period each;
- k) "Full Road Closure" means the whole of the road carriageway would be closed to all motor vehicles and cyclists but remain accessible to pedestrians;
- l) "Halsey Wharf" means the Halsey Street Extension Wharf and the Western Viaduct Wharf;
- m) "Harbourmaster" means the Harbourmaster's office within Auckland Transport;
- n) "Heavy vehicle" means a vehicle with a gross vehicle mass exceeding 3.5 tonnes;
- o) "Infrastructure" means the wharves, piles, berths, buildings, other structures, and related works, services and access for the Event and Operations to be constructed by Panuku Development Auckland and includes the construction of base building platforms and foundations, but otherwise excludes the syndicate bases (buildings and associated yards on land/wharves and water space) to be constructed by the syndicates;
- p) "Managed Road Closure" means a full road closure for motor vehicles only, with access permitted for authorised vehicles;



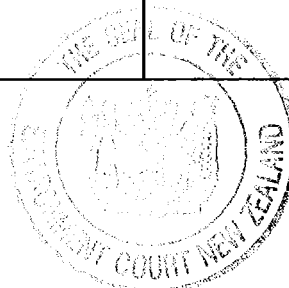
- q) "Monitoring Station" - means a groundwater monitoring borehole;
  - r) "Noise Event" means the planned use of a space or building involving amplified sound being broadcast to people and where the noise levels (excluding crowd noise) will not comply with the noise limits in Condition 168A;
  - s) "Operations" means the use and operation of the syndicate bases (buildings and associated yards on land/wharves and water space) for a period up to ten (10) years from the commencement of consent;
  - t) "Partial Road Closure" means a restriction on the capacity and/or direction of travel, potentially for all modes, within the whole road reserve;
  - u) "Project" means the construction, operation and management of the Infrastructure on land and water space to facilitate the Operations and Event;
  - v) "Seasonal Low Groundwater Level" - means the annual lowest groundwater level – which typically occurs in summer;
  - w) "Services" means - including fibre optic cables, sanitary drainage, stormwater drainage, gas and water mains, power and telephone installations and infrastructure, road infrastructure assets such as footpaths, kerbs, catch-pits, pavements and street furniture;
  - x) "Team Leader Compliance Monitoring – Central" means the Team Leader Compliance Monitoring – Central for the time being of the Council's Licencing and Regulatory Compliance Department;
2. [not used]
3. The consent holder shall appoint a suitably experienced person with appropriate seniority for a period of 10-years from commencement of the consent to:
- (a) Take responsibility for the implementation of the consent conditions;
  - (b) Maintain oversight of the overall programme;
  - (c) Ensure liaison and consultation between stakeholders to the conditions of consent including but not limited to Auckland Council, Council-Controlled Organisations, the Community Liaison Group, the Forum (Condition 5), and the Auckland Civil Defence and Emergency Management Group;
  - (d) Manage the lodgement or submission of documents or reports to the Team Leader Compliance Monitoring – Central where required by the conditions;
  - (d) Carry out appropriate reporting to assist the Council with compliance monitoring; and
  - (e) Take such actions as necessary to resolve any matters arising from the implementation of the conditions.

#### **Commencement & Duration of Consents**

4. Pursuant to sections 116 and 123 of the RMA, the commencement and duration for the various resource consents shall be as set out in the table below:



Consent	Duration (unless the consent has lapsed, been surrendered, or been cancelled at an earlier time)	Commencement
Land use consents (for the establishment of temporary structures associated with the America's Cup, land disturbance activities, including earthworks, NES consent for disturbance of contaminated soils, and tree removal) and for the Event	(a) Consents for the Event and temporary structures: 10 years from commencement  (b) For all other land use consents: 5 years from commencement	In accordance with section 116(1) of the RMA
Consent to construct structures in the CMA and to occupy for construction purposes under section 12 of the RMA	10 years from commencement	
Consent to carry out the Event on the structures in the CMA under section 12 of the RMA	10 years from commencement	
Occupation of the CMCA for the Base B structure under section 12 of the RMA	10 years from commencement	
Consent to occupy the CMCA under section 12 of the RMA following completion of construction	35 years from commencement	Commences on the date the construction of the structures in the CMA is completed (as notified to the Team Leader Monitoring Compliance – Central under condition 44)
ITA discharge consent	10 years from commencement	In accordance with section 116(1) of the RMA
Stormwater diversion and discharge consent	35 years from commencement	
Consent to discharge contaminants into air associated with storage of the dredged materials and use of cement during construction	10 years from commencement	
Consent for capital works dredging within the CMA to facilitate construction of the coastal structures and create adequate depths for the boats	10 years from commencement	
Consent for diversion of ground water associated with ground stabilisation works	35 years from commencement	
Consent to discharge of contaminants to land and water as a result of storage of the dredged material and potential use in construction	10 years from commencement	

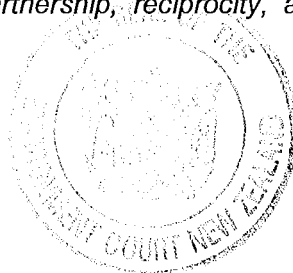


## Mana Whenua Engagement

5. Prior to the Commencement of Consent, the consent holder shall invite the mana whenua listed below in c) to establish a Forum to:
- a) Assist the consent holder in the preparation of an America's Cup Kaitiaki Engagement Plan (ACKEP) (Conditions 5A-5F) consistent with relevant customary practices and in accordance with the principles of the Treaty of Waitangi (Te Tiriti o Waitangi), especially the principles of consultation, active participation and partnership; and
  - b) Fulfil the obligations set out in the America's Cup Kaitiaki Engagement Plan on behalf of mana whenua.
  - c)
    - 1. Ngāi Tai ki Tāmaki
    - 2. Ngāti Maru
    - 3. Ngāti Tamaoho
    - 4. Ngāti Te Ata Waiohua
    - 5. Ngaati Whanaunga
    - 6. Ngāti Tamaterā
    - 7. Ngāti Whātua Ōrākei
    - 8. Te Ākitai Waiohua
    - 9. Te Patukirikiri
    - 10. Te Kawerau ā Maki
    - 11. Ngāti Pāoa
    - 12. Ngāti Whātua o Kaipara
    - 13. Te Rūnanga o Ngāti Whātua
    - 14. Ngāti Wai
    - 15. Ngāti Manuhiri
    - 16. Ngāti Rehua Ngāti Wai ki Aotea
    - 17. Te Uri o Hau
    - 18. Te Ahiwaru Waiohua
    - 19. Waikato-Tainui

The consent holder shall facilitate and fund the additional resourcing of the Forum to meet all its fair and reasonable costs associated with any work streams required for the Forum to fulfil its role in respect of this condition.

**Advice Note 1:** *It is acknowledged that Te Tiriti o Waitangi/The Treaty of Waitangi underpins the relationship between Mana Whenua and the Crown. Inherent in this are (amongst other things) the principles of partnership, reciprocity, active protection and*



*equity. Importantly, the principle of partnership is endorsed by the concept of good faith. Those principles are acknowledged in the Local Government Act 2002.*

**Advice Note 2:** *The Consent Holder acknowledges that the Waitematā is of extremely high spiritual, ancestral, cultural, customary and historical importance to Mana Whenua*

**Advice Note 3:** *The Consent Holder records its commitment to implementing this condition in good faith, and to using the services of an independent mediator, as necessary.*

- 5A. The consent holder shall prepare an **America's Cup Kaitiaki Engagement Plan** (ACKEP) for the Project with the assistance of the Forum. Within ten (10) working days of the Commencement of Consent or prior, the consent holder shall provide a copy of the ACKEP to the Team Leader Compliance Monitoring – Central.
- 5B. The purpose of the ACKEP is to assist mana whenua to express tikanga, fulfil their role as kaitiaki, and establish the engagement process before, during and after the completion of construction activities for implementation throughout the project. It shall be formulated through:
- a) Providing the framework for a collaborative approach between the consent holder and mana whenua to address the matters which impact cultural values / interest, before, during and after the completion of the construction activities; and
  - b) Identifying how the consent holder and the Forum will ensure that effective relationships are provided for throughout the Event.
- 5C. The objectives of the ACKEP are to:
- a) Acknowledge the cultural and spiritual importance of the Waitemata and its surrounds to mana whenua;
  - b) Acknowledge mana whenua as kaitiaki;
  - c) Recognise the importance of engagement and identification of key mana whenua values, areas of interest and matters concern in relation to the Project;
  - d) Provide mana whenua with an opportunity to be actively involved with the formulation and implementation of the ACKEP; and
  - e) Facilitate engagement between the consent holder and mana whenua in relation to the activities authorised by this consent, and to assist mana whenua to fulfil their role as kaitiaki.
- 5D. As a minimum, the ACKEP shall include details of the following matters:
- a) How mana whenua who have historic associations with the Project area and its surrounding waters have been involved in the formulation of the ACKEP and are to be involved in its implementation;
  - b) The process for involvement of mana whenua in the preparation and implementation of the engineering design, construction management, and operational plans as they relate to:





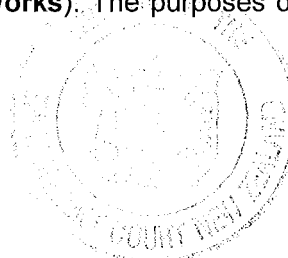
- (i) Managing water quality during the construction and operation of the Infrastructure;
  - (ii) Managing underwater noise during construction so as to protect marine animals;
  - (iii) Protecting the waters of the area from biosecurity risks;
  - (iv) Providing cultural markers within the Infrastructure to recognise the historic associations of mana whenua with the area and the significance of the land and seascapes of Waitematā to mana whenua; and
  - (v) Enabling use of the Infrastructure for cultural activities.
- c) In giving effect to Condition 5D.b), involvement by mana whenua in preparation and implementation of the following management plans:
- (i) Management Plan for Dredging and for Placement of Mudcrete in the CMA (MPDPM);
  - (ii) Erosion and Sediment Control Plan (ESCP);
  - (iii) Remediation Action Plan (RAP);
  - (iv) Groundwater Monitoring and Contingency Plan (GWMCP);
  - (v) Construction Noise and Vibration Management Plan (CNVMP);
  - (vi) Biosecurity Management Plan (BMP);
  - (vii) Inner Viaduct Harbour Environmental Management Plan (IVHEMP);
  - (viii) Industrial and Trade Activities Hazardous Substances and Environmental Management Plans (ITA HSEMPs);
  - (ix) Industrial and Trade Activities Emergency Spill Response Plans (ITA ESRPs); and
  - (x) Event Management Plan (EMP).
- d) Accidental discovery protocols;
- e) Procedures for the cultural induction of construction workers and Event staff;
- f) Timing, frequency, location and methods of cultural monitoring procedures and protocols during construction activities to demonstrate achievement of the objective(s) for the ACKEP;
- g) Ongoing mana whenua engagement procedures following the completion of construction; and
- h) The process by which amendments can be made to the ACKEP.

5E. The Consent Holder shall operate in accordance with the ACKEP.

5F. The role of the Forum in terms of this consent shall continue for the duration of the 10-year period of the consent, and until the requirements of Conditions of 6 to 7C have been complied with.

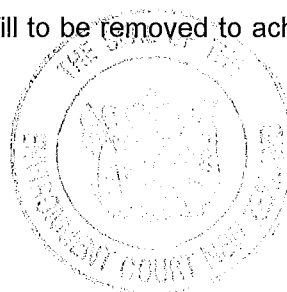
### **Removal of Structures/Reinstatement**

6. The buildings for syndicate bases B-G shall be removed no later than six (6) months after any loss of the America's Cup during the period ten (10) years following the commencement of consent (**Base Removal Works**). The purposes of the base removal



works are to ensure that base buildings are removed when not required after an America's Cup Event, that demolition works are managed appropriately and the surface of Hobson Wharf is left in a suitable condition for future use. For the avoidance of doubt, this condition does not prevent a replacement base being constructed under this consent and in accordance with all conditions in the event that the Cup is won again overseas and hosted back in Auckland during the ten year period, and in any event all bases B-G are to be removed by the end of the ten year period.

- 6A. The consent holder shall give at least one (1) month's written notice to the Team Leader Compliance Monitoring - Central prior to the commencement of any Base Removal Works, and such notice shall be accompanied by the following details:
- a) The proposed demolition / removal methodology, including sequence and timing;
  - b) Duration of works and hours of operation;
  - c) Measures to manage environmental effects, including (but not limited to) dust, construction noise, and construction traffic effects;
  - d) For the removal of Bases C-G, drawings detailing the site surface and boundary treatment: and
  - e) For the removal of Base B, drawings detailing the design of the public space and Base B building and yard area of Hobson Wharf, the extent of which is illustrated on Figure 4 of the America's Cup Wynyard Hobson Building, Yard and Public Open Space Design Requirements in Annexure C, which shall include the following:
    - (i) Make-good and treatment of the wharf surface with a consistent concrete surface similar to that of the Halsey Wharf Extension, suitable for activities permitted by the Auckland Unitary Plan;
    - (ii) Any retention of existing or any proposed services; and
    - (iii) Any public realm element, for example furniture, lighting and handrails.
7. No less than 50% of Wynyard Wharf infill shall be removed no later than ten (10) years following the commencement of consent (**Infill Removal Works**). The purpose of the Infill Removal Works is to ensure that Wynyard Wharf reverts to the character of a wharf rather than that of a surface contiguous with the land on Wynyard Point while ensuring the retained infill portions align with future east-west lanes in Wynyard Point.
- 7A. The consent holder shall give at least one (1) month's written notice to the Team Leader Compliance Monitoring - Central prior to the commencement of any Infill Removal Works, such notice to be accompanied by the following details:
- a) The proposed demolition / removal methodology, including sequence and timing;
  - b) Duration of works and hours of operation;
  - c) Measures to manage environmental effects, including (but not limited to) dust, construction noise, and construction traffic effects;
  - d) Plans detailing the 50% of the wharf infill to be removed to achieve the purpose set out in Condition 7; and



- e) Provision for management of any public access.
- 8. All Base Removal Works, and/or Infill Removal Works shall be carried out in accordance with the details in Conditions 6A and 7A respectively.
- 8A. No later than two months after the conclusion of any Event provided for during the term of this consent, the consent holder shall remove all pontoons and associated piles and structures along the western edge of the existing Halsey Wharf to enable those areas to be used for the berthage of fishing and other vessels.

#### **Access to the Site**

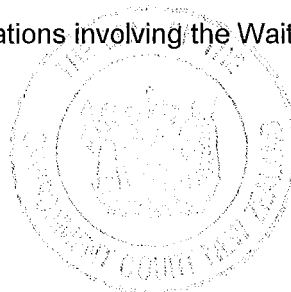
- 9. The servants or agents of the Council shall have access to all relevant parts of the site at all reasonable times for the purpose of carrying out inspections, surveys, investigations, tests, measurements and/or to take samples.

#### **Monitoring**

- 10. The consent holder shall pay the Council an initial consent compliance monitoring charge of \$10,000.00 (inclusive of GST), plus any further monitoring charge or charges to recover the actual and reasonable costs that have been incurred to ensure compliance with the consents.
- 11. The \$10,000.00 (inclusive of GST) charge shall be paid prior to the commencement of construction and the consent holder will be advised of the further monitoring charge or charges as they fall due. Such further charges are to be paid as required by the invoice.

#### **Review Condition**

- 12. Pursuant to section 128 of the RMA, the conditions of the consent may be reviewed by the Council (at the consent holder's cost):
  - a) At any time during the construction period in relation to activities and structures that are subject to the provisions in sections 15 and 16 of the RMA and where the best practicable option may be necessary to remove or reduce any adverse effect on the environment;
  - b) At any time during the construction period, and thereafter in the month of November annually for 10 years, and thereafter at 5 yearly intervals, in relation to altering any monitoring requirements as a result of monitoring results and/or in response to changes to the environment, and/or changes in engineering and/or scientific knowledge;
  - c) Within six (6) months from the date the Team Leader Compliance Monitoring – Central is notified of completion of the final stage of construction work (in accordance with Condition 44), and thereafter in the month of November annually for 10 years, and thereafter at 5 yearly intervals, to deal with any adverse effect(s) on the environment which may arise from the exercise of the consent, or which may be identified following:
    - (i) The granting of a customary marine title or protected customary right or the vesting of ownership over any part of the common marine and coastal area encompassing the Project area; or
    - (ii) The outcome of any Treaty negotiations involving the Waitematā Harbour; and



- d) Within three (3) months of the completion of each Event to enable reconsideration of adequacy and appropriateness of all conditions governing the operation of the Event.

**Development in Accordance with Plans**

- 13. Construction and the activities authorised by these consents shall be undertaken in general accordance with the drawings and all information submitted with the application, as detailed in **Annexure A**, referenced by the Council as BUN60318372.
- 14. In the event of inconsistency between the plans and documents referred to in Condition 13 and the conditions of this consent, the conditions shall prevail.

**Management Plan Certification Process**

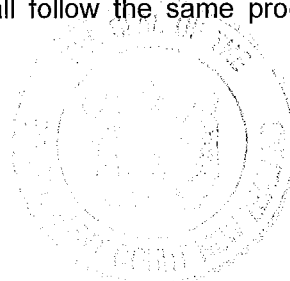
- 15. Conditions 16 to 21 shall apply to all Management Plans required by these conditions.
- 16. Management Plans shall be submitted to the Team Leader Compliance Monitoring – Central for certification in writing. Management Plans shall be submitted at least twenty (20) working days prior to Commencement of Construction unless otherwise specified in the conditions. The consent holder shall ensure that any changes to draft Management Plans are clearly identified.

**Advice Note:** *Any preliminary works, which do not need resource consent / are permitted activities can be undertaken prior to any Management Plan(s) being certified.*

- 17. Management Plans may be submitted in parts or in stages to address particular activities or to reflect a staged implementation of the Project, and when provided in part or for a stage shall be submitted at least twenty (20) working days prior to Commencement of Construction of that part of stage unless otherwise specified in the conditions. Management Plans submitted shall clearly show the linkage with plans for adjacent stages and interrelated activities.

**Advice Note:** *Under Condition 32, the consent holder is required to address in the CEMP construction works programming, including confirmation of the proposed staging and sequence of construction of the Project.*

- 17A. Where consultation on a Management Plan is required by a condition of these consents including any change to a Management Plan contemplated by Condition 20, the consent holder shall provide the following to the Team Leader Compliance Monitoring – Central when submitting the Management Plan for certification:
  - a) A summary of consultation during preparation of the Management Plan;
  - b) Any feedback on the proposed text of the Management Plan from the party or parties that the condition requires consultation with; and
  - c) A response to that feedback indicating the matters that were not incorporated into the text of the Management Plan submitted for certification and the reasons why.
- 18. Should the Team Leader Compliance Monitoring – Central refuse to certify a Management Plan, or a part or stage of a Management Plan, in accordance with Condition 16 above, the consent holder shall submit a revised Management Plan for certification as soon as practicable. The certification process shall follow the same procedures as outlined in Condition 15 above.

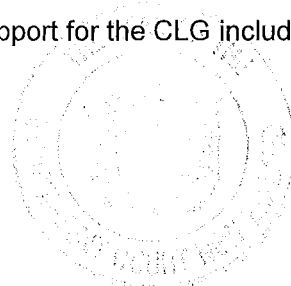


19. Any certified Management Plan may be amended if necessary to reflect any minor changes in design, construction methods or management of effects. Any amendments are to be discussed with and submitted to the Team Leader Compliance Monitoring – Central for confirmation in writing prior to implementation of the change, unless the Team Leader Compliance Monitoring – Central determines in his or her discretion that those amendments once implemented would result in a materially different outcome to that described in the original plan.
20. Any changes to a certified Management Plan involving a materially different outcome under Condition 19 shall be submitted to the Team Leader Compliance Monitoring – Central to certify that they comply with the applicable requirements of these conditions. Any material change must be consistent with the purpose of the relevant Management Plan and the requirements of the relevant conditions of these consents. Where a Management Plan was prepared in consultation with affected parties, any material changes to that Plan shall be prepared in consultation with those same parties.
21. All works shall be carried out in accordance with the certified Management Plans. No works shall commence until written certification of a Management Plan has been received, unless otherwise approved in writing by the Team Leader Compliance Monitoring – Central.

## Pre-construction Conditions

### Community Liaison Group

22. No later than one (1) month following the commencement of this consent under section 116 of the RMA, the consent holder shall establish a **Community Liaison Group (CLG)**.
- 22A. The members of the CLG will include representative(s) of the consent holder, representative(s) of the Auckland Council and CCOs, and shall be open to interested submitters and s274 parties, and body corporates of the apartments in the Viaduct Harbour and Wynyard Precincts.
- 22B. The objectives of the CLG are to:
  - a) Provide a means for all parties to give and receive regular updates on progress with the Project, Operations and Events;
  - b) Provide a regular forum through which information about the Project, Operations and Events can be provided to the community;
  - c) Enable opportunities for concerns and issues to be reported to and responded to by the consent holder; and
  - d) Provide feedback on the development of the CEMP, CTMP, CNVMP, HWMP, EMP and ETMP.
- 22C. The consent holder shall:
  - a) Consult with the CLG on the development and content of the CEMP, CTMP, CNVMP, HWMP, EMP and ETMP and on the Legacy Use Options Plan to the extent required in the applicable conditions;
  - b) Provide reasonable administrative support for the CLG including:

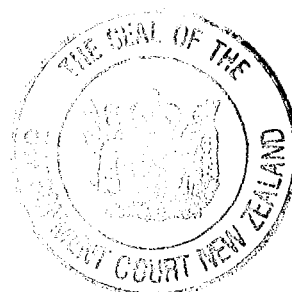


- i. Organising meetings at a local venue;
  - ii. Inviting all members of the CLG;
  - iii. Distributing an agenda to each CLG member no less than ten (10) working days prior to meetings;
  - iv. The taking and dissemination of meeting minutes;
- c) Appoint one or more persons to provide administrative assistance to the CLG and ensure the CLG operates effectively;
  - d) Ensure that the CLG meets at least every two (2) months and more often as required during construction of the Project and during Events, and at least annually at other times, or as otherwise agreed by the CLG;
  - e) Provide an update at least every two (2) months (or as otherwise agreed by the CLG):
    - i. During construction of the Project on compliance with consent conditions and the CEMP;
    - ii. During Events on compliance with the consent conditions and the EMP;
  - f) The CLG shall continue for a period of 10-years from commencement of the consent, and until the requirements of Conditions 6 to 8A have been complied with.

**Base Design - Buildings, Signage/Branding and Yard Areas**

23. Prior to construction of Base Buildings B-G, the Consent Holder shall submit detailed design drawings and supporting information to the Team Leader Compliance Monitoring – Central for certification that the buildings, signage/branding and yard areas achieve the America's Cup Wynyard Hobson Building, Yard and Public Open Space Design Requirements (**Design Requirements**) in **Annexure C**. In all cases the drawings shall demonstrate compliance with the following envelope requirements:
- a) Base building height shall not exceed a maximum of 15m above finished wharf or finished ground level;
  - b) The base building footprint at ground / wharf level shall comply with the Building Footprint areas shown in Figures 2 and 3 of the Design Requirements in Annexure C; and
  - c) The yard areas shall not extend beyond the Syndicate Base Boundary shown in Figures 2 and 3 of the Design Requirements in Annexure C.
24. Prior to the commencement of external alteration works to Base Building A, the Consent Holder shall submit detailed design drawings and supporting information to the Team Leader Compliance Monitoring – Central for certification that the signage/branding and yard area achieves the Design Requirements in **Annexure C**.

**Advice Note:** *For the avoidance of doubt, Base A is located within the existing VEC with minor external alterations which are authorised by Condition 13 of this Consent.*



### **Public Space Design**

25. No later than three (3) months prior to the first Event, the Consent Holder shall submit detailed design drawings and supporting information to the Team Leader Compliance Monitoring – Central for certification that the design of public spaces for the Project achieves the public space components of the Design Requirements in **Annexure C**.
- 25A. Public space design features, as outlined in the Design Requirements in **Annexure C**, shall be implemented prior to the first Event.
- 25B. Prior to submission of drawings to the Team Leader Compliance Monitoring – Central for certification under Conditions 23-25, the following process will occur:
- a) The design of the buildings, signage/branding, yards and/or public spaces, including any supporting information required by the conditions, will be presented to Panuku Development Auckland's **Technical Advisory Group (TAG)**;
  - b) TAG will undertake design review, and provide comment including recommendations for any design changes necessary to give effect to the Design Requirements;
  - c) Designs may be required to be re-submitted to TAG to ensure that appropriate design changes have been made to achieve the Design Requirements and receive landowner approval;
  - d) Once TAG has concluded that the proposed design of buildings, signage/branding, yards and/or public spaces achieve the Design Requirements, the consent holder shall provide a report to the Team Leader Compliance Monitoring – Central, in addition to any other supporting information that may be provided, that describes the TAG process undergone for the design for which certification is sought and the recommendations or conclusions provided by TAG specifying how the proposal achieves the Design Requirements; and
  - e) The Team Leader Compliance Monitoring – Central shall have regard to the TAG report when determining whether to certify that the Design Requirements have been achieved.

### **Roading Design and Layout**

- 25C. At least twenty (20) working days prior to the construction of vehicle, pedestrian and cyclist access to the Wynyard Point bases, Hamer Street footpath and the internal Access Lane of Bases C-G the consent holder shall submit a detailed design of these areas to the Team Leader Compliance Monitoring – Central for certification that it will provide for safe movement of pedestrians and people on bicycles through that area. The detailed design shall be in general accordance with Beca Drawing 3233847-CA-4201, Revision B, Wynyard Point Works Civil Drawing 1, General Arrangement Plan, and McIndoe Urban Boffa Miskell Drawing Wynyard Point Bases Public Realm Integration, Date 13 April 2018, Revision A as referenced in **Annexure A**. The design of the Access Lane shall have specific input from a road safety engineer who has experience in the design of shared zones.



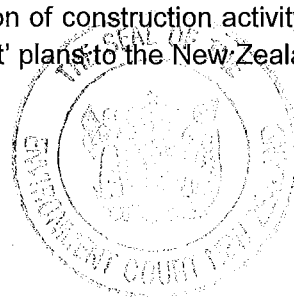
- 25D. The vehicle, pedestrian and cyclist access to the Wynyard Point bases, Hamer Street footpath and the internal Access Lane of Bases C-G shall be built in accordance with the detailed design certified under Condition 25C.
- 25E. At least twenty (20) working days prior to the construction of the Northern Connector Road the consent holder shall submit a detailed design of this private road to the Team Leader Compliance Monitoring - Central for certification that it addresses the Auckland Transport Code of Practice. The detailed design shall be in general accordance with the concept design given in Figure 4-4 of the Beca Traffic and Transport Technical Report, April 2018 report as referenced in **Annexure A**, except that it shall include the following changes:
- a) The right turn movement from the Northern Connector Road into the Access Lane serving the bases has to give way to westbound through traffic on the Northern Connector Road; and
  - b) Pedestrian and cyclist connections shall be retained between Daldy Street/Jellicoe Street and North Wharf/Silo Park through the provision of appropriate facilities, and onward to join Hamer Street and the Access Lane.
- 25F. The Northern Connector Road shall be built in accordance with the detailed design certified under Condition 25E.
- 25G. All vehicle crossing to the bases over the Hamer Street and Northern Connector Road footpaths shall be designed and constructed to the same levels as the footpaths, using the same materials, kerbing, paving, patterns and finish as the footpath, on each side of the crossing.

#### **Detailed Engineering Drawings and Details**

26. At least twenty (20) working days prior to Commencement of Construction for the relevant Project stage (excluding site investigations, demolition and removal of buildings and structures, relocation of services and establishment of site entrances and fencing), the consent holder shall submit detailed engineering designs and drawings of structures in the CMA (including dimensioned cross sections, elevations, site plans of all areas of permanent and temporary structures) to the Team Leader Compliance Monitoring – Central, to be prepared in accordance with the Engineering Plans documents as referenced in **Annexure A**.
27. The consent holder shall ensure that new wharf piles are designed:
- a) For a future 1m increase in the height of the wharf deck that can be staged over several increments over the next 100 years; and
  - b) To recognise the marine environment risk factors of corrosion due to chloride attack.

#### **As-Built Drawings**

28. Within three (3) months of Completion of Construction for each stage of construction (wharves, services and buildings on each base), the consent holder shall supply a complete set of As-Built Drawings to the Team Leader Compliance Monitoring – Central. The As-Built Drawings shall show the location, dimensions and typical cross-sections of structures and services.
- 28A. Within twenty (20) working days of the completion of construction activity in the CMA, the consent holder shall supply a copy of the 'as built' plans to the New Zealand Hydrographic

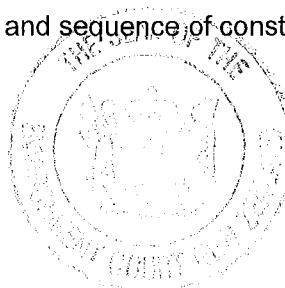




Authority (Land Information New Zealand, Private Box 5501, Wellington 6011 or customersupport@linz.govt.nz). The As-Built drawings shall relate to all activities in the CMA, including finished dredged depths, wharves, breakwaters and other and structures that are appropriate for inclusion on Hydrographic Charts.

### **Construction Environmental Management Plan**

29. The consent holder shall prepare a **Construction Environmental Management Plan** (CEMP) for the Infrastructure construction and works in consultation with the CLG in accordance with Condition 22C. The consent holder shall submit the CEMP to the Team Leader Compliance Monitoring – Central for certification that the CEMP gives effect to the objectives in Condition 30 and complies with the requirements in Conditions 31 to 36. The CEMP shall be in general accordance with the Draft Construction Environmental Management Plan as referenced in **Annexure B**.
30. The objectives of the CEMP are to:
- a) Ensure that the construction works remain within the limits and standards approved under the consent and set out the management procedures and construction methods to be undertaken in order to avoid, remedy or mitigate potential adverse effects arising from construction activities; and
  - b) Give effect to the objectives in the management plans listed in Condition 31.
31. The CEMP shall incorporate or refer to the following management plans and documents:
- a) Management Plan for Dredging and for Placement of Mudcrete in the CMA (MPDPM);
  - b) Erosion and Sediment Control Plan (ESCP);
  - c) Remediation Action Plan (RAP);
  - d) Groundwater Monitoring and Contingency Plan (GWMCP);
  - e) Construction Traffic Management Plan (CTMP);
  - f) Construction Staff Travel Plan (CSTP);
  - g) Construction Noise and Vibration Management Plan (CNVMP);
  - h) Construction Lighting Management Plan (CLMP);
  - i) Biosecurity Management Plan (BMP);
  - j) Inner Viaduct Harbour Environmental Management Plan (IVHEMP);
  - k) Navigation and Safety Management Plan (NSMP); and
  - l) Project Geotechnical Design Report (PGDR).
32. The CEMP shall provide details of the responsibilities, reporting frameworks, coordination and management required for effective site management. The CEMP shall provide information on the following matters:
- a) Construction quality assurance;
  - b) Construction works programming including:
    - (i) An outline construction programme;
    - (ii) Confirmation of the proposed staging and sequence of construction;

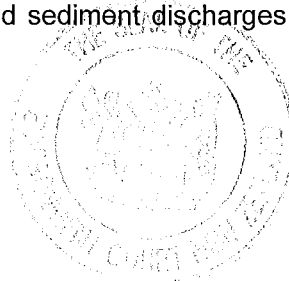


- c) Site management;
- d) Wharf, breakwater, berthage and building construction;
- e) The geotechnical-related earthworks matters addressed in Condition 135Bb);
- f) Consultation and communications, including the methods for communicating and consulting with the CLG (Conditions 22 to 22C); and
- g) For each stage the open area of earthworks and detail on the erosion and sediment control measures to be used with reference to the measures confirmed for the wider site in the ESCP in Conditions 70 to 74.

### **Construction Quality Assurance**

33. This part of the CEMP requires the establishment of management frameworks, systems and procedures to ensure quality management of all on-site construction activities and compliance with the conditions of this consent. This section shall provide details on the following:

- a) Contact details of the contractor's site supervisor or project manager and the consent holder's Project Liaison Person (phone, postal address, email address);
- b) Confirmation of the construction methodology, including for permanent and temporary structures;
- c) System for Hot Work Permits and Underground Services Work Protocols/Permits in general accordance with the Construction Environmental Management Plan Draft Table of Contents in Appendix B, America's Cup 36 Physical Infrastructure Technical Report (Beca, April 2018) (for information only) as referenced in **Annexure A**;
- d) Location of construction site infrastructure including site offices/amenities, contractors' yard access, equipment unloading and storage areas, construction access to the CMA, contractor car parking and security;
- e) Methods and systems to inform and train all persons working on the site of potential environmental issues and how to avoid remedy or mitigate any potential adverse effects;
- f) Procedures for ensuring that residents, businesses, network utility operators and road users in the immediate vicinity of construction areas are given prior notice of the Commencement of Construction and are informed about the expected duration and effects of the work;
- g) Procedures for responding to, recording and reporting complaints about construction activities;
- h) Means of providing for the health and safety of the general public;
- i) Measures to be adopted to maintain the CMA and land affected by the works in a tidy condition in terms of disposal / storage of rubbish, storage and unloading of construction materials and similar construction activities;
- j) Procedures for controlling sediment run-off, dust and the removal of soil, debris, demolition and construction materials (if any) from public roads or places adjacent to the work site/s;
- k) Contingency plans in case of unexpected sediment discharges to the CMA during works;



- l) Proposed temporary or permanent fencing or other structures along the boundary of the construction areas with adjacent sites in order to delineate site boundaries, maintain site security, prevent unauthorised access, ensure the safe and practical operation of adjacent sites, and to avoid intrusion of construction works beyond the construction area;
- m) Measures to manage the potential impacts of construction on Council street trees and vegetation;
- n) Measures to manage the potential impacts of construction lighting on residents, businesses and on local fauna;
- o) Methods to ensure that barges and equipment used in the CMA are clean and certified as free of invasive species identified by the Ministry of Primary Industries;
- p) Procedures for the refuelling, cleaning, maintenance and storage of plant and equipment, methods to be used to minimise the need for these activities in the CMA, and measures to avoid discharges of contaminants from these activities in the CMA;
- q) Measures to address the storage of fuels, lubricants, hazardous and/or dangerous materials, along with contingency procedures to address emergency spill response(s) and clean up;
- r) Procedures for incident management, monitoring and reporting including review and corrective and preventative action;
- s) Site clean-up following completion of works, including removal of construction materials, temporary structures;
- t) Maintenance of plant in a good state of repair so as not to produce excessive fumes or leakage of contaminants when parked or in operation; and
- u) Measures to monitor and minimise discharges of dust so that any offensive or objectionable effects are immediately identified and are mitigated.

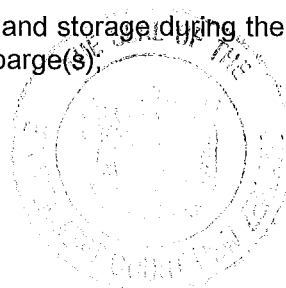
### **Construction Works Programme**

34. This part of the CEMP is to ensure that the consent holder has prepared a programme of works that will enable the Infrastructure and all other associated land based works, to be constructed in a manner that is timely, adequately co-ordinated and minimises the adverse effects of construction on existing users of the affected land and water space. This section shall, among other matters, provide details of the programme for the construction works throughout all stages of the Infrastructure development process.

### **Site Management**

35. This part of the CEMP is to ensure that procedures are in place to ensure that the site is managed safely and in a tidy condition throughout the entire construction process. This section shall provide details on the following:

- a) The measures to be adopted to maintain the construction zone and adjacent parts of the CMA in a tidy condition in terms of storage and unloading of materials, refuse storage and disposal and other activities;
- b) The provision of any site office, parking for workers' vehicles and workers' conveniences (e.g. portaloos);
- c) The location of construction machinery access and storage during the period of site works, including any temporary mooring of the barge(s);



- d) The procedures for controlling sediment run off into the CMA, and the removal of any debris and construction materials from the CMA; and
- e) The provision of any artificial lighting associated with construction works and the effects of any such lighting.

36. [Not used]

### Implementation

- 37. All personnel working on the site shall be made aware of the requirements contained in the CEMP. A copy of the certified CEMP shall be held on each of the project sites at all times while any activity associated with construction is occurring. The certified CEMP shall be implemented and maintained throughout the entire period of the works.
- 38. No construction activity shall commence until the CEMP is certified by the Team Leader Compliance Monitoring – Central and all measures identified in that plan as needing to be put in place prior to the start of works are in place.
- 39. The consent holder shall notify the Team Leader Compliance Monitoring – Central in writing of the proposed date of Commencement of Construction at least twenty (20) working days prior to the proposed start date.
- 40. Within fifteen (15) working days prior to Commencement of Construction, the consent holder shall arrange a pre-start meeting that:
  - a) Is located on the subject site;
  - b) Is scheduled not less than five (5) working days before the anticipated Commencement of Construction;
  - c) Includes Council representatives and representatives of Auckland Transport, Watercare Services Limited, relevant network utility operators and the Harbourmaster's Office;
  - d) Includes representation from the contractors who will undertake the works; and
  - e) Includes an invitation to the Forum (Condition 5) and to members of the CLG (Condition 22A).
- 41. The prestart meeting shall discuss the works methodology generally (including contaminants, water and wastewater services, erosion and sediment control measures, and earthworks methodology) and shall ensure all relevant parties are aware of and are familiar with the conditions of the resource consents.

**Advice Note:** *All new and temporary public water and wastewater infrastructure including connection points to the existing systems will require an approval from Watercare Services and an Engineering Plan Approval from Auckland Council. All new and temporary private wastewater infrastructure will require a Building Consent from Auckland Council. The Consent Holder is reminded of the need to consult with Watercare Services (as per the Watercare review, Referenced 72816).*

- 42. The following information shall be made available at the pre-start meeting:
  - a) Timeframes for key stages of the works authorised under this consent;
  - b) Resource consent conditions; and



- c) Any Erosion and Sediment Control Plans that are available.
43. In the case that any of the invited parties, other than the representative of the consent holder, do not attend this meeting, the consent holder will have been deemed to have complied with this condition, provided reasonable notice of ten (10) working days is given to the parties listed above.
44. The consent holder shall notify the Team Leader Compliance Monitoring – Central in writing of the date of completion within ten (10) working days of the completion of the last activity relating to works in any CEMP.

**Advice Note:** *To arrange the pre-start meeting please contact the Team Leader Compliance Monitoring – Central to arrange this meeting on [monitoring@aucklandcouncilgovt.nz](mailto:monitoring@aucklandcouncilgovt.nz), or 09 301 01 01. The conditions of consent should be discussed at this meeting. All additional information required by the Council should be provided two (2) working days prior to the meeting.*

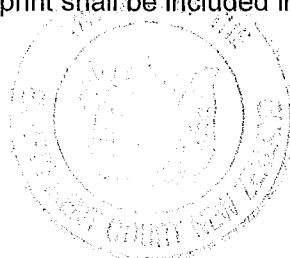
#### **Accidental Discovery Condition**

45. In the event that works associated with the construction of Infrastructure for the America's Cup Wynyard Hobson project reveal protected New Zealand objects as defined in the Protected Objects Act 1975 the consent holder shall implement the Protected Objects Protocol in **Annexure D**.
- 45A. The accidental discovery rules in the Auckland Unitary Plan: Operative in Part continue to apply for the discovery of other sensitive material, including human remains and kōiwi, archaeological sites, Māori cultural artefacts/taonga tuturu and lava caves greater than 1m in diameter.
- 45B. Any object that is encountered that sits outside Heritage New Zealand Pouhere Taonga Act or Protected Objects Act legislation shall be offered to the New Zealand Maritime Museum (in the first instance) by the project archaeologist. If the offer of the object is not accepted and the object is of sufficient material stability, the Consent Holder will give consideration to the retention of this object in a location within the Wynyard Precinct area. If a location cannot be identified within the application area, the Consent Holder will give consideration to whether the object can be safely stored until such time as an agreed location becomes available.

**Advice Note:** *This condition applies separately and in addition to the requirements of the Protected Objects Act 1975 and the Heritage New Zealand Pouhere Taonga Act 2014.*

#### **Restrictions on Breakwater Construction for Ferry Navigation in Situ**

- 45C. Construction of the proposed breakwater extending east from Wynyard Wharf (shown as Breakwater Structure 1 on Beca Civil Drawing Number 3233847-CA-4101 Rev E) shall only proceed on the basis that the construction footprint (including barges/tugs etc.) (**Footprint**), shall not impede the passage of ferries. In practice this means construction activity for the Wynyard breakwater (shown as Breakwater Structure 1 on Beca Civil Drawing Number 3233847-CA-4101 Rev E) is constrained to the approximate length of the planned breakwater. The Footprint may at times extend further; provided it can be withdrawn as required to ensure that the passage of ferries is not impeded. A protocol governing extension and reduction of the Footprint shall be included in the NSMP.



45D. Except with Sealink Travel Group New Zealand Limited's (**Sealink**) prior written approval, construction of the Halsey Street extension wharf breakwater (east-west finger shown as Breakwater Structure 2 on Beca Civil Drawing Number 3233847-CA-4101 Rev E) shall not be commenced until the existing Sealink ferry ramp facility has been removed. This does not include the proposed base element (immediately adjacent to the Halsey Street Wharf and shown as Breakwater Structure 3 on Beca Civil Drawing Number 3233847-CA-4101 Rev E), provided the construction activity of the proposed base element is completed before construction of Breakwater Structure 1 commences or is carried out from the shore or from the east, or otherwise the Footprint can be withdrawn as required to ensure that the passage of ferries is not impeded. A protocol governing how Breakwater Structure 3 is to be constructed shall be included within the NSMP. This shall include, in particular, details as to how and when the construction footprint will be withdrawn to ensure that the safe passage of ferries is not impeded.

#### **Restrictions on Construction of Superyacht Berthage on Existing Halsey Wharf**

45E. The Consent Holder shall defer the construction of the proposed superyacht berths and associated structures along the western edge of Halsey Wharf until Sanford's fishing vessels have been moved to an alternative location.

#### **Navigation and Safety Notifications and Documentation**

46. Prior to Commencement of Construction, the consent holder shall consult the Auckland Harbourmaster to identify the appropriate location, number and types of navigational aids and lighting required for the Infrastructure (including for the temporary and/or permanent structures in the CMA). The navigational aids and lighting as approved by the Harbourmaster will be provided and maintained by the consent holder at its cost, and in accordance with Maritime New Zealand guidelines, and the Port and Harbour Marine Safety Code.

46A. The consent holder shall establish a **Navigation Safety Management Plan (NSMP)** for on-water construction activities. The objectives of the NSMP are to:

- a) Provide for efficient operation of the waterspace affected by construction;
- b) Provide a safe environment for all water users;
- c) Ensure water users are appropriately notified of construction activities and any changes to the operation of the waterspace affected by construction;
- d) Ensure safe navigation access to berths is maintained for vessels at all times as far as practicable to enable continued operations by Sealink (Wynyard Terminal), Sanford and the wider commercial fishing fleet (AFPL) prior to their respective relocation, subject to ensuring that the requirements of Conditions 45C and 45D are met at all times;
- e) Maintain safe navigation for and access to other berth holders and water space users; and
- f) Ensure access to and from the Outer and Inner Viaduct Harbour is maintained for vessels at all times as far as practicable.

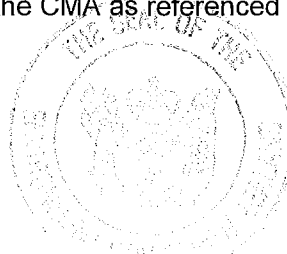


- 46Aa. To the extent that the NSMP relates to the restrictions in Conditions 45C and 45D or to otherwise managing the effects on Sealink's operations, the NSMP shall be prepared in consultation with Sealink.
- 46Ab. To the extent that the NSMP deals with effects on the operations of Sanford and Auckland Fishing Port Limited, the NSMP shall be prepared in consultation with Sanford and Auckland Fishing Port Limited.
- 46B. The NSMP shall include information/procedures on how navigation access shall be maintained for vessels using berthing facilities within the construction area, including the maintenance of navigation access to and from the Viaduct Harbour and Wynyard Wharf South Water Space. The NSMP shall also include requirements such as: the showing of day mark; placement of buoys and temporary beacon lights; the shielding or use of other means to prevent glare and reflection or confusion with navigation lights from construction related lights and area flood lighting; as well as operational communications. The NSMP shall be prepared in consultation with the Harbourmaster, and a final draft NSMP shall be submitted to the Harbourmaster for approval at least twenty (20) working days prior to the Commencement of Construction. The Team Leader Compliance Monitoring - Central is to be informed of the Harbourmaster's approval.
47. The consent holder shall notify the Auckland Harbourmaster, Sealink, Sanford, Auckland Fishing Port Limited, the Viaduct Harbour Marina Manager (via Viaduct Harbour Holdings Limited) and Ports of Auckland Ltd Harbour Control, of the location of the marine works and the proposed date of Commencement of Construction in the CMA at least twenty (20) working days prior to the proposed start date.
48. The consent holder shall request, as part of the notification in Condition 47, that the Harbourmaster issue a Temporary Notice to Mariners, advising the location of the marine works, to yachting and boating clubs and the Auckland Coastguard at least five (5) working days prior to the commencement of the marine works.
49. The consent holder shall notify the Auckland Harbourmaster, Sealink, Sanford, Auckland Fishing Port Limited, the Viaduct Harbour Marina Manager (via Viaduct Harbour Holdings Limited), Ports of Auckland Ltd Harbour Control, and the Land Information NZ (LINZ) Hydrographic Office in writing of the date of completion of works in the CMA within ten (10) working days of the completion of the last activity involving wharves and pontoons.
50. The consent holder shall provide to the LINZ Hydrographic Office a hydrographic survey of the dredged areas within three months of dredging.

#### **Dredging and Placement of Mudcrete in the CMA**

#### **Management Plan for Dredging and for Placement of Mudcrete in the CMA**

51. The consent holder shall prepare a **Management Plan for Dredging and for Placement of Mudcrete in the CMA** (MPDPM). The consent holder shall submit the MPDPM to the Team Leader Compliance Monitoring – Central for certification that the MPDPM gives effect to the objectives in Condition 52 and complies with the requirements in Condition 53. The MPDPM shall be in general accordance with the Draft Management Plan for Dredging and for Placement of Mudcrete in the CMA as referenced in **Annexure B**.
52. The objectives of the MPDPM are to:



- a) Ensure that appropriate environmental practices are utilised;
- b) Identify roles and responsibilities for preparation and implementation of the MPDPM;
- c) Ensure that adequate vessel draft depths are achieved; and
- d) Ensure access to and from the Outer and Inner Viaduct Harbour is maintained for vessels at all times as far as practicable.

53. The MPDPM shall include the following matters:

- a) Details of the equipment and methods to be used for dredging and mixing and placement of mudcrete in the CMA;
- b) Details of the locations, depths, quantities and timing of dredging to achieve water depths for vessels using the water space and placement of mudcrete in the CMA;
- c) Measures to ensure that at no time shall any material be placed outside the co-ordinates of the offshore disposal grounds;
- d) Details of the physical characteristics of the dredged material, based on visual observation, to be provided to the Council throughout the physical works period;
- e) Monitoring and reporting (refer to Conditions 55 to 64);
- f) Contingency measures to be implemented where required under Condition 67;
- g) Roles and responsibilities of the personnel involved; and
- h) Method/s of disposal and location of disposal site/s for dredged material.

54. [Not used]

**Water Quality Monitoring for Dredging of North Wharf and for Placement of Mudcrete in the CMA - Sampling**

55. The consent holder shall undertake one-off comprehensive water quality monitoring during the initial phase of the dredging of the North Wharf area and the placement of mudcrete in the CMA. The purpose of this monitoring during the initial phase is to confirm the mixing zone and proposed trigger level specified in Condition 62. Water quality samples shall be collected:

- a) For a neap tide;
- b) At an up-drift control site located approximately within the Waitemata Harbour main channel (for ebb tide) and at least 500 m beyond the operations (for flood tide);
- c) At dilution gradient sites 10m, 20m and 50m down-drift of the operations aligned approximately along the centreline of the Waitemata Harbour main channel; and
- d) At a compliance site 200m down-drift of the operations aligned approximately along the centreline of the Waitemata Harbour main channel.

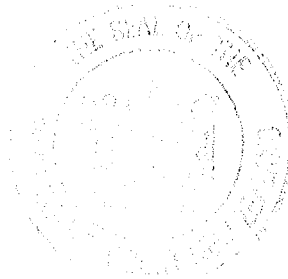
56. Following the initial phase of dredging and placement of mudcrete in the CMA, the consent holder shall undertake water quality monitoring once per week whilst dredging and any placement of material in the CMA is underway. Water quality samples shall be collected:

- a) On an ebb tide;





- b) At an up-drift control site located at least 500m beyond the operations;
  - c) At a dilution gradient site 50m down-drift of the operations aligned approximately along the centreline of the Waitemata Harbour main channel; and
  - d) At a compliance site 200m down-drift of the operations aligned approximately along the centreline of the Waitemata Harbour main channel.
57. During each sampling run carried out in accordance with Conditions 55 and 56, records shall be kept of:
- a) Sampling date and time;
  - b) Weather conditions;
  - c) Sea state;
  - d) Sampling location;
  - e) Water depth;
  - f) Time that dredging and placement of dredged material in the CMA commenced; and
  - g) Time of low and high tide on day of sampling.
58. Water samples collected in accordance with Conditions 55 to 56 shall be individual samples from the surface (approximately 0.5 m below surface) and at depth (approximately 0.5m above the seabed) at each site.
59. Water samples shall be collected on a day that dredging is occurring.
60. Dilution gradient and compliance site samples shall be representative of the plume generated by the operations (i.e. not collected before the plume has had a chance to develop upon the start of the operations and not after the plume has had a chance to dissipate upon completion of the operations), and shall be collected as close as practicable to mid-tide to capture the maximum extent of any plume.
61. Samples for water quality monitoring of dredging shall be analysed for total suspended solid levels (TSS). Samples for water quality monitoring of mudcrete placement in the CMA shall be analysed for total suspended solid levels (TSS) and pH.
62. Unless amended in accordance with Condition 65, the proposed trigger level for total suspended solids shall be 25g/m<sup>3</sup> above TSS at the control site; and for mudcreting, a pH of 8.5.
63. ~~[not used] Following two months of weekly sampling, and subject to written certification by the Team Leader Compliance Monitoring – Central, the monitoring programme may be amended, for example compositing of surface and depth samples, and reduction of the frequency (e.g. to fortnightly / monthly) upon the Team Leader Compliance Monitoring – Central being satisfied that the results are consistently showing no exceedances of the trigger levels in Condition 62.~~
64. Within three months of completion of all the dredging works, the consent holder shall provide the Team Leader Compliance Monitoring – Central with the best available estimates of the in-situ volumes of:
- a) Material dredged; and



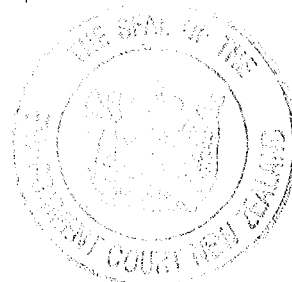
- b) Material placed as mudcrete in the CMA.

### **Water Quality Monitoring for Dredging and CMA Mudcrete – Trigger Levels and Contingency Plan**

- 65. The consent holder shall review the proposed TSS trigger level of 25g/m<sup>3</sup> and pH trigger level of 8.5 set out in Condition 62 against the results of the one-off comprehensive monitoring undertaken during the initial phase of the dredging operations. The consent holder shall provide a report to the Team Leader Compliance Monitoring – Central confirming the above trigger level(s) or proposing alternative trigger level(s) with the technical justification for the alternative(s). The report shall be provided within twenty (20) working days of the receipt by the consent holder of the analytical results for the one off comprehensive water sampling required in Condition 55. The alternative trigger level(s) may be used for regular monitoring subject to certification in writing by the Team Leader Compliance Monitoring – Central.
- 66. During regular monitoring, an exceedance shall be:
  - a) For dredging and for mudcrete placement: a TSS level in any sample collected at the compliance site that exceeds the trigger level plus the TSS level measured in the updrift control sample collected during the same sampling run. The TSS level shall be identified from the analytical results of the water quality samples in accordance with Conditions 56 to 61; and
  - b) For mudcrete placement: a pH in any sample collected at the compliance sites that exceed the pH trigger level. The pH shall be identified from the analytical results of the water quality samples in accordance with Conditions 55 to 61.
- 67. In the event of an exceedance the consent holder shall implement the contingency measures identified in the MPDPM. These shall include further monitoring measures, in the first instance, or a site specific effects assessment, and practical modifications to the relevant activities where further monitoring identifies repeated exceedances. Such modifications may include suspending or altering the dredging approach, reducing production rates, focusing dredging activities around slack tide, and using silt fences or other containment approaches. Details of any contingency measures implemented in accordance with this condition shall be provided to the Team Leader Compliance Monitoring – Central no later than five (5) working days after the exceedance occurs.

### **Aerial Photography Monitoring for Dredging**

- 68. The consent holder shall take aerial photographs of the extent of any plume during the dredging during water quality sampling runs. Where water quality for dredging is also being undertaken, the photograph shall be completed at the same time as the sampling runs. Aerial photography sites shall be selected to correspond only to those areas where dredging or placement of dredged material in the CMA is occurring, to confirm sediment plume distribution and aid sampling.



### Reporting for Dredging and Placement of Mudcrete in the CMA

69. The consent holder shall provide monitoring reports to the Team Leader Compliance Monitoring – Central and the Mana Whenua Groups that participate in the preparation of the ACKEP as follows:

- a) At completion of the one-off comprehensive water quality monitoring; and
- b) Every six weeks for the duration of dredging and placement of mudcrete in the CMA for routine water quality monitoring.

**Advice Note:** *The consent holder may seek written confirmation from the Team Leader Compliance Monitoring – Central to modify the regularity of monitoring reports if no exceedances occur.*

### Erosion and Sediment Control Plan

70. The consent holder shall prepare an **Erosion and Sediment Control Plan** (ESCP) in consultation with the Forum in accordance with Condition 5D. At least ten (10) working days prior to the commencement of earthworks, the consent holder shall submit the ESCP to the Team Leader Compliance Monitoring – Central for certification that the ESCP gives effect to the objectives in Condition 71A and complies with the requirements in Condition 72. The ESCP shall be in general accordance with the Draft Erosion and Sediment Control Plan as referenced in **Annexure B**.

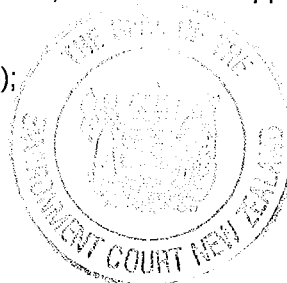
71. Erosion and sediment control measures shall be implemented throughout land-based Construction Works. They shall be constructed and maintained so as to operate and perform in accordance with Auckland Council *GD2016/005: Erosion Sediment Control Guide for Land Disturbing Activities in the Auckland Region* and any amendments to this document, except where a higher standard is detailed in the conditions below in which case the higher standard shall apply.

71A. The objectives of the ESCP are to:

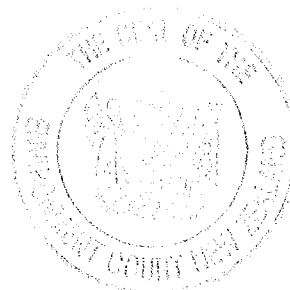
- a) Minimise potential erosion effects; and
- b) Minimise discharge of sediment beyond the boundaries of the areas being earthworked and into the CMA.

72. The ESCP shall include but is not limited to, the following information as appropriate to the scale, location and type of earthworks:

- a) Drawings showing location and quantities of earthworks and any mudcrete placement on land, contour information, catchment boundaries and erosion and sediment controls (location, dimensions, capacity);
- b) Supporting calculations for erosion and sediment controls;
- c) Reference to details of measures for contaminated land;
- d) Details of construction methods to be employed, including timing and duration;
- e) Dewatering and pumping methodology (if applicable);
- f) Details of the proposed water treatment measures, devices and appropriate trade waste permits (if applicable);
- g) Specific location of stockpile areas (if applicable);



- h) Detail of adjacent cesspits to be protected or capped (if applicable);
  - i) Final details and specifications of the coffer dam or temporary seawall;
  - j) The geotechnical-related earthworks matters addressed in Condition 135B(b);
  - k) A programme for managing exposed area, including progressive stabilisation considerations;
  - l) Roles and responsibilities under the ESCP and identification of those holding roles including the suitably qualified person; and
  - m) Monitoring, maintenance and record-keeping requirements.
73. Prior to any earthworks commencing, a certificate signed by an appropriately qualified and experienced person shall be submitted to the Team Leader Compliance Monitoring – Central, to certify that the erosion and sediment controls have been constructed in accordance with the certified ESCP and Auckland Council Guideline GD2016/005.
74. The certificate provided under Condition 73 shall include but not be limited to the dewatering and treatment devices, stabilised construction entrances, cesspit protection and clean and dirty water diversions. The certification for these and any subsequent measures shall be supplied immediately upon completion of construction of those measures. Information supplied if applicable, shall include:
- a) Contributing catchment area;
  - b) Treatment capabilities and capacities;
  - c) Shape and capacity of structure (dimensions of structure);
  - d) Position of inlets/outlets;
  - e) Stabilisation of the structure; and
  - f) A statement regarding the appropriateness of the device with respect to Auckland Council Guideline GD2016/005.
75. The operational effectiveness and efficiency of all erosion and sediment control measures required by the ESCP shall be maintained throughout the duration of earthworks activity, or until the site is permanently stabilised against erosion.
76. Erosion and sediment control measures shall be constructed and maintained in general accordance with Auckland Council Guideline GD2016/005; Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region and any amendments to this document, except where a higher standard is detailed conditions of this consent or in the documents referred to the ESCP, in which case the higher standard shall apply.
77. Earthworks shall be managed to avoid deposition of earth, mud, dirt or other debris on any road or footpath beyond the subject site resulting from earthworks activity on the subject site. In the event that such deposition does occur, it shall be immediately removed. In no instance shall roads or footpaths be washed down with water without appropriate control measures in place to prevent contamination of the stormwater drainage system, watercourses or receiving waters.



**Advice Note:** *In order to prevent sediment laden water entering waterways from the road, the following methods may be adopted to prevent or address discharges should they occur:*

- *Provision of a stabilised entry and exit(s) point for vehicles;*
- *Provision of wheel wash facilities;*
- *Ceasing of vehicle movement until materials are removed;*
- *Cleaning of road surfaces using street-sweepers;*
- *Silt and sediment traps; and*
- *Catchpit protection.*

*It is recommended that the consent holder discuss any potential measures with the Council's monitoring officer who may be able to provide further guidance on the most appropriate approach to take. Please contact the Team Leader Compliance Monitoring – Central for more details. Alternatively, please refer to Auckland Council Guideline GD2016/005, Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region.*

78. The sediment and erosion controls at the site of the works shall be constructed and maintained in accordance with the certified ESCP and shall be inspected on a regular basis and within 24 hours of each rainstorm event that is likely to impair the function or performance of the erosion and sediment controls. A record shall be kept of the date, time and any maintenance undertaken in association with this condition, and shall be forwarded to the Team Leader Compliance Monitoring – Central on request.
79. The site shall be progressively stabilised against erosion at all stages of the earthwork activity and shall be sequenced to minimise the discharge of sediment to surface water.

Interim stabilisation measures may include:

- The use of waterproof covers, geotextiles, or mulching;
- Top-soiling and grassing of otherwise bare areas of earth; and
- Aggregate or vegetative cover that has obtained a density of more than 80% of a normal pasture sward.

**Advice Note:** *It is recommended that the consent holder discuss any potential measures with the Council's monitoring officer who may be able to provide further guidance on the most appropriate approach to take. Please contact the Team Leader Compliance Monitoring – Central for more details. Alternatively, please refer to Auckland Council Guideline GD05, Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region.*

80. Upon completion or abandonment of earthworks on the subject site all areas of bare earth shall be permanently stabilised against erosion to the satisfaction of the Team Leader Compliance Monitoring - Central.

Measures may include:

- The use of mulching;



- Top-soiling, grassing and mulching of otherwise bare areas of earth; and
- Aggregate or vegetative cover that has obtained a density of more than 80% of a normal pasture sward.

**Advice Note:** *The on-going monitoring of these measures is the responsibility of the consent holder. It is recommended that the consent holder discuss any potential measures with the Council's monitoring officer who will guide you on the most appropriate approach to take. Please contact the Team Leader Compliance Monitoring – Central for more details. Alternatively, please refer to Auckland Council Guideline GD05, Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region.*

81. Notification shall be given to the Team Leader Compliance Monitoring – Central within twenty (20) working days of completion of earthworks.
82. [Not used]
83. [Not used]
84. [Not used]

## **Contaminated Land Management**

### **Detailed Site Investigation and Remediation Action Plan**

85. Prior to any excavation or soil disturbance in areas of known or potentially contaminated land, the consent holder shall engage a Suitably Qualified Environmental Practitioner (SQEP) to undertake additional soil and groundwater testing for the assessment of contamination within the areas proposed for soil disturbance. The investigation shall be undertaken in general accordance with Ministry for Environment (MfE) *Contaminated Land Management Guidelines No. 5: Site Investigation and Analysis of Soils* (Revised 2011) and any amendments to this document. A **Detailed Site Investigation** (DSI) Report is to be prepared and submitted to the Team Leader Compliance Monitoring – Central for certification that the DSI adequately addresses all areas proposed for soil disturbance and has been undertaken in general accordance with the Guideline.
86. At least five (5) working days prior to excavation or disturbance in areas of known or potentially contaminated land, the consent holder shall update the Draft **Remediation Action Plan** (RAP) as referenced in **Annexure B**. The updated RAP shall be prepared and submitted to the Team Leader Compliance Monitoring – Central for certification that the RAP gives effect to the objectives in Condition 87 and complies with the requirements in Condition 88.
87. The objectives of the RAP are to:
  - a) Minimise harm from any potential human exposure from contaminants;
  - b) Manage environmental risk from contaminated material; and
  - c) Identify any unknown contaminated material.
88. The RAP shall be in general accordance with the Draft Remediation Action Plan as referenced in **Annexure B**, and shall include:



- a) Any soil, groundwater and gas (if required) investigations undertaken to characterise potential hazards associated with works in those areas and to inform development of the RAP;
- b) The measures to be undertaken in the handling, storage and disposal of all contaminated material excavated during Construction Works;
- c) The soil verification testing that will be undertaken to determine the nature of any contamination in excavated material and the potential reuse or disposal options for that material;
- d) Measures to be undertaken in the event of unexpected contamination being identified during construction activities, including measures to:
  - (i) Assist with identification of unknown contaminated material; and
  - (ii) Stop work or isolate the area once any such material is identified.
- e) The measures to be undertaken to manage contaminated land to:
  - (i) Protect the health and safety of workers and the public;
  - (ii) Control stormwater run-on and run-off to ensure that no water which has come into contact with potentially contaminated soils/spoil etc. shall be allowed to discharge into the stormwater system; and
  - (iii) Remove or manage any contaminated soil.
- f) Measures to monitor and mitigate discharges of odour, volatile organic compounds and asbestos (if required) during excavations, including criteria/action levels for triggering specific control and contingency measures.

89. The RAP shall be implemented and maintained throughout the entire construction period.

89A. If the DSI required by Condition 85 identifies the presence of vapours from contaminants in the ground a vapour risk assessment shall be undertaken to:

- a) Confirm the potential contaminants, pathways and receptors who may be impacted by vapours including construction workers and building occupants;
- b) Undertake a risk assessment to identify if additional mitigation measures are required for the protection of workers or occupants on any enclosed buildings or structures; and
- c) Identify appropriate mitigation measures for incorporation into the RAP or into the design of any proposed buildings or structures.

#### **Placement of Dredge Material on Land**

89B. The discharge of contaminants to land and water from the reuse and stockpiling of cement stabilised dredge material shall be carried out in accordance with the updated Remediation Action Plan referenced in Condition 88.

c)

89C. At least five (5) working days prior to the placement of stabilised dredge material on land the consent holder shall provide to the Team Leader Compliance Monitoring – Central in the updated RAP referenced in Conditions 86 to 88 the following details:



- a) Description of the methodology of the proposed placement of the dredge material within the site, and its management;
- b) The management of the associated contaminant discharges and the relevant effects on the receiving environment; and
- c) Description of the contingency plan procedures for the management of unexpected contamination within the placed dredge material.

89D. The measures in Condition 89C shall be implemented and maintained throughout placement of stabilised dredge material on land.

89E. There shall be no un-stabilised dredge material placed on land within the Project area.

### **Site Management**

- 90. All sampling and testing of contamination on the site shall be overseen by a suitably qualified and experienced practitioner. All sampling shall be undertaken in general accordance with *MfE Contaminated Land Management Guidelines No. 5 Site Investigation and Analysis of Soils* (Revised 2011) and any amendments to this document.
- 91. Where contaminants are identified that have not been anticipated by the RAP, works in the area containing the unexpected contamination shall cease until the contingency measures outlined in the certified RAP have been implemented, and the discovery and contingency measures undertaken have been notified to the Team Leader Compliance Monitoring – Central.
- 92. Excavation or soil disturbance in areas of known or potentially contaminated land shall be managed to minimise the generation of dust, asbestos, odour and volatile organic compounds and be carried out in accordance with the certified RAP.

### **Groundwater**

#### **Damage Avoidance**

- 93. All excavation, stabilisation and works associated with the diversion or taking of groundwater, shall be designed, constructed and maintained so as to avoid damage to buildings, structures and services on the site and adjacent properties, outside that considered as part of the application process unless otherwise agreed in writing with the asset owner.

#### **Alert Levels**

- 94. The activity shall not cause any groundwater changes greater than the Alert Level thresholds specified in Schedule A. Alert Levels are triggered when the following thresholds are exceeded:





<b>Schedule A: Groundwater Alert Levels</b>		
<b>Movement</b>	<b>Alert Level 1</b>	<b>Alert Level 2</b>
The distance below the pre-dewatering Seasonal Low Groundwater Level, or the distance above the pre-dewatering Seasonal High Groundwater Level at AC36_PZ01	0.2 m	0.5 m
The distance below the pre-dewatering Seasonal Low Groundwater Level, or the distance above the pre-dewatering Seasonal High Groundwater Level at AC36_PZ02 and AC36_PZ03	0.5 m	1.0 m

These levels may be amended as part of the Groundwater Monitoring and Contingency Plan (GWMCP) certification process under Condition 96, and, after the receipt of pre-dewatering monitoring data and recommendations from a suitably qualified person, but only to the extent that avoidance of damage to building, structures and services can still be achieved.

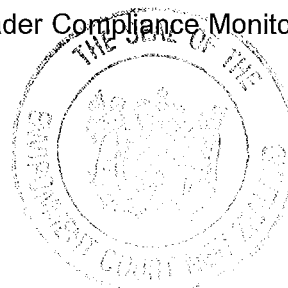
**Advice Note:** *Condition 95 sets out the matters that must be complied with when Alert Level 1 is exceeded. Condition 96B) sets out the matters that must be implemented when Alert Level 2 is exceeded. These include actions that must be taken immediately including seeking the advice of a suitably qualified person.*

**Alert Level actions**

95. In the event of Alert Level 1 being exceeded the consent holder shall:
- a) Notify the Team Leader Compliance Monitoring – Central within 24 hours;
  - b) Re-measure all Monitoring Stations within 50 m of the affected monitoring location(s) to confirm the extent of apparent movement;
  - c) Ensure the data is reviewed, and advice provided, by a suitably qualified person on the need for mitigation measures or other actions necessary to avoid further groundwater level change and/or damage. Where mitigation measures or other actions are recommended those measures shall be implemented;
  - d) Submit a written report, prepared by the suitably qualified person responsible for overseeing the monitoring, to the Team Leader Compliance Monitoring – Central within five (5) working days of Alert Level exceedance. The report shall provide an analysis of all monitoring data relating to the exceedance, actions taken to date to address the issue and recommendations for future remedial actions necessary; and
  - e) Measure and record all Monitoring Stations within 50 m of the location of any Alert Level exceedance every two (2) working days until such time the written report referred to above has been submitted to the Team Leader Compliance Monitoring – Central.

**Groundwater Monitoring and Contingency Plan**

96. At least twenty (20) working days prior to the Commencement of Dewatering/Stabilisation, the consent holder shall prepare a **Groundwater Monitoring and Contingency Plan** (GWMCP) in consultation with the Forum in accordance with Condition 5D. The consent holder shall submit the GWMCP to the Team Leader Compliance Monitoring – Central for



certification that the GWMCP gives effect to the objectives in Condition 96A and complies with the requirements in Condition 96B. The GWMCP shall be prepared by a suitably qualified person and be in general accordance with the Draft Groundwater Monitoring and Contingency Plan as referenced in **Annexure B**.

96A. The objectives of the GWMCP are to:

- a) Minimise potential settlement of surrounding properties and structures; and
- b) Ensure any changes in groundwater levels are monitored and appropriate contingency actions are provided.

96B. The GWMCP shall set out the practices and procedures to be adopted to monitor any changes in groundwater levels as a result of works, and provide for contingency actions if Alert Levels are exceeded, and shall include, at a minimum, the following information:

- a) Provision for reporting including providing notice to the Team Leader Compliance Monitoring – Central at least ten (10) working days prior to the proposed commencement of dewatering and reporting and review of monitoring results;
- b) A monitoring location plan showing the location and type of all groundwater monitoring bores based on Figure 5 of the report America's Cup Groundwater Technical Report for Resource Consent Application, Wynyard Hobson as referenced in **Annexure A**. In any case where the location of a Monitoring Station differs substantively from that shown on Figure 5 of the report America's Cup Groundwater Technical Report for Resource Consent Application, Wynyard Hobson as referenced in **Annexure A** a written explanation for the difference shall be provided at the same time that the GWMCP is provided;
- c) Final completed Schedule A (as per Condition 94) and Schedule B (as per Condition 99) for the groundwater monitoring programme (including any proposed changes to the monitoring frequency) as required by Conditions 98 and 99;
- d) All groundwater level monitoring data undertaken to date, and required by Conditions 98 and 99;
- e) A bar chart (such as a Gantt chart) showing the timing and frequency of monitoring required by this consent, and, a sample report template for the required 2 monthly monitoring;
- f) All Alert Levels, which shall be based on assessed risk to buildings and utility services resulting from changes to groundwater levels (including reasons if changes to such are proposed; for example as a result of data obtained from pre-dewatering monitoring); and
- g) Details of the contingency actions to be implemented if Alert Levels are exceeded. The contingency matters may include stopping work if it is necessary to prevent damage to buildings, structures and services on the site and adjacent properties.

97. All construction, dewatering, monitoring and contingency actions shall be carried out in accordance with the certified GWMCP. No bulk excavation (that may affect groundwater levels) or other dewatering activities shall commence until the GWMCP is certified by the Team Leader Compliance Monitoring – Central.



## Groundwater Monitoring

98. The consent holder shall install and maintain groundwater monitoring boreholes at the sites shown in Figure 5 of the report America's Cup Groundwater Technical Report for Resource Consent Application, Wynyard Hobson as referenced in **Annexure A**. The consent holder shall install the monitoring bores at least 2 months prior to commencement of any construction works that interact with soil materials below the groundwater level.

99. Groundwater level monitoring is to be undertaken in accordance with Schedule B below:

<b>Schedule B: Groundwater Monitoring Frequency</b>					
<b>Bore Name</b>	<b>NZTM Location</b>		<b>Groundwater level monitoring frequency (to an accuracy of 10mm)</b>		
	<b>Easting</b>	<b>Northing</b>	<b>From bore construction until one month before Commencement of Dewatering / Stabilisation</b>	<b>One month before Commencement of, and until Completion of Dewatering / Stabilisation</b>	<b>From Completion of Dewatering / Stabilisation until 6 months later</b>
AC36-PZ01	1756583	5921416	Monthly	Weekly	Monthly
AC36-PZ02	1756673	5921538	Monthly	Weekly	Monthly
AC36-PZ03	1756742	5921606	Monthly	Weekly	Monthly

The monitoring frequency may be changed as part of the certification process by the Team Leader Compliance Monitoring – Central. Any change shall be specified in the GWMCP. In addition, the 6 month monitoring period post Completion of Dewatering/Stabilisation may be extended, by the Team Leader Compliance Monitoring – Central, if measured groundwater levels are not consistent with inferred seasonal trends or predicted groundwater movement.

If groundwater level measurements show an inconsistent pattern immediately prior to the Commencement of Dewatering/Stabilisation (for example varying more than +/-200mm during a month), then further readings may be required by the Team Leader Compliance Monitoring – Central to ensure that an accurate groundwater level baseline is established before dewatering commences.

## Contingency Actions

100. If the consent holder becomes aware of any Damage to buildings, structures or services potentially caused wholly, or in part, by the exercise of this consent, the consent holder shall:

- a) Notify the Team Leader Compliance Monitoring – Central and the asset owner immediately upon becoming aware of the damage;
- b) Seek access permission from the building, structure or asset owner, together with the request that a suitably qualified person is engaged by the consent holder at its cost, to prepare a report that: describes the damage; identifies the cause of the damage; identifies methods to remedy and/or mitigate the damage that has been caused; identifies the potential for further damage to occur; and describes actions that will be taken to avoid further damage;



- c) Provide a copy of the report, prepared under b) above, to the Team Leader Compliance Monitoring – Central and the asset owner within ten (10) working days of notification under a) above; and
- d) The consent holder shall implement any necessary actions identified in the report under c) above to the satisfaction of the Team Leader Compliance Monitoring – Central.

### **Reporting**

101. At two monthly intervals a report containing all monitoring data required by conditions of this consent shall be submitted to the Team Leader Compliance Monitoring – Central. The report shall include a construction progress timeline, a summary interpretation of the monitoring data recorded in that period, and, a comparison of that data with previously recorded data and with the Alert Levels for each groundwater bore.

### **Notice of Completion**

102. The Team Leader Compliance Monitoring – Central shall be advised in writing within ten (10) working days of when stabilisation and dewatering has been completed.

### **Construction Traffic**

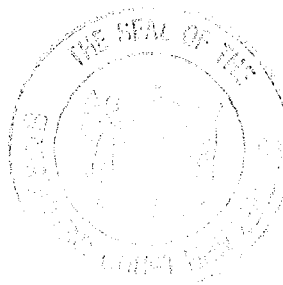
#### **Construction Traffic Management Plan**

103. The consent holder shall prepare a **Construction Traffic Management Plan (CTMP)** for each stage of the Project including for the construction of each base. The CTMP for the Infrastructure construction shall be prepared in consultation with the CLG in accordance with Condition 22. The CTMP for the Infrastructure construction shall be in general accordance with the Draft Construction Traffic Management Plan as referenced in **Annexure B**.

103A. The consent holder shall submit the CTMP for each stage of construction to the Team Leader Compliance Monitoring – Central at least twenty (20) working days prior to the Commencement of Construction of each stage for certification that the CTMP gives effect to the objectives in Condition 104 and complies with the requirements in Condition 105, as applicable to the particular construction stage.

104. The objectives of the CTMP are to:

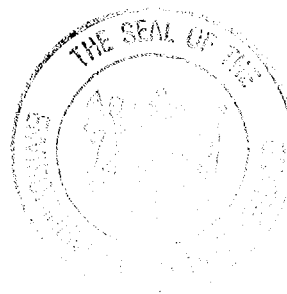
- a) Provide for the safety of everyone at all times;
- b) Ensure maintenance of access at all times for all modes of transport to / from properties in Wynyard Precinct and Viaduct Harbour Precinct and any on street loading zones in or adjacent to those Precincts;
- c) Minimise disruption from construction traffic on occupants in Wynyard Precinct and Viaduct Harbour Precinct;
- d) Minimise adverse effects on amenity caused by construction traffic in Wynyard Precinct and Viaduct Harbour Precinct;
- e) Avoid Full Road Closures and minimise any Partial or Managed Road Closures;



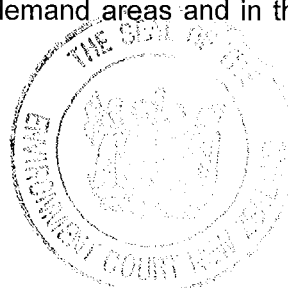
- f) Manage integration with other construction projects and Auckland Transport projects;
- g) Provide for prior engagement with stakeholders when access to properties will be affected by construction traffic; and
- h) Provide a mechanism for addressing queries and responding to complaints.

105. The CTMP shall include:

- a) Provision of the new Northern Connector Road to the north of proposed Base C providing access during construction between Brigham Street and Hamer Street, specifically in advance of the closure of Brigham Street. If Brigham Street needs to be temporarily closed (Partial or Managed Road Closures) before it is permanently stopped a Traffic Management Plan (TMP) shall be prepared by the consent holder and submitted to the Team Leader Compliance Monitoring – Central for certification in consultation with Auckland Transport. This TMP shall identify diversion routes, signage and other measures to advise of the temporary closure and to ensure safety for all modes of transport, and to mitigate any effects of the closure;
- b) For each Project stage and/or construction area, clearly address the traffic management measures that will be required to be implemented;
- c) A mechanism and nominated stakeholder manager responsible for receiving, addressing and monitoring queries and responding to complaints in relation to the construction works;
- d) For Wynyard Point bases, include specific construction site traffic management measures (for example ensuring sufficient space is maintained on construction site(s) to prevent vehicles queueing on the street) to ensure that construction traffic does not affect the efficiency and safety of other vehicles, pedestrians and people on cycles on Hamer Street including the flow of vehicles to and from the Firth site;
- e) For Halsey Wharf, include a Traffic Management Plan for the Marine and Fishing Industry, which shall be completed in consultation with the Regional Facilities Auckland (Viaduct Events Centre “VEC”) and the marine and fishing industry (including Sanford Limited and Auckland Fishing Port Limited) and shall be based on the VEC Traffic Management Plan, which was prepared as a condition of consent for the VEC;
- f) For Hobson Wharf base, include specific construction site traffic management measures to ensure that continued vehicle access is provided to the Eastern Viaduct and to Te Wero and that provision is made at all times for a vehicle loading zone on the Eastern Viaduct for the purpose of servicing the marina and berths on the Eastern Viaduct;
- g) Provision of appropriate ingress and egress routes to/from the different sites for the construction vehicles, including confirmation of appropriate heavy vehicles layover areas and over-dimensional vehicle routes. The operation of the heavy vehicles layover area on Brigham Street shall not impede the travel of passing vehicles and cyclists;



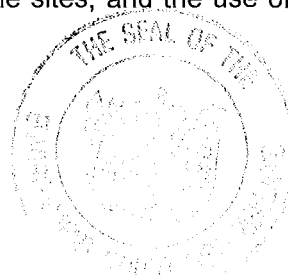
- h) For each Project stage and construction site, confirmation of typical numbers of heavy vehicle movements throughout the day;
- i) Coordination with Auckland Transport regarding other construction sites and streetworks in the vicinity of the Wynyard Precinct and the Viaduct Precinct, including works on Quay Street;
- j) Restricting parking for workers on construction sites, with parking prioritised for minor trades (i.e. those needing to bring tools for specialist activities), car / van pooling, staff working outside standard hours and mobility impaired staff / visitors;
- k) No heavy vehicle movements/ deliveries to and from the construction sites within the Wynyard Precinct via the Fanshawe Street intersections on weekdays (excluding public holidays) between 7am and 9am and between 4pm and 6pm unless included as part of a CTMP;
- l) No heavy vehicle movements / deliveries to and from construction sites shall be made via Viaduct Harbour Avenue or that part of Customs Street West located west of Lower Hobson Street at any time;
- m) The movement of heavy vehicles shall be managed to avoid queuing or parking from occurring on adjacent roads that may affect access to and from adjacent properties including Auckland Theatre Company drop-off and pick-up on Madden Street and Halsey Street;
- n) Minimising heavy vehicle movements between 10.30pm and 6.00am via Halsey Street and Madden Street;
- o) Maintaining safe and efficient vehicle, pedestrian and cyclist accesses from Brigham Street during construction for remaining activities / properties, which may include temporary access for BST, and Sealink and Auckland Seaplanes via the southern part of the Sail NZ / ASB car park site;
- p) No heavy vehicles shall use Daldy Street unless specifically required for large infrequent deliveries, which shall occur between midnight and 6am;
- q) Monitoring of landscaping and pavements located on construction routes and provide remediation of any damage resulting from Project construction traffic;
- r) Monitoring and remediation of any damage to landscaping and pavements on construction routes within Wynyard Precinct north of and including Madden Street and all of Halsey Street;
- s) Providing safe access for pedestrians and people cycling to Project construction sites;
- t) In coordination with Auckland Transport, implement measures to raise awareness of pedestrians walking and people cycling east-west on North Wharf and Wynyard Crossing shared path and zebra crossing to construction and heavy vehicle drivers travelling on Hamer Street, Karanga Plaza and Brigham Street (until it is stopped);
- u) Specific measures to provide for the safe movement of pedestrians and people cycling through high pedestrian and cycle demand areas and in the vicinity of site access points;



- v) Specific measures to ensure that construction traffic minimises disruption of movement of all modes of traffic through Wynyard and Viaduct Harbour Precincts to and from existing businesses and maintains access to and from sites;
- w) Restricting or preventing public access to parts of Halsey Wharf, Wynyard Wharf and Hobson Wharf where required for public safety;
- x) Educating construction staff of the safety needs of pedestrians and people cycling;
- y) Confirmation that no heavy vehicles will reverse to or from public roads within Wynyard Precinct, Viaduct Harbour Precinct and Lower Hobson or Quay Streets; and
- z) Processes for monitoring, and to enable review and amendment to the CTMP.

### **Construction Staff Travel Plan**

106. The consent holder shall prepare a **Construction Staff Travel Plan (CSTP)** for the Infrastructure construction. The consent holder shall submit the CSTP to the Team Leader Compliance Monitoring – Central for certification that the CSTP gives effect to the objectives in Condition 107 and complies with the requirements in Condition 108. The CSTP shall be in general accordance with the Draft Construction Staff Travel Plan as referenced in **Annexure B**.
107. The objectives of the CSTP are to encourage and promote travel by public transport, walking and cycling and to minimise private vehicle travel associated with construction.
108. The CSTP shall include:
- a) Provision of any car or van pooling from outside the Wynyard Precinct or City Centre;
  - b) Providing staff with information on preferential parking locations and rates for those ride sharing;
  - c) Providing construction staff with information about recommended cycle and pedestrian routes to/from the construction sites;
  - d) The provision of secure cycle parking and storage facilities (for personal items) on the construction sites; and
  - e) Providing staff with information on public transport to and from the construction sites.
- 108A. Six (6) months and the twelve (12) months following the commencement of the construction, a report evaluating the CSTP shall be prepared and submitted to the Team Leader Compliance Monitoring - Central. The report shall identify:
- a) The number of staff on each site, the measures that have been put in place to facilitate and encourage staff not to drive to and from work;
  - b) The outcomes of the implementation of the CSTP including the number of staff travelling on various modes to and from the sites, and the use of on-street parking provision by staff within Wynyard Precinct.



108B. Should the report required by Condition 108A identify that more than 30% of staff are travelling by single occupancy car and parking within Wynyard Precinct, the consent holder shall within one month prepare an amendment to the CSTP that includes further measures to actively discourage driving to and from work and submit the amended CSTP by the Team Leader Compliance Monitoring – Central for certification.

### Construction Noise and Vibration

109. Construction noise shall be measured and assessed in accordance with the provisions of New Zealand Standard NZS 6803:1999 "*Acoustics - Construction Noise*" and comply with the following Project Standards unless otherwise provided for in any CNVMP (refer Condition 110).

Day	Time	L <sub>Aeq</sub> (30min)	L <sub>AFmax</sub>
Monday to Saturday	0700 to 2230	75	90
Sunday	0900 to 1900	65	80
All other times		60	75

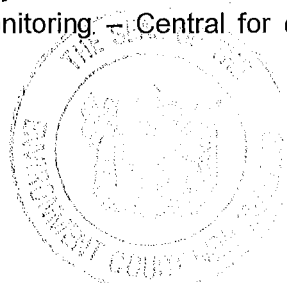
109A. Vibration arising from construction activities which may affect people and buildings shall be measured in accordance with ISO 4866:2010 *Mechanical vibration and shock – Vibration of fixed structures – Guidelines for the measurement of vibrations and evaluation of their effects on structures*, and shall comply with the Category A vibration standards in the table below:

Receiver	Time	Category A	Category B
Occupied dwellings, hotels and motels	Night 2230h - 0700h	0.3mm/s PPV	1mm/s PPV
	Day 0700h - 2230h	2mm/s PPV	5mm/s PPV
Other occupied buildings	All times	2mm/s PPV	5mm/s PPV
All buildings	All times	5mm/s PPV	Tables 1 and 3 of DIN4150-3:1999

109B. Vibration from construction activities shall comply with the Category A standards in Condition 109A unless otherwise provided for in any CNVMP (refer to Condition 110).

109C. Vibration may only exceed Category B standards at existing buildings located on Hobson Wharf, and only subject to compliance with the management procedures set out in the CNVMP required by Condition 110.

110. The consent holder shall prepare a **Construction Noise and Vibration Management Plan** (CNVMP) for the Infrastructure construction in consultation with the CLG in accordance with Condition 22. At least five (5) working days prior to Commencement of Construction of the Infrastructure for the Project, the consent holder shall submit the CNVMP to the Team Leader Compliance Monitoring – Central for certification that the





CNVMP gives effect to the objectives in Condition 110A and complies with the requirements in Condition 110B. The CNVMP shall be in general accordance with the Draft Construction Noise and Vibration Management Plan as referenced in **Annexure B**.

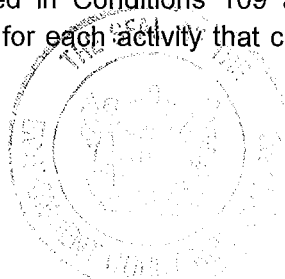
**Advice Note:** A CNVMP is a mandatory requirement under Condition 110 for Infrastructure construction and under Conditions 135C-135E for the Base B building on Hobson Wharf, but is optional for the Base C-G buildings at Wynyard Point.

110A. The objectives of the CNVMP are to:

- a) Identify and implement the Best Practicable Option (BPO) for the management of all construction noise and vibration effects;
- b) Define the procedures to be followed where the noise and vibration standards (Conditions 109 & 109A) are not met (following the implementation of the BPO);
- c) Set out the methods for scheduling works to minimise disruption;
- d) Ensure engagement with affected receivers and timely management of complaints; and
- e) Protect wellbeing of marine mammals.

110B. The CNVMP shall include:

- a) A description of the works;
- b) Hours of operation, including a specific section on works at night (2230h - 0700h), incorporating clear definitions of the works undertaken at night;
- c) Contact details for staff responsible for implementation of the CNVMP;
- d) The construction noise and vibration performance standards for the project;
- e) The selection of construction equipment that:
  - (i) Where practicable, minimises noise and vibration, prioritises electric motors over diesel engines, prioritises rubber tracked equipment over steel tracked equipment;
  - (ii) Is suitably sized for the task;
  - (iii) Is maintained and fitted with exhaust silencers and engine covers; and
  - (iv) Avoids tonal reversing or warning alarms.
- f) Minimum separation distances from receivers for plant and machinery where compliance with the construction noise and vibration standards is achieved;
- g) Identification of affected sensitive receivers where noise and vibration performance standards apply;
- h) Avoidance of night works where practicable;
- i) A specific section setting out the predicted noise and/or vibration levels, mitigation, monitoring and management measures (including communication with stakeholders and use of temporary noise barriers) that will be adopted for works which cannot comply with the project standards specified in Conditions 109 and 109A. This section shall include the information above for each activity that cannot practicably



comply. This section may be in the form of site specific plans which would require certification from the Council before the works can proceed, in a manner that would achieve the objectives outlined in Condition 110A;

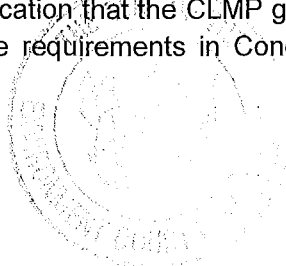
- j) Management and mitigation options to manage the underwater noise effects on marine mammals from impact and vibratory piling methods, including defined marine mammal management zones, marine mammal observation procedures, measurements of underwater noise at the commencement of vibratory and impact piling to calibrate underwater noise model, and procedures to ensure piling works cease when marine mammals are present inside the management zones;
- k) Methods and frequency of monitoring and reporting of noise and vibration. This shall include monitoring during the first occurrence of impact piling, bored piling, vibro piling, other activities that are predicted to exceed the project standards in Condition 109 and the Category A standards in Condition 109A, and repeated if different equipment is utilised to undertake these activities;
- l) Communication, consultation and complaints response protocol including specific provisions for determining the times that receivers are sensitive to noise and vibration and the extent to which high noise and vibration works can be scheduled around those times where practicable (including residential, office, hospitality and tourism activities);
- m) A section requiring that impact and vibratory piling within 30m of occupied buildings (including on Hobson Wharf) shall be scheduled between 8am and 10am unless otherwise agreed with the building occupants;
- n) A section requiring that all impact piling within 100m of any occupied building on Princes Wharf is restricted to between the hours of 7am and 7pm, unless the Council certifies that impact piling outside of these hours is consistent with the BPO;
- o) A section requiring building condition survey to be undertaken for the Maritime Museum; and
- p) A section requiring that impact piling and concrete cutting may only be undertaken during the daytime periods defined in Condition 109.

110C. In all cases, piling work may not commence until the absence of marine mammals inside the effects management zones identified in the CNVMP is confirmed visually. All piling work shall cease in the event that a marine mammal is detected within the effects management zones identified in the CNVMP.

110D. In the event of a noise and/or vibration complaint, monitoring shall be undertaken where the activity and methodology has not already been shown to be compliant with the Project Standards in Conditions 109 – 109C at that location. Council may waive the requirement for further monitoring where it would not better inform the complaint.

### **Construction Lighting Management Plan**

111. The consent holder shall prepare a **Construction Lighting Management Plan (CLMP)** for the Infrastructure construction. The consent holder shall submit the CLMP to the Team Leader Compliance Monitoring – Central for certification that the CLMP gives effect to the objective in Condition 112 and complies with the requirements in Condition 113. The



CLMP shall be in general accordance with the Draft Construction Lighting Management Plan as referenced in **Annexure B**.

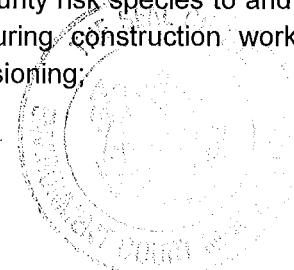
Refer to Conditions 135C-135E for the CLMP requirements for Hobson Wharf Base B. For the avoidance of doubt, no CLMP is required for Bases C-G however works shall be carried out in accordance with the AUP:OP rule E24.6.1.

112. The objective of the CLMP is to minimise potential impacts of construction lighting required by the works including to minimise adverse effects on amenity caused by construction lighting on residential and visitor accommodation in the Viaduct Harbour and Wynyard Precincts.
113. The CLMP shall include:
- a) Details of construction lighting columns and luminaires, that shall be selected, tilted and/or aimed to ensure that spill light and glare to light sensitive areas is controlled to ensure:
    - (i) Spill light at the boundary with dwellings shall be no more than the limits in AUP:OP rule E24.6.1(6);
    - (ii) Glare to dwellings shall be no more than the limits in AUP:OP rule E24.6.1(8); and
    - (iii) Other potentially light sensitive areas, where the AUP:OP lighting rules do not apply shall also be protected from unnecessary lighting glare effects as reasonably practical. In particular, this refers to non-dwelling residential uses such as hotels and commercial outdoor dining, such as the eateries along North Wharf and Princes Wharf.
  - b) Confirmation that no lights being directed towards the night sky;
  - c) A map of the surrounding light sensitive areas;
  - d) Design to comply with the E24.6.1 General Standards in the AUP:OP;
  - e) Planning and setup measures to minimise spill light and glare; and
  - f) Other measures such as construction vehicle headlight sweep, construction vehicle warning lights/beacons, construction vessel lights.

#### **Biosecurity Management Plan**

114. Prior to the installation of any structures in the CMA or undertaking any dredging, the consent holder shall prepare a **Biosecurity Management Plan (BMP)** in consultation with the Forum in accordance with Condition 5D. The consent holder shall submit the BMP to the Team Leader Compliance Monitoring - Central for certification that the BMP gives effect to the objectives in Condition 115 and complies with the requirements in Condition 116. The BMP shall be prepared by a suitably qualified person and be in general accordance with the Draft Biosecurity Management Plan as referenced in **Annexure B**. The consent holder shall also lodge an updated BMP for re-certification prior to the decommissioning of any America's Cup Infrastructure located in the CMA.
115. The objectives of the BMP are:

- a) To avoid the spread of any unwanted/biosecurity risk species to and from the site to other locations by construction vessels during construction works, construction decommissioning and post-Event decommissioning;



- b) To ensure that decommissioning of America's Cup Infrastructure is carried out in a manner that minimises the risk of any threats from unwanted/biosecurity risks species and / or the transfer of those threats off-site; and
- c) To ensure that any operators of any vessels visiting the Event are aware of their obligations to avoid the spread of any unwanted/biosecurity risk species to Hauraki Gulf or offshore islands.

116. The BMP shall include:

- a) Identification of any unwanted/biosecurity risk species present;
- b) Identification of the potential for transfer of threat species off-site; and
- c) Measures to avoid or minimise transfer of unwanted/biosecurity species, during construction works, construction decommissioning and post-Event decommissioning of Infrastructure in the CMA; and
- d) Measures to ensure that any operators of any vessels visiting the Event are aware of their obligations to avoid the spread of any unwanted/biosecurity risk species to Hauraki Gulf or offshore islands.

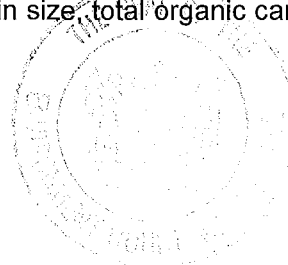
#### **Inner Viaduct Harbour Environmental Management Plan**

117. The consent holder shall prepare an **Inner Viaduct Harbour Environmental Management Plan** (IVHEMP) in consultation with the Forum in accordance with Condition 5D. The consent holder shall submit the IVHEMP to the Team Leader Compliance Monitoring - Central for certification that the IVHEMP gives effect to the objective in Condition 118 and complies with the requirements in Condition 119. The IVHEMP shall be prepared by a suitably qualified person and be in general accordance with the Draft Inner Viaduct Harbour Environmental Management Plan as referenced in **Annexure B**.

118. The objective of the IVHEMP is to provide for monitoring of water quality and ecology within the Inner Viaduct Harbour water space to identify any ~~ecological~~ changes to the environment of the Inner Harbour from works authorised by this consent.

119. The IVHEMP shall include:

- a) An environmental monitoring programme that shall include:
  - (i) Water quality monitoring on a monthly basis at sites within the Inner Viaduct Harbour and the Wynyard South Waterspace and in Freemans Bay. The samples are to be collected on a monthly basis and analysed for the constituents as set out in the Golder report "Assessment of Coastal Environmental Effects Associated with the Development of America's Cup Facilities for the Wynyard Hobson Option" as referenced in **Annexure A**;
  - (ii) In addition to the sites identified in (i), on a monthly basis, additional sites for the observation of aesthetic effects (identification of sheens, floatables, rubbish) with photographic records being kept;
  - (iii) Sediment quality sampling on an annual basis at the water quality monitoring sites in the Inner Viaduct Harbour. The samples collected at each site are to be photographed and examined for grain size, total organic carbon, redox and concentration of copper, lead and zinc;



- (iv) Benthic ecological sampling collected annually, at the same time as the sediment quality sampling is undertaken, to provide information on the infauna at sediment quality sampling sites;
  - (v) Intertidal and subtidal ecological monitoring on structures (pontoons, piles and walls) from at least three locations within the Inner Viaduct Harbour. Data will be collected annually from permanent photo-quadrats and for wall and pile sites, quadrats are to be established at surface and approximate mid and bottom water depths;
  - (vi) Water quality sampling is to be carried out following a minimum of three storm events, with the sampling being taken at the Karanga Steps within the Inner Viaduct Harbour, and examined for enterococci and the field information as collected under (i) above
- b) The following matters as they relate to the Inner Viaduct Harbour and Wynyard Wharf South Water Space:
- (i) The extent to which there are any new, untreated stormwater discharges from surrounding development into the Inner Viaduct Harbour and Wynyard Wharf South Water Space;
  - (ii) Provisions for waste management, including flotsam removal, litter collection from adjacent quays; and
  - (iii) Any wider Council group initiatives for the Freemans Bay catchment stormwater improvement.

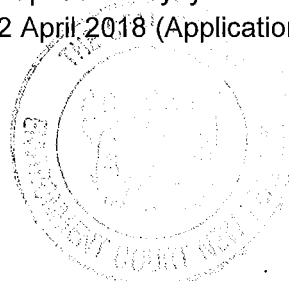
119A. Water quality monitoring required by Condition 119a) shall be carried out for a period of 12 months following the completion of the construction period. At the completion of the 12-month period the consent holder shall submit a report prepared by a suitably qualified ecologist to the Team Leader Compliance Monitoring – Central which summarises all environmental data collected during the monitoring period and provides an assessment on the following matters:

- a) Whether there have been any environmental or ecological changes within the Inner Viaduct Harbour that may have been influenced by possible changes in flushing within the Inner Viaduct Harbour;
- b) Whether water quality in the Inner Viaduct Harbour and Wynyard Wharf South Water Space is suitable for contact recreation; and
- c) Whether stormwater discharge to the Inner Viaduct Harbour and Wynyard Wharf South Water Space results in identifiable water quality changes.

119B. The report required by Condition 119A shall include a recommendation as to whether the monitoring shall cease or if it is to be continued for an additional period and if so for what period for further review and reporting.

**Trees**

120. Conditions 121 to 135A apply to Trees 1, 15, 16, 17 and 18 as identified in the report 'Arboricultural Assessment Report America's Cup 36 – Wynyard Hobson' provided by Stuart Barton of Arbor Connect Limited dated 12 April 2018 (Application Document 18) as

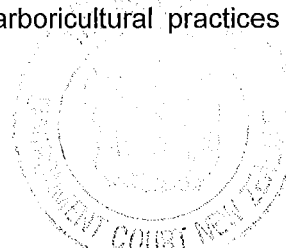


"trees to be retained" to mitigate potential adverse effects of the proposal on those trees. A copy of the tree protection methodology in Conditions 121 to 135A shall be held on site at all times.

121. A suitably experienced arborist ("Appointed arborist") shall be employed by the consent holder, at the consent holder's expense, to monitor, supervise and direct all works within the drip line or in the vicinity of the trees to be retained, for the duration of the works.
- 121A. The appointed arborist shall provide advice during the detailed design phase and development of the construction methodologies and enabling works to be undertaken in Hamer Street to ensure the potential effects on trees and the number of tree removals required are minimised.
122. An integral requirement for the protection of the retained vegetation within the site will be the continued and documented monitoring of conditions during the construction process. The Appointed arborist shall maintain a log of visits to the site and works undertaken on those visits.
123. Prior to any site works (including demolition works) commencing that affect the trees to be retained, a pre-commencement site meeting shall be held so that the tree protection methodology that pertains to those trees can be explained by the Appointed arborist to all contractors or sub-contractors who will be working on site within the root zone of, or adjacent to, any of the trees to be retained.
124. The pre-commencement meeting may also be attended by Council's Arborist. The consent holder shall give the Team Leader Compliance Monitoring – Central and the Council's Arborist at least ten (10) working days prior notice of the intended date of the meeting.
125. Prior to construction, the consent holder shall provide a report prepared by a suitably qualified and experienced arborist setting out the methodology for the relocation of any Trees 1, 16, 17 and 18 identified to be transplanted and their successful establishment to satisfaction of the Team Leader Compliance Monitoring – Central. These works shall be carried out by a suitably qualified and experienced arborist.
- 125A. All reasonable care shall be taken during the works to ensure that the trees within Hamer Street that are growing outside the project area are retained in a safe and healthy condition. Only in instances where the Appointed Arborist (taking into consideration the tree species, age, condition and tolerance to damage, root zone disturbance and pruning) can demonstrate to the satisfaction of Council's Arborist that the stability and / or long-term health of a tree is likely to be compromised by the works may the tree be removed.
- 125B. If feasible and proportionate to the value of the tree (in the opinion of the Appointed Arborist), any tree to be removed may be transplanted to another location or stored and replanted back within the vicinity of the project area, subject to the confirmation of Council's Arborist.
126. Any demolition, including the removal of asphalt surfaces, or excavation works within the root zone of any tree to be retained shall be undertaken under the supervision of the Appointed arborist.



127. All roots encountered during excavations that require severance shall be cleanly cut back to the excavation face using handsaw or secateurs, by the consent holder's nominated arborist. All exposed roots and root ends shall be covered to prevent them from drying out by a covering of Hessian (or acceptable alternative) that is to be kept damp until the excavated area can be backfilled. Roots that will come into contact with wet concrete shall be covered by plastic prior to the concrete being poured.
128. Temporary protective fencing to protect the trees to be retained shall be installed prior to any site works, including demolition, commencing on site. The purpose of the temporary protective fencing is to provide an area around the retained trees that will facilitate their successful retention during the construction process. The exact extent and location of the temporary protective fencing shall be finalised on site before works begin, by the consent holder's nominated arborist. Although temporary, the fence shall be constructed so that it is not easily moved.
129. The area within the temporary protective fencing is to be considered a total exclusion zone as follows:
  - a) No storage of diesel, cement, building materials, site huts, spoil etc within the delineated area;
  - b) No spillages of substances likely to be injurious to tree health within seepage distance of the delineated area;
  - c) No alteration to the dimensions of the delineated area without prior confirmation by the nominated arborist; and
  - d) No access into or works within the delineated area without prior confirmation by the Appointed arborist.
130. The consent holder is responsible for maintaining the condition of the temporary protective fencing. The condition, repair and location of the temporary protective fencing shall be regularly inspected as part of the routine tree-monitoring programme.
131. The Appointed arborist shall undertake all remedial pruning works necessary, including the pruning of tree roots uncovered during excavations, in accordance with documented arboricultural standards.
132. During the construction process the Appointed arborist may make recommendations on the installation of irrigation systems, mulch or remedial pruning works, if they are required to improve the health of the trees.
- 132A. All works required to install services within Jellicoe Street shall be undertaken outside the below-ground rain garden structures.
133. Replacement planting shall be carried out for each protected tree that is removed and not transplanted. Within the planting season following the completion of work within Brigham Street, the consent holder shall plant a minimum of 5.0m high replacement trees on a one for one basis for those removed.
134. Replacement planting shall be carried out in accordance with correct arboricultural practices in locations that provide for the trees' long-term growth and development and shall be maintained in accordance with correct arboricultural practices for a minimum period of 2 years after planting.



135. Any replacement or transplanted tree that dies within the 2 year maintenance period shall be replaced like-for-like.

135A. The consent holder shall supply a completion memorandum to the Team Leader Compliance Monitoring – Central upon completion of all works on site. This memorandum shall include minutes of the pre-commencement meeting that is required as a condition of consent, a log of all site visits and actions undertaken by the Appointed Arborist, confirmation of the number, size, species and location of all replacement or transplanted trees, and confirmation that all required tree protection measures were adhered to for the duration of the works.

**Advice Note:** *The consent holder is advised to consult with Auckland Council's Community Facilities Arborist (delegated by Auckland Transport to manage trees in streets) at the earliest opportunity to gain his or her approval for the works affecting trees under Community Facilities' management.*

### **Geotechnical Conditions**

135B. The following geotechnical requirements shall apply to the Project:

- (a) The consent holder shall submit a Project Geotechnical Design Report (**PGDR**) to the Team Leader Compliance Monitoring - Central no later than twenty (20) working days before the Commencement of Construction for certification that it adequately addresses the matters in this Condition 135(a) including item(i) set out below. The PGDR shall include analysis and design to address specific natural hazards likely to affect the development and shall include but not be limited to:
  - i. Detailed geotechnical assessment and design of structures and earthworks fill which demonstrates stability and appropriate performance in accordance with the Auckland Council 'Code of Practice for Land Development and Subdivision' for the specific intended design life, considering the destabilising effects of natural hazard.

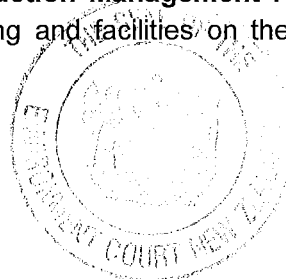
Works shall be carried out in accordance with the certified PGDR.

- (b) The trenches, retaining walls and building foundations shall be supervised by a suitably qualified engineering professional. In supervising the works, the suitably qualified engineering professional shall ensure that trenches for the purpose of drainage (manholes and drains), fill and foundations (if any), have been provided with adequate support and protection so they will not lead to instability;
- (c) All geotechnical-related earthworks shall be managed to ensure that they do not lead to any uncontrolled instability or collapse either affecting the site or adversely affecting any neighbouring properties. In the event that such collapse or instability does occur, it shall immediately be rectified.

**Advice Note:** *All new and temporary public water and wastewater infrastructure including connection points to the existing systems will require an approval.*

### **Hobson Wharf Base B Construction Management Plan**

135C The consent holder shall, in consultation with members of the CLG in terms of Condition 22C, prepare a **Hobson Wharf Base B Construction Management Plan (HWMP)** in relation to the construction of the Base B building and facilities on the Hobson Wharf





Extension. The consent holder shall submit the HWMP to the Team Leader Compliance Monitoring – Central for certification that the HWMP gives effect to the objectives in Condition 135D and complies with the requirements in Condition 135E.

135D. The objectives of the HWMP are:

- (a) To ensure that the construction works subject to the HWMP remain within the limits and standards approved under the consent;
- (b) To set out the management procedures and construction methods to be undertaken in order to avoid, remedy or mitigate potential adverse effects on residents and businesses arising from those construction activities;
- (c) To give effect to the objectives in the CTMP (refer to Conditions 103-105), CNVMP (refer to Conditions 110-110B) and CLMP (refer to Conditions 111-113) management plans as listed in Condition 31 to the extent they are relevant to the construction works subject to the HWMP; and
- (d) To ensure that the adverse effects arising from the construction works subject to the HWMP are minimised and, to the extent reasonably possible, avoided on the amenity of occupants of Princes Wharf, on vehicular and pedestrian access to the Eastern Viaduct and to Te Wero including provision for loading and unloading on the Eastern Viaduct.

135E. The HWMP shall include:

- (a) Those elements of the CTMP (refer to Conditions 103-105), CNVMP (refer to Conditions 110-110B) and CLMP (refer to Conditions 111-113) management plans listed in Condition 31 that are relevant to the construction works subject to the HWMP;
- (b) Steps to be taken to minimise and, to the extent reasonably possible, avoid adverse effects on the amenity of occupants of Princes Wharf, on vehicular and pedestrian access to the Eastern Viaduct and to Te Wero including provision for loading and unloading on the Eastern Viaduct; and
- (c) A requirement to, at all times, provide vehicle access onto the Eastern Viaduct and a vehicle loading zone on the Eastern Viaduct for the purposes of servicing the marina and berths on the Eastern Viaduct.

## Post-Construction Requirements

### Industrial and Trade Activities

#### Stormwater Treatment Devices

136. Stormwater treatment devices for the ITAs shall be provided as set out in Condition 148.

137. Stormwater treatment devices for the ITAs shall be operated and maintained in accordance with the ITA HSEMPs.

#### Industrial and Trade Activities Environmental Management Plans

138. At least twenty (20) working days prior to any Industrial and Trade Activities occurring on any one of the syndicate bases, the consent holder shall prepare an **Industrial and Trade**



**Activities Hazardous Substances and Environmental Management Plans** (ITA HSEMP) for that syndicate base in consultation with the Forum in accordance with Condition 5D. The consent holder shall submit the ITA HSEMP to the Team Leader Compliance Monitoring - Central for certification that the ITA HSEMP gives effect to the objectives in Condition 139 and complies with the requirements in Condition 141.

139. The objectives of the ITA HSEMPs are to:
- a) Ensure Best Practicable Options (BPOs) are utilised to avoid, remedy or mitigate adverse effects arising from ITA's and Hazardous Substance storage and use; and
  - b) Enable flexibility in the location of hazardous substance storage and use areas.
140. The consent holder shall ensure that each base is operated and managed in accordance with the certified ITA HSEMP for the duration that the ITA continues and / or any hazardous substance is stored or used at that base.
141. The ITA HSEMP shall include the following:
- a) Site location, activities, layout and drainage plans;
  - b) Identification of potential contaminants associated with the activities conducted on the site/s, methods to avoid, control and treat discharges of these from the site/s, and methods to manage environmental risks from site activities as far as practicable;
  - c) Identification of hazardous substances on site;
  - d) Identification of treatment devices proposed to be utilised
  - e) Operation and maintenance procedures for treatment devices, which may be contained in a separate plan cross referenced in the ITA HSEMP as required by Condition 150 (design report for stormwater treatment);
  - f) If the syndicate bases are to use detergents the consent holder shall prepare and submit additional details for the management of wash water that are to include but are not limited to:
    - (i) A description of the detergent, the quality and frequency of use, and the combined amount of wash water;
    - (ii) The procedure during application to contain the washwater so that it avoids entering the stormwater treatment device; and
    - (iii) Confirmation of acceptance by Watercare of any subsequent discharge to the public wastewater system.
  - h) Roles and responsibilities associated with the ITA HSEMP;
  - i) Methods for providing and recording staff training on the ITA HSEMP;
  - j) A programme for auditing site performance against the ITA HSEMP provisions; and
  - k) Reporting and review of the ITA HSEMP.



### **Industrial and Trade Activities Emergency Spill Response Plans**

142. Prior to occupation of each syndicate base, the consent holder shall prepare an **Industrial and Trade Activities Emergency Spill Response Plan** (ITA ESRP) for the syndicate base in consultation with the Forum in accordance with Condition 5D. The consent holder shall submit the ITA ESRP to the Team Leader Compliance Monitoring - Central for certification that the ITA ESRP gives effect to the objectives in Condition 143 and complies with the requirements in Condition 145.
143. The objectives of the ITA ESRPs are to:
- a) Ensure appropriate operational procedures are identified to mitigate risk of spills; and
  - b) Ensure appropriate management systems are identified to mitigate risk of spills;
144. The ITA ESRP shall apply to, and be kept on site and accessible on each site for the duration that the ITA continues at that site.
145. The ITA ESRPs shall include the matters in Appendix A to the America's Cup Stormwater and Services Technical Report prepared by Beca, as referenced in **Annexure A**.

### **Reporting**

146. The consent holder shall submit a report to the Team Leader Compliance Monitoring – Central annually in a month to be agreed following the date that ITAs and/or hazardous substance handling or storage commenced at the sites. The report shall include:
- a) The performance of the sites against the ITA HSEMP provisions, including the results of any audits required under Condition 141;
  - b) Inspection and maintenance records for the stormwater treatment devices;
  - c) Results and interpretation of the stormwater device monitoring programme;
  - d) Records of any spills or incidents which occurred within the previous reporting period and the response undertaken; and
  - e) Any updated sections of the ITA HSEMP resulting from the review required under Condition 141.
147. The consent holder shall report to the Auckland Harbourmaster or the Auckland Council's 24 Hour Water pollution Hotline (09 377 3107):
- (a) Subject to (b) below, all spills of Hazardous Substances and other substances over 10 litres that have entered the stormwater system or a water body from the ITA sites; and
  - (b) Any spills of hydrocarbons that have entered the stormwater system or marine environment.



## Stormwater Management

### Stormwater Systems and Treatment Devices

148. The following stormwater management works shall be constructed for the following catchment areas and design requirements, and shall be completed prior to discharges commencing from the site:

Catchment	Works	Design requirement(s)
Wynyard Wharf permanent infill sections – trafficked areas	Stormwater360 Stormfilter or similar approved device	75% TSS removal
Hobson wharf extension – trafficked areas		
Wynyard point bases – trafficked areas		

149. In the event that any modifications to the stormwater management system are required, that will not result in an application pursuant to section 127 of the RMA, the following information shall be provided:

- a) Plans and drawings outlining the details of the modifications; and
- b) Supporting information that details how the proposal does not affect the capacity or performance of the stormwater management system.

All information shall be submitted prior to implementation of the modifications to the Team Leader Compliance Monitoring - Central for certification that the stormwater management system remains in general accordance with the capacity and performance of the system included in the application.

150. At least twenty (20) working days prior to construction of the proposed stormwater systems and treatment devices, the consent holder shall submit a design report to the Team Leader Compliance Monitoring – Central for certification, including detailed engineering drawings, specifications, and calculations for the stormwater treatment devices. The details shall include:

- a) Confirmation that the design achieves the requirements of Condition 148;
- b) Contributing catchment size and boundaries and impervious percentage;
- c) Specific design and location of stormwater treatment devices; and
- d) Supporting calculations for stormwater treatment devices, including capacity and suspended solid removal efficiency.

Construction of the stormwater management works shall not commence unless the Team Leader Compliance Monitoring – Central has certified that the report achieves the matters in a) to d) above.

151. [Not used]

152. [Not used]

153. [Not used]



154. [Not used]

#### **Pre-construction meeting**

155. A pre-construction meeting shall be held by the consent holder, **prior** to commencement of the construction of any stormwater devices onsite, that:
- a) Is arranged five (5) working days prior to initiation of the construction of any stormwater devices on the site;
  - b) Is located on the subject area;
  - c) Includes representation from the Team Leader – Compliance Monitoring - Central; and
  - d) Includes representation from the site stormwater engineer and contractors who will undertake the works and any other relevant parties.
156. The following information shall be made available prior to, or at the pre-construction meeting
- a) Timeframes for key stages of the works authorised under this consent;
  - b) Contact details of the site contractor and site stormwater engineer; and
  - c) Construction plans certified (signed/stamped) by an Auckland Council Development Engineer.

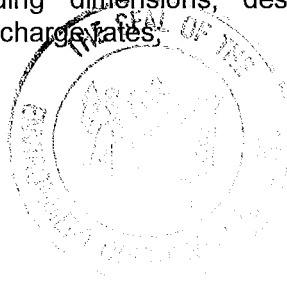
#### **Post-construction meeting**

157. A post-construction meeting shall be held by the consent holder, within twenty (20) working days of completion of the stormwater management works, that:
- a) Is located on the subject area;
  - b) Includes representation from the Team Leader Compliance Monitoring - Central; and
  - c) Includes representation from the site stormwater engineer and contractors who have undertaken the works and any other relevant parties.

**Advice Note:** *To arrange the pre-construction or post-construction meeting required by this consent, please contact the Team Leader Compliance Monitoring - Central on phone 09 3010101 or [monitoring@aucklandcouncil.govt.nz](mailto:monitoring@aucklandcouncil.govt.nz).*

#### **As-Built Drawings**

158. No later than thirty (30) working days after the practical completion of the project or of any project stage which is subject to separate practical completion, the consent holder shall supply As-Built Drawings for the stormwater systems and treatment devices to the Team Leader Compliance Monitoring – Central.
159. The As-Built Drawings shall be signed off by a Chartered Professional Engineer on behalf of the consent holder and shall include:
- a) The as-built locations of stormwater reticulation, treatment devices and outfalls expressed in terms of the New Zealand Transverse Mercator Projection and Chart Datum to the nearest 0.1 m for location and 0.01m for level;
  - b) Stormwater treatment device details including dimensions, design capacity, treatment efficiencies, inlet/outlet levels and discharge rates;



- c) Photographs at all stormwater outfall locations; and
- d) Documentation of any discrepancies between the certified design plans under Condition 150 and the As-Built Drawings.

### **Operation and Maintenance Plan**

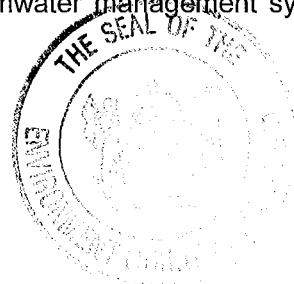
160. An Operation and Maintenance Plan shall be provided to the Team Leader Compliance Monitoring - Central five (5) working days prior to the post-construction meeting required by this consent for certification.
161. The Operation and Maintenance Plan shall set out how the stormwater management system is to be operated and maintained to ensure that adverse environmental effects are minimised. The plan shall include:
- a) Details of who will hold responsibility for long-term maintenance of the stormwater management system and the organisational structure which will support this process;
  - b) A monitoring programme to determine maintenance frequency;
  - c) A programme for regular maintenance and inspection of the stormwater management system;
  - d) A programme for the collection and disposal of debris and sediment collected by the stormwater management devices or practices;
  - e) A programme for post storm inspection and maintenance;
  - f) A programme for inspection and maintenance of the outfalls; and
  - g) General inspection checklists for all aspects of the stormwater management system, including visual checks
162. The Operation and Maintenance Plan shall be updated and submitted to the Team Leader Compliance Monitoring - Central upon request for certification that it includes the matters in Condition 161.

### **Maintenance Contract**

163. A written maintenance contract for the on-going maintenance of the proprietary device(s) shall be entered into with an appropriate stormwater management system operator, prior to the operation of any proprietary stormwater management device(s). A written maintenance contract shall be in place and maintained for the duration of the consent.
164. A signed copy of the contract required shall be forwarded to the Team Leader Compliance Monitoring - Central five (5) working days prior to the post-construction meeting required by this consent.
165. A copy of the current maintenance contract shall be provided to the Team Leader Compliance Monitoring - Central upon request throughout the duration of the consent.

### **Maintenance Report**

166. Details of all inspections and maintenance for the stormwater management system, for the preceding three years, shall be retained.



167. A maintenance report shall be provided to the Team Leader Compliance Monitoring - Central on request.
168. The maintenance report shall include the following information:
- a) Details of who is responsible for maintenance of the stormwater management system and the organisational structure supporting this process;
  - b) Details of any maintenance undertaken; and
  - c) Details of any inspections completed.

## Pre-Occupation and Event Conditions

### Noise

168A. Noise, excluding Noise Events as provided for in Condition 183Q and the operational requirements of any vessel, shall comply with:

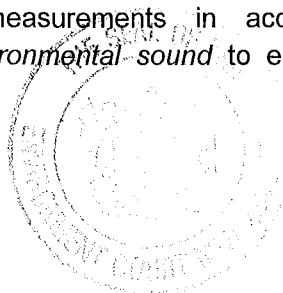
- a) Parts (2) and (5) of Rule I214.6.4 for activities on land in the Wynyard Precinct;
- b) Rule E25.6.8 for activities on land in the Business – City Centre Zone not in Wynyard Precinct;
- c) Rule E25.6.22 for all activities in the CMA, where the noise limits of the receiving zone shall apply to all receivers on land on the south side of the Waitemata Harbour;
- d) Rule E25.6.14 for all activities in the CMA where the noise is received on any site in a residential zone on the northern side of the Waitemata Harbour; and
- e) The following noise limits for any activities at Base B (other than amplified sound) where the noise is measured and assessed as the incident level on the facade of any building on Princes Wharf occupied by an activity sensitive to noise:

7am to 11pm	65 dB $L_{Aeq}$
11pm to 7am	60 dB $L_{Aeq}$
	75 dB $L_{AFmax}$

- f) The following noise limits for amplified sound at Base B where the noise is measured and assessed as the incident level on the façade of any building on Princess Wharf occupied by an activity sensitive to noise:

7am to 11pm	65 dB $L_{Aeq}$
11pm to 7am	55 dB $L_{Aeq}$
	65 dB at 63 Hz $L_{eq}$ 1/1 Octave Band
	60 dB at 125 Hz $L_{eq}$ 1/1 Octave Band
	75 dB $L_{AFmax}$

168B. Prior to the use of any distributed loudspeaker system designed for playing commentaries, interviews, promotional material or any other amplified sound to the public (excluding Noise Events), the consent holder shall provide a report from a suitably qualified acoustics expert setting out sufficient detail to demonstrate that the speaker system(s) have been calibrated by noise measurements in accordance with NZS6801:2008 *Acoustics – Measurement of environmental sound* to ensure that the



cumulative noise level from the operation of the speakers and all other Operations (excluding crowd noise) will be compliant with the noise limits in Condition 168A at all times. The speakers may not be used for any purpose other than the calibration until the report is certified by the Council.

## **Wynyard Point Bases Design and Management**

### **Location of Base Buildings**

169. The location of the Base Buildings C-G shall be in accordance with plans in Condition 13, including the location and layout of the hardstand areas for each base.

### **Detailed Design**

170. Bases C-D shall be designed by a chartered engineer to ensure that there is sufficient time for an alarm and evacuation to occur without structural compromise or ignition of the building occurring and if necessary shall include:

- a) A requirement that occupiers of Base Buildings C-D cannot fit mechanical ventilation systems (such as air conditioning units) that draw air from outside the building unless the system can be automatically shut down in an emergency;
- b) Location of entrances, access points to the bases and fencing fronting Hamer Street; and
- c) Design details of the emergency access route along the eastern side of the Base Buildings including openable gates to ensure unimpeded access southwards during an emergency.

170A. Any ground vapour mitigation measures required to protect occupants of enclosed structures as determined by the detailed site investigation report and vapour risk assessment shall be incorporated into the design and construction of the land or buildings.

### **Occupant Numbers**

171. The total number of people at any one time at Bases C to G shall not exceed 500 persons per base.

### **Pedestrian Access**

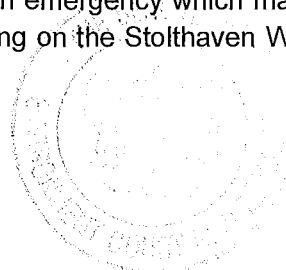
172. In addition to the absence of footpaths or any activities or amenities that would attract people to the area on Hamer Street and Brigham Street north of Base C, the consent holder shall ensure (as part of the design submitted for certification under Condition 25) that the detailed design of the public realm strongly discourages pedestrian access to these areas.

173. The consent holder shall put in place measures to restrict public access to the Wynyard Wharf east breakwater when a dangerous goods tanker is berthed at Wynyard Wharf.

### **Wynyard Point Bases Emergency Evacuation Plan**

174. Prior to the occupation of Base Buildings C-G, the consent holder shall prepare and submit a comprehensive **Wynyard Point Bases Emergency Evacuation Plan** (WPBEEP) for Bases C-G to the Team Leader Compliance Monitoring – Central for certification that the WPBEEP achieves the matters in Condition 175.

175. The WPBEEP shall include provisions to cater for an emergency which may arise from a fire, explosion, or the release of toxic vapour occurring on the Stolthaven Wynyard (north)





hazardous substances facility or their external product lines to Wynyard Wharf. The WPBEEP shall also:

- a) Include an evacuation scheme prepared in accordance with the Fire and Safety Evacuation of Buildings Regulations 2006 or any amendment to this document which shall also take into account any additional items which may arise and are considered appropriate in respect of any hazardous incident associated with a fire, explosion, or the release of toxic vapour occurring on the Stolthaven Wynyard (north) hazardous substances facility or its external product lines to Wynyard Wharf. In particular, consideration shall be given to:
  - (i) Alarm systems;
  - (ii) Evacuation and egress times;
  - (iii) Emergency services access;
  - (iv) Provision of appropriate information;
  - (v) Information on direction of egress; and
  - (vi) Induction and training of staff.
- b) Ensure continuous evacuation routes from the Bases, which should be via a choice of alternative routes via the Syndicate Base yards, the Northern connector road and Hamer Street, or through the base yards to Brigham Street entrance;
- c) Include a provision requiring the WPBEEP to be reviewed at a minimum of 12 month intervals, commencing from the date of first occupation of the Bases. This shall take into account any learnings from the implementation of the WPBEEP in the prior 12 months in response to a hazardous incident occurring and the content of any Event Emergency Management Plans (Conditions 183H-183J);
- d) Be consistent with the guidance in the *Emergency Evacuation Plan: Jellicoe Street, Silo Park & Gateway Plaza, Wynyard Quarter Auckland (by Holmes Fire Safety, 25 May 2011 Rev B)*; and
- e) The WPBEEP shall be reviewed by a suitably qualified expert to ensure that the Base design and evacuation procedures are sufficient to ensure evacuation in the event of a toxic vapour release from the Stolthaven Wynyard (north) facility. The review shall be submitted to the Team Leader Compliance Monitoring - Central at least thirty (30) working days prior to occupation of the bases.

#### **Wynyard Wharf South Water Space area**

176. Prior to the berthing of super yachts in the Wynyard Wharf South Water Space area, the current emergency plan for North Wharf (*Emergency Evacuation Plan: Site 14 Redevelopment, Wynyard Quarter Auckland (by Holmes Fire Safety, 25 May 2011 Rev B)*) shall be updated to ensure egress / evacuation arrangements are included for super yachts berthed in this area that could be potentially affected by an ammonia release from the nearby Sanford facility or a toxic vapour release from the Stolthaven Wynyard (North) facility.
- 176A. The consent holder shall ensure that adequate access for emergency service vehicles to the Wynyard Wharf South area is maintained for the duration of the occupation of the

bases. In particular, the consent holder shall implement the following safety-related actions:

- a) Management of public access onto Hamer Street north of Base C and onto the Wynyard east breakwater during the Event (through the Event Management Plan) by establishing access cordons at the access points to these areas; and
- b) Limiting Event on-street parking and any public parking to land areas in Wynyard Precinct that are south of Jellicoe Street, or are located outside the Precinct.

### **Servicing, Delivery and Guest Transport Plans**

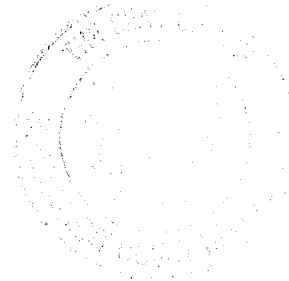
177. Prior to occupation of any syndicate base or superyacht facilities on Wynyard Point and Hobson Wharf, the consent holder shall prepare **Servicing, Delivery and Guest Transport Plans** (SDGTPs) for the syndicate base. The consent holder shall submit the SDGTP to the Team Leader Compliance Monitoring - Central for certification that the SDGTP gives effect to the objectives in Condition 178 and complies with the requirements in Condition 179a) and 179b) as applicable.

178. The objectives of the SDGTPs are to:

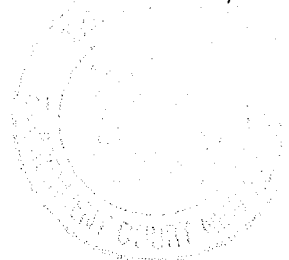
- a) Ensure servicing and deliveries and associated parking are provided for whilst minimising impacts on the transport network and occupants within Wynyard Precinct and Viaduct Harbour Precinct;
- b) Ensure guest transport traffic movements and associated parking during functions are provided for whilst minimising impacts on the transport network and occupants within Wynyard Precinct and Viaduct Harbour Precinct;
- c) Provide for the safety of all users with particular regard to pedestrians and people cycling;
- d) Provide advance notification of the SDGTP measures to affected parties; and
- e) Minimise the number of vehicle movements on Wynyard Point north of Jellicoe Street and on Hobson Wharf generated by activities on the syndicate bases.

179. The SDGTPs shall, as applicable to the operations they address, shall include the following:

- a) For *Wynyard Point* a plan to address servicing and delivery and to communicate to guests of hosted functions the transport management arrangements, including the following measures:
  - (i) Vehicles associated with the pick-up and drop-off of guests at the Wynyard Point bases shall be minimised within Wynyard Quarter between 4pm and 6pm on weekdays (except Public Holidays). This includes taxis and private vehicles;
  - (ii) During guest hosting at the syndicate bases, on-site pick-up and drop-off arrangements within the Access Lane will be appropriately configured to manage taxi/private hire demand within the Wynyard Point site;
  - (iii) Identify alternative pick-up and drop-off zones in the wider area in consultation with Auckland Transport, and communicate the identified location to guests;



- (iv) During the Event, parking for base guests shall be limited to up to a total of no more than 20 spaces, excluding pick-up and drop-off arrangements during guest hosting at the bases;
  - (v) Guests who choose to use private vehicles to attend functions at bases will be encouraged through communication to park in public car parks outside of Wynyard Quarter;
  - (vi) The public transport options close to Wynyard Point bases will be communicated to guests;
  - (vii) Taxi and private hire operators shall will be informed of the timing restrictions and alternative pick and drop off points noted above and of on-site drop-off and pick-up arrangements;
  - (viii) The on-street parking for private vehicles on Hamer Street and Brigham Street will be temporarily suspended on racing days during the Event phase and will not be available for public parking (excluding the 'Goods Vehicle Only' spaces);
  - (ix) No servicing, rubbish collection and deliveries shall occur between 4pm and 6pm unless it involves essential deliveries, necessary to avoid delay to racing; and
  - (x) Communicate servicing, rubbish and delivery contractors and drivers of arrangements for access, including where loading docks are located.
- b) For *Hobson Wharf* (i.e. Base B) a plan to address servicing and delivery and to communicate to guests of hosted functions the transport management arrangements and to provide coordination of the servicing/ deliveries to the NZ Maritime Museum and Eastern Viaduct, including the following measures:
- (i) No parking on Hobson Wharf or the Eastern Viaduct for guests attending a function at the base or in a superyacht;
  - (ii) Guests who choose to use private vehicles to attend functions at Base B will be advised to park in public car parks outside of Wynyard and Viaduct Precincts;
  - (iii) The public transport options close to the base will be communicated to guests;
  - (iv) Identify any temporary pick-up and drop-off zones in the wider area in consultation with Auckland Transport, and communicate the identified location to guests;
  - (v) Inform taxi firms and private-hire operators that no on-site drop-off and pick-up arrangements shall be permitted on Hobson Wharf with the exception of disabled passengers on Hobson Wharf;
  - (vi) No servicing, rubbish collection and deliveries shall occur between 4pm and 6pm unless it involves essential deliveries, necessary to avoid delay to racing. The essential deliveries will be escorted by a nominated person, if required;
  - (vii) Manage entry and exit of servicing and delivery vehicles at vehicle access control points on Eastern Viaduct and Hobson Wharf to ensure safety for all people;
  - (viii) Any vehicle turning areas on the Wharf will be demarcated;



- (ix) Vehicle speeds on the wharf will be no more than 10km/hour and reinforced with appropriate design measures and signage; and
- (x) The overall design of the access route will encourage a low speed environment for vehicles.

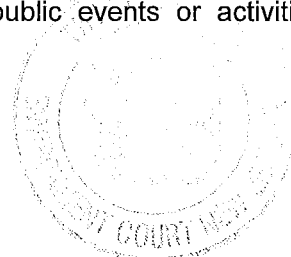
### **Event Management Plan**

180. The consent holder shall prepare an **Event Management Plan** (EMP) in consultation with the Forum in accordance with Condition 5 and the CLG in accordance with Condition 22C. At least sixty (60) working days prior to the commencement of an Event, the consent holder shall submit the EMP to the Team Leader Compliance Monitoring – Central for certification that the EMP gives effect to the objectives in Condition 181 and complies with the requirements in Condition 182. The EMP shall be in general accordance with the Draft Event Management Plan as referenced in **Annexure B**.

In addition to the specific matters identified in Conditions 181 and 182, the EMP shall include an **Event Transport Management Plan** (as required by Conditions 183 to 183G), an **Emergency Management Plan** (as required by Conditions 183H to 183J), an **Event Lighting Management Plan** (as required by Conditions 183K to 183M) and a **Noise Event Management Plan** (as required by Conditions 183N to 183P).

181. The objectives of the **EMP** are to:

- a) Enable a successful Event that positively showcases Auckland and New Zealand to the world, including provision of appropriate cultural expression by the Forum (Condition 5);
- b) Provide for and manage large numbers of spectators;
- c) Provide a safe and secure environment at all times;
- d) Provide for a range of scenarios (with associated management measures) within each Event based on forecast daily visitor numbers;
- e) Provide for on and off water sports activities, activation, merchandising, entertainment and associated activities throughout each Event;
- f) Provide for a range of plans and management plans as identified in Condition 183 that address transport, public transport, pedestrians and people on cycles, traffic, emergencies, lighting and noise for each Event;
- g) Ensure maintenance of access at all times for all modes of transport to and from properties in Wynyard Precinct and Viaduct Harbour Precinct (including fishing industry berthage areas, to the extent any such areas remain in use by the fishing industry) and any on street loading zones in or adjacent to those Precincts, noting that managed access may be required for safety or operational reasons;
- h) Minimise disruption from Event-related traffic and gathering of crowds on occupants in Wynyard Precinct and Viaduct Harbour Precinct including the dispersal of crowds;
- j) Avoid Full Road Closures and minimise any Partial and / or Managed Closures;
- k) Specify methods and procedures to minimise public within Wynyard Point north of Silo Park during the Event, and avoiding any public events or activities which



encourage people to congregate in this area while the Stolthaven North facility is still occupied;

- l) Ensure appropriate emergency egress, lighting and noise measures are provided;
- la) Avoid adverse effects arising from temporary additional lighting, amplified sound or music generated on public spaces on residents and other occupants of the Wynyard Precinct and Viaduct Harbour Precinct after 10.30 pm each day;
- m) Manage integration with other construction projects and Auckland Transport projects;
- n) Provide for the active monitoring of transport to inform the management of the Event on the day, as well the planning and management of future Events; and
- o) Provide for prior engagement with stakeholders when access to properties will be affected by the Event and a mechanism for addressing queries and complaints.

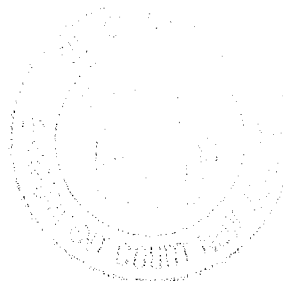
182. The **EMP** shall be in effect at all times during an Event. The **EMP** shall include the following in relation to the Event:

- a) An indicative concept plan that identifies structures and activities;
- b) An indicative schedule of activities;
- c) A range of scenarios including expected daily forecast visitor numbers, which may differ according to location, duration, timing and occupancy;
- d) Provisions made to address risk, safety and security measures (as appropriate);
- e) Reference and align with the 'Key Principles for Delivering Events' from Auckland Council's Events Policy;
- f) Measures to ensure access to and from properties within Wynyard Precinct and Viaduct Harbour Precinct including any managed access measures;
- g) Procedures for the removal of temporary structures after each Event; and
- h) Monitoring and feedback measures and processes to enable the review and amendment of the **EMP** and the plans/measures identified in Conditions 183 to 183G.

### **Event Transport Management Plan**

183. The consent holder shall prepare an **Event Transport Management Plan** (ETMP) in consultation with the CLG in accordance with Condition 22C. At least sixty (60) working days prior to the commencement of an Event, the consent holder shall submit the ETMP to the Team Leader Compliance Monitoring – Central for certification that the ETMP gives effect to the objectives in Conditions 181 (as applicable), 183B, 183D and 183F and complies with the requirements in Conditions 183A, 183C, 183E and 183G. The ETMP shall be in general accordance with the Draft Event Transport Management Plan, including in particular Figure 5-1, as referenced in **Annexure B**.

183A. The objectives of the **ETMP** are the transport-related objectives included in Condition 181. The **ETMP** shall include the details/measures/plans identified in Conditions 183 to 183G, including the following matters:



- a) Marshalling and management of pedestrian, cycle and vehicle access to the Eastern Viaduct, Princes Wharf, Hobson Wharf, Halsey Wharf and Wynyard Point (north of Base C) to ensure safety for all people;
- b) On-site marshalling and management of vehicle access and bays on the Wynyard Point site, implemented also through the Servicing, Delivery and Guest Transport Plan (refer to Condition 179a));
- c) An effective communication strategy to guests attending functions at bases to raise awareness of using active and public modes of transport to and from the Event;
- d) Methods to manage public access within Wynyard Point and Wynyard Wharf (including the breakwater) during the Event;
- e) Effective communication strategy to guests attending functions at bases to raise awareness that no parking will be available in the bases or on the Wharf, restricted parking on local streets, carparks, location of drop-off and pick-up locations and existing taxi ranks;
- f) Marshalling and management of vehicle access to Brigham and Hamer Streets, as well as temporary parking restrictions on Hamer and Brigham Streets on racing days during the Event to ensure safety for all people;
- g) Marshalling and management of vehicle access to sections of Beaumont, Daldy, Jellicoe, Halsey and Quay Streets, depending on the Event scenario implemented, as well as temporary parking restrictions in this area to ensure safety for all people;
- h) Identify public bus service routes and stops, including any temporary diversion of existing scheduled bus services and associated temporary bus stop relocations;
- i) Identify temporary private bus and coach pick-up / drop-off locations, as well as temporary pick-up / drop-off location/s for taxis and private hire vehicles including temporary pick-up drop-off zones;
- j) Identify potential management measures, as necessary, to address any impacts on or in the vicinity of Wynyard Crossing to maintain the safety of pedestrians and people cycling, which will be informed by more detailed pedestrian modelling and the Pedestrian and Cycling Management Measures;
- k) Provide active monitoring of the Event transport. This will inform the management of the Event on the day, as well the planning and management of future Events;
- ka) At all times provide vehicle access onto the Eastern Viaduct and a loading zone on the Eastern Viaduct for the purpose of servicing the marina and berths on the Eastern Viaduct;
- kb) An effective communication strategy to the general public to raise awareness: of the availability of active and public modes of transport to and from the Event; that no Event dedicated parking will be available for the public in this area; that parking on local streets and in public carparks is likely to be taken by existing businesses in the vicinity; of the location of drop-off and pick-up areas; and of existing and any temporary taxi ranks; and
- l) The management measures in Conditions 183B to 183G.

183B. **Event and Public Transport Management Measures (EPTMM)**. The objectives of the EPTMM are to:

- a) Reduce private vehicle trips to the Event and promote alternative transport modes;
- b) Successfully communicate alternative transport modes to the public;
- c) Enable a large number of visitors to the Event via public transport;
- d) Provide for and communicate public transport options to the public; and
- e) Provide active monitoring of the Event transport.

183C. The EPTMM shall include the following matters:

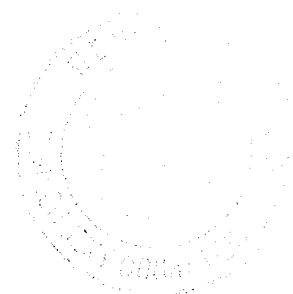
- a) A Travel Demand Strategy to discourage driving and this will need to be clearly communicated to the public along with the promotion of sustainable modes of travel;
- b) Any relevant matters from condition 182;
- c) A strategy for taxi and coach pick up and drop off;
- d) Any changes to the SGDTPs for activities during the Scenario 1 / 1+ Event;
- e) Any changes to the SSTP for activities during the Event;
- f) Identifying and delivery of additional services for buses, trains and ferries;
- g) Identify temporary new and existing park and ride facilities;
- h) Any relevant matters from condition 183;
- i) Identifying any temporary diversion of existing scheduled bus services;
- j) Identifying and implementation of temporary bus stops;
- k) Establishing the Major Events Operations Centre (MEOC) to provide active monitoring of the Event and to inform management of future Events; and
- l) Any relevant plans showing the above matters.

183D. **Pedestrian and Cyclist Management Measures (PCMM)**. The objectives of the PCMM are to:

- a) Encourage pedestrians and people on cycles to the Event;
- b) Provide positive experiences for pedestrians and people on cycles; and
- c) Provide for the safe movement of pedestrians and people who cycle.

183E. The PCMM shall include the following matters:

- a) Identify pedestrian routes between the public transport facilities and the Event (i.e. the "Last Mile" routes);
- b) Implement clear wayfinding and signage for visitors to and within the Event;
- c) Manage safe pedestrian and cycle access to the wharves and breakwaters;
- d) Provide convenient, secure temporary cycle parking for the public;
- e) Enable safe movement of pedestrians and cyclists along the shared path through Silo Park and Karanga Plaza and within areas, to the south and west of Wynyard Point bases;



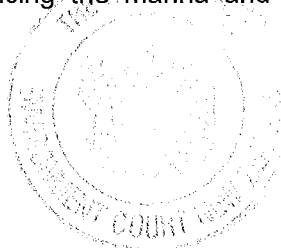
- f) Provide a detailed management plan for Wynyard Crossing in the event that detailed pedestrian modelling reveals insufficient capacity of the bridge in any Event scenarios;
- g) Any relevant matters from condition 183;
- h) Identify diversion routes for pedestrians and cyclists wanting to bypass the Event;
- i) The PCMM's shall be informed by further detailed pedestrian modelling undertaken for the Event; and
- j) Any relevant plans showing the above matters.

183F. **Traffic and Parking Management Measures (TPMM).** The objectives of the TPMM are to:

- a) Ensure safe and efficient traffic management measures for the Event;
- b) Ensure maintenance of access at all times for all modes of transport to and from properties in Wynyard Precinct and Viaduct Harbour Precinct and any on street loading zones in or adjacent to those Precincts, noting that managed access may be required for safety or operational reasons;
- c) Minimise disruption from Event-related traffic on occupants in Wynyard Precinct and Viaduct Harbour Precinct;
- d) Ensure integration with other construction projects and Auckland Transport projects.

183G. The TPMM shall include the following matters:

- a) Measures to manage the circulation of vehicle and parking movements in combination with the Event Transport Plan. Implement clear wayfinding and signage for visitors to and within the Event;
- b) Any relevant matters from condition 183;
- c) Site-Specific Traffic Management Plan (SSTMPs), which shall address any Full, Partial and / or Managed Road Closures, as well as temporary parking restrictions during the Event;
- d) Minimise disruption to access to properties and businesses within Wynyard and Viaduct Precincts;
- e) Enable access to residents and businesses, where necessary on a restricted basis to provide for pedestrian / crowd safety, particularly for their servicing and deliveries;
- f) Enable efficient circulation of vehicle movements around Wynyard Precinct;
- g) Provide clear communication on any changes to the operation of roads and parking to stakeholders;
- h) Provide for loading and unloading of goods;
- i) Identification of pick up and drop off areas;
- j) Provide appropriate accessible parking options;
- k) Enable the safe operation of Fanshawe Street intersections;
- l) At all times provide vehicle access onto the Eastern Viaduct and a loading zone on the Eastern Viaduct for the purpose of servicing the marina and berths on the Eastern Viaduct; and





- m) Any relevant plans showing the above matters.

### **Event Emergency Management Plan**

183H. The consent holder shall prepare an **Event Emergency Management Plan (EEmMP)** in consultation with Auckland Civil Defence and Emergency Management Group. At least sixty (60) working days prior to the commencement of an Event, the consent holder shall submit the EEmMP to the Team Leader Compliance Monitoring – Central for certification that the EEmMP gives effect to the objective in Condition 183I and complies with the requirements in Condition 183J.

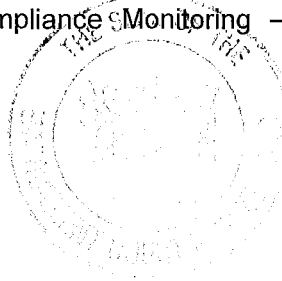
183I. The objective of the EEmMP is to ensure provision is put in place to deal with potential emergencies.

183J. The EEmMP shall:

- a) Incorporate operational and emergency management plans, including evacuation requirements that are integrated with other local evacuation plans, including the matters in Conditions 174 to 175;
- b) Identify public address and communications plans for the Event site;
- c) Provide signage and wayfinding;
- d) Confirm that the Governor-General has declared the Event to be a "major event" in accordance with section 7 of the Major Event Management Act 2007 and include a copy of the relevant Order in Council;
- e) Establish an operational and emergency control rooms;
- f) Methods and procedures to evacuate the site and surrounding areas in the event of an ammonia release from the nearby Sanford facility or a toxic vapour release from the Stolthaven Wynyard (north) facility;
- g) Measures to restrict public access to the Wynyard Wharf east breakwater with the purpose of ensuring the breakwater can be safely evacuated in the event of a toxic vapour release from Stolthaven North; and
- h) In relation to tsunami risk:
  - (i) Identify the emergency management response for tsunami hazards for the areas associated with the Americas Cup Infrastructure and Event(s);
  - (ii) Identify roles and responsibilities for the management of tsunami risk including integration with Regional Emergency Management Planning;
  - (iii) Identify emergency management responses including but not limited to physical signage, warning systems and messaging, platforms or signage, and evacuation areas, routes, egress times and safe location; and
  - (iv) Be consistent with EEP associated with the Hazardous facilities risk and any other Emergency Management Plans as identified in Condition 174.

### **Event Lighting Management Plan**

183K. The consent holder shall prepare an **Event Lighting Management Plan (ELMP)**. At least sixty (60) working days prior to the commencement of an Event, the consent holder shall submit the ELMP to the Team Leader Compliance Monitoring – Central for



certification that the ELMP gives effect to the objective in Condition 183L and complies with the requirements in Condition 183M.

183L. The objectives of the ELMP are to ensure that Event lighting minimises adverse effects on amenity and to avoid adverse effects arising from temporary additional lighting on public spaces on occupants of the Wynyard Precinct and Viaduct Harbour Precinct after 10.30 pm each day.

183M. The ELMP shall include the following matters:

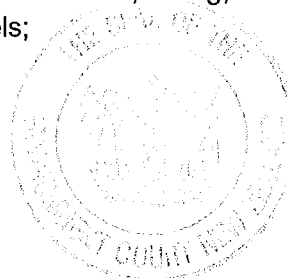
- a) A map of surrounding light sensitive areas;
- b) Design principles and a monitoring regime for the Event lighting installation to ensure compliance with E24.6.1 General Standards and to minimise obtrusive lighting effects to the light sensitive areas and visitor accommodation;
- c) Design to be in accordance with CPTED principles;
- d) A requirement for a suitably qualified lighting specialist to undertake a walkover of the surrounding light sensitive areas, prior to the Event with the lighting switched on, to ensure that the Event lighting satisfies standards at Condition 183Mb);
- e) Location, control, orientation and the number of LED screens, feature lighting and lighting for hospitality features;
- f) Identification of outside broadcast area location(s);
- g) Details regarding shut down periods for temporary additional Event lighting, which shall involve only light for crowd dispersal, operational and safety purposes being used after 10.30pm; and
- h) Positioning or control of big screens to minimise obtrusive light effects, either by directing screens away from light sensitive areas and visitor accommodation where practical or by achieving compliance with rule E23.6.1.(3) in the AUP:OP.

### **Noise Events Management Plan**

183N. The consent holder shall prepare a **Noise Events Management Plan (NEMP)** At least sixty (60) working days prior to the commencement of an Event, the consent holder shall submit the NEMP to the Team Leader Compliance Monitoring – Central for certification that the NEMP gives effect to the objectives in Condition 183O and complies with the requirements in Condition 183P.

183O. The objectives of the NEMP are to:

- a) Ensure that the consent holder identifies the number of Noise Events needed out of the total permitted number of Noise Events each year in accordance with Rules I211.6.1(1) and I214.6.4(4) and to communicate this to the Council for record keeping;
- b) Provide methods and procedures to ensure that the noise limits in Condition 183Q are complied with including sound system calibration and noise level monitoring processes with reference to low frequency noise;
- c) Ensure that effective engagement with affected receivers is undertaken prior to each Noise Event, and to communicate details such as dates, timing, effective complaints handling procedures and expected noise levels;



- d) Identify the BPO for the management of noise from sources associated with the Event such as pack-in and pack-out, crowd noise management (particularly late at night), refuse and recycling collections, servicing of venues during night time hours and electricity generation;
- e) Provide procedures to ensure that all contractors, staff and production crews responsible for generating and/ or managing noise are briefed and trained about the contents and objectives of the NEMP; and
- f) Avoid adverse effects arising from amplified sound or music generated on public spaces or on syndicate bases on occupants of the Wynyard Precinct and Viaduct Harbour Precinct after 10.30 pm each day.

183P. The NEMP shall:

- a) Set out procedures for the calibration of all sound systems prior to each Noise Event to ensure compliance with the noise limits in Condition 183Q at all times for all Noise Events;
- b) Address all requirements of Rule I211.6.1 for Noise Events in the Viaduct Harbour Precinct, and Rule I214.6.4(4) for Noise Events in the Wynyard Precinct (except that the noise limits in those rules shall be replaced with those set out in Condition 183Q);
- c) Provide contact details for the person on site responsible for noise management; and
- d) Establish procedures for monitoring and recording the frequency and number of Noise Events within the Event area and the provision of this information to the Team Leader Compliance Monitoring - Central.

### Noise Events

183Q. Noise from activities taking during the Event period shall comply with the levels in Condition 168A except where provided for below:

- a) Medium Noise Events:

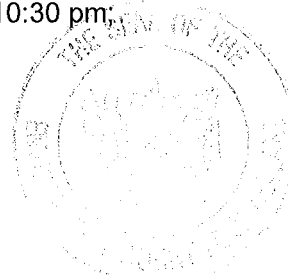
#### Viaduct Harbour Precinct Events

- (i) No more than eighteen (18) Medium Noise Events may take place during any Event;
- (ii) A Medium Noise Event shall not exceed 6 hours in duration and may only take place between the hours of 12:00 noon and 10:30 pm;
- (iii) The noise from all Medium Noise Events (excluding crowd noise) shall comply with:

72 dB  $L_{Aeq}$  and 80 dB  $L_{A01}$

#### Wynyard Precinct Events

- (iv) No more than twelve (12) Medium Noise Events may take place within a calendar year;
- (v) A Medium Noise Event shall not exceed 6 hours in duration and may only take place between the hours of 12:00 noon and 10:30 pm;



- (vi) The noise from all Medium Noise Events (excluding crowd noise) shall comply with:

72 dB  $L_{Aeq}$  and 80 dB  $L_{A01}$

b) High Noise Events

Viaduct Harbour Precinct Events

- (i) No more than three (3) High Noise Events may take place during any Event;  
(ii) A High Noise Event shall not exceed 3 hours in duration and may only take place between the hours of 12:00 noon and 10:00 pm;  
(iii) The noise from all High Noise Events (excluding crowd noise) shall comply with:

80 dB  $L_{Aeq}$  and 90 dB  $L_{A01}$

Wynyard Precinct Events

- (iv) No more than three (3) High Noise Events may take place within a calendar year;  
(v) A High Noise Event shall not exceed 3 hours in duration and may only take place between the hours of 12:00 noon and 10:00 pm;  
(vi) The noise from all High Noise Events (excluding crowd noise) shall comply with:

82 dB  $L_{Aeq}$  and 90 dB  $L_{A01}$

- c) The noise limits must be complied with when measured and assessed as the incident level, 1 m from the façade of any building not authorised by this consent which contains an activity sensitive to noise (as defined in Chapter J of the AUP) that is occupied during the Event.

183R. There shall be no amplified music before midday on any day during the Event periods.

183S. There will be a maximum of two outdoor stages where live amplified music for Medium Noise Events or High Noise Events will be played, with one stage located at Silo Park and the second stage located on Te Wero Island.

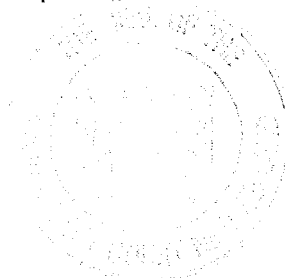
### Syndicate Staff Travel Plans

184. The consent holder shall prepare a **Syndicate Staff Travel Plan (SSTP)** for each syndicate base. At least twenty (20) working days prior to the occupation of each base, the consent holder shall submit a SSTP to the Team Leader Compliance Monitoring – Central for certification that the SSTP gives effect to the objectives in Condition 185 and complies with the requirements in Condition 186.

185. The objectives of the SSTP are to encourage and promote travel by public transport, walking and cycling, and to minimise private vehicle travel associated with base activities.

186. The SSTP shall include:

- a) For Wynyard Bases – no more than 20 on-site parking may be provided for staff working at Bases C – G during the operational phase. These onsite parking may be made available as guests parking during the Event phase;



- b) For VEC ETNZ Base A – no more than 18 on-site parking shall be provided for staff working at the base during the Operational and Event phases. There shall be no onsite parking for guests at any time;
- c) For Hobson Wharf Base B – there shall be no onsite parking for staff or guests at any time;
- d) Measures to encourage carpooling from team hotels or accommodation;
- e) Identification of the locations for allocated parking for staff car / van pooling;
- f) Provision for cycle parking;
- g) Provision of information regarding the public transport options and walking and cycling routes; and
- h) Provision for drop-off and pick-up locations depending on space requirements.

186A. Six (6) months prior to the commencement of an Event, a single report evaluating the SSTPs for all syndicate bases shall be prepared by the consent holder and submitted to the Team Leader Compliance Monitoring - Central. The report shall identify:

- a) The number of staff on each syndicate base, the measures that have been put in place to facilitate and encourage staff not to drive to and from work; and
- b) The outcomes of the implementation of the SSTPs including the number of staff travelling on various modes to and from the sites, and the use of on street parking provision by staff within Wynyard Precinct.

186B. Should the report identify that more than 30% of staff are travelling by single occupancy car and parking within Wynyard Precinct, the Consent Holder shall promptly prepare and submit an amendment to the SSTP for certification by the Team Leader Compliance Monitoring – Central that will actively discourage driving to and from work;

186C. An additional SSTP evaluation report may be required by the Team Leader Compliance Monitoring – Central on reasonable notice during any Event. Any further evaluation report required shall be prepared and submitted to the Team Leader Compliance Monitoring - Central in accordance with the requirements of Conditions 186A and 186B above.

### **Wynyard Point Traffic Measures**

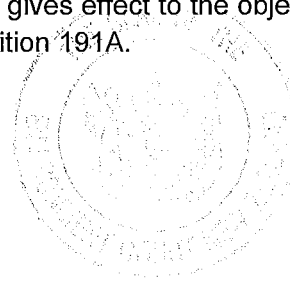
187. [Not used]

188. Clear signage shall be provided at the access to each of the five Wynyard Point bases to enable easy legibility of the access strategy.

189. A footpath shall be provided on the eastern side of Hamer Street for the full length of Bases C-G, to be agreed with Auckland Transport based on further consultation. The footpath shall serve the Wynyard Point America's Cup syndicate Bases C-G and be coordinated with any provision made for footpaths on the western side of Hamer Street.

### **VEC Syndicate Base Traffic Management Plan**

190. The consent holder shall prepare a **VEC Syndicate Base Traffic Management Plan** (VEC SB TMP) for Base A. At least twenty (20) working days prior to the occupation of Base A, the consent holder shall submit a VEC SB TMP to the Team Leader Compliance Monitoring – Central for certification that the VEC SB TMP gives effect to the objectives in Condition 191 and complies with the requirements in Condition 191A.

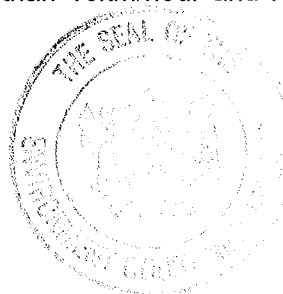


191 The objectives of the VEC SB TMP are to:

- a) Update the current Viaduct Event Centre Traffic Management Plan to respond to change of use of the building to a syndicate base;
- b) Ensure servicing and deliveries and associated parking are provided for whilst minimising impacts on the transport network and occupants within Wynyard Precinct;
- c) Ensure guest transport traffic movements and associated parking during an Event are provided for whilst minimising impacts on the transport network and occupants within Wynyard Precinct; and
- d) Provide for the safety of all users with particular regard to pedestrians and people cycling.

191A. The VEC SB TMP shall include:

- a) Vehicles including taxis and private/hired vehicles associated with the pick-up and drop-off of guests at the base and for superyachts shall be minimised within Wynyard Precinct between 4pm and 6pm on weekdays (except public holidays);
- b) Parking on Halsey Wharf shall be limited to up to 18 staff parking spaces;
- c) No parking or pick-up/drop-off by taxis or private/hired vehicles on Halsey Wharf for guests attending a function at the base or on a superyacht;
- d) Guests who choose to use private vehicles to attend functions at the base or on superyachts shall be encouraged through communication to park in public car parks outside the Wynyard Precinct;
- e) The public transport options close to the ETNZ VEC base will be communicated to guests;
- f) Identify pick-up/drop-off zones in the wider area in consultation with Auckland Transport, as part of the wider ETMP, and communicate the identified locations to guests;
- g) Inform taxi firms and private hire operators that no drop-off/pick-up arrangements shall be permitted on Halsey Wharf with the exception of disabled passengers;
- h) Managed entry and exit of servicing and delivery vehicles at vehicle access control point on the western edge of Halsey Wharf;
- i) No servicing, rubbish collections and deliveries shall occur between 4pm and 6pm on weekdays (excluding public holidays), unless it involves essential deliveries, necessary to avoid delay to racing. The essential deliveries will be escorted by a nominated person, if required;
- j) Communicate to servicing, rubbish collection and delivery contractors and drivers, the arrangements for access, including where loading docks are located;
- k) Any vehicle turning areas on the Wharf will be demarcated;
- l) Vehicle speeds on the wharf will be no more than 10km/hour and reinforced with signage;



- m) The overall design of the access route will encourage a low speed environment for vehicles; and
- n) No vehicle entry/exit from the eastern edge of Halsey Wharf via Karanga Plaza except for emergency vehicles and occasional large vehicles, i.e. for moving masts or other large yacht parts.

### **VEC Syndicate Base Marine and Fishing Industry Management Plan**

192. The consent holder shall prepare a **VEC Syndicate Base Marine and Fishing Industry Management Plan** (VEC SB MFIMP) for Base A. At least twenty (20) working days prior to the occupation of Base A, the consent holder shall submit a VEC SB MFIMP to the Team Leader Compliance Monitoring – Central for certification that the VEC SB MFIMP gives effect to the objectives in Condition 193 and complies with the requirements in Condition 194.

193. The objectives of the VEC SB MFIMP are to:

- a) Address the matters in the current MFIMP as applicable to the conversion of the VEC to a syndicate base and reflecting the use of the building and yard on Halsey Wharf as a syndicate base for ETNZ;
- b) Ensure existing fishing industry berthage on the western side of Halsey Wharf and the southern side of the Western Viaduct Wharf remains accessible to, and useable by, the fishing industry for loading, unloading, servicing and maintenance of fishing vessels during any periods when Sanford and/or Auckland Fishing Port Limited are operating from these locations; and
- c) Provide for the safety of all users with particular regard to pedestrians and people cycling.

194. The VEC SB MFIMP shall address the efficient and safe accesses for vehicles, pedestrians and people on cycles during the operational phase.

### **Public Access**

195. In the event that Bases C-G (inclusive) are not occupied or all bases are removed during the ten year consent period, the consent holder shall provide a minimum 10m wide pedestrian and cycle connection between North Wharf and Brigham St except where closure required for temporary events and marine and port operations.

196. Public access shall be maintained along the western side of Halsey Wharf at all times except where closure is required during construction for safety and operational reasons.

197. Public access shall be maintained to the upper level viewing deck of the Viaduct Events Centre at all times except where required during construction for safety and operational reasons.

197A. During the ten year consent period public access shall be provided to the eastern side of Halsey Wharf when Base A is not occupied and to the southern edge of Hobson Wharf for a minimum width of 10m when Base B is not occupied or the base is removed, except where closure is required for temporary events and marine and port operations.

### **Use of and Buildings on Wharf Extensions and Infill**

198. Wharf extensions and infill (Hobson and Wynyard) shall not be used for public car parking.



198A. In the event that the building on Base B is removed under Condition 6, the extension to Hobson Wharf shall remain free of buildings for the 10-year period of the consent other than as required for temporary events or for marine and port activities. For the avoidance of doubt, this condition does not prevent a replacement base being constructed under this consent and in accordance with all conditions in the event that the Cup is won again overseas and hosted back in Auckland during the ten year period.

### **Legacy Use Options**

198B. The Consent Holder shall prepare a Legacy Use Options Plan. The purpose of the Legacy Use Options Plan is to identify options for future use that retain the ability for events of similar scale to be hosted in Auckland in the future without requiring new infrastructure (including but not limited to wharfs) to be constructed in the Waitemata Harbour. The Legacy Use Options Plan is to be prepared in consultation with the Crown mana whenua and the CLG. For the avoidance of doubt, the area to be considered by the Legacy Use Options Plan is not restricted to the area subject to this consent.

198C. The Consent Holder shall submit the Legacy Use Options Plan to the Team Leader Compliance Monitoring – Central at the earlier of:

- a) Six (6) months prior to the expiry of the ten (10) year consent(s);
- b) Three (3) months prior to a consent holder initiated plan change or proposed plan being notified for the area of Wynyard Quarter north of Jellicoe Street and/or Hobson Wharf;
- c) Three (3) months prior to lodgement of any resource consent application by the Consent Holder enabling the redevelopment of any of the area occupied by Bases B – G that would restrict the ability for events of a similar scale to the America's Cup;
- d) As soon as reasonably practicable after any other plan change is notified relating to the area of Wynyard Quarter north of Jellicoe Street and/or Hobson Wharf; and
- e) As soon as reasonably practicable after lodgement by any party other than the consent holder of any resource consent application enabling the redevelopment of any of the area occupied by Bases B – G that would restrict the ability for events of a similar scale to the America's Cup.

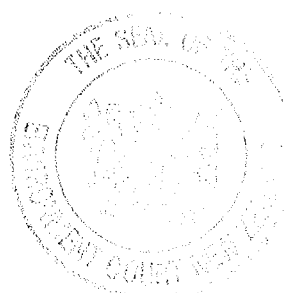
198D. At the time the Legacy Use Options Plan is submitted to Council, the Consent Holder shall also provide:

- a) A summary of consultation during preparation of the Legacy Use Options Plan;
- b) Any feedback on the final Legacy Use Options Plan from the Crown, mana whenua and the CLG (Condition 22C); and
- c) A response to that feedback indicating the matters that were not implemented and the reasons why.

199. [Not used]

200. [Not used]

201. [Not used]





### **Illuminated Signage**

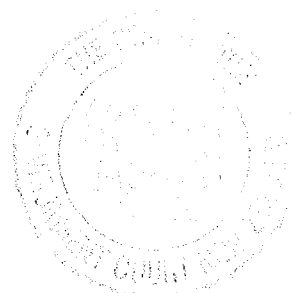
202. The following requirements shall apply to any signage involving internally illuminated signs and LED digital signs (in addition to any other requirements in the conditions of this consent):

- a) For permanent signage (throughout the 10-year consent period):
  - (i) A lighting report shall be submitted to the Team Leader Compliance Monitoring – Central for certification that any internally illuminate signage will achieve rule E23.6.1.(3) in the AUP:OP; and
  - (ii) The lighting report shall be accompanied by a lighting assessment by a suitably qualified lighting specialist and shall be implemented as certified.
- b) For temporary signage (for the duration of the Event):
  - (i) The lighting design shall satisfy permitted activity requirements in the AUP:OP, including rules within sections E23 & E24.

### **BAU Lighting**

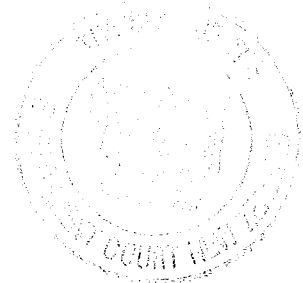
203. Business as usual lighting (i.e. other than construction or Event lighting) shall comply with the following requirements:

- a) Exterior lighting on new bases shall be zero tilt luminaires with no light projected above the horizontal or shall be selected, oriented and/or screened such that any obtrusive light effects satisfy the permitted activity limits in the AUP:OP section E24.6.1;
- b) Pole mounted lighting is to have zero tilt luminaires with no light projected above the horizontal;
- c) Design of lighting is to be in accordance with CPTED principles; and
- d) Lighting must comply with the E24.6.1 General Standards in the AUP:OP.

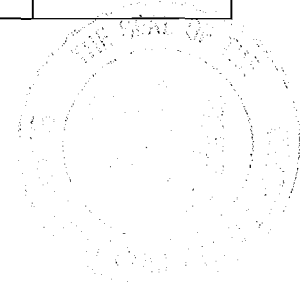


**ANNEXURE A**  
**Drawings and Documents (refer to condition 13)**

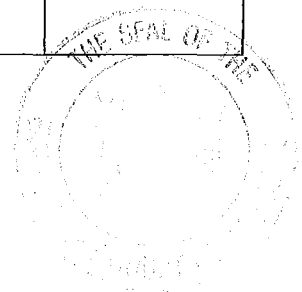
America's Cup Wynyard Hobson  
Applicant's Proposed Conditions – Reply Version  
Including responses to Questions from the Court (on 4 September 2018 Condition Set)  
11 September 2018



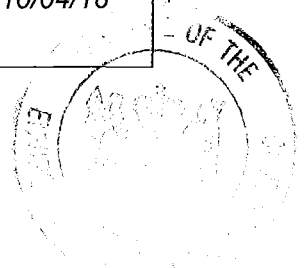
Plan title and reference	Author	Rev	Dated
<b>Engineering Plans</b>			
Drawing No. 3233847-CA-4001; 'General Civil Drawing 1- Overall Existing Layout Plan'	Beca	B	10/04/18
Drawing No. 3233847-CA-4002; 'General Civil Drawing 2- Overall Development Layout Plan'	Beca	B	10/04/18
Drawing No. 3233847-CA-4003; 'General Civil Drawing 3- Existing Occupation Consents Plan'	Beca	B	10/04/18
Drawing No. 3233847-CA-4004; 'General Civil Drawing 4- Proposed Occupation Consents Plan'	Beca	B	10/04/18
Drawing No. 3233847-CA-4101; 'Marine Works Civil Drawing 1- Overall General Arrangement Layout Plan'	Beca	E	20/08/18
Drawing No. 3233847-CA-4102; 'Marine Works Civil Drawing 2- Halsey Wharf Breakwater – General Arrangement'	Beca	B	10/04/18
Drawing No. 3233847-CA-4103; 'Marine Works Civil Drawing 3- Halsey Wharf Breakwater-Typical Sections'	Beca	B	10/04/18
Drawing No. 3233847-CA-4104; 'Marine Works Civil Drawing 4- Hobson Wharf Extension- General Arrangement'	Beca	B	10/04/18
Drawing No. 3233847-CA-4105; 'Marine Works Civil Drawing 5- Hobson Wharf Extension- Typical Sections'	Beca	B	10/04/18
Drawing No. 3233847-CA-4106; 'Marine Works Civil Drawing 6- Wynyard Wharf South Extension- General Arrangement'	Beca	B	10/04/18
Drawing No. 3233847-CA-4107; 'Marine Works Civil Drawing 7- Wynyard South Extension- Typical Sections'	Beca	B	10/04/18



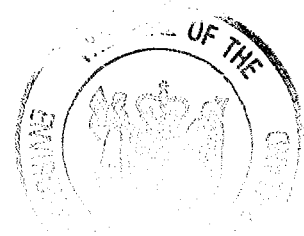
Plan title and reference	Author	Rev	Dated
Drawing No. 3233847-CA-4108; 'Marine Works Civil Drawing 8- Dredge Plan'	Beca	B	10/04/18
Drawing No. 3233847-CA-4109; 'Marine Works Civil Drawing 9- Wave Panel Arrangement'	Beca	B	10/04/18
Drawing No. 3233847-CA-4110; 'Marine Works Civil Drawing 10- Bathymetry Plan'	Beca	B	10/04/18
Drawing No. 3233847-CA-4111; 'Marine Works Civil Drawing 11- Hobson Wharf Wave Panels- Typical Sections'	Beca	B	10/04/18
Drawing No. 3233847-CA-4201; 'Wynyard Point Works Civil Drawing 1- General Arrangement Plan'	Beca	B	10/04/18
Drawing No. 3233847-CA-4202; 'Wynyard Point Works Civil Drawing 2- Proposed Contour Plan'	Beca	B	10/04/18
Drawing No. 3233847-CA-4203; 'Wynyard Point Works Civil Drawing 3- Typical Sections'	Beca	B	10/04/18
Drawing No. 3233847-CA-4204; 'Wynyard Point Works Civil Drawing 4- Stormwater Plan'	Beca	B	10/04/18
Drawing No. 3233847-CA-4205; 'Wynyard Point Works Civil Drawing 5- Indicative Pavement Cut and Fill Plan'	Beca	B	10/04/18
Drawing No. 3233847-CA-4206; 'Wynyard Point Works Civil Drawing 6- Earthworks Layout Plan'	Beca	B	10/04/18
Drawing No. 3233847-CA-4207; 'Wynyard Point Civil Works Drawing 7- Indicative Extent of Ground Improvement'	Beca	B	10/04/18
Drawing No. 3233847-CU-4401; 'Existing Services Drawing 1- Services Key Plan'	Beca	B	10/04/18



Plan title and reference	Author	Rev	Dated
Drawing No. 3233847-CU-4402; 'Existing Services Drawing 2- Services Plan Sheet 1 of 6'	Beca	B	10/04/18
Drawing No. 3233847-CU-4403; 'Existing Services Drawing 3- Services Plan Sheet 2 of 6'	Beca	B	10/04/18
Drawing No. 3233847-CU-4404; 'Existing Services Drawing 4- Services Plan Sheet 3 of 6'	Beca	B	10/04/18
Drawing No. 3233847-CU-4405; 'Existing Services Drawing 5- Services Plan Sheet 4 of 6'	Beca	B	10/04/18
Drawing No. 3233847-CU-4406; 'Existing Services Drawing 6- Services Plan Sheet 5 of 6'	Beca	B	10/04/18
Drawing No. 3233847-CU-4407; 'Existing Services Drawing 7- Services Plan Sheet 6 of 6'	Beca	B	10/04/18
Drawing No. 3233847-CU-4451; 'Proposed Services Drawing 1- Services Key Plan'	Beca	B	10/04/18
Drawing No. 3233847-CU-4452; 'Proposed Services Drawing 2- Services Plan Sheet 1 of 6'	Beca	B	10/04/18
Drawing No. 3233847-CU-4453; 'Proposed Services Drawing 3- Services Plan Sheet 2 of 6'	Beca	B	10/04/18
Drawing No. 3233847-CU-4454; 'Proposed Services Drawing 4- Services Plan Sheet 3 of 6'	Beca	B	10/04/18
Drawing No. 3233847-CU-4455; 'Proposed Services Drawing 5- Services Plan Sheet 4 of 6'	Beca	B	10/04/18
Drawing No. 3233847-CU-4456; 'Proposed Services Drawing 6- Services Plan Sheet 5 of 6'	Beca	B	10/04/18



Plan title and reference	Author	Rev	Dated
Drawing No. 3233847-CU-4457; 'Proposed Services Drawing 7- Services Plan Sheet 6 out of 6'	Beca	B	10/04/18
Drawing No. 3233847-GE-4501; 'Geotechnical Drawing 1- Rock Contour Plan'	Beca	B	10/04/18
Drawing No. 3233847-GE-4502; 'Geotechnical Drawing 2- Cross Sections Sheet 1 of 5'	Beca	B	10/04/18
Drawing No. 3233847-GE-4503; 'Geotechnical Drawing 3- Cross Sections Sheet 2 of 5'	Beca	B	10/04/18
Drawing No. 3233847-GE-4504; 'Geotechnical Drawing 4- Cross Sections Sheet 3 of 5'	Beca	B	10/04/18
Drawing No. 3233847-GE-4505; 'Geotechnical Drawing 5- Cross Sections Sheet 4 of 5'	Beca	B	10/04/18
Drawing No. 3233847-GE-4506; 'Geotechnical Drawing 6- Cross Sections Sheet 5 of 5'	Beca	B	10/04/18
Drawing 3233847-FE-4601; 'Fire Safety Drawing 1 FENZ Access and Facilities"	Beca	B	10/04/18
Drawing 3233847-FE-4602; 'Fire Safety Drawing 2 Provisions for Egress'	Beca	B	10/04/18
<b>Urban Design Figures</b>			
Figure 8; "Wynyard Point Bases - Public Realm Integration"	McIndoeUrban/Boffa Miskell	A	13/04/2018
Figure 20; 'Water Use – Event Mode'	McIndoeUrban/Boffa Miskell	A	13/04/2018



Plan title and reference	Author	Rev	Dated
<b>Architectural Plans</b>			
Drawing No. A1-13; 'Team Base A-Viaduct Event Centre Proposed Indicative Floor Layout- L1'	Moller Architects	A	13/04/27
Drawing No. A1-14; 'Team Base A-Viaduct Event Centre Proposed Indicative Floor Layout- L2'	Moller Architects	A	13/04/27
Drawing No. A1-15; 'Team Base A-Viaduct Event Centre Proposed Indicative Floor Layout- L3'	Moller Architects	A	13/04/27
Drawing No. A2-10; 'Exterior Elevations- Team Base A North & East'	Moller Architects	A	13/04/18
Drawing No. A2-11; 'Exterior Elevations- Team Base A South & West'	Moller Architects	A	13/04/18

Document Number	Title	Author	Date
4	Assessment of Environmental Effects	Unio Environmental	13/04/18
9	Physical Infrastructure Technical Report for Resource Consent Application, Wynyard Hobson	Beca Ltd	04/18
14	Quantitative Risk Assessment	Sherpa Consulting Pty Ltd	06/04/18
16a	Coastal Processes and Dredging Technical Report, Appendix A Sedimentation Analysis and Appendix B Hydraulic Modelling Report	Beca Ltd and Tonkin + Taylor Ltd	04/2018
16b	Appendix C Tonkin Taylor Hydraulic Modelling Report	Tonkin + Taylor Ltd	04/2018
16c	Appendix D Wake and Wave Reports prepared by Cardno	Beca Ltd (Cardno)	10/04/2018



Document Number	Title	Author	Date
16d	Continuation of Appendix D, Appendix E Wave Tranquillity Performance Criteria, Appendix F Wave Reflection and Transmission Coefficients, Appendix G Sediment Plume and Fate Analysis	Beca Ltd (Cardno, Tonkin + Taylor Ltd)	Appendix D – 10 April 2018 Appendix E – 20 November 2017 Appendices F and G - 12 January 2018
17	Assessment of Coastal Environmental Effects Associated with the Development of America's Cup Facilities for the Wynyard Hobson Option	Golder Associates	04/18
18	Arborcultural Assessment Report	Arbor Connect Ltd	12/04/18
21a	Traffic and Transport Technical Report	Beca Ltd	04/2018
21b	Appendices A to F of Traffic and Transport Technical Report	Beca Ltd	04/2018
25	Geotechnical Report	Beca Ltd	04/18
26	Groundwater Technical Report	Beca Ltd	04/2018
28	Stormwater and Services Technical Report	Beca Ltd	04/18





**ANNEXURE B**  
**Management Plans to be referenced**

Construction Environmental Management Plan (CEMP)

Remediation Action Plan (RAP)

Erosion and Sediment Control Plan (ESCP)

Groundwater Monitoring and Contingency Plan (GWMCP)

Management Plan for Dredging and Placement of Mudcrete in the CMA (MPDPM)

Construction Traffic Management Plan (CTMP)

Construction Staff Travel Plan (CSTP)

Construction Noise and Vibration Management Plan (CNVMP)

Construction Lighting Management Plan (CLMP)

Biosecurity Management Plan (BMP)

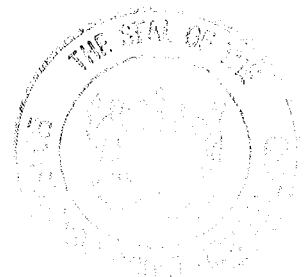
Inner Viaduct Harbour Environmental Management Plan (IVHEMP)

Navigation and Safety Management Plan (NSMP)

Project Geotechnical Design Report (PGDR)

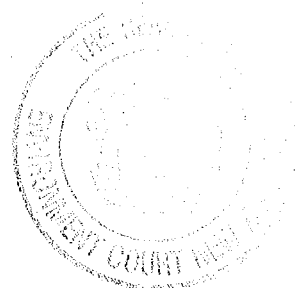
Event Transport Management Plan (ETMP)

Event Management Plan (EMP)



**ANNEXURE C**  
**America's Cup Wynyard Hobson Building, Yard and Public Open Space Design**  
**Requirements**

America's Cup Wynyard Hobson  
Applicant's Proposed Conditions – Reply Version  
Including responses to Questions from the Court (on 4 September 2018 Condition Set)  
11 September 2018



# AMERICA'S CUP WYNYARD HOBSON

## Building, Yard and Public Open Space

### Design Requirements

Final Agreed Version 27 August 2018

#### INTERPRETATION

1. The Moller Architects' designs are an example of base buildings that achieve the Design Requirements. Refer to Parts A and B of the Architectural Drawing Set 36 America's Cup: Wynyard Hobson. 13 April 2018.
2. The bases are identified in figure 1 below.

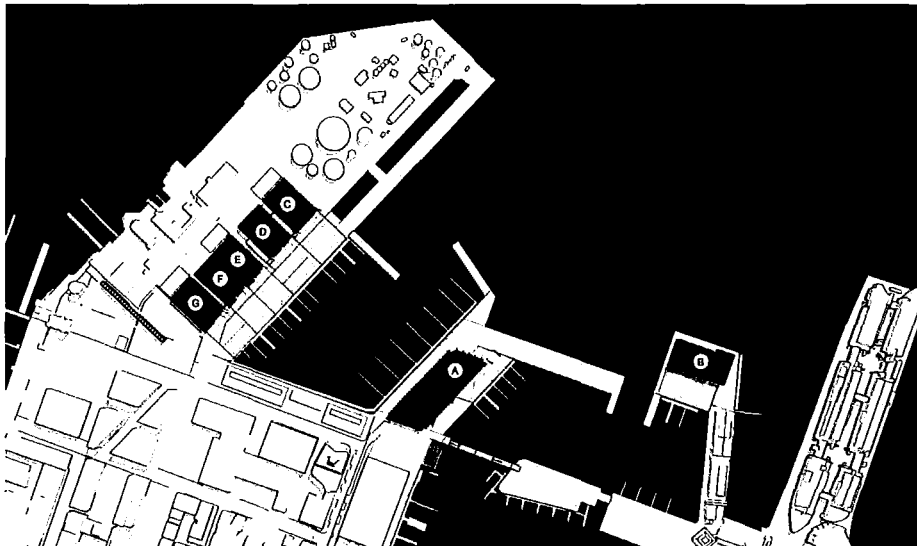


Figure 1: Base locations

#### Section 1

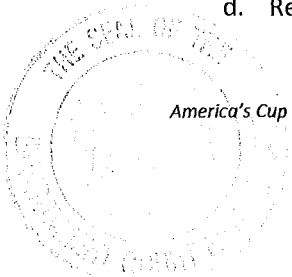
##### GENERAL DESIGN OBJECTIVE AND DESIGN PRINCIPLES

*This general design objective and the overarching design principles apply to all building, yard and public open space design.*

##### General Design Objective

The purpose of this document is to ensure that the design of the bases and associated yard and public open spaces achieve the following:

- a. A successful Americas Cup Event;
- b. A high-quality environment and experience for the wider public, locals and spectators;
- c. Reinforcement of the maritime character of the Wynyard and Viaduct Harbour Precincts; and
- d. Recognition and celebration of Mana Whenua values.



## Overarching Design Principles

### Design with consideration of context

- 1.1. In applying these requirements recognise these are short-term temporary maritime-industrial and event buildings, and also the characteristics of physical setting:
- a. Base B will be prominent in view from all four sides and define a new east-facing public open space. Public access is also provided for around its northern and western wharf edges. While it will be designed to provide fit-for-purpose temporary maritime industrial facilities for the event, because of its visual exposure it must also be of a high aesthetic quality.
  - b. Bases C-G will be prominent in view from the south and east and present a frontage to both Hamer Street and the interim and temporary open space planned there, as well as to the Wynyard Wharf South water space. They are in a generally industrial context including boat yards, concrete plant and fuel tanks but will also be in view from the North Wharf, Halsey Wharf and Silo Park areas. There is potential to use pop-up and demountable building types on these sites including elements such as shipping containers. This would be subject to suitable design which remains consistent with all applicable parts of these Design Requirements.

### Design coherence

- 1.2. Each base is to embody an overarching design idea or concept; relate sensitively to its specific context, including other buildings and public open spaces; and demonstrate design coordination and integration so as to avoid outcomes being a piecemeal assemblage of unrelated design responses.
- 1.3. Public open space design is to embody an overarching design idea or concept; relate sensitively to its specific context, including buildings, yards and other public open spaces; and demonstrate design coordination and integration so as to avoid the outcome being a piecemeal assemblage of unrelated design responses.
- 1.4. The principles and requirements within this document are to be considered individually and in combination to achieve an integrated, high quality design outcome that will meet the general design objective.

### Te Aranga Māori Design Principles

- 1.5. Recognise Te Aranga Māori Design Principles in the design of public open space as determined through the Mana Whenua Engagement Plan process. The Te Aranga Māori Design Principles, including their intended outcomes, are:
- a. Mana Rangatiranga: Authority  
The status of iwi and hapū as mana whenua is recognised and respected.
  - b. Whakapapa: Names and Naming  
Māori names are celebrated.
  - c. Taiao: The natural environment  
The natural environment is protected, restored and/or enhanced.



- d. **Mauri Tu: Environmental health**  
Environmental health is protected, maintained and/or enhanced.
- e. **Mahi Toi: Creative expression**  
Iwi/hapū narratives are captured and expressed creatively and appropriately.
- f. **Tohu: The wider cultural landscape**  
Mana whenua significant sites and cultural landmarks are acknowledged.
- g. **Ahi Kā: The living presence**  
Iwi/hapū have a living and enduring presence and are secure and valued within their rohe.

## **Section 2**

### **GENERIC BUILDING AND YARD DESIGN REQUIREMENTS**

*These generic requirements apply to the design of all buildings for Bases B-G, and yards for Bases A-G.*

#### **Building edge activation**

- 2.1. Locate any publicly accessible facilities within each base at ground level where they will best contribute to the quality and activation of adjacent public spaces.

#### **Scale and visual interest**

- 2.2. Buildings shall be designed to be visually interesting and manage the effects of visual bulk. This will be through the use of a variety of design elements assembled in an architecturally coherent way, while recognising these are temporary maritime-industrial and event buildings. A combination of fit-for-purpose techniques shall be used comprising for Base B a-d and at least three of e-j, and for Bases C-G at least two of a-d and at least three of e-j:
  - a. expression of primary and secondary building volumes with modulation of height or form;
  - b. roof form modulation;
  - c. provision of human scale, fine-grained detail and richness at all edges that the public will view at close range, and larger forms and elements to respond to mid and long-range viewing distances;
  - d. visual expression of building entries;
  - e. offsets of facade planes;
  - f. integration of wall openings and windows;
  - g. variation in materials;
  - h. repetition of elements and treatments to achieve visual rhythm;
  - i. projections of secondary components and forms over related wharf and public/yard spaces; and
  - j. use of colour, texture and lighting.

#### **Base signage and branding**

- 2.3. Signage for teams and their sponsors is anticipated as a positive attribute and will be positioned within the building envelope and sized to positively complement the architectural qualities of the building to which it relates. No

freestanding or other signage is provided for, except for as provided in the Event Management Plan or specified below.

2.4. All applied signage on base buildings and yard enclosures, including corporate branding and logos, shall:

- a. cover not more than 40% of the area of any building façade;
- b. cover not more than 40% of the roof surface;
- c. not project beyond or above the roof envelope; and
- d. be integrated with the façade composition by relating to openings, alignments and forms in a coherent way; and
- e. signage on yard enclosure fences shall be limited to the 30% maximum solid area of any fence as detailed later in these requirements, except there will be no signage on any yard fence that might be erected along a wharf edge.

For clarity, applied signage is defined as text, logos, and/or areas of corporate colour. This is distinct from integrated signage and branding which is an expression of team or brand values in the general aesthetic quality of the building.

2.5. In addition to the above, illuminated and luminated (back-lit) signage shall comply with the following:

- a. not more than one third of the total area of applied signage may be of an illuminated type and to an extent consistent with the Wynyard Hobson conditions of consent for lighting; and
- b. luminated (back-lit) and all variable message or LED screen signage will be covered by the Event Management Plan or subject to separate resource consent or signage bylaw approval.

2.6. No more than three flag poles are permitted for each base (on the base building or its associated yard area), with each:

- a. extending to not more than 25 metres above finished ground or wharf level; and
- b. able to accommodate a flag with a total area of not more than 32 square metres.

For clarity, these are permanent poles and flags that are in place for the duration of the base tenure as enabled in consent condition of 6.

#### **Amenity Lighting**

2.7. Establish lighting that contributes to:

- a. the identity and quality of the event;
- b. the amenity and character of Wynyard Point and the Viaduct Harbour Precincts;
- c. enhances the legibility of buildings and wayfinding to them; and
- d. provides for public safety.

2.8. To achieve the above, amenity lighting must be provided and designed to:

- a. complement the architectural features of each building;
- b. avoid potential adverse lighting effects including glare; and
- c. minimise light spill towards the Waitematā Harbour, and external Viaduct Basin and Wynyard Point Precincts (excluding the basins and water space).



### Waste, recycling and service storage provision

- 2.9. Provide facilities for service storage, and temporary storage of waste and/or recycling. This excludes the equipment and other maritime industrial activity associated with the syndicates which is not required to be screened in this way.
- 2.10. Ensure these facilities are located to be visually discreet, and screened within the yard enclosures and/or integrated within the base buildings:
- when within yards such facilities must be in screened enclosures, or in portable containers or storage pods, not more than 3m high and which provide for storage but not occupation; and
  - if located on the external façade of the building, storage spaces for waste and recycling must be designed in a way that the contents cannot be seen from the adjacent public space, except when the space is being accessed.

## Section 3

### BUILDING AND YARD-SPECIFIC DESIGN REQUIREMENTS

*These apply to Base B and bases C-G in addition to the generic building design requirements.*

#### Base B, Hobson Wharf Extension

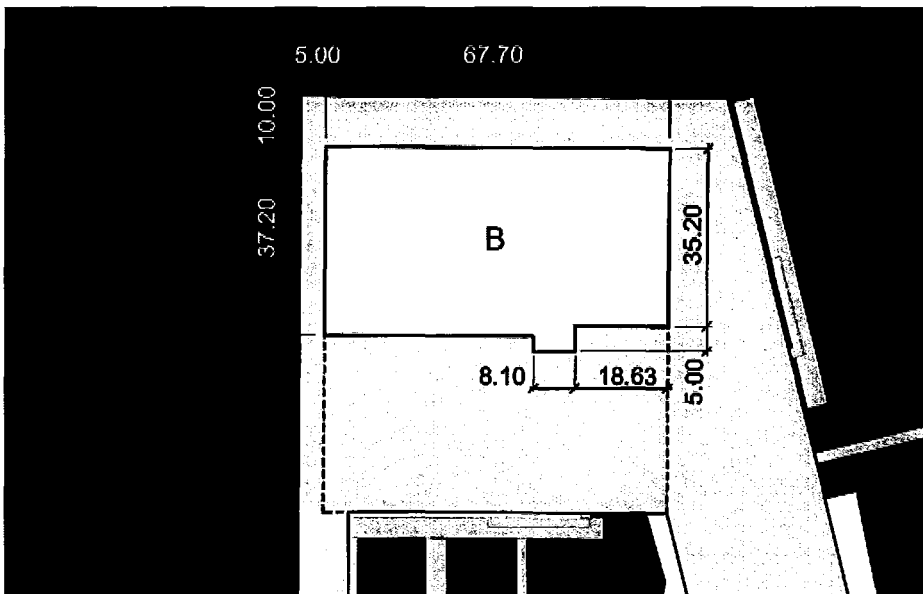
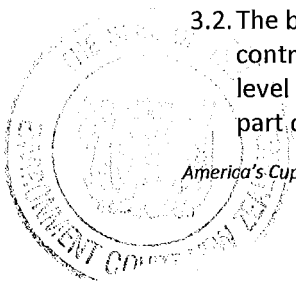


Figure 2: Hobson Wharf Base B building and yard footprint (dimensions are in metres)

#### Building form

- 3.1. Buildings must be designed to be contained within the building envelope established by the building footprint identified in Figure 2 with a maximum building height of 15 metres above the wharf surface, except as provided for below.
- 3.2. The building must be designed to have a roof form and profile that contributes to an interesting and varied skyline when viewed from both wharf level and elevated locations in the surrounding area and that is an integrated part of the overall building concept. To ensure this, the building must include



expression of building top being no less than 20% of the total area of all elevations, including roof surfaces visible in the elevations. Expression of building top on the elevation may include obvious roof forms and/or other façade components.

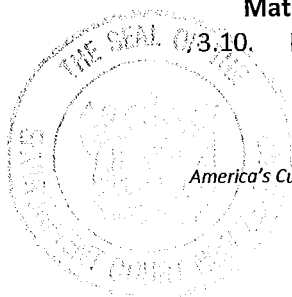
- 3.3. Locate the building so that the building line at ground / wharf level abuts at least 50% of the eastern boundary line of the footprint as identified in Figure 2 above.
- 3.4. Should the design for Base B result in a reduced building footprint (excluding minor recesses and voids relating to architectural expression and entrances) this footprint reduction must occur primarily at the western end so as to increase the width of public access along the western wharf edge.
- 3.5. Any projections beyond the identified footprint in Figure 2, must only occur at upper building levels on the eastern and northern sides of the building subject to the following:
  - a. These will not extend more than 4m from the façade and will not be less than 5m above the wharf surface;
  - b. The maximum volume of projection for the eastern elevation is 865m<sup>3</sup> and for the northern elevation 520m<sup>3</sup>;
  - c. No projection on the northern elevation shall be closer than 4m from the western end of the façade; and
  - d. The total volume of any projection(s) shall be compensated for by an equal volume of reduction within the building envelope as defined in requirement 3.1. This is to ensure that the overall scale of building will not increase as a result of additional projections.
- 3.6. Plant being all mechanical and electrical equipment that is a fixed and permanent part of the building must be within the maximum building envelope, integrated into the overall building and rooftop form and if projecting beyond any façade or roof surface, designed as a complementary architectural element.

#### **Façade design**

- 3.7. The main pedestrian entrance to Building B must be located within the eastern facade and be prominent in view from the adjacent public open space.
- 3.8. Clear glaze at least 30% of the length of the ground floor eastern façade to a height of at least 3.0m to allow two way views between indoors and outdoors.
- 3.9. The northern facade must be designed to provide passive surveillance from within the building of the public space to the north. The façade must contain at least three openings with clear glazing at eye level, two of which must have an area of at least 1 square metre and the third connecting to the boat shed(s) of at least 20 square metres in area to provide public views of the inside of the boat shed, or equivalent.

#### **Materials**

- 3.10. Materials on all wall elevations must:
  - a. be physically robust and resistant to potential impact;
  - b. be sufficiently corrosion resistant to maintain their appearance





- for the intended maximum 10 year service life of the building; and
- c. incorporate texture in the surface and/or expression of fine-grained modularity along the ground level façade sufficient to provide visual interest.

3.11. Avoid mirror glass and highly reflective wall surfaces (all elevations).

**Amenity lighting**

3.12. Given its visual prominence in its immediate context, the lowest practicable lux-level is to be used to achieve a subtle glow-type lighting of the building.

**Bases C-G, Wynyard Point**

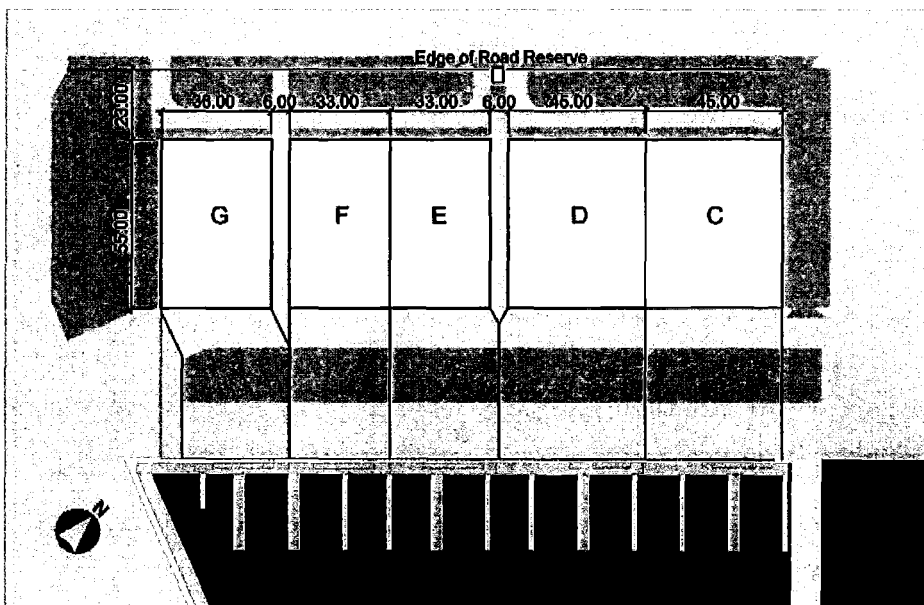
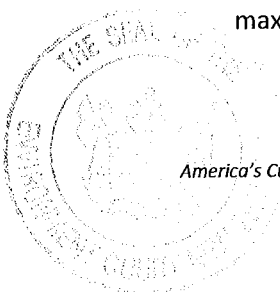


Figure 3: Wynyard Point Base C-G Building and yard footprint (dimensions are in metres)

**Building form**

- 3.13. Buildings must be designed to be contained within the building envelope established by the building footprint identified in Figure 3 with a maximum building height of 15 metres above finished ground level, except as provided for below.
- 3.14. Locate the building so that the building line at ground level abuts at least 50% of the western boundary line of the footprint as identified in Figure 3 above.
- 3.15. Any building setback from the western boundary of the footprint must not be used for car parking and/or permanent waste storage.
- 3.16. Canopies over doors, and boat shed door portals that provide architectural and shelter elements may project beyond the specified maximum building envelope as follows:
  - a. Any portals around boat shed doors are not to extend more than 1 metre from the defined footprint area in Figure 3; and
  - b. Entrance canopies must be visually light weight and shall not



extend more than 2.5m from the defined footprint area in Figure 3.

- 3.17. There may be open cantilevered balconies extending not more than 2 metres beyond the identified footprint on the east and west facades of the buildings. The total area of any such balcony projections must not exceed a cumulative total of 70 square metres per base.

#### **Façade design**

- 3.18. Allow two-way views between indoors and outdoors along at least 20% of the ground floor western façade to a height of at least 2.2 metres.
- 3.19. The south facade of the Base G building must be designed to provide passive surveillance from within the building of the public space to the south, with at least three openings at eye level, two of which must have an area at least 1 square metre, and the third must at least 15 square metres in area, or equivalent.
- 3.20. The north facade of the Base C building must be designed to provide passive surveillance from within the building of the adjacent public footpath space, with at least three ground floor clear glazed openings at eye level, each of which has an area of at least 1 square metre, or equivalent.

#### **Inter-base boundary fencing between bases C-G**

- 3.21. Yard fencing between each base C-G is not required, but where proposed this must:
- be located at the boundary of each yard;
  - have a maximum height of 2.4 m;
  - be of a single type with consistent materials and construction for all of these inter-base yard boundaries but which allows for variation in height, gates and other openings;
  - visual permeability of a minimum of 80% of the area of the fence in elevation over at least 70% of its length;
  - be solid for no more than 30% of the length per elevation (per base) except that there shall be no solid panels on any fencing or barrier along the wharf edge; and
  - not use overtly defensive materials such as electric, barbed or razor wire.

For completeness, public interface fencing around yard perimeters is addressed in section 4.

- 3.22. Locate outdoor storage for Base G on the northern edge of the yard in order to maintain views in from the public space at the south, unless there is an operational reason that necessitates storage at the southern end of the yard.



## Section 4 GENERIC PUBLIC OPEN SPACE DESIGN REQUIREMENTS

*The following apply to the design of all public open spaces identified in Figure 4, and to all new public interface yard enclosures and safety barriers on wharf edges.*

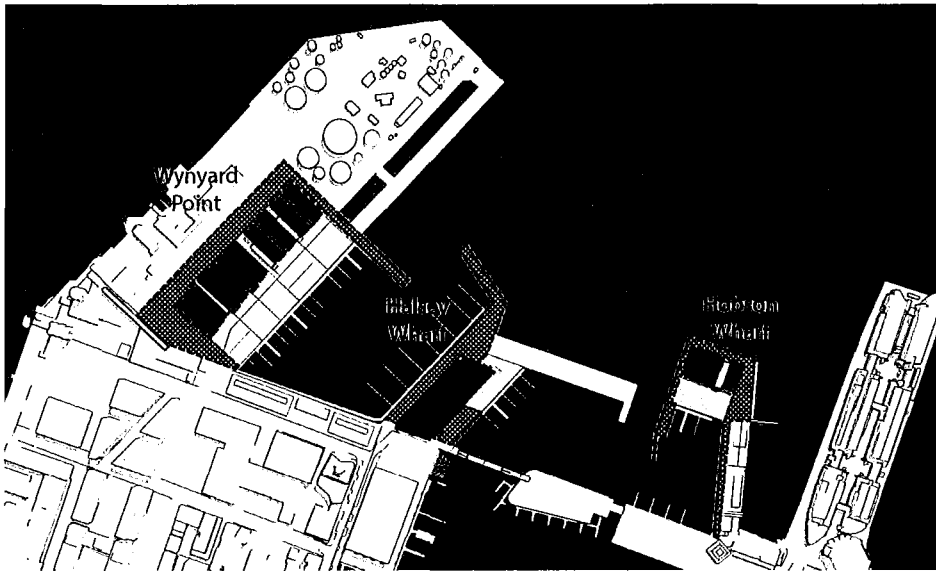


Figure 4: Areas where the Public Space Design Requirements apply

### Public open spaces in general

- 4.1. Provide a unifying concept for the design of the areas shown on Figure 4. Each area shall:
- be based on an idea that relates to the wider context of existing wharf and public space composition, design and treatments;
  - apply a consistent and aesthetically coherent approach to surface treatments, details and finishes;
  - accommodate the functions of the marine industry and events; and
  - provide for the safe viewing of marine activities from public areas.

### Wharf and breakwater edges

- 4.2. The design of all new wharf and breakwater edges is to be visually compatible with those existing adjacent edges.
- Maintain consistency of treatment along any wharf edge or breakwater, and with all new wharf edge treatments.
  - Ensure wave panels are set back a minimum of 500mm from the outer edge of the wharf and breakwaters to create a shadow line and visually express the wharf edge.

### Public interface yard enclosures

- 4.3. Fences along the edges of the Base yards for A, B, C (northern end), G (south-western end), and at the lanes between bases C-G shall:
- be aesthetically compatible with the wharf edge safety barriers;
  - be of a consistent design across all of these identified

- interface areas;
- c. be a maximum 2.2m high;
- d. be not less than 80% visually permeable over 70% of the length; with not more than 30% of the length along each elevation (per base) being solid, except that there shall be no solid panels on any fencing or barrier along the wharf edge;
- e. include gates where necessary, with a consistent design to the fence; and
- f. not include overtly defensive materials such as electric, barbed or razor wire.

4.4. Provide for emergency and managed event access to and/or as necessary through the yards for Bases A and B, and include fail-safe 24 hour emergency public egress from the outer parts of wharf promenade through these yards with capacity calculated to provide for anticipated crowd numbers.

#### **Furniture**

4.5. Incorporate public realm elements, infrastructure and furniture to support public use and occupation of the wharf areas and associated land spaces. These include lighting, flagpoles, service connections, bicycle parking, seating, shelter elements and safety rails as required. These elements shall be designed with a character which supports the marine industrial and working wharf setting.

#### **Wharf edge safety barriers**

- 4.6. Where wharf edge safety barriers are required to provide safety from falling they shall:
- a. be readily installed and removed according to need for general and event crowd safety and wharf edge operations;
  - b. be at least 80% visually permeable and minimise visual impact on views from the waterfront axis out into the harbour;
  - c. achieve as far as possible visual continuity and aesthetic consistency in each area of wharf edge in which they are located;
  - d. avoid highly reflective finishes; and
  - e. be constructed from robust materials.

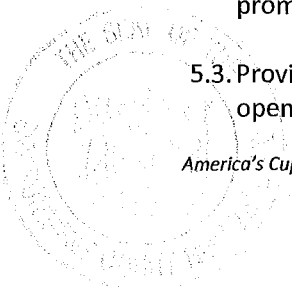
## **Section 5**

### **LOCATION-SPECIFIC PUBLIC OPEN SPACE DESIGN REQUIREMENTS**

*These apply to the areas identified in Figure 4 and are in addition to the generic open space design requirements.*

#### **Hobson Wharf**

- 5.1. Replace the existing barrier arm with removable bollards to control vehicle access while inviting public pedestrian movement.
- 5.2. Provide a surface treatment at the southern end of the existing wharf that signals a connection with the pedestrian access along the waterfront axis promenade and conveys to users that it is public space.
- 5.3. Provide lighting, and signage that provides easy wayfinding to Base B and the open space at the eastern side of the Hobson Wharf Extension.

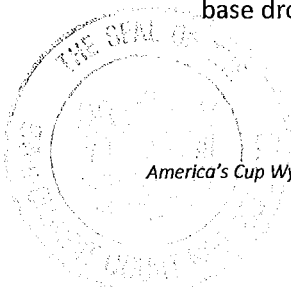


## **Halsey Wharf**

- 5.4. Provide lighting and signage to assist wayfinding to the public viewing platform at the north end of the Viaduct Events Centre.
- 5.5. Allow for a flagpole on Halsey Wharf that:
- a. extends up to not more than 35 metres above wharf level;
  - b. accommodates a flag or flags with a total area of not more than 90 square metres; and
  - c. is located between the northern end of the Viaduct Events Centre and the existing northern edge of Halsey Wharf, and not more than 60 metres from its western edge.
- 5.6. Allow for no more than three flagpoles at the eastern end of the Halsey Wharf which:
- a. extend to not more than 25 metres above wharf level; and
  - b. are able to accommodate a flag with a total area of not more than 32 square metres.

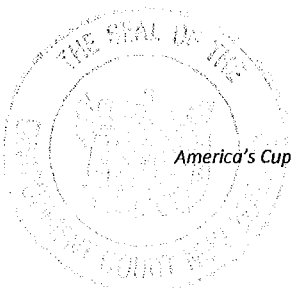
## **Wynyard Point**

- 5.7. Design the temporary and interim public open space on the Hamer Street frontage and north of the Silo Park gantry (as indicated on Figure 4) to provide for public access, use and enjoyment during the event; provide access to the bases; and support for America's Cup activity. This space shall include the following characteristics:
- a. surface finishes that are fit-for-purpose, simple and economical and provide for a range of predominantly public uses;
  - b. multi-purpose hard surfacing that provides both for the identified amount of carparking accessed from the north south lane and identified in the conditions and public and event uses;
  - c. public realm elements including lighting, seating, and other furniture items including bicycle racks and flagpoles;
  - d. potential for temporary public art installations;
  - e. provision for flexibility of use including sub-spaces to function in a range of ways and in various combinations for everyday use and a range of minor events;
  - f. integration of trees and other planting to assist with spatial separation from the street and to enhance the amenity of these spaces;
  - g. design to cater for a range of public activities;
  - h. design for public safety incorporating Crime Prevention Through Environmental Design (CPTED) principles;
  - i. public connections including a new footpath within the road reserve along the edge of Hamer Street, with crossings to provide access to the bases; and
  - j. lighting and services to support the intended uses.
- 5.8. Provide a 10 metre wide lane along the western side of Bases C-G including a 4 metre wide pedestrian only path along the western frontage of the base buildings, and a shared surface lane which allows for vehicle movement and base drop-off and servicing.



- 5.9. Provide no more than three multi-purpose poles (for lighting, services provision, event branding and wayfinding purposes) on the Hamer Street open space. Each:
- a. extends to not more than 20 metres above finished ground level;  
and
  - b. can accommodate a flag or flags and/or banners with a total area of not more than 10 square metres.

END



**ANNEXURE D**  
**Protected Objects Protocol**

America's Cup Wynyard Hobson  
Applicant's Proposed Conditions – Reply Version  
Including responses to Questions from the Court (on 4 September 2018 Condition Set)  
11 September 2018

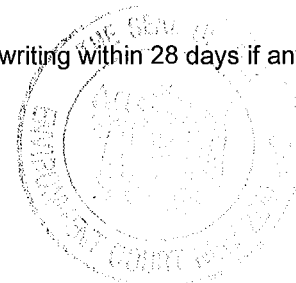


## Purpose

1. The purpose of this protocol is to provide procedures to be followed in the event that works associated with the construction of infrastructure for the America's Cup Wynyard Hobson project reveal protected New Zealand objects as defined in the Protected Objects Act 1975.
2. This protocol does not apply to any requirements of the Protected Objects Act 1975 or the Heritage New Zealand Pouhere Taonga Act 2014 but instead overrides the accidental discovery rules in the Auckland Unitary Plan: Operative in Part in so far as they relate to protected New Zealand objects. Resource consent has been sought for disturbance of contaminated land, so the accidental discovery rules relating to contaminated land are also excluded.
3. The Auckland Unitary Plan: Operative in Part accidental discovery rules continue to apply for the discovery of other sensitive material, including human remains and kōiwi, archaeological sites, Māori cultural artefacts/taonga tuturu and lava caves greater than 1m in diameter. The provisions of the Protected Objects Act 1975 and Heritage New Zealand Pouhere Taonga Act 2014 continue to apply in relation to any requirements under that legislation.

## Protocol

4. The Auckland Council Cultural Heritage Inventory (CHI) includes the following entries that may be affected by the site preparation and piling works associated with the America's Cup Point: Halsey application (although the specific location of the objects is unknown):
  - (a) CHI 401, hulk, *Chelmsford*;
  - (b) CHI 18609, industrial, *Vos boatbuilding yards*;
  - (c) CHI 404, hulk, *Kaniere*.
5. In the event of discovery of the above items, or any protected New Zealand object as defined in the Protected Objects Act 1975 for the purposes of Rules E11.6.1 and E12.6.1 of the Auckland Unitary Plan: Operative in Part, the procedures in this Protocol shall apply instead of the accidental discovery standards and procedures set out in Rules E11.6.1 and E12.6.1 of the Auckland Unitary Plan: Operative in Part.
6. The consent holder shall employ at its expense a qualified archaeologist (the Project Archaeologist) who shall:
  - (a) carry out regular inspections of the works area during site preparation and piling at Wynyard Point;
  - (b) provide records of site inspections to the Council [Heritage department];
  - (c) be available on call to inspect any discoveries of any objects that might be protected New Zealand objects encountered during excavation or piling works, and to enable identification of any objects;
  - (d) advise the Council in writing within 24 hours if any protected New Zealand objects have been discovered;
  - (e) advise the Ministry for Culture and Heritage in writing within 28 days if any *taonga tūturu* have been discovered.





7. Any discoveries of protected New Zealand objects, such as hulls of ships, shall be recorded, including to identify the location and expected source of the object. Where practicable, damage to these objects will be minimised.
8. For the avoidance of doubt, works are not required to stop on the discovery of a protected object, except as necessary for the Project Archaeologist to carry out the above procedures.

