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**REPORT 1**  
*(1215/52/IM)*

## **PROPOSED DISTRICT PLAN VARIATION 11 – AMENDMENTS TO PROPOSED DISTRICT PLAN CHANGE 48 (CENTRAL AREA REVIEW) - WELLINGTON WATERFRONT**

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### **1. Purpose of Report**

The purpose of this report is to seek the approval of the Committee to publicly notify Proposed District Plan Variation 11. The variation includes new and amended policy and rule provisions to manage future development in identified areas on the waterfront and to give effect to the Waterfront Framework (2001).

### **2. Executive Summary**

The report covers the background to Proposed Variation 11 which was given impetus as a result of the recent Environment Court decision on the proposal to develop a new Hilton hotel on Queens Wharf. The appeal decision raised various issues relevant to the District Plan and signalled the need for changes to be made.

It is noted that the Environment Court decision did not question the existing Waterfront Framework. It acknowledged it as a Council policy document but questioned the method of incorporation and reference in the District Plan.

The report then considers the key changes under Proposed Variation 11. Refinements to the existing waterfront provisions are proposed to establish an appropriate regulatory framework for the assessment of future resource consents for new development in identified areas. Central to this are new and amended policy provisions and a new Discretionary (Restricted) rule with associated development standards and a design guide (proposed initially for the North Kumutoto area).

It is recommended that proposals under the Discretionary (Restricted) rule provisions within the specified standards apply with a presumption for the non-notification of resource consent applications. This will require interested third parties to focus their involvement at the initial plan variation stage as there may not be the opportunity for further challenge and possible appeals when subsequent resource consent applications are made.

### **3. Recommendations**

Officers recommend that the Committee:

1. *Receive the information.*
2. *Agree to publicly notify Proposed Variation 11 as set out in Appendix 1 to this report in accordance with the procedures in Schedule 1 of the Resource Management Act 1991.*
3. *Agree to adopt the section 32 report for Proposed Variation 11 as included in Appendix 2 to this report.*
4. *Agree to delegate to the Portfolio Leader for Urban Development and Transport the authority to approve minor editorial changes to the documentation of Proposed Variation 11 as may be required before public notification.*

### **4. Background**

From August 2001 when the former District Plan Variation 22 was notified, specific objectives, policies and rules have applied to the waterfront area. A deliberately strict regime was imposed requiring all new building development and the development of open space to be assessed as Discretionary Activities (Unrestricted). This was to ensure that no development would occur on the waterfront without the opportunity for public involvement.

As outlined in the Waterfront Framework (Section 5.2) and the District Plan it was envisaged that following the adoption of the initial provisions there would be a stage two design process leading to more detailed plans that would be introduced through further changes to the District Plan. This is now being addressed through the proposals in this report.

To date all developments have continued to be assessed as full discretionary consents on a case by case basis and this has worked to enable full public participation in the decision making process.

However, on 14 March 2008 the Environment Court issued its decision on the resource consent appeals relating to the proposal to construct a new Hilton hotel on the Outer-T of Queens Wharf. This decision has raised important issues that are relevant to the operation of the existing District Plan provisions and the future determination of resource consents on the waterfront.

With regard to the District Plan the Court found that provisions that purport to incorporate the Waterfront Framework into the District Plan were *ultra vires* or beyond the law. Specifically this related to:

- The provisions that refer to the Waterfront Framework as a design guide (meaning a design guide similar to the existing guides in Volume 2 of the District Plan)
- The references to the Waterfront Framework applying as assessment criteria for the consideration of resource consent applications.

The decision also commented on various matters relating to the protection of both public and private views. On this matter the height and bulk of buildings are the most important considerations. It is believed that to continue with a zero height limit in areas of the waterfront identified for development would be problematic. A zero height limit was imposed for most of the waterfront area as a trigger to activate resource consents for new building development and not as a means to prevent development. As a zero height limit provides no permitted baseline for the assessment of resource consents it is possible that future resource consent applications could face significant planning and legal obstacles if issues such as building height and the intensity of development are raised by submitters.

To activate the original intention of devising tailored District Plan provisions for identified areas on the waterfront and to address the issues arising from the *Hilton* decision it is now recommended that appropriate changes to the District Plan be initiated before further resource consent applications for new developments are made. Consideration has now been given to the District Plan changes believed necessary. These cover the following six areas:

- The removal of references in the policies to the Waterfront Framework being a design guide.
- The inclusion of more detailed policy provisions for future building development within the waterfront and in particular the North Kumutoto area.
- The inclusion of a new policy and rules to ensure that the ground floors of buildings are predominantly accessible by the public and have active edges to significant public and open space areas.
- The inclusion of a specific rule (Rule 13.3.4A) to provide for new development in identified areas on the waterfront as a non-notified Discretionary Activity (Restricted) application in accordance with building height and footprint requirements.
- The inclusion of new design guide provisions to provide for the assessment of applications for new building development and the development of related public spaces within the North Kumutoto area.
- The amendment of Rule 13.4.7 to make it clear that any building development within an identified area that is not covered by the Discretionary Activity (Restricted) provisions will require consent as a Discretionary Activity (Unrestricted).

The proposed changes and amendments are detailed in Appendix 1 attached to this report. These proposals are supported by the required section 32 report attached as Appendix 2.

It is important that changes are made to the District Plan to provide for the completion of the waterfront project. It is understood that the next programmed development is for the land to the north of the new Meridian Building in the North Kumutoto area. It is most desirable that proposed Variation 11 be publicly notified before resource consents are lodged for any new development so that the revised provisions can be taken into account.

At this point it should be mentioned that there was initially some comment that the Court's decision on the status of the Waterfront Framework had invalidated the Framework. This was not the case. The Court did not question the validity of the Waterfront Framework as a policy document for guiding the development of the waterfront. The *ultra vires* issue related solely to referencing the Waterfront Framework as a design guide in the District Plan. The Framework therefore remains intact and can continue to provide the over-arching policy direction for the development of the waterfront. It is still appropriate for the Waterfront Framework to be referenced in the District Plan to the extent that it provides high-level policy guidance, but the Framework can not be applied as District Plan rules.

## **5 Discussion**

### **5.1 Why a District Plan Variation?**

The Wellington waterfront lies within the Central Area and any development on the waterfront is currently subject to the provisions of both the operative Central Area zoning provisions and the provisions of Proposed District Plan Change 48 (Central Area Review). District Plan Change 48 has recently passed through most of the plan change processes and is close to becoming operative.

In the normal course of events a further change to the waterfront provisions would require both a change to the Operative District Plan and a variation to Proposed District Plan Change 48. A District Plan variation is the technical term for amendments or alterations to a proposed District Plan change. In other words, a change to a plan change.

However, as the operative Central Area provisions have now largely been superseded by District Plan Change 48, legal advice confirms that in this case the Council need only proceed with a variation to introduce new waterfront provisions. The focus on only one set of amendments will greatly simplify the process and minimize the confusion that might arise if both a District Plan change and variation were to be notified.

## **5.2 Deletion of references to the Waterfront Framework being a design guide**

Simple but essential amendments involve the deletion of references in the 'Methods' section of the policies to the Waterfront Framework being a design guide. It is proposed that the methods instead refer to the Central Area Design Guide which already applies to developments on the waterfront and is now proposed to include site specific waterfront provisions.

The above proposals will address the issues identified by the Court in the *Hilton* decision.

## **5.3 New policy provisions**

It will be recalled that a key feature of the Central Area review under District Plan Change 48 was the strengthening of the policy provisions to provide greater clarity and precision in achieving the objectives of the Plan. The need for greater guidance had been identified as a matter of importance in light of case law developments and amendments to legislation over the past ten years that influence the processing of resource consents.

To provide for new development in identified areas on the waterfront further consideration has been given to the policies in the District Plan. It is proposed to enhance the provisions relating to new building development and to include an additional policy relating to ground floor accessibility and active edges.

Specifically, Policy 12.2.8.6 has been amended to clearly provide for new building development and an additional Policy 12.2.8.6A has been included to address site planning and urban design issues for new building development and related public spaces.

The most important addition to the above policies is the requirement for developments in the North Kumutoto area to accord with the site specific proposals for the area in the Central Area Urban Design Guide. These provisions will provide the primary assessment criteria for future resource consents.



*North Kumutoto Area*

A key element of the proposed North Kumutoto Design Guide is the attainment of quality architecture and design and in support of this a new Policy 12.2.6.8B has been included which requires design excellence for significant new

development. This reflects an existing policy for the Central Area under Plan Change 48 requiring design excellence for buildings over the height standards. It is important to achieve exemplary development on the waterfront and it is considered that this should be reflected in the policies.

Another Policy has also been introduced (Policy 12.2.6.8C) which is to ensure that the ground floors of buildings on the waterfront are predominantly accessible to the public and have active edges to main public spaces. This is a general waterfront issue that has not arisen directly from the *Hilton* decision but the opportunity has been taken to include new requirements in this regard through Variation 11 to support a key principle of the Waterfront Framework.

#### **5.4 Building height and design**

An important part of the Variation 11 development process has been the urban design analysis underpinning the proposed building height limits for the North Kumutoto area and related planning and design requirements. The proposed height limits are set out in Section 5.6 below.

The need to establish clear parameters for the assessment of proposed new development arose from the Environment Court's comments on view protection and the relationship of this to the existing zero height limits that currently apply to all areas of the waterfront except for existing buildings.

Although certain design work has already been undertaken by Wellington Waterfront Limited for the North Kumutoto area, for the purpose of preparing regulatory provisions under the auspices of the Resource Management Act, a separate urban design assessment and evaluation has been undertaken. This work has considered the key planning and urban design considerations including:

- Heritage
- Building heights
- Building design
- Views and viewshafts

The outcome of this work has informed two key components of the proposed variation, namely:

- An Appendix plan that defines the extent of the North Kumutoto area to which proposed District Plan rules for new building development and the development of related open space areas will apply including building height and building footprint areas.
- A North Kumutoto Design Guide for new building development and surrounding public spaces that is proposed to be included as an appendix to the existing Central Area Urban Design Guide. This will work to achieve the high quality of development envisaged under both the Waterfront Framework and the District Plan.

For a full explanation of above proposals refer to the report entitled *Validity of Redevelopment at 'North' Kumutoto* appended to the attached section 32 report.

### **5.5 Proposed District Plan Rule Process**

Under the Operative District Plan all building development and the development of open space areas on the waterfront is a Discretionary Activity (Unrestricted). As previously noted the adoption of such restrictive provisions within the waterfront area was to ensure that prior to any further plan changes introducing more tailored or refined provisions, the public would have the opportunity to be involved through publicly notified resource consent processes.

Proposed Variation 11 now establishes a framework for dealing with future development areas on the waterfront and introduces site specific provisions for the North Kumutoto area to be assessed as a Discretionary Activity (Restricted) with a presumption for the non-notification of applications.

The Variation 11 proposals will be publicly notified and subject to usual submission and hearing processes. This will provide the opportunity for full public involvement in setting the policies rules and guidelines for managing new development in all identified areas on the waterfront.

It is considered that where parties have the opportunity to be fully involved at the plan formulation stage and the proposed provisions clearly define the desired development outcomes, it is appropriate for subsequent resource consent applications to be determined as Discretionary Activities (Restricted). In this event, the substantive nature of the development would have been settled and the consideration of subsequent resource consents would be limited to matters of detail. This course has been adopted for other recent plan changes including DPC 45 (Urban Development Area and Structure Plan for Lincolnshire Farm) and DPC 60 (Churton Park Village Rezoning).

It is noted that under the Variation 11 proposals, developments in identified areas that exceed the specified building standards and all new building and the development of open space outside identified areas would remain a Discretionary Activity (Unrestricted) and most likely notified.

### **5.6 Application of the proposed rules to possible building development in the North Kumutoto Area**

This section outlines in more detail how the proposed rules would be applied to building development in the North Kumutoto area.

Proposed Rule 13.3.4A provides for new building development as a Discretionary Activity (Restricted) subject to height and footprint standards. Where development is in accordance with the standards there is a presumption for the non-notification of resource consent applications.

The height limits will be referenced on the District Plan Height Map (Map 32) and detailed in an appendix plan (Appendix 13) attached to the rules. Three

height areas are proposed for the North Kumutoto area at levels of 17.5m, 25.5m and 30m above mean sea level. The height limits arose from the planning and urban design assessment of the area and provide for what is believed to be an appropriate scale of development.

The rules also provide that development up to a maximum of 15% above the height limits can be considered as a Discretionary Activity (Restricted) on a non-notified basis. This accords with the existing approach to height control for the central area under Plan Change 48. Above the 15% limit buildings would become a Discretionary Activity (Unrestricted) and most likely notified.

The proposed building footprints shown on the appendix plan attached to the rules have been defined having regard to existing key site constraints (viewshafts and coastal yards) and other pre-determined design features such as pedestrian links and lanes. Proposals within the defined footprints would be a Discretionary Activity (Restricted) and include a presumption for the non-notification of resource consent applications. Developments beyond the footprints but not outside the identified North Kumutoto area would also be a Discretionary Activity (Restricted) but without a presumption for non-notification. This approach is believed appropriate given the importance of providing for the reasonable protection of public space around buildings and for ensuring the sympathetic relationship of new buildings to existing heritage buildings.

In all cases new building proposals would also be assessed against the provisions of the North Kumutoto Design Guide that would form part of the Central Area Urban Design Guide. For larger buildings that might exceed the height limits or extend beyond the defined building footprints consideration would have to be given to achieving design excellence.

Outside the identified North Kumutoto area, development would remain a full Discretionary (Unrestricted) Activity under Rule 13.4.7.

### ***5.7 LTCCP Implications***

The public notification of Proposed Variation 11 will not have any direct or immediate LTCCP implications. However, should the matter eventually result in an appeal or appeals to the Environment Court the total cost of defending the proposals could be in the order of \$80,000-\$100,000. This would add to the cost of other anticipated Environment Court appeals arising from previous District Plan changes or variations which are likely to culminate in a full hearing before the Court. The total appeal costs continuing through to the end of 2009 at least, could be significant and therefore have LTCCP implications.

## **6. Conclusion**

It has been established that there is now a need to amend the District Plan to provide for the ongoing development of the waterfront in accordance with the Waterfront Framework. The Waterfront Framework itself is not at issue. This is an adopted Council policy document that remains intact and can continue to be appropriately referenced as such in the District Plan. Proposed Variation 11 has

been prepared to address all of the issues arising from the *Hilton* decision and the refinements to the policies and rules establishes the necessary regulatory framework for the determination of all future development proposals in identified areas. As future development of the waterfront is expected to focus next on the North Kumutoto area the opportunity has been taken as part of the Variation 11 proposals to include site specific provisions for this area.

Contact Officer: *Brett McKay: Chief Planner*

## **Supporting Information**

### **1) Strategic Fit / Strategic Outcome**

The District Plan supports a wide range of strategic outcomes in the Long Term Council Community Plan. Specifically, this proposed variation will implement a number of goals and outcomes desired by the Urban Development Strategy and the objectives and principles of the Wellington Waterfront Framework.

### **2) LTCCP/Annual Plan reference and long term financial impact**

Project C533 – District Plan

### **3) Treaty of Waitangi considerations**

All District Plan work is required to take into account the principles of the Treaty of Waitangi (refer to section 8 of the Resource Management Act 1991).

### **4) Decision-Making**

The proposal to vary the District Plan is in accordance with Council Policy expressed in the Urban Development Strategy and the Wellington Waterfront Framework.

In a broad context the proposed changes and amendments to the District Plan are not significant in that they focus on ensuring that existing provisions in the Plan will work effectively.

### **5) Consultation**

#### **a) General Consultation**

No specific consultation has been undertaken with landowners

#### **b) Consultation with Maori**

The Wellington Tenth Trust and Te Runanga o Toa Rangatira have been consulted on the proposed changes.

### **6) Legal Implications**

Council's lawyers have been consulted during the development of this report.

### **7) Consistency with existing policy**

The variation proposals are consistent with the Council's vision for the city, Sense of Place values, the Urban Development Strategy, the Heritage Policy and the Wellington Waterfront Framework.