

**WELLINGTON CITY COUNCIL  
URBAN DEVELOPMENT AND TRANSPORT**

**NOTICE OF DECISION**

Service Request No: 181872  
File Reference: 1006365

**HEARING DATES:** Wednesday 19 to Friday 28 November 2008

**COMMISSIONERS:** Stuart Kinnear, Noreen Barton, Brian Hasell

**DATE OF DECISION:** 14 January 2009

<b>Site Address:</b>	Cobham Park Drive, 54 Tacy Street, 74 and 82 Kemp Street, Kilbirnie
<b>Legal Description:</b>	Section 171,169,165,152,177 Evans Bay District, Part Lot1 DP 5999
<b>Applicant:</b>	Wellington City Council c/o Urban Perspectives Ltd
<b>Proposal:</b>	The construction, maintenance and operation of an indoor sports and recreation centre including all associated site and building, lighting, car parking, landscaping, earthworks and removal of contaminated material.
<b>Owner:</b>	Wellington City Council
<b>Plan Nos:</b>	As listed in Condition (1)

## THE DECISION

The Hearing Commissioners acting under delegated authority from the Council and pursuant to section 104B of the Resource Management Act 1991 **grant consent** to the construction, maintenance and operation of an Indoor Sports and Recreation Centre, including all associated earthworks, removal of contaminated material, landscaping, car parking, internal and external lighting **at 54 Tacy Street, 72 and 84 Kemp Street Kilbirnie**, being Section 171, Section 169, Section 165, Section 152, Section 177 Evans Bay District and Part Lot I DP 5999, for the reasons below, subject to the following conditions:

### Conditions:

#### General:

- (1) That the proposal must be in accordance with the information submitted to the Council under SR 181872 and the following plans submitted by Sinclair Knight Merz and Tennent and Brown Architects.

<b>Drawing Number</b>	<b>Drawing Title</b>	<b>Date</b>
RC05	Site Plan	June 08
RC06	Undercroft / Ground Level	June 08
RC07	Mezzanine / Roof Level	June 08
RC08	Building Sections	June 08
RC09	Ground Floor Plan -North	June 08
RCIO	Ground Floor Plan -South	June 08
RCII	Mezzanine Level Plan -North	June 08
RCI2	Mezzanine Level Plan -South	June 08
RC 13	Key Plan for Views	June 08
RCI4	Building Elevations -South & East	June 08
RCI5	Building Elevations -North & West	June 08
RCI6	Sections & Interior Views	June 08
RC22	Site Sections	June 08
RC23	Site Sections	June 08
RC24	Site Sections	June 08
C-OOI -Amendment A	Existing Contours and Site Plan	13.05.08
C-002 -Amendment B	Contours	05.06.08
C-003 -Amendment B	Bulk Earthworks Cut and Fill	05.06.08
C-004 -Amendment B	Bulk Earthworks Cross Section	05.06.08
C-005 -Amendment A	Finished Surface Contours	05.06.08
C-006 -Amendment A	Proposed Storm Water Layout	05.06.08
C-007 -Amendment A	Proposed Sanitary Sewer Layout	05.06.08
C-008 -Amendment A	Proposed Water Supply Layout	05.06.08
C-008 -Amendment A	Erosion and Sediment Control Plan	05.06.08
SKWA_14 -Wind Mitigation Strategy		23.10.08

#### Special Events:

- (2) "Special Events" is defined as those events where capacity of 2,600 persons is exceeded on the site. Special Events held on the site are limited to 2 in number per year and shall finish no later than 2400hrs.
- (3) The maximum capacity for special events is to be limited to 4000 persons.
- (4) The consent holder shall, at least one month prior to an individual Special Event being scheduled, submit for approval to the Compliance and Monitoring Officer, a Special Events Management Plan. The plan shall be implemented to address matters that may arise depending upon the circumstances of individual Special Events, including but not limited to, scheduling and hours of operation, community liaison, and transport of persons to and from the site, parking, servicing, and noise management.

**Noise:**

- (5) The consent holder must not use the facility for amplified concerts.
- (6) Certification from an acoustic consultant must be made before operation of the Sports and Recreation Centre for sporting activities, and submitted to the Compliance and Monitoring Officer, confirming that any internal sound amplification systems have been calibrated in compliance with the District Plan noise rules. Calibration of the sound system must be re-certified at least once per year and when any hardware or software changes are made to the sound system that would be likely to change the calibrated sound emission levels. A certification record of all calibrations carried out to the sound systems must be kept on site and made available for inspection by the Compliance and Monitoring Officer at any reasonable time.
- (7) Noise emission levels from activities within the site, including noise emanating from any mechanical plant, sporting, recreational and entertainment activities when measured at, or within any residential boundary in accordance with the District Plan, must not exceed the following noise limits:

Time Period		Noise Limit (dBA)	
		L <sub>10</sub>	L <sub>max</sub>
Monday to Sunday	0700 to 2200 hours	55	-
	2200 to 2300hours	50	75
	2300 to 0700 hours	45	75

- (8) Before the operation of the Sports and Recreation Centre for sporting activities first commences, the consent holder shall provide certification from a suitably qualified person to the Compliance and Monitoring Officer for approval. This certification must identify the mitigation measures included, and confirm that the construction and design of those mitigation measures is consistent with the Marshall Day Acoustics report provided with the application and titled "Wellington Indoor Community Sports Centre Noise Assessment of Environmental Effects" dated 3 July 2008, report No. 2007410W Rp02 R02.

Note: The Council regards the following persons as fulfilling the requirements for being suitably qualified with respect to the above:

- Members of the Association of Consulting Engineers of New Zealand (Incorporated);
  - Members of the Institution of Professional Engineers of New Zealand
  - Members of the New Zealand Institute of Architects (NZ.I.A.); and,
  - Registered Clerks of Works
  - Marshall Day Acoustics
- (9) Noise emissions levels emanating from any fixed plant and equipment including heating, cooling and ventilation plant and/or air handling system must be monitored at the commissioning stage by an acoustic consultant to assess compliance with the design specifications. Certification must be provided to the Compliance Monitoring Officer, before any activity takes place at the Centre or prior to the operation of the fixed plant equipment. In the event of non-compliance, mitigation measures must be carried out to ensure compliance.
  - (10) A detailed Construction Noise Management Plan must be prepared by the appointed contractor under the supervision of an acoustic consultant. The Plan must be submitted to the Compliance Monitoring Officer for approval, before the commencement of any works on site. The plan must describe the methods by which noise associated with the work will comply in all aspects with the controls set out in

NZS 6803P:1984 and how all persons undertaking day-to-day site management will adopt the best practical option at all times to ensure the emission of noise from the site does not exceed a reasonable level in accordance with Section 16 of the Resource Management Act 1991. The Plan must follow the guidance contained within the advice notes below which cover "Tips on writing a construction noise management plan" and in particular detail how to manage noise and vibration effects from any construction work taking place on site. The construction noise management plan must be implemented by the consent holder.

- (11) Prior to the opening of the Centre for sporting activities, the consent holder must provide a Noise Management Plan prepared by a suitably qualified acoustic consultant to the Compliance and Monitoring Officer, for approval. The noise management plan shall set out the practices and procedures with respect to noise management to be adopted in order that compliance can be achieved with the conditions of the consent, that the best practicable option is being adopted, and must as a minimum address the following:

- Noise rules and consent conditions;
- Types of events to be held at the centre;
- General activity noise management;
- Event noise management;
- Allocation of staff responsibility;
- Education and training;
- Community liaison
- Recording and reporting on complaints received;
- Noise monitoring;
- Adopting the best practicable option to reduce noise to a reasonable level.

The Noise Management Plan must be implemented by the consent holder.

- (12) The consent holder must, from time to time, submit to the Compliance and Monitoring Officer a proposed amended Noise Management Plan, if so requested, in order to address any substantiated noise complaints.
- (13) Car park turning areas and ramps shall be constructed using a design specification that will minimise adverse noise impacts from tyre squeal.
- (14) The consent holder must ensure that Kemp Street between the intersection of Tacy Street and Troy Street is resurfaced prior to the opening of the Centre. A suitable standard of the resurfacing that will reduce traffic noise shall be agreed with the Council's Roading Department prior to the commencement of the works.

**General Code of Practice & hours of work:**

- (15) The earthworks and construction must be carried out in accordance with the Council's Code of Practice for Land Development, Part B -Earthworks Design and Construction. The hours of work are restricted to:
- Monday to Sunday 7:30am to 6pm
  - Quiet setting up of site (not including running of plant or machinery) may start at 6:30am
  - No construction work involving earthworks or heavy machinery is to be carried out on Sundays or public holidays.

**Dust:**

- (16) The consent holder must ensure that the discharge of dust created by earthworks, transportation and construction activities is suitably controlled to minimise dust hazard or nuisance.

**Transportation of Materials:**

- (17) The proposed haulage and return route for the removal of material from the site is fixed to that shown in Figure I "proposed truck route to southern landfill" within Appendix 7 of the application. In the event that any material to be removed from the site is not acceptable to the southern landfill, a revised haulage route must be submitted for the approval of the Council's Compliance and Monitoring Officer prior to the extraction of material. Any revised route shall be fixed for the duration of works.

Note: The Compliance and Monitoring Officer shall liaise with the Council's Chief Transport Planner regarding the acceptability of the revised haulage route.

- (18) The Council's 'General Conditions of Excavation and Transport of Excavated Materials' dated December 1993, will apply and remain in force for the duration of the site development works, or as determined by the Wellington City Council's Compliance Monitoring Officer.

**Traffic & Parking:**

- (19) Any obstructions to visibility e.g. foliage or new fences, for the first 5 metres from the road edge either side of the crossing points on both Kemp Street and Tacy Street, must be maintained at 600mm maximum in height. This is to ensure adequate visibility between vehicles on the driveway and pedestrians on the footpath.
- (20) Prior to construction, the consent holder is required to submit for approval to the Compliance and Monitoring Officer, detailed construction plans for all traffic and transport improvements, including access arrangements for all vehicles associated with construction. These improvements are to include, but are not limited to, modifications which are generally consistent with those shown on the following drawings:
- Drawing Number 005502-02-115 C02 Rev A by MWH and Transit New Zealand dated 23 November 2006.
  - Drawing Number ZBOOI21-C-001 Amendment I by SKM dated 18 June 08 -Kemp Street Right Turn Lane and Traffic Calming.
  - Drawing Number ZBOOI21-C-002 Amendment I by SKM dated 18 June 08 -Troy Street/Kemp Street Intersection Improvement Details.
  - Drawing Number ZBOOI21-C-004 Amendment 0 by SKM dated 12 June 08 -Roading and Traffic Standard Speed Hump Details.

The proposed dropped kerb crossing for pedestrians on Troy Street just south of and adjacent to the Fire Station kerb crossing is to be omitted for safety reasons.

Note: The Compliance Monitoring Officer is to liaise with the Council's Chief Transport Engineer and Council's Consultant Traffic Engineer to determine the acceptability of the plans.

- (21) Prior to operation of the Sports and Recreation Centre for sporting activities, the consent holder must ensure that the Cobham Drive/Troy Street roundabout improvements referred to in condition (20) above are completed in full.
- (22) Prior to operation of the Sports and Recreation Centre for sporting activities, the consent holder must ensure that the proposed local road improvements and access linkages (traffic calming, pedestrian/cycle facilities, traffic management and island modifications) are completed.
- (23) The consent holder must, prior to the commencement of operation of the Sports and Recreation Centre, submit to the Compliance and Monitoring Officer, a Travel Demand Management Plan for the site. The Plan is to be developed in consultation with and with assistance from Wellington City

Council, Greater Wellington Regional Council, the New Zealand Transport Agency, and the relevant sporting codes. The purpose of the document will be to identify how:

- total travel demands associated with the site can be reduced;
- the use of alternative modes of travel to the private car can be maximised;
- the efficiency of private vehicle use can be maximised.

Note: Those aspects of the Travel Demand Management Plan which are within the responsibility of the consent holder must be implemented by the consent holder.

- (24) The consent holder is required, prior to the consent being exercised, to submit for approval to the Compliance and Monitoring Officer, a Construction Traffic Management Plan for the proposed construction period.

Note: The Compliance Monitoring Officer is to liaise with the Council's Consultant Traffic Engineer on the plans acceptability. The plan should consider methods to minimise interruption to the daily operations of commercial and residential interests in the local area. (See also conditions 17 & 18)

- (25) The consent holder is required to submit for approval to the Compliance and Monitoring Officer a Traffic Management Plan to address Tournament Events one month prior to the event taking place. Tournament Events are defined as those sporting events expected to attract on site, participants/spectators in excess of 600 persons at any time to a maximum of 2599 persons at anyone time. The plan shall consider the likely magnitude of Tournament Events in terms of day and time of the event, total visitor numbers, and the scale and nature of temporary parking and traffic management measures to be implemented. The traffic management plan to address tournament events must be implemented by the consent holder.

**Contamination:**

- (26) Prior to commencement of construction on the site, the consent holder must under take further testing to identify the nature of the contaminated material on the site. Testing must include all matters mentioned within the letter from SKM dated the 10th of September 2008 held on the Council's Files
- (27) Prior to earthworks commencing on the site, a Contamination Management Plan for the project must be submitted to, and approved by the Wellington City Council's Compliance and Monitoring Officer in liaison with the Council's Contamination Land Advisor (currently URS Consultants).

Note: The Contamination Management Plan must include the following:

- Procedures for monitoring contamination levels during construction and excavation works;
- Procedures for the safe storage, treatment and disposal of identified contaminated material, including dust, silt, storm water, groundwater and odour;
- Identification of the person/s responsible for assessing and disposal of contaminated material;
- Procedures for dealing with noise, traffic and site security.

This management plan is required to control all aspects of excavation and construction related to this approval that involve the contaminated material. The document should be prepared by a suitably qualified professional with experience in remedial measures for contaminated sites.

The plan shall take into account all matters relating to the further testing required on the site mentioned in condition (26) above.

- (28) The consent holder must submit to the Wellington City Council's Compliance and Monitoring Officer for approval a Health and Safety Management Plan prior to any works commencing.

Note: The Compliance Monitoring Officer is to liaise with the Council's Contamination Consultant's (currently URS) to determine the acceptability of the Plan.

- (29) The applicant is required to carry out the works to remedy site contamination in accordance with the approved plans required by Conditions (27) and (28) above.

### **Landscaping Plan**

- (30) The consent holder must, prior to exercising the consent submit for approval, to the Compliance and Monitoring Officer, Urban Development and Transport a Landscape Plan showing the following;
- (a) All plants, their names, grade and locations on a detailed plan.
  - (b) Further sections showing mound details within the northern and south eastern areas of the site must be shown at a reasonable scale.
  - (c) Areas of the site needing the greatest protection from wind and the appropriate density of planting.
  - (d) Further information and improvements that address the impact of the building along the narrow eastern edge of the site (Section G contained within the Tennent Brown Drawing RC 24).
  - (e) Details regarding the sizing and availability and management of sufficient numbers of pohutukawa specimens to ensure an appropriate quality and number of trees on the site as part of the overall landscaping design.
  - (f) Details showing how existing trees proposed to be retained will be managed and protected, identifying all methods and procedures to protect trees during the construction phase, which must be implemented throughout the construction phase.

Note: The Compliance Monitoring Officer is to liaise with the Council's Landscape Architect in respect of the Plans acceptability.

- (31) The landscaping, approved under condition (30), is to be completed by the consent holder within 6 months of completion of construction. The plantings are to be monitored for a period of 18 months from the time of planting in order to allow for plant establishment. This includes the removal of weeds within the vicinity of the plantings and the replacement of plants that die or are removed unlawfully within this period in the same location, with the same species and sized plants. Any plants that fail must be replaced at the expense of the consent holder. All plantings shall continue to be maintained by the consent holder thereafter.

### **Signage**

- (32) The consent holder must, prior to exercising the consent, submit for approval to the Compliance and Monitoring Officer, a Signage Strategy for all signage permanent and temporary -now and in the future. This strategy shall be complied with on an on going basis once approved.

Note: The Compliance Monitoring Officer is to liaise with the Chief Urban Designer in respect of the strategy's acceptability. The signage strategy must consider the likely locations, forms and functions of all proposed temporary and future signage.

### **Lighting Plan for External Signage**

- (33) The consent holder must, prior to exercising the consent, submit for approval to the Compliance and Monitoring Officer, an external lighting plan for signage. This Plan shall be complied with on an on going basis once approved.

Note: The Compliance Monitoring Officer is to liaise with the Chief Urban Designer in respect of the strategy's acceptability. The lighting strategy should consider the likely modes of external illumination for the site.

## **Lighting**

- (34) Lighting levels emanating from any light sources at the sports centre site must be monitored at the commissioning stage by a qualified engineer to assess compliance with the design specifications as assessed by Sinclair Knight Merz in the Lighting Statement dated 10 June 2008 (Appendix 10 to the Assessment of Environmental Effects submitted as part of the Resource Consent Application) and to assess compliance with the conditions of this consent. Certification must be provided to the Compliance Monitoring Officer before the Centre is opened confirming the design specification has been met.
- (35) The luminous intensity of any external lighting must be less than 10,000 candela in the direction of residential properties;
- (36) The maximum upward light ratio for any lighting on site must not exceed 5% maximum upward light.

## **Discovery of Artefact Material**

- (37) If any antiquities, koiwi, taonga or other artefact material is discovered in the course of works on the site, then the works shall cease and local Iwi and Historic Places Trust are to be notified immediately. This requirement is to be specified in the Contract Specifications for the building project.

Note: This condition is to allow Iwi representatives and/or other advisors to inspect the site and then arrange with the consent holder appropriate steps to recover the artefacts and/or safeguard them so that work can resume.

## **Monitoring and Review:**

- (38) The Council may, within one year of commencement of operation of the Sports and Recreation Centre for sporting activities, and at five yearly intervals thereafter, review the conditions of consent pursuant to section 128 of the Act to address any adverse effects that may result from exercising this consent.
- (39) The consent holder shall pay to the Wellington City Council the actual and reasonable costs associated with the monitoring of conditions [or review of consent conditions], or supervision of the resource consent as set in accordance with section 36 of the Resource Management Act 1991. These costs\* may include site visits, correspondence and other activities, the actual costs of materials or services, including the costs of consultants or other reports or investigations which may have to be obtained.

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

- (40) Prior to starting work, the consent holder must advise of the date when work will begin. This advice must be provided at least 48 hours before work starts to the Wellington City Council's Compliance & Monitoring Officer by either telephone (801 4017) or facsimile (801 3165), and must include the address of the property and the service request number.

## **Advice Notes:**

1. A vehicle access approval is required for the construction of the new kerb crossings under Part 5, Section 16 of the WCC Consolidated Bylaw 2008.
2. The land use consent must be given effect to within 5 years of the granting of this consent, or within such extended period of time pursuant to sections 125 and 37 as the Council may allow.

3. Where appropriate, the Council may agree to reduce the required monitoring charges where the consent holder will carry out appropriate monitoring and reporting back to Council.
4. This development will be assessed for development contributions under the Council's Development Contributions Policy when an application for building consent is made. If a development contribution is required it will be imposed under section 198 of the Local Government Act 2002. If you want to obtain an indication of the amount of the development contribution payable you can:
  - access the development contributions policy and calculator online at [www.Wellington.govt.nz](http://www.Wellington.govt.nz); or
  - contact the Council's Development Contribution Officer.
5. The consent holder is required to meet the costs of any replacement, relocation, removal or modification to existing street lighting. The consent holder will need to confirm the Council's lighting requirements with the Wellington City Council's Project Manager Street Lighting.
6. Any damages to the adjacent streets, kerbing, footpaths or other Council property as a result of the works, should be promptly made good and remedied to the Council's satisfaction.
7. The consent holder should provide for the reuse and treatment of stormwater on site where practical. Further discussion can be had with Council's Drainage Engineer, John Boot, in the first instance.
8. Tips on writing a Construction Noise Management Plan

- What will the noisiest work be?

List the noisiest machines and type of work. If possible, include the sound levels where available from hirers or suppliers. Examples include hammer-driven piling, concrete breaking using rock breakers on foundations near to shared or common walls, jack hammering, saw cutting of steel, concrete pouring, heavy plant such as excavators and generators. Describe where this work will happen on site and when.

- Who and where are all the neighbours?

What are the distances to the nearest residential and other noise sensitive sites? Preferably draw a diagram showing where local shops, offices, cafes, hotels, education centres and residential sites are located around the construction site. Preferably speak to these neighbours and find out if they have a problem with very noisy work at certain times of the day. Describe how this may have an impact on the work. For example, some demolition in the CBD may have to take place between 7.30am and 9am and between 5pm and 8pm.

- What can be done about the noisiest work?

Look at as many options as possible for noise controls that are reasonable? For example -barriers placed near to very noisy activities, lower noise producing plant and equipment (electric rather than diesel, concrete crushers rather than breakers) and where plant could best be located on site. Describe how these options can be made to work to reduce noise as much as possible. It will be necessary to state how this will actually be done in practice to plan practical controls in advance.

- Will standard working hours be exceeded?

The standard working hours are from 7.30am to 6pm on Mondays to Saturdays. Is it likely that any work will take place outside these hours? For example, early morning concrete pours before 7.30am or setting up a crane on a Sunday. Describe how the Council will be contacted to agree to any exemptions and how neighbours will be notified in advance.

- How will site workers and sub-contractors be supervised?

Describe how measures will be put in place to monitor noise on site and to control noise from sub-contractors and their hours of working. This is a major source of complaints on construction sites, especially if sub-contractors go on site at times when there is no site manager around, though it is preferable that this never happens.

- How will site workers be trained?

Describe how all site workers will be made aware of the noise control requirements. For example, at site induction or at regular site meetings.

- How will complaints be handled?

Describe the system for logging and following up complaints, who will take action and feedback to the complainant and what happens if the complainant is still not happy.

- How will neighbours be kept informed?

Describe which neighbours will need to be consulted about special requirements, who will need to be informed and kept up to date with work on site as it progresses and who will carry this out. For example, will there be letter drops for special works, newsletter updates, and regular weekly or monthly meetings with the community and/or Council noise control staff. Will early consultation take place with a noise control officer? Their local knowledge may be beneficial to highlight any special issues to consider. This process has proved to be one of the best things site managers can do to get support from neighbours and avoid time dealing with complaints and the stoppages that can result.

- Where will contact details be posted?

What are the details of the person responsible on site, their mobile phone number, email address and where will people be able to see this. For example, on a site board at the gate, on letters to neighbours.

## **THE SITE AND LOCALITY**

1. The five subject titles included within the bounds of the application site are collectively known as Cobham Park, a series of sports fields located immediately south of Cobham Drive (State Highway 1) in the suburb of Kilbirnie. The site contains approximately 3.0554ha and is bounded to the south by Kemp Street, to the east by Troy Street and to the west by established industrial/retail and religious uses.
2. To the east of the site is Troy Street (Principal Road), a four lane road with a planted median strip dividing the north and south bound lanes. Further to the east lies the Kilbirnie Fire Station and also a group of semi detached, two storied residential dwellings which are located at 163 Rongotai Road.
3. To the south of the site lies Kemp Street (Local Road), a two way street which links Troy Street and Evans Bay Parade and contains parking on both sides. Immediately on the opposite side of Kemp Street is a row of residential properties of varying dimensions and also a public pedestrian right of way that links Kemp Street and Rongotai Road. Further residential properties lie to the south which are accessed from Rongotai Road.
4. The site is bound to the west by existing industrial warehousing (58 Kemp Street), a Jehovah's Witness centre (27 Tacy Street), a retail park currently under construction (50 Tacy Street) and the site's Tacy Street entrance. The Indian Cultural Centre is located west of the site at 48 Kemp St and further to the west fronting on Tacy Street are a number of residential properties and 5 outdoor netball courts that are home to Motu Kairangi Netball, a satellite of Netball Wellington.
5. State Highway 1 (Cobham Drive) to the north separates the site from Evans Bay. Like Troy Street, the highway has four lanes separated by a planted median strip.
6. The existing site is divided into two distinct areas, these being the playing fields to the south (2 large and 1 small for winter sports and 3 cricket fields during summer) and a sealed parking area to the north which contains a single storey ablution and changing rooms block. An existing chain mesh fence, up to approximately 8m high in places bounds the site to the south and east. The western boundary is predominately occupied by concrete walls associated with the neighbouring industrial unit with the northern boundary featuring juvenile pine trees and earth bunds which screen the site from the adjacent State Highway. Current vehicular access to the site is via only one point at Tacy Street with several pedestrian access gates existing on the southern boundary of the property which provide access to Kemp and Troy Streets.
7. During site investigations by the applicant, it was discovered that a layer of coal ash was present in the test pits located on the eastern side of the site. The ash layer was smaller in the test pits located in the western side of the park. The presence of the contamination has been confirmed and the land is now recognised as being a contaminated site. Currently, the subject site is not registered on the Greater Wellington Regional Council's Selected Land Use Register (SLUR).

## **THE PROPOSAL**

8. Land use consent is sought by the applicant for the construction, operation and maintenance of an Indoor Sports and Recreation Centre (the Centre) on the site with associated car parking, signage, landscaping, earthworks and removal of on-site contaminated materials.

### **The Centre**

9. The main access for the Centre would be from Kemp Street via a designated in/out system over two crossing points. The entry point would be located near the south western corner of the site and be served by a proposed light turn bay on Kemp Street. This bay would be approximately 150 metres from the intersection of Kemp and Troy Streets. The site's main exit point would be located

approximately 35 metres from the intersection with Troy Street. The proposal also includes external lighting and landscaping around the site in the form of selected plantings and earth bunds.

10. The development will provide 319 car parking spaces, of which 144 would be provided at basement level. The provision of parking includes spaces for buses and an area for service vehicles as well as a turning circle near the northern boundary of the property. Approximately 10 parks would be provided for disabled persons.
11. The building will feature 12 indoor courts that will be used predominantly for basketball and netball and have capacity for one-off tournament events of up to 2600 people including spectators and participants.
12. A cafe/function room is proposed on the ground floor just inside the main entrance.
13. Although the proposed Centre would be predominantly used for sporting purposes, special social events would be able to be held providing for a maximum of 4,000 persons. The applicant has stated that these events would be limited to a small number per year.

#### **Earthworks & Removal of Contaminated Material**

14. The development involves excavation of the site to provide for the proposed undercroft car parking facility. Excavation would involve cutting and filling of material and construction of new retaining walls as well as the removal of known contaminated material that was previously dumped on the site.

#### **NOTIFICATION AND SUBMISSIONS**

15. The application was publicly notified on 28 August 2008 in accordance with section 93(2) of the Resource Management Act. A public notice appeared in the Dominion Post on this date and a sign was erected on the site. All owners and occupiers of land in the immediate area were served a copy of the application.
16. A total of 76 submissions to the proposal were received by the close of submissions on 8th of October at 4.00pm. Of these 58 were in support, 2 were neutral and 17 were in opposition. One submission was received on the 20th of October, after the public notification period had closed.

#### **DISTRICT PLAN PROVISIONS**

##### **Planning Maps-Zoning**

17. The site is located within the Suburban Centre Area of the District Plan. Sites to the west also carry the same zoning, with sites to the east and south being zoned Outer Residential. The site's northern frontage on Cobham Drive West (SH 1) is deemed restricted access under Map 46 of the District Plan. Further to the north opposite the highway is a strip of land along the foreshore which has a zoning of Open Space B.

##### **Activity Status -Operative District Plan**

*Noise:*

18. The proposal is a Non-Complying Activity under Rule 7.5 of the District Plan as the activity for which consent is sought will exceed by more than 5dB the noise limit specified within the Standards and Terms applicable to Discretionary Activities (Restricted) under Rule 7.3.1.

The development also requires consent for the following matters:

### *Parking & Access*

19. The proposal fails to meet the criteria of Rule 7.1.1.7 of the District Plan as more than 120 parks would be provided on the site during its normal day to day operation. The development would provide approximately 319 parking spaces at ground and basement level.
20. The proposed vehicle crossings would be in excess of the 6m limit specified under Rule 7.1.1.7.9. The development provides 2 crossings on the Kemp Street frontage where a maximum of one is permitted.

### *Bulk & Location*

21. The proposed building height exceeds the 12m limit for the suburban centre zoning. The maximum height is approximately 15.0m.

### *Earthworks*

22. The proposal fails to meet the following permitted activity conditions under Rule 19B.2.1 associated with Plan Change 65 (Earthworks):
  - Rule 19B.1.1.1.1 allows a maximum cut depth of 1.5m with the proposed development involving cuts of up to 2.8m.
  - Rule 19B.1.1.1.3 allows a maximum fill depth of 1.4m with the proposed development having fills of 1.4m.
  - Rule 19B.1.1.1.4 allows for filling up to 1m depth required directly behind proposed retaining walls. The development would exceed this rule.
  - Rule 19B.1.1.2.2 allows a maximum earthworks area of 250m<sup>2</sup> with the proposed development involving an area of approximately 30,000m<sup>2</sup>.
  - Rule 19B.1.1.8 allows for a total volume of earthworks to be cut to waste of 200m<sup>3</sup> with the development proposing a level of 6,102m<sup>3</sup> (includes bulking factor).
23. In respect of parking and access, bulk and location and earthworks the activity becomes a Discretionary Activity (Restricted) under Rules 7.3.1 and 7.3.2.

### *Site Contamination*

24. The proposal also requires consent under Rule 7A.3 as a Discretionary Activity (Unrestricted) for the use of a contaminated site as parts of the application site area contain contaminated material.

### *General Compliance*

25. The development is considered to comply with all other Permitted Activity criteria set out within the District Plan for Suburban Centres including discharge of contaminants, dust, lighting, electromagnetic radiation, screen of activities and storage, signage, use, storage or handling of hazardous materials and all other bulk and location requirements of buildings. Overall, the development IS considered to be a Non-Complying Activity under Rule 7.5 of the District Plan.

## **Plan Changes**

### *Plan Change 52 -Suburban Centre Rule Amendments*

26. On 20 October 2006, proposed Plan Change No. 52 was notified. Plan Change 52 takes effect from the date of notification and assessment under the provisions of both the Operative Plan and Plan Change 52 has been undertaken as required. The key components of the plan change are:

1. To address the adverse effects of larger scale buildings on the urban design and quality of the built environment; and
  2. To address the adverse effects of 'out of centre' retailing, including potential effects on the viability of existing town centres, a compact urban form and sustainable transport systems.
27. The application also requires Discretionary Activity (Restricted) consent under Plan Change 52 (7.3.2.5A gross floor area [design controls]) because it exceeds 500m<sup>2</sup> in floor area.
28. At the time that this application was lodged with Council (8th July 2008), the proposed plan change decisions had been made by Council and it is now subject to an appeal period. In terms of weighting, the proposed plan change is considered to alter the provisions of the Operative District Plan with respect to the use of the site and accordingly it is considered relevant to the assessment of this proposal.

*Plan Change 65 -Earthworks*

29. On 1 July 2008, proposed Plan Change No. 65 was notified. Plan Change 65 takes effect from the date of notification and assessment under the provisions of both the Operative Plan and Plan Change 65 has been undertaken as required.
30. Proposed District Plan Change 65 is a change to the objectives, policies and rules for earthworks in all areas of the City. The Plan Change proposes policies and rules for:
- earthworks stability, to replace the requirements of the Earthworks Bylaw;
  - erosion, dust and sediment;
  - earthworks associated with streams and wetlands;
  - the flooding hazard of earthworks;
  - earthworks for tracks;
  - the visual amenity of earthworks -general;
  - the visual amenity of earthworks -suburban coastal areas; and
  - the transport of material.
31. This application was lodged with Council (8th July 2008). Plan Change 65, was notified on the 1st July 2008 and is relevant to the assessment of the proposal.
32. The activity status remains as a Non-Complying Activity.

**SUMMARY OF EVIDENCE HEARD**

33. The following were present at the hearing of the application:

Wellington City Council Officers

Campbell Robinson	Senior Planner
David Dunlop	Consultant Traffic Engineer
Kevin Tearney	Engineering Consultant
Glynn Jones	Environmental Noise Officer
Bruce Duffield	Urban Design
Angela McArthur	Landscape Architect

Applicant

James Winchester	Counsel
Emily Dowding-Smith	Assisting Counsel

Applicant's Witnesses

Tim Harrod	Wellington City Council Project Manager
Jamie Delich	Recreation Wellington
Justin Toebes	Wellington Basketball Association:
Paulette O'Reilly	Netball Wellington Centre
Anisiata Pritchard	Wellington Volleyball Association
Hugh Tennent	Project Architect
Megan Wraight	Landscape Architect
James Chrystall	Lighting Engineer
Andrew Bell	Traffic Engineer
Tim Kelly	Traffic Engineer peer review
Craig Fitzgerald	Acoustical Engineer
Peter Coop	Planning Consultant

#### Submitters

John Holden  
Seton Butler  
Sue Ryall  
Geoff Henry  
Paul Cameron  
Barry Chalmers  
Simon Tay  
J G McCulloch  
Tushar Panchal  
Barney Scully  
Stan Andis  
Glen Kingston - Strathmore Park Progressive and Beautifying Association (Inc)  
Michael Mellor  
David Gibson  
Elizabeth Steer  
Richard Burrell  
Andrew Foster  
Gary Clark - Andrew Foster's Traffic Engineer  
Ian Maskell - Andrew Foster's Project Management Expert

### **Council Officer's Report**

34. **Campbell Robinson**, Senior Planner for Wellington City Council, prepared a comprehensive section 42A report which was pre-circulated. His report described the site, the proposal, the submissions received, the District Plan provisions, the submissions received, the assessment of effects, the relevant statutory criteria including the objectives and policies of the District Plan and Proposed Plan Changes 52 and 65, and Part 2 of the Resource Management Act 1991 (RMA).
35. Mr Robinson summarised the submissions received. The issues raised by the submitters in support were:
- Wellington needs more indoor sports facilities for training and competition.
  - Economic benefit to Wellington from being able to host tournaments and finals.
  - Essential to accommodate growth in participation in netball, basketball and other sports.
  - Boost for the eastern suburbs as well as the wider community.
  - Appropriate location for bus access and proximity to Kilbirnie aquatic centre
36. The submissions in opposition raised the following concerns:
- Adverse effects of noise on adjacent residential area
  - Effects of Shading
  - Wind issues

- Effects of traffic and parking on local streets
  - Effects of traffic on SHI
  - Poor access for pedestrians and cyclists from Miramar
  - Poor access by public transport
  - Loss of green space
  - Loss of playing fields
  - Loss of views
  - Too large for the site
  - Effect on property values.
37. Mr Robinson advised that one submission, from Gemma Feleti, was received late on the 20th of October, after the public notification period had closed. Council officers acting under delegated authority had accepted the late submission.
38. Mr Robinson's report provided a thorough section 104 (1)(a) assessment of the effects of the proposal on the environment relying on the advice of specialist council staff/consultants. The effects that he assessed were:
- noise
  - site contamination and groundwater
  - traffic, parking and access (including proposed roundabout improvements, wider network modelling, local roading improvements, public transport, pedestrian and cycling, and cumulative developments impacts)
  - urban design
  - shading
  - privacy
  - wind
  - services
  - earthworks.
39. Mr Robinson's report concluded that the adverse effects would be no more than minor.
40. He then assessed the proposal (section 104(1)(b)) against the objectives and policies and of the District Plan and Proposed Plan Changes 52 and 65 with reference to the relevant District Plan assessment criteria as a guide.
41. With respect to section 104(1)(c), Mr Robinson's report addressed two other matters, namely the loss of playing fields and the loss of property values, before undertaking his assessment under Part 2 which he summarised as follows:

*"The development would involve a range of ongoing permanent effects given the current land use would be permanently changed. The major anticipated effects include increases in traffic movements, noise and shading associated with the development. The above assessment has shown all impacts are no more than minor. Furthermore, these effects must be balanced with the long-term positive effects of the proposal which provides a high quality all weather recreational facility which would have major economic, social and cultural benefits for the city and region.*

*It is concluded that whilst there are negative impacts associated with the scheme, these are no more than minor and that the considerable positive effects associated with a high class facility such as that proposed more than offset the negative impacts. Given this positive effects balance the development is considered to meet the intent of Part 2 of the Act.*

*Overall, the proposed development is considered to meet the stated intention of Part 2 of the Act, in that it represents the sustainable management of a physical resource and also provide for social, environmental and economic wellbeing." (para's 219-221)*

42. Mr Robinson's conclusion with respect to section I04D was:

*"As the proposal is a Non-Complying Activity the gateway test of section I04D must be fulfilled, namely that either the effects are minor, or that the proposal is not contrary to the objectives and policies of the District Plan, before the application can be considered pursuant to section I04B of the Act.*

*Having considered the application and submissions received, together with the expert advice of Council Advisors, I consider that the adverse effects arising from the proposal will be no more than minor. I also consider that the proposal is consistent with the relevant objectives and policies of the District Plan. For this reason there is therefore authority to consider the proposal further under SI04B.*

*With regard to the fact that I consider that the adverse effects of the activity are minor and that the proposal meets the relevant objectives, policies and assessment criteria of the District Plan and all relevant Plan Changes, I have also concluded that the proposal achieves the intent of Part 2 of the RMA. For these reasons and having considered the matters set out in section 104 of the Act, I am of the opinion that consent can be granted subject to appropriate conditions. "* (para 222-225)

43. **Mr David Dunlop**, a Principal Transport Planner at Opus International Consultants, reviewed the work of the applicant's traffic experts and their responses to his various concerns. He reviewed the application against the transport rules in the District Plan, principally Rules 7.3.4.2 and 7.3.4.3 and agreed with Mr Bell's conclusion that the traffic impacts in the immediate vicinity of the site would be less than minor, subject to completion of the proposed improvements to the Cobham Drive/Troy Street roundabout.

44. He also agreed that the Kilbirnie site is well positioned:

*"near major road network facilities and on the path of several bus routes ". However "it does not actively promote walking and cycling from these areas (Miramar) due to the limited facilities that are available and the difficulty of providing connecting facilities across SH1." Also the provision of large numbers of free car parks "will encourage users to drive as the principal means of getting to the facility ".*

45. Mr Dunlop advised that the off-street parking proposed would be adequate for up to 600 users of the Centre at any one time. A Traffic Management Plan should be required for all events above that level. He also considered that some form of local residents parking scheme will be required on Kemp Street as otherwise users of the Centre will park on-street rather than entering the car park.

46. Mr Dunlop evaluated the impacts of the development against the five objectives of the New Zealand Transport Strategy which has the vision that:

*"People and freight in New Zealand have access to an affordable, integrated, safe, responsive and sustainable transport system".*

47. He concluded that the improvements to the Cobham Drive/Troy Street roundabout, with the more efficient flow on the Troy Street approach, would assist in meeting the following objectives:

*"Assisting economic development:  
Assisting safety and personal security: and  
Improving access and mobility".*

48. Considering the objective *"Protecting and promoting public health"*, he considered that the Centre:

*"will contribute to the health of the local community by providing accessible sporting facilities.";*

and:

*"As the facility accommodates for pedestrian and cyclist activities from both the south and west of the site, sustainable transport trips are also promoted. "*

49. Considering the objective *"Ensuring environmental sustainability"* he considered that:

*"greenhouse gas emissions can be expected to decrease associated with the improvements to the roundabout. With a reduction in congestion and energy wasted by waiting at the Cobham Drive/Troy Street roundabout during peak times, fuel consumption in the area can be expected to improve. Should the use of PT and sustainable transport modes be further promoted, this environmental sustainability could be future improved".*

50. **Mr Glynn Jones**, Council Officer, with specialist knowledge of noise and lighting effects had reviewed the applicant's noise and lighting assessments and generally agreed with their conclusions. He discussed the drafting of possible noise conditions, and further assisted the Panel with information on matters of enforcement and precedent.
51. Other Council officers and consultants reviewed aspects of the development and their conclusions were included in the Planning Officer Mr Robinson's report. They generally were supportive of the project, subject to conditions and, other than the Council Landscape Officer, and the Traffic Engineering Consultant were not required to present their evidence or answer questions from the Panel.

### **The Applicant's Case**

52. **James Winchester**, of Simpson Grierson, presented legal submissions on behalf of the applicant and summarised the areas to be covered by the following 12 witnesses. He advised that suggested conditions were being prepared for consideration and expressed a preference for performance based conditions to deal with any noise concerns.
53. He commented that some submitters were advocating for an alternative site. To the extent to which alternative sites are relevant he drew the Panel's attention to s88 and l(b) of the Fourth Schedule of the RMA (requiring that an activity should result in significant adverse effect on the environment to trigger consideration of other sites) and to a number of established legal tests for use in these cases.
54. He advised that the applicant accepted the proposal should be assessed overall as a non-complying activity because the noise effects will be integral to the day to day operation of the centre and it is therefore not reasonable to sever that aspect of the consent.
55. He submitted that the effects of the proposal need to be considered in the light of the existing environment and reasonable foreseeable environment both in terms of what the plan permits and the likely implementation of existing consents. He submitted that the application of the permitted baseline is a factor when assessing the effects of the proposal.
56. **Timothy Harrod**, Senior Project Manager at Wellington City Council discussed the history of the project, the Council's objectives, the consideration of options and alternative sites, including matters that have arisen during consultation with potential users and the community. He advised that the facility would not have a regional focus, but:

*"its availability for community sporting events needs to be a priority and not be subject to other events or competing needs" He stated that "the need and demand for a facility of this quality and size is not seriously in question" and "the positive effects of the proposal are significant".*

57. **James Delich**, Manager of Recreation Wellington a Business Unit of the Council, discussed the present situation for community sport in Wellington giving details of the expected use by sporting

codes, schools and the community and the way this would be managed. He agreed with Mr Harrod as to the good fit with the Council's objectives.

58. **Gerald Toebes** of Wellington Basketball Assn, **Paulette O'Reilly** of Netball Wellington Centre Inc and **Anisiata Pritchard** of Wellington Volleyball Assn presented evidence on the views and expected use of the facility by the three "anchor" codes. Each strongly supported the need for the centre to satisfy existing demands for indoor facilities and to help grow participation levels.
59. **Hugh Tennent**, Director of Tennant and Brown Architects, provided an overview of the architectural design process and the way the design had been developed to serve the users of the Centre while mitigating visual impact from Kemp Street, and the effects of shading and wind. He referred to drawings showing shading effects on residential properties in Kemp Street in the early morning at various times of the year. Comparing the proposed building with a 12 metre high base line building on the same footprint he showed that the worst affected property was 81 Kemp Street. At the winter solstice, shading from the proposed centre would leave the house at 9.45am and the front yard at 10am, 15 minutes later than would be the case for the baseline building.
60. **Megan Wright**, a landscape architect, presented the landscape design for the project which addressed the briefs requirement for a "high quality urban design". Following expert wind assessment of the site the design includes wind screens for pedestrians, especially in the external car parking areas and special sheltering for the trees as they adapt to the site. She expressed her view that:

*"The landscape has the ability to absorb a building of this scale and the proposed landscape design and treatment will ensure the ICSC sits appropriately in its setting. "*

61. **James Chrystall**, an Electrical Consultant, discussed the potential effects of the proposed exterior car park lighting, building facade lighting and interior building lighting. In his view the exterior building lighting design satisfies the requirements of the District Plan. He accepted the conditions suggested in the Planning Officers Report other than the suggested cut off time of 2400, arguing that some lighting (mainly light emitting diodes) should continue for security reasons and that would be at a level that would not have an impact on the amenity of local residences.
62. **Andrew Bell**, Transport Planning Team Leader for SKM, presented an analysis of the traffic impacts of the proposed development. He concentrated on the "sporting mode" of operation of the facility, with all courts operating and up to 500 people on site at anyone time. He analysed the effect of peak traffic movements to and from the site, with games change over coinciding with peak flow on the surrounding street network. He considered that this was a worse case scenario for the normal operation of the centre and considered "tournament use" to have a lesser impact, due to the greater likelihood that participants would arrive in shared transport, or by bus, minibus or shuttle. For the occasional "Finals" or "Special Events" the number of people involved would be greater, but he expected that the impacts would be managed through special planning by centre management and the expected peak traffic movements would probably be lower than the worse case scenario. He advised that his discussions with representatives of sporting codes reinforced his view that his basic assumptions were conservative and that actual impacts on the road network could well be lower than his predictions. He reached this conclusion following traffic modelling and allowing for the effect of proposed mitigating measures, principally improvements at the Cobham Drive roundabout on SH1 adjacent to the site and provision for right turns from Troy Street onto Kemp Street.
63. Mr Bell recommended that a site specific travel demand management (TDM) information and education programme be considered to encourage the use of sustainable modes.
64. After considering the effect of expected further development in the area, wider network effects, safety, parking, loading and access to bus routes, cycle ways and footpaths he concluded that:

*"the proposed ICSC has good accessibility being adjacent to the primary road network and near public transport routes. When the proposed mitigation measures are in place, the overall*

*net impact of this development on the road network will be no more than minor" and "from a traffic engineering point of view there are no traffic planning reasons to preclude this development as proposed"*

65. **Tim Kelly**, a director of his own traffic engineering and transportation planning practice, presented a peer review of Mr Bell's work. He advised that the SKM assessments had been undertaken in a thorough and professional manner and agreed with the conclusions reached. In response to a question he advised that in his view the problem of providing a safe pedestrian crossing across Troy Street was an existing problem and was not triggered by the application.

66. **Craig Fitzgerald**, an Acoustical Consultant, discussed the present noise environment, affected by high levels of traffic noise from Cobham Drive and Troy Street, and the District Plan noise rules. He referred to the Marshall Day report included in the Application and advised that noise survey information showed that:

*"It would be difficult to measure a compliant Permitted Activity noise source at the adjacent Outer Residential boundaries due to the high background and ambient noise levels. Therefore the relevance of the current Permitted Activity noise limits to this location is questionable given they are virtually unenforceable..."*

67. He therefore proposed noise limits be determined using an approach called "background plus" in accordance with NZS6802: 1991. He presented the results of computer modelling of the noise effects of the Centre. This showed that the building design was able to contain noise generated within the building and the noise impact on residences in Kemp Street would be from vehicle movement on the site and from the additional vehicle movements in Kemp Street.

68. Mr Fitzgerald proposed noise limits for the time periods 0700-2200, 2200-2400 and 2400-0700 of 55, 50 and 45 dBA L10 respectively, with an Lmax level of 75 dBA for the 2200-0700 period. He advised that:

*"All predicted peak hour noise emissions from the proposed development will meet these noise limits."*

69. He supported the various conditions proposed to mitigate noise effects and considered that because of the high ambient noise environment the noise effects of the Centre would be less than minor.

70. **Peter Coop**, a consultant resource management planner, commented on the need to consider positive effects as well as adverse effects. He supported the application of a "permitted baseline" when assessing the scale of impact of the Centre under s 104 (1)(a) and on that basis considered it was no more than minor. If no permitted baseline was available, he advised that the shading effects alone would in his view have an effect that exceeded minor.

71. Mr Coop also assessed the application against District Plan objectives and policies, the Draft Regional Policy Statement (March 2008), the Regional Land Transport Strategy and the Wellington Regional Strategy. He advised that the Centre is consistent with the relevant policies and objectives of the District Plan and also consistent with non-statutory plans and policies. He reviewed Part 2 matters and concluded that:

*"the proposal will promote the RMA's sustainable management purpose because it will provide for the wellbeing of the community while not offending RMA "bottom lines" in Section 5(2)(a) to (c)".*

72. Mr Coop produced an amended list of proposed consent conditions. It was agreed that the applicant and the Council would meet to discuss these and advise those that they were in agreement on later in the hearing.

## **The Submitters**

73. **Mr John Holden**, for Marist St Pats RFC, opposed the development on the grounds of a net loss of sports playing and training facilities in the area and advocated for works to improve Evans Bay Park and associated playing fields.
74. **Mr Seton Butler** supported the application from his background as a Basketball coach and knowledge of an unsatisfied demand for more training and playing facilities.
75. **Sue Ryall** on behalf of Netball Wellington Region Inc also supported the proposal and gave further background on the organisation of netball in Wellington and their likely use of the Centre. She advocated for the Centre to be open at 6am for pre-work training as per the Regional Aquatic Centre. She saw advantage in the proposed location for ease of access and for recovery sessions at the Aquatic Centre after games.
76. **Mr Geoff Henry**, a resident of Strathmore Park, with a background in athletics supported the proposal as a community facility focussed on encouraging and enabling increased participation in sport for all age groups in Wellington. He showed a video on Sports Hall Athletics showing how school children could be introduced to athletics indoors and supported the site as being close to low decile schools.
77. **Mr Paul Cameron** of Sport Wellington also supported the proposal as:
- "creating an opportunity for more Wellingtonians to enjoy the benefits of sport and physical recreation and at the same time reduce the rising levels of obesity, diabetes and inactivity. "*
78. Mr Barry Chalmers, who has a background in the parks and recreation industry and has been an administrator and basketball player in Wellington, supported the proposal and demonstrated:
- "the importance of the facility to one of Wellington's key sporting codes".*
- He highlighted the good fit with various Council strategies and plans.
79. **Mr Simon Tay**, **Mr McCulloch** and **Mr Tushar Panchal**, who were all residents of Kemp Street and lived opposite the site, provided valuable information on the present traffic environment. Mr McCulloch commented on the good bus service available on Rongotai Road. They all had concerns about loss of views and the impacts of additional traffic in their street, especially extra noise. Mr Panchal, who has a young family, was concerned about the hours of operation of the Centre and was of the view that the 10pm weekday and midnight weekend closing time that had been suggested was too late in this locality. They were all generally happy about the present noise, traffic and parking environment in the street, but were apprehensive and unsure about the possible future impacts on their living environment should the development proceed.
80. **Mr Barney Scully** and **Mr Stan Andis** were especially concerned about the poor pedestrian access to the Centre from the direction of Miramar. Mr Andis advocated a footbridge be erected over SH1 Cobham Drive and had been involved in previous consultations on Airport noise issues as a community representative. Mr Andis and **Mr Glen Kingston** on behalf of the Strathmore Park Progressive and Beautifying Assn were both concerned about any relaxation of existing District Plan noise rules because of the likely precedent for other developments in the area. Mr Kingston also asked that there be a strict control on the number and scale of special events applied for. **Mr Michael Mellor** advocated for greater effort to improve the situation for pedestrians, cyclist and bus users. While all four submitters were aware that the problems they were concerned about already existed and would not be caused by the development, they argued that it should not proceed until substantial improvements were in place.
81. **Mr David Gibson**, a resident in Yule Street, had two traffic concerns. He supported routes for earthworks construction traffic avoiding the use of local streets and wished to see the routeing proposed in the application enforced. He was also concerned that the development would increase traffic flows on Cobham Drive and proposed further additional lanes be constructed,

82. **Elizabeth Steer**, also a Yule Street resident, was concerned about the possibility of overflow parking onto local streets such as Yule Street where many residents do not have off-street parking.
83. **Mr Richard Burrell** and **Mr Andrew Foster** were concerned that the development would have unacceptable traffic effects in an area that was already congested and advocated for a more central site - at Westpac Stadium concourse or Seaview. They had commissioned expert traffic evidence from Mr Gary Clark and he presented this as part of Mr Foster's submission.
84. **Mr Gary Clark**, the Managing Director of Traffic Concepts Ltd, had reviewed the traffic report that accompanied the application. He had not had access to later work presented at the Hearing. He expressed concern that the analysis was based on 2006 data, very limited surveys of existing sporting venues and that wider area effects had not been modelled. Mr Clark concluded that:
- "The proposed centre is located within a road network that is already congested. The new facility will further congest this part of the network along with the wider road network and state highway corridor"*
85. **Mr Ian Maskell**, presented evidence in support of Mr Foster's submission. He provided background information on the Westpac Stadium Concourse site investigations and commented that:
- "the Concourse option remains a viable alternative to the Cobham Park option at the same cost but with clear and obvious benefits in terms of the Regional Transport policy, accessibility, environmental considerations and fundamental Urban Design principles (central location)."*
86. Mr Foster argued that the application should not be granted as the transport access arrangements are contrary to the principles of sustainable management and the Centre would have a traffic impact that would be more than minor as it was located in an area of serious traffic congestion. He explained that the worse traffic congestion was on the SH 1 route from the Evans Bay Road intersection to the Basin Reserve. Although this corridor was the subject of a recent study and plans for improvements were being made there was no certainty that these improvement works would be funded.
87. He referred to District Plan Policy 6.2.8.1 *"Seek to improve access for all people, particularly people travelling by public transport, cycle or foot and for those with mobility restrictions"*; and the assessment criteria which in his view the application did not meet. It was his opinion that an alternative and more central site at the Westpac Trust Stadium Concourse should be considered.
88. He submitted that a central site would reduce the travel distance to the Centre for an even larger proportion of the potential users (i.e. residents of Western suburbs and central city as well as those working in the central city). Moreover their travel to and from a central city site would not contribute further to congestion on SH1 between the Basin Reserve and Evans Bay. A central city site would also be more accessible to pedestrians, cyclists and public transport.
89. **The New Zealand Transport Agency** was a submitter in opposition but withdrew their objection to the Centre by letter dated 18 November 2008. They advised that they had reached agreement with the applicant on funding arrangements for the mitigation works for the Cobham Drive/Troy Street roundabout. The Agency supported the proposed condition requiring these improvements be in place prior to the Centre becoming operational

### **Council Officer's Reply**

90. Mr Robinson advised that he was supportive of performance based conditions and that this approach would be consistent with that used for other similar applications. He tabled a revised list of proposed conditions following discussion with the applicant. These included the preparation of generic traffic management plans for various levels of use of the Centre and time of day, set out in tabular form, Mr Dunlop assisted with explanation.

91. Revised noise level conditions were also submitted which would omit consideration of noise from the external car park and remove the previously proposed wind down 2200-2400 period. Mr Glynn Jones advised that he was happy to be more relaxed about vehicle noise and concentrate on the noise associated with operations inside the building where management would have more direct control.

### **Applicant's Reply**

92. Mr Winchester presented written closing legal submissions. He advised that it was his submission that the matter of the site being contaminated was severable and does not preclude the application of a permitted baseline. He argued that the exercise of the existing consent for remediation of the site, or one which is virtually identical is likely or inevitable and the permitted baseline should be applied on the basis that the site has been remediated. However, he advised that he was not able to provide any references in support of this opinion.
93. Mr Winchester tabled the applicant's revised list of proposed conditions and advised that while agreement had been reached with Council officers on most of these there was still an issue about the need for a 50dBA noise limit between the hours of 10pm and midnight as the facility winds down for the evening.

### **RELEVANT STATUTORY PROVISIONS**

94. The following provisions of the Resource Management Act 1991 were considered in arriving at the decision on this application.

#### **Part 2 -Purpose and principles**

95. The consideration of all resource consent applications is subject to Part 2 of the RMA, which sets out the purpose and principles of the Act. Under Section 5, the purpose of the Act is to promote the sustainable management of natural and physical resources. "Sustainable management" means:

*....managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while-*

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

96. In achieving the purpose of the RMA, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, are required to:

- Recognise and provide for the matters of national importance listed in section 6;
- Have particular regard to the other matters listed in section 7; and
- Take into account the principles of the Treaty of Waitangi in section 8.

#### **Part 6 -Resource Consents**

97. Section 104(1) of the Act sets out matters that a consent authority is to have regard to in considering an application for resource consent and any submissions received. Subject to Part 2 of the Act (Purposes and Principles), these include:

*Section 104 (1) (a) "any actual and potential effects on the environment of allowing the activity; "*

*Section 104 (1) (b) any relevant provisions of -*  
*(i) a national policy statement;*  
*(ii) a New Zealand coastal policy statement;*  
*(iii) a regional policy statement or proposed regional policy statement;*  
*(iv) a plan or proposed plan; and*

*Section 104 (1) (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

98. Section 104 (2) provides that:

*"When forming an opinion/or the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect".*

99. Section 104D sets out particular restrictions for non-complying activities as follows:

"(1) Despite any decision made for the purpose of section 93 in relation to minor effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either -

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

(2) To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity. "

100. Section 104B, in regard to the determination of applications for discretionary or non-complying activities, requires that-

*After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority-*

*(a) may grant or refuse the application; and*

*(b) if it grants the application, may impose conditions under section 108*

101. Section 108 outlines the nature of conditions that can be placed on land-use consents.

## RELEVANT PLANNING INSTRUMENTS

### National

102. With reference to the planning instruments and other matters referred to in section 104 above, there is no national policy statement relevant to this application.

Regard has been had to the New Zealand Coastal Policy Statement 1994 to the extent that it is relevant.

### Regional

103. The submissions and/or evidence heard was not directed to any particular provisions of the Regional Policy Statement or any regional plan except that the AEE that accompanied the application referred to the Regional Policy Statement containing - *"high level policy guidance that has been recognized and proved (sic) for at the district level through District Plan provisions and in particular, the provisions for the Suburban Centre areas within which the application site is situated"*.

### District

104. Mr Robinson's report sets out the relevant provisions of the District Plan to which regard must be had. The rules and standards that determine the activity status under the District Plan and Proposed Changes 52 and 65 are set out at paragraphs [see pages 18-20]....above.
105. The following Discretionary Activity Assessment Criteria of the District Plan have been referred to as guidance in assessing this non-complying activity:

#### *Height*

- 7.3.2.6.1 *Whether additional height will have a material effect upon sunlight access to streets, public space, or residential buildings in Residential Areas*
- 7.3.2.6.2 *Whether the wind environment will be materially affected*
- 7.3.2.6.3 *Whether the general form and continuity of development on street frontages will be affected*
- 7.3.2.6.4 *Whether additional height is necessary to facilitate any industrial or manufacturing Process.*

#### *Traffic & Parking*

- 7.3.4.2 *Whether the proposed development will cause congestion or affect the safe or efficient movement of traffic on streets in Suburban Centres or nearby Residential Areas.*
- 7.3.4.3 *Whether the proposed activity provides high standard facilities for public transport, cycling, pedestrian and vehicular movements or has easy access to those facilities or promotes the use of transport modes other than private vehicles.*

#### *Contaminated Material*

- 7.4.3.1 *The nature of the contamination and the extent to which the community and the environment will be exposed to the contaminants.*
- 7.4.3.2 *The proposed approach to, and timing of, the future decontamination of the site or the management of the decontamination risk.*

The following objectives and policies of the District Plan are relevant to the application:

- Objective 6.2.1 To promote the efficient use and development of natural and physical resources within Suburban Centre areas.*
- Policy 6.2.1.2 Encourage a wide range of activities by allowing most uses or activities within a Suburban Centre provided that the conditions specified in the Plan are satisfied.*
- Objective 6.2.2 To maintain and enhance the amenity values of Suburban Centres and any nearby Residential Areas.*
- Policy 6.2.2.1 Ensure that the effects of activities are managed to avoid, remedy or mitigate adverse effects on other activities within the Suburban Centre or in nearby Residential Areas.*
- Policy 6.2.2.2 Require that where activities in Suburban Centres adjoin or face a Residential Area, or where Suburban Centre buildings or structures adjoin the Residential Areas, they satisfy additional conditions.*
- Policy 6.2.2.3 Control the adverse effects of noise within Suburban Centres.*
- Objective 6.2.3 To maintain and enhance the physical character, townscape and streetscape of Suburban Centres.*
- Policy 6.2.6.4 Ensure that earthworks and buildings do not exacerbate flood hazards.*
- Objective 6.2.7 To prevent or mitigate any adverse effects of the storage, use, disposal, or transportation of hazardous substances, including waste disposal, and the formation of contaminated sites.*
- Policy 6.2.7.6 Control activities on any contaminated site.*
- Policy 6.2.7.7 Encourage the restoration of contaminated sites.*
- Objective 6.2.8 To enable efficient, convenient and safe access for people and goods within Suburban Centres.*
- Policy 6.2.8.1 Seek to improve access for all people, particularly people traveling by public transport, cycle or foot and for those with mobility restrictions.*
- Policy 6.2.8.3 Encourage the provision of appropriate parking and require servicing and site access for activities in Suburban Centres.*

106. The policies and objectives contained with Plan Change 65 are as follows:

- Objective 19A.2.1 To provide for earthworks for the use development and protection of land throughout the city while avoiding, remedying or mitigating any adverse effects of earthworks, landslips and associated structures on the environment.*
- Policy 19A.2.1.1 Ensure earthworks and associated structures are designed to reflect appropriate land development and subdivision by considering future development of the land.*
- Policy 19A.2.1.2 Require earthworks to be designed to minimise the risk of instability.*

- Policy 19A.2.1.3*      *Require earthworks to be designed and managed to minimise erosion, and the movement of dust and sediment beyond the area of the work, particularly to streams, wetlands and coastal waters.*
- Policy 19A.2.1.4*      *Ensure that earthworks and associated structures do not exacerbate flood events in Hazard (Flooding) Areas.*
- Policy 19A.2.1.6*      *Ensure that the design of earthworks and associated structures reflect the character and visual amenity of the local area.*
- Policy 19A.2.1.9*      *Require the transport of earth or construction fill material, to and from a site, to be along a safe and does not detract from amenity.*

107. Plan Change 52 provides that any building with a floor area in excess of 500m<sup>2</sup> requires a resource consent that is accompanied by a design statement addressing a number of specific urban design criteria.

### **Other Planning Instruments**

108. The following other planning instruments were referred to in the application and/or the evidence heard:
- The New Zealand Transport Strategy
  - The Regional Land Transport Strategy
  - The Wellington Regional Strategy.

### **PRINCIPAL ISSUES IN CONTENTION**

109. The principal issues in contention include the following:
110. **Traffic, Parking and Access** - Expert traffic witnesses for the applicant and the Council were in general agreement on all significant traffic matters. However the following matters were contested by submitters:
- Scale of traffic effects on SH1
  - Adequacy of off-street parking provision
  - Pedestrian and cycling access deficiencies
111. **Noise effects** - Given the development lies in close proximity to an established residential area on Kemp Street, the proposed noise levels associated with the activity have the potential to result in adverse effects for the surrounding residential amenity. However the application site is in a high ambient noise environment not only because of the proximity of the runway of Wellington Airport approximately 400 metres to the east but also from the traffic noise on the adjoining streets, Cobham Drive, Troy Street and Kemp Street. The applicant's environmental noise survey results demonstrate that it would be difficult to measure a compliant Permitted Activity noise level at the adjacent Outer Residential boundaries due to these high ambient noise levels. One matter in contention therefore is - what are the appropriate maximum day/night permitted noise levels for the proposed activity? A second matter in contention is whether noise should be controlled by restricted hours of operation of the Centre, or by setting performance standards in the form of maximum permitted noise levels for day and nighttime periods.
112. **Site Suitability and Alternatives** - Some submitters maintain that the Centre is an over-development of the site which is out of scale with the amenities of the area and will result in negative effects on adjoining landowners, the coastal environment and the wider environment. Submitters also regard the site as inappropriate because of its location in the eastern suburbs and argue that a central city site

would enable greater benefits to be realised and would be more accessible to a greater number of people.

## MAIN FINDINGS AND REASONS FOR DECISION

### Traffic

#### *Scale of traffic effects on SHI*

113. It was generally agreed that there will be an increase in queue lengths on the Cobham Drive approaches to the SHI Roundabout adjacent to the site and a significant reduction in the queue lengths on the Troy Street approach as a result of the improvements to be made as part of the project. Some submitters have stated that these improvements are part of works on the route that are required by the many expected developments expected as a result of the Council nominating the area for future growth (growth spine) but are being brought forward as part of the Centre project. Mr Dunlop states that the improvements had earlier been proposed for safety reasons but that the Authority has delayed funding them as the safety problems are not a high enough priority at this time. Taking a long term view, the expected increase in queue lengths on the SHI approaches to the roundabout at Troy Street can therefore be seen as part of an overall strategy for the route by the road controlling authority and to be expected as further intensification of land use occurs along the growth spine, rather than being a direct consequence of the development of the Centre.
114. Submitters were also concerned about the wider impacts of the traffic attracted by the Centre; in particular extra traffic at the SH1/ Evans Bay Road intersection and on Wellington Road and Ruahine Street, the SHI route to the central city. Mr Clark giving expert evidence for Mr Foster was of the view that these effects were poorly understood and advocated for further survey and modelling before considering approval of the Centre. Mr Dunlop had also had concerns initially, but advised that following further work carried out for the applicant by Mr Bell he was satisfied that the impact would not be material. The Panel notes that Mr Clark had not reviewed this further work and did not offer any analysis of his own to support his view. Also the withdrawal of the New Zealand Transport Agency's objection indicates that they do not have a concern about this matter. The Panel is also aware that those parts of the network remote from the site are already congested and the road controlling authorities are developing proposals to address the problems.
115. In summary, the Panel accepts the view of experts for the applicant and Council that traffic effects on the roading network will be no more than minor.

#### *Adequacy of off-street parking provision*

116. Residents in local streets have a concern that visitors to the Centre will seek parking space in their streets, which, in the case of streets such as Yule Street, is already heavily used. Submitters from Kemp Street did not have these concerns to the same extent as they had their own off-street parking, but the view of the Council's expert traffic witness was that once the Centre was in operation there could be problems unless a scheme giving priority to residents was in place.
117. The traffic experts are agreed that the off-street car park will be sufficient for normal levels of use of the Centre (up to 600 persons at anyone time) and that special arrangements for traffic movements and parking will be required for larger tournament events (attracting participants /spectators in excess of 600 persons to a maximum of 2599 persons). This would be in addition to the requirement to provide and implement a "special events" management plan for all "special events" (i.e. attracting in excess of 2600 participants/spectators).
118. The Panel has visited the area and noted that there are open areas off Kemp Street which are part of school, church or commercial properties and could be suitable for overflow parking. It therefore seems possible that the managers of the Centre could produce a credible generic traffic management plan for such tournament events that should be able to minimise parking impacts on local streets. The Panel

decided that a condition requiring a Residents Parking Scheme should not be considered; as such a scheme would impose costs on residents as well as benefits and would need to be consulted on. It is one of a variety of measures that the Council and residents could consider once experience was gained with the operation of the Centre.

#### *Pedestrian and cycling access deficiencies*

119. Some submitters had a view that existing cycle and pedestrian access deficiencies on the nearby road network should be solved prior to the Centre operating. There was general agreement between submitters and traffic experts that direct pedestrian and cycle access from Miramar (i.e. the northern half of Miramar Peninsula) was poor and not safe, however pedestrian and cycle access from the southern half of the Miramar Peninsula was significantly assisted by the pedestrian and cyclist tunnel under Calabar Road and the Wellington Airport runway.
120. The main problems for residents of the northern half of the Miramar Peninsula were a lack of any safe crossing of SRI Cobham Drive from the waterside cycle/ pedestrian path to the Centre, and the lack of a safe pedestrian crossing on Troy Street near Kemp Street. It was accepted that these problems were existing ones. The applicant submitted that the responsibility for correcting these problems was for the road controlling authorities, not the applicant, as the Centre did not create the problems and the expected flow of cyclists and pedestrians from the northern half of Miramar Peninsula was predicted to be very small.
121. The applicant offered to accept a condition that required the preparation of a Travel Demand Management Plan that would encourage the use of safe cycling and pedestrian access and had included footpath links and cycle stands in their proposed development, working to industry best practice.
122. Other submitters had a higher level concern; arguing that, because there were pedestrian and cycling access deficiencies, consent should not be granted, citing sustainability and carbon neutral objectives. Mr Dunlop for the Council had carried out an assessment against the objectives in the New Zealand Transport Strategy and found the application with its proposed mitigation measures supported all of the five objectives to some extent, including the sustainability objective.
123. In the Panel's view, this is not a matter that should be assessed in isolation from other issues and effects of the proposal. The application needs to be assessed against the totality of the District Plan and other relevant plans and policies.

#### **Noise**

124. The site and the immediately adjacent Kemp Street residences are generally located within the Wellington Airport Air Noise Boundary. Due to this and traffic noise from the arterial roads on the site boundary the existing noise level is substantially above the levels set in the District Plan. Local residents are well aware that they live in a noisy location.
125. The applicant and Council are in agreement as to the use of a "background plus" method for determining required noise levels to be met by the development, but not on the use of a 2200-2400 wind-down period with a transitional noise level set for that period, nor on whether or not to include noise from traffic associated with the Centre. The applicant argues for inclusion of traffic noise and the wind-down period, the Council Officer argues that neither is needed.
126. Considering the appropriate levels to be set, the Panel accepts the use of the background plus approach as set out in NZS 6802: 1991, and the agreed view of experts for the applicant and Council that the levels set should be 55dBA(L10) during the day (7am to 10pm) and 45dBA(L10) and LMax 75dBA at night. The level of 45dBA outside buildings is noted in NZS 6802 as the maximum level that allows residents to sleep with windows open.
127. The Panel considers that traffic noise associated with the site is a direct effect of the site operation. Indeed, it was clear from the expert evidence that it was the only significant contributor to additional

noise at the residential properties. It can be influenced by Centre management through their control of access arrangements and should be included in any measurement of noise levels.

128. On the adoption of a wind-down period, the Panel is aware that a reduction from an allowable noise level of 55 dBA during the daytime and evening to 45dBA during sleeping hours is perceived as a halving of allowable noise. If this reduction is required to occur at 10pm without a transition period the Panel was advised that it would effectively mandate a closing time of 9.30pm. Conversely if a transition period was allowed with a noise level of 50dBA, from 10pm to 11pm this would mandate a closing time of 10 pm while providing the Centre with some flexibility to achieve the managed reduction in noise generating activities over the one hour transition period to the night time level of 45dBA. The Panel saw the introduction of such a period as having the possibility that the community users of the Centre could have greater flexibility in their time of use, while recognising the need for the Centre to be a good neighbour. The Panel notes the comment in the 2008 update of NZS 6802 that while the definition of times of day is a matter for local authorities, a period of at least 8 hours should be provided for sleep. This supports the use of 10pm to 11pm as the wind down period with 11pm as the start of the night time period, thus allowing 8 hours quiet for sleep until 7am.

### **Site Suitability and Alternatives**

#### *Alternative Sites*

129. The Panel's task in determining this application is limited to a consideration of the sustainable management issues, including the effects on the environment that would arise from a use of the application site as proposed. The Panel does not have a mandate, nor would it be appropriate to have one, to compare the application site with other sites which may, in the minds of submitters, be superior for whatever reason.
130. Schedule 4 of the RMA, which provides guidance on the contents of assessments of effects on the environment (AEE) that are to accompany an application for resource consent requires the inclusion in such an assessment, among other things, of the following:

*"Where it is likely that an activity will result in any significant adverse effect on the environment, a description of any possible alternative locations or methods for undertaking the activity. "*

131. First the Panel does not believe that the proposed activity is likely to result in any significant adverse effect on the environment. The Panel concludes this by reference to the evidence heard in respect of traffic and parking, noise, building height and bulk, lighting and the nature of the activities that will be conducted within the Centre. As seen in the Panel's assessment of adverse effects below, some effects may be considered to be more than minor, but generally effects can be mitigated by conditions, and the degree of adverse effects stops well short of what could reasonably be regarded as significant.
132. Second, even if there was a potential for a significant adverse effect, all the particular provision of Schedule 4 referred to above requires is that a description of "*possible alternative locations*" is included in the AEE. The Panel is satisfied that the AEE contained such a description. Furthermore, the evidence of Mr Harrod described the process of consideration of alternative locations in some detail and gave cogent reasons for the selection of the application site. The Panel does not believe that the applicant was required to do more than that.
133. Mr Winchester submitted that the Panel's task was to assess the proposal on its individual merits in accordance with the relevant statutory provisions of the RMA, and cited the decision of the Environment Court in the case *All Seasons Properties Limited v Waitakere CC W021/07*. The Panel accepts this submission.

#### *Location*

134. The Panel believes that the site has a number of positive attributes that confirm its suitability as a location for the Centre. It is located adjacent to State Highway 1 (Cobham Drive) with access from a secondary street. This primary roading corridor will continue to be the focus of a number of strategic initiatives that will ensure its maintenance and predominance as the region's principal arterial route. In that respect the Panel believes that access to the proposed facility will be assured into the future.
135. Looking at the Evans Bay area as a whole, the Panel believes that the location of the sports centre is a strategic fit with the other public and private recreation facilities including Kilbirnie Park, the Regional Aquatic centre, Evans Bay Park, Tacy Street netball courts, Kilbirnie Bowling Club and the playing fields of St Patricks College and Evans Bay Intermediate School. A number of submitters drew the Panel's attention to the potential for complementary "wet and dry" recreation packages, particularly for schools, involving the combined use of the Regional Aquatic Centre and the proposed Centre. A cluster of recreation facilities in Evans Bay/Kilbirnie would provide positive reinforcement of the Council's growth strategy for Kilbirnie.
136. The Panel also heard evidence that the Centre would be conveniently located for up to 40 schools with total rolls of nearly 14,000 students within a 5 kilometre radius. Some 14 of these, with a total of 4,620 students, are within 2 kilometres which is considered to be a reasonable walking distance.
137. Locations for facilities of this type and size are often restricted to public open space land simply to meet the demanding site requirements. Location of the Centre within the Suburban Centre Area has the advantage that there is no reduction in land zoned for public open space and the building and associated site development are already largely contemplated by the District Plan provisions applying to the area.
138. Overall, the Panel has concluded that the site is an appropriate location for the Centre.

*Physical Suitability*

139. Performance requirements for the Centre translate to a large building, both in footprint and height. This in turn requires a large site and an appropriate context. To the north the site has the benefit of the open space of Cobham Drive and Evans Bay, while to the east the Troy Street roundabout and a portion of Troy Street provide separation from other land uses. To the west is a fully built up portion of the Suburban Centre with commercial buildings between 10 and 15 metres in height, and a church complex. This leaves only the Kemp Street frontage, the smallest of the site's four frontages, to interface with the residential area on the south side.
140. Plan Change 52 sets out the relevant criteria for assessing applications for resource consent for any building with a gross floor area exceeding 500m<sup>2</sup>. Applications of this nature must supply a design statement that demonstrates a number of design responses several of which are directly related to the suitability of the site to accommodate the building. These are:
1. *The extent to which the design and siting of the building reinforces and defines the adjoining street edge and public space.*
  2. *The way the treatment of the building bulk mitigates the scale of the building relative to adjacent sites and buildings (eg through providing transitional volumes or contrasting elements).*
  5. *Whether servicing and vehicle parking is located and functions in a way that does not compromise the quality of the street edge, nor the status of the main entry to the building.*
  6. *The extent to which the building is designed to respond appropriately to its context. "*
145. The Panel was advised that the urban design aspects of the proposed building have been assessed and accepted by the Council's Chief Urban Designer, Gerald Blunt.

146. In response to the submission from Mr Richard Burrell that the site is overdeveloped and out of scale with the amenities of the area, Mr Tennant's evidence was that:

*"69. In response to this concern, I consider that the building is appropriately scaled for its urban and topographical context, and the site development is consistent with the intentions of the Suburban Centre Zoning of the site. The building has a large footprint but in effect is quite flat for its area. It is essentially a big roof, with the walls being of an appropriate scale for the road edge location, and pulled back far enough from the Kemp Street residences to not be overbearing. As outlined by Ms Wraight in her evidence, trees also screen and mitigate this proximity to a taller building.*

*70. I also consider the scale of the building is also appropriate given the scale of Evans Bay. The largest manmade element along the Bay is the airport runway, which I consider to be of a larger scale than the proposed facility, and further, the building scale is consistent with the large structures along Cobham Drive. "*

147. Overall, the Panel is satisfied that the site has the attributes to accommodate a building of the size proposed together with the necessary ancillary car parking and service access. The Panel agrees with the expert evidence of Mr Tennant that the building is appropriately scaled for its context and appropriately sited to avoid, as far as possible, adverse effects on the residential properties on the south side of Kemp Street opposite.

### **Assessment of Effects**

#### *Positive Effects*

148. The Panel agrees with the evidence of Mr Coop and Mr Delich who consider that the Centre has a number of substantial positive effects. For instance the facility would have immense benefit to community sports and recreation organisers and users by providing safe, indoor playing and training facilities, eliminating bad weather cancellations. It would provide much needed facilities for basketball, netball and volleyball and would increase access to playing courts for use by a wide section of the community, including both casual and club use and use by schools. It would provide a destination for sports proficiency programmes, coaching clinics and training camps, and it would enable more regional, national and international sports events to be held in Wellington.

149. In addition, Mr Delich drew attention in his evidence to the importance to overall community health and wellbeing of access to sport, recreation and leisure opportunities for people of all ages, abilities and circumstances. The Panel was impressed with the range of identified needs of possible community users identified by Mr Delich and his comprehensive evidence as to the flexibility and versatility of the Centre to meet many of these needs. The Panel sees that as a very positive aspect of the proposal.

150. A further positive feature identified by Mr Tennant is that the building will signal a "gateway" or "landmark" building on the route into the City from the airport and will positively contribute to the experience of arriving in Wellington and travelling along Cobham Drive.

151. Mr Robinson also considers that the proposal will have positive effects where at paragraph 219 of his report he refers to:

*".. ...the long-term positive effects of the proposal which provides a high quality all weather recreational facility which would have major economic, social and cultural benefits for the city and region. "*

#### *Permitted Baseline*

152. Before dealing with the adverse effects of the proposed activity there is a need to determine to what extent, if at all, the Panel should disregard the adverse effects of activities that are allowed by the District Plan under section 104 (2), commonly known as the permitted baseline.

153. In this respect Mr Winchester submitted that the adverse effects relating to the proposal which are permitted by the District Plan should be disregarded. He cited the following description of these activities from Mr Coop's evidence:

*"In simple terms, then, the District Plan anticipates and provides for the proposed activity as a permitted activity, building(s) of up to 12m in height, and on site parking for 120 cars. These are significant components of the proposal and illustrate the significant extent to which the proposal is deemed to be acceptable on this site by reference to the District Plan provisions. "*

154. On this basis Mr Winchester submitted that any assessment of building height and its associated effects (sunlight access, shading, wind, amenity) should be confined to the additional 3.7 metres of the proposed building over and above the permitted 12 metres under the District Plan provisions. He further submitted that Mr Tennent's evidence indicates that creation of a building which establishes this "baseline" is quite feasible and non-fanciful.

155. Mr Robinson also considered that disregarding permitted activity effects is appropriate in this case as use of the permitted baseline is not inconsistent with the wider context of the District Plan and Part 2. He further stated in his report that:

*"A plausible and credible permitted baseline scenario is considered particularly relevant to the proposed height of the building and is presented in the effects assessment below. Whilst it is noted that Plan Change 52 would require a resource consent application to be submitted for the design of a building of this scale, the bulk and height of such a structure can be considered to be 'anticipated' through the maximum permitted controls of the Suburban Centre Chapter of the District Plan. "*

156. In the above passage Mr Robinson is confirming that under Plan Change 52 a resource consent is required for any building in the Suburban Centre area that exceeds 500m<sup>2</sup> in area. Thus a building that does not exceed the 12 metre maximum height still requires Discretionary Activity (Restricted) consent in respect of design, appearance and siting, and that consent could be refused those grounds, but not on the grounds of its height alone.

157. During the hearing the Panel raised the question of whether the site contamination issue and the need under the District Plan to obtain a consent to a Discretionary Activity (Restricted) (Rule 7.4.3) was a barrier to the application of the permitted baseline. It was common ground that the site is a "contaminated" site as to the application of this rule. The explanatory note to this rule in the Plan states:

*"Activities on contaminated sites are controlled for two reasons. Firstly to prevent the contamination from adversely affecting occupiers of the site, or processes which could take place there, and secondly, to ensure that such sites are cleaned up. "*

158. As a preliminary to the clean up of the site, Consent 169761 was granted on 21 December 2007 - *"To undertake remediation works associated with a large scale commercial use of a contaminated site"*. The Conditions which are part of the decision concern the planning and carrying out of the earthworks and disposal of material from the site. No details of the *"large scale commercial use"* are given and there is no discussion of the effects of that use or any Conditions relevant to the presumed building. The Consent has yet to be exercised.

159. Mr Winchester in reply submitted that following the Court of Appeal decision in **Queenstown Lakes District Council v Hawthorn Estates Limited (2006) 12 ELRNZ 299**, the "environment" against which a proposal should be assessed is not limited to the existing environment but includes:

*"the reasonably foreseeable environment after allowing for potential use and development -both in terms of what the plan permits and in circumstances where there is evidence that implementation of existing consents is likely or inevitable. "*

160. The Panel accepts Mr Winchester's point that the question of the site contamination is severable from the application of the permitted baseline. The site contamination has been dealt with by the previous consent and that provides the opportunity for a "permitted" building of up to 12 metres in height to be constructed without further consent. The present application includes site contamination aspects because the proposal now includes excavation required for the undercroft parking.
161. Regarding the constraints imposed by Plan Change 52, the Panel agrees with Mr Robinson that in the strictest sense the baseline building described by Mr Tennant does not constitute the permitted baseline because resource consent is required. The Panel notes that this comparative building has been given the same roof profile and footprint (size and location) as the proposed building but its eave line, which is the part of the building that causes shading, has been reduced to 12 metres. The Panel acknowledges that the comparative building is set back from Kemp Street, something that the District Plan does not require, so that it is not a "worst case" baseline building. However it is not a building that could be built "as of right". Because it exceeds 500m<sup>2</sup> in area, resource consent is required in terms of the rules added to the District Plan by Plan Change 52.
162. Mr Robinson refers in his report to the fact that several smaller buildings under 500m<sup>2</sup> could be built as of right on the site. He further notes that such "as of right" buildings could cover a greater area of the site and be positioned closer to the Kemp Street residential properties than the building proposed in the application. The Panel agrees that in the future if the proposed centre is not developed commercial buildings could be erected on the site that would have similar shading characteristics. However, the discretionary nature of consent for buildings in excess of 500m<sup>2</sup> and the lack of evidence as to the shading effects of "as of right" buildings introduce uncertainties which the Panel believes prevents it from applying the permitted baseline. Consequently, with reference to the relevant question posed by the Environment Court in **Lyttelton Harbour Landscape Protection Association Inc v Christchurch CC C055/06**, the Panel finds that it is unable to disregard the adverse shading effects of the proposed baseline building.<sup>1</sup>

#### *Mitigation through Conditions*

163. The adverse effects of the proposal can be mitigated by conditions of consent. The Panel has therefore approached the assessment of adverse effects by focussing on the net effect resulting from the application of conditions. In the main these have been agreed between the applicant and the Council's regulatory officers and cover most aspects of the proposal.

#### *Adverse Effects*

164. Using categories of effect identified and discussed by Mr Robinson in his report the Panel takes it as common ground that subject to the conditions that he recommends, or ones to the like effect, that there are no issues with the identified effects in respect of site contamination and groundwater, urban design, landscape modification, privacy, wind, services and earthworks, and the Panel adopts his conclusion that adverse effects in those respects are either *de minimus* or not more than minor.
165. In regard to traffic, parking and access, the Panel has determined that adverse effects on the network are not more than minor, that parking is adequate for day to day operation but will require to be addressed through traffic management plans for tournament finals and special events, and that access difficulties for pedestrians and cyclists from the east were existing ones for the road controlling authorities, not the applicant.
166. Construction effects will also be appropriately mitigated to the point where they are not more than minor by the implementation of appropriate management plans, hours of use and the specification of both

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<sup>1</sup> In **Lyttelton Harbour Landscape Protection Association Inc v Christchurch CC C055/06** one of the suggested questions to be asked when considering that application of the permitted baseline is - *Is the evidence regarding the proposal, and regarding any hypothetical (non-fanciful) development under a relevant permitted activity sufficient to allow for an adequate comparison of adverse effect?*

outwards and return route for earthworks construction traffic (including transport of contaminated material) which avoids the use of local streets.

167. Noise effects can also be largely avoided and/or mitigated by the adoption of noise standards, noise management plans (i.e for construction activities, tournament events and special events) and the treatment of road and car park surfaces to reduce traffic noise. With these measures secured by conditions the Panel is satisfied that potential adverse effects of noise from within the building and from vehicles using the centre will be reduced to acceptable levels.
168. In all respects other than shading effects, the Panel concludes that adverse effects are not more than minor.
169. If no permitted baseline is applied in respect of building height the shading received by the residential properties in Kemp Street would be in the order of 1.5 -2 hours early to mid morning each day between late May and early August. The Panel considers that this amount of shading is an adverse effect that is more than minor. When this scenario was put to Mr Coop he agreed that without application of the permitted baseline the shading effect would be more than minor.

### **Non-complying Activity Assessment**

#### *The Legal Tests*

170. As seen above, the application falls to be considered as a non-complying activity under Section 104D. This involves a consideration of whether either of the provisions of this section are satisfied in respect of the application not having more than minor adverse effects on the environment or it not being contrary to the objectives and policies of the District Plan.
171. The Panel's assessment of effects has led it to the conclusion that for the purpose of section 104D(1)(a) the adverse effects will be more than minor. In coming to this conclusion the Panel is aware that the Environment Court has found that there is no statutory authority to consider the positive effects of a proposal when deciding whether this threshold test is met.<sup>2</sup>
172. The Panel has therefore considered whether or not the application is contrary to the objectives and policies of the relevant District Plan or plans which in this case the Panel takes to be the operative District Plan and Plan Change 65. Plan Change 52 does not propose any objective or policy that is relevant to the Panel's considerations.
173. In considering this aspect the Panel has had regard to Mr Winchester's submission that the application is a case to which the findings of the Environment Court are relevant when it stated that:

*"...the purpose of section 104D is not to create a type of de facto prohibited activity but to allow for activities that are acceptable in the sense that they do not oppose or challenge the objectives or policies and therefore qualify for further examination under section 104."*<sup>3</sup>

174. The Panel has also had regard to the meaning given by the Courts in various decisions to the notion of "contrary" in this context, as being "opposed to in nature, different to, or opposite and also repugnant and antagonistic".<sup>4</sup>

#### *The Evidence*

175. Both Mr Robinson and Mr Coop addressed the objectives and policies of the District Plan in their evidence and both concluded that the proposal was consistent with these. In Mr Robinson's case he

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<sup>2</sup> Stokes v Christchurch City Council (CI08/99)

<sup>3</sup> Price v Auckland City Council (WI8of 96)

<sup>4</sup> NZ Rail Ltd v Marlborough DC 04/11/93, Greig J, HC Wellington API69/93, [1993] 2 NZLR 641, [1994] NZRMA 70, 1&2 NZPTD 720.

included an analysis of each relevant objective and policy and provided a conclusion for each. His overall conclusion in respect of objectives and policies was that:

*"The relevant objectives and policies seek to control the effects of Suburban Centre activities in order to ensure that developments such as the proposed facility respond well to their surrounding context and do not unduly harm the amenities of surrounding land uses. I believe the proposed new facility, subject to appropriate controls, is consistent with the objectives and policies under the Operative District Plan for the reasons outlined in the assessment above. "*

176. Mr Coop adopted Mr Robinson's overall conclusion and relied on the AEE that accompanied the application for his own assessment of the proposal against the relevant objectives and policies. In section 5.11 of the AEE five thematic questions are posed and answered. These questions have been derived from the relevant objectives, policies and anticipated environmental results. In summary, Mr Coop's evidence in these respects was that:

- Approval of the application will promote the efficient use and development of natural and physical resources within Suburban Centre areas. [Objective 6.2.land Policy 6.2.1.2.]
- The amenity of nearby residents will be affected, but mainly in a positive manner. There will be minor adverse effects for a limited number of nearby residents associated principally with increased traffic, shading and the change from existing open playing fields to a sports and recreation centre. [Objective 6.2.2 and Policies 6.2.2.1 and 6.2.2.2]
- The amenity of nearby residents will not be unreasonably affected by noise generated by the Centre. [Policy 6.2.2.3]
- The Centre will have an acceptable visual "fit" with the locality. [Objective 6.2.3]
- The Centre will be able to be conveniently accessed by users. [Objective 6.2.8 and Policies 6.2.8.1 and 6.2.8.3]

177. Mr Coop agreed that if the permitted baseline is not applied, the adverse effects of shading will be more than minor. However, in respect of objectives and policies, he believes that the proposal is not contrary to these because the significant positive effects outweigh the adverse effects.

178. The Panel's acceptance of this evidence from Mr Robinson and Mr Coop is qualified by the fact that both witnesses rely on the application of the permitted baseline as far as shading effects on the residents of Kemp Street are concerned, something that the Panel does not accept. Therefore the Panel has given further consideration to the objectives and policies of the District Plan.

#### *Objective 6.2.2 -Amenity*

179. Objective 6.2.2 is:

*"To maintain and enhance the amenity values of Suburban Centres and any nearby Residential Areas. "*

This is achieved by a number of policies including Policy 6.2.2.1:

*"Ensure that the effects of activities are managed to avoid, remedy or mitigate adverse effects on other activities within the Suburban Centres or in nearby Residential Areas. "*

180. The methods stated for achieving the policy include rules, the Regional Air Quality Plan, Abatement Notices and Enforcement Orders. The accompanying explanation refers to the containment of nuisances including fumes, smoke, smell, vibration, and glare, and noxious or dangerous activities. The explanation refers to the Council relying on section 17 of the RMA to avoid remedy or mitigate the adverse effects of activities.

181. The anticipated environmental results associated with this policy are:

*"uses or activities in Suburban Centres will not cause a nuisance or danger either within Suburban Centres or in nearby Residential Areas."*

The explanation further states that:

*"Other effects identified in the rules will be controlled by applying performance standards. "*

182. Policy 6.2.2.2 is as follows:

*"Require that where activities in Suburban Centres adjoin or face a Residential Area, or where Suburban Centre buildings or structures adjoin the Residential Area, they satisfy additional conditions. "*

As for Policy 6.2.2.1 there is a reliance on District Plan Rules for implementation. In fact, the rules do not include any "additional" conditions regarding maximum building height. Rule 7.1.2.2 -Height control adjoining Residential Areas, is an "additional" rule designed to protect nearby Residential areas from overshadowing. This rule provides for a transition in the height of buildings between Suburban Centres and surrounding Residential Areas, to protect residents from overshadowing and other impacts that buildings may have. The proposed building meets the requirements of this rule.

183. The Panel's interpretation of this amenity objective and its associated policies is that it is mostly focused on containing the effects of nuisances (as described above) to within the Suburban Centre Areas, whereas other effects, including shading effects, are left to the rules of the District Plan to set appropriate thresholds and mechanisms such as Discretionary Activity consents to determine proposals that exceed those thresholds.

184. A wider alternative interpretation of objective 6.2.2 can be considered, based on its reference to "amenity values" which is defined in the RMA as being:

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

The Panel has had regard to this wider scope of Objective 6.2.2 and believes that overall the significant positive contribution that the proposed centre will make to the amenities of the greater Kilbirnie area will outweigh any adverse effects through shading in the early winter mornings of parts of the nearby residential area.

185. The proposal will transform a nondescript, windy playing field into a versatile, community-orientated, all-weather, recreational facility with significant economic, social and cultural benefits for Kilbirnie and the wider City. The proposed competition-winning building design is of a high standard that will become a landmark building in the area and be aesthetically pleasing.

*Finding as to Objectives and Policies*

186. Having had regard to the evidence, legal submissions and relevant case law, and having given detailed consideration to the relevance of Objective 6.2.2 and its associated policies relating to amenities, the Panel finds that the proposal will not be contrary to the objectives and policies of the District Plan. The second threshold test of section 104D (I) is met and the application can be considered under section 104.

## **Section 104**

*Assessment of Effects*

189. In considering the actual and potential effects on the environment of the proposed centre the Panel has had regard to the comments of the High Court in **Elderslie Park v Timaru District Council (CP 10/94)** regarding the assessment of effects in consideration of a resource consent application as follows:

*"To ignore real benefits that an activity for which consent is sought would bring necessarily produces an artificial and unbalanced picture of the real effect of the activity. In determining whether an effect is minor it is appropriate to evaluate all matters which relate to the effect. These matters would include counterbalancing benefits and possible conditions. "*

190. As seen above, the Panel's view is that many of the potential adverse effects of the proposal can be mitigated by conditions so that in the overall analysis they are no more than minor. In respect of the adverse effects that are not able to be avoided or mitigated by conditions, notably the additional shading of residential properties on the south side of Kemp Street, the Panel's view is that following Elderslie Park these residual adverse effects are outweighed by the considerable positive effects of this proposal that have already been identified.

#### *Objectives and Policies*

191. The Panel's determination that the proposal is not contrary to the objectives and policies of the District Plan and Plan Change 65 made for the purpose of section 104D(1)(a) is also applicable when regard is had to those provisions under section 104.

#### *District Plan Assessment Criteria*

192. The Suburban Centre Rules set out a number of assessment criteria to be considered when evaluating Discretionary (Restricted) Activities, including when a Permitted Activity Performance standard is not met, as is the case in respect of the height of the proposed building in this case. Assessment Criteria are also included in respect of applications for the use and development of contaminated sites.
193. Having regard to the planning evidence of Mr Robinson and Mr Coop, the Panel is satisfied that the proposal complies with the criteria relating to:

- The wind environment
- Effects on Street frontages
- The safe and efficient movement of traffic on streets in Suburban Centres or nearby Residential Areas.
- Contaminated Sites.

194. In respect of the additional height of the proposed building, the criteria are:

7.3.2.6.1      *Whether additional height will have a material effect upon sunlight access to streets, public space, or residential buildings in Residential Areas*

7.3.2.6.4      *Whether additional height is necessary to facilitate any industrial or manufacturing Process.*

195. While the additional height does not relate to a industrial or manufacturing process, the Panel is satisfied on the evidence of the applicant that the proposed height of the building is necessary to accommodate the intended sporting use of the building and to achieve the necessary span and proportions for a 12 court facility.
196. As the site is currently used as open sports fields and contains virtually no buildings, the proposed development represents a significant change to the surrounding built environment. The proposed

development will have shading effects on a limited number of properties surrounding the site, including Kemp Street. However, given the Suburban Area zoning of the site which provides for a certain level of development, some shading can be anticipated.

197. Overall, the proposed development, through its curved roof and its location as far to the north of the site as possible, minimises the shading effects of the development. However, the applicant's evidence was that residential properties on the south side of Kemp Street would be shaded by the proposed building for between 1.5-2 hours from early to /mid-morning between late May and early August. The Panel notes that the shading effect is therefore confined to 10 weeks of the year during the winter. The Panel considers that this amount of shading is an adverse effect that is more than minor and would be material in terms of this assessment criterion. However, the Panel has already determined that in the broader assessment this adverse effect is acceptable given the significant positive effects of the proposal.

#### *New Zealand Coastal Policy Statement*

198. The Panel does not believe that there will be any conflict with the New Zealand Coastal Policy Statement if this application is granted. Although in the coastal environment, as that term is generally understood and used, the proposed building will be separated from Evans Bay by Cobham Drive. The natural character of the locality has long been modified by major developments such as the airport and Cobham Drive, and there is ongoing commercial building development in close proximity. Notwithstanding that, the landscape and architectural evidence of the applicant was that the coastal landscape has the ability to absorb a building of the scale proposed and that it the building "connects" to the harbour through its openness to the environment and views over the water.

#### *Regional Matters*

199. The Panel received no evidence that the proposal is contrary to any aspect of the Regional Policy Statement or any Regional Plan. The Greater Wellington Regional Council did not make a submission on the application. The Panel sees the proposal as being consistent with the Wellington Regional Strategy (WRS), a non-statutory document that identifies the urban form and transportation advantages of further growth and intensification of activity along the "Johnsonville to Airport Growth Spine".
200. The Panel notes that Mr Coop advised in his evidence that Wellington Regional Strategy introduced a growth spine strategy which was consistent with the Draft Wellington Regional Land Transport Strategy (November 2006) and the subsequent joint Council, Greater Wellington Regional Council and New Zealand Transport Authority "Ngauranga to Wellington Airport Study".

#### *Other Matters*

201. Both Mr Delich and Mr Harrod in their evidence refer to the proposal being important in giving effect to the Council's "Social and Recreation Strategy" and "Strategic Social and Recreational Outcomes" identified in the Council's Long Term Community Council Plan.

#### *Part 2 Assessment*

202. Overall, the Panel is satisfied that the proposal is consistent with the purpose and principles of the RMA, in that it will promote the sustainable management of natural and physical resources. This is primarily because the proposed facility will have significant benefits that will enable the social, economic and cultural wellbeing of people and communities.
203. It is an efficient use of natural and physical resources that will remedy a contaminated site. It will provide an attractive and versatile community recreation facility in response to identified needs using a high quality building design.
- 204.

The proposal will largely maintain the amenity values and quality of the surrounding environment through appropriate mitigation of adverse effects and through conditions of consent. While some adverse effects will arise from the development and use of the site for the Centre, these are outweighed by the significant benefits of the proposal.

## **PROPOSED CONDITIONS**

205. During the hearing the applicant and Council officers conferred on the conditions that would apply if consent was granted. Complete agreement was not achieved with the principal differences being in the areas of special events management and noise controls.

### **Use of Traffic Management Plans**

206. The applicant supports the preparation and approval of a Special Events Management Plan for events that will exceed 2,600 persons on the site, but limited to 4,000 persons. The applicant indicated that the number of Special Events were expected to be small but did not propose a limit. The Council proposes a limit of 2 such events per year. The Special Events Management Plan would include scheduling, hours of operation, community liaison, transport of persons to and from the site, parking and noise.
207. It is suggested that Tournament Events would not reach the scale of a Special Event and that Centre management in conjunction with an Advisory Group of sports administrators would develop appropriate management tools for Tournament Events to control effects on the local community and road system. The applicant accepts the development of generic traffic management plans as suggested by Mr Dunlop. The applicant acknowledges the level of uncertainty associated with these events and their impacts and notes that there will inevitably be a "bedding in" period whereby operational practices and any operational practices and problems will be refined and addressed. Additionally, after a period of one year there is agreement that there should be an opportunity for a review of conditions to take place.
208. The Panel agrees that generic traffic management plans should be prepared for Tournament Events (expected to attract on site participants/spectators in excess of 600 to a maximum of 2599 persons), as proposed by the Council but with some rewording.
209. Special Events should be subject to approval of a Management Plan as proposed by the applicant, but should be limited to 2 per annum. This will help reinforce the intent that the Centre is primarily for Wellington community sport use.

### **Transportation of Materials**

210. The applicant, responding to concerns of submitters, has proposed that the proposed haulage route for the removal of material from the site be also stipulated as the return route for trucks. The Panel supports this change.

### **Noise Controls**

211. As described above the nature of noise controls was not agreed between the applicant and the Council officers. For the reasons explained in paragraphs 124-128 above the Panel has adopted the three maximum noise levels suggested by the applicant but has adjusted the transitional night time maximum of 50 dBA to cease at 2300 hours rather than 2400 hours in order to provide a one hour "wind-down" period for activities at the Centre as well as provide for 8 hours of sleeptime with a 45dBA nighttime noise limit.

### **Hours of Work for Construction On Site**

212. The applicant, supported by Council officers, propose allowing construction work on site on a Sunday or public holiday, other than that involving earthworks or use of heavy machinery. The original conditions proposed by Council were for no work on these days. The Panel supports this change.

#### **Travel Demand Management Plan**

213. The applicant and Council officers have agreed that any consent granted should be subject to a condition requiring the preparation and implementation of a Travel Demand Management Plan. The Panel supports this proposal.

#### **CONCLUSION**

214. For the reasons set out above, and having regard to all the information contained in the application, the evidence and submissions heard, the relevant statutory provisions and the matters to be considered under section 104 and 104D of the RMA, the Panel has concluded that consent can and should be granted to the application for the construction, maintenance and operation of an indoor sports and recreation centre including all associated site and building lighting, car parking, landscaping, earthworks and removal of contaminated material at Cobham Park Drive, 54 Tacy Street, 74 and 82 Kemp Street, Kilbirnie, subject to appropriate conditions.



Stuart Kinnear  
Hearing Commissioner, Chair  
14 January 2008