

ORIGINAL

Decision No. W 21/2005

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under section 120 of the Act

BETWEEN DUXTON HOTEL WELLINGTON

(ENV W 14/04)

Appellant

AND

THE WELLINGTON CITY COUNCIL

Respondent

AND

129 JERVOIS QUAY LIMITED

Applicant

BEFORE THE ENVIRONMENT COURT

Environment Judge S E Kenderdine

Environment Commissioner J D Rowan

Environment Commissioner W R Howie

HEARING at WELLINGTON on 24 – 27, 30 – 31 August 2004

FINAL SUBMISSIONS: 17 September 2004



COUNSEL:

L J Taylor and J Maslin for Duxton Hotel Wellington

I M Gordon and M J Slyfield for 129 Jervois Quay Limited (the Watermark Building)

P C Mitchell and G M Poirier for the Wellington City Council



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DECISION

Introduction

[1] The appeal concerns an application to develop a triangular block of land in the central area of Wellington, contained between Wakefield, Cable and Taranaki Streets with a landmark building – called “Watermark”. The land is currently occupied by the John Chambers building (which has a heritage status in the District Plan having been built by Gummer and Ford in 1917), and by the Wakefield Markets building, which is classified as an earthquake risk.

[2] The unusual aspect of this appeal for Wellington is that part of the proposed new building is intended to be 11-storeys high, and have a height of 41.5 metres. Height limits have been strongly debated in Wellington City in the past. The height of this building exceeds the permitted height of 27 metres on this site in the District Plan, as well as the discretionary height limit of 27 metres plus one storey (4.2 metres). At a height of 10.3 metres above the discretionary limit, the development is therefore a non-complying activity.



The Proposal

[3] The proposed development will comprise an architecturally designed (tower) building that would be constructed on the Wellington Market's site, in conjunction with the renovation of the adjacent John Chambers building. The building will incorporate 68 apartments and 162 carparks, 80 of which are identified for public use. The development is to be integrated across the whole site, resulting in a mix of uses, including retail, a restaurant, public spaces, studio, office space and parking with the residential apartments on the upper floors.

[4] The building site is described as a prominent one, chiefly because it is a triangular island site created by several roading networks joining together and of which there are few in the City. Consequently, the site may be viewed in the round from many vantage points throughout the Central City Area and beyond. The site is also dominated currently by the John Chambers heritage building with its massive scale and building form, its iconic bull nose and lift tower¹. The architects' intent is to integrate this with the tower proposal and create a landmark building overall, to honour both the public position of the site and its unique qualities, particularly its heritage, and the prospective views at tower level.

[5] Exhibit A, a model of Watermark put in evidence by Mr N Barratt-Boyes, Director of Studio Pacific Architecture, who appeared as architectural consultant to the applicant, discloses two distinct building forms or planes that appear to slip past each other to reduce the overall bulk of the elevation sitting atop a solid base. One is rectilinear in plan, rakes and sits completely on top of the base. The other more southern form, has a curved façade which recognises the twist in Wakefield Street and interlocks with the base. The level of articulation (façade treatments and building forms) overall is intended to break down the height, as are the significant glass and steel canopies which are intended to create a strong lip at street levels.

[6] The tower, in raked form, on the Wakefield Market's site is intended to cascade to street level. It consists of floors 5 – 11 comprised exclusively of apartments. Its construction is intended to be light in appearance, well articulated and built from high quality materials. Natural stone pre-cast concrete cladding, powder coated aluminium joinery, glass balustrades and glass sliding screens are intended to create a 'floating' concept for this part of the building



above the base. This contrasts with the anchor building which is made up in part from the solidly based John Chambers building with which it interlocks.

[7] Parking floors 1 – 4 are contained within the curtilage of the building proposed. They integrate both the John Chamber and Wellington Markets' sites creating a combined base. Rather than exposing the carpark floors to the public, the carparks are sheltered by 300 – 400 millimetres deep louvres. These act as visual filters so the passer-by looking up would not see vehicles parked or moving around.

[8] Mr Barratt-Boyes recounts the building is critically designed to take account of the views around, the wind, heritage protection issues, parking, shading, privacy, and the transitional site (at the junction of the "High and Low" city areas)². Its roof top (considered "the fifth elevation" as it is likely to be overlooked from above in this Wellington setting) reflects the clean linear lines of the rest of the building, unencumbered as it is by either artifice or insensitive lift shafts.

[9] The architectural model provided by the architects was supplemented with a considerable number of photomontage documents demonstrating the building as seen from its many vantage points.

[10] Mr M N Baily, consultant planner to the applicant, explains that initial concerns raised by the appellant ('the Duxton') were shading on the hotel foyer area, and effects on views. As a result, the applicant reduced the height of the building by one level. Mr Baily also explains that in response to other submitters' concerns, the applicant agreed to include:

- a roof top garden on the John Chambers building (in response to submission from Greenspace);
- a greening of the Jervois Quay edge and substantial wind shelter at Taranaki Street end (in response to submissions by Taranaki Wharf Holdings Ltd and Shed 22 Holdings Ltd);
- confirmation that a covenant will be placed on the John Chambers heritage building to prevent additional building on the top (in response to submissions



² Barratt-Boyes EIC 4, para 5.2, 1)-8).

by Taranaki Wharf Holdings Ltd (which has a 100 year lease of both the Odlins and Ambulance buildings adjacent), and Shed 22 Holdings Ltd); and

- confirmation (through conditions proposed) that the public carparking will be for public use (in response to submissions by Taranaki Wharf Holdings Ltd and Shed 22 Holdings Ltd).

[11] Mr Bailly indicated further reductions were contemplated but it was found that the height could not be reduced further without loss of design integrity and a significant number of public carparks within the building. We were also subsequently informed that the raking form of the building on the Taranaki Street frontage is now straightened³.



The Site and Locality

[12] The site, as an island, is bounded on three sides by the wide arterial roads that surround it – Jervois Quay to the south, Cable Street to the north and Taranaki Street to the east, all taking large volumes of traffic and providing large open spaces. It is situated close to the Wellington waterfront, with Circa Theatre and the Te Papa Museum approximately 50 – 70 metres away⁴. The site therefore adjoins and directly engages two significant public precincts with high amenity value and public access on three of its four sides⁵. The relationship between the waterfront and the city is seen as a critical one to develop⁶.

[13] The 3-storey John Chambers building occupies the western part of the site. Essentially this building has two main elevations that come to a point at the western most corner of the site, sometimes described as the “nose” of the building. While it is listed as a heritage building in the district plan, John Chambers is not listed with the New Zealand Historic Places Trust and has the potential to be demolished under current legislative provisions and District Plan provisions⁷. It is currently occupied by the Rialto Cinema and a furniture/design store.

[14] To the north of the site are three buildings that are listed in the Wellington City District Plan and by the New Zealand Historic Places Trust. These are Shed 22, now developed as a brewery and bar, the Odlins building, currently being developed for apartments, offices and retail, and the Wellington Free Ambulance building (the waterfront heritage buildings) – about to be developed for similar activities.

[15] The area to the south of the site is the wide expanse of Jervois Quay and beyond the grassed median is Wakefield Street. Buildings in the block on Wakefield Street range in size from the 9-storey former Colmar Brunton building on the corner of Taranaki and Wakefield Streets to the Duxton Hotel, also at 9-storeys high – with the 3-storey Aulsebrooks building in the middle. The Duxton site (with the hotel roof at 37.5 metres above ground level) is depicted as under-utilised relative to the density that could be achieved in the long term and as



Paratū-Boyes NOE (24 Aug) 21.

Williams HC 4, para 2.11.

Plant HC, para 22. Section 12.1.4 of the District Plan.

Taylor Submissions in Reply 8, para 3.23. See Rule 21.3.1 and clause 21.3.1.1.

likely to be redeveloped⁸. Adjacent to the Duxton building is the Wellington Regional Council building.

[16] To the west of the site are the Michael Fowler Centre, its adjoining carpark, and the Wellington City Council buildings that form Civic Square. The Square is linked to the waterfront by the City to Sea Bridge.

[17] The BP Roadmaster service station is located on the opposite side of Taranaki Street, behind and to the east of the Watermark site. In terms of direct measurement, this facility is closer to the Watermark site than the waterfront heritage buildings⁹.



The Appellant

[18] The appellant is the Duxton Hotel Group ('the Duxton'), a hotel facility with a five star rating, is situated directly across from the proposed Watermark building on Wakefield Street. The Duxton is concerned about:

- the adverse effects of the building's height;
- the adverse effects on existing views from the Duxton and from shading potentially caused by the Watermark;
- the adverse effects of the Watermark development on Wellington's urban form;
- the adverse effects of the proposal on amenity values and the public environment.

[19] These matters were chiefly addressed by Mr A J Williams, consultant urban designer and architect to the Duxton, who found all issues above would have a significant adverse impact on urban form. Planning issues were addressed by Mr R G Stroud, a consultant planner. Mr Stroud concludes the adverse planning effects generated by the proposal are major while the proposal is contrary to two important objectives and four policies of the District Plan.



*Status of the Activity*¹⁰

[20] In terms of the Wellington District Plan, the site is located within the Central Area. The permitted height limit for this site is 27 metres above ground level. An Environment Court Consent Order dated 12 June 2003 confirmed the height limit for this site. The site is within the "Low City" in terms of Map 32 **Central Area Building Heights** of the plan. As noted, the site contains a listed heritage building, #48, being the John Chambers Building (1917).

[21] A proposal to construct a new Central Area building is a Controlled Activity under Rule 13.2.1 (the construction or alteration of, and addition to buildings and structures). The standards and terms under this rule require compliance with the Permitted Activity conditions set out under Rule 13.1.2 of the plan. This application does not comply with the following conditions under Rule 13.1.2:

- the building exceeds the maximum permitted height of 27 metres above ground level;
- the proposal does not result in the permitted wind speeds at street level.

[22] The construction of buildings where one or more of the conditions for Permitted Activities under Rule 13.1.2 are not met, are provided for as a Discretionary Activity (Restricted) under Rule 13.3.2. The standards and terms under this rule require that maximum height within the Low City area is not exceeded by more than one storey. This proposal is beyond the discretionary limit as the proposal exceeds the permitted height limit by four storeys. The building is therefore a Non-complying Activity under Rule 13.5.

[23] The proposed activities (apartments, retail office and parking activity) require consent as a Discretionary Activity (Restricted) under Rules 13.3.1 and 13.3.3 as the permitted activity conditions under Rule 13.1.1 of the plan relating to the following matters are not met:

- the proposal involves more than 70 carparks;
- the carparks and servicing area do not meet all dimension and gradient rules.



Miss M. E. O'Callahan EIC, senior planner for the council.

[24] There are no standards and terms under Rule 13.3.1 that are relevant to servicing and carpark layout non-compliance.

[25] The standards and terms under Rule 13.3.3 which apply to proposals with more than 70 carparks require compliance with Rules 13.1.1 and 13.1.2 unless concurrent consents are sought, as is the case with this application.

[26] The proposal also requires consent under the heritage rules as it involves additions and alterations to a heritage building (the John Chambers building). These works are provided for as a Controlled Activity under Rule 21.2.2 (additions and alterations to a heritage building). There are no standards and terms under this rule. The building is therefore a Non-complying Activity under Rule 13.5.

[27] The appeal is to be considered under the RMA as amended in 2003.



Non-complying Activity Threshold Tests

[28] Under s.104D(1) RMA, a consent authority may grant a resource consent for a non-complying activity only if one of either of the following “threshold tests” are met:

- (a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(b) 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.

[29] If either of the threshold tests are satisfied, the proposal must then be evaluated under s.104(1). Under s.104B RMA, after considering an application under ss.104D and 104, which is subject to Part 2, a consent authority still retains an overarching discretion to approve or refuse consent.

[30] The applicant conceded in opening that the proposal would result in effects that are more than minor. This concession was limited to the effects of shading on the Aulsebrooks Building and the effects of loss of visual amenity from a confined part of the 9th floor of the Duxton Hotel – as detailed in the evidence of Mr D Calder, architect, and Mr F Boffa, landscape architect for the applicant. It was submitted that the applicant’s concession in this respect is confined to the “Gateway” tests as these are not so significant as to warrant declining the application when all of the effects of the application, both positive and negative, are measured in the round with regard to Part 2 of the Act¹¹.

[31] In the applicant’s terms, the primary focus for the appeal is the s.104D(1)(b) test: whether the proposal is not contrary to the objectives and policies of the (operative) District Plan. This threshold provision we therefore intend to address first. If we find the proposal satisfies that threshold, we will move to the s.104 provisions as the s.104D tests are provided in the alternative¹².



Objectives and Policies of the District Plan: Section 104D(1)(b)(i)

[32] In some of the objectives and policies which follow, it is necessary to establish 'effects' within the discussion.

- ***Amenities***

[33] The District Plan has one objective on **Central Area Amenity Values** and numerous policies to achieve it. The type of amenity effects the plan seeks to control are adjacent Residential Area amenity, noise, wind, sunlight, panoramic views, vistas, signs, shelter and traffic. The appellant singled out the objective and several of its policies with which to challenge the Watermark proposal¹³. It is these we intend to address under this heading – namely views, shading/sunlight and parking.

- ***Views***

[34] The appellant considers the proposal is contrary to¹⁴:

Objective 12.2.2 – Central Area Amenity Values
To maintain and enhance the amenity values of the Central Area and any nearby Residential Area.

and:

Policy 12.2.2.1:

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

METHODS

- **Rules**
- **Other mechanisms (Regional Air Quality Plan, Abatement Notices, Enforcement Orders)**

The effects generated by the wide range of activities in the Central Area, such as fumes, smoke, smell, vibration, glare or other nuisances, can have adverse impacts both within the Central Area or in areas beyond its boundary. Some activities will be noxious or dangerous wherever they are sited but others, relatively less harmful, become more dangerous if sited in residential or sensitive areas. Council aims to



13 Daily EIC 10, paras 45–46.

14 Williams EIC 17, para 2.66: *The impacts on existing views above the permitted building height.*

ensure that such activities are contained and do not cause a nuisance or danger.

To do this, Council relies on the general duty of every person under the Act to avoid, remedy or mitigate the adverse effects of activities (section 17). Where necessary Council will also use the enforcement or abatement provisions of the Act to control nuisances. Other effects identified in the rules are controlled by setting performance standards.

The environmental result will be that uses or activities in the Central Area will not cause a nuisance or danger either within the Central Area or in nearby Residential Areas.

[35] The Duxton did not adduce any evidence to rebut the applicant's conclusion that the proposal will not generate any effects identified in the explanation to the policy. Only one issue was taken up in this context and this was views.

[36] It is Mr Williams' evidence that although the District Plan does not formally define hotels as a residential activity, their activities do closely parallel such activities. He particularly targeted the effect on the views from the Duxton which the applicant considers are more than minor. He considers a complying scheme is less likely to damage these essentially residential views, specifically those across the northern end of the building. Mr Stroud concludes the current proposal would significantly adversely affect the Duxton's views of the harbour and hills.

Evaluation

[37] We do not consider the adverse effects identified in Policy 12.2.2.1 are intended to address private views.

[38] We note too effects on private views (and private sunlight access) have been directly excluded from those matters to which the council's discretion would be restricted when considering an additional storey on the Watermark site above the permitted 27 metre height limit¹⁵.



[39] The Maximum Building height assessment criteria (13.3.2.9–13.3.2.17) for Discretionary Activities (Restricted) are, as the explanation to them states:

*Designed primarily to protect the panoramic view of the harbour and distant hills viewed from the public viewing point at the top of the Cable Car.*¹⁶

[40] It is Mr Boffa's conclusion, and also ours, the assessment criteria are therefore not directly applicable to views from the Duxton Hotel.

[41] In addition, as Ms O'Callahan for the council points out, several policies attached to Objective 12.2.2 do address views but they are public ones:

Policy 12.2.2.6:

Protect the panoramic view from the public viewing point at the top of the Cable Car.

METHOD

• **Rules**

Council considers that the panoramic view of the harbour and distant hills from the Cable Car lookout site is of outstanding importance and should be protected. The building height provisions, particularly the defined height limits in the "High City" area, are designed to protect this view. Any development above the maximum height limits is a Discretionary Activity and assessed for its impact on this public view.

The environmental result will be the protection of the panoramic view of the City from the top of the Cable Car.

and:

Policy 12.2.2.7:

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

METHOD

• **Rules**

Specific views of the harbour, local hills and townscape features are an important element of the cityscape, which Council seeks to preserve. Views to be protected are identified in the Plan and are subject to rule



provisions. Building development that intrudes upon a view is a Discretionary Activity.

The environmental result will be that identified views will be protected.

In Ms O'Callahan's opinion, with which we agree, neither policy mentions private views. And are deliberately excluded from the views the District Plan is seeking to protect¹⁷.

[42] The relevant Central City **View Protection** Rule (13.1.2.6) confirms that the protection rule specifically protects only the viewshafts identified in Appendix 5. And of the 27 identified viewshafts in Appendix 5, the Taranaki Street Viewshaft (23) is the only view that could be potentially affected by the proposed Watermark development. Mr Boffa agrees with Mr Barratt-Boyes that the impact of the Watermark on this viewshaft is minor and does not adversely affect or compromise the view from this location in respect of the District Plan. Mr Barratt-Boyes' illustration, attached to his evidence as P-116 **View of Site from Point F – Taranaki Street (Viewshaft No VS23)**, clearly demonstrates the visual effect on the Taranaki Street Viewshaft to be as these experts state. And there was no rebuttal from the appellant to indicate otherwise.

[43] Ms O'Callahan further notes that statements such as *there are no controls to protect views from private property* in the explanation to the Residential Area rules, support the council's interpretation of the District Plan's policy intent. We note too the **Definitions** section of the District Plan defines **Residential Activity** as specifically excluding hotels, motels, etc so we do not accept the appellant's argument in terms of the plan provisions¹⁸. As it argues that the Duxton activities are akin to residential ones, it follows that it cannot now expect private protection for its views from the plan provisions. Accordingly, while the proposal may have effects on private views, the explanations which are part of the policies are consistent in that they restrict the intention of the relevant provisions of the District Plan to apply to public views.

[44] While views beyond those identified under Policies 12.2.2.6 and 12.2.2.7 are not protected or controlled, Mr Boffa considers the District Plan makes other provisions to manage the visual amenity of the Central Area. This includes the imposition of nominated building heights and requirements on council to have regard to controls with respect to the



O'Callahan EIC 15, para 56.

Wellington District Plan, **Definitions**, page 3/66.

design, external appearance and the siting of buildings. These controls, states Mr Boffa, are essentially visual amenity controls. There was no suggestion from the appellant that this was a wrong assumption and we take it to be the correct one. We accept therefore Ms O'Callahan's and Mr Boffa's conclusion as the correct interpretation of the council's approach to private views.

Finding

[45] Accordingly and for the reasons given, we do not find the proposal contrary to Objective 12.2.2, Policy 12.2.2.1 or Policy 12.2.2.6 and Policy 12.2.2.7 – views.

[46] Actual and potential effects on views are another matter and these we address these under s.104(1)(a).

• *Shading/Sunlight*

Policy 12.2.2.5:

Protect sunlight to identified Central Area parks and pedestrian malls and encourage improved sunlight access to buildings and public places when the new development occurs.

Methods

- **Rules**
- **Design Guides**

[47] The explanatory statement to the policy states as follows:

People need access to direct sunlight. However, it is accepted that within the Central Area, full access is neither reasonable nor practicable. Council will work to ensure that reasonable sunlight is maintained to identified parks and pedestrian malls where people congregate. Performance standards in the Plan will achieve this. In addition, encouragement will be given to improving sunlight and daylight to buildings and other public places as part of the assessment of new building development, particularly on the northern side of streets and other public places.

The areas in particular challenged by the appellant are the Taranaki Wharf/Te Papa and the affected buildings include the Duxton and Aulsebrooks.



Open Space: Taranaki Wharf Area

[49] Policy 12.2.2.5 is to protect sunlight to identified public areas. And the rule for its implementation, Rule 13.1.2.7, requires that buildings and structures be designed to maintain direct sunlight access to specified areas (such as the Taranaki Wharf area) between stated times. Mr Stroud considers that the applicant's shadow diagrams (P-73 and P-74) will cause significant shading of the Taranaki Street wharf area in summer evenings from October – February when they are most heavily used. Mr Stroud is also of the opinion that if a 27 metre + 1 floor structure over the entire site is considered (the appellant's option), the comparative effect of shading from the proposal on the wharf area would be significantly greater than a realistic 27 + 1 floor discretionary height scheme development and in his opinion it would have more than a minor effect¹⁹.

The Duxton Building

[50] The Duxton is concerned about shading over a period of 3 – 4 months of the year between 7.00 am – 9.00 am when the lobby/entrance area will be affected²⁰. The Duxton, it is stated, is a building designed to take maximum advantage of sunlight. The appellant is particularly concerned about any adverse effect around checkout time. Mr Stroud spoke of the large numbers who use the lobby during that period²¹. The appellant contends that any development that exceeds the prescribed height level can potentially increase the degree of shading that would otherwise occur.

[51] Mr D S R Leighton, urban design consultant to the applicant, states that an additional 4.2 metres on top of the 27 metres permitted for a building on the Watermark site could enable a building of up to 31.2 metres to be built occupying the whole of the site, subject to a discretionary assessment. Mr Boffa assumes a discretionary height development of 30.2 metres to be four floors on top of the existing John Chambers building. Mr Stroud for the



¹⁹ Stroud EIC 13, paras 60–61.
²⁰ Taylor Opening Submissions 7, para 4.21.
²¹ Stroud EIC Oral Interpolation; NOE 366–367.

appellant however doubts on the applicant's evidence that such a development could ever be achieved because:

- the John Chambers building has a heritage classification under the plan which could prevent any additions going across the whole building;
- the acute angle of the western end of the site (the nose), and the existing structure beneath, impose severe building constraints.

[52] Mr Stroud therefore sees four floors on top of the John Chambers building as more fanciful than credible or even likely for comparative purposes. Instead he considers Mr Williams' Exhibit 4 drawing of what he terms a credible building as less than fanciful and greatly more preferable overall than the applicant's proposal²².

[53] The appellant also contends that 30 minutes of additional shading at the equinox, or 45 minutes of additional shading in mid-winter in the lobby is significant, and comparable with the shading that would be experienced by the abutting Aulsebrook building. Mr Stroud considers this effect is contrary to Policy 12.2.2.5 in that the Watermark building will not *encourage* sunlight access into the Duxton building as required under the plan.

[54] In particular, Mr Stroud drew attention to Diagram P-131 of the applicant's evidence. Mr Stroud considers if a credible building such as is illustrated in Mr Williams' Exhibit 4 drawing was the subject of the resource consent, that shadow would not be thrown across the entry to the Duxton – it would be much more truncated²³. This is because the nose or the prow of the John Chambers building would not be built over for heritage/structural reasons. Mr Stroud considers comparative shading effect of the proposal would certainly not be "neutral" in its effect on the Duxton entranceway as the applicant claims. The witness discusses the appellant's Diagram P-131 as follows:

This diagram [P-131] is at the lowest point, ... of the year, when the sun was at its lowest point, June 22. If you refer to August 22 at the same time, you can see that the dotted lines that you're referring to as being the shadow of a 27



and EIS 12, para 54.

Stroud considers that a credible building is one which has a similar building footprint on top of the John Chambers site as does the Watermark: Stroud NOE 364, 391.

*metre height and a 27 metre plus one floor height do not extend over the face of the building, except the 27 metre one, plus one floor does a little bit but not very much, over the entryway area. So for a period of about two months either side of that with the exception of a few weeks in the middle, it can properly be said that the proposal would create a much greater shadowing than a building that was of conforming height, and extended right up to this lift tower that you refer to.*²⁴

[55] Mr Stroud also observes that the assessment criteria for granting consent for increased height, includes whether the additional height will have a material effect upon sunlight access to streets, public space, or residential buildings in Residential areas. Whilst this criterion applies only in Residential areas, in his opinion the council relies on the height restrictions in the central business area, plus the implementation of Policy 12.2.2.5 (discussed below) to encourage sunlight access to buildings and public places. He implies the Duxton should therefore be able to rely on the height restrictions to protect its sunlight exposure amenity and he generally disagrees with Mr Calder's sunlight plans²⁵.

Evaluation

The Applicant's Case

[56] An extensive sunlight analysis on the buildings and public areas surrounding the Watermark site was undertaken by Mr F D D Calder, an associate with Studio Pacific Architecture. The key to his measurements lists several height levels – shadow from existing buildings, shadow from the new building (at 41.5 metres), shadow from 27 metre permitted height building over the site, and shadow from 27 metres + 1 floor discretionary height (31.2 m above ground level). Mr Calder's conclusion is that:

- any additional building on the Watermark site will have effects on adjacent properties which are no more than minor;
- a conforming 27 metre high building form creates a wide but shorter shadow which moves across adjacent sites quite slowly;



²⁴ Ibid. 393–394.
²⁵ Ibid. 413, paras 58–59.

- a narrower but taller tower form moves more quickly but has more impact at certain times.

[57] As to the Duxton in particular, Mr Calder considers any additional building on the Watermark site will have shading effects. The greatest of these will be at the equinoxes (March and September) and will cause around 45 minutes additional shade to the entrance of the hotel between the hours of 8.00 am – 8.45 am. This increase reduces to about 30 minutes additional shade when compared with the 27 metres + one additional floor form. Thus the greatest effect on sun-seeking patrons at the entry to the hotel would be at the checking out periods at a specific time of the year.

[58] As to the Te Papa/Taranaki Wharf area, the only likely effects on the Te Papa forecourt are before closing time when shading does not fall on the building. After 6.00 pm, the sun is so low and the shadow cast so long that these areas are already shaded by the existing buildings on the waterfront. At 7.00 pm, daylight savings time in the summer months (a key time for shading) the shadow would not extend around the left of Te Papa or any promenade space (Te Papa itself was not modelled as a shading object for it would be casting its own shadow through this area).

[59] Finally, with respect to the Michael Fowler Centre Park/Carparking area, it is Mr Calder's evidence that the overall shading effects of the Watermark would be at worst similar to those of a 27 metre high building on the site. Further, the shade effects from a building on this site would be biased towards the narrower street end of the park – more so than would result from a shorter but wider permitted building.

[60] When questioned whether comparing building to the nose of the John Chambers site with that the shortened Watermark tower structure would reduce the shadowing effect on the Duxton and the carpark, Mr Calder is clear the difference would be only slightly less – that in reality – there is no material difference²⁶.



Open Space: Taranaki Wharf Area

[61] Mr Calder's Diagrams P-73 and P-74 illustrate **Afternoon Sun Shadows on Taranaki Wharf** at 4.00 pm and 5.00 pm with daylight savings times (NZST) calculated also. The key to the diagram indicates light grey shadow from existing buildings, and dark grey shadows from the Watermark which form over the existing shading. It is Mr Stroud's personal experience that people move away from the Circa Theatre building shadows on fine evenings to be able to stand in the sunshine²⁷. And it is that area that Diagrams P-73 and P-74 of the applicant's evidence show as shaded by the existing buildings.

[62] We note the sun shadow at 5.00/6.00 pm on 22 October and 22 February on Photomontage P-73 only partly encircles the front of the Circa building and incorporates shadow from the new building which forms *over existing shading*. In other words, the shading is already there from existing buildings. And on looking at the dark grey shading on the same diagram there is still an area of sunlight between Te Papa and Circa and an unlimited area between Circa and the waterfront for patrons to move into.

[63] We do not consider that this area of additional shading is particularly significant or contrary to Policy 12.2.2.5. Nor did Mr Stroud identify what times the patrons stand outside Circa Theatre in the months between October – February.

The Duxton Building

[64] Referring to Photomontage P-131 showing **Sun Shadows** at 9.00 am and 9.30 am on the Duxton respectively on 22 June, the applicant considers these examples effectively demonstrate that the shadow moves off the entry in half an hour. We therefore closely assessed Mr Calder's evidence on existing shading, on shading from a building of 27 metres, with a building of 27 metres + 1 floor, with the Watermark development proposal. On:

- the morning of 22 June, Diagram P-61 illustrates the shadow from the proposal is less than from the permitted 27 metre height limit from or 27 + 1 floor;
- the morning of 22 August, Diagram P-62 illustrates the shadow from the proposal is less at 9.00 am, more at 10.00 am;



- the morning of 22 September, Diagram P-63 illustrates the shadow from the proposal is more at 8.00 am and more at 9.00 am;
- the morning of 22 October, Diagram P-64 illustrates the shadow from the proposal is more at 7.00 am.

[65] In the winter therefore, the shadow on the Duxton from the Watermark development is less than that from a permitted height building of 27 metres. In August the shadow is slightly less at 9.00 am and slightly more at 10.00 am. In spring, the shadow is slightly more at 8.00 am and more at 9.00 am but gone by 10.00 am. In late spring, the shadow is more at 7.00 am but gone by 8.00 am.

[66] We concluded these shadowing effects on the Duxton, additional to those from a permitted height building on the site are not contrary to the plan provisions.

[67] Finally, Mr Calder also contends that if a building is constructed on the Michael Fowler Centre carpark site, which has a 27 metre height limit designation to the northern side of Wakefield Street, this would result in more shading effects on the Duxton than the Watermark proposal (Diagrams P-131 ~ P-134). This is due to the much closer proximity of that site to the Duxton (25 metres as compared with 65 metres) even though its overall height would be less. The extent of the shading would be similar but the duration this shading would be much greater. In the month of June the entry to the hotel would be completely shaded at midday²⁸.

[68] While it was the evidence from several witnesses that it would be unfortunate if the Michael Fowler Centre Park/Carpark was ever built on because it is such valuable open space, we could not ignore the effect on the Duxton of building on that site in addition to the effect of the Watermark proposal. The site is zoned for development and is not a reserve. Mr Stroud however considers that a building going to the point of the triangular area across from the Duxton is just not credible. This was after some discussion as to whether it was possible to build to the very nose of the John Chambers building.



[69] A block of apartments on a triangular site being built in Molesworth Street was referred to by the applicant as a credible example for the Michael Fowler site, but was

dismissed by Mr Stroud with the words *no doubt the Molesworth Street development has been accomplished, but no doubt there were difficulties both in terms of structure and spaced accommodation*²⁹.

[70] The Court went to view the outside of the Molesworth construction, particularly the point of the triangle, over the period this decision was being written. There is no doubt from what we saw that building to the point of a triangle can be accomplished very successfully. The point of the triangle in Molesworth Street is only 3.5 metres wide, whereas the prow of the John Chambers building (which creates another triangle) is 6 metres³⁰. The shadow on the Duxton from a 27 metre high building as a controlled activity on the Michael Fowler carpark site is thus entirely credible – as is building to the prow of the John Chambers site. The provisions of the plan in such an instance would not prevent such a building, the council could only control it through the provisions for controlled activities.

The Encouragement of Sunlight Access to Buildings

[71] Section 75 RMA makes clear distinctions between provisions of a district plan under the heading **Contents of District Plans** as follows:

75 Contents of district plans

(1) A district plan must state—

- (a) the significant resource management issues for the district; and
- (b) the objectives sought to be achieved by the plan; and
- (c) the policies for those issues and objectives, and an explanation of the policies; and
- (d) the methods (including rules if any) to implement the policies; and
- (e) the principal reasons for adopting the objectives, policies, and methods of implementation set out in the plan; ...

[72] The objective in the District Plan for the Central Area to be achieved in this case is the maintenance and enhancement of *the amenity values* of the Central Area. Under the heading for this discussion (sunlight access), we take the use of the word in this case as relating to the general beneficial nature of the Low City provided by its structures and open spaces, by its varying buildings and generally the height provisions, and its interface with the waterfront.



[73] While sunlight is to be protected in certain specific areas identified in the rule, the word *encourage* in the policy explanation in relation to improving sunlight access to buildings in Policy 12.2.2, is much less directive.

[74] We note the 'explanation' in Policy 12.2.2.5 is an integral part of that provision under s.75(1)(c) so we can discuss it. In this case encouragement is to be given to improving sunlight and daylight to buildings as part of the assessment of new building development. This means anything in a spectrum which ranges from *urging, inciting, recommending, advising or stimulating or permitting*³¹.

[75] Mr Baily, for the applicant, links the explanatory statement to Policy 12.2.2.5 in the District Plan to the Design Guide G9 *Form* and G10 *Location* provisions which encourage side boundary setbacks for this purpose³². He notes the Guide appears to encourage gaps between buildings to prevent a wall of them on the north sides of streets and to let sunlight down into the street behind. He also identifies a conflict in the plan rules which allow 100% site coverage and a permitted height, and the guidelines which seek boundary setbacks for ordinary buildings. As did Mr Calder, Mr Baily observes that any new building will generate a shadow and ultimately concludes that the policy does not *require* that a new building must be setback, but that where there is scope for one – that the council's planners would encourage a developer to do so. As the Watermark proposal includes a number of setbacks, particularly of the tower building, Mr Baily is able to support the Watermark development and the evidence of Mr Calder.

[76] Any improvement to sunlight access is not considered an absolute. Indeed a new building will inevitably create a new shadow and new building is expected in the Central Area. The policy appears to be more about promoting mitigation of potential effects by a range of techniques – such as those employed by the applicant in this case, namely setbacks and raking. Here the tower type proposal at 41.5 metres has an adverse shading effect but over a shorter period than the other options measured. The taller but narrower form of the proposal creates a longer but faster moving shadow than a 27 metre form across the site³³.



³¹ See Shorter Oxford Dictionary, Clarendon Press 1993, 814.
³² Central Area Design Guide, Wellington District Plan Design Guide, page 15.
³³ Gordon, Submissions in Reply 13, para 2.48.

[77] Ms O'Callahan, for the council, echoes Mr Baily about the effect of new building work in what she too had to say:

Overall, the proposal will cause some shading over and above that anticipated by the permitted height limit on the surrounding public streets and to neighbouring properties. In my view, these effects are not contrary to Policy 12.2.2.5 as the emphasis is placed on important public places that people use for gathering and sitting informally. In terms of private sites and general street areas, the policy asks decision makers to encourage improved sunlight access. While encouragement can be given, new building work by its very nature does not improve sunlight access for neighbouring sites. The applicant's shading evidence at the Council hearing indicated that the architects have examined the shading impact when developing the form of the building. In my view, this is consistent with the policy intent.³⁴

[78] We consider the key words in this evidence is that *while encouragement may be given, new building work by its very nature does not improve sunlight access*. And such is the case here. The policy should not be interpreted as to discourage new building. Further, the explanatory statement to the policy identifies that *it is accepted that within the Central Area, full access is neither reasonable nor practicable*.

[79] We conclude that the extent of shading from Watermark on the Duxton in the context of such caveats does not offend Policy 12.2.2.5.

[80] Finally, Mr Stroud did not take into account the Design Guide provisions as a method to implement Policy 12.2.2.5 as he considers they relate only to the exterior of buildings. The difficulty with that approach is that they are incorporated by reference into the District Plan and are part of it³⁵. As a *Method* to achieve Central Area buildings with design qualities which create a positive relationship to public spaces, we consider on this occasion they may be applied as an interpretative aid as to how sunlight access or the prevention of shading is to

occur³⁶.



O'Callahan EIC 15, para 55.

Kingston District Plan, Introduction, page 1/20.

They could also be separately analysed under s.104(1)(b)(iv).

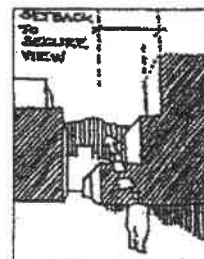
[81] The Design Guide's Guidelines for Neighbourhood Context *Form and Location* accompanied by relevant diagrams state this:

Form and Location

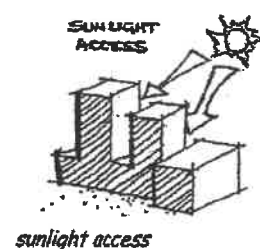
G9 Beyond the first height threshold, a building's form need not be built out to its street or side boundaries, but should still be aligned with adjacent streets.

G10 Side boundary setbacks should be employed to provide:

- light and outlook from neighbouring buildings
- glimpsed views from adjacent streets and major public places to the hills surrounding the Central Area and/or to the waters of the inner and outer harbour
- sunlight to major city streets with an east-west orientation. This applies only to buildings immediately to the north of these streets.



setback to secure view



sunlight access

[82] It is Mr Calder's evidence that the Watermark:

- strongly emphasises alignment with adjacent streets;
- is built to the existing streetline on all sides except for the Taranaki Street frontage where a widened footpath is provided;
- at the first height threshold or bases provided by the John Chambers building links with the adjacent building frontage of the Odlins and Ambulance buildings.

[83] It is Mr Boffa's evidence that glimpsed and wider views from the Duxton to some parts of the inner and outer harbour will remain from the proposal. Thus by setting the tower building back to the eastern end of the Watermark site, the development leaves the light and outlook situation of the new apartments in the Odlins building on the waterfront unencumbered and the covenant to be implemented on the John Chambers building ensures for the Duxton that its current outlook over that site to the waterfront, including the Odlins and the Free Ambulance buildings, will remain unrestricted for 100 years.



We note in conclusion that the final bullet point of G10 relates to major city streets with an east-west orientation. Wakefield Street is said to be a major city street with an

east/west orientation but G10 only in effect applies to side boundary setbacks to provide sunlight. This is confirmed by Mr Leighton when discussing G10 but he goes on:

Now, this really relates to buildings that are sandwiched between other buildings and its talking about protecting light and outlook from neighbouring buildings, glimpsed views from adjacent streets and sunlight to major streets with an east-west orientation. So that last point applies to this and this is talking about protecting sun to east-west streets, which I think, as you heard from Daryl Calder, this building does quite well.³⁷

[85] We agree. However, we note none of the streets surrounding this site could be described as running exactly in an east-west direction. Taranaki Street runs northeast-southwest, Wakefield Street runs northwest-southeast, Jervois Quay runs northwest-southeast and Cable Street runs northwest-southeast approximately. Strictly speaking, this provision of the Design Guide does not apply, nevertheless the proposed building has a stepped tower form and allows sunlight into the surrounding neighbourhood.

Finding

[86] We do not find the shading/sunlight issues arising from the Watermark proposal contrary to the objective or policy identified.

- *Access and Traffic*

[87] The applicant addressed traffic matters through the objectives and policies and rules of the plan and again through the evidence of Mr Baily – as carparking appeared a major issue for the appellant – despite the fact it was not raised in the notice of appeal.



Leighton NOE 17.

[88] The relevant plan provisions are as follows:

Objective 12.2.9

To enable efficient, convenient and safe access for people and goods within the Central Area.

Policy 12.2.8.1

Seek to improve access for all people, particularly people travelling by public transport, cycle or foot and for people with mobility restrictions.

...

Policy 12.2.8.3

To limit the supply of commuter carparking and require appropriate loading and site access for activities in the Central Area.

...

Council's transportation strategy for the central area seeks to control the growth of commuter traffic, both to avoid, remedy or mitigate congestion and to improve the Central Area environment. The strategy promotes the use of transport modes other than private vehicles. In particular Council seeks a high standard of public transport, pedestrian and cyclist accessibility. One way of controlling the growth of commuter traffic is by limiting parking supply. While the District Plan does not require parking to be provided for activities in the Central Area, where it is provided, a maximum level is set. This is established by a Permitted Activity condition of a ratio between parking and the gross floor area of buildings. Any additional provision will generally only be considered for short-stay parking where this is appropriate for certain activities, such as shopping.

Premises must be able to be serviced safely and efficiently, so that streets are not blocked and people and cars can move freely.

...

The environmental result will be the improved access to streets in the Central Area.

[89] The appellant in effect only disputed Policy 12.2.8.3. The Duxton is opposed to the applicant providing more carpark spaces than the number of apartment units and more than the limit prescribed in the plan, suggesting the proposal is contrary to the policy of limiting commuter parking. Mr Stroud notes Ms O'Callahan's report to the council inferred doubts of the applicant's ability to ensure that excess parking is utilised for other than commuter parking. Mr Stroud considers that the obvious effect of the applicant's excess carparking is the generation of more commuter traffic with consequent effects of traffic accessibility/congestion. He emphasises that the carpark spaces occupy a substantial part of four floors in the Watermark building, which in turn forces an increase in the height structure of



the building. By reducing carparking numbers, the structure could be made to conform with the height restrictions in the District Plan and consequently the urban form objectives³⁸.

Evaluation

[90] In terms of the objective, Mr Baily is of the opinion, based on the opinions of the other applicant's experts, that the Watermark building and its associated improvements to the streets around it and shelter above, will improve accessibility for people on foot. He identifies the access and movement for vehicles to and around the site is considered satisfactory by the council traffic engineers and from evidence provided by Traffic Design Group at the hearing.

[91] We had no evidence to suggest therefore that the applicant's proposal did not meet the requirements of Objective 12.2.9 and Policy 12.2.1.1. It is Ms O'Callahan's evidence that a developer on this site is not obligated to provide verandah cover and retail windows. It is very good outcome for this development – also that it is going to assist with achieving a stepping stone from Taranaki Street down to the waterfront.

[92] The focus of the debate was in reality about using Watermark as a [commuter] parking building. We heard the longstanding policy of the council is to limit the supply of commuter parking into the Central Area (Policy 12.2.8.3 as above). This should mean, as Mr Stroud identifies, that inner city dwellers will not need a car, although some will retain a vehicle to use at weekends.

[93] In respect of this policy, the public parking proposed in the Watermark building is limited by conditions to ensure that the parking is available for use by short term visitors. The rationale for providing the carparks is to assist in accessibility to the waterfront where surface parking is being removed to make way for public space improvements. Mr Blunt for the council notes that carparks on the waterfront will be reduced to zero when work is finished on the Odlins and Free Ambulance buildings.

[94] The Watermark development is not required to provide a carpark for apartments or businesses, but Mr Baily gave evidence that the applicant may provide 201 carparks on the basis of the Gross Floor Area (GFA) of the building. The proposal is to provide 162 carparks



on 3½ floors. Once the residents are catered for, 60 – 62 parks will be available³⁹. Rule 13.1.1.7.1 *prima facie* limits parking by requiring one park per 100 square metres. Otherwise the activity is a Discretionary Activity (Restricted) with planning controls centred on access, internal circulation and the extra traffic generated, etc by the proposal. The council traversed these issues in its decision and there was no challenge to them by the appellant.

[95] Mr Baily, for the applicant, considers that considerable public benefit will occur if additional public carparks are created. He details how much surface carparking has been deleted from the waterfront with the redevelopment, how few additional parking spaces the heritage buildings on the waterfront will create, and he gives a rough estimate from earlier waterfront proposals of how much is needed in the future (approximately 200 public carparks).

[96] Counsel for the appellant sought agreement from Mr Baily that carparking in itself cannot really justify exceeding the height limits. Mr Baily did not agree as his view is that the proposal is within the objectives and policies of the District Plan.

[97] He is nevertheless of the opinion that having carparking "*in small lumps*" in the Central Area is a good strategy to which this proposal makes a positive contribution providing efficient, convenient and safe access for people within the Central Area. He identified that in discussion with Te Papa's and Circa Theatre's management, there was a great deal of interest in the public parking component within the building which would benefit those facilities in particular. Ms O'Callahan too is of the opinion that the carparking is one of the benefits of the proposal.

[98] The definition of "*commuter*" in the term "*commuter parking*" is parking that occurs as a result of people travelling to and from work. Hence the restriction on parking relates to parked vehicles on a long term basis generated by inner city workers. It does not relate to those who visit the area either as visitors to the theatre, Te Papa, events on the waterfront or Waitangi Park.



[99] The evidence established this application in fact will not open the Watermark up to long term commuter carparking. The commercial activities on the site may generate enough casual public carparking for some spaces.

[100] Ms O'Callahan identified 80 carparks will be available for apartment dwellers and the remainder for casual parkers. To ensure the carparks do not become utilised by commuters, the council imposed the following conditions:

Carparking on levels 1 and 2 must be available for public use at all times.

Provision must be made during the 6:00am to 6:00pm period Monday-Friday for at least 20 car parks to be available for short stay use by physical, financial or other mechanism(s) on an ongoing basis. Details of how this is to be achieved must be submitted to and approved by the compliance monitoring team, Urban Strategy Group prior to any use of the public car parks within the building. This condition is ongoing and the consent holder must submit information to demonstrate compliance with the condition 6 months after the opening of the car park for public use and biannually thereafter.

Note 1 – The compliance monitoring team will consult with the traffic engineer with regard to this condition.

Note 2 – In the event that the 20 short stay car parks are not being utilised, the consent holder may wish to seek a change of conditions pursuant to Section 127 of the Act.⁴⁰

[101] It appears to us that ensuring the availability of 20 carparks, during the hours between 6.00 pm and 6.00 am is redundant and difficult to police. We do not understand why the 20 are there to ensure there is residual parking, no matter what fluctuations might occur throughout the day which was the council's explanation for such ring-fencing. Counsel for the council assured the Court that public carparks are not available for long term lease. We consider therefore that that part of the condition should be deleted.



Finding

[102] We find that the parking proposed by the applicant is not contrary to Objective 12.2.9 or Policies 12.2.8.1 and 12.2.8.3 on the condition that Note 2 is deleted.

[103] The next series of objectives and policies relate to different issues again.



- ***Maintenance and Enhancement of the Physical Character, Townscape and Streetscape***

OBJECTIVE

- 12.2.3** **To maintain and enhance the physical character, townscape and streetscape of the Central Area.**

POLICIES

To achieve this objective, Council will

- 12.2.3.1** **Preserve the present general urban form of the Central Area.**

METHOD

- **Rules**

Development in the Central Area is located within an amphitheatre formed by hills and ridgelines to the west and the harbour to the east. The general built form is in two parts: a well-defined and constrained core of high-rise buildings centred on Lambton Quay and Willis Street ("The High City") and the low-rise development to the outer boundaries of the Central Area ("The Low City").

Council intends to maintain and enhance this general urban form by means of building height and height threshold rules for both the "High City" and the "Low City".

The environmental result will be the maintenance and enhancement of the Central Area's general urban form.

General Urban Form

- [104] "Urban form" has been defined as:

*'Urban form' means the integration of all of the physical elements of the city into a three dimensional whole.*⁴¹

- [105] "Urban design" has been held to be *the art of making places work ... as well as how they look*⁴².



Counsel for the Wellington City Council, Opening Submissions, para 25 citing *Building Owners and Managers Association of New Zealand Inc v Wellington City Council* (1990) 14 NZTPA, 289, 294. See also Williams v OE 477 – urban form is made up of various elements that go towards making up the whole. Plaintiff EJC para 17 citing *By Design: Urban Design in the Planning System: Towards Better Practice*. UK Office of the Deputy Prime Minister.

[106] The High City/Low City concept is, according to Mr G H Blunt, urban designer for the council, the key driver for urban form in the city. In *Understanding the District Plan*, the council spells this out:

*To preserve this well established urban form (High City/Low City), the district plan controls building height (and in some cases, height thresholds) beyond which certain design conditions apply.*⁴³

[107] As we understand the general urban form of the Central Area, it consists of a Low City on either side of the High City. The description of the general urban form of the High City and the Low City in the first paragraph of Policy 12.2.3.1 is in effect a longitudinal one. It is supported by the Low City/High City/Low City plan in the council's *Central Area Design Guide Existing Patterns*⁴⁴. This map in the plan demonstrates two areas of Low City on either side of the High City which they lead up to.

[108] Mr Stroud, as does Mr Williams, sees the physical form of the Central Area that it is the plan's objective to maintain and enhance, as effectively prescribed by the height limits as detailed in Map 32 of the District Plan. These, they maintain, are clearly based on the height limits of the taller buildings in different localities. Mr Stroud says this:

Thus in broad terms there is the "High City" [containing the city's central business district] located along the golden mile, and the low city to the north and south.

It is recognised though that within the northern low city area there is a group of medium height structures centred on Molesworth Street, and in the southern low city a further medium height group centred on Dixon Street. In both these areas height limits have been set to reflect the heights of existing taller buildings. The heights are prescribed as above mean sea level ("amsl") for the high city area and above ground level ("agl") for the low city area.

The effect of these height limits is to prescribe a form for the high city which consists of a series of planes – the highest around the Lambton Quay/Willis



*Street intersection at 95 m amsl, lowering to 60 m amsl at the northern extremity and 55 m amsl at the southern extremity. Beyond the southern extremity of the high city is an area centred on Dixon Street with a height limit of 43.8 m agl. Beyond this the greatest extent of the low city area generally known as Te Aro flat, is limited to a height of 27 m agl (6 stories). There are some limited exceptions where, adjacent to residential areas to the east and west, the height is further limited, to 4, 3 or 2 storeys.*⁴⁵

[109] The witness considers the urban city form is not just a homogenous whole created by a broad brush approach but created by the almost block by block setting of height limits and the whole area is a set of districts⁴⁶. He sees a major principle in the District Plan as the preservation of the present urban form as embodied in:

- the height limits;
- the concept of the current urban city form;
- the carefully considered pattern of height limit restrictions set over several district plans and variations such as Variation 22⁴⁷.

[110] The High City heights range from 55 – 95 metres. The Low City heights range from 10.2 metres, at the extremities adjacent to residential areas, through to 60 metres at Harriett Street near the Civic Square. Mr Williams for the appellant considers the most prominent Low City height in which the Watermark site is situated is 27 metres. He considers that the stepped down building heights not only promote a marked edge in contrast with the surrounding taller buildings behind, but they offer a more open spatial structure for pedestrians to enjoy the waterfront and Civic Centre environment. He points out this “stepped down” urban form is recognised in the 2002 Urban Perspectives Study as an important feature to follow and is further substantiated in the Design Guide⁴⁸.

[111] The Low City is described as having a high part and low part. The high part, the 43.8 metres height limit is set by reference to the existing buildings in their identified areas,



⁴⁵ Stroud EIC 4, paras 10–12.

⁴⁶ Stroud Oral Interpolation NOE 356–357.

⁴⁷ Williams EIC 5, para 14.

⁴⁸ Williams EIC 5, para 2.14. The Urban Perspectives Ltd Study entitled *Wakefield/Cuba Street Planning/Urban Design Study on Building Height* was prepared for the Wellington City Council by Ms D Popva, urban designer and others (“The Urban Perspectives Study”).

and the appellant considers the transition point from the high Low City towards the waterfront using that method, (ie the existing buildings in the area) is logically and properly at Wakefield Street, where the Duxton Hotel, the Colmar Brunton building and the other high buildings in the Low City are. As we shall see, this is a significant part of the appellant's case. Mr Williams considers the site is clearly separated from the edges of the High City by the entire Civic Centre Character Area where significantly lower building heights are found⁴⁹. Thus in Mr Williams' opinion the High City does not exert a significant influence on the site's ultimate height or its localised urban form.

[112] On the question of urban form therefore, the essence of the appellant's case that the plan is designed to maintain and preserve urban form through a series of blocks which build up to the "High City" and come down to the waterfront⁵⁰. The appellant considers any departure from the identified height planes in Map 32 threatens this objective.

[113] Counsel for the appellant refers to the fact that Mr Blunt and Mr Leighton state in their evidence that this site needs to be "stepped up" from the large waterfront buildings to support the general amphitheatre effect for the urban form of the city⁵¹. But, he submits, while they say the Odlins building and a building of the same height on the Watermark site cannot be considered to achieve the desired effect, this has to be compared with the fact that:

- that so-called need for "stepping up" is not reflected in the plan as it stands;
- the height limit so recently set for this area on this site by Variation 22 is 27 metres; and
- when Ms D Popova considered the option of stepping up the Watermark building in her Option 2 in her Urban Perspective Study for the Wakefield/ Cable Street area, she specifically provided that for this site if a step up was to be implemented, the height limit should be 22 metres, but not higher⁵².

[114] It is the appellant's case also, that the council has clearly identified the need to contrast in the Low City between the high/Low and the low/Low City⁵³, as the High City and



Williams EIC 12, para 2.44.

Blunt for Oral Opening Submissions, NOE 342.

Blunt EIC, para 63; Leighton, EIC 15 - 16, paras 7.21-7.29.

Blunt for Oral Submissions NOE 245.

Williams NOE 480.

the Low City are fundamental building blocks of the Central Area Design Guide⁵⁴. Its concern lies not with the macro urban form of the city as a whole – where the impact of individual buildings is largely lost – but the site's immediate and neighbourhood context⁵⁵. Mr Williams considers that the general urban form within the local neighbourhood of the Watermark building for example takes its reference from the lower or 'stepped down' building heights closer to the waterfront. In his opinion, it is these heights which provide a marked edge or contrast with the surrounding taller buildings and the Watermark proposal at 41.5 metres will entirely disrupt them. The height levels as seen on the map, together with the heights Rule 13.1.2.1 and the provisions of the Design Guide, are thus, in essence, all designed to complement each other.

[115] The effect of the Watermark project at 54% higher than 27 metres in terms of the Objective and Policy 12.2.3.1 is therefore considered by the appellant to be major and by its very nature contrary to what is intended.

Evaluation

Retention of General Urban Form

[116] Mr Barratt-Boyes identifies that maintaining a consistent urban form set against the backdrop of natural hills and the harbour in Wellington has given rise to the High City/Low City policy of the District Plan⁵⁶. Mr Blunt considers the amphitheatre analogy encourages a balance so that the built environment does not dominate the environment⁵⁷. We consider maintaining the amphitheatre effect of the Central Area of Wellington through maintaining a consistent urban form is one of the most significant issues facing the city at this time. Just how this is achieved is also a chief issue arising from this case.

[117] Figure 2 of Mr Stroud's evidence is the depiction from the Design Guide of the amphitheatre effect of the High City/Low City identified in the explanation to Policy 12.2.3.1.



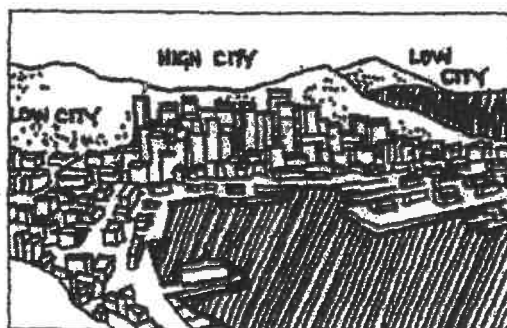
⁵⁴ Williams EIC 9-10, para 2.20, NOE 516.

⁵⁵ Williams EIC 9-10, para 2.33, NOE 478.

⁵⁶ Barratt-Boyes EIC 9, para 12.1.

⁵⁷ Blunt EIC 7, para 27.

It is the only perspective sketch which approximately relates to that diagrammatic material of the Central Area in either the Design Guide or District Plan and we reproduce it here⁵⁸.



Ampitheatre Setting

[118] Photomontage P-111 **View of Site from Point A – Mount Victoria** illustrates the Watermark proposal centred in the macro urban form of the High City/Low City, but centred between two Low City height thresholds – 27 metres on the one hand and 43.8 metres on the other. In the immediate neighbourhood context may be seen the Duxton, the Colmar Brunton building, the Michael Fowler Centre, the Civic Precinct, the Taranaki Wharf and Te Papa⁵⁹. From this perspective two low heritage buildings on the waterfront are not really visible⁶⁰ with only the Odlins building at 29.2 metres high presenting a side-on view.

[119] Mr Williams accepts that there is only one policy on urban form and it uses the expression *general urban form* (our emphasis) (which is not necessarily focused at the street or neighbourhood levels which is the situation with the Design Guide). He also agrees that the District Plan at the Policy 12.2.3.1 level is not concerned with the maintenance of discrete parts of the Central Area in this policy, but is concerned with preserving the general urban form as a whole. He further accepts that whilst the Design Guide is one of the methods to implement Policy 12.2.3.2 which is the next policy to assist in preserving the general urban form objective, Policy 12.2.3.1 itself does not take the user directly to the Design Guide. He maintains nevertheless there is a strong nexus between the Guide and Policy 12.2.3.1 as the terms “High City” and “Low City” are fundamental building blocks of the Central Area Design Guide⁶¹.



⁵⁸ Central Area Design Guide, page 4: Stroud EIC Exhibit 2.

⁵⁹ Watt-Boyes EIC 10, para 12.1. This was only one of a series of photomontages illustrating how it is proposed the proposal conforms to the High City – Low City form.

⁶⁰ Watt-Boyes EIC 5.

⁶¹ Williams NOE 512-515.

[120] We agree with all these acknowledgements with the exception of the strong links between the Design Guide and Policy 12.2.3.1. Those links come from Policy 12.2.3.2. Mr Williams confuses the policy on general urban form not just with the actual height limits themselves but also with that different Policy 12.2.3.2 on urban design and the Central Area Design Guide's treatment of street and neighbourhood context⁶². We therefore agree with Mr Leighton that in discussing general urban form, the plan is discussing the overall urban form of the High City and the Low City⁶³.

Height Issues

[121] The council in its explanation to the policy explains it *intends* to maintain and enhance urban form by means of the height rules and height threshold rules. The evidence establishes that the height limit rules serve a fundamental purpose to preserve urban form and the height planes have been identified as the sole tool listed in the District Plan for maintaining that form⁶⁴. Therefore, even in a discussion of objectives and policies, it is necessary to understand the height rules.

[122] They are as follows:

13.1.2.1 Maximum Building Height

No building or structure (except for cranes, elevators and similar cargo handling equipment and lighting poles in the Operational Port Area, which may be higher) shall exceed the building height as shown on the Central Area height Map 32.

In the Low City areas height limits range between 10.2 metres and 43.8 metres above ground level to reflect Council's urban form objectives and to provide transitions between the High City and Low City areas and between buildings in the Central Area and those of surrounding Residential Areas. Specific height limits have been included for the Lambton Harbour area to reflect the low-rise nature of development in this area. In the High City area, the height limits are those approved by the Planning Tribunal in 1991 (measured above mean sea level) and are retained to protect the panoramic view of the harbour and distant hills from the viewing point at the top of the Cable Car.

[123] The height threshold rule (13.3.2) categorises the construction of buildings that do not meet certain conditions, including building height as a Discretionary Activity (Restricted)



Submissions in Reply, 4, paras 2.14-2.15.
Leighton NOE 42.

Ibid

but with the codicil that the maximum height in the Low City must not be extended by more than one storey⁶⁵.

[124] The applicant's proposal is non-complying under Rule 13.5:

13.5 Non-Complying Activities

Activities that contravene a rule in the Plan, and which have not been provided for as Discretionary Activities (Restricted) or Discretionary Activities (Unrestricted) are Non-Complying Activities. Resource consents will be assessed in terms of section 105(2A)(b) of the Resource Management Act.

The decision on whether or not a resource consent application will be notified will be made in accordance with the provisions on notification in the Act.

[125] Counsel for the appellant made much of the rule allowing building height of 27 metres on this site as a controlled activity. He initially referred in fact to the *prohibitive effect* of the prescribed building height. He also referred to the attempt to exceed height limits via a resource consent application. Counsel also suggested that the District Plan *clearly imposes such a prohibition by stipulating that the maximum building height in this area is not to exceed 27 metres (plus a discretionary level of one floor)*. Counsel further suggests that it is difficult to see how the council could have more clearly stated its intention to prohibit development above 27 metres + one floor in the area⁶⁶.

[126] As counsel's argument developed however, it became clear[er] that he was not in fact suggesting that any exceedance of the height limit would automatically exclude an application for a non-complying development. He acknowledges in oral additions to his submissions that the fact that the proposal goes through the height planes is not, in itself, decisive⁶⁷.

[127] Counsel then submits that council could not go further and prohibit any application for a building above that height *because to do so would cut across the rights of applicants under the Act*⁶⁸. This is a significant concession in the context of this case because the appellant's witnesses appeared to suggest that the general urban form could *only* be preserved



⁶⁵ Ibid ELP 6, para 21.

⁶⁶ Ibid Oral Submissions in Reply, para 3.16.

⁶⁷ Ibid Oral Submissions NOE 343.

⁶⁸ Ibid Submissions in Reply 6, para 3.16.

by maintaining the height limit on the Watermark site at 27 metres + 1 floor or what was termed *a credible development*.

[128] Mr Mitchell identifies Rule 13.5 as the default rule – in other words, should there be a proposal which exceeds the relevant height limit which the council must then assess, it must default from the Discretionary Activity (Restricted) to the Non-complying rule⁶⁹.

[129] Thus when a building is proposed above 31.2 metres, it is submitted it must be assessed on whether the provisions of the District Plan for preserving and maintaining urban form will be met. Counsel for the applicant makes the point:

*A building above the permitted and discretionary heights does not necessarily fail to preserve and maintain the present general urban form; quite simply that is what needs to be assessed, because unlike a permitted or discretionary height building, it has not been predetermined that such a building will be consistent with that intention.*⁷⁰

[130] Therefore, says the applicant, a building height of 41.5 metres at this site is not automatically repugnant to the present general urban form, even at a neighbourhood level. We agree.

[131] Mr Stroud himself acknowledges there is no upper height limit that would trigger a proposal going from being non-complying in status to being prohibited⁷¹.

[132] A non-complying activity application is thus a provision in the RMA which offers a legitimate avenue for the applicant to test whether or not its proposal is contrary to the objectives and policies of the District Plan.

[133] We think that because Mr Taylor views the rule almost as a prohibition, he automatically assumes that a height exceedance of 54% must be repugnant to the objectives and policies. But this is a non-complying activity. While the activity may not find direct



Mitchell Opening Submissions Oral Interpolation.
 Stroud Submissions in Reply 5, para 2.18.
 Stroud NOE 402.

support in the objectives and policies of the plan, it may not be automatically contrary to them. The assessment we must make under s.104D is much more subtle. We note particularly Mr Taylor's submission that the activity is contrary to the objectives and policies of the plan, but merely falling within the category of non-complying is not a guarantee that the activity will fail this threshold test.

[134] As this is an island site, the context of the buildings around the Watermark includes ones of varying heights. As Mr Blunt states, in reality there is not a seamless cloak of staggered building heights across the city⁷².

[135] As we shall see, we consider the Watermark is in scale with both the heritage buildings on the waterfront and the buildings on Wakefield Street, whilst the retention of the John Chambers building provides an overall form which is complementary to the other heritage buildings. By leaving the John Chambers building at its present height, this allows the northern end of the project to have its current complementary and scale relationship with the heritage buildings on the waterfront virtually left untouched. Meanwhile, the Watermark tower building has a scale relationship with the Colmar Brunton building and the Duxton. Whilst "*stepping up*" to the Duxton from the waterfront is not the practical result of the proposal, in fact the Duxton has the potential (as do the other buildings in the block), to go to a height limit of 43.8 metres on its own site, which would in fact provide for such a stepping up. Apart from referring to the amphitheatre setting of the city, the District Plan does not require a stepping up of building heights from the waterfront. Mr Leighton accepts that there is nothing in the plan in terms of height limits which suggests that the Watermark site can be treated as a transition site to step up from the waterfront to the same height as the Duxton nor indeed that the plan requires such a transition⁷³. We therefore accept the proposal is not inconsistent with the Low City and in particular, with the Low City height limit behind it, taken from the Duxton block.

[136] In our view, it is thus the high end of the Low City which is the lodestar for this site and the Watermark development, not the High City itself. Mr Leighton notes that the Central Area Design Guide discusses a number of scales within the larger urban form, before moving on to look at the issue of how the building looks, works and is experienced at a



, para 29.

neighbourhood or street scale⁷⁴. In fact, it is the District Plan which has two permitted Low City height thresholds – 27 metres and 43.8 metres, the latter in which the Colmar Brunton/Duxton/ Regional Council block of buildings are located. The Watermark, as a 41.5 metre height limit non-complying activity intercedes successfully between the two⁷⁵. This is illustrated from some of the issues which follow.

Photo-simulations

[137] A number of the applicant's photo-simulations illustrate the Watermark building fitting into the Low City/High City macro urban form – an approach supported by Messrs Barratt-Boyes and Leighton and by Mr Blunt. Mr Stroud is critical however that these foreshorten or flatten the effects of the building so it would actually be more intrusive than depicted. And further he says by shading critical background drawings in red (a dominant colour) instead of blue (a recessive colour), the actual height and scale appearances of the Watermark building are misleading. The net result, in his view, is that the building as proposed appears to form part of the higher part of the Low City in the exhibits. In reality, he considered the building would be seen as much further forward in, for example, Photomontage P-114 **View from Overseas Passenger Terminal** and would be seen to rise out of the 27 metre height plane⁷⁶.

[138] Mr Stroud also dismisses P-111 **View of Site from Point A – Mount Victoria** (included above) as illustrating how incongruous the development is in relation to the Low City area towards Courtenay Place and the harbour. He maintains that because of the foreshortening effect, the building will not appear to be part of the High City area – it will not be seamlessly integrated. Mr Williams argues that because of the distance from which the photo-simulation is taken, that the Watermark would be lost in the urban conglomeration⁷⁷.

[139] We have doubts about the appellant's witnesses strong views on flattening/foreshortening. We accept there will be elements of both, but photomontages are a very useful assessment tool, particularly in assessing macro urban form. Mr Boffa had this to say



and he is as experienced a landscape architect as Mr Stroud is a planner. He has personally created many photo-simulations:

During my professional career I have carried out a number of visual effects and view assessments for a wide range of projects for Councils, utility companies and private organisations and individuals. In the course of this work I have prepared and supervised the preparation of both manual and computer generated visual simulations, which I have used to assist with the assessment of visual effects.

In recent years I have had the opportunity to check the "as built" or completed projects with what was previously simulated. In all cases the simulations have reasonably portrayed the proposals and in many instances the simulations have, if anything, tended to slightly overstate the effects.⁷⁸

We prefer Mr Boffa's opinion as the more qualified on the issue.

[140] The building proposed reflects the orientation of the block in which it is located. One building form, the southern one, has a curved façade which recognises the twist in Wakefield Street, while the other, which slides past it, orientates the upper part of the building towards the waterfront and the prow of the John Chambers base. The building's design orientation therefore draws the structure more to the Central Area (and not Courtenay Place) where it rests comfortably from the viewpoint in question in the context of the existing buildings with the High City behind. And from this perspective, we do not accept, as Mr Stroud maintains, that a structure two thirds the height of the proposed Watermark only, would provide a proper addition to the macro urban form from this general location for a number of reasons⁷⁹.

Curves

[141] The interesting point about the general urban form of the Central City Area at the macro level is a point Mr Barratt-Boyes makes (one of a number) – that the overall urban form



Stroud, NOE 405.
para 3.4.

diagrams and diagrams of building heights actually and generally form a curve running in the south towards Te Aro back up to the Majestic Tower and BNZ. The general urban form is therefore made up of the flow and curves of the High City and the Low City which together conspire to create the amphitheatre effect of the Central Area nestling between the hills and the waterfront. Mr Barratt-Boyes maintains, and we agree, *The macro urban form test is – that when you add to the city – is there a curve – and there is*⁸⁰. Referring to Photomontage P-115 **View of Site From Outer Queens Wharf**, and the **City Heights Diagram P-21**, Mr Barratt-Boyes identifies:

- the similarity in height between the proposed building at 41.5 metres and the permitted height 43.8 metre height of the adjacent area;
- the proposed building is at a stepping point between two Low City thresholds (at 27 metres and 43.8 metres);
- whilst it is a minor shift in that transition, the building does not materially alter the nature of the curve up to the High City (Majestic Centre and Bank of New Zealand);
- the proposed building does not create a defined height 'spike' in the overall urban form.

[142] Mr Stroud considers that through the definition of form, the terms of height restrictions are quite precise and detailed⁸¹. It is not curves that the urban form is controlled by, but a series of stepped planes. In his opinion, the urban form the District Plan seeks to maintain is the Low City 27 metre height plane. The whole is the sum of its parts and its parts are a series of planes – there is a regularity to it⁸². Mr Stroud considers that if the District Plan expected to rely on a curve it would say so⁸³. In another part of his evidence, Mr Stroud identifies that the objective is to maintain or preserve the existing form which is composed of all the structures within it. While the District Plan does not appear to be pre-occupied with exact height limits as that signalled in the explanation to Policy 12.2.3.1 the plan then goes on to state the city will manage this by restricting height limits. He thus interprets the objective by reference to the rule⁸⁴.



[143] We have included a photocopy of the applicant's **City Heights Diagram** attached to this decision as Appendix A.

[144] As a matter of fact, the applicant:

- establishes such a curve;
- establishes that there is no height spike from the development within the height ranges the curve encompasses.

[145] To insist that the height rule applied on a block by block basis produces consistent edges and step downs is not what factually occurs on the ground. Levels are but a first approximation of the general urban form which is described in the District Plan as the Central City flanked by the Low City on either side set in an amphitheatre context.

Transitions

[146] As to transitions, Mr Williams says this:

I therefore cannot understand Mr Blunt's assertion that it is the height of those buildings to the north-east in the "high city" and to the south that are important rather than the 27 m height limit of the subject site (and the adjoining sites along Cable Street).

It is also misleading to suggest that this site is transitional in nature. The transition between one height plane and another clearly occurs at Wakefield Street as is clearly shown by the differing height limits that apply between Wakefield Street (43.8 m reflecting the height of existing buildings) and 27 m for the subject and related sites. In other words, the District Plan clearly shows that the transition is at Wakefield Street and the subject and related sites indicate the next level of step down to the waterfront.⁸⁵



[147] In the context of the preservation of general urban form, instead of taking the Duxton as making the transition between the higher buildings that surround it and the waterfront

⁸⁵ Williams EIC 6-7, paras 2.20-2.21.

with its landmark buildings, the applicant looks at those buildings as a frame of reference only for its own development. It justifies the height of the Watermark by way of reference to the higher buildings to the south so that the development is not inconsistent with the High/Low City objective⁸⁶. The general urban form to be preserved by the District Plan is one of high central city buildings flanked in a north to south direction by lower buildings, the whole being set in an amphitheatre. It does not define a graded increase in building height from the waterfront and running to the west, although the nature of an amphitheatre would suggest that buildings in the forefront should not hide the high buildings behind when viewed from the water. When approached in this way, Taranaki Street in fact becomes the dividing line for the 43.8 metre threshold and the Watermark site can be seen as sitting at the edge of the 43.8 metres building height zone in the general urban form. Also, as the height of the proposal is 41 metres (lift tower to 41.5 metres) it can be viewed as stepping up to the 43.8 metres from the Odlin's building and the waterfront, a feature not required by the District Plan but one in keeping with the amphitheatre model. When seen in this way we can accept the council's proposition that exceeding the height limit for this particular site does not in itself create a spike or an adverse effect on the general urban form⁸⁷.

[148] The proposal is in fact in scale with the assembly of existing buildings and fits within that context. The Watermark at 41.5 metres is lower when compared with the height threshold of the site of the Colmar Brunton building at 43.8 metres. The tower of the Watermark seems to extend the high part of the Low City over the Low City area and more towards the waterfront but it does not extend it over the whole site. Meanwhile, retention of the height of the John Chambers building (18 metres) respects the current height limit for the Central Area (27 metres) and respects the average height of the heritage buildings on the waterfront⁸⁸.

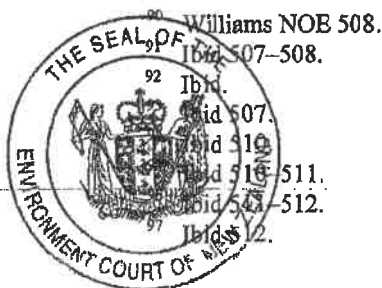
[149] Mr Barratt-Boyes stresses that in the wider context of urban form, the Watermark has to be viewed from all vantage points around, not just the waterfront⁸⁹. And in the context of



Barratt-Boyes NOE (24 Aug) 22.
Callaghan EIC 18, para 63.
Wellington NOE 57-58.
Barratt-Boyes NOE (24 Aug) 24.

Policy 12.2.3.1, we agree. For Mr Williams, as the expert urban designer for the appellant, concedes that the proposed building from a series of vantage points:

- is not seen in isolation from other buildings⁹⁰;
- agrees the building does not intrude on the views of the harbour or the hills or from Cable Car⁹¹;
- agrees the building does not intrude on the views of Mt Victoria⁹²;
- accepts that the District Plan under Maximum Building Height 13.3.2.9 for the Central Area (of which the proposed site is a part) specifies the maximum building heights are designed primarily to protect the panoramic views of the harbour and distant hills from [the] important public view point of the Cable Car⁹³;
- accepts that from the vantage point of Photomontage P-113 **View of Site from Point Jerningham** does not present as a single spike in the gradual slope from the core of the High City down to the Low City⁹⁴;
- accepts that from the vantage point of Point Jerningham and the Cable Car the building treatment in terms of colour and materials would largely be lost in terms of the general urban conglomeration⁹⁵;
- accepts that from distances such as Point Jerningham and the Cable Car it is unclear where the High City and Low City height planes begin and end⁹⁶;
- accepts that the casual observer at Point Jerningham would consider there is a general slope [therefore not a series of stepped planes] down from the core of the High City to the Low City⁹⁷.



Stepping Up From/Stepping Down to the Waterfront

[150] Mr Williams could not support the notion that the Duxton, in an overall height plane of 43.8 metres (the high point of the Low City) should be used as an immediate reference for the Watermark site. He said this in relation to the height limit of the Watermark site:

First and most importantly, the 27 metre height limit provided for in the district plan states that the maximum height actually reflects and defines the step down towards the waterfront harbour from 43.8 metres.⁹⁸

Thus Mr Williams would not support the applicant's case that the Watermark proposal makes the transition between the high point of the Low City and the low Low City itself.

[151] In our opinion, this is an example of the different understanding of the provisions of the District Plan held by Mr Williams and the applicant. The plan itself does not seem to require this step down to the waterfront. Rather it requires the preservation of the general urban form described as High City flanked by the Low City and set in an amphitheatre.

[152] We therefore have reservations about the appellant's case on the necessity to step down to the waterfront from the 4.38 metre height limit of the sites on southern side of Wakefield Street leaving the Watermark site at 27 metres + 1 floor for a number of reasons.

Mr Williams:

- concedes that he had interpolated or inferred the statement quoted above from planning Map 32, but that document makes no such stated reference to the necessity to step down to the waterfront, it just demonstrates various city heights⁹⁹;
- acknowledges that there is no objective or policy that implements the "step down" on the Watermark site that planning Map 32 is purported to reflect¹⁰⁰;
- significantly, concedes that planning Map 32 (and his coloured diagram from the Design Guide) demonstrates there is a Low City step up on the western side



Williams v C 6, para 2.20.
Ibid. NOE 516.

of Taranaki Street to 43.8 metres rather than a step down to the waterfront in the vicinity of the Watermark site¹⁰¹;

- acknowledges where the High City abuts Jervois Quay at 60 odd metres, there is an abrupt step down to the waterfront – right opposite Frank Kitts Park at 10 metres¹⁰²;
- acknowledges that in spite of a fairly wide road in between, the High City at Jervois Quay comes close to the waterfront¹⁰³
- significantly acknowledges that there is no consistent stepping down to the waterfront from every part of the Central Area¹⁰⁴;
- acknowledges that Shed 22 and the Ambulance Building “step up” in height to the height of the Odlins building¹⁰⁵;
- acknowledges that the coloured up diagram he selected from the Design Guide when compared with planning Map 32 leaves out that part of the Low City 43.8 metre threshold that comes round behind the High City and in doing so does not provide a step down to the waterfront at all¹⁰⁶;
- acknowledges that the general pattern of stepping down to the waterfront is one only alluded to in the Design Guide and not the objectives and policies of the District Plan¹⁰⁷;
- could also argue the heritage buildings on the waterfront step up in height to the Odlins Building¹⁰⁸.

[153] The applicant has in fact also carried out another theme of “stepping up”. Photomontage P-113 **View of Site from Point Jerningham** was considered by Mr Leighton to illustrate how the proposed building steps up from Te Aro in the Low City to the High City, in line with the intent in the plan. Mr Blunt for the council also considers 41.5 metres a step up from the waterfront on this site¹⁰⁹. Mr Leighton appears to indicate that this is because the bulk and scale of the Odlins building at 29 + metres forms a strong foreground element that steps up to the Watermark¹¹⁰. Referring to Photomontage P-121 **View of Site from**

¹⁰¹ Williams NOE 518.

¹⁰² Ibid 519.

¹⁰³ Ibid.

¹⁰⁴ Ibid 481.

¹⁰⁵ Ibid 476.

¹⁰⁶ Ibid 517-518.

¹⁰⁷ Ibid 519-515.

¹⁰⁸ Ibid 476.

¹⁰⁹ Blunt NOE 315.

¹¹⁰ Leighton EIC 15, para 7.25.



Waterfront Promenade (Te Papa) and P-123 View of Site from Taranaki Wharf, he identifies how the assemblage of existing and proposed buildings would step back. The latter photomontage, for example, demonstrates how the base of the Watermark relates to the height and scale of Shed 22¹¹¹.

[154] In questioning Mr Barratt-Boyes, counsel for the appellant suggests that going from Shed 22 at 15.8 metres to the Watermark at 41.5 metres is not a gentle step up – but a giant leap. We do not consider it quite in those terms.

[155] Referring to Photomontage P-121 (above), Mr Leighton makes the point that the strong base height of the Watermark building relates very clearly to the intermediate height between the Odlins building, the Ambulance building and Shed 22. All three are different heights and if averaged out, it is Mr Leighton's opinion they would be close to the height chosen for the base of the Watermark and the scale of that has been selected to reinforce the heights of Shed 22 and the Odlins building¹¹². It is an intermediate height that reflects and is close to the height of the John Chambers building:

*So you can't see the John Chambers building in this [diagram], but the building height has been wrapped around onto basically all four elevations, forming an intermediate step or a base or a plinth or a podium, if you will.*¹¹³

[156] Mr Leighton considers that the respect paid to the John Chambers building by stepping to its nose is very important in the heritage context of this case¹¹⁴. And this is generally acknowledged by all parties to this hearing.

[157] The Watermark is not stepped up to the same 43.8 metres height limit as the Duxton or its neighbouring buildings may achieve in the future. So it is lower than that backdrop and serves to extend the high part of the Low City over that part of the Central Area from half the



111 Leighton EIC 15–16, paras 7.26–7.27.

112 Ibid NOE 11.

114 Ibid NOE 11.

site, not the whole site¹¹⁵. Mr Leighton considers it is in scale with those surrounding buildings also:

*You have a jump across Taranaki Street to a significantly greater height and a different form of building ... when built it will be harmonious with those. Its rectilinear ... it fits the Te Aro typology.*¹¹⁶

[158] Although Mr Barratt-Boyes also accepts that the Watermark tower is not a gentle step down to the heritage buildings on the waterfront¹¹⁷, he nevertheless reflects that raking the building reflects a step down. It is a stepping point – a transition – a raking incline is inherently a transition point¹¹⁸. It is also Mr Leighton's evidence in urban design terms that raking the building reflects the step down to the nose of the John Chambers building and that it is a very significant element of the development¹¹⁹.

Finding

[159] The general urban form referred to in the District Plan consists of the central High City flanked by the Low City on either side all set in an amphitheatre bounded by the hills surrounding the city. That is to be preserved. It is a concept best seen from a viewpoint above the inner harbour as demonstrated by the diagram in the District Plan's Design Guide for the Central Area¹²⁰.

[160] Block by block height limits in the District Plan are but a first approximation of this general urban form. They define height planes with steps from one to another. Reality however demonstrates to us that the built profile of the city forms a curve rising to its highest level in the centre from lower levels at the extremities.

[161] A proposed building which distorts that profile could be said to be contrary to the objective of preserving the general urban form. We do not find that the Watermark proposal does this.



[162] Some refer to a need for building heights to increase gradually as they recede from the waterfront but there is no requirement for this in the District Plan. It could only be a property that might be associated with the amphitheatre description.

[163] To the extent that the amphitheatre concept requires some gradation of building heights from the waterfront, we are satisfied that the proposed heights of the Watermark is not contrary to the provisions in the plan.

[164] Taking all these considerations into account, we conclude the proposal as designed preserves the present general urban form of the Central Area and is not contrary to Policy 12.2.3.1 of the District Plan.



• *Enhancement of the Public Environment of the Central Area*

OBJECTIVE

- 12.2.3** To maintain and enhance the physical character, townscape and streetscape of the Central Area

POLICY

- 12.2.3.2** Enhance the public environment of the Central Area by guiding the design of new buildings.

METHODS

- Rules
- National standard access design criteria
- Advocacy
- Design Guides (Central Area, Courtenay, Cuba, Civic Centre)

The design and appearance of Central Area buildings has a direct bearing on the quality of the public environment and on the Central City's wider public setting. Design Guides are intended to ensure that the design of developments enhances, rather than detracts from, this public environment. The Design Guides identify various design principles to be followed but do not seek to impose aesthetic control.

Enhancing accessibility to buildings is an important aspect of the public environment of the Central Area, so Council will advocate improved provision for older people and all others with mobility restrictions in the refurbishment of those existing buildings which do not provide equitable access in terms of current Building Code requirements.

The environmental result will be Central Area buildings with design qualities which create a positive relationship to public spaces and the wider city setting.

[165] We separate the policy into two headings below. Firstly, 'enhancement of the public environment', and secondly, 'by guiding the design of new buildings'. This policy introduces provisions of the Central Area Design Guide as part of its focus. As noted, the guide addresses a number of different scales within a large urban form, then moves on to address the issue of how the building looks and works at a neighbourhood and street scale¹²¹.

[166] The *Introduction* in the plan to the Central Area 12.1 spells out that:

Specific rules deal with the siting, design and appearance of new buildings so that the existing urban form is prescribed and enhanced. This is achieved through building height and general urban design guidelines. ... To ensure the development in the Central Area is to a high standard, Council is guided by an urban design strategy. ...



[167] The *Introduction* to the Central Area Design Guide 1.0 says this:

The Design Guide is based on the premise that the collective form of the city is more important than its individual components. As the city's cultural and business centre, the character of the Central Area is perhaps the most visible expression of Wellington's collective civic identity. Accordingly, any new addition to the area should not only have its own architectural integrity, but should also demonstrate a considered relationship with the local street environment and with the Central Area in general.

Context

[168] Mr Williams for the appellant, on reviewing the assessment of Messrs Barratt-Boyes, Leighton and Blunt, while accepting that their assessments accurately describe how the Design Guide requirements relate to non-contextual issues such as "*Design Coherence*" and "*Legibility*", says they all fail to provide a compelling argument as to how the scheme maintains or enhances urban form with "*Context*" associated with:

- heritage issues (the immediate adjacent, heritage buildings on the waterfront and the height and overall bulk mass of the Watermark project);
- the highly public nature of the adjoining Civic Centre Character Area;
- the high level of visual and spatial connectivity between the subject site, the Civic Centre, the waterfront and Te Papa¹²².

[169] The Design Guide defines *Context* as:

Context: While any public may have its own distinct identity, it is also part of a collective environment. The design of individual buildings should acknowledge and recognise their physical context, either by complement or contrast.

[170] Mr Williams goes on to identify that G1 *Communication Between Buildings and Public Space*, G2 *Relationships to the Surrounding Environment* and G3 *Overall Building*



Composition are the foundation guidelines of the entire Central Area Design Guide¹²³. These then are the witness's particular focus. They state as follows:

Guidelines

In practical terms, this means that the external design of new Central Area development should take account of the following:

G1 Communication Between Buildings and Public Space

Buildings should communicate with their surrounding public environment. Every opportunity should be taken to provide an external expression of the unique spaces and activities contained within a building.

G2 Relationship to the Surrounding Environment

The overall context of a building should be taken into account in its design. New developments should not occur in isolation. Their design should recognise the place that they occupy within the street and within the Central Area as a whole.

G3 Overall Building Composition

The design of any building should derive from a coherent overall compositional idea. The development of this idea should reflect all the relevant design criteria set out in this Design Guide.

[171] In particular Mr Williams introduces contextual matters as one of the essential foundations of the Design Guide, and considers this lack of compliance is a fundamental flaw in the development¹²⁴.

[172] For the witness, the street context of the public environment and the special features surrounding the Watermark site are made up of:

- the heritage values of the area;
- the history of the waterfront;
- the open spaces that surround the site¹²⁵.



Williams NOE 461: see Central Area Design Guide 3.0 General Design Guidelines.

Ibid.

He suggests:

- that these special features will be compromised to an unacceptable degree by the proposal – namely the heritage *value* of Shed 22, Odlin's and the Free Ambulance building;
- that value will be diminished because the Watermark project in conjunction with associated buildings fails to achieve an acceptable level of integration with them through its excessive height and associated bulk;
- the discordant raked west facing elevation of Watermark serves to fragment the already fragile composition of the historic buildings and disconnect the Watermark from its immediate context, when an opportunity to mitigate the existing fragmentation exists through introducing a lower building height;
- the historical value of the Odlin Group of buildings will be diminished from the flow-on effects resulting from the degraded quality of the Taranaki Wharf experience as a result of the existence of the adjacent overbearing building;
- as the proposal is to be located in a highly civic context, it is crucial that the Watermark building contributes to and complements its existing and immediate [heritage] context and it does not achieve this¹²⁶.

Evaluation

[173] Despite Mr Williams' genuine concerns about the project, it is our conclusion that the public environment in this location will not be affected by the Watermark proposal and that he considerably overstates a case on this issue.

The Public Environment

- History of the Waterfront

[174] Mr Williams considers the proposal has a lot to do with how we view the waterfront, how we view the heritage of the area and its history¹²⁷. So as a reference in a highly civic context it is crucial that the building contribute to and complement its existing and immediate



Williams NOE 461-462.

context¹²⁸. The Watermark, he considers, because of its height and bulk would detract from the immediate context of the heritage buildings which strongly convey the history of Wellington along the waterfront. He suggests people will enjoy the area less – they would look up and say what is that building doing in this environment¹²⁹?

[175] The *historical* value of the waterfront buildings is clearly unaffected by the proposal. The John Chambers building was originally used for gold mineral extraction with *prima facie* no clear links to the Waterfront itself. It later became adopted for use as a cinema facility. The change of use proposed is reflected in the changes of use in the heritage buildings adjacent – including that of the Odlins building which is also to contain carparking, commercial and residential use¹³⁰.

[176] Further, new buildings have been placed on the waterfront fairly recently – namely Circa Theatre and Te Papa. In addition, the proposed history of Chaffers/Waitangi Park development indicates that the City planning authorities do not view the existing waterfront development or otherwise as static.

- The Open Spaces of the Area

[177] In terms of his definition of the public environment Mr Williams accepts that there are no skyline issues in terms of the Design Guide because the proposal is less than 15 floors. There are thus no open space or dominance problems in that respect.

[178] In terms of other spaces surrounding the heritage buildings, the Taranaki Street Wharf promenade was identified by the appellant as one of those most affected by the Watermark because it is an overbearing, over dominant building.

[179] We turned to P-118 **View of the Site from Point H – Taranaki Wharf** and called on our site visit experience to assess this aspect. The experience of that space is in fact defined by the existing buildings such as The Boatshed, Odlins and Shed 22. Any building behind those provides but glimpse views. Further, as considered by Mr Leighton, the building



will not have an effect on the spatial structure of the promenade – *the focus of the waterfront is the waterfront*. The experience of that space in fact is defined by the front row of buildings on the promenade which all open out on to the wharf's open spaces¹³¹.

[180] Further, the evidence disclosed it can be seen that there is a drop in scale and bulk from the Odlins building to Shed 22 which is counterbalanced by the proposed Watermark building behind¹³². Photomontage P-118 also shows how the base of the Watermark building relates to the height and scale of Shed 22.

- The Other Streets

[181] In the content of the heritage buildings in the vicinity of the Watermark, the applicant makes the point, and we agree, that the three heritage buildings across Cable Street on the waterfront may be closer to parts of its intended site, but they are not required to be singled out as the only, or even the most important, influence for development on this site. For the Design Guide identifies "context" with visual connectivity rather than heritage status as the issue. The Guide's intent is to promote the visual relationship between buildings – not just the heritage ones¹³³. Towards the end of his cross-examination Mr Williams acknowledges this¹³⁴.

[182] For the Design Guide states:

There is a special visual relationship between the space of a street and the buildings that edge it, shaped by the visual range of the pedestrian and the various ways observers in public spaces engage with their surroundings. There is also a special collective relationship between buildings at street level, where they are seen in close physical association with each other.

These design issues apply between ground and an approximate height threshold of 8 storeys above the street. (See "Notes" below for further explanation).¹³⁵

[183] Messrs Williams and Stroud emphasised that in their view the Watermark site does not sensibly form part of the high edge of the Low City that extends round the Golden Mile



131 Leighton NOE 23.

Leighton EIC 15, para 7.26.

Design Guide 4.0 Guidelines for Design Contexts; Definitions; The Street Context – The Neighbourhood Context Page 9

Williams NOE 498

Central Area Design Guide The Neighbourhood Context Section 4, page 9.

consisting of the Colmar Brunton buildings, etc. This is because the Watermark site is significantly detached from the 43.8 metre height limits of the block because of its distance from the Watermark two streets away.

[184] When questioned as to whether the Watermark site is not just right across the road from the Colmar Brunton building, Mr Stroud acknowledges one end is, but the major part of the site is separated from the area across Wakefield Street where there is a higher limit in another block¹³⁶. This conclusion led both witnesses to conclude the most relevant special collective relationship relates only to the John Chambers building and those on the waterfront.

[185] Mr Leighton considers the site abuts the area with a 43.8 metre maximum building height limit directly southwest of Jervois Quay and Wakefield Streets. It also abuts the Civic Centre Character Area which is the effective transition or step down from the High City to the Low City in this part of the Central Area.

[186] We do not accept the Watermark site "*abuts*" the 43.8 metre height threshold sites of the Low City or the Civic Centre Character Area, but it is adjacent to them. 'Adjacent' may be interpreted as lying near or relatively close to those sites¹³⁷.

[187] We had considerable difficulty therefore with aligning the Watermark site only with the heritage buildings on the waterfront and making them the one frame of reference for what should happen with the development. As Mr Barratt-Boyes explains, context is everything around the building. The buildings to the south and east (which are not as iconic as Te Papa and the Town Hall) play just as important part in the determination of what the context is. Whilst the waterfront buildings may have a strong influence, there is a wider context than that¹³⁸.

[188] And in our view, when considering the plan's aspirations for urban form and urban design context, it would be unrealistic not to include those effects such as permitted building height in the neighbourhood context of the subject site.



Stroud NOE 417.

The New Shorter Oxford Dictionary page 27.

Barratt-Boyes NOE (24 Aug) 24.

[189] A block pattern determines the orientation of buildings within the Central Area as a whole. The Watermark tower within its own block is only 50 metres from the Colmar Brunton building which has a height of 43.8 metres and is approximately 60 – 70 metres from the Duxton (approximately a similar distance to Te Papa), and approximately 30 metres to the BP station site¹³⁹. Thus the buildings around are not only all shapes but also all sizes.

[190] In its description of the Low City the Design Guide records this reality as follows:

- a greater relative variation in heights (of buildings);
- a wide variety of building types¹⁴⁰.

[191] The Watermark proposal therefore reflects these last two attributes. The site itself is surrounded with a range of building typologies. Only the three waterfront heritage buildings provide a loose aesthetic coherence and even then they demonstrate nothing of the coherence of urban form provided by the City of Bath buildings touched upon by Mr Stroud¹⁴¹.

[192] There is in fact no reference in the Design Guide for a requirement to retain architectural coherence with existing buildings in the area, although Mr Williams draws this inference from Design Guide 3.0 *General Design Guidelines G2 Relationship to the Surrounding Environment* which promotes the notion that new developments have a relationship with the surrounding environment¹⁴². Architectural coherence, he also considers, stems from the Definition of “**Street Context**” in the District Plan which means:

Special Collective Relationship Between Buildings At Street Level Where They Are Seen In Close Physical Association With One Another.

[193] We note G2 is a very general guideline which refers to the surrounding *environment*. As the Watermark site is an island, the frame of reference must be just the three heritage buildings on the waterfront but all the structures around, some closer than others. Mr Barratt-Boyes makes the point that the context is crucial for an island site¹⁴³. It is his evidence that



Barratt-Boyes NOE (24 Aug) 20–21.

Design Guide 2.0 *The Central Area: Character*; *The Low City* 5, see also Williams NOE 474.

Stroud NOE 432.

Williams NOE 474–475.

Barratt-Boyes EIC 9, para 11.1.

because the John Chambers and Wellington Markets sites form a triangular one, this is a special characteristic which demands a site specific design. He states:

The generous open space around the site, e.g. widened roads and open spaces, emphasise its island quality.

Island sites require an understanding that they are seen 'in the round'. This means they are viewed as an object within a space. In the subject situation there are wide open spaces around the building, especially as viewed from the southeast and the southwest. The building, as it is seen from many viewpoints, therefore necessitates careful design consideration on all sides. Ultimately any proposal necessitates a strong three-dimensional/sculptural quality as opposed to, for example, a single façade to a single street amidst a wall of buildings.¹⁴⁴

[194] The context is drawn from every structure and every element around the building in all directions. If one precinct only is the focus, then the total context of the Watermark would not be taken into account.

[195] Turning to other issues of importance in a street context, it can be seen from Photomontages P-122 **View of Site from Point L – Taranaki Street Corner** and P-123 **View of Site from Point M – Taranaki Wharf** that the design is highly integrated with the John Chambers building, and creates what is termed an “*active street frontage*” of cafés, clear glazed shopfronts and pedestrian-oriented activities around most of its perimeter. This is recognised in urban design as important to pedestrian amenity. In this case, it will also serve to encourage pedestrian traffic to and from the harbour as advocated in the 1994 Urban Design Strategy and the draft pedestrian report produced for the council by Gehl Architects (2004). This pedestrian linkage is further reinforced by:

- locating a café/restaurant at the corner of Taranaki Street and Jervois Quay;
- setting the building back from the property line to effectively widen the footpath;
- an improved pedestrian crossing at the Taranaki/Jervois Quay corner and
- creating a colonnade (along part of Taranaki Street); and



- continuous glazed verandah to provide shelter from the wind and rain.

[196] As to other matters, Mr Williams accepts that the Watermark proposal would improve streetscape amenities for pedestrians moving around three sides of the site, and moving down Taranaki Street to Taranaki Wharf¹⁴⁵. A wind and rain shelter will be provided on the western side of Taranaki Street in the form of a new colonnade and a 4 – 5 metre canopy. The footpath is also to be upgraded into a wider paved facility. An upgrade to the eastern end of the slip road is also proposed which could demarcate a walking zone and slow down incoming traffic¹⁴⁶. The enhancement of accessibility to the John Chambers building which the Watermark development will provide over and above what is currently provided is also a positive factor to be considered in terms of the policy.

[197] Finally, in the context of the street (and doubtless the neighbourhood), the appellant is particularly critical of the raked form, particularly of the north facing elevation of the Watermark considering it a seriously discordant note in respect of the surrounding architecture, particularly that of the heritage buildings on the waterfront¹⁴⁷. We note that many of the buildings surrounding the Watermark site have raking elements inbuilt into their architectural forms although we acknowledge all of these are not as comprehensive as this proposal. Nevertheless:

- there is no dispute the raking form provides a critical design factor in terms of wind control in that it directly addresses the wind stream, with the prevailing wind coming from the northwest; the evidence establishes the tapering plan form and rake in section and setbacks combine to create an appropriate response in respect of wind generation;
- the raking form provides a series of steps down to the flatiron form of the John Chambers building and leaves it largely unburdened by a series of floors above – which would otherwise detract from its heritage value;
- the raking of the new building allows it to rake back from the historic nose of the John Chambers building;



Williams NOE 492.
 Houghton EIC 14, para 7.19.
 Williams EIC 10, para 2.37.

- the raking form preserves the Duxton's views from serious adverse visual effects.
- the raking form preserves the privacy (amenities) of the Odilins residents

- The Neighbourhood

[198] P-124 View of Site from Point N – Across MFC Park and particularly P-117 View of Site from Point G – Wakefield Street illustrate the scale of the development relative to the width of the adjacent road reserves.

[199] In terms of the protection of open spaces around Taranaki/Wakefield Street, Mr Leighton identifies that a basic principle of urban design (recognised in the Wakefield/Cable Street Urban Perspectives study) is the concept that streets should be enclosed or defined by adjacent buildings to create “outdoor rooms”. Urban design practice accepts that there are appropriate ratios between building height and street width to create this definition or enclosure. Mr Leighton notes that the Urban Perspectives study states *the intended building height to street width ratio is in the range of 1:1, 1–1.3 provided that new buildings are built to the street boundary*. While the source of this ratio is not referenced, Mr Leighton states this is in line with urban design literature, eg *A 1:2 ratio is the minimum desirable ratio of height to width for good street spatial definition*¹⁴⁸.

[200] Since most of the road reserves in Te Aro are 20 to 22 metres in width, the report's recommended ratio to Mr Leighton implies an appropriate building height of 22 to 28.6 metres in the larger Te Aro area. This is in line with the report's recommended maximum height at 22.8 to 27 metres. The Jervois Quay road reserve adjacent to the Watermark site is, however, 30 metres in width, and when combined with the Wakefield Street road reserve, results in an approximate distance of 52 metres between the Watermark and the Colmar Brunton building on the corner of Taranaki and Wakefield Streets.

[201] Taking the report's recommended width/height ratio to its logical extreme, Mr Leighton considers the appropriate range of height for the southeast end of the Watermark site would therefore be in the 57.2 to 74.4 metre range. This is obviously unrealistic given the surrounding context and objectives of the plan. Nevertheless in his view, the proposed height



of 41.5 metres above ground level remains well below this. This logic also supports the placement of the tallest part of the building at the southeast end of the site as located, where it both defines and helps to enclose the widest road reserves.

[202] Mr Leighton therefore believes that the proposed 41.5 maximum height in the southeast end of the site is appropriate in urban design terms given:

- [a] the width of both the Jervois Quay/Wakefield Road Reserve combined with the other adjacent road reserves (Cable and Taranaki Streets);
- [b] the 43.8 metre building height threshold to the southwest (especially when the potential additional discretionary height of 4.2 metres is considered);
- [c] the balance between the proportion of building below the height limit at one end of the site and above height at the other;
- [d] the additional design strategies (outlined in Mr Nicholas Barratt-Boyes' evidence) used by the architects to minimise the visual bulk and scale of the building and meet the provisions of the Design Guide.

[203] Mr Williams is critical of this approach. He states:

- the street width to building height ratio concept is a known but not absolute urban design theory;
- it should be applied relative to other influencing features such as:
 - existing variations in heights, street plantings, etc (in this case the pohutakawas that separate Wakefield Street from Jervois Quay);
 - where there is consistency in street width – such as along Cable and Taranaki Streets.

[204] Mr Williams considers applying the height/width ratio concept to the combined widths of Wakefield Street and Jervois Quay is misleading and besides the overall street width actually increases to the north which is contrary to the logic of placing the highest part of the development along the southern part of the site.



Acknowledging that the street width/building height ratio is not an absolute design and that the applicant has used it as but one explanation of why it supports a greater

height at the eastern end of the site¹⁴⁹, initially there appeared some merit in Mr Williams' argument. Both Taranaki Street and Cable Street are approximately 20 metres wide which would suggest a 27 metre complying height limit on the Watermark site would be more appropriate next to those streets.

[206] But in our view, applying the theory as Mr Williams would have it to this site would produce the wrong result. The tower building would be at the nose of the John Chambers building, which would overwhelm its heritage values, whilst retaining a 27 metre high building at end of the site would be in an area where large open spaces already prevail. We accept therefore the degree of enclosure of these public open spaces is appropriate and the building will not overly dominate the adjacent streetscape.

[207] The context of the 'neighbourhood' appears to relate to the visual relationships the Watermark site has with the Civic Centre Character Area, the Wellington waterfront and Te Papa¹⁵⁰. The Design Guide states:

Beyond the range of the street, there is a visual relationship where observers see a building from the interiors of other buildings or from neighbouring public spaces. In this context, buildings are still seen as collective entities in association with neighbouring buildings. From these distances some of the density, detailing and tactile qualities of a building appropriate to the street can be simplified, while still providing general visual interest and signalling the building's size, relative use and architectural intention.

These design issues apply in an approximate range between the height thresholds of 8 and 15 storeys.¹⁵¹

It is stated this guideline can influence the quality of the public environment from the multiple viewpoints.

[208] Mr Williams maintains there is a stronger visual connectivity between the Civic Centre Character Area and the waterfront and the Watermark site than the 43.8 metre height limit block in which the Duxton is situated¹⁵². When questioned by the Court however, the witness acknowledged from the visual perspective shown in Photomontage P-115, *View of Site from Queens Wharf Outer T*, the most dominant building was not the proposed



Daughton NOE 51.

Williams EIC 22, paras 3.3.

Design Guide 4.0 *Guidelines for Design Contexts*, page 9.

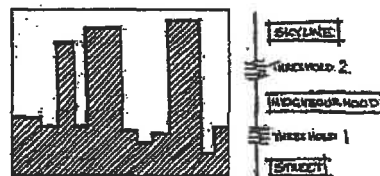
Williams EIC 7, para 2.23(c).

Watermark building but the Duxton. And in P-119 **View of Site from Lagoon (on the waterfront)**, we note the Duxton and Odilins buildings vie for dominance – even with 50% of the Duxton eclipsed from view. With respect to P-120 **View of Site City to Sea Bridge**, Mr Williams again agreed both the Duxton and Odilins vie for dominance. We consider in that view the raked form of the Watermark by comparison only makes a somewhat hesitant appearance between the two. Even then, the forms of the other taller buildings in the area are clearly in evidence. Mr Williams also acknowledged in respect of his Exhibit 6, **City to Sea Bridge**, that the Duxton was a strong component of that view also¹⁵³. He added that even so from an urban design perspective that does not require it to become an influential decider in the development of the site¹⁵⁴. We disagree with this point of view. As counsel for the applicant submits the Duxton with its strong formal lines in its location adjacent to the John Chambers building rather shouts at the neighbourhood¹⁵⁵. Mr Stroud was very clear that the Duxton building is a prominent one coming down Jervois Quay heading south and that it is a prominent building in Design Guide terms¹⁵⁶. Jervois Quay intersects with Wakefield Street and where it does the Colmar Brunton building is situated only 50 metres away from the Watermark site and just down the street from the Duxton. Hence it is that the Watermark project is not disconnected from its southern neighbours.

[209] With respect to the height threshold rules, Mr Leighton points out that the Design Guide, at 4.0 *Guidelines for Design Contexts*, has a number of height thresholds and they are not height limits but base thresholds to do with fit, look and appearance¹⁵⁷. A drawing accompanies the text of the Design Guide thus:

1. Height Thresholds

A height threshold is a notional building height above ground level. It establishes the approximate position where the design issues of significance in one design context begin to change to those of another. Threshold heights are intended to signal a transition in design issues and have no particular significance in their own right



Williams NOE 498

Stroud NOE 420-421.

Leighton NOE 40.

[210] Mr Barratt-Boyes says this:

*The Central Area Guidelines suggest that neighbourhood context issues apply to those parts of buildings between the first and second height thresholds of around 8 to 15 storeys. Because this site is at a transition between two low city thresholds and because the existing 3 storeys of the John Chambers Building form a conceptual podium height, this assessment will take the first height threshold as the parapet of that building. The Guidelines do acknowledge that the height threshold is a notional building height and "intended to signal a transition in design issues."*¹⁵⁸

[211] Here the height threshold description signals a transition in design issues of significance – in this case between the ultra modern glass tower of 41.3 metres and the solid bull nose John Chambers building at 18 metres. What Guideline 4.1 also refers to if we understand Mr Leighton correctly, is that the provision has a number of height thresholds which seek to avoid buildings which go straight up from the street level and do not have a distinguished base, middle and top. This trap the Watermark avoids most successfully¹⁵⁹.

[212] Other than the waterfront buildings and the Duxton, Mr Williams did not identify any other special features or buildings of the neighbouring public environment on the waterfront or the Civic Centre Character Area that might be affected by the Watermark proposal – in spite of determining *it is these features, however, that are critical to a proper assessment of this site*¹⁶⁰.

[213] As to visual connections with the Civic Centre, Mr Stroud acknowledges that standing inside Civic Square and looking towards the Watermark site, other buildings are in the line of sight. He acknowledges therefore that from that perspective it is difficult to say there is a visual connection between the Civic Square open space and the Watermark site – which is what the Design Guide would require in a neighbourhood context¹⁶¹.



Barratt-Boyes EIC 12, para 13.2.
Leighton OE 23.
Williams EIC 10, para 2.36.
161 Stroud NOE 417–418.

[214] Viewed from the water, the Civic Centre is flanked by tall buildings. Rather than being a step down from High City to Low City, the Civic Centre seems to us to be more of an oasis of lower buildings in the High City. It is that nature that sets the Civic Centre apart and could be considered a micro set of the general urban form. The Watermark proposal emphasises and contributes to this aspect of the urban form.

By Guiding the Design of New Buildings

- Heritage Values

[215] We begin by looking at the John Chambers building. That 1918 building is listed as a heritage building in the District Plan. It is recorded in the council's documents that John Chambers and Son was a major engineering firm which began to put its roots down in Wellington in 1915. It is recorded as making a considerable contribution to the development of industry, particularly gold extraction. In the initial years, the building was used as a warehouse, workshop and offices¹⁶². The statement is made in a council report that:

This building has some historical significance for its association with that firm. The construction of what was essentially an industrial building on the periphery of Wellington's commercial zone was a statement of considerable confidence by the company.

The design is the work of an important architectural practice, Hoggard, Prouse & Gummer, and was stylistically advanced for its time, having features such as long horizontal bands of windows that are typical of the Moderne style of the 1930s. The plain, bold exterior, and the wedge-shaped form on a busy city thoroughfare, give the building high townscape value. It is technically interesting for its concrete construction, and is relatively authentic in its structure and exterior treatment. It is a good example of adaptation of a period building of industrial character, in this case to a modern cinema complex, giving it amenity value and relevance in the cultural scene of the city today. ...



Appendix 1. Statement of [the Building's Heritage] Significance. Report to Resource Hearings Committee of the Wellington City Council, pages 7-8.

The refurbishment of the building by Athfield Architects for the Archive won a regional architecture award in 1995.

The John Chambers Building is remarkably modern in its design, despite having been commissioned and built at the time of the First World War. It occupies a dramatic and highly visible wedge-shaped site between Cable Street and Jervois Quay, its Jervois Quay elevation following the curve of the road. The building has faint Classical overtones, particularly in the bracketed cornice at first floor level supported by plain pilasters, and in the detailing of the Jervois Quay entrance. The first and second floors however, are stripped clean of any embellishment, and are dominated by strong horizontal bands of steel-framed windows that give an impression of the Moderne style of the 1930s. This impression is strengthened by the curve of the façade around the nose of the building. Horizontality is emphasised by the continuous first floor cornice and the plain parapet at roof level, each running around both street elevations. The townscape value of the building is high because of its strong form on a busy city road. Although a no-nonsense industrial building, originally used for warehousing, there is enough interest in the detail and in the idiosyncratic service rooms on the roof to attract attention. It is one of a group of important period buildings, including the former Free Ambulance Building, Odlins and Shed 22 on the opposite side of Cable Street and, more distantly, Manthel Motors in Taranaki Street. It provides an anchoring role to this disparate heritage grouping.

There is technical value in the all-concrete construction of the building, and a reasonable level of authenticity, certainly in the exterior form. The interior has been modified in an intelligent way to provide for the dramatically different use of cinema. ...

[216] The respect paid to the John Chambers building by stepping to its nose is a significant aspect of the proposal¹⁶³. By increasing the height of the building at the southeast (Taranaki Street) end of the site, the architect has been able to avoid either demolition of the



John Chambers building or otherwise compromising heritage values by constructing additional floors over it.

[217] In terms of heritage issues, retaining the existing prow of the John Chambers building meets the Design Guide 7.0 G1 *Guidelines for Prominent Sites*, namely *Buildings at the Termination of Street Viewshafts*. Retaining the strong feature of the prow means it continues to be highly visible at the corner of Cable Street. The retention of its strong heritage form appears to emphasise this is a prominent site¹⁶⁴.

[218] Mr Leighton cites the evidence of Jeremy Salmond, conservation architect, who in the AEE for the proposal, cites it *as an instance of accomplished adaptation and integration of a fine heritage building within a new development of distinctive architectural character*¹⁶⁵. In addition, Ms Fill, heritage advisor for the council, assessed it in the form we heard at the hearing (with the removal of one floor) and approved it¹⁶⁶. The appellant produced no heritage expert to refute Mr Salmond's conclusion or Ms Fill's and we are entitled therefore to rely on them. It is the integration of the John Chambers building with the new proposal that the experts acknowledged is the most important issue to "get right"¹⁶⁷ and in our view the architects have achieved this in a way that is as innovative as it is commendable.

- Integration (Heritage Context)

[219] With respect to the significant aspects of the John Chambers building which the developer is intent on preserving through its proposal, Mr Barratt-Boyes says this:

Our approach has been to integrate new and old. We do not subscribe to the approach of 'mimicking' the past but prefer to pursue designing contemporary buildings 'contrast' and at the same time compliment the existing heritage values.

The design elements in this instance include, therefore:

- *New building integrates with base of heritage building parapet line*



¹⁶⁴ Central Area Design Guide, page 18. Leighton NOE 21-22.

¹⁶⁵ Leighton EIC page 12, para 7.5; NOE 16.

¹⁶⁶ Stroud NOE 383-4.

¹⁶⁷ Leighton NOE 58.

- *New building rakes back from historic nose*
- *New building interlocks with heritage building rather than abuts*
- *New building continues strong horizontal nature of façade*
- *Respectful re-use of existing openings in façade where buildings overlap*
- *Existing openings at ground floor retained and respected*
- *Reinstatement of ground floor openings*
- *Integration of colours between new buildings and heritage building*
- *Heritage lobby and entranceway remains entirely intact*¹⁶⁸

[220] From examining the concept, we concluded the Watermark project is successful in its own heritage context terms for a number of reasons.

[221] Whilst the John Chambers building itself is the adjacent frontage to the waterfront buildings, it is reasonable to point out at this stage that the Design Guide does not contain a requirement to replicate existing patterns or design (the point made by Mr Barratt-Boyes), and nor does it necessarily favour replicating the appearance of existing street frontages¹⁶⁹. What is proposed also avoids an elongated plan shape for this unusually large building which the Design Guide does not favour for sites such as this¹⁷⁰.

[222] The design of the Watermark also retains the anchoring role the current John Chambers building provides the group of period buildings on the waterfront (the street) – in various ways:

- the heritage linkage is provided by continuing the cornice line of the building¹⁷¹;
- through the overall retention of the John Chambers building with the setback from the heritage prow;
- with the exterior of that building staying largely as is, where is, it remains a highly visible, impressive, solid structure, providing an effective counterpoint to the disparate group of heritage buildings adjacent;



¹⁶⁸ Barratt-Boyes EIC 7, para 8.2.

¹⁶⁹ Design Guide 4.0 Guidelines for Design Contexts G4 Guidelines for Street Context, page 12, and 3.0 General Guidelines Design Coherence, page 7. Williams NOE 474.

¹⁷⁰ Design Guide 4.0 Guidelines for Building Bulk G5 Elongated Plan Buildings, page 21.

¹⁷¹ Williams NOE 11.

- the solid base form and strong horizontal bands of steel-framed windows on the existing building will be echoed in form, if not substance in the building on the Wakefield Markets site by the horizontal louvres covering the carparking floors of the integrated building (at the John Chambers level, the Watermark “locks in” with the new structure);
- although some of the windows on the Chambers building will be replaced, we do not consider this is a significant impact on the building’s heritage values and nor did any of the appellant’s witnesses suggest it would.

[223] Further, Mr Williams acknowledges that the architectural modules of Watermark have similarities with the Odlins Group (of the 3 heritage buildings) at least to plinth level, and thereby have a sense of scale with each other. He accepts too that the openings in the proposed building above the plinth have a human scale, although he argues that will be eroded by size and bulk beyond the 7th (27 metre) floor¹⁷². As submitted by counsel for the applicant, this argument appears to cut across the Design Guide’s prescription for comparing relative building scale. The guide provides that relative scale can be achieved by one of two means: buildings can have the same dimensions or, where they are of different stature, they can remain in scale by having similar architectural modules. Mr Williams reads into the guide a dimensional limitation on the comparison of relative architectural modules which does not seem to exist. We accept if the guide had intended such a limitation, it would have said as much, or issued a warning as to the extent that architectural modules could be used to compare scale. We particularly paid attention to Photomontage P-123 **View of Site from Point M Taranaki Wharf** which we consider carefully reflects through its depiction of people and buildings the acceptable human scale of the Watermark .

[224] In this case, the building adjoins the existing John Chambers building on the block as recommended. The Watermark establishes dimensional continuity with that building, and its neighbours, and the designs aligns itself to the block pattern in the surrounding area. There was no dispute of these assessments. Thus the design of the Watermark does not overwhelm the built scale of its heritage surroundings.



[225] Finally, it is significant too that Mr Williams concedes that his concern about the front heritage values being affected by the Watermark development is not shared by the

various stakeholders in and around Taranaki Wharf, namely Waterfront Watch, the developer of the three heritage buildings opposite the site, the people of Wellington at large, or the tourism industry¹⁷³. In the Court's experience, the waterfront is a flash point for public concern if development is perceived to be at odds with heritage or open space values. Public opinion has in the past been rapidly mobilised in this area. That it has not occurred in this instance, is a remarkable achievement for the developer and perhaps reflects the 30 – 36 months the architects have put into the project.

- Scale of Building

[226] Mr Williams also acknowledges that people moving in and around the base of the building on Cable Street may have a sense that the Watermark base at street level is in scale with buildings across Cable Street up to the level of the John Chambers building. But, he adds, *it is not until the onlooker pulls back and looks further up to the Watermark building that a sense of loss of scale would be evident at the tower level*¹⁷⁴. Mr Leighton however puts this concern to rest. He:

- considers the details the building provides make it pedestrian friendly – it will not overwhelm the adjacent pedestrian area;
- agrees the pedestrian's eye will be drawn more to the lower (heritage) cornice line than the tower above;
- considers nevertheless the wide verandahs on the tower will mitigate any perceived adverse effects of scale;
- makes the point that the glass/colour transparency of the tower with its high proportion of glazing on the waterfront frontage serves not to overwhelm what is around it – referring to P-121 **View of Site from Waterfront Promenade**¹⁷⁵

all of which we agree with.

[227] All such factors contribute to our conclusion that the scale of the building does not detract from the heritage values of Cable Street and the waterfront.



Bulk of Building

[228] Mr Williams does not address the question of the bulk of the Watermark development in any detail maintaining just that it is overbearing¹⁷⁶. That judgement is not sustained by careful scrutiny. From the evidence of Messrs Barratt-Boyes and Leighton, we conclude as follows:

- as with height, the architects have consciously taken the bulk and manipulated it to the Taranaki Street end of the site where the road reserves are widest and where the visual impact as a matter of fact will be least, rather than simply following the 27 metre height limit¹⁷⁷;
- in Section 5.0 G1 *Guidelines for Building Bulk*, the Design Guide identifies contrasting colours and patterns are seen as a useful tool resulting to provide visual interest. The actual subtle building colours and building elements we were introduced to by Mr Barratt-Boyes will provide strong shadow lines and divide the building up into a series of smaller blocks/components. This will reduce the visual bulk impact of the building and this is also recognised in G2 *Sub-division of Frontages*. The effect of collectively dividing the site into two frontages based on the scale of the John Chambers building effectively creates two blocks as opposed to one, convincingly reduces the bulk and mass of the proposal and consequently reduces the building's visual impact¹⁷⁸;
- as noted earlier also, the strong base height of the John Chambers building relates clearly to the intermediate height between the Odlins building, Shed 22 and the Free Ambulance building averaged out;
- meanwhile the properties of the new building at base level are similar to those of the John Chambers and also respect the heritage buildings on the waterfront – common architectural materials, elements and details; a combination of masonry and solid walls¹⁷⁹; they produce a sound design precedent for future street frontages¹⁸⁰.



Williams EIC, para 2.36.
Leighton NOE 8.

[229] Mr Leighton also points out on this issue of building bulk G3 *Building Form*, that that guideline encourages architects to divide the building bulk in the collection of sub-volumes which he believes the architect has done in this case successfully. And where this is quite an issue – where a large building adjoins those in a smaller scale as in this case (such as John Chambers) and the larger primary volume of the new development – two compositional techniques need to be used to modify this bulk:

- there needs to be a secondary foreground volume to help obscure the primary building volume when viewed from neighbouring public spaces;
- transitional volumes need to be introduced between smaller existing buildings and the larger, primary volume of the new development;

and the Design Guide's diagrams effectively illustrate this. They ask for a stepping between smaller existing buildings and newer, larger, taller buildings.

[230] In this case, the foreground volume will be the setback of the John Chambers building itself, the setback of the various levels, and as Mr Leighton suggests from further afield, the Odlins building provides some of the secondary foreground milieu¹⁸¹.

[231] As to Design Guide 5.0 *Guidelines for Building Bulk G4 Adding to the Existing Built Form* this issue introduces transitional volumes between smaller existing buildings and the larger. Mr Leighton says:

*Where large new buildings are set in part or all of the city block, the buildings should be positioned to adjoin existing buildings, establish dimensional continuity and align itself to the block pattern.*¹⁸²

[232] In this case, the building adjoins the existing John Chambers building on the block as recommended. The Watermark establishes dimensional continuity with that building, and its neighbours, and the design aligns itself to the block pattern in the surrounding area. There was no dispute of these assessments. Thus the design of the Watermark does not overwhelm the built scale of its heritage surroundings.



Finding

[233] In terms of Policy 12.2.3.2 therefore we do not find that the intended development is contrary to the spirit and intent of enhancing the public environment of the Central Area by guiding the design of new building development.

[234] . The end result is that:

- the District Plan's objective – to maintain and enhance the physical character, townscape and streetscape of the Central Area is achieved;
- the Watermark has significant design qualities which create a positive relationship with the public spaces of the Central Area.



• ***Integrity of the Plan/Precedent Effect***

[235] This issue may be considered within the context of s.104(1)(b)(iv) or s.104D(1)(b). We intend to address in the context of the latter. The appellant maintains:

- the proposal provides an unfortunate precedent for future developments in the area;
- there is high public concern about pressure from developments to go through the height planes – if this proposal is allowed public confidence in the plan will be seriously eroded;
- the risk of the integrity of the District Plan being called in question is immense as a result of this proposal being consented to: it is not a development that can be allowed in the Central Area without raising questions as to what is the point of having a plan when developers can ignore it.

[236] The leading authority on the subject of precedent (in the sense of like cases being treated alike) is *Dye v Auckland Regional Council*¹⁸³. We will not repeat what was said in that case, but will note for present purposes that it is sometimes appropriate to consider the concept of precedent. We therefore consider “precedent” in the sense that the granting of one consent may have an influence on how another application should be dealt with.

[237] The process of evaluation as applied by the Court in *Whistler v Rodney District Council*¹⁸⁴ involves two questions:

- is it a relevant consideration to consider public confidence in the administration of the plan?
- does the application have any unusual qualities which take it outside the generality of cases?

[238] And in the context of this particular case, where heights are such an issue, the answer to both is yes.



[239] The High Court has recently helpfully summarised the relationship between precedent, plan integrity and 'unusual qualities':

The Resource Management Act itself makes no reference to the integrity of planning instruments. Neither does it refer to coherence, public confidence in the administration of the district plan or precedent. Those are all concepts which have been supplied by Court decisions endeavouring to articulate a principled approach to the consideration of District Plan objectives and policies where under s.104(1)(d) or s.105(2A)(b) and their predecessors. No doubt the concepts are useful for that purpose but their absence from the statute strongly suggests that their application in any given case is not mandatory. In my view, a reasoned decision which held that a particular non-complying activity proposal was not contrary to District Plan objectives and policies could not be criticised for legal error simply on the basis that it had omitted reference to District Plan coherence, integrity, public confidence in the plan's administration, or even precedent. Consequently, I am not prepared to hold that the Environment Court erred in any way by fusing its consideration of plan integrity and precedent (failing to separately consider each doctrine) as the council alleges. Neither do I think that it was obliged to make a specific finding on plan integrity, or as to whether public confidence in the administration of the relevant planning instruments would be shaken or challenged, which are the subject of separate questions raised by the appeal under this heading.

No doubt the Environment Court will continue to advert in appropriate cases to the concepts of the integrity and coherence of the District Plan, public confidence in its consistent administration, and precedent. I do not suggest that there is any error in taking that course. I do not think, however, that the statute requires those matters to be referred to and the present case is one in which that course did not need to be followed.



Successive amendments to the Resource Management Act mean that the particular statutory provisions to which the Tribunal was there referring [in Batchelor v Tauranga DC] are no longer accurate. But the essence of the approach described remained valid down to and including the amendments enacted by the Resource Management Amendment Act 1997 (the form of the statute relevant to this appeal).

*It is to be observed that on this approach, it is where the circumstances of a particular case lack any evident unusual quality that granting consent may give rise to concerns about public confidence in the consistent application of the rules in the district plan. Conversely, where the circumstances of the particular case can be seen as having some unusual quality, the constraints of what is now s105(2A)(b) may be overcome. In an appropriate case the Environment Court can decide that there are aspects of a proposal which take it outside the generality of cases, so that the case may be seen as exceptional and if it can be said that the proposal is not contrary to the objectives and policies of the district plan, it will not be necessary also to consider and make findings, on the issues of public confidence in the administration of the district plan and district plan integrity. Concerns about precedent, about coherence, about like cases being treated alike are all legitimate matters able to be taken into account, as the recent decision of Baragwanath J in *Murphy v Rodney District Council* [2004] 3 NZLR 421 again emphasises. But if a case is truly exceptional, and can properly be said to be not contrary to the objectives and policies of the district plan, such concerns may be mitigated, may not even exist.¹⁸⁵*

[240] Cooper J held that it is not strictly necessary that an application for a non-complying activity have unusual qualities, or aspects. If these aspects exist however, they may remove some of the concerns that the appellant has expressed.

[241] As it happens, we have found that this case does possess sufficient unusual qualities to remove it from the ordinary run of cases. Mr Leighton, in particular for the applicant,



Rodney District Council v Gould & Gillain (11/10/04, Cooper J, CIV 2003-484-2182), paras [199] – [100],

[102]

expects there would have to be something significantly different for a developer to exceed the height plane in this area¹⁸⁶. The fact that the Watermark site:

- is excluded from any existing character area or future character area such as the land opposite Te Papa;
- is a triangular island site;
- contains a significant heritage building which is able to be enhanced by keeping the bulk of the new structure away from its prow;
- has a backdrop of a permissible 43.8 metre height block of buildings and discretionary (48 metres) in the same neighbourhood;
- is at the confluence of several major roads;
- interfaces with three major heritage buildings on the waterfront;
- provides a lack of spike into general urban form (because of the neighbouring high Low City/High City);

all contribute to making it a distinctive site in the context of the Central Area.

[242] Further, as Mr Baily points out, the Watermark site stands lower than the high Low City background of 43.8 metres (and rising) whereas the Cable Street properties to the east stand against a background of Low City at 27 metres. Any building of greater height than 27 metres at these eastern sites on Cable Street would be out of step with the sloping down of building heights from High to Low City and the sloping down of Te Aro.

[243] The appellant argues that the Michael Fowler carpark site is a triangular one and the council would be hard pressed to turn down an application similar to this on that site. We suggest on its facts the Michael Fowler carpark site is quite different from Watermark:

- the entire site is located within the Civic Centre Character area;
- it contains an iconic stand alone landmark building directly abutting (the Michael Fowler Centre) – not one that is to be physically integrated into a proposal;
- a building on this site, would, in terms of the shading effects on the Duxton, have a quite different impact on that building than the Watermark proposal;
- it is not on an island site;



- it may have quite different impacts on the three heritage waterfront buildings (particularly Odlins) from this proposal;
- it is not isolated from other buildings by streets.

[244] Mr Williams considers the Watermark tower height will have disastrous consequences for the properties on Cable Street to the east of Taranaki Street and Te Aro. But:

- those sites are part of a Te Aro grid pattern where buildings generally abut one another;
- the proximity of Te Papa calls for a different design¹⁸⁷;
- those areas are not bounded on three sides with streets and are without a High City/Low City backdrop.

Determination

[245] We conclude that the appellant's concerns on this issue are without substantial foundation:

- the development and site is significantly different for it not to cause a precedent;
- it is not contrary to the objectives and policies of the plan;
- it will not damage the integrity of the plan.



Actual and Potential Effects: Section 104(1)(a)

• **Adverse Effects**

Alternative Locations or Methods

[246] The appellant considers a relevant principle under s.104(1)(a) is that a consent authority may take into account possible alternative locations or methods for undertaking a non-complying activity: see for example *Queenstown-Lakes District Council v Lakes District Rural Land Owners Soc Inc*. This was a decision of the High Court on a number of references. The rule considered in that appeal required an “alternative locations and methods approach”¹⁸⁸. In this case, the rules of the District Plan do not require an alternative locations or methods approach. The Fourth Schedule (Assessment of effects on the environment) requires applicants, if their proposed activity is likely to result in any significant adverse effect, to describe possible alternative locations or methods – that will be a question of fact to be established. Section 105 requires a consent authority only to have regard to alternative methods for discharge when considering some applications for discharge or coastal permits. So, there is nothing in s104, s104D or s105 or elsewhere in the RMA, which would require the Court to consider alternative methods or locations for *this* activity as a matter of course.

Permitted Baseline or a “Comparison” Test

[247] The appellant also submitted that an applicant is not entitled to approval just because its proposal has no adverse effects. The other considerations of s.104 must be taken into account. In particular, consideration will no doubt be given to the consequences of granting approval to proposals which exceed the height control but in respect of which it can be established that credible complying activity would have the same effects: *Smith Chilcott Ltd v Martinez and Miguel* [2001] NZRMA 108. We cannot disagree with such a submission. It is our duty to consider all relevant statutory considerations. However, in *Smith Chilcott* the major question to be answered was one of the appropriate permitted baseline activity.



The appellant, however, submitted that this is a case where one has to seriously question the viability of using the permitted baseline test. Mr Taylor suggests instead that a

¹⁸⁸ *Queenstown Lakes District Council v Lakes District Rural Landowners Society Inc* [2002] NZRMA 81, 93.

more appropriate approach is to compare the proposal with a sensitively constructed and complying building and ask the question whether there is a compelling need, which justifies the consent sought.¹⁸⁹ Mr Taylor similarly submitted that the real question was whether a credible complying proposal could also provide the same or similar benefits. He suggests that if the same or similar benefits could be provided with a complying building then any benefits that a non-complying proposal provides should be discounted¹⁹⁰.

[249] The provisions of the RMA that allow us to consider a comparison of the proposal with a complying (as in permitted) activity are to be found in s.104(2) and s.104D(2). They allow us to disregard an adverse effect of the activity on the environment, if the plan permits an activity with that effect. Mr Taylor notes that use of the permitted baseline comparison is no longer mandatory.

[250] We consider Mr Taylor's submission that we should use a new "comparison" test is misguided. First, we acknowledge that some balancing must be done in the exercise of our discretion, having regard to the principles in Part 2. We make such a judgement in the exercise of our discretion later in the decision. Secondly, the RMA allows us to compare only the adverse effects of an activity over and above such effects created by a permitted activity. It does not require or allow us to compare the benefits claimed by an applicant with the benefits that might be achieved by a permitted activity, and to deny the applicant resource consent because those benefits could be achieved by a complying building. We will weigh the adverse effects and claimed benefits in the exercise of our discretion. Mr Taylor's "comparison" test is rejected.

[251] As to complying alternatives, the appellant submitted that a complying alternative (such as Mr Williams' Exhibit 4) would secure all the heritage aspects of the John Chambers buildings without having to breach the height limits of the District Plan. Mr Barratt-Boyes accepted in cross-examination that a building with a similar ground floor area could be achieved with a complying proposal which also protected the heritage features of the building and in particular the distinctive lift tower¹⁹¹.



[252] As stated, there are no tests in s.104 or more importantly in this case s.105, which require the Court to consider whether the same or similar benefits could be achieved with a credible complying building. There is also nothing in the RMA that suggests a developer on this site has to provide an absolute need to breach the height limit¹⁹². We have carefully considered the complying alternatives the appellant raised in evidence. However, we consider in this case that there is no useful permitted or complying building that we can sensibly compare this activity with. As the applicant notes, there is effectively no permitted baseline because the District Plan does not permit new building in the Central Area. All new building is controlled and s.104(2) is confined to effects from activities that a plan permits. However, the applicant acknowledges that the plan, in effect, permits any height related effects from a building up to 27 metres high. Mr Gordon suggests it is useful to compare the proposed height effects against the 27 metre height. We have done this throughout the decision and found them on such issues as sunlight/shading and views to have a greater impact than the Watermark would.

[253] We put Mr Taylor's arguments to one side.

- *Effects on the Duxton's Amenities: Views*

[254] Despite not being part of the specific amenities referred to in the policies which support Objective 12.2.2, the appellant still considered there were adverse effects from the proposal on the amenity of the Duxton Hotel and, in particular, from the hotel's views. The term Amenity values is defined in s.2 RMA as meaning:

those natural or physical qualities and characteristics of an area which contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.

[255] In *Foot v Wellington City Council*, the Court noted that while there is no legal right to a particular private view, it is a legitimate aspect of the amenity value to be evaluated when setting height controls in the district plan¹⁹³. That was a reference appeal and not a resource consent so it is not directly applicable to this case.



Leighton v DE 44. Mr Leighton however suggests he would like to see strong justification on behalf of the developer and we have addressed that.

¹⁹³ Environment Court, W 73/1998, 2 September 1998, para 125.

[256] The Duxton did not call expert evidence on the effects of the proposal either on views or if the proposal went ahead the resulting effects of the building on its commercial operation. Mr Stroud however gave opinion evidence that if the existing visual amenity no longer exists, the hotel may not be so popular to go to. This would, he considered, adversely affect the hotel on a permanent basis¹⁹⁴.

[257] Nevertheless, Mr Boffa gave evidence for the applicant on the issue of views. He identifies the significant change in the nature and content of views he would expect from the new proposal and drew conclusions as to its overall effect relative to the various height thresholds possible. In particular, he provided a number of computer generated visual simulations and photographs taken from various locations within the hotel that would be most likely to be affected. The locations were carefully identified after discussions with Mr Simon Jamieson, Regional General Manager for the Duxton Hotel Group, whom we met on our site visit to the hotel.

Evaluation

[258] Mr Stroud's statement about the negative economic effect on the Duxton's views appeared more of a hypothesis than anything else. In particular, the Duxton did not undertake any study, economic or otherwise to substantiate Mr Stroud's opinion. And as submitted by the applicant, the District Plan's mechanisms for the protection of views in the Central Area is confined to public places with no regard for private views. We accept, without plan provisions to the contrary, that this is a reasonable planning approach to a collection of Central Area buildings between 15 – 90 metres tall within a relatively confined space – particularly when the District Plan emphasises containment of the City.

[259] We also note in this context that the Planning/Urban Design Study undertaken by Urban Perspectives Ltd¹⁹⁵ under the heading *Building Height Implications* identifies the relevant amenities as *sun exposure, wind, daylight* – not views.

[260] In the event, Mr Boffa concluded that from all viewpoints, on the ground floor, levels 3, 7 and 9, the change in view from the existing situation to a building up to the permitted 27



Stroud NGE 426:

metre height level across both the John Chambers and Wakefield Market buildings would be significant. The difference between the permitted and/or discretionary height levels and the proposed Watermark building is similar in terms of the bulk of the built form and the extent of view retained. The difference, however, is that the Watermark development provides greater opportunity for more expansive side views where activity and interest is evident. To achieve this there is usually a loss of sky view¹⁹⁶. The views from the non-complying height proposal most likely to be affected however, are those from level 9 (the uppermost level) and possibly level 8 at the eastern end of the hotel. He considered that the Watermark proposal would have a more than minor effect on the eastern locations of level 9 although the panoramic view of the waterfront currently enjoyed from the public rooms would not be entirely lost from that vantage point.

[261] The Court was taken on an extended site visit of the Duxton by Mr Jamieson. The Duxton is a beautifully appointed hotel with an interior in amenity terms which demonstrates its high status in the hierarchy of Wellington hotels. That site visit confirmed the evidence that the most likely potential effects on visitor views would be from rooms on level 9 and in particular the public rooms.

[262] The greatest effect will be in terms of the Club Lounge which, as Mr Jamieson pointed out on our site visit, is one of the most popular facilities in the hotel with currently a beautiful expansive view of the waterfront. That view will be truncated to the east. But Mr Boffa's evidence (to which there was no countering expert opinion) was that while he considered the effect of the Watermark on the overall view to be more than minor, taking into account the expansiveness and breadth of view along the width of the lounge frontage, he did not consider the effect to be adverse¹⁹⁷. The northern views will be left intact because the building will remain at its current height and we note from Mr Baily's evidence these views will be protected by a covenant with the leaseholder of the Free Ambulance building and that of Odlins and that those leases are for 100 years.



[263] It was our conclusion that in spite of the significant change the Watermark will create on some Duxton views there are sufficient mitigating factors to prevent them becoming a major adverse change:

- the proposed Watermark building form presents a more visually attractive urban form compared with what would result from a building that conforms to 27 metres even limiting the development at about the lift tower on the John Chambers building – it would still be bulky and blockish¹⁹⁸;
- some viewshafts on level 3 would be blocked entirely by a permitted building while others would be retained and to some degree enhanced by the Watermark development;
- the proposed Watermark building is a taller structure with a stepped form, and consequently occupies less of the background view elements; Mr Boffa sees this as acceptable in terms of the overall context of the wider panoramic view of the city buildings and the waterfront, and so do we;
- the transient nature of hotel guests is something we took into account and the fact that by altering one's position relative to the window view, the view varies – it is not a constant – a point made by Mr Boffa¹⁹⁹;
- the heritage profiles of the John Chambers and Odlins buildings and hence their heritage quality will remain a constant in the viewshafts for those Duxton guests who may appreciate such amenities;
- even at 10.00 am which was approximately the time of the Court's site visit, the roads between the Duxton and the John Chambers building were filled with pedestrians and cars; other activities and planting will interpose in the future from the Watermark at ground level regardless of height limits and affect the lower level Duxton views²⁰⁰;
- in addition, it is proposed there will be some landscaping amelioration of the lower building levels with the planting of Pohutukawa adding to what is there;
- the fine architectural details or articulation of the Watermark tower building with its light colours and extensive use of glass make it very attractive to look at²⁰¹.



¹⁹⁸ Boffa Photomontages; Leighton EIC 9, para 6.4.

¹⁹⁹ Boffa EIC 12, para 8.13.

²⁰⁰ Ibid NOE 89.

²⁰¹ Ibid NOE 432.

[264] Mr Barratt-Boyes describes the building's "personality" (and building scale) as arising from the level of articulation provided. On all facades the apartment levels are set back from the base of the structure with the tower appearing to float above the base. The building will thus not present a blank impermeable face to the Duxton. The applicant's detailed evidence on this issue, which we prefer, is that there is a level of detail which gives richness, character to the proposal and contributes to breaking down the scale and bulk.

[265] It is fair to mention that counsel for the appellant pressed Mr Boffa to accept that building a complying building to 27 metres at least to the lift tower on the John Chambers building would have less effect on the Duxton rather than the non-complying one. Mr Boffa however reiterated that such a proposition would not result in a greatly different impact on the Duxton:

*It would be different in so far a piece [of the view] is left out but you would still lose the essential ingredients of the hills/harbour interface. Everything in there is lost with a 27 metre building. That's – that's the view. Not whether you see a bit more of the Odlin's roof.*²⁰²

[266] Mr Boffa clearly indicated what he meant with his panoramic montage simulations put in evidence, which were persuasive. Figure 12 from his evidence shows a 27 metre permitted height and additional 1 storey discretionary building as well as the present proposal. This is a worst case scenario of all the views, and the non-complying height of the Watermark still allows for disclosure of a greater expanse of sea/land/sky interface.

[267] Thus, we concluded, the situation from the non-complying proposal is not as adverse as it will be by the 27 metre plus 1 floor, even if it stopped short at the lift tower.

[268] Counsel for the appellant submits that what Mr Boffa considered in his evidence in chief was that the effect on the Duxton's level 9 views would be more than minor when compared to a permitted height building. But this is not just what Mr Boffa said. It is worth



quoting him in context because what in issue in this case is not the possibility of a permitted height building:

While I favour and support the design proposed for the Watermark development and believe it to be more appropriate in its urban context, the visual impact from the eastern section of the 9th floor will be more than minor, compared with a permitted height building.

However, in my opinion, the Watermark proposal would have less impact on views from this part of the Hotel than would a discretionary height building. If faced with a discretionary height building on the Watermark site, Council's discretion would be limited to the criteria listed at 13.3.2.9 of the Plan: which do not include any ability to have regard to effects on private views. (The only view covered in those criteria being the panoramic view from the top of the Cable Car.) I therefore consider that the visual outcome secured by the Watermark proposal, even in respect of views on Level 9 at the eastern end of the Duxton, would be preferable to the visual outcome that might be produced by a discretionary height building on the site, over which no control might be exercised to ensure such a considered and sensitive building form [as this].²⁰³

[269] In other words, Mr Boffa is stating the effect of the Watermark development on the 9th floor when compared with a discretionary height building is no more than minor. And that even a discretionary building could not be controlled in the way this is. Thus the most significant change to the Duxton views is between what exists now and what the permitted change in height is for the site. The preferred outcome is to have the building in the form proposed²⁰⁴.

[270] Mr Boffa's conclusion is consequently ours:

... I consider that even a permitted height development on the Watermark site would have more widespread effect on views than the Watermark would, on account of its taller raked form. The architects' sensitive and appropriate



Boffa EIC 16-17, paras 8.28-8.29.

Boffa EIC 17, para 86. Boffa affirmed.

*consideration of building form results in a proposal that manages to mitigate, within the design, the potentially greater effects on views in general, and in particular the views from the Duxton Hotel.*²⁰⁵

[271] Potentially therefore, we consider that the effect on the Duxton's overall views from the Watermark tower will not be significantly adverse.

- *Other Effects*

[272] We have detailed the actual and potential effects on:

- parking;
- sunlight/access;
- urban form;

in the objectives and policies under s.104. There we found them not to be significant also.



Other Plan Provisions: Section 104(1)(b)(iv)

• ***Objectives and Policies***

[273] In addition to the objectives and policies already mentioned under s.104D, the others that are relevant and not challenged by the appellant include:

- efficient use and development (Objective 12.2.1);
- wind (Policy 12.2.2.4);
- traffic (Policy 12.2.2.1.1);
- views and vistas (Policy 12.2.2.6 and 7);
- verandahs (Policy 12.2.2.10);
- streetscape (Policy 12.2.3.4);
- access to public spaces (Policy 12.2.9.5);
- personal safety and security (Policy 12.2.10.1);
- heritage (Policy 20.2.1.2)²⁰⁶.

• ***Design Guide Provisions***

[274] Mr Leighton gave a detailed analysis of how the proposal met the finer provisions of the Design Guide and there was no challenge to those either²⁰⁷.



Policy EIC 15, para 74: oral interpolation.
Leighton EIC 17-21.

Other Matters: Section 104(1)(c)

• ***Urban Design Perspectives Study***

[275] The *Wakefield/Cable Street Planning/Urban Design Study on Building Height* by Urban Perspectives (2002) is a document which we may take into account in assessing the proposal. It is relevant to the extent that it is the first report which relates to height issues in the Central City. The study was headed by Ms D Popova, a consultant urban designer well known in Wellington, and while it did not set height limits for the area it made various suggestions on how the issues it was required to address by the council could be accommodated.

[276] We were interested in the study to assess what aspects may be reflected in the District Plan and to assess the Watermark proposal as against some of the study's provisions. It appears to provide a more detailed explanation as at 2002 of the background to the council's thinking in terms of its urban design strategy for the Central Area.

[277] The study relates to four blocks between Cable and Wakefield Streets which were previously part of the Lambton Harbour Area, which in turn is part of the Central Area of the City, including the Watermark 'block'. All blocks are in private ownership and accommodate a variety of Central Area activities.

[278] In its Variation 22 decision, the council determined that the four blocks should not be dealt with as part of the waterfront, but recognised that they provide an important interface with that area. The council's brief to Urban Perspectives was to prepare a report assessing the need for a further change to the District Plan to:

- identify alternative height positions;
- address linkages between the study area and the waterfront, Courtney Place, and the central city;
- recommend planning/urban design provisions; and
- address consultation with affected property owners.



[279] The Urban Perspectives study points to a strong relationship the Wakefield/Cable Street area has to Te Papa, and to the waterfront. And in discussing Alternative Height Options, the study identifies Option 1, a "Cautious Approach" (22.8 metres which is close to current building heights), Option 2 "The Stepped Down Approach" (a stepping height limit to be achieved within the area itself), Option 3 "The Developers Approach" (at 27 metres adopting a height limit that matches the Courtney Place area), and Option 4 a "Location – Specific Approach" (agreement to a proposal through consultation with the council as recommended by the council's study for the heights in the wider Te Aro area). The study records:

- Options 1 and 4 provide the highest degree of council discretion over the scale and quality of the new development²⁰⁸;
- all options (including Option 4) are seen as consistent with the "Low City" concept and would not compromise the District Plan's approach to Wellington's urban form²⁰⁹;
- the study area has a linear character and an east/west orientation²¹⁰;
- the John Chambers building is the only listed heritage building in the area²¹¹;
- the possibility to provide carparking for the waterfront as part of new mixed-use development is an issue, as is pedestrian linkage, and the retention of existing viewshafts²¹².

[280] Interestingly, in discussing "Development Opportunities", the study identifies:

- *Height per se, for the area as a whole, was not considered to be the main issue to stop/or encourage new development. Rather, the current 'land ownership' with a number of key sites subject to long-term leases, was identified as a key factor.*²¹³



and "Appropriate Activities" were seen as:

- *Mixed-use development with publicly accessible ground level activities was generally supported as appropriate and desirable for the area.*²¹⁴

[281] Even more significantly, under the heading "Key Objectives", 'Urban Form', the study records:

- *Any alternative height limits should be consistent with the present "High/Low City" concept of urban form. (Future height limits would not necessarily provide a stepped down height transition from Courtenay Place to the waterfront)*
- *Future height limits should recognise the special "interface" location of the study area along and in close proximity to the waterfront.*²¹⁵

[282] The evidence established the study was used to assist the council with the settlement of references to the District Plan by Casata Limited and Granadillon Limited in relation to building height on Cable and Wakefield Street sites east of Taranaki Street. The two appeals sought no more than 27 metres as a permitted building height. In discussing alternative height options, the Urban Perspectives report signalled as Option 3 *The Developers Approach* (27 metres above ground level) a height limit which matches that of the adjacent Courtney Place Area. The references were subsequently resolved by a Consent Order of the Court at the Option 3 height level. Thus those appeals were seeking no more than 27 metres as a permitted building height – the Urban Perspectives Report was not used by the council to drive down the aspirations of the referrers – *they got what they wanted*²¹⁶.

[283] Nevertheless, some of the contents of the study were also referred to by counsel and witnesses in this case. A focus was Option 4, a "*Location – Specific Approach*" noting that it related only to 8 Cable Street (the Wakefield Markets building) in respect of a specific proposal up to 43.8 metres. Ms Popova's treatment of the applicant's proposal at the time did



not include consideration of integration with the John Chambers building which was not then part of it. Nevertheless, Ms Popova made some observations which are apposite to this case:

The proposed public carparking has been proposed in response to current and future carparking demands for both the waterfront and Te Papa. The specific proposal (as indicated in concept design sketches attached to this report) does not directly impact either on the relevant viewshaft along Tory Street, or on the heritage fabric of the immediately adjacent John Chambers Building (The Film Archive). However, the proposal alters the frame of the relevant viewshaft and if constructed would be the highest building in the immediate vicinity. This in turn would attribute to it a certain sense of a "landmark" status. Because of its scale the proposal could raise issues of relative bulk and scale in relation to both Te Papa and the lower buildings immediately around and particularly those along the waterfront (Odlins, Shed 21 and the former Wellington Free Ambulance Building).

Nevertheless any assessment of such a proposal should take into account the proximity of the site to the adjacent 43.8 metre height area to the south-west, the presence of the spatial gap to the north created by the street width and adjacent open space, as well as the particular form and design appearance of the development.

On the other hand, the proposal, as a concept, could deliver certain public benefits (the main one being public carparking for the waterfront), which are worth exploring. Overall, while there is no sound urban design justification for increasing the height limit for this particular site, there is an opportunity for Council and the developer to work jointly and determine the acceptable parameters of a height limit in the context of a site-specific design brief.²¹⁷

[284] And in summary overview of all options, Ms Popova states in relation to Option 4:

Option 4 encourages a location-specific approach to managing building height, (with generally lower permitted height thresholds) as currently



*discussed for the wider Te Aro area. In terms of the study area this may mean that the current height limit is either retained or possibly lowered over the entire area or certain locations. This option would appear least certain from a developer's point of view but most flexible for achieving the optimum design quality for each specific development and its surrounding context.*²¹⁸

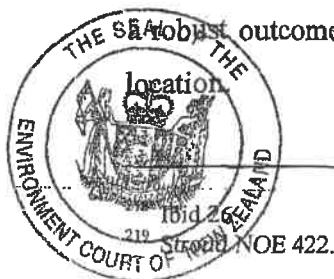
Evaluation

[285] As a general statement, Ms Popova's overview of Option 4 does not appear to closely reflect the text of her study of Option 4 as it favours retention of the 22 metre height limit or a possible lowering over the entire area or certain locations.

[286] We agree with Mr Stroud that in the long term, the issues of building heights in the Central Area should be reviewed²¹⁹. But, as Mr Stroud also identifies, concrete height restrictions cannot be placed on a growing city. And in our opinion, a long term review does not justify delaying a decision on the Watermark development to allow for such an occurrence if it meets the legal tests for a non-complying activity.

[287] The appellant's approach to this case would not include an *Option 4 site-height specific design brief* as identified in the study. In fact, as counsel for the applicant points out, the very process that Ms Popova refers to is that which this application has already undergone. A site specific-height design brief is the nature of a *non-complying* application for resource consent. It involves scrutiny by council officers and includes the opportunity for the public to express their views.

[288] In this case, we were advised submitters to the proposal were more concerned about effects on their businesses (36 stall holders in the Wakefield Markets building – as well as the Duxton Hotel) rather than impacts on the townscape, streetscape or public environment which now concern the appellant in this appeal. The process including the consultation referred to by Mr Bailly on the Watermark proposal appears to have been sufficiently inclusive to provide a robust outcome, in that only one appellant remains to a development in a highly sensitive location.



[289] Of significance in the context of this case, is the observation in the Urban Design Study that *future* as opposed to existing height limits would not necessarily provide a stepped down height transition towards the waterfront. Even so, any such height limits would be required to recognise the interface location of the waterfront and the sites in the study area. How this was to be achieved without a step down (or step up approach) is not discussed.

[290] In discussing Option 2 “The Stepped Down Approach”, there is a suggestion under the heading ‘Urban Form’ that the difference of one floor only, might not be able to expressly achieve *the intended stepping down effect*²²⁰. Elsewhere, the study mentions the then height provisions of 24 metres were intended to create an urban form “step down” to the waterfront by providing a height transition within the range of two storeys only²²¹. Ms Popova recommends Option 2 at 24 metres essentially allowing negotiation on additional heights beyond that – on a performance basis²²². For as well as recognising that future height limits would not necessarily provide a stepped down transition to the waterfront she identifies that it should be a key objective that:

*Future height limits should recognise the special interface location of the study area along and in close proximity to the waterfront.*²²³

And in her report she notes that all four recommended options would not be inconsistent with the Low City approach²²⁴.

[291] The highest height of Te Papa at 28 metres above ground level at the top of the street is seen as a reference for discretionary height limits for any future development adjoining that particular landmark site as opposed to permitted height limits. Then while acknowledging that currently the character of the collective built form of the study area is inconsistent and lacking a sense of coherence, the study records:

Urban Form – the intended urban form is based on the “Low City” Concept. Theoretically, the intended built form, if the permitted development potential is



Urban Perspectives Design Study 21 Chapter 7.3 Option 2, 21.
 Ibid Chapter 7.1 Current Height Limits – Overview, 18.
 Ibid Chapter 8 Recommendations, 28.
 Ibid Chapter 6.2 Key Objectives, 16.
 Ibid Chapter 7.5 Option 4, 25.

*fully utilised, would create well-defined city blocks with a height that has a stepping down effect from Te Aro to the waterfront.*²²⁵

[292] In discussion of Option 4, the study had commented that returning the existing or slightly lower height limit as a permitted baseline with a possibility for further increase, subject to particular design requirements, could be very close to achieving the objectives of a location-specific approach (eg set up a permitted baseline at 22.8 metres or alternatively 18.6 metres for the entire area)²²⁶.

[293] What do we make of all this? Firstly, the report:

- recognises the Watermark site is a prominent one;
- does not recognise the site-specific characteristics of the whole Watermark site because it only addressed 8 Cable Street which appears to be the only proposal put to the study group;
- accordingly did not consider the possibility that part of the building proposed might be taller and part lower²²⁷;
- in spite of considering "*contextual differences*", the study does not distinguish the Watermark site as being of a different size, shape and visibility and building separation (adjacent road reserve) width than the other three blocks considered;
- recognises that adjacent to the 8 Cable Street site is a 43.8 metre height area;
- does create uncertainty as to future height limits providing a stepped down height transition to the waterfront²²⁸;
- appears to encourage proposals which deliver a public benefit such as heritage retention and carparking for the waterfront;
- appears to view a stepped down approach in this area from 28 metres (applying to sites adjacent to Te Papa) to 22.8 metres in Option 2 for block 1 or, alternatively, 18.6 metres (which is the height of the John Chambers building);
- appears not to account for the Odlins building at 29.2 metres already on the waterfront;



and Chapter 7.1 *Current Height Limits – Overview*, 18.

Urban Perspectives Design Study Chapter 7.5 *Option 4*, 24.

Height/NOE 43.

Urban Perspectives Design Study Chapter 7.6, 26.

- highlights the spatial gap to the north of the Watermark site created by the street width and adjacent open space;
- requires an account by the consenting authority to be taken of the particular form and design of the proposed development;
- identifies the mixed use developments appropriate for the area.

[294] There are several immediate problems with the study in the context of this case, namely:

- it signals the beginning of a planning process for the area in which the Watermark is sited, not the end;
- the report was written between the time the Hearing Commissioners on the references set the interim height limit at 24 metres and the final Consent Order on the references cemented the height limit for the area at 27 metres;
- already the 29.2 metres of the Odlins building interrupts the "stepping down" approach to the waterfront as envisaged by Ms Popova if either the 22.8 metres height limit or 18.6 metres limit were applied to the Watermark building.

[295] What the Watermark proposal does provide in terms of the Popova study are:

- an Option 4 development where council and the careful attention to the form and design of the proposed development is given;
- a mixed use development;
- public benefits such as a heritage building left largely intact and provision of public carparking;
- a significant building on a prominent Central Area site;
- verandahs;
- the enhancement of critical linkages between the city and the sea;
- enhancement of pedestrian access by providing wind and shelter on the western side of Taranaki Street;
- a stepping down to the waterfront from the 43.8 metre height levels of the Low City buildings behind Wakefield and Taranaki Streets adjacent and/or a stepping up;



- a respect for the scale of the waterfront buildings by retaining the John Chambers building and continuing its parapet height along Cable Street;
- the raking for respects the (more or less) east/west orientation of the study area, its linear character and entirely respects the neighbourhood environment looking towards the Duxton, the Michael Fowler Centre and City to Sea Bridge²²⁹;
- the raking proposal respects the privacy of the residents of the Odilins building.

[296] Mr Leighton was questioned about Ms Popova's conclusion in her report that there was no urban justification for the Watermark project to exceed the height limit [24 metres] at the time she conducted that analysis. His response is that there is now real benefit in that the John Chambers building and the Watermark have been integrated in such a way that there is a lot more merit than there was at the time Ms Popova wrote her report²³⁰. He does not believe that the same advantages could be provided to the same extent as a complying building, one of them being that it avoids a long bulky building which is of concern in the Design Guide²³¹. Again -- we accept that evidence.



Barratt-Boyes NOE (25 Aug) 17.
Leighton NOE 43.

Part II Matters

[297] In terms of s.6(f) RMA which qualifies s.5 issues, it states:

Matters of National Importance

...

(f) The protection of historic heritage from inappropriate ... use, and development ...

[298] We find the appellant did not make out a case in respect of heritage. It:

- does not mention heritage issues in the notice of appeal;
- did not put forward a heritage expert;
- required an urban designer to express a perception that the historical value of the waterfront heritage buildings will be diminished with (unspecified) flow on effects for the quality of the Taranaki Wharf experience²³²;
- did not address any of the District Plan's requirements, such as objectives and policies for the protection of heritage, except through submissions in reply;
- made reference to a report of a council witness attached to the council's report on the resource consent hearing (Fell) as to the John Chambers heritage building, but did not subpoena her so that particular reference could be challenged in evidence²³³;
- preferred instead to run an argument on a complying building which the applicant's architect said he could build but other than that probed no further issues as to retention of heritage – which Mr Leighton was doubtful about retaining with a complying building²³⁴.

[299] The applicant instead produced uncontroverted evidence as to heritage matters and in our view has met all the requirements for the protection of historic heritage.

[300] In terms of s.7, **Other Matters**, the Court is required to have particular regard to:

(b)

... The efficient use and development of natural and physical resources:
The maintenance and enhancement of amenity values:
...



(f) **Maintenance and enhancement of the quality of the environment.**

[301] We find the proposal is an efficient use of a prominent heritage building and the land resources of the site.

[302] We also find the maintenance and enhancement of amenity values and the quality of the Central Area of Wellington will be sustained in large measure by the proposal. We consider the result will be a significant building on a prominent site – together with the enhancement of a significant heritage building – which in turn will maintain and enhance the quality of the Central Area environment.

[303] As to s.5 matters, the project meets all the tests of sustainable management. In terms of s.5(2)(c) we consider the effect on the Duxton views, in the context of what can be allowed as of right, will be no more than minor.

Determination

[304] The project meets the requirements of Part 2 of the Act.



Exercise of the Discretion

[305] The issues alive in the exercise of our discretion are taken from *Baker Boys Ltd v Christchurch City Council* are as follows:

- to take into account all of the relevant matters identified under s.104;
- to avoid consideration of any irrelevant matters such as those identified in s.104(6) and 104(8);
- to give different weight to the matters identified under s.104 depending on the Court's opinion as to how they are affected by application of ss.5(2)(a), (b) and (c) and (6) through to (8) of the Act to the particular facts of the case;
- in light of the above, allow for comparison of conflicting considerations, the scale or degree of them and their relative significance or proportion in the final outcome²³⁵.

[306] In applying the Court's findings in that case to this, we conclude that:

- the actual and potential effects on parking, traffic, heritage and wind from the proposal are all beneficial;
- the proposal is not contrary to the objectives and policies of the District Plan, including the maintenance and enhancement of general existing urban form;
- the proposal reinforces the significance and appearance of an important heritage building on a prominent site in the Central Area of Wellington;
- in spite of the appellant alleging adverse effects on a number of issues as being more than minor, we do not make this finding;
- the Watermark building itself has significant architectural integrity which contributes to the proposal's positive attributes²³⁶;
- positive benefits from the proposal include an injection of life and form into the site and its environs, including improved pedestrian access to the waterfront;
- the high quality of the design and materials of the proposal will complement and enhance the existing amenities in the vicinity of the site and create a positive design precedent for future developments;



[1998] 2 RMA 433.

²³⁶ Design Guide 1.0 Introduction, page 2, second para.

- the retention and enhancement of the heritage values of Cable Street together with the provision of parking in an area (starved of such facilities) are important contributions to the sustainable management of the Central Area's resources;
 - the proposal meets the tests of sustainable management in s.5 qualified as they are in this case by ss.6(f) and 7(a), (c) and (d).
-



Conclusion

[307] For the foregoing reasons, the appeal is dismissed and the Wellington City Council's decision is affirmed.

Conditions

[308] Of particular interest to the Court were the conditions of consent which (inter alia) specify that the proposal must be in accordance with:

- the information supplied in the application and the accompanying series of plans;
- the full working drawings to be submitted including the materials, samples of which were displayed to the Court.

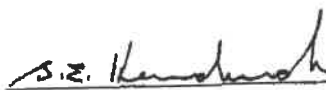
[309] For this project to retain its architectural integrity, it is essential that what is proposed and before the Court is adhered to and that the excellence of design is carried out as the architects intend.

[310] In such a sensitive location, it is imperative that "stray" modifications are not allowed to water down such a benchmark building.

Costs

[311] The question of costs is reserved and any application to be made within 14 days of this decision and any reply 7 days later.

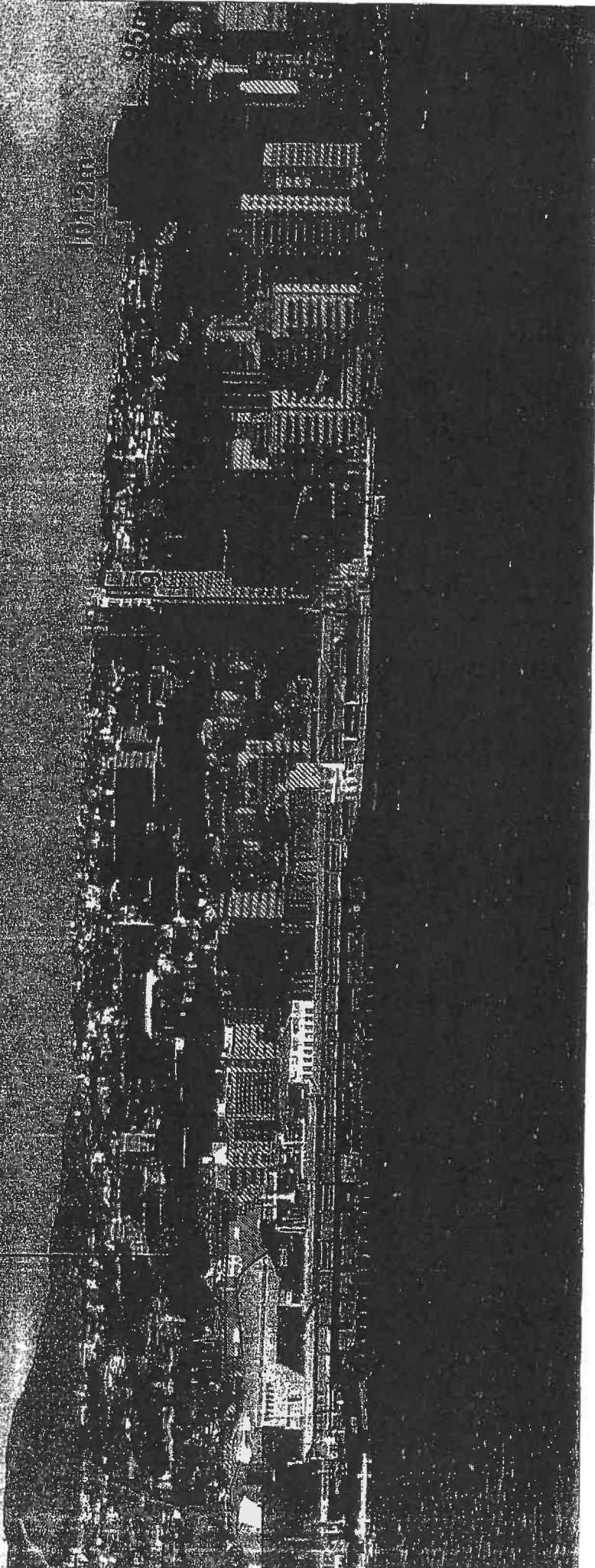
DATED at WELLINGTON this 21st day of February 2005
For the Court:


S E Kenderdine
Environment Judge





Proposed New Building



Studio of
pacific Architecture
Architects, Urban Designers, Interior Designers
2nd Floor, Hibernian House, 80 Willis Street, P.O. Box 11-517,
Wellington, NZ. Tel: (04) 473 8444 Fax: (04) 499 1888
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The **Watermark**

Proposed Redevelopment of the Wellington Market Site and John Chambers
Building, 477 Jarvis, Taranaki and Cable Streets, Wellington
for
LAND EQUITY GROUP

Equivalent conversions for reference:
Digital camera Focal Length: 18.2mm
35mm camera lens equivalent: 105mm
Field of view: 23.3°
Digital zoom: Yes

**View of Site from Point
- City Heights Diagram**

Scale: nts
Original size: A3 CAD Reference: 940.02.P-21 CH-Peppa RE
Date: August 2004
Studio of Pacific Architecture • Dwg No: 940 P-21 RE

