

## **Attachment 19**

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Copy of Fergusson Reclamation  
permit

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Decision No. A72/98

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of appeals under section 120 of the Act

BETWEEN

JUDGES BAY RESIDENTS  
ASSOCIATION

(RMA 880/96)

SOCIETY FOR THE PRESERVATION  
OF AUCKLAND'S COASTAL  
ENVIRONMENT

(RMA 914/96)

NGATI WHATUA O ORAKEI MAORI  
TRUST BOARD

(RMA 917/96)

WAITEMATA HARBOUR AND  
HAURAKI GULF PROTECTION  
SOCIETY

(RMA 936/96)

FERGUSON WHARF CAMPAIGN

(RMA 939/96)

Appellants

AND

THE AUCKLAND REGIONAL  
COUNCIL and THE AUCKLAND  
CITY COUNCIL

Respondents

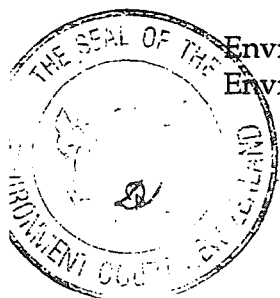
AND

PORTS OF AUCKLAND LIMITED

Applicant

BEFORE THE ENVIRONMENT COURT

Environment Judge DFG Sheppard (presiding)  
Environment Commissioner P A Catchpole



HEARING at Auckland on 2, 3, 4, 5, 9, 10, 11, 12, 13, 23, 25, 26 and 27 March 1998.

APPEARANCES

Mr B H Clark for the Judges Bay Residents Association Inc  
 Mr J M Savage for the Society for the Preservation of Auckland's Coastal Environment  
 Mr D E Wackrow for Ngati Whatua o Orakei Maori Trust Board  
 No appearance for Waitemata Harbour and Hauraki Gulf Protection Society  
 No appearance for Fergusson Wharf Campaign  
 Mr J A Burns and Mr K Phillips for the Auckland Regional Council  
 Mr D A Kirkpatrick and Mr K Phillips for the Auckland City Council  
 Mr D A Nolan, Mr MRG Christensen and Mr A W Royle for Ports of Auckland Limited  
 Mrs G M Houghton for the Director-General of Conservation

DECISION ON APPEALS

and

REPORT TO THE MINISTER OF CONSERVATION ON INQUIRIES

I

**The Proceedings**

- [1] Five appeals to the Environment Court arose from decisions by the Auckland Regional Council and the Auckland City Council granting and recommending grant of resource consents for an extension of the Fergusson Container Terminal at the Port of Auckland. The appellants were : Judges Bay Residents Association Incorporated <sup>1</sup>, the Gladstone Group (subsequently replaced by the Society for the Preservation of Auckland's Coastal Environment ) <sup>2</sup>, Ngati Whatua o Orakei Maori Trust Board <sup>3</sup>, Waitemata Harbour and Hauraki Gulf Protection Society <sup>4</sup>, and Fergusson Wharf Campaign <sup>5</sup>. Each of them sought, in effect, that the resource consents be refused.
- [2] Ports of Auckland Limited had made applications for resource consents to the Auckland Regional Council and the Auckland City Council. Two of the

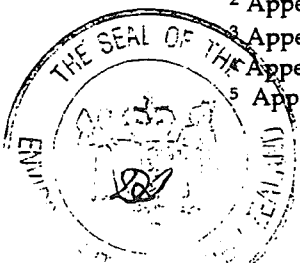
<sup>1</sup> Appeal RMA 880/96.

<sup>2</sup> Appeal RMA 914/96.

<sup>3</sup> Appeal RMA 917/96.

<sup>4</sup> Appeal RMA 936/96.

<sup>5</sup> Appeal RMA 939/96.



resource consents are restricted coastal activities : for reclamation of part of the harbour, and for dredging of part of the harbour. In those respects the resource consent applications are to be decided by the Minister of Conservation, and the function of the Court is to conduct inquiries and report to the Minister. In all other respects the Court has jurisdiction on the appeals to make decisions in place of those made by the primary consent authorities. Because of the close inter-relationship between the applications for consents which are restricted coastal activities and those which are not, it is convenient to contain in one document the Court's report and recommendations on the former and its decisions on the latter.

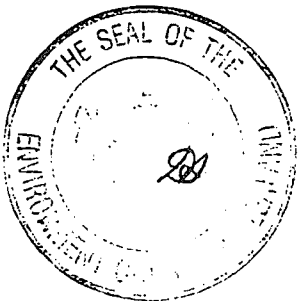
- [3] At a prehearing conference of the parties held on 14 July 1997, Judge Sheppard gave directions intended to assist the parties to prepare for a fair, orderly and efficient hearing of the appeals.
- [4] Evidence was taken from two witnesses prior to the start of the hearing of the proceedings, namely Mr D L Hazard and Mr R Cooper.
- [5] At the start of the hearing on 2 March 1998, Mr Wackrow, counsel for Ngati Whatua O Orakei Trust Board, informed the Court that the Trust Board had reached a settlement with Ports of Auckland Limited in respect of its appeal; that notwithstanding the settlement, both parties acknowledged that Ngati Whatua retain the right to argue issues relating to customary title, and that there are no implications for issues relating to customary title arising from withdrawal of their appeal. The Trust Board's appeal was accordingly withdrawn by leave of the Court.
- [6] At the start of the hearing on 2 March 1998, Mr Savage, counsel for the Society for the Preservation of Auckland's Coastal Environment, announced that a settlement had been reached in principle of the society's appeal, and as a result the society did not wish to pursue its appeal further, but (with the support and consent of Ports of Auckland Limited) would ask the Court to consider certain amendments to conditions imposed by the Auckland City





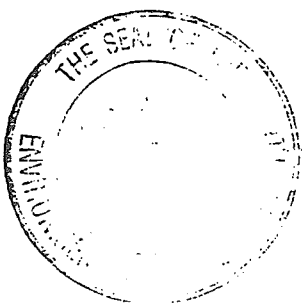
Council on the land-use consent, in the event that the Court decided to confirm that consent.

- [7] Subsequently on 11 March 1998, Mr Savage announced that the society had been given a written undertaking by the Chief Executive of Ports of Auckland Limited that the company will not undertake further reclamation to the east, beyond the proposed eastern boundary of the reclamation identified as Option B2. Mr Savage also announced that the society agreed to land-use consents and coastal permits being granted to enable the project to proceed according to the modified design identified as Option B2, and joined with Ports of Auckland Limited in asking the Court to impose amended noise and lighting conditions on any grant of land-use consent which may be made.
- [8] Although notice had been given by the Registrar to Waitemata Harbour and Hauraki Gulf Protection Society of the time and place for the hearing of its appeal, at the start of the hearing there was no appearance before the Court on behalf of that society. Counsel for Ports of Auckland Limited announced that he had been given to understand that the society did not wish to proceed with its appeal. Accordingly Appeal RMA 936/96 was dismissed for want of prosecution.
- [9] Notice had also been given by the Registrar to Fergusson Wharf Campaign of the time and place for the hearing of its appeal, but at the start of the hearing there was no appearance before the Court on behalf of that society. Counsel for Ports of Auckland Limited announced that he had been given to understand that this society too did not wish to proceed with its appeal. Appeal RMA 939/96 was therefore dismissed for want of prosecution.
- [10] In the event, then, the only appeal which was pursued was that of the Judges Bay Residents Association Incorporated (the Association). The hearing of that appeal occupied 13 hearing days, in which the Court received the testimony of a further 38 witnesses.



[11] For the first nine days of the hearing, the court consisted of Environment Judge Sheppard, and Environment Commissioners P\_A Catchpole and F Easdale. However after that Commissioner Easdale was obliged to retire from the sitting due to ill-health, and in his absence the hearing was completed by Judge Sheppard and Commissioner Catchpole. Accordingly Commissioner Easdale does not take part in the giving of this decision and report, which is made only by the members of the Court who were present throughout the hearing.

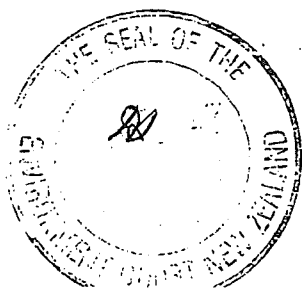
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## II

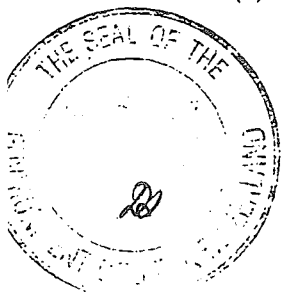
## The Proposal

- [12] At the eastern end of the main cargo handling area of the Port of Auckland there is a facility called the Fergusson Container Terminal which handles exclusively cargo in standard containers. The ships which are berthed there are specialist container ships, and the equipment and operating systems of the terminal are designed for handling containers. Efficiencies are gained by the terminal being dedicated to container handling. Ships with other cargoes are directed to other parts of the port.
- [13] The Fergusson Container Terminal currently has 590 metres of berthage along its western edge. That is sufficient to berth two container ships, or three if the ships are small enough. There are 5 specialist container cranes, and a fleet of 28 straddle carriers for carrying and stacking containers around the terminal. The area of the terminal (excluding space currently used for storing empty containers) is 20.4 hectares, which is used for cranes, container stacking and manoeuvring, road exchange, and administration. That area is land which has been reclaimed from the harbour.
- [14] It is proposed to extend the existing terminal to the north and to the east. A new wharf structure would be built on the northern edge to provide a berth for another container ship. Additional back-up land would be provided by further reclamation. The new berth would be 320 metres long, and the wharf area associated with it would occupy 1 hectare. The extra reclamation would contain about 1.8 million cubic metres of filling, would cover 9.4 hectares, and would extend beyond the eastern end of the new berth by about 150 metres. The existing eastern edge of the back-up land would be extended out to that line to form the additional back-up land to service the new berth.
- [15] The additional back-up area would be 10.4 hectares of new berth and reclamation and 3.6 hectares being land previously used for storing empty containers, a total of 14 hectares. Added to the existing 20.4 hectares, the area



of the expanded terminal would then be 34.4 hectares to serve a total berthage length of 960 metres.

- [16] The new wharf would be constructed of concrete piles supporting a concrete deck. In the ship berthing area, north of the new wharf, an area of harbour bed 320 metres long and 60 metres wide would be dredged to a depth of 13.5 metres below chart datum to allow larger container ships to be fully loaded at all states of the tide. Two new container cranes would be installed to serve the new berth, and one of the existing cranes would also be able to be used in loading or unloading ships at the new berth.
  
- [17] Seven new lighting towers, 30 metres high, would be installed, along with 18 more conventional street lights.
  
- [18] A pedestrian boardwalk would be constructed above the sloping seawall on the eastern side of the new reclamation for part of its length, and trees would be planted along it. That boardwalk is intended to be available for public use.
  
- [19] On completion of the extension, the enlarged container-handling facility would be operated as a single entity.
  
- [20] With growth in trade and further efficiencies in operation of the terminal, it is expected that the existing Fergusson Container Terminal will be able to handle a total of 300,000 twenty-foot container equivalent units (TEUs) per year when it reaches maximum capacity, which is expected to be this year. The extended terminal is intended to accommodate a total of 480,000 TEUs per year, an increase of 180,000.
  
- [21] The resource consents required to carry out the proposal are now described.
  
- [22] Coastal permits
  - (a) The reclamation of 9.4 hectares of the Waitemata Harbour. Ports of Auckland Limited had originally sought consent to a larger reclamation of 10 hectares, known as Option A, but the Auckland Regional Council's recommendation was for a reduced area of 9.4 hectares, known as Option B1);



- (b) The dredging of 6 hectares of the seabed, which is the area to be occupied by vessels at the new berth and an area beneath the new reclamation seawall where the soft sediments have to be removed. This includes the return of seawater and silt from the operation;
- (c) The construction and use of the 320 metre-long wharf structure;
- (d) Demolition and removal of the existing mooring dolphin and construction and use of a new mooring dolphin with a connecting link to the north-eastern corner of new reclamation;
- (e) Occupation of the coastal marine area for construction purposes and for ongoing operations;
- (f) Discharges of sea water and of stormwater during construction of the reclamation, including some fine silts, via diffuse discharge through the bund walls;
- (g) Discharges of stormwater from the completed development for ongoing operations, including the extension of two existing outfalls and increase in the volume of their discharges (Outfall D increased by 100 litres per second and Outfall E increased by 700 litres per second, the combination of two existing outfalls (F and G) to a single Outfall H with its volume increased by 800 litres per second; and a new Outfall I with a volume of 600 litres per second;
- (h) Construction of two container cranes and the use of those cranes together with existing cranes (as these will be partly on the wharf);
- (i) Use of berthage, loading and unloading of vessels and cargo, storage of cargo, servicing of vessels and equipment, providoring and bunkering of vessels;
- (j) Utilities and services on the wharf structure and mooring dolphin, including cables and water mains.

#### Land-use consents

[23] Land-use consents were sought for the following activities to take place once the land has been reclaimed:

- (a) Construction of two container cranes and the use of those cranes together with existing cranes (where above mean high-water springs);
- (b) Loading and unloading of vessels and cargo, storage of cargo, use of the truck exchange, servicing of vessels and equipment, construction and use of reefer towers for power and refrigeration, construction and use of the mooring dolphin link;

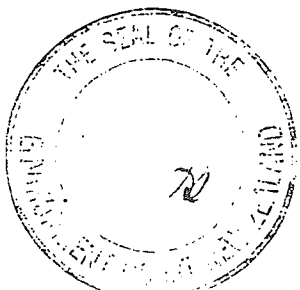
Utilities and services including:



- (i) Demolition of the existing northern substation and construction and use of new substation (12 metres long, 6 metres wide, 4 metres high) on the north-eastern corner of the new reclamation and provision of cables within the reclamation;
  - (ii) Possible removal of the existing northern toilet block and construction and use of new toilet facilities on the new reclamation, including the laying of new sewer lines;
  - (iii) An additional 200 millimetres diameter water main along the eastern side of the new reclamation;
- (d) An additional 7 lighting poles 30 metres high, and up to 18 poles 12 metres high.
- [24] Pursuant to section 123 of the Resource Management Act the coastal permit for the reclamation is sought for an unlimited period. The other coastal permits are sought for a term of 35 years.
- [25] To allow for staging, a period of 8 years is sought from the date of commencement of all the consents before any would lapse, in accordance with section 125 of the Resource Management Act. This period was granted by the primary consent authorities.
- [26] Because of the nature of the proposal and the length of the construction period, the consents were sought on the basis of the applicant being permitted to apply for a change or cancellation of any conditions of the consents (other than any conditions as to the duration of the consents), in accordance with section 127(1)(a) of the Act.

#### Amendments to proposal

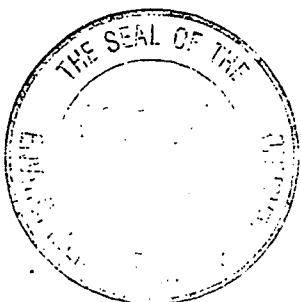
- [27] In order to further ameliorate any potential tidal and other harbour effects, which were originally of concern (in particular) to the Auckland Yacht and Boating Association, Ports of Auckland Limited agreed (in consultation with the respondents) to accept a 3-degree rotation of the orientation of the northern face of the reclamation. Auckland Yacht and Boating Association withdrew its appeal on the basis of that concession by Ports of Auckland Limited. As mentioned earlier, the layout of the reclamation and berth



approved by the primary consent authorities was known as "Option B1". To avoid any misunderstanding, that same layout with the 3-degree rotation is now referred to as "Option B2" (the area of the reclamation remains the same). All of the port company's evidence related to Option B2.

- [28] Some minor, consequential changes occurred as a result of adopting Option B2 - for example, minor revisions to the dredging and occupation plans so that they take the rotation into account. Consent was sought from the Court and the Minister for the development to proceed on the basis of Option B2, rather than Option B1. (Option A, being the larger reclamation for which the port company had originally applied for consent, was not pursued further by Ports of Auckland Limited).
- [29] There were also some agreed changes to conditions (subject to approval by the Court and Minister) to accommodate settlements reached with other parties, for example, the noise condition imposed by the Auckland City Council.

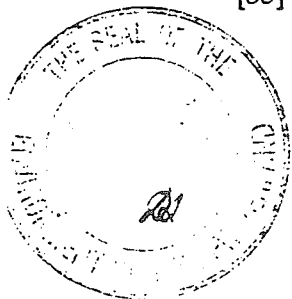
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## III

## The Justification

- [30] Ports of Auckland Limited sought to justify the proposed extension of the Fergusson Container Terminal by the growth in cargo through the Port of Auckland in standard containers carried on dedicated container ships. The evidence established that the Port currently handles 52% of this country's container trade, and around 70% of the containers passing through the Fergusson Container Terminal are destined for or originate from the Auckland region.
- [31] The relative efficiency of the terminal dedicated to handling cargo in containers was demonstrated by the fact that in the year 1996/97 the Fergusson Container Terminal, with a back-up area of 17.6 hectares, handled 290,000 TEUs, and the rest of the Port of Auckland handling bulk cargo and general cargo (including containers) with a back-up area of 35 hectares, handled an equivalent of 330,000 TEUs. A computerised control system at the Fergusson Container Terminal is designed to ensure optimum stacking of containers and selection of straddle carriers, which enables higher productivity. Rail and truck ranking and exchange areas have been designed to enhance efficiency of the terminal.
- [32] The demand for an extension to the Fergusson Container Terminal was asserted in evidence by Mr G E Vazey, Chief Executive of Ports of Auckland Limited. He testified that the volumes of container cargo handled at the Terminal have increased from 138,600 TEUs in 1988/89 to 290,000 TEUs in 1996/97, an average annual increase of 9.7%; and he deposed that this reflected a higher rate of growth for containers than for bulk and general cargoes, and the efficiencies achieved by having a specialist container handling facility.
- [33] The witness also demonstrated that whether measured by the ratio of the number of containers handled per crane, the ratio of the number of containers handled per berth, or the number of containers handled per metre



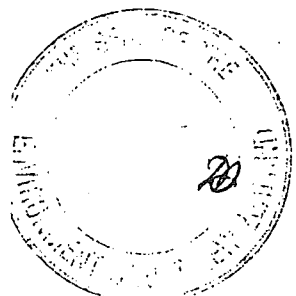


of berth length, or the ratio of the number of containers handled to the area of back-up land, the Fergusson Container Terminal is highly efficient compared with other container terminals at ports elsewhere in the world.

[34] Mr Vazey observed that Auckland city and region are a major manufacturing base, and also a major centre of population growth, factors which tend to favour growth in the types of cargoes which lend themselves to containerisation, with the advantages that can bring in the ratio of port infrastructure to the amount of cargo handled. He also testified that Auckland is a hub port for New Zealand in general and the North Island in particular. Hub ports are an international trend, and results in a more even balance in the number of containers being imported and exported. Mr Vazey added that there is also a trend in international shipping for combinations of companies leading to shared use of larger vessels, containers and other equipment; that such combined operations need efficient container terminals; and that for New Zealand the Fergusson Container Terminal is the primary facility for that kind of operation.

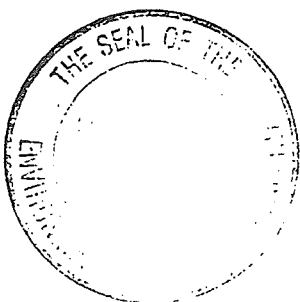
[35] The witness estimated that growth in business for the Fergusson Container Terminal will continue at about 7% per annum in the short and medium term, and in the longer term would be nearer the historic long-term average of about 3%. He deposed that the ability to extract further capacity from the existing physical infrastructure is extremely limited; that Ports of Auckland Limited is using best international practice to extract maximum capacity from existing land and infrastructure; that it can no longer keep up with demand growth solely from efficiency gains; and that more land and berths are needed for expansion to accommodate growth.

[36] Mr B Chrystall, the Manager, Port Planning, for Ports of Auckland Limited, observed in evidence that even if the predicted rate of growth in business for the Fergusson Container Terminal is not realised, that would only affect the timing of the need for expansion, but not the need itself. In response to questioning of the efficiency of the use of back-up land by Mr D M Hill, a witness called for the Judges Bay Residents Association, Mr Chrystall quoted



comparable figures at container ports elsewhere to support his opinion that the expanded terminal would be making an efficient use of back-up land.

- [37] Evidence of Mr J M Halling, Dr J D M Fairgray, and various business and shipping witnesses supported the port company's case that need exists for additional container handling capacity.
- [38] Although the Judges Bay Residents' Association's case proposed that extra container cargoes should be handled elsewhere or in other ways, it did not challenge Ports of Auckland Limited's case that the growth in business is such that there is a need for additional capacity for handling those cargoes.
- [39] There was no evidence to the contrary, and we find that the continuing growth in container cargoes is such that there is a need to provide additional handling capacity to enable the community of the Auckland region to provide for their economic wellbeing.
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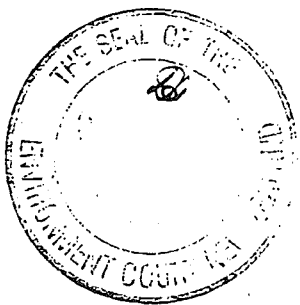
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## Other options

## Introduction

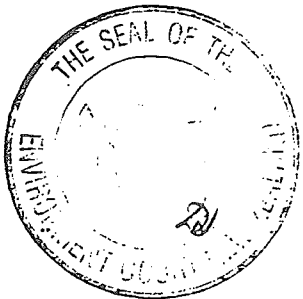
[40] It was the case of the Judges Bay Residents Association (the Association) that an increase of reclaimed land within the inner harbour must detract from the natural environment, and that Fergusson is the wrong place to commence expansion. The issue the Association raised was "not whether container traffic should increase, but where". The Association claimed that the port company seeks to extend in the wrong direction, and without sufficient consideration of the inter-relationship between a large reclamation at Bledisloe and Jellicoe Wharves, and a smaller extension of reclamation north and east of Fergusson. It urged that the proposed expansion of Fergusson is not necessary, as extra container handling capacity is available or can be provided in other places or in other ways. In particular, it maintained that there is additional container handling capacity at the port of Tauranga; that extra capacity is available and can be provided by planned expansion of Bledisloe, Jellicoe and Freyberg wharves; that a new port for Auckland will inevitably be needed, and additional capacity should be provided there rather than by further reclamation at Fergusson; and that better use could be made of the existing capacity by handling containers elsewhere inland (a concept described as an inland port).

[41] The port company contested the Association's claims, and maintained that there is no requirement on an applicant to prove that its proposal is the best available, but rather that the Resource Management Act contemplates that an applicant give consideration to alternatives with a view to demonstrating that the means selected is appropriate, having regard to the effects of the activity, as against the effects of alternatives.



## Tauranga

- [42] The Judges Bay Residents Association maintained that there is a contestable market for port facilities to handle containerised cargoes; that the ports of Auckland and Tauranga "coexist in both competitive and complementary modes"; that Tauranga has capacity designed to receive another 200,000 TEUs at minimal capital cost and without adverse environmental effects; and that consignors and consignees should be able to choose between existing facilities available at Auckland and Tauranga .
- [43] The Association's President (and counsel), Mr B H Clark, suggested that Tauranga could conceivably be a container hub for the whole country, and questioned whether it is necessary for Ports of Auckland Limited to expand its services. Mr Clark observed that Auckland and Tauranga are only about 150 kilometres distant from each other, that Tauranga is equidistant or even closer to some major sources of primary products, and that both ports have good rail connections. He deposed that "the time and cost differentials using rail transport to the Waikato and South Auckland are (seemingly) not very great"; that "with some further limited investment and changes in operation methods ... the Sulphur Point capacity can be extended"; and "vessels that visit to load export cargo can also quickly discharge imported containers ( in competition) with other ports seeking the trade".
- [44] For the port company, Mr Vazey deposed that any restrictions to thwart market forces toward Auckland being a hub port would be impracticable, would impose considerable costs on exporters and importers, and would result in loss of economic benefits. He deposed that the majority of containers through Auckland are destined for, or come from, the wider Auckland region or areas to which the Port of Auckland is closest; and that for those containers to be shipped through another port would add significantly to costs. For example, he estimated that the cost of moving large volumes of full containers between Auckland and Tauranga would be about \$300 or \$400 per container, about twice the cost of handling a container at a port. Such an additional cost would have a significant adverse economic



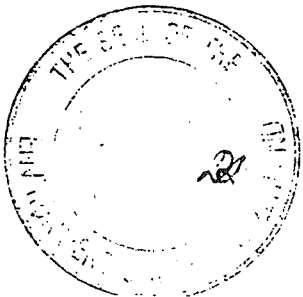
effect. He confirmed that the market demand is for additional container-handling capacity at Auckland, not at Tauranga.

[45] Mr Vazey also deposed that if spare container-handling capacity at Tauranga was used to handle containers from Auckland, that would bring forward the date when new reclamation might be needed at Tauranga to meet the needs of its own region and hinterland.

[46] Mr Halling (who until recently had been chief executive of the port of Tauranga) testified that the Sulphur Point facility at that port (which had been the focus of the Association's case in this regard) is not dedicated to handling only containers, but handles break-bulk cargoes as well. The spare capacity of the existing facilities to handle additional containers that might otherwise have been handled at the Fergusson Container Terminal is about 50,000 TEUs per year, (less than one-third of the additional capacity that would be provided by the proposed expansion of the Fergusson Container Terminal).

[47] There was strong support for expansion of the Fergusson Container Terminal rather than use of the port of Tauranga for additional demand. Trade witnesses generally were resistant to having to bear the additional cost of transporting containers between Tauranga and Auckland. Dr J D M Fairgray, an independent consultant, confirmed the considerable internal transport benefit from handling Auckland goods at Auckland rather than at Tauranga or Whangarei. Additional savings would result from the greater efficiency of enhancing Auckland's hub function for container shipping.

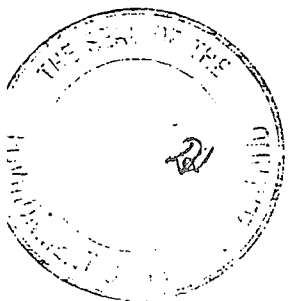
[48] We hold that it would not be appropriate for decisions on resource consent applications to be influenced by seeking to enhance or hinder the positions of competitors for business, such as the ports of Auckland and Tauranga. Whether shippers of containers and others choose to use Tauranga rather than Auckland may be left to the market. It is not relevant to deciding whether the Fergusson Container Terminal expansion proposal would promote the sustainable management of natural and physical resources. To



refuse resource consent on the basis of a decision that the increase in container traffic should be handled at Tauranga where there is currently some spare capacity would be to take up a business licensing role, and there is no warrant in the Resource Management Act for that.

**Bledisloe, Jellicoe, Freyberg.**

- [49] The Port of Auckland comprises three main areas : the Western Reclamation, the Viaduct Basin, Princes Wharf and ferry tees, and the main cargo handling areas from Queens Wharf east to the Fergusson Container Terminal.
  
- [50] The Western Reclamation includes Wynyard Wharf, which is a bulk liquid handling facility, and some dry bulk cargoes such as sand and cement are handled there too. The Viaduct Basin is used for small craft activities, and is currently being redeveloped for activities associated with the Americas Cup contest; Princes Wharf is used for passenger and cruise liners, and as lay-up berthage; and harbour ferry services operate from between that wharf and Queens Wharf.
  
- [51] The main cargo-handling wharves are the Fergusson Container Terminal and the conventional port, which handles conventional or break-bulk cargoes, some containers and some bulk commodities. In the conventional port, Queens Wharf, Captain Cook Wharf and Marsden Wharf are older pier structures with low permitted axle-loadings, which limits their usefulness for containers and some cargoes. Bledisloe Wharf has three berths and some 13.3 hectares of back-up land. It has facilities for roll-on roll-off ships, and two container cranes, so it can handle ships with mixed container and break-bulk cargoes. Jellicoe and Freyberg Wharves are used for mixed container, break-bulk and bulk cargoes.
  
- [52] It was the case for the Judges Bay Residents Association that three new berths at the Bledisloe terminal, with additional backup land and facilities, would have the capacity to handle a much greater throughput than a single new



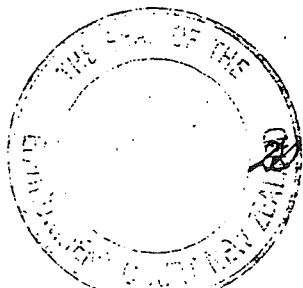
berth at the north of Fergusson, and might obviate the need for any expansion at Fergusson. The Association's planning witness, Mr Hill, was critical of Ports of Auckland Limited for having made a piecemeal application by which a further area of harbour "may be compromised (if granted) without any ability to consider the merits of an alternate configuration within the prescribed limits"; he deposed that there is sufficient capacity in the Bledisloe-Jellicoe area for up to 20 years; and that the necessity for the port east of Bledisloe had not been adequately demonstrated, leaving the prospect of an undesirable cumulative effect.

- [53] The Bledisloe complex (Bledisloe, Jellicoe and Freyberg wharves) handles containerised and non-containerised cargo and non-cellular container vessels. These facilities are expected to reach their full capacity in the next few years, and further development of that part of the port is also needed. We accept Mr Vazey's evidence that

... each of the various facilities of the port has been developed to service different customer segments, the differentiation of facilities in that manner allowing more overall volume to be handled in a given amount of berthage and back-up area. Customers demand accommodation at the facilities within the Port best suited to their particular type of operation and cargo mix.

- [54] Mr Vazey deposed that by 1999/2000 or shortly thereafter, all existing container-capable areas of the port of Auckland will be at capacity; that consolidation of main cargo activities in the eastern port area must involve expansion otherwise growth cannot be accommodated; and that for Fergusson, that can only be done by extensions to the north and east to provide an additional berth and back-up land. The Fergusson terminal cannot be expanded to the west because of the existing berthage, the safe water width necessary for navigating ships, and the other port facilities adjacent to Freyberg Wharf.

- [55] Mr Vazey explained that a key determinant of port costs is speed of ship turnaround, and that if back-up space is inadequate, or too far from the ship berth it serves, turnaround times are extended. An international standard is that depth of backup space should approximate the length of the berth (some 300 metres for modern container ships), and travelling distances from ship's



side to the container stack should not exceed 500 metres. The proposed extension for the Fergusson Container Terminal would result in the most distant stacking being 560 metres from the south-western berth.

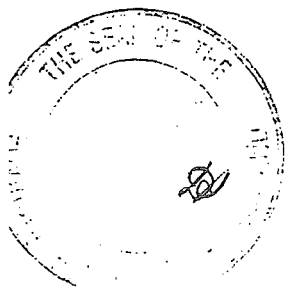
[56] Mr Vazey deposed that it would not be practical to use land at Freyberg Wharf as back-up space for Fergusson, because it would ignore the fact that an extra berth is needed, not just more back-up space, because Freyberg is itself an important facility in its own right which is nearing full capacity, and because any stacking area there would be 600 to 700 metres away from the nearest Fergusson berth, which he considered a totally impracticable distance.

[57] We accept Mr Vazey's evidence and find that adopting the option suggested by the Association would transfer the capacity constraint from the dedicated container handling facility to the mixed-cargo handling facility. We find that the physical arrangement of the commercial port is such that the logical and preferable way to expand the dedicated container and mixed-cargo facilities is to extend the former to the east and consolidate the latter in their existing position.

#### A new port

[58] It was the case for Ports of Auckland Limited that the adverse environmental effects and economic costs of developing a new port at a greenfields site would far outweigh the adverse effects of developing the existing port. The company had commissioned a study of the possibility by consultants in visual effects, planning issues, hydraulic effects, ecological effects, dredging and disposal, and transport, and a comparison had been made of a number of possible new port options and development of the existing port.

[59] Development of the existing port was rated first or first equal for minimising environmental effects in 9 out of 11 effects categories. In a points system by which the highest score indicated greatest environmental effects, its overall

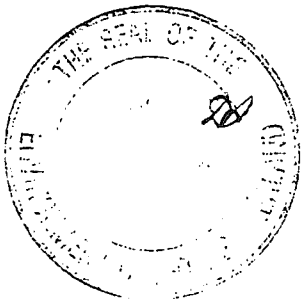




rating was less than half the score for the next option. The overall conclusion of the consultants had been that there was no doubt that the adverse environmental effects of development at the existing port site (including future development broadly in line with the 1989 Port Plan) are very substantially less than development of a new port at a new site, and that development at the existing site is certainly preferable from an environmental perspective.

[60] In addition, it was estimated that it would cost \$500 million to expand Fergusson as proposed and to undertake staged developments of Bledisloe across to Freyberg Wharf (broadly in line with the Port Plan), and the least expensive new port with similar capacity to the planned extensions of the existing port would cost some \$1.25 billion, representing an additional cost of about \$650 per TEU, about three times the current cost of handling a container through a port, and equivalent to an added cost of \$650 million per annum on importing and exporting businesses. In short, from a national and regional perspective, development of a new port would have what Mr Vazey described as enormous economic impacts. He gave the opinion that development of a new port should be avoided for as long as appropriate alternatives are available at the existing port location.

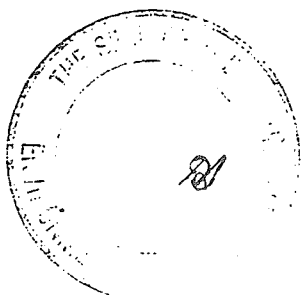
[61] It was the evidence of Mr R S Gee and Mr G O Winn that the broad strategy of the proposed Auckland regional policy statement is to protect and enhance valuable existing resources and infrastructure, and to prevent inappropriate and unnecessary sprawling or sporadic use or development. The existing port being in a built-up area, a heavily modified environment, the port company submitted that it would be in keeping with that strategy, and with sustainable management of natural and physical resources, to extend the existing container terminal rather than development of a new port outside metropolitan limits and in an area of the coastal environment having high natural character. Although an additional port might be needed in the long term, it would be speculative and unrealistic to consider it now.



- [62] The evidence of a senior planning consultant, Mr A A Bradbourne, based as it was on evidence of other witnesses in their specific fields of expertise, was that wherever it is located, a new port would compromise an undeveloped coastline; that all of the options for a new port have significant natural features which would be compromised; that all the options would have features which would conflict with matters of national importance; all would require massive investment in port facilities and new road and rail connections; and all would involve a complete reassessment of the future urban form of the region.
- [63] Although this issue had been raised on behalf of the Judges Bay Residents Association, having heard the evidence for the port company Mr Clark announced that he accepted that at present and in the near future the option of a second port within the greater Auckland region is not commercially attractive.
- [64] The planning witness called for the Association, Mr Hill, agreed that on the face of it there were reasonable grounds for generally intensifying the existing port; although he allowed himself to suggest that insufficient forward planning on the part of Ports of Auckland Limited had resulted in a planning crisis which has become the rationale for the present proposal. He was given the opportunity in examination to justify the latter assertion, and we do not find that it was warranted.
- [65] We find that this new port option is speculative and is not a realistic alternative for handling the expected growth in container cargoes beyond the capacity of the current Fergusson Container Terminal.

#### An "inland port"

- [66] Although the idea of an "inland port" was raised by the Association, it did not call any expert evidence about the practicality of such an option, and we understood it to have only a minor part in its case.



[67] Mr Vazey addressed the suggestion of using sites outside the port to receive containers as an alternative to reclaiming land close to the berths. He observed that this would result in reduced productivity and slower ship exchange, due to inability to control and maintain the speed of receipt and despatch of containers. There would be potential for bunching and delays in the city traffic network, or in the time taken to shunt rakes of railway trucks, double-handling of containers, and increased costs.

[68] We accept those points as sound, and find that this option does not deserve further consideration.

### Conclusion

[69] It has long been held that it is not the function of a consent authority to determine whether a site is the only suitable site, but rather whether it is a suitable site.<sup>6</sup> Ports of Auckland Limited accepted that as applicant it had a responsibility to provide sufficient details and information to enable the Court to assess effects on the environment of alternatives.<sup>7</sup> However it relied on the following passage in the decision of the Planning Tribunal in *Trio Holdings v Marlborough District Council*<sup>8</sup>—

... if the proposal meets the tests of sustainability in terms of section 5 of the Act, then the question of suitability of alternatives is diminished.

[70] The port company also submitted that alternative sites or methods should be reasonably practical.<sup>9</sup> We accept those submissions, and add that it is our understanding that it is not the Court's function to eliminate speculative alternatives or suppositious options.<sup>10</sup>

<sup>6</sup> *Adamson Taipa v Mangonui County Council* Planning Tribunal Decision A 134/80, affd on appeal sub nom *Environmental Defence Society v Mangonui County Council* (High Court Auckland M101/81 23 October 1981, Speight J).

<sup>7</sup> *AFFCo v Far North District Council (No 2)* [1994] NZRMA 224; 1B ELRNZ 101.

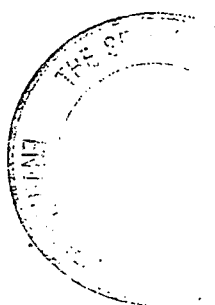
<sup>8</sup> [1997] NZRMA 97, 107 (a passage omitted from the report of the decision at 2 ELRNZ 353).

<sup>9</sup> citing the approach taken by the Planning Tribunal in *NZ Rail v Marlborough District Council* Decision C36/93 and *Trans Power v Rodney District Council* Decision A56/94.

<sup>10</sup> *Environmental Defence Society v Mangonui County Council* (High Court Auckland M101/81 23 October 1981, Speight J).

[71] In our opinion any deliberate refusal of consent for the Fergusson expansion so as to divert container cargoes to the port of Tauranga would not be consistent with the purpose of the Resource Management Act. We have found that the logical and preferable way to expand the dedicated container and mixed cargo facilities is to extend the former to the east and consolidate the latter in their existing position, and it follows that the option of providing for the growth of container ship cargoes by developing the Bledisloe, Jellicoe and Freyberg Wharf facilities is not reasonably practical. We have found that the option of developing a new port at Auckland is speculative and not a realistic alternative. We have also found that on the evidence before us, the option of an "inland port" does not deserve further consideration. Having considered the options to expanding the Fergusson Container Terminal for handling the growth in container cargoes expected in the next few years, we find that a sound case was made for consideration of the expansion proposal, rather than any of those options.

*20*



## V

## Effects on the environment

## Basis for decision

[72] Our consideration of the appeal is to be by full rehearing of the resource consent application <sup>11</sup>. Section 104(1) of the Resource Management Act 1991 governs consideration of such an application. Subsection (1) of that section directs that, subject to Part II, in considering a resource consent application the consent authority is to have regard to various matters listed in the subsection. Making that direction subject to Part II implies that the duty is to yield to the provisions of that part where there is a conflict between them. We have therefore considered whether there is anything in Part II which would conflict with our having regard to the relevant matters listed <sup>12</sup>. No party suggested that there is, and we have found none. We have therefore to have regard to such of the matters listed in section 104(1) as are relevant to the facts of this case. The first of them is any actual and potential effects on the environment of allowing the activity <sup>13</sup>. A number of effects were raised in the appeal hearing, and we now address them.

## RECLAMATION OF HARBOUR

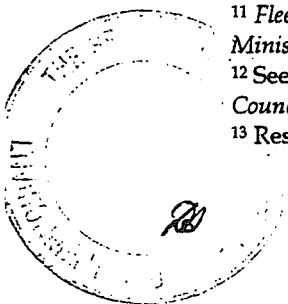
## A Finite Resource

[73] The Waitemata Harbour, and in particular that compartment between the commercial port and Stanley Point and Devonport opposite, within which the terminal expansion is located, is indisputably a natural resource of major significance. It is an area of open public tidal water and it is a natural resource which is strictly finite.

<sup>11</sup> *Fleetwing Farms v Marlborough District Council* [1997] NZRMA 385, 391-2; 3 ELRNA 249, 257-8; *Minister of Conservation v Wangarei District Council* Environment Court Decision A131/97, page 3.

<sup>12</sup> See *Application by Canterbury Regional Council* [1995] NZRMA 110,126; *McIntyre v Christchurch City Council* [1996] NZRMA 289, 291; 2 ELRNZ 84, 88.

<sup>13</sup> Resource Management Act 1991, section 104(1)(a).



[74] Underlying much of the evidence presented was an acceptance that this particular part of the harbour is indeed such a finite resource. For example Mr J L Goodwin in considering the visual appearance of the harbour, held that one of the main issues to be assessed in relation to effects on the harbour is the reduction in the area of open water. He also had no doubt that the harbour is a seascape of outstanding beauty despite a substantial built waterfront including port activities.

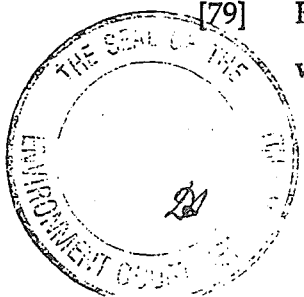
[75] The effects of the proposal are more profound than those of visual appearance. The reclamation of an area of public open harbour water to produce a company- controlled container terminal would permanently reduce a finite natural resource, and have an effect on the environment which is considerably more than minor.

[76] Evidence which addressed such issues as the navigation of a wide variety of shipping, areas for water-based recreation, accommodating tidal flows and sediment transportation, and the effects of winds and waves, all treated the harbour compartment as a finite resource.

[77] Since the original reclamations of 1859 to 1862, approximately 2.2 square kilometres (220 hectares) of reclamation seaward of the original shoreline has been undertaken to form the commercial port as it is today. We were not given figures to relate the extent of reclamations to the total size of the harbour compartment. However perusal of the plans would indicate that a considerable proportion, perhaps up to one-third of the original water compartment, has already been lost to reclamation.

[78] This current proposal is to reclaim some 10 hectares, and we were told that future proposed redevelopment of the Bledisloe/Jellicoe complex in three stages would involve a further 21.5 hectares.

[79] Ports of Auckland Limited acknowledged that some effects of the proposal will be more than minor, in part because it involves a reclamation. However



it submitted that all effects are appropriately avoided, remedied or mitigated by the project design and the proposed conditions.

[80] In our judgment the effect arising from the loss of such a finite resource, as is the case with this proposal, cannot be avoided or remedied, nor can it be mitigated, by project design or conditions. At best it might be justified in terms of the planning instruments and the perceived benefits of the overall proposal, a matter we address later in this document.

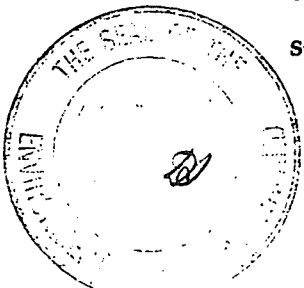
[81] We also accept that expanding the eastern port would free up areas in the west for "people places" and other waterfront activities, and that there is a cost incentive for Ports of Auckland Limited to reclaim no more land than is necessary to support the additional berthage.

#### Wind effects

[82] Evidence on the effects that the proposed Fergusson Container extension may have on wind patterns was given by Professor R G J Flay, who is an associate professor in the Department of Mechanical Engineering at the University of Auckland. He described the results of a number of wind-tunnel experiments he had carried out with a colleague, from which they had predicted the wind shadow that would be caused by vessels berthed at the proposed new berth.

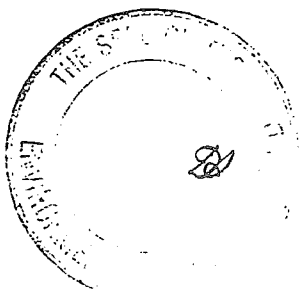
[83] The witness used a model he had developed for the wind at 200 metres over Auckland, a model which is generally used in wind-tunnel tests for sites in Auckland. Additional data had been collected from instruments set up on the site. The data collected was correlated with data gathered at Auckland Airport so the directional data collected at the airport could be used to estimate the wind direction at Fergusson.

[84] Because of the alignment of the Fergusson Terminal and its position relative to the harbour, wind-shadow effects will occur when the wind is in the south and south-west directions. Data showed that the wind was in the



quarter from 180° to 240° for about 41% of the time, with 240° the most frequent, representing 20.1% of the occurrences. Although 180° represents only 5% of the wind, as this bearing is approximately perpendicular to the harbour channel, it has the potential for having wind shadows with the largest extent into the channel. The wind directions that were modelled were therefore 180°, 210° and 240°.

- [85] The models had been tested for a vessel in the existing northern berth and for the proposed new berth, with three different sized vessels, including a large "post-Panama" vessel which the new berth would be able to accommodate.
  
- [86] Professor Flay had modelled the wind-shadow effects, but had not assessed the effects of the various wind shadows on recreational or other use of the harbour, leaving interpretation of the significance or otherwise of those effects to others with expertise in harbour use.
  
- [87] In that respect, two other witnesses commented on the wind-shadow effects: Captain J T Varney, a master mariner, one time Harbour-Master and chief pilot for the Auckland Harbour Board, and now a consultant on marine navigation and safety matters; and Mr P B Hay, a consulting engineer experienced in ports engineering, and also a yachtsman and former Commodore of the Royal New Zealand Yacht Squadron.
  
- [88] Both of those witnesses accepted that there would inevitably be changes to the wind shadow effects on the harbour, but considered that those effects would not necessarily be negative. The worst conditions for small craft is one of wind against tide. In this case any wind shadow by vessels moored at the proposed installation could in fact be helpful to small craft in lessening the sea state. Most of the yachts which navigate within the area likely to be affected by wind-shadow would be racing yachts. The additions and changes to the application of these natural elements would be viewed favourably or unfavourably by the racing sailors depending on whether they achieve an advantage or disadvantage relative to their competitors. Captain Varney's view was that in some cases the wind shadow effect could add to



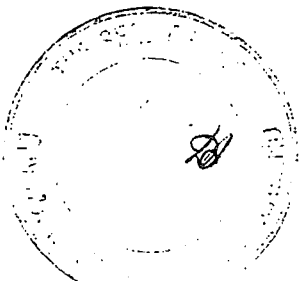


the recreational experience of the harbour during races. Mr Hay saw it from a sporting point of view as just another challenge to contend with.

- [89] The Association did not adduce any evidence about the possible effects of wind shadow on recreational users of the harbour. Having considered the evidence on that topic, we find that on balance the proposal would not have significant adverse wind effects on the environment.

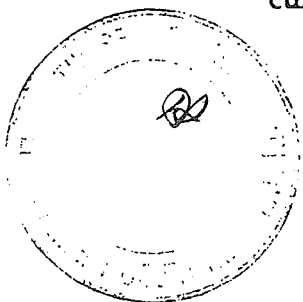
### Tidal Currents

- [90] The Association did not seek to adduce any evidence about the effect that the proposal might have on the tidal currents in the harbour.
- [91] Ports of Auckland Limited called in evidence Mr S J Priestley, a registered engineer who had responsibility for various technical areas of the project including tidal currents. Under his supervision tidal currents (velocities) had been measured in the area from Queens Wharf across to Stanley Point and from Tamaki Drive across to Devonport Wharf. The measurements were made with an acoustic doppler profiler which enables a velocity profile through the water column to be taken from a moving vessel. Measurements were taken on a spring and on a neap tide. The measured spring tide had a range of 2.9 metres, and the neap tide had a range of 2 metres.
- [92] The purpose of the investigations was to obtain sufficient current information to validate the use of a numerical model. The vertical profile of velocities within the main channel confirmed that a two-dimensional (constant depth) model was appropriate for this part of the Waitemata Harbour.
- [93] At present, following high tide, the ebb current develops uniformly off the main channel, increasing to give the highest current off the end of Fergusson Terminal. Counterflow (an eddy) develops east of Fergusson and persists for 4 hours of the ebb tide. Later in the tide the maximum current moves to the mid channel near Devonport. On the turn of the tide the flood currents are



relatively uniform across the channel, with a stronger current developing off the end of Fergusson Terminal. Here the flow is constricted, causing it to accelerate. During the decelerating (second half) flood tide, the maximum current shifts to the mid channel off Fergusson Terminal. A wake forms behind Fergusson Terminal and extends over a significant part of the port area. Within this area, tidal currents are low and the area is relatively quiescent. This is consistent with the original idea of providing tidal reflectors at the boundaries of the port area.

- [94] Mr Priestley gave the opinion that the general features of the Waitemata Harbour were realistically replicated by the model, which could be used to assess likely changes in tidal currents for a variety of development options. This opinion was shared by the Auckland Regional Council and was confirmed by the peer reviewer, Professor R M Kirk.
- [95] The results of the modelling showed that, for Option B2 and the base scenario off Fergusson Terminal, under extreme spring tide conditions a maximum current increase of 0.21 of a knot is expected, increasing to 0.23 if a maximum size ship were berthed on the northern face. Such a combination would be relatively rare as no ships of 40-metre beam visit the port at present.
- [96] On the flood tide, Option B2 would have minimal influence to the east of the terminal and the changes would be greatest at Fergusson Terminal, where the proposed extension would result in an increase of up to 0.21 of a knot over most of the channel with an average sized ship berthed. On the ebb tide the tidal changes would be minimal to the west of the Terminal while at the Terminal the currents would be increased by 0.21 of a knot over most of the channel with an average sized ship. These results were all worst-case scenarios, and for most of the time during different phases of the tide and on lesser tidal events, currents would be less than the existing maximum currents within the main channel. The main direct effect of these increased currents would be on harbour users and on ship handling.

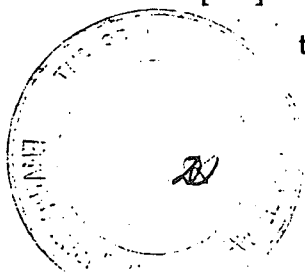


[97] Captain Varney's opinion was that an increase of up to 0.5 of a knot would hardly be noticed by the majority of pleasure craft, given their engine power. For vessels entirely dependent on wind as a mode of propulsion, he was of the opinion that while there would obviously be times when it was against them, with the tide changing every 6.25 hours and the prevailing winds being south-westerly and north-easterly, often the additional push could be of help and most welcome. Because most east-west movements occur in mid-channel they would not be affected. Traffic travelling in the other direction against the tide and favouring the south shore might have to follow a slightly different course when a vessel is berthed, and experience marginally stronger currents. The witness considered that traffic on the northern side of the harbour, including the Navy, would not be affected by the tidal changes.

[98] Both Captains Varney and N B Meek gave evidence that Ports of Auckland pilots are quite used to working in strong tidal conditions, and neither expressed any concern that the slight increases in current would present any difficulties. Captain Meek deposed that tidal patterns alter dramatically when larger vessels with smaller underwater clearances are manoeuvring into or out of the basin. This is because the amount of water each vessel displaces must move around and beneath the hull. In a partially enclosed docking system such as currently exists these movements are accentuated. The proposed new berth, because of its east-west alignment, will be significantly different and risks will be less.

[99] From a racing yachtsman's point of view, Mr Hay said that the increase in the tidal streams would hardly be noticed, with a quarter of a knot representing only a 4% change for a vessel travelling at 6 knots. \*Because there is already a tidal shear associated with the north-east corner of the Fergusson Terminal, most boats (except racing yachts under some conditions) keep well clear of this area. As with the wind shadow effects, he considered that any changes would be a challenge.

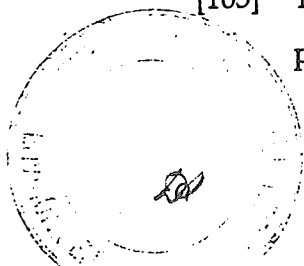
[100] The collective conclusions of the witnesses (which were not challenged) were that any tide changes associated with the development will have no more



than minor effects on the navigation and safety of the port or other harbour users. We accept their conclusions and so find.

### Sedimentation

- [101] We have now to consider the transport of sediment within the harbour system. Although its origins are land-based, most of the sediment that moves within the harbour system is reworked sediment from either the coastal margins, the harbour bed, or potential inputs beyond the harbour.
- [102] Sedimentation is a natural process, as erosional and accretional patterns of areas within the harbour change daily. Many of those changes may be short term, but over a long period of time little change may be observed. This is referred to as being in a condition of stability or dynamic equilibrium, which means that the amount of sediment being transported into an area and depositing, is equivalent to the amount of material eroding and leaving.
- [103] As a basis for analysing the sedimentation aspects of the proposal, a study had been made of how the main channel has changed over time as port development and other activities within the harbour have been carried out. This was principally done by inspecting both historical soundings and contemporaneous port development layouts.
- [104] Mr Priestley gave evidence of the uncertainty associated with attempting to model coastal processes, and gave the opinion that the uncertainty had been managed and minimized for this proposal by conducting hydraulic and sedimentation studies in enough detail to gain an understanding of the natural processes; working as a team with specialist individual knowledge in different areas of the coastal processes; having the outputs of the investigations internally reviewed; and having the overall assessment reviewed by Professor R M Kirk, a recognized expert.
- [105] The overall conclusions of the team were that effects on the harbour processes of Option B2 would be minor and localised, and would not be



persistent. In terms of uncertainty the main issue was whether the seabed sediments, if they were eroded, would be deposited in areas where they would have significant effects, such as the smothering of an ecosystem. Any changes to the existing sedimentation regime would be similar to existing processes, rather than wholesale changes. Therefore, any eroded material is expected to be deposited into existing depositional areas. Ecosystems in these areas would have become acclimatised to regular mud and/or sand deposition. The most likely depositional area is the port basins, which are an already modified environment, and subject to regular dredging.

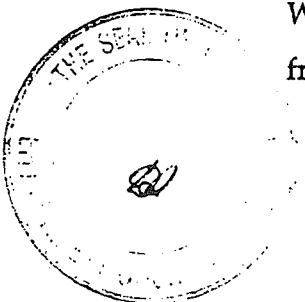
[106] In his review Professor Kirk had discussed the possibility of the increases in tidal currents causing channel scour and increased sedimentation, but he concluded that the floor of the main channel, being exposed to the strongest currents, is armoured with a lag of shell 'gravels'. He concurred with the findings of the investigation team and concluded that the changes to sedimentation caused by the construction of Option B2 would be mild in environmental and port operational terms. They would not amount to unacceptable adverse effects and sedimentation could be managed in a sustainable fashion.

[107] No evidence on sedimentation was called by the appellant. We accept the findings of the witnesses for Ports of Auckland Limited, and find that the proposal would not have any significant adverse effects on the deposition or transport of sediment within the harbour.

### Wave Climate

[108] Direct evidence relating to the wave climate was presented by only one witness, Mr Priestley. His evidence was unchallenged by the appellant.

[109] The Fergusson Container Terminal is the eastern-most port structure in the Waitemata Harbour. As such it is exposed to waves entering the harbour from the east and north-east. Waves from the east are generated by easterly

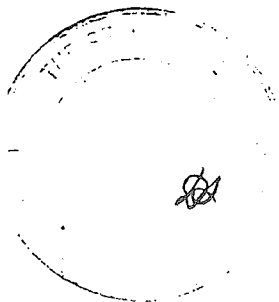


winds over a fetch of 30 kilometres in Tamaki Strait. Those waves pass Browns Island before reaching the terminal. North-east swell is generated over the Hauraki Gulf and reaches the site through Motuihe Channel. The northern face of the Terminal is also exposed to waves generated over a moderately short fetch across the harbour in the north-west to north-east directions.

[110] Wave energy entering the harbour is eventually absorbed on non-reflective surfaces such as gently sloping beaches, or attenuated as the waves propagate over shallow areas with relatively high bed roughness, or reflected off solid structures such as vertical walls or partially reflected off rubble structures such as rock breakwaters. At present minimal reflection occurs from the existing north face of the Terminal for the predominant east-north-east wave direction. Attempts to observe the reflective wave off the Terminal during a 25-30 knot wind were not possible as the reflective wave is very difficult to visually detect. A slightly confused sea state is generally the only noticeable effect.

[111] The proposed terminal extension would be efficiently shaped to disperse reflected wave energy. Even though it presents a larger length of structure, the reflected wave field would be smaller than that from the existing structure for typical east-north-east waves. In Mr Priestley's opinion, the wave climate in Okahu Bay would be better than with the existing terminal, and the wave reflection effects from the Terminal extension would not be significant.

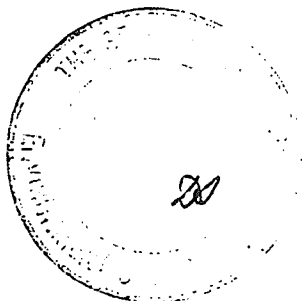
[112] Mr Priestley also addressed the matters of extreme events such as sealevel rises and tsunamis. Measurements from previous tsunami events had been studied. Present predictions of sea level rise are significantly less than those made in the late 1980s. The witness gave the opinion that the proposed wharf level would be adequate to cater for extreme events. He also observed that changing wharf levels would create a significant operational problem as port activities would need a transition between the proposed new backup land and existing areas.



- [113] In reliance on Mr Priestley's evidence we find that the proposal would not cause any adverse wave effects, nor other adverse effects in extreme events.

#### Discharges from reclamation

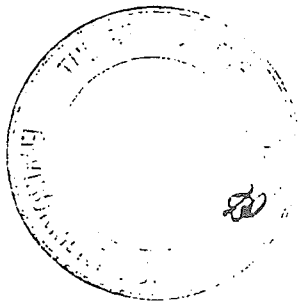
- [114] It is proposed that material used for the reclamation would in general come from three sources: aggregate from a quarry source; mudcrete; or compacted sandstone (above water level).
- [115] The mudcrete process makes a beneficial use of a material which has traditionally been treated as waste. It is made by mixing contaminated materials obtained from dredging, with cement.
- [116] A textile liner between the mudcrete and the perimeter rock bund wall would ensure that sediment (which contains most of the contaminants) would be released in only negligible quantities to the coastal environment. Any adverse effects associated with discharges during construction would be minor and localised.
- [117] Apart from the discharges associated with the actual reclamation, the new area would be drained by a network of catchpits which would discharge through two new outfalls directly to the harbour on the east side of the site, and two reconstructed outfalls on the north side of the site. Two existing outfalls will be extended through the new reclamation.
- [118] The new stormwater outfalls would be designed in accordance with the Auckland Regional Council's Technical Publication No. 10: *Stormwater Treatment Devices Design Guideline Manual*, 1992.
- [119] As with any industrial premises or yards, stormwater from working surfaces on the Terminal has the potential to transport a variety of contaminants derived from surface wear, vehicle wear and corrosion. Basic stormwater management practices would control these, and we find that the discharge of



stormwater from the Terminal into the harbour would not result in adverse effects off site.

### Dredging

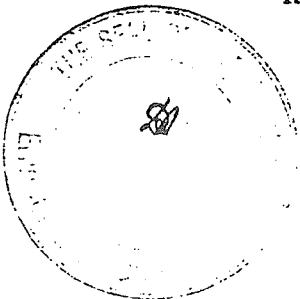
- [120] Because of the cohesive nature and strength of the soils, it is anticipated that dredging would be undertaken by large grab dredges. This method is similar to that currently carried out in other areas of the port for the removal of accumulated sediment. A grab dredge lifts the material from the harbour bed in a crane-mounted clam-bucket, and transfers it into another vessel or the dredge's own hopper. A grab dredge is able to dredge a wide variety of materials by fitting various types of clam buckets.
- [121] To develop the first work areas, it would be necessary to store a quantity of dredged material either on a barge or in a stockpile area on site. If that is done, this material could later be used for fill after being stabilised with cement. Alternatively, the small initial quantity of dredgings might be disposed of at an appropriate deep-sea location, probably outside the coastal marine area. This may be required if permanent bund construction is not able to be started until after the first areas have been dredged.
- [122] Approximately 240,000 cubic metres of harbour bed would be removed. The bed material consists mainly of muddy sands and is relatively clean, with low concentrations of trace elements and organic compounds.
- [123] The removal of sediment by dredging would result in the disturbance and loss of benthic communities and habitat in the harbour. As well, there is potential for resuspension of sediment. However, overseas investigations have indicated that significant suspended loads are not attributed to dredging operations because the bulk of the released material moves rapidly back to the seabed, with some remaining in suspension due to entrainment around the edges of the plume. Given the conditions and rates of dredging proposed, the change in suspended solids at 200 metres from the dredger is expected to be less than 4 grams per cubic metre. This is compared with an





average suspended solids level of 10 grams per cubic metre in the main channel and is well within the normal range of recorded values.

- [124] Studies have not identified any species of unique ecological or conservation value in or immediately adjacent to the area of the proposed dredging. The removal of the existing bottom habitat is not considered to be significant, although the area of existing benthic habitat (which amounts to 10 hectares) will be lost. Over time, the dredged area at the northern face of the terminal would be recolonised by invertebrate species typical of the area. The effects of suspended solids on the biota is not expected to be significant.
- [125] Dredging would not be undertaken on a continuous basis, so the discharge of poor clarity water is unlikely to occur for significant periods of time. Therefore it is unlikely that any biota would be exposed to increased suspended solids for long periods of time. Fluctuations in suspended solids occur naturally or occur in the harbour as a result of man-induced activities. The existing biota would be tolerant of this, as they are of the effects of vessel movements in the harbour.
- [126] It is anticipated that the physical effects of the proposed dredging operation would be localised, and no adverse effects of dredging are anticipated in the wider harbour area.
- [127] A marine environmental scientist, Mr P C Kennedy, gave evidence of the biological resources in the harbour. He gave the opinion that the removal of the bottom habitat by dredging would not be significant as no species of significant ecological or conservation value were identified in or immediately adjacent to the area proposed to be dredged.
- [128] Accordingly, we find that there would not be likely to be any significant adverse effects on the environment caused by the proposed dredging of the harbour bed.



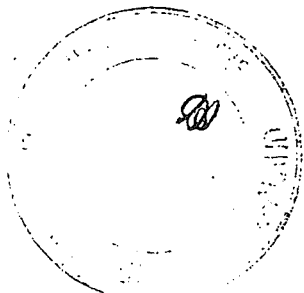
## Navigation and Recreational Use

[129] Ports of Auckland Limited presented full evidence on the effects of the proposal on navigation on the harbour. None of that evidence was challenged by the Judges Bay Residents Association, and in general the witnesses were not cross-examined. The evidence covered the effects of winds, tides and currents on the piloting, manoeuvring and berthing of ships. The collective conclusions of the evidence were that any wind and tide changes associated with the development would have no more than minor effects on navigation in the port and or on other harbour users. We have referred to those effects in more detail in other sections of this document. In addition, from the evidence of Mr Waller we find that there will be no adverse effect on harbour users from the proposed lighting.

## Biological Ecology

[130] No natural resources of significance have been identified in the area proposed to be reclaimed on the eastern side of the Fergusson Container Terminal. Intertidal and benthic invertebrates are typical of the fauna found throughout the lower Waitemata Harbour. The evidence established that no birds of note have been observed in the area, and that no unique use of the area by birds has been identified. Although there are areas of subtidal and intertidal ecological resources of conservation significance located in the lower Waitemata Harbour, none is immediately adjacent to the area of the proposed reclamation.

[131] Assessment of sediment quality in the area of the reclamation has shown that the concentrations of key contaminants (trace elements and organic compounds) is intermediate between that found in the Port and in Mechanics Bay, slightly to the south of the site for the proposed reclamation. No significant concentration of environmentally persistent organochlorine compounds was found.

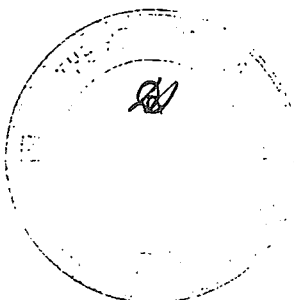


[132] Mr Kennedy gave detailed evidence on the biological resources adjacent to the site. He identified a number of environmental issues associated with the construction and operation of the proposed extension to the Fergusson Container Terminal. He gave the opinion that the loss or change of habitat associated with the construction phase would not be significant as the environment is similar to that occurring elsewhere within the Port and the lower Harbour. He also considered that the change in water turbidity due to resuspended sediment during dredging and pile-socket drilling would not be significant either, due to the depth of water at the site, the dilution, dispersion and settling of the sediments, and the short term nature of the operation.

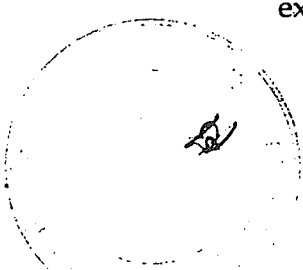
[133] Mr Kennedy also provided an overview of environmental issues associated with the operation of the expanded terminal. These issues are the control of hazardous cargoes, stormwater quality, control of ships' ballast water, and prevention of the introduction of unwanted marine organisms. All of those activities already occur or are covered by existing port or other maritime regulations (or in the case of ballast water by a voluntary code of practice). The witness concluded that there are no activities associated with the increase in vessel utilisation that would result in unacceptable environmental effects.

[134] Mr Kennedy gave the opinion that the proposed conditions are comprehensive and are appropriate to ensure that any effects are appropriately monitored and able to be dealt with, and that the proposed extension would have no more than minor ecological and biological effects and be in accordance with relevant objectives and policies of the various statutory documents.

[135] We accept his opinions and so find.



## Noise

- [136] The Association did not call evidence about noise effects. Its counsel announced that it did not dispute the technical expertise of Mr C W Day, the witness called by the applicant on the question of noise. However the Association maintained that increased nuisance from noise is a serious problem and questioned the notion that adding to a noise nuisance is reasonable if the amount of increase is not very great. It contended that like any other individual or corporate citizen, the port company must conduct itself to keep within the existing rules and noise limits.
- [137] For its part, the port company had responded to expressions of concern about noise from residents of Judges Bay by commissioning Mr Day to undertake what he described as "one of the most extensive noise monitoring studies ever to be carried out in New Zealand".
- [138] The port company had also moved immediately to identify, and (where practicable) address, all possible sources of penetrating or annoying noise which might not have been controlled by the normal noise limit controls. An internal task force is in place as well as regular liaison with local residents. Through the agreed noise conditions proposed to the Court, it is intended that this process be developed further. A noise management plan would be prepared and implemented, and arrangements for ongoing liaison with the residents are proposed.
- [139] Although Mr Day was the only acoustic expert to give evidence, the noise condition proposed reflects the input of two acoustic advisers engaged by the Auckland City Council and that of Auckland Healthcare's adviser.
- [140] Mr Day's evidence was extensive and covered not just the noise that would be emitted from the container terminal but also possible effects of an increase in road traffic noise and also noise associated with the construction of the expanded facility.
- 

[141] The Waitemata Harbour Maritime Planning Scheme includes noise controls for the Ports Zones A to F. These controls are implemented through both the transitional operative Auckland City District Plan and the transitional operative Auckland Regional Coastal Plan.

[142] Following a number of variations during the early 1990s, the noise control has the effect that port activity is to comply with the following noise limits (L<sub>10</sub>):

60 dBA	at the southern side of Quay Street (at all times)
55 dBA	at any residential property excluding the area north of The Strand during daytime (0700 and 2200 hours).
45 dBA	at any residential property excluding the area north of The Strand during night-time (2200 to 0700 hours).

[143] The exclusion of The Strand was to allow an area of potential apartment buildings to be located in a new residential zone in the south-east corner of Quay Park without affecting the noise control applying to the Port. This was a scheme promoted by NZ Railways Corporation and the new buildings were to be insulated from port noise.

[144] The Auckland City Council has recently notified the Central Area section of its proposed district plan. The noise control for the Port Precinct specifies a limit of 50 dBA(L<sub>10</sub>) within any residential activity zoning. The explanatory comment refers to these noise limits being similar to the Fergusson extension.

[145] The proposed Regional Coastal Plan has been notified and the proposed noise rules are similar to the operative plan which specifies 45 dBA (L<sub>10</sub>) night-time for residential areas. The Auckland City Council submitted that this should be raised to 50 dBA nighttime and Ports of Auckland Limited submitted that the rule should specify 55 dBA at all times, recognizing the 24 hour operation of the Port. At the hearing of these proceedings, the Auckland Regional Council had not given its decision on those submissions.

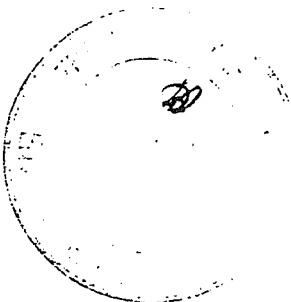
[146] Of the various controls, the night-time 45 dBA limit is generally the most stringent control. Historical (1975) night-time noise levels at the eastern end of the port were in the range of 44 to 50 dBA, and monitoring undertaken since 1990 showed this level continuing. Therefore the 45 dBA noise level previously set in the plan was below the actual noise already occurring at the eastern end of the port.

[147] To assess the noise effects of the proposed expansion of the terminal it is necessary to predict the change in level due to the increased activity, and review the absolute noise level to ensure it does not exceed a reasonable level.

[148] Operation of the Fergusson Container Terminal involves the following main sources of noise:

Portainer cranes,  
Straddle carriers,  
Container refrigeration units  
Ships at berth  
Road trucks  
Trains.

[149] A computer model had been set up to calculate noise levels from the terminal. This model was then run to predict the noise level from the extension alone, and also the overall noise from the total operation. Using the extent of the expansion based on information supplied by the port company which included a 40% increase in cranes, straddle carriers and trucks, a 50% increase in ships, and a 20% increase in reefer units (refrigerated containers), and positioning these appropriately, the following noise levels were predicted:



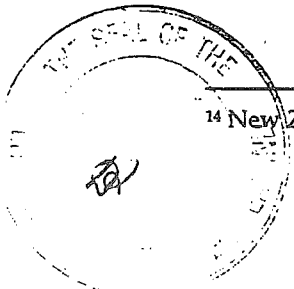
	<u>Existing Activity</u> <u>15 Dec</u>	<u>Expansion</u> <u>only</u>	<u>Expansion plus</u> <u>existing</u>	<u>Increase due</u> <u>to expansion</u>
Balfour St.	47.6 dBA	40.3 dBA	48.3 dBA	0.7 dBA
Judges Bay Road	43.0 dBA	39.4 dBA	44.6 dBA	1.6 dBA
Dilworth Terrace	46.4 dBA	39.8 dBA	47.3 dBA	0.9 dBA

[150] These results show that the proposed expansion on its own would comply with the normal night-time noise limit of 45 dBA in residential areas. On that basis we accept that the extension would have only a minor effect on the noise environment.

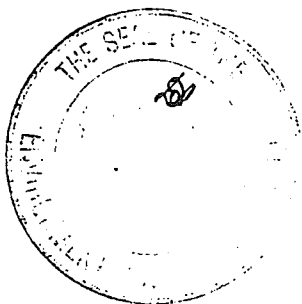
[151] In practice it will be physically impossible to measure the noise level of the expansion alone, as it will always be operated as part of the whole terminal. Because of this, Ports of Auckland Limited has been willing from the outset to offer a noise condition that would apply to the overall level of noise from the whole terminal (both the existing operation and the extension).

[152] To accommodate the slight increase in overall noise level, a night-time noise limit of 50 dBA was proposed, and that was accepted by the City Council. Mr Day considered that this level was appropriate for a number of reasons. First, 50 dBA recognises the practical realities of the existing situation. It was his opinion that the terminal is being responsibly managed to minimise noise, and a terminal of this size simply cannot achieve a level of 45 dBA. The existing terminal does not do so, and neither could the expanded terminal. Secondly, the 50 dBA limit is supported as an appropriate limit by the measured background noise levels and the New Zealand Standard *Assessment of Environmental Sound*.<sup>14</sup> An earlier measurement of background noise at Balfour Street was 43 dBA. Clause 4.2.1 *Limits of Acceptability* in the Standard recommends setting L<sub>10</sub> noise limits at 10 dBA above the background noise level. This would support a noise limit of 53 dBA, rounded down to 50 dBA, as an appropriate limit. There is no data to support a noise limit of 45 dBA.

<sup>14</sup> New Zealand Standard NZS 6802:1991



- [153] Thirdly, the draft Port Noise Standard promotes setting port noise limits using a future noise prediction based on the level of port operations in a minimum of ten years time. This approach allows for some port expansion and subsequent increase in noise level, rather than expecting port development to occur with a nil increase in noise. The proposed limit of 50 dBA allows for the small increase in overall noise level due to the expansion in a similar way to the draft Port Noise Standard. Mr Day gave the opinion that this is quite stringent, and will be difficult to comply with.
- [154] The resource consents granted by the Auckland City Council for the expansion include a number of noise conditions which are based on these concepts, and include a normal daytime control of 55 dBA L<sub>10</sub> and a night-time control of 50 dBA L<sub>10</sub>. They also include an averaging clause to allow for noise variations due to different meteorological and operational conditions.
- [155] The Council noise condition also specifies that the noise level should be measured within the boundary of any adjacent residentially zoned site, excluding areas north of The Strand. This approach is consistent with the measuring point for residential land in the operative district plan. Mr Day was in agreement with this, as it is the existing residential areas that need to be protected. The port should not have to deal with a continually reducing noise limit due to apartments being built in business zones or on former railway land close to the port. This is the situation the draft Port Noise Standard specifically tries to avoid by setting its port noise boundaries and including land use restrictions.
- [156] Consultations and negotiations with Auckland Healthcare led to their appeal being withdrawn after a draft noise management plan was prepared and some amendments were made to the meteorological conditions, Auckland Healthcare preferring specific tolerances rather than averaging procedures.





[157] While the assessment of transportation noise is specifically excluded from New Zealand Standard NZS6803P, and is generally outside the control of local authorities when vehicles are operating on public roads, Mr Day had assessed the increase in noise of the extra vehicles expected and concluded that the cumulative effects should be seen as very minor.

[158] The witness also concluded that the noise associated with the construction phase would be well within the allowable noise limits under the standards for construction work<sup>15</sup>, and substantially less than many other construction sites elsewhere in the city.

[159] Mr Day's conclusion was that—

In my opinion, the predicted levels of noise from the proposed extension are reasonable, considering the existing noise environment, and the small increase will not be noticeable. On this basis the adverse effects of noise from the terminal will be minor.

[160] We accept his opinion, and so find.

#### Traffic

[161] In presenting the opening submissions for the Association, its counsel accepted that increased heavy traffic to and from the Bledisloe or Fergusson terminals would not of itself result in any major adverse effect on the immediate environment. Therefore the Association did not call any evidence on traffic effects.

[162] The applicant called Mr P T McCombs, a well qualified and experienced traffic engineer. This witness observed that the planned extension of the Fergusson Container Terminal is one project among a series of other current proposals for future developments throughout much of the adjoining downtown and railyard area of the City including plans for a large retail, commercial and residential development known as Quay Park (planned in

<sup>15</sup> New Zealand Standard NZS 6803P 'Measurement and Assessment of Noise from Construction, Maintenance and Demolition Work'



the general area of the Auckland Railway Station), the Britomart project, and a series of other planned projects both big and small extending along the length of the waterfront. He therefore included the scope and extent of each of these various projects and their related traffic effects, both singly and in combination, in his evaluation of the proposed traffic effects.

[163] From those analyses Mr McCombs concluded that the development plans intended by the application represent a desirable and timely improvement to the capacity and efficiency characteristics of the Port of Auckland in serving the city and the region beyond, and are able to be approved without compromise to the operation and safety of the adjoining principal arterial roads and intersections, and similarly without adverse effect on the amenity and levels of service available to other road users.

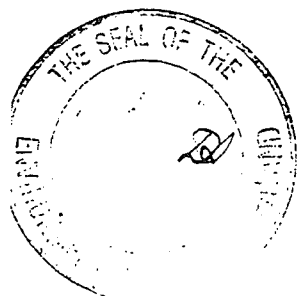
[164] On the basis of Mr McCombs's evidence, we are satisfied that any effects associated with traffic movement to and from the extended terminal are acceptable.

### Lighting

[165] The appellant did not specifically raise the question of light emission as constituting by itself a major adverse effect on the environment. It contended though that there have been occasional problems with the existing lighting.

[166] Mr G A Waller, a professionally qualified illumination engineer called on behalf of Ports of Auckland Limited, gave evidence that current problems have been satisfactorily resolved by redirecting light beams or by adding additional glare guards.

[167] The existing Fergusson Container Terminal has twelve 30-metre high light poles. Each light has on average 35 individual luminaires in two circles around the circumference of the lights. The individual luminaires are all aimed downwards at various parts of the terminal. Generally, the luminaires



are 100 watt metal halides. Because the luminaire arrangement on top of the light towers is circular, only a small proportion are shining in one direction.

[168] The proposed lights will be arranged differently, being located towards the eastern boundary and generally having luminaires oriented towards the west. The purpose of the lighting is to provide sufficient light to work ships at night, and to operate the container yard. This is to ensure that the straddle carriers can manoeuvre safely, that individuals working or moving to and from ships have sufficient light to see the straddle carriers, and overall to ensure that there is a proper degree of safety. The light levels do not need to be particularly high to meet those requirements and by opting for 30 metre high poles, the port company is able to avoid the need for a far greater number of lights at a lower height. A greater number of lights would have a greater visual impact as well as taking up more land, providing further obstacles, and more potential glare sources.

[169] The proposed reclamation would include seven 30-metre light poles and up to eighteen 15-metre poles. The original application proposed that the eighteen poles would be 12 metres high, but this was found to conflict with the height of the straddle carriers, and the proposal has therefore been amended.

[170] As a comparison Mr Waller compared the proposed lighting with proposals for Eden Park, and the proposed Wellington Stadium, and attested that this proposal is quite different because there is no need to provide such a high level of lighting.

[171] The approach taken by the Auckland City Council has been to require floodlighting to comply with a floodlighting bylaw.

[172] This bylaw provides that between the hours of 10pm and 7am any artificial lighting may not be used in such a manner that it causes:



- (a) an added illuminance in excess of 10 lux measured horizontally or vertically at any window of an adjacent building with a residential use;
- (b) an added illuminance in excess of 20 lux measured horizontally or vertically at any point of any adjacent boundary of any adjacent land which is zoned residential or used for residential purposes.

[173] It was Mr Waller's opinion that there will be full compliance with this bylaw as there would be no measurable increase in lux level at the boundary of any residential property.

[174] Five of the seven proposed 30-metre light poles would be within Port Zone A in the Waitemata Harbour Maritime Planning Scheme. In that zone they are permitted activities. For the remaining two 30-metre poles, and all of the 15-metre poles, discretionary activity consent is required. The potential effects of the lighting proposed at Fergusson are:

Spill/glare on to residential properties;

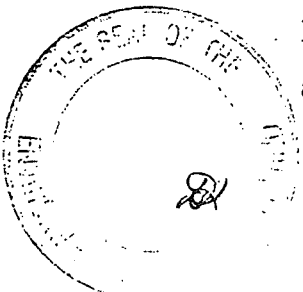
Glare on to roads which affects traffic safety;

Glare on to harbour users.

[175] Mr Waller gave the opinion that the effect on residential properties of spill or glare from the proposed lighting would be negligible. However he was aware that the port company and the Society for the Preservation of Auckland's Coastal Environment would be asking the Court to consider adding a further lighting condition to the conditions proposed, to read as follows:

POAL shall adopt all reasonably practical measures to minimize the effects of lighting, especially glare, on the existing residential area of Parnell from the expanded terminal operation.

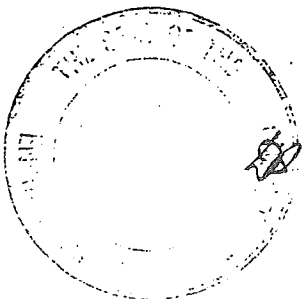
[176] Mr Waller deposed that this would encompass the current procedure whereby Ports of Auckland Limited is working to reduce concerns about lighting effects raised by the residents of Parnell, and he found the condition acceptable.



- [177] The witness found that there would be no effect on traffic safety as the lights were not directed towards traffic. Neither would they affect harbour users, being directed generally in a westerly direction.
- [178] Mr Waller commented that he had studied the proposed conditions and although he considered that proposed conditions N and O are quite stringent, he deposed that they would be able to be met.
- [179] On the basis of Mr Waller's evidence, we find that because of the location, direction and relative low intensity of the lighting and the further condition proposed, no other further conditions for lighting are required and all potential lighting effects are suitably avoided, remedied or mitigated.

#### Visual and Landscape

- [180] The visual effects of the proposal were challenged by the Association. Its counsel claimed that the Association members have a passionate attraction to the entire Waitemata Harbour and unashamedly wish to protect and preserve as much as possible of the natural state of the harbour for the benefit of the present and future generations of Aucklanders. To support its case the appellant called a landscape architect, Mr D G Mansergh, and also sought to rely on a report prepared for the joint commissioners who heard the resource consent applications by the Auckland City Council's then Senior Landscape Architect, Ms S Peake, in which she had assessed the visual effects of the original application.
- [181] The port company called two landscape architects, Ms M C Buckland and Mr J L Goodwin. Mr Goodwin had prepared the landscape and visual effects report which had been incorporated into the resource consent applications and the assessment of environmental effects. Ms Buckland had been engaged in March 1997 to carry out an independent visual and landscape assessment of the proposed Fergusson Container Terminal. Both of those



witnesses produced full and detailed descriptions of the methods they used and the vantage points from which their assessments were made.

[182] Similarly Mr Mansergh gave evidence of his assessment of the anticipated visual and landscape character effects of the proposal.

[183] All of these witnesses used similar vantage points, being sites on the north side of the harbour at Devonport, Mt. Victoria and Stanley Bay, and positions on the harbour itself, to give perspectives of ferry travellers and boat users, and points closer to the site along the southern shore of the harbour, including Judges Bay. As well, the view of the site from the Auckland War Memorial Museum was assessed.

[184] All three of these witnesses presented computer simulations which superimposed views of the proposed expanded terminal on photographs taken from the various vantage points. We commonly find photographic montages of that kind helpful, especially when visiting the same vantage points. We were able, on a full and useful site visit, to see and understand for ourselves the points made by all of the witnesses.

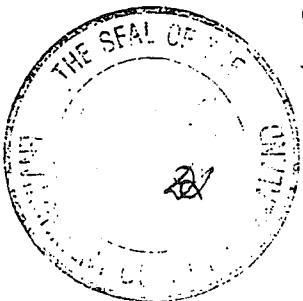
[185] Mr Goodwin's conclusions in his original report were:

The extension will be visible from a relatively wide area within Auckland City, the North Shore and the Waitemata Harbour, and will be seen by residents, commuters and tourists. The visual impact from a range of specific representative viewpoints will range from low to high.

Taking into account the viewing audience, the existing highly modified landscape and the context of the majority of the views, the adverse visual effects will generally be minor, once the expansion is constructed and in operation. During the construction phase significant adverse effects would occur, and from isolated specific viewpoints with a narrow viewshaft, particularly in the vicinity of Bridgewater Road, significant adverse visual effects could remain for some residents.

Once completed the terminal expansion will appear as an extension to the existing activity containing similar characteristics and elements, assisting to integrate this new wharf structure into its city and harbour setting.

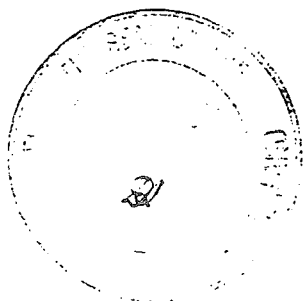
[186] The witness reiterated that statement in the conclusion of his evidence. He referred to the relevant policies 1.1.1, 3.2.2 and 3.5.2 of the New Zealand Coastal Policy Statement which are relevant to the potential landscape and visual effects of the proposal. Mr Goodwin gave the opinions that the



proposed extension, located adjacent to an area where the natural character has already been significantly compromised, may avoid the need to locate such an activity in another coastal environment, and that would reduce the cumulative effects of the development in the coastal environment. He acknowledged that there would be varied adverse landscape and visual effects, but considered that in time the proposed pohutukawa tree planting would mitigate some of them. The conditions of the Auckland City Council consent require provision of a public access boardwalk, and the applicant has not appealed that.

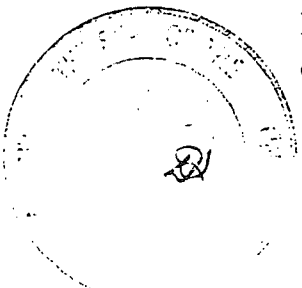
[187] Mr Goodwin also referred to relevant provisions in the Auckland Regional Policy Statement and Auckland Regional Planning Scheme. He concluded that although the adverse visual effects would be significant for a small number of the residents in Judges Bay, for the wider community including those using other static, private viewpoints, the effects will not be significantly adverse. Although the development would not enhance the natural values of the harbour, given its location, scale and design relative to the existing container terminal, the principal values associated with the harbour would not be compromised and will be maintained. While an area of what is presently open water will be lost, the predominant landscape character of the harbour - headlands, Tamaki Drive, and volcanic cones will prevail and remain a legible part of the wider area. The witness gave the opinion that by extending the existing port in a currently modified environment as is proposed it would avoid or delay any new port and maintain the landscape values of the Auckland Region, because the environmental impact of a new port in a greenfields site is likely to be highly significant.

[188] Mr Goodwin also referred to provisions of the transitional Auckland Regional Coastal Plan (Waitemata Harbour Maritime Planning Scheme) about preserving visual quality, and deposed that as the development and activities proposed are located adjacent to the existing highly modified terminal and commercial port, the expansion will not impede the interaction of natural forces and the natural forms of bays, inlets, headlands and the like.



The witness reported that the proposal would maintain the visual relationship between the land and harbour and also provide public access in the form of a walkway along a large part of the eastern boundary, and that by concentrating the proposed development adjacent to the existing port activities, the visual character of the port is reinforced and thus in a comparative sense the visual qualities of other parts of the harbour may avoid modification.

- [189] Next, Mr Goodwin addressed the relevant provisions of Section 4 of the proposed Regional Plan: Coastal which deals with areas identified as outstanding or regionally significant landscapes. The witness observed that the reclamation has been specifically designed to retain the existing Mechanics Bay Seaplane Landing Ramp which is listed in Schedule 2 of the Coastal Plan as a Cultural Heritage Site For Protection. Again, given the highly modified character of the Fergusson Container Terminal's coastal edge, he did not consider that there will be any adverse effects on the natural environment and it could be said that a development in this location may prevent compromising the natural character elsewhere.
- [190] Finally, Mr Goodwin considered relevant provisions of the Auckland City proposed District Plan (Isthmus Section) which applies to the area beyond the Central Area and the Port. It includes Parnell, Tamaki Drive and the eastern Suburbs. As its provisions are related to development activities within that area they are not of direct relevance to the Port. However Part 5C deals with heritage values with an objective to identify and protect views of important visual landmarks, and a policy to protect existing views of certain landmarks by limiting development on sight-lines from important vantage points. Those landmarks include the Auckland War Memorial Museum which is protected by a plane generated by a 1 : 40 slope extending from the bottom tread of the museum steps (RL75.23) in an arc out to the north.
- [191] The existing and proposed container cranes protrude into that protection plane and the seven additional 30 metre light standards will also do so. Mr Goodwin accepted that there would be additional blocking in the view-shaft,





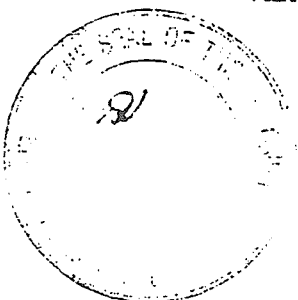
but gave the opinion that the effects would be minor, particularly as the intrusions would be relatively small in the totality of the view, and as the views in that direction from the museum are largely blocked by vegetation. This was demonstrated in evidence by photographs and was also evident when we visited the museum and looked out to the north from the defined step tread.

- [192] The existing port activities extend for some 3.0 kilometres along the Auckland Central Business District waterfront from Freemans Bay to Judges Bay. This highly modified landscape and harbour edge is part of a large area of reclamation on which much of Downtown Auckland is located. The Fergusson Container Terminal is located at the eastern extremity of the commercial port and is at the transition between the more modified and intensive urban activities to the west, and the residential and recreational activities to the east. The extension to the terminal would create a larger land area for container storage with additional berthage, lights and cranes to the east of the existing reclamation. In practice, this would result in the "transition" point being moved slightly to the east, but it would still be west of the Point Resolution headland which delineates the point of change of character in this area.

- [193] Ms Buckland's assessment came to much the same conclusions as Mr Goodwin. She concluded —

... that the landscape of this part of the Waitemata Harbour has already been compromised by port development, and that an expansion of the Fergusson Wharf here is infinitely preferable, in landscape and visual terms, to developing a new port in a new environment.

- [194] Mr Mansergh was of the opinion that there are limited options for the mitigation of this type of development, and that even if some planting does eventually become effective in perhaps 10 -15 years time, the sheer bulk of the terminal would make it impossible to effectively screen the site from all vantage points.



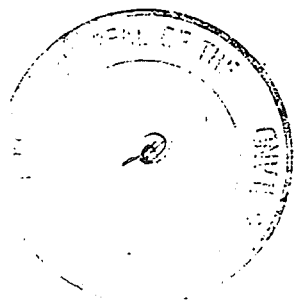
[195] The three visual and landscape experts came to generally the same conclusions about effects. In cross-examination, Mr Mansergh accepted that Ms Buckland's methodology was widely accepted and appropriate. He also accepted that her methodology appeared to be similar to that used by Mr Goodwin. Any area of difference between those experts related to their conclusions about the visual effects of the proposal, and their conclusions were not very different. For almost all of the views chosen by Mr Goodwin and Mr Mansergh, their categorisation of the visual effects was moderate and low-to-moderate. Mr Mansergh accepted that his descriptions of "low" and "moderate" appear to be broadly similar to those same descriptors used by Mr Goodwin and Ms Buckland.

[196] It was agreed between Mr Mansergh and Mr Goodwin that:

... while it is anticipated that, from some locations, the container terminal development would significantly affect the character of existing views into and across the inner harbour from adjacent residential properties, such changes are mainly limited to a narrow view corridor to the south of the site.

[197] A key factor in assessing the visual effects of this proposal is that from most locations, and particularly from any public viewpoints, expansive views are offered. These views not only include the container terminal but also offer a range of other features. An exception is the view from number 12 Bridgewater Road. All of the experts agreed that the visual effect of the proposal from that location is either high or significant. However, it must be noted that this view is from the third storey. It is a "worst case scenario" rather than a representative view from that particular road or area. Also, the terminal extension does not introduce a new element into the landscape but merely increases the proportion of the individual elements within it.

[198] There was some disagreement between the experts over the effects from positions on the harbour and from within the Mikano Restaurant. While we have only viewed the present situation from the harbour, we accept Mr Goodwin's opinion that views from there are tempered by their transient nature and the expansive views obtainable on the harbour. The views from the Mikano Restaurant are also transient, being restricted to those who



choose to be in the restaurant, some of whom may well be there because of the terminal rather than in spite of it.

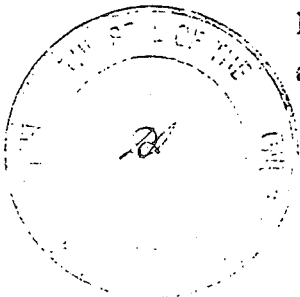
[199] Mr Mansergh's views from the Museum were, on his own admission, not from within the protected view-shaft.

[200] The fourth landscape and visual expert mentioned, Ms S Peake, is no longer employed by the Auckland City Council and was not called to give evidence. The Association sought however to use her report as part of its case. Counsel for the applicant noted that the report was written in August 1996, was intended for the joint ARC/ACC commissioners, and related solely to the original proposal Option A, rather than Option B2, the proposal now before us. The report had been written prior to Ms Peake having had the opportunity of hearing the evidence presented at the primary hearing. There is no indication about whether her views may have altered after hearing that evidence. In any event the application for Option A was refused consent. It had greater visual effects than the current proposal and did not include the boardwalk or the landscaping now proposed. We accept counsel's contentions in those respects, and prefer to base our findings on the evidence given at the appeal hearing.

[201] In summary, we find that while the visual effects from some locations would be more than minor, taken overall they are not such as to warrant the application being declined.

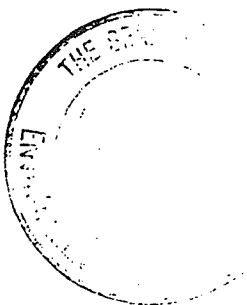
#### Other amenity values

[202] This project is unquestionably a significant development of both regional and national importance. A detailed study of the evidence has shown that the reclamation and development itself would have adverse effects which are surprisingly mild for the scale of the proposal. Much of the evidence presented in support of the proposal was not challenged by the appellant. In addition no appeals were lodged by any other environmental groups, Ngati



Whatua O Orakei Trust Board withdrew its appeal and no representative of any other Maori iwi appeared at the hearing. The Regional Council, the City Council and the Department of Conservation are satisfied with the proposal.

[203] In the absence of evidence to the contrary we assume that there are no other amenity values which we need to take into account.



## VI

## Planning instruments

## Introduction

[204] By section 104(1) of the Act, subject to Part II, when considering a resource consent application and submissions on it, consent authorities are to have regard to relevant planning instruments under the Act.

[205] There are seven major planning instruments relevant to the consideration of this application. Four of these are split into two sections that require separate consideration. These are detailed and extensive documents. Although we have read all the many passages referred to in the hearing, to avoid unnecessary prolixity in this decision and report, we only refer to those which are particularly relevant to deciding the issues in this appeal.

[206] Mr D M Hill (planning consultant for the appellants) described the status of the statutory instruments like this:

The New Zealand Coastal Policy Statement (NZCPS) is operative; the Waitemata Harbour Maritime Planning Scheme (WHMPS) is an operative transitional plan; the Proposed Auckland Regional Policy Statement (PARPS) is moving through its references to the Environment Court [although substantial sections have been settled]; the Proposed Regional Plan: Coastal (RP:C) has completed its regional council hearings into submissions [decisions are indicatively due for release in May 1998]; the City of Auckland proposed District Plan - Isthmus Section (DP: Isthmus) is progressing through references to the Environment Court; the City of Auckland proposed District Plan - Central Area Section (DP: Central) was notified in October 1997.

## NZ Coastal Policy Statement

[207] The *New Zealand Coastal Policy Statement*<sup>16</sup> includes 14 general principles, the most relevant of which are principles 1 and 2:

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<sup>16</sup> *New Zealand Gazette*, No 42, 5 May 1994, page 1563.

1. Some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the social, economic, and cultural well-being of people and communities. Functionally, certain activities can only be located on the coast or in the coastal marine area.
2. The protection of the values of the coastal environment need not preclude appropriate use and development in appropriate places<sup>17</sup>.

[208] Mr Hill suggested that –

the spirit of the NZCPS is not to prevent development. Rather it is to recognise that the coastal margin is extremely important to both to human and non-human populations ... Accordingly, it articulates a principle of caution so that this interface with the land is not inappropriately managed.

[209] He considered that what was at issue is not whether the port activity was appropriate in its immediate location, but

... the ground upon which an increment in development not hitherto anticipated/planned for in any statutory instrument might be considered appropriate where an indicative option [Bledisloe-Jellicoe] which lies within the port boundary is already signalled.

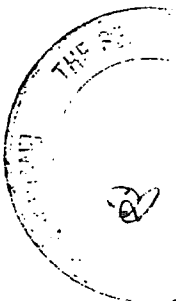
[210] Policy 1.1.1(a) encourages development in areas where the natural character has already been compromised. Mr Gee deposed that the area concerned is already "heavily modified" and that "it is questionable whether it could be described as having any significant 'natural character'."

[211] Chapter 3.2 concerns the appropriate provision to be made for the subdivision and use of the coastal environment. Mr Gee gave the opinions that the proposal is consistent with policy 3.2.2 (avoidance, mitigation or remedying of adverse effects of subdivision, use, development); that Policy 3.2.4 (cumulative adverse effects) is met in that adverse effects would not be significant on the coastal environment as a whole, or on the particular area of development; and he testified that adequate services (such as waste disposal etc.) are already available, as required by policy 3.2.5.

[212] Mr Gee also gave the opinion that the intent of Chapter 3.3 ("the precautionary approach") has been met. There is a relatively detailed understanding of the possible effects on the environment, a result of

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<sup>17</sup> Emphases added.

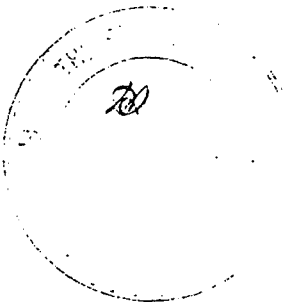


extensive studies, environmental impact reports from the previous development at the terminal, additional investigation for the current proposal, and general harbour studies. He considered that the proposal takes into account the need to avoid, remedy or mitigate possible adverse effects.

[213] Chapter 3.5 of the *Coastal Policy Statement* relates to public access to and along the coastal marine area. It is recognised in Policy 3.5.1 that restriction of public access to the coastline is appropriate in some situations, including where it is necessary to protect health and safety, or where the purpose of the consent requires a level of security. Ports of Auckland Limited intends to provide public access along a three-metre wide boardwalk at the eastern edge of the terminal, separated from the terminal by a security fence. The proposed walkway would extend the Tamaki Drive walkway.

[214] Policy 4.1.4 requires that material used for or sited on a reclamation does not include contaminants that may affect the coastal marine area adversely. The conditions of consent require extensive programmes for monitoring of discharge of sediments and contaminants, screening of solid fill to exclude fine material, and control of discharge of sediments and contaminated stormwater. Policy 4.1.6 concerns alternatives to the proposal, and we have addressed that in Chapter IV. Policy 4.2.2, which relates to Treaty of Waitangi matters and consultation, has been recognised by the port company's consultation with tangata whenua.

[215] Mr Gee concluded by giving the opinion that the proposal is generally consistent with the purpose, principles and relevant policies of the New Zealand Coastal Policy Statement. Recognising the importance of the coastal margin and the need for caution in managing the coastal interface, we accept Mr Gee's opinion and find that the proposal is consistent with the relevant policies of that instrument.



## Proposed Auckland Regional Policy Statement

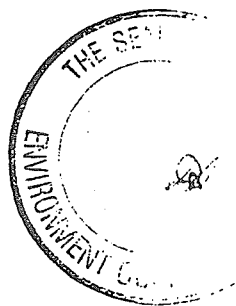
[216] The proposed Auckland regional policy statement has reached the stage where decisions on submissions have been given, and some of references to the Environment Court have been disposed of, but other references remain to be resolved. It was the case of the Auckland Regional Council that the relevant provisions of both Chapter 2 and 7 of the regional policy statement are supportive of granting consent to this proposal.

[217] Issues 2.3.1, 2.3.4 and 2.3.6 are relevant to the proposal. Issue 2.3.1 concerns the economic focus of the Auckland region ("the dominant economic focus of New Zealand), and recognises the importance of Auckland in a "successful export-led strategy", and in particular focuses on the large domestic market, infrastructure, port and airport, commercial expertise and manufacturing and industrial base. Issue 2.3.4 recognises the importance of the regionally significant infrastructure and other important physical resources, but also recognises that these may give rise to adverse effects. Issue 2.3.6 records that the coastal environment of Auckland is "a fundamental part of its heritage", "essential to the region's social and economic well-being" and "sensitive to adverse effects of inappropriate subdivision, use and development". The statement recognises the need for a balanced approach to the strategic direction of the region.

[218] Mr Hill deposed that the policy statement —

invites consideration of the policy, planning and management integration of the developments such as that proposed. In its now largely agreed Chapter 2 ... attention is drawn to the need to maximise the efficiency of the use to which large scale regional infrastructure is put in order to avoid and/or minimise the adverse environmental effects of alternative developments.

[219] Mr Hill stated that the policies related to the integrated management of the regionally significant infrastructure are supportive of the consolidation and development of the existing port. He suggested that development should be contained within the established commercial port boundary, rather than compromising an area of public open coastal space.





[220] Mr Bradbourne commented that —

An urban containment policy is the cornerstone of the RPS, within which the infrastructure components play an important role.

[221] It was Mr Hill's opinion that the implied policy preference in the policy statement is for the "continual improvement, upgrading and expansion of existing systems and networks - subject to the ability to avoid, remedy or mitigate adverse effects".

[222] Objective 2.5.1.7 is to ensure that the management of the use, development and protection of the region's natural and physical resources is carried out in an integrated manner. Objectives 2.5.1.4 and 8 are also relevant, as they provide for the natural character of the coastal environment to be preserved while ensuring that the use of that environment by those industries which serve the needs of the region and which depend on a coastal location is appropriate and efficient, and for the integrated management of the natural and physical resources of the region. Objective 2.5.1.6 promotes transport efficiency and encourages the efficient use of natural and physical resources, including urban land, infrastructure, and energy sources.

[223] Mr Bradbourne gave the opinion that the extension to the Fergusson Container Terminal represents the implementation of all of those objectives.

[224] Mr Winn considered that the proposed extension would be "quite consistent" with objectives 2.5.1.1, 2.5.1.2, 2.5.1.4 and 2.5.1.6, and strategic policies 2.5.2.1, 2.5.2.3, 2.5.2.6, and 2.6.7. He stated that those objectives and policies contain "important imperatives" for the consideration of the proposal, and that one of the main imperatives is to ensure that the region has the capacity to "meet the demands of population and economic growth is placed alongside the necessity of protecting the region's resources." The witness also deposed -

The Strategic Direction, ... links these two requirements, that is, to ensure the region has the capacity to accommodate growth and development, and at the same time protect the quality and efficient use of the natural and physical resources.



[225] Mr Hill stated that the "proposal is broadly consistent with the policy framework - although the appropriateness of the extent of the reclamation sought remains at question."

[226] The second major imperative in the Strategic Direction is the requirement to contain growth within defined urban limits and encourage intensification within these limits. Mr Winn considered that the proposed extension "would intensify the port within limits identified over 20 years ago" in the Waitemata Harbour Maritime Plan; development within these long-recognised limits was seen by Mr Winn as helping consolidate commercial and industrial development within the urban area. He noted that the environmental values and natural character of the harbour area occupied by the Ports had "already been compromised or heavily modified."

[227] Policy 2.5.2(6) provides for the "development of regional infrastructure" in a manner which is consistent with the strategic direction, and which avoids, remedies, or mitigates any significant adverse effects of those activities on the environment.

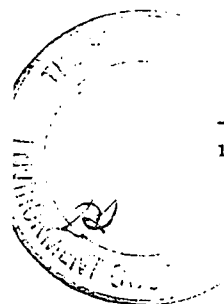
[228] In giving effect to these strategic directions, the regional development policies provide for integrated urban development (referring to a 30 year time horizon within defined spatial limits, and in forms that are consistent with the strategic direction, and (among other things)<sup>18</sup>:

- (iv) enable the safe and efficient operation of existing regional infrastructure and the provision of necessary new or upgraded regional infrastructure in a manner that avoids remedies or mitigates any adverse effects of those activities on the environment;
- (v) facilitate the efficient provision of services ... through the utilisation or upgrading of existing facilities, or the provision of new ones;

[229] Policy 2.6.7 (regionally significant infrastructure or services) provides for the safe and efficient operation of existing regional infrastructure (including ports), and that provision of necessary new regional infrastructure is to be planned and undertaken in ways that:

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<sup>18</sup> Paragraph 2.6.1.2



- (i) avoid, remedy or mitigate adverse effects on the environment, including cumulative effects;
- (ii) preserve, protect or maintain natural and cultural heritage features or places, and landscape values as are provided for in the Heritage chapter of this RPS and maintain or enhance amenity values;
- (iii) are consistent with the provisions of the RPS:  
and in ways that are as far as practicable:
- (iv) consistent with the Strategic Direction
- (v) maintain or enhance provision for the social, economic and cultural well-being and health and safety of people and communities
- ...
- (ix) promotes the regional transport objectives as expressed in the Regional Land transport Strategy (Transit NZ Act)
- (x) promotes the efficient use and operation of existing regional infrastructure and services

[230] Mr Gee concluded that the proposed development is consistent with these objectives and policies, as did Mr Winn.

[231] In terms of Chapter 7 - Coastal Environment, the policies of the New Zealand Coastal Policy Statement are taken into account, and effect given to the provisions of the Resource Management Act. Objectives 7.3(1) and 7.3(4) seek to preserve the natural character of the coastline and to protect it from inappropriate subdivision, use and development, while enabling appropriate subdivision, use or development (respectively). Objective 7.3(4) is of specific relevance to the proposal-

To enable the use of the coastal environment for appropriate port purposes, other water related industrial and commercial activities and network utilities.

[232] Objective 7.3(8) concerns the appropriate disposal of dredged material, and Policy 7.4.4(1)(iii) provides for the protection of the natural environment in areas which are not of high natural character by controls on the adverse effects of development. Policy 7.4.10(1) sets out the criteria for the appropriate subdivision, use and development. Those criteria include the preservation of natural character, maintenance or enhancement of public access, amenity values and public open space; the functional need for use and development within the coastal marine area, the efficient use of natural and physical resources; activities being of a scale, design, and location that maintains or enhances landscape values, with no significant adverse effects on the coastal marine area, or adjacent land, the need for hazard protection

works being avoided and provision made for adequate utility services. Policy 7.4.10(2) requires a precautionary approach to the assessment of subdivision, use and development in the coastal environment. By Policy 7.4.10(7)-

Appropriate subdivision, use and development shall be encouraged to locate in areas where the natural character has already been compromised, thereby avoiding sprawling or sporadic subdivision, use and development in the coastal environment.

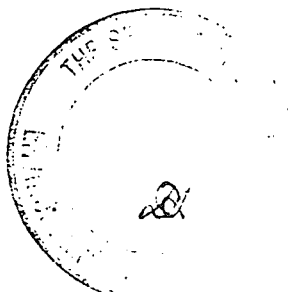
- [233] The provision of port and other water related activities is to be in a manner consistent with other policies relating to subdivision, use and development (Policy 7.4.10 (1) - (9)). Clause 7.4.12 - Reasons states that activities which have a functional need (such as ports) to locate in the coastal environment :

are generally considered appropriate where any adverse effects can be avoided, remedied, or mitigated. Appropriate subdivision, use and development also includes making the most efficient use of space.

- [234] Policy 7.4.13 is concerned with encouraging public access to and along the coastal marine area. Subclause 3 outlines the circumstances where public access might be limited, of these (iii): protection of public health and safety, or (iv) ensuring a level of security consistent with the purpose of a resource consent appear the most relevant.

- [235] Mr Gee gave the opinion that the proposed disposal of dredged material either within the reclamation or outside of the Hauraki Gulf would comply with Policy 7.4.19(3) and Method 7.4.20(3), and that the design and construction methods of the proposed extension to the terminal recognise the requirement to avoid, remedy, or mitigate adverse effects on the environment. In particular, it was his opinion that the extension of the existing wharf makes efficient use of the available space, and is located in an area where the natural character of the environment has already been compromised.

- [236] Chapter 8 concerns issues relating to water quality, and recognises that reclamations, foreshore construction, urban stormwater, bilge discharges (and other activities) can contribute to water degradation. The policies of



chapter 8 require that the adverse effects on water quality should be avoided, remedied or mitigated (in that order), and method 8.4.8.(6) requires that all new developments shall adopt the best practicable option to achieve stormwater quality control. The general port area is identified as an "area of known degradation", which is subject to Policy 8.4.21(2). This policy provides that -

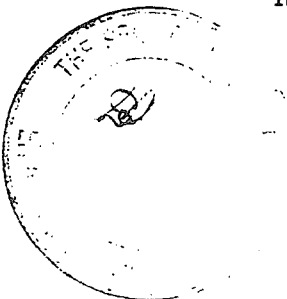
Priority shall be given to maintaining, and where possible improving, water quality in areas which are susceptible to degradation and/or have special values...

[237] Mr Gee considered that the adverse effects on water quality are taken into account by the development design, which -

fully recognises the need to minimise any adverse effects on water quality. In addition, the design of stormwater systems and terminal operating practices will be directed to avoiding, remedying or mitigating adverse effects of discharges".

[238] In relation to Chapter 10, Air Quality, Mr Gee deposed that the extension of the port facility will assist in reducing carbon dioxide emissions by concentrating container operations into a single area, and thereby reducing the travelling distance for vehicles and cargo handling equipment. In terms of Chapter 11, - natural hazards, these are identified as including erosion, inundation of low-lying areas, land instability, rising sea levels and tsunamis. Policy 11.4.1(10) states that location and design of new subdivision, use or development should be such that the need for hazard protection measures is avoided. Policy 11.4.1(12) requires a "precautionary approach" to be used in avoiding, remedying or mitigating the adverse effects of natural hazards on development.

[239] Mr Gee gave the opinion that the standard of design (particularly in regard to possible sea-level rise) is that currently considered appropriate, that inundation and erosion are not relevant risks to a built port environment, and that the extension will have the same levels of protection from natural hazard as the existing facility.



[240] The chapter on esplanade reserves and strips is similar to the corresponding parts of the *New Zealand Coastal Policy Statement* in that where it is necessary for both public safety and security of the Fergusson Container Terminal operations, public access can be excluded. However, the proposal for the esplanade strip around the eastern side of the reclamation would provide a significantly greater level of public access than presently exists.

[241] In response to Mr Hill's comments on the regional policy statement that -

it is equally poor planning practice to arrive at a situation of acute capacity constraint and only then, to proceed to make application for *part* of the planning solution.

[242] Mr Gee deposed -

... there are economic and practical consequences which suggest that the actual development of any new port facilities should be delayed as long as possible

... This has particular application to ports which must respond to changes in shipping and cargo handling...

[243] Mr Gee presented historical evidence about the development of container shipping which illustrated how radically and quickly port requirements can change.

[244] We have surveyed the relevant provisions of the proposed regional policy statement & the evidence about them. There is no challenge to the proposal being consistent with those provisions, except in one respect. That is Mr Hill's opinion that the development should be contained within the existing commercial port boundary to meet the policy of maximising the efficiency of the use of large-scale infrastructure so as to avoid or minimise adverse effects on the environment of alternative developments. In that respect, we accept Mr Gee's evidence that the proposed extension of the existing terminal would make efficient use of the available space and is located in an area where the natural character of the environment has been heavily modified. We find that, although the shape of the extension does not fit precisely within the existing port boundary, the design and conditions of the proposal are such that the container terminal as extended would avoid or minimise adverse

effects on the environment of alternative developments. In short we conclude that the proposal would be consistent with the provisions of the proposed regional policy statement.

#### **Proposed Regional Plan: Coastal**

[245] The proposed Regional Plan: Coastal was notified in January 1995. At the time of the Environment Court hearing, the Regional Council had not given decisions on submissions on the contents of the proposed plan. However by section 104(1)(d) of the Act a consent authority is required to have regard to any relevant objectives, policies, rules or other provisions of a proposed plan.

[246] The plan was notified on the basis of conceptual reclamation identified in the 1989 Port Plan, and Ports of Auckland Limited had sought an extension to this zone through the submission process, seeking that the Port Management area should be extended to cover the full extent of the present proposal, rather than leaving some of it in the unzoned area. The proposed Port Management area 1A (Bledisloe Terminal to Fergusson Container Terminal) extends to the east of the existing terminal (but not as far as the corresponding provision under the Waitemata Harbour Maritime Planning Scheme did).

[247] It was the Regional Council's case that whatever weight is given to the Waitemata Harbour Maritime Planning Scheme or the proposed Regional Plan: Coastal, granting consent to the proposal would not be contrary to the objectives or policies contained in either of these plans.

[248] *Port Management area 1A*

Port Management areas 1A and 1B are identified in the proposed plan as the principal commercial working port wharves used for handling bulk cargo and containers, and it is stated <sup>19</sup> that -

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<sup>19</sup> Paragraph 25.1.

The efficient use and development of these commercial working port areas is of strategic and economic importance of the region and the nation.

[249] Chapter 25 is required to be read alongside the provisions of Chapter 24: Ports Overview and General Provisions. Mr Gee identified Policies 24.4.2, 24.4.3, 24.4.6 and 24.4.9 as being relevant to the proposal. Of these, he considered that the proposal is consistent with Policy 24.4.3 in that the design reduces the need for dredging, and uses dredgings within the reclamation, as provided for in Policy 24.4.2. From the evidence for the port company we find that the design, construction methods and operation of the proposed development provide for any significant adverse effects to be avoided, remedied or mitigated (in accordance with Policy 24.4.6).

[250] Mr Gee observed that the proposal does not conform with Policy 24.4.9, which provides that the development of new port facilities for cargo handling outside of Port Management Areas is to be avoided. Commenting upon this, he stated that

It appears that the policy is intended to be directed at the development of completely new port facilities. However, in its present wording the policy is inconsistent with the approach taken in the proposed plan (clause 24.1.2) of not making specific provision for a number of other wharves in the Region, outside of Port Management Areas, which are recognised as being important for cargo and transport.

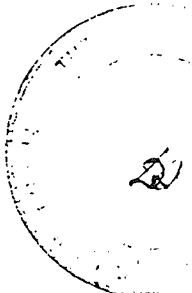
[251] Mr Gee considered that the policy -

appears to be inconsistent with the anticipated environmental result in clause 24.8.2 which refers only to expansion occurring "predominantly" in Port Management Area 1. Furthermore the Policy is the subject of a specific submission by the port company requesting its deletion from the Proposed Plan.

[252] In comparison, Mr Hill's evidence was that -

It is my opinion that the present application does not meet the general expectations and requirements of the RMA, or the particular planning requirements of the operative and coastal plans. Therefore I conclude that the reclamation extension and operational port area should not be permitted and certainly not beyond the existing boundary of the Port Management Area as shown in the RP:C.

[253] Mr Gee reminded us that Mr Hill had accepted that any adverse effects are "probably either not significant or able to be mitigated", and reiterated his understanding that the proposed development cannot be sited wholly within





the Port Management Area 1A because of "sound constructional, operational and environmental reasons".

[254] In cross-examination by counsel for Ports of Auckland Limited, Mr Hill confirmed that his opinion that the development was contrary to the objectives and policies of this plan contrasted with the opinions of Messrs Brookes, Gee and Bradbourne. He conceded that he had not heard the evidence given by the shipping witnesses and port customers.

[255] Most of the proposed development site is in the Port Management Area 1A of which the proposed plan states -

It is in Port Management Area 1A that the future development for container and cargo handling is likely to be concentrated. This may include a need for further reclamation to accommodate larger vessels and cargo handling cranes.

[256] The relevant objective is given as being -

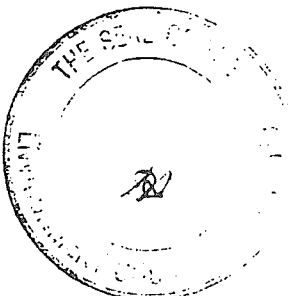
To facilitate the efficient use and development of Port Management Areas 1A and 1B for commercial working port activities, in particular container and bulk cargo handling, by providing for the consolidation and intensification of these port activities and associated structures.

[257] Policy 25.4.1 states that the development of new port facilities for cargo handling should be consolidated and intensified within these port management areas. Policy 25.3.3 states the development of new port facilities for cargo handling and associated passenger movements should be consolidated and intensified within Port Management Areas 1A and 1B.

[258] The following passages occur in paragraph 25.7 -

These are the key port areas in the Auckland Region for commercial working port activities, in particular container and bulk cargo handling. It is in the social and economic interest of the region and the nation to make appropriate provision to facilitate the port activities in these areas.

The environment of these areas has already been altered by the structures and port activities that are undertaken in them. In addition, the landward areas adjoining these wharves have been developed to provide land and infrastructure to service the bulk cargo and container handling activities. It is therefore appropriate that provision be made to concentrate any necessary future port expansion within these areas, while avoiding, remedying, or mitigating any adverse effects.



[259] Paragraph 25.8.2 states as an anticipated environmental result –

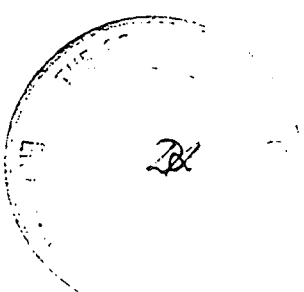
That any future expansion of the port occurs predominantly in Port Management Area 1A.

[260] Mr Gee deposed that for the port to operate efficiently requires that the development extends and goes beyond the proposed boundary of Area 1A; and he reminded us that the port company's submission on the proposed regional plan had requested that the delineation of the boundary for Port Management Area 1A be amended to facilitate the planned development. Mr Gee also testified that the additional area of proposed development beyond the boundary was a smaller area than the space unused on the eastern side, and if the excess area was located there then it would comply with the operative plan.

[261] In cross-examination by Mr Clark about the efficient operation of the Auckland port in combination with the Tauranga port, Mr Bradbourne emphasised the importance of the Auckland port and that he considered the expansion as a necessary step.

[262] Mr Wren stated that all the planning instruments encourage the provision of public access to the waters edge unless it is unsafe to provide it. It was his view that the proposed boardwalk will be a safe and secure public facility which will meet these objectives.

[263] By Rule 24.5.1, "port activities" (which includes navigation, anchoring, mooring, berthing, manoeuvring and servicing of vessels and loading, unloading and storage of cargo) are permitted activities, except for those which obstruct views through the identified view shafts (subject to conditions). The erection or placement of any new structure required for port activities on the seabed is a controlled activity under Rule 24.5.6, and Rule 24.5.7 provides that any addition to, alteration or replacement of existing structures is also controlled.



[264] Reclamation is a discretionary activity where it is required for port activities. In the general management area it is non-complying activity. Given that part of the proposal will be within the general management area, the activity is to be treated as non-complying with the proposed plan.

[265] The objectives of Chapter 12 (reclamation and drainage) are to avoid inappropriate reclamation and drainage (of the coastal environment and to ensure that the adverse effects are avoided, remedied or mitigated. Relevantly, Policy 12.4.1 states--

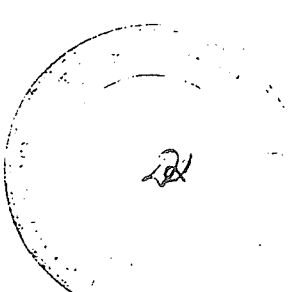
Reclamation and drainage within the coastal environment shall generally be considered inappropriate, unless it is for the operational needs of the port in Port Management Areas ...

[266] Mr Hill gave the opinion that reclamation for port purposes would be appropriate only within the defined port.

[267] Policy 12.4.5 sets out the criteria for "appropriate" reclamation (and drainage). These relate to : the availability of alternative methods or land-based sites, efficient use of the coastal environment by using the minimum area necessary, the reclamation having either positive or minor adverse effects on the environment, or the effects being capable of being either mitigated or offset, the compatibility of the finished appearance of the reclamation with the existing environment, public access and use, and the benefits to the regional or local community in terms of the social, economic and cultural wellbeing (sufficient to offset any adverse effects on the environment). The other policies include requirements relating to public access, ownership, esplanade reserves, disposal of dredged material and the release of contaminants.

[268] Mr Gee gave the opinion -

... that the proposal is consistent with the objectives and policies in so far as it involves a reclamation for port purposes in a Port Management Area. The area of the proposed reclamation which is outside of the Management Area boundary, I consider that it is appropriate in terms of the tests contained in Policy 12.4.5.



[269] Policies 24.4.1 and 24.2.2 apply generally to the Port Management Area. The first is that applications for reclamation shall demonstrate that there are no practicable alternatives, including the use of existing facilities and existing land-based areas in the region, that reclamation is the most appropriate form of development, and that adverse effects are to be avoided, remedied or mitigated. Policy 24.4.2 recognises reclamation -

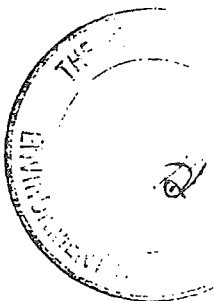
as an option for port development to meet necessary future cargo handling and passenger needs within the Port Management areas. Where practicable the fill for any such reclamation should use dredged material from the Port Management Areas.

[270] Mr Bradbourne gave the opinions that the port extension proposal is consistent with the relevant provisions of chapter 25, that the proposal reflects the anticipated environmental results, and that the proposal is supportable, having regard to objectives 12.3.1 and 12.3.2 (reclamation).

[271] Mr Hill emphasised that Objective 24.3.1 calls for the facilitation of the use of port management areas for container and cargo handling, and that Policy 24.4.2 recognises reclamation as a legitimate option *within* port management areas. He considered that Objective 25.3.1 and Policy 25.4.1 clearly direct future development toward consolidation and intensification within the port management area, and so he concluded that to the extent that the proposal is non-complying it is, on balance, contrary to the objectives and policies of the proposed plan.

[272] Dredging is a discretionary activity in both the port and general management areas, subject to the policies in 14.4.5 and 14.4.6.

[273] The relevant objectives are "to provide for appropriate dredging ... associated with existing authorised activities, while remedying or mitigating adverse environmental effects" and "to minimise the need for dredging associated with new development or redevelopment ...". These are to be achieved by appropriate design and application of criteria for dredging proposals: alternative methods, locations or designs, disposal methods and sites, timing of dredging operations in relation to ecological conditions, recreational uses and other established uses, effects on sediments and water turbidity, release



of contaminants, erosion processes and the effect on the habitats of rare and endangered species.

[274] The anticipated environmental outcome is stated to be-

The continuation of necessary dredging activities, so that appropriate activities within the coastal marine area such as ports, marinas, navigational channels, wharves and jetties, are able to be developed and continue to operate.

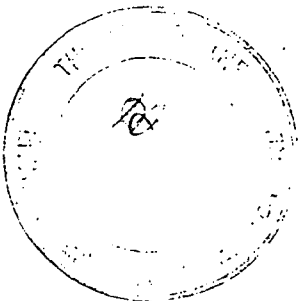
[275] The wharf structure and mooring dolphin (and associated cables, pipes) are all controlled activities in the port management area, subject to standards and terms which would be complied with. These activities are discretionary in the general management area.

[276] The general disturbance of the seabed (other than for dredging or reclamation) is provided for in Chapter 15 - 'disturbance of foreshore and seabed'. Activities associated with the proposal such as drilling for pile placement, preparation of foundations for seawalls and other structures, and the construction of stormwater outfalls, are encompassed in this chapter. Policy 15.4.3 (a)(vi) recognises that such activities may be appropriate where it can be demonstrated that it is "necessary to ... enable the carrying out of an authorised activity, consistent with the provisions of this chapter". These activities are discretionary.

[277] Mr Gee commented that these particular activities -

essentially involve detailed aspects of the design and construction of the proposed development. In themselves they will have no significant adverse effect on the coastal environment and they are generally consistent with the objectives, policies and rules contained in the chapter.

[278] Discharges during construction and discharges of stormwater during operations both have the same status under the port and general management areas. The discharge during construction is controlled, subject to standards which are to be complied with. Discharges during operations are discretionary.



- [279] The use of berthage, loading and unloading and other related services are permitted as port activities, which are defined as follows -

navigation, anchoring, mooring, berthing, manoeuvring and servicing of vessels and barges, the embarking and disembarking of passengers, loading, unloading and storage of cargo, and the use of buildings or structures associated with these activities

- [280] The occupation of the coastal marine area is to be treated as a part of the activity which requires the occupation, so that for example if a wharf (which is a discretionary activity) requires occupation, that occupation is also discretionary in both the port and general management areas.

- [281] Noise generated within the coastal marine area is recognised as an issue where the control and management concerns are offset by the recognition that "it may not be practicable or realistic to control all noise generated within the coastal marine area". Accordingly, the objective (32.3.1) is-

To control the emission of noise generated from within the coastal marine area and to mitigate its effects, to the greatest extent practicable.

- [282] Many of the provisions of Chapter 32 - Noise are the subject of submissions<sup>20</sup> by Ports of Auckland Limited, and may be subject to change.

- [283] Activities are to be required to "comply with the noise standards" as specified in the plan, although rule 32.5.4 excludes the operational requirements of commercial vessels, including cargo vessels and tugs, from the noise standards. Matters to which regard will be had (with respect to noise) when assessing an application for a coastal permit, and in deciding whether appropriate noise standards should be imposed, are listed at policy 32.4.2. Policy 32.4.4 is -

Any structure or any activity associated with that structure in the coastal marine area should be designed so that the effects of noise generated from within or adjacent to the coastal marine area are mitigated to the greatest extent practicable.

- [284] Relevant rules are 32.5.3 (noise levels for permitted activities within the Port Management Areas) and 32.5.1 (permitted activities other than in Port

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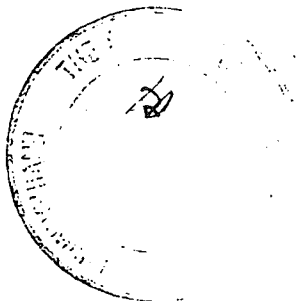
<sup>20</sup> Including the provisions providing for lower noise limits on Sundays and Public Holidays.

Management Areas). Construction noise (including reclamation and dredging) is required to comply with NZS 6803P: 1984 (Rule 32.5.6). Rule 32.5.7 requires that, notwithstanding any of those rules, the best practicable option is to be adopted to ensure that the emission of noise does not exceed a reasonable level, nor is excessive noise in terms of section 326 of the Resource Management Act. Rule 32.5.8 provides that any activity which fails to meet the provisions of rules 32.5.1, 32.5.2, 32.5.3 (the noise emission standards) is a discretionary activity.

[285] In cross-examination by Mr Nolan, Mr Wren confirmed that the noise limit under the Waitemata Harbour Maritime Planning Scheme is 45 dBA, and the limit is 50 dBA under the Central Area section of the proposed district plan. To exceed these limits in these areas would require a discretionary activity consent. Because discretionary activity consent is provided for, Mr Wren considered that those limits are not absolute for the port development.

[286] In the preceding chapter of this decision and report we gave our finding that a suitable noise control can be put into place for the whole Terminal which would protect amenities while enabling the port to operate.

[287] The port area (including the shoreline of the Fergusson Container terminal and proposed development) is identified as 'Regionally Significant Landscape'. The proposed plan states that use and development of the coastal marine area is considered inappropriate where it would adversely affect the key elements, features and patterns which would contribute to the landscape quality of the area. However recognition is given to the built environment of these landscapes. In addition the plan contains a policy of ensuring that development is generally consistent with the type of adjacent development, as well as the pattern of subdivision, use, and development above mean high water springs, and ensuring that structures comply with a policy that they be of an appropriate scale, colour, design and location to avoid, remedy or mitigate adverse effects on the coastal environment.



[288] The main respect in which the proposal would not conform with the proposed regional coastal plan is that the site for the development does not match precisely the boundaries of the Port Management Area 1A. For that reason the proposal is a noncomplying activity in terms of that proposed plan. However we accept that the boundaries of that area are the subject of the port company's submission, and may yet be altered so as to include the whole of the site. We also recognise that the proposed plan does not unequivocally require that development of the port is entirely within Port Management Area 1A. The proposal would not hinder achievement of the anticipated environmental result, namely, that any future expansion of the port occurs "predominantly" in Port Management Area 1A. We conclude that the proposal is a noncomplying activity because of the zone boundary, it is substantially in accordance with the proposed regional coastal plan, and does not depart from it to any significant extent.

#### **Auckland Regional Planning Scheme**

[289] The operative Auckland regional planning scheme was prepared under the Town and Country Planning Act 1977 and came into force on July 1, 1988. By section 367(1) of the Resource Management Act 1991, in carrying out their functions described in sections 30 and 31, the Regional Council and territorial authorities are to have regard to its provisions to the extent that those provisions are not inconsistent with Part II of the Resource Management Act.

[290] However having heard evidence about the content of that scheme, and having read the provisions referred to by the parties, we have concluded that the relevant provisions of the scheme are substantially similar to, and more helpfully addressed by corresponding provisions of more recent instruments prepared under the Resource Management Act. In particular we refer to provisions of the regional planning scheme that future development of the port should as far as practicable be concentrated in the two areas between the western side of Kings Wharf and the Eastern Breakwater, and between the western side of Hobson Wharf and Wynyard Wharf; that reclamation for port development should only be approved if there is no reasonable alternative;



and that further major port development outside the existing ports is not to occur until the need can be demonstrated.

### Transitional Regional Coastal Plan

- [291] On the commencement of the Resource Management Act on 1 October 1991, those parts of the Waitemata Harbour Maritime Planning Scheme which had been in force under the Town and Country Planning Act 1977 and applied below mean high water springs became part of the deemed (transitional) regional coastal plan.<sup>21</sup>
- [292] By that plan, the boundary for the Port A zone is well to the east of the existing Fergusson Container Terminal, and to the east of the proposed reclamation. A small part of the proposed reclamation would protrude to the north beyond the Port A zone into an area of the harbour which is unzoned. Port activities are provided for throughout the Port zone, and reclamation is specifically provided for as a discretionary activity. In the unzoned area only navigation, recreational uses and activities are permitted, and all other activities require consent.
- [293] The importance of the Port of Auckland is recognised in the plan, which identifies various aspects of the harbour as being of value, including: as a site for a commercial port; as a recreational area; a major open space and landscape feature; a natural marine environment (for study and education); and a constantly renewed body of water into which surrounding land drains or discharges wastes.
- [294] Policies relevant to the present proposal are that future development is to be within Port area, that port facilities are to have priority within Port area, and that future development should be concentrated between western side of Kings Wharf (Bledisloe Terminal) and the Eastern Tide Deflector (the eastern side of Fergusson Container Terminal) and the area between the western side of Hobson Wharf and Wynyard Wharf.

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<sup>21</sup> Resource Management Act 1991, section 370(1).

[295] Policy 5.1.39 states-

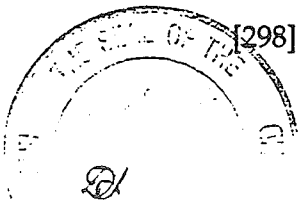
Future development of major port facilities is to be met for as long as possible within the Commercial Port area. Future developments outside this area should be justified by showing:-

- (i) a need for further port facilities.
- (ii) that it is neither practicable or desirable for the development to be located within the Commercial Port area.

[296] Mr Gee gave the opinion in evidence that the provision of Policy 5.1.41 that development of the Commercial Port is to be contained within the port zones needs to be read alongside policy 5.1.39 which specifically contemplates further port development beyond the zone boundaries when justified. In cross-examination Mr Gee testified that the proposed development (option B2), if reconfigured, would be able to fit entirely within the area of the Port A boundary shown in policy 5.1.41 (so that there was no part of the expansion protruding to the north of the boundary), and would therefore comply.

[297] After referring to the planning goal at 3.4.1 and policies 5.1.41 and 5.1.42 of the plan, Mr Hill gave the opinion that "a reclamation outside of the Port A Zone is not contrary to the policies of the WHMPS, but the use of that portion of the reclamation for port-related activities is clearly contrary to the intention of the policies". In cross-examination Mr Hill clarified this by saying that the distinction between reclamation and use of the reclaimed land was in the plan, and he did not express any opinion on appropriate uses. Mr Hill also accepted (in cross examination) that the overall objective of that section of the plan "to recognise the national and regional importance of the Ports of Auckland and provide for its continued operation and development" was a relevant objective to bear in mind when looking at the expansion of the port through the boundary. Mr Hill accepted that his opposition to the proposal as being contrary to the transitional plan would disappear if the terminal was reconfigured to sit within the Port A zone footprint, to the east of the existing terminal.

[298] Policies 5.1.61 and 5.1.76 concern the policy to minimise detrimental impacts of port facilities (design and construction), and to contain noise from any



uses, activities and works in the commercial ports so that it does not exceed the criteria in clause 5.1.72.

[299] The purpose of the Port A zone is -

to provide for the efficient operation and development of the eastern section of the Commercial Port. It is in this zone that the future development of port and cargo handling facilities should be concentrated.

[300] Mr Wren deposed that the activity classifications applying to the land-use aspects of the proposal under the Port A zone were "mostly permitted", with some activities classified as discretionary. This is to be compared with the port company's submissions that that the proposal is entirely permitted within the Port A zone.

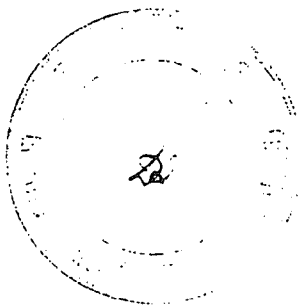
[301] Mr Wren summarised the objectives about the visual environment of the harbour, stating that they "recognise the existing visual nature of the port, but seek to provide for public access and views to the harbour where possible."

[302] There are criteria for discretionary applications in respect of visual effects, pipelines, electric power and noise.

[303] There is an overall objective-

To recognise the national and regional importance of the Port of Auckland and provide for its continued operation and development.

[304] For Port Zone A (Fergusson Wharf - Kings Wharf), permitted uses include the movement or berthing of vessels, the reconstruction or reinstatement (not reclamation) of existing port and harbour facilities, loading and unloading of cargo, cargo sheds, terminals and trucking depots, and buildings and structures associated with permitted uses. There are requirements about height restrictions, noise levels, a yard requirement, and noise controls. Reclamation is a discretionary activity, to be evaluated against criteria which include the objectives and policies of the scheme, the purpose of the



reclamation, whether the proposed use has an operational need for a harbour location, an examination of the alternative proposals for use not involving reclamation, impacts on the amenities of adjoining land, the extent of the reclamation, the impact upon tidal flows, navigation, water quality, erosion and sedimentation, impact on: ecological values, visual qualities and recreational activity, construction methods, and the effect of the proposal on the traditional and cultural uses of the harbour by Maori.

[305] Mr Gee deposed that the objectives and policies of the plan generally support the continuing operation and development of the eastern section of the existing port, and accord it a high priority for harbour space. The extent of the Port A zone to the east of the Fergusson Container Terminal provides the opportunity for expansion in that area. The witness considered that the zone boundary was somewhat arbitrary, and that it has now become evident that in practice, expansion of the Terminal cannot take place within the precise boundaries of the zone. The extent of the proposed development outside the zone is small. He gave the opinion, based on the environmental effects assessment, that the use of the unzoned portion is necessary for the efficient operation of the port and that there are no practicable alternatives. Additionally, he considered that the environmental effects of the extension beyond the zone boundary would not be significant, and that reclamation is "the only practicable method of construction." The proposed use of some of the dredged material within the reclamation was consistent with past practice, and a method of minimising the amount to be deposited in open water.

[306] Mr Hill stated that the policies 5.1.41 and 5.1.42 are explicit in requiring that further reclamation for port related activities only occurs within the defined Port area and he suggested that while the reclamation outside of the port area may not be contrary to the policies of the scheme, the use of the reclamation for port-related activities is clearly contrary to the intention of the policies.

[307] In response, Mr Gee reiterated his opinion that policy 5.1.39 specifically contemplates the possible need for port development extending beyond the

zone boundaries, and deposed that the proposal is a discretionary activity, rather than being necessarily contrary to the policies of the plan. Mr Gee noted that, based on a plan of the proposal which had been prepared by Mr Hill, only approximately 0.73 hectares of the reclamation is beyond the zone boundary, and if the reclamation and the new quay structure are considered together, the figure is 1.53 hectares; and that an alternative development of similar scale could theoretically be located entirely within the Port A zone, were it not undesirable for constructional, operational and environmental reasons.

[308] Mr Bradbourne deposed that the-

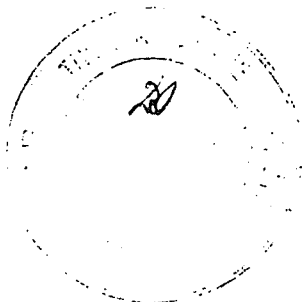
... main thrust of the plan as a whole gives support to the application consented to by the Auckland Regional Council even though a significant area of additional reclamation is proposed, and based on the need for backup storage space adjacent to the new container berth, is unavoidable.

[309] Mr Bradbourne gave the opinion that the assessment criteria would be met, and that the construction of a boardwalk along the eastern side of the reclamation (with landscaping) would assist in making the new reclamation available for public use as well.

[310] The proposed wharf structure and mooring dolphin, associated cables, pipes, etc are permitted activities subject to performance standards would be complied with.

[311] Cranes are permitted as "port and harbour facilities"), as are use of berthage, loading and unloading, services.

[312] The occupation of the coastal marine area is unclassified as this activity is covered by the now repealed Harbours Act 1950. No rule expressly applies under the transitional plan, so by section 105(1)(c) of the Resource Management Act, it should be treated as a discretionary activity.



[313] In the unzoned area, almost every use that is not recreational or navigational is classified as an exception to the plan, and is therefore a discretionary activity; however dredging is a permitted activity.

[314] In short, the effect of the transitional regional coastal plan is that reclamation for development of port facilities beyond the Port A zone is a noncomplying activity, but is contemplated when justified. We do not accept Mr Hill's view that use for port facilities of land reclaimed beyond the zone for that purpose is contrary to the intent of the policies. We think that is inconsistent with the purpose of the reclamation. In our view, the contemplation of the act of reclamation for port facilities outside the zone implies contemplation of the use of the reclaimed land for those activities.

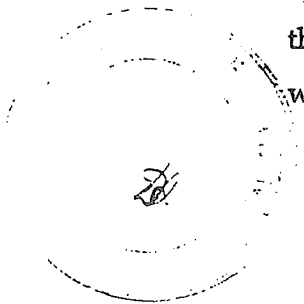
[315] Reclamation within the Port A zone, and occupation of the coastal marine area, are discretionary activities. We accept the evidence that in terms of the policies and criteria of the plan, the proposal deserves consent in those respects.

#### **Transitional District Plan**

##### *Former Waitemata Harbour Maritime Planning Scheme provisions*

[316] From the commencement on 1 October 1991 of the Resource Management Act 1991, the provisions of the former Waitemata Harbour Maritime Planning Scheme which applied above mean high water springs and beyond the boundary of the former Auckland City district scheme have been included in the deemed (transitional) district plan for Auckland City. Those provisions apply to most of the existing Fergusson Container Terminal.

[317] An issue arose about the status of the proposed land-use activities on the land that is to be reclaimed. Ports of Auckland Limited submitted that by operation of section 89(2) of the Resource Management Act the provisions of the transitional plan are to be applied in deciding the application. The effect would be that land-use activities in that part of the area to be reclaimed



which is zoned Port A in the transitional plan would be permitted activities, and those in the part which is unzoned would be discretionary activities.

[318] Counsel for the port company, Mr Nolan, properly acknowledged that there is another possible application of provisions of the Act, the effect of which would be that no district plan is applicable to the land to be reclaimed, section 9(1) would apply to the relevant activities, and as the proposed activity would not contravene a rule in a district plan it would be permitted. However Mr Nolan distinguished *Clyma v Otago Regional Council*<sup>22</sup> because in that case there was not a former maritime planning scheme which had been included in a deemed (transitional) district plan, and because in that case the Court had been required to consider the reclamation itself rather than the use to be made of the land once reclaimed.

[319] Mr Nolan submitted that the correct application of the Act is that section 89(2) directs which is to be the consent authority, but does not extend the district plan on to the reclaimed land, so that if any operative plan applies it is the relevant provisions of the former Waitemata Harbour Maritime Planning Scheme which have been included in the deemed (transitional) district plan for Auckland City.

[320] The City Council disputed the submission that the proposal is entirely permitted within the Port A zone, and maintained that by application of section 373(4) the proposal is to be judged as a discretionary activity.

[321] Section 89(2) provides –

- (2) Where –
  - (a) An application is made to a territorial authority for a resource consent for an activity which an applicant intends to undertake within the district of that authority once the proposed location of the activity has been reclaimed; and
  - (b) On the date the application is made the proposed location of the activity is still within the coastal marine area, –
- then the authority may hear and decide the application as if the application related to an activity within its district, and the provisions of this Act shall apply accordingly.

<sup>22</sup> Planning Tribunal Decision W64/96.

[322] Section 373(4)<sup>23</sup> provides –

- (4) Where, immediately before the date of commencement of this Act, –
  - (a) No operative district scheme, combined scheme, or maritime planning scheme under the Town and Country Planning Act 1977 is in force; and
  - (b) No proposed district scheme, combined scheme, or maritime planning scheme, or proposed change or variation, under that Act has been publicly notified –
- in respect of any district, then, for the purposes of this Act every use of land within the meaning of section 9(4) shall be deemed to be a discretionary activity.

[323] We do not accept the City Council's submission that section 373(4) applies. The relevant condition for the application of that subsection is that described in paragraph (a), namely that immediately before the commencement of the Resource Management Act no operative district scheme, combined scheme or maritime planning scheme under the Town and Country Planning Act 1977 was in force. However we find that immediately before the commencement of the 1991 Act a maritime planning scheme under the 1977 Act was in force in respect of the Waitemata Harbour, namely the Waitemata Harbour Maritime Planning Scheme. The fact that some of the area of the harbour that is now proposed to be reclaimed was unzoned by the Waitemata Harbour Maritime Planning Scheme does not negate the fact that the maritime planning scheme was in force in respect of the harbour. For that reason we hold that section 373(4) does not apply.

[324] We accept the port company's submission that the status of the activity of constructing the reclamation is irrelevant to the status of the land-use activities to be carried out on the land to be reclaimed. We also accept that section 89(2) has effect to indicate which territorial authority is to be the consent authority to hear and decide the application. There is no doubt that the territorial authority to hear and decide Ports of Auckland Limited's application is the Auckland City Council.

[325] The subsection also provides that the territorial authority is to hear and decide the application as if the subject related to an activity within its district, and the provisions of the Act are to apply accordingly. The relevant

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<sup>23</sup> As amended by section 169(3) of the Resource Management Amendment Act 1993.



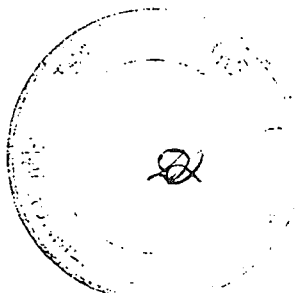
provisions are those in section 104(1)(e), by which the consent authority is directed to have regard to any relevant district plan or proposed district plan. The district plan which is relevant is the deemed (transitional) district plan for Auckland City; and the provisions of that district plan which are relevant are those which are applicable to the part of the harbour to be reclaimed, being provisions of the former Waitemata Harbour Maritime Planning Scheme. We therefore hold that the proposed land-use activities in that part of the area to be reclaimed which is zoned Port A in the transitional plan would be permitted activities, and those in the part which is unzoned, would be discretionary activities.

[326] Under cross-examination by Mr Nolan, Mr Hill gave the opinion that the use of a reclamation outside the Port A zone for port related activities is contrary to the intention of the policies of the plan. He clarified that by stating that port activities should be contained within the limits as shown on the plan. Under cross-examination by Mr Burns, Mr Hill agreed to Mr Burns' proposition that if the development was contained within the Port A zone then Mr Hill's opposition to the development on the basis of it being contrary to the transitional plan would disappear. However, Mr Hill had not looked at the effects of reconfiguring the development in that way as compared with the effects of the proposal known as Option B2.

[327] We have already considered this issue in respect of the same provisions in the transitional regional coastal plan, and do no more than repeat our finding that the use for port facilities of land reclaimed from the harbour for port facilities is implicitly contemplated as consequential on the reclamation. As a discretionary activity in the unzoned area, those activities are consistent with the relevant policies and criteria, and deserve resource consent.

*Former Auckland City district scheme provisions*

[328] On the commencement of the 1991 Act the relevant provisions of the former Auckland City district scheme under the Town and Country Planning Act 1977 were included in the deemed (transitional) district plan (except for



provisions subject to appeal). The plan includes general scheme statement references to the port traffic and coastal reclamations (clause 10.05:8 - Part 10: Traffic and Parking; Part 12: Conservation and Environment). The port is recognised as one of the "major transport facilities in the district". Clause 10.05:8 states:

...The movement of trucks associated with the port forms a major part of all heavy vehicle movement in the City. Port traffic is causing congestion and environmental problems on roads in the district. Further growth of trade through the port could aggravate these problems. The Council will promote an increased use of rail to service the port and an improvement in road access, especially more direct connections to the motorway system.

The Council will not support further expansion of the port in its present location until this is shown to be justified by a long term plan for the provision of port facilities in the Auckland area."

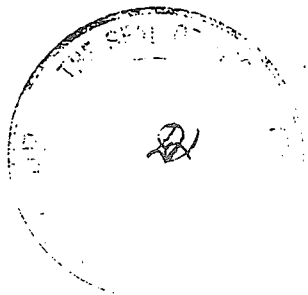
[329] Mr Gee testified that there have been improvements made to road and rail access since the scheme was prepared, and that the 1989 Port Development Plan for Auckland (prepared jointly with the Council) proposed the expansion of the Fergusson Container Terminal.

[330] In the previous chapter of this document we referred to the expert evidence of Mr McCombs, and stated our finding that any effects of traffic movement to and from the extended container terminal would be acceptable.

[331] On those bases, we find that the proposal does not offend clause 10.05.8.

[332] Part 12 requires that any reclamation/port construction in or adjacent to existing port areas is justified in the local or national interest and that no reasonable alternative exists, and must be as limited as possible. Mr Gee gave the opinion that the evidence presented on trade demands, possible alternative developments, and environmental effects justified both the wharf construction and proposed reclamation.

[333] It was Mr Bradbourne's opinion that the proposed extension to the container terminal "will not be in conflict with stated objectives and policies" of the transitional district plan (central area).



- [334] We accept the opinions of those witnesses and find that the proposal would not be contrary to the former Auckland City district scheme provisions of the transitional district plan.

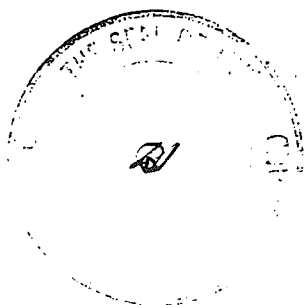
### **Proposed Auckland City District Plan**

#### *Isthmus section*

- [335] The Isthmus section does not include the area which is the subject of the proposal (this is within the Central City Section), but instead covers the land immediately adjacent to the site (as part of the Tamaki Drive Scenic Way). The Fergusson Container Terminal and proposed development site are featured on the map defining areas which are affected by the View Protection Area provisions relating to the War Memorial Museum. Mr Goodwin did not consider that either of these provisions apply to the proposal. However, Mr Wren differed from that, and gave the opinion that the proposal may well be in contravention of the View Protection Area provisions relating to the Auckland War Memorial Museum. The same issue arises in respect of the Central Area section of the proposed district plan which we now address.

#### *Central Area section*

- [336] The Central Area section of the proposed district plan was notified in October 1997, the time for lodging submissions closed in December 1997, and the submissions have not yet been heard or decided. Accordingly the contents of the proposed plan could be altered by submission and reference processes under the First Schedule to the Act.
- [337] By that section of the proposed district plan, the Fergusson Container Terminal and the area proposed to be reclaimed are within the Port Precinct where all the proposed land-use activities would be permitted, subject to controls (which would be complied with).



[338] Relevant objectives and policies include the general provisions in Part 4, which apply to the Harbour Edge Strategic Management Area, and which recognise the importance of the Port and key road and rail routes serving the freight movements associated with it.

[339] Objective 4.2.3.3 requires the retention and reinforcement of the character elements located within the Harbour Edge Strategic Management Area and the mitigation of significant adverse effects that may result from developments within the precincts. One of the associated policies requires the application of controls to protect views to and from the Auckland War Memorial Museum. This is also covered specifically by Objective 10.14.3.2 which requires protection of views to and from the Auckland War Memorial Museum. The associated policy requires the adoption of measures which prevent visual intrusion of buildings and structures into the views presently available to and from the museum.

[340] Overall, there are generally no inconsistencies between these objectives and policies and the proposed development. However, there is possible conflict of lighting tower heights with the Museum view protection plane control in rule 10.14.6.1.

[341] The Terminal is part of the Port Precinct ( a subset of the Strategic Management Area owing to its special characteristics and management needs). The objectives and policies of the precinct generally "provide for the continued efficient operation of port activities in the port precinct", while ensuring that any adverse effects of port activities are avoided, remedied or mitigated. Mr Gee gave the opinion that the development proposal is appropriate in terms of the policies and objectives, and that, "consistent with the City Council's resource consent, the plan indicates that, subject to this appeal, the proposed development area is to be included in the Precinct."

[342] Mr Wren agreed with this consistency. In cross-examination Mr Nolan asked Mr Wren about the inconsistency in pursuing both (reasonable) growth of the port and (limited) protection of the environment. Mr Wren responded that

he saw this balancing as the crux of resource management. Mr Wren stated that the proposed Central Area Section of the plan recognised the possibility of the proposal, and that the aim of consolidating port activity is not contravened by the development.

[343] Within the Precinct, the rules provide specifically for "port and harbour facilities, including wharves ..." as permitted activities.

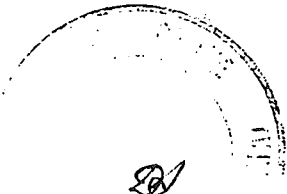
[344] Mr Wren deposed that the proposal complies with the relevant plan development controls and rules, except for the height limit control in respect of the Auckland War Memorial Museum View Protection Plane.

[345] In the port precinct permitted building height is limited by Rule 14.8.7.1 to the greater of 15 metres above average street level or 18 metres above mean high water springs. However structures, including lighting poles, cranes, derricks and cargo stacking and lifting devices are exempt from the height definition in the Port precinct.

[346] Mr Kirkpatrick submitted that although development control rule 6.2.1 governs height generally throughout the central area, and rule 14.8.7.1 is a general height control for the port precinct, both are subject to the Museum view protection plane control in rule 10.14.6.1 which superimposes an additional limit on "any buildings, structures, ... components, ...". non-complying activity resource consent is required for activities infringing the rule.

[347] The view protection plane provisions have only recently been introduced to the plan and have not been tested by the submission process.

[348] Mr Wren submitted that the land-use aspects of the application (although mostly permitted) should be treated as non-complying because of the non-compliance with the view protection plane rule (because it is not possible to separate the generality of the application). He deposed that consent may be granted to the non-compliance with the view protection plane, given the



nature of the cranes and light stands, their distance from the museum, and the relative weight of the plan provisions in support of having a modern port in this location. He noted that the height requirements of the view shaft are "not entirely consistent with the other objectives, policies and rules of the Central Area section of the district plan and other plans which recognise the eastern area of the port as being where major port activities should take place." The witness also observed that in treating the whole application on a non-complying basis, the infringement of this control was not a significant one.

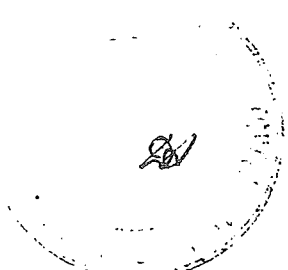
[349] Mr Gee testified that the proposed 30-metre-high light standards or poles would intrude into the Auckland War Memorial View Protection Plane and gave the opinion that "while there is some inconsistency in the terminology used in rule 10.14.6.1 and in the exemptions from the maximum height limit in Rule 14.8.7.1, they would appear to be subject to Rule 10.14.6.1 requiring their consideration as a non-complying activity."

[350] Mr Kirkpatrick submitted that the 15 metre light towers now proposed for the end of the wharf may also extend into the plane and be non-complying. He submitted that the cranes, although mobile, are within the plan's definition of 'building', so would be subject to the view protection rule, and would also have non-complying status.

[351] The application of the view protection plane control to the Port precinct is the subject of a submission to the City Council under the First Schedule to the Act.

[352] Mr Nolan submitted that, when read together, the structures of the Port precinct are exempted from the view protection plane.

[353] We do not accept that submission, and hold that the special provision of the view protection control prevails over the port precinct, so that the proposed light towers and container cranes which protrude through the plane require resource consent as noncomplying activities.



[354] The proposed plan places importance on port activities in the port precinct. Further, from our own observations we accept the evidence of Mr Goodwin (referred to in Chapter V) that the effects of the light standards and cranes intruding in the view from the museum step would be minor as they would be relatively small in the totality of the view, and because the views in that direction from the museum are largely blocked by vegetation.

[355] We do not wish to devalue the views to the north from the museum steps. We have to make a judgment of comparison. On one hand there is the effect on the value of those views from the museum steps of the intrusion into the views of the proposed light standards and cranes. On the other hand there is the recognition in the proposed plan (and other instruments already mentioned) of the national and regional importance of the port, the provision for it in the port precinct, and the necessity of lighting and cranes for operating a modern container port. In our judgment, the management of resources to enable the community to provide for their economic wellbeing by the proposed extension of the container terminal, including the necessary lighting towers and cranes, deserves to prevail over protecting the views from the minor intrusions of those structures.

[356] In summary, we hold that the proposal is generally in accordance with the central area section of the proposed district plan, except to the extent of the infringement of the view protection plane, an infringement which, in our judgment, deserves consent.

### Conclusion

[357] Mr Wren provided a summary of the general themes running through the planning instruments. He identified those themes as -


1. A recognition or acknowledgment of the port in its current location.
2. That the port should not be allowed to expand beyond the general area that it currently occupies.
3. That public access to the water's edge should be achieved in those areas where it is possible or where port activities no longer require space.

4. Concentration of port activities should take place in the eastern end of the port.
5. The adverse environmental effects of the port should be minimised or otherwise addressed in development and operation of the port.
6. The viewshaft introduced by the Central Area Section of the District Plan.

[358] From the foregoing consideration of the abundance of instruments, we accept Mr Wren's summary as reliable and helpful identification of consistent themes on the essential issues.

[359] The area the subject of this application has been previously used for bulk tanker movement and berthage, and in general it has been identified as being part of the commercial port within which future developments should be concentrated. The proposed development is consistent with the relevant objectives, policies and other provisions contained in the instruments. Minor infringements of zone boundaries which were either set long ago or are currently subject to challenge should not detract from the fact that the site is generally in the area which all the instruments identify for port development. Criteria provided for assessing consent applications are met. The requirement for public access to the edge of the coastal marine area is provided for. Adverse environmental effects would be minimised. Infringements of the recently proposed view protection plane would be minor and outweighed by the functional need for cranes and lighting. In short, we find that there is nothing in the instruments which would preclude the granting of the consents sought, subject to compliance with appropriate conditions.

*Q*





## VII

## Section 104(1)(i) matters

[360] In accordance with the directions in section 104(1) of the Act, we have addressed the actual and potential effects on the environment of allowing the activity, and the relevant planning instruments under the Act. Section 104(1) also directs that when considering a resource consent application, a consent authority is to have regard to—

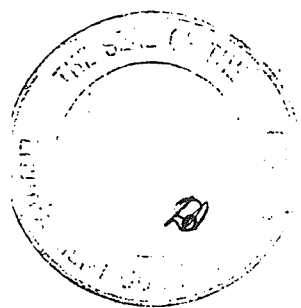
Any other matters the consent authority considers relevant and reasonably necessary to determine the application.

## Eastern limit of port

[361] The Association relied on a number of non-statutory documents in support of its case. They included a letter dated 12 October 1970 from the (then) chairman of the Auckland Harbour Board to the (then) Mayor of Auckland; submissions in that year to the Parliamentary Local Bills Committee; a student thesis (by Mr Winn) in 1973; an Auckland Harbour Board Outline Development Plan of 1973; a Commission for the Environment Audit in 1973 of a report on Bledisloe and Kings Wharf redevelopment schemes; a port development plan of 1989; a 1992 report on development of Bledisloe and Fergusson Wharves; a 1994 report on a review of Bledisloe and Fergusson Wharves development; and a 1995 consultative document on the Fergusson upgrade.

[362] The main point the Association sought to make from those documents was that there has been a longstanding acceptance by various authorities, including the port company's predecessor the Auckland Harbour Board, that the port should not be permitted to extend further east than the existing edge of the Fergusson Container Terminal.

[363] We have two main reservations about that. First, the various documents are largely indicative, and are not evidently intended to prescribe with accuracy and for all time the eastern limit of the port, let alone to impose or assume a legally binding obligation precluding the port company from exercising its



right under the law to apply for resource consent for the current proposal.  
Mr Clark allowed himself the comment that -

... time and commercial considerations sometimes encourage some of the less attractive aspects of capitalism.

[364] That comment is slightly oblique, but its import is plain enough. By it the Association is suggesting that, in the light of the contents of those documents, the port company's proposal to extend the container terminal to the east of the present eastern edge is not reputable.

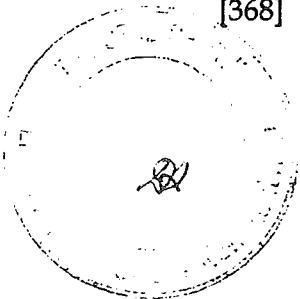
[365] The jurisdiction of the Environment Court is directed to the sustainable management of natural and physical resources, not to issues of commercial morality. However the submission having been publicly made in the course of Environment Court proceedings, we consider that the port company is entitled to have our finding on it. We have found nothing in the evidence to warrant a suggestion that it is improper, in the light of those previous documents, for the port company to pursue its present proposals.

[366] Mr Clark also offered criticism of the port company having made changes in policy in late 1995 which led it to propose a much larger reclamation than contemplated in a review of the port development plan earlier that year. Counsel submitted that -

... environmental considerations were not to the fore in the minds of either Port management or the consultants retained prior to the POAL applications being lodged at the close of 1996.

[367] We do not regard it as relevant or reasonably necessary to determine the resource consent applications to have regard to that question. Rather we focus on the environmental effects of the proposal and other aspects in which it would or would not serve the purpose of promoting sustainable management of natural and physical resources.

[368] Secondly, where as, Chapter VI of this decision and report demonstrates, there is an abundance of planning instruments in force under the Resource



Management Act which are applicable to the proposal, we consider that it is not reasonably necessary to add to them consideration of non-statutory documents which were not prepared for the purpose of guiding decision-makers under the Act, nor intended to have legal effect.

- [369] Mr Nolan reminded us of a Planning Tribunal decision given in 1991<sup>24</sup> in which it was said<sup>25</sup> –

Although the Harbour Board had accepted the limit for the redevelopment of the marina at that time, there was no evidence that it accepted that limit as a constraint which would be effective on it in future ... further if such an agreement had been entered into in 1978, it would reflect the attitudes of the parties at that time, but would not necessarily have the same validity in the circumstances existing 13 years later ... we frankly acknowledge that we do not take [the alleged undertaking] into account.

- [370] A similar theme is evident in a passage from a more recent Environment Court decision<sup>26</sup> –

... it must be accepted that planning under the Act embraces an inherently dynamic characteristic of accommodating new direction when deemed appropriate in the promotion of the Act's purpose.

- [371] We consider that a similar approach to this aspect of the Association's case is valid. The port company's proposals should be judged by reference to the purpose of the Resource Management Act 1991, to instruments under that Act, and to their effects on the environment as it is in 1998. In our opinion, development of the port company's plans over the years, as needs and circumstances have changed, and as benefits have been gained from consultation, is not a sound basis for opposing the resource consent application.

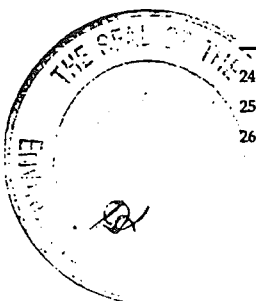
### Sale of port land

- [372] The Association also relied on the fact that Ports of Auckland Limited had sold pieces of land in the west of the port as surplus to its requirements, being unable to provide berthage for large ships. We take the implication to have been that if that land had not been sold the port company might not have needed to reclaim additional land for the container terminal.

<sup>24</sup> *Ports of Auckland Limited v Americas Cup Planning Authority* Planning Tribunal Decision A 100/91.

<sup>25</sup> Pages 23-24.

<sup>26</sup> *Becmead Investments v Christchurch City Council* [1997] NZRMA 1, 22; 2 NZELR 368, 392.



However the evidence did not establish that, and we do not consider it reasonably necessary to take those sales into account in determining the resource consent application.

### Comprehensive port development plan

[373] The Association also contended that it would not be sound resource management planning to approve the current proposal in isolation from future development of the Bledisloe terminal, but rather that there should be comprehensive planning for the development of the port as a whole. Its counsel stated -

It is not beyond the realm of possibility that three new berths at Bledisloe, in conjunction with increased use of the joint rail exchange and improved facilities at Tauranga may prove sufficient, at least, for some years to come.

As Mr Gee acknowledged all the previous planning over the past decade has been in the context of both Bledisloe and Fergusson options. In our submission, Fergusson should not now be approved in advance of full joint investigation and planning.

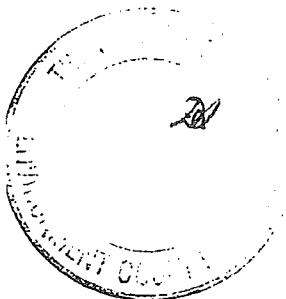
...

The Appellant's case is that the Applicant seeks to extend in the wrong direction and without sufficient consideration of the inter-relationship between a very large reclamation at Bledisloe/Jellicoe and a smaller (but still too large) extension north and east of the existing Fergusson Terminal.

...

We do not consider that the Applicant has paid enough regard to the inter-relationship between its two proposed terminal extensions. While there can be no question of the Court expressing either approval or disapproval of Bledisloe, it is our submission, quite artificial to view them in isolation.

[374] We have stated our findings about the Bledisloe and Tauranga options in an earlier chapter of this decision and report. We find that the port company has been planning for development of the port on a comprehensive basis, which includes responding to perceived needs for additional capacity for handling dedicated container ships, and also more capacity for handling ships having containers and other classes of cargo. The time has come for the planning to be implemented, if the requisite resource consents can be secured. In our view, postponing a decision for more investigation and planning would not be managing the resources of the port to enable the community to provide for their economic wellbeing, nor would it gain any advantage in gaining any of the goals in paragraphs (a) to (c) of section 5(2) of the Act.



## VIII

## Section 105(2)(b) limits

## The limits

[375] To the extent that the proposal requires resource consent as a noncomplying activity, attention needs to be given to the limits on granting consent to such an activity. Those limits are contained in section 105(2) of the Act. Because this appeal was lodged on 2 December 1996, before the commencement (on 17 December 1997) of the Resource Management Amendment Act 1997, the appeal has to be decided and completed as if that Amendment Act had not been enacted <sup>27</sup>. Accordingly, the limits to be applied are those contained in section 105(2)(b) of the Act, as substituted by section 55 of the Resource Management Amendment Act 1993, as follows –

- (2) A consent authority shall not grant a resource consent –
- ...
  - (b) Notwithstanding any decision made under section 94(2)(a), for a non-complying activity unless it is satisfied that –
    - (i) The adverse effects on the environment ... will be minor; or
    - (ii) Granting the consent will not be contrary to the objectives and policies of the plan or proposed plan ...

[376] Ports of Auckland Limited acknowledged that not all of the adverse effects on the environment will be minor <sup>28</sup>, but submitted that granting the consents sought would not be contrary to the objectives and policies of the respective plans and proposed plans.

[377] Counsel for the Association submitted that if the adverse effects are more than minor, then an application for consent must be refused, as –

neither the primary consent authorities (nor the Court) have jurisdiction to consent to the same.

[378] That submission can only be accepted if the true interpretation of section 105(2)(b) is that a consent authority is not to grant a resource consent if it is not satisfied that the adverse effects on the environment will be minor,

<sup>27</sup> Resource Management Amendment Act 1997, section 78(5).

<sup>28</sup> The port company also maintained that the unavoidable adverse effects could be adequately remedied or mitigated by design, construction and operational measures already contained in the proposal or in conditions imposed by the primary consent authorities.

regardless of whether granting consent would not be contrary to the objectives and policies of the plan or proposed plan. However the High Court has held to the contrary. In *Hopper Nominees v Rodney District Council* <sup>29</sup> Justice Tompkins said -

... s 105(2)(b) contains threshold provisions. Once either of the limbs have been complied with, the threshold has been crossed and the provisions is no longer relevant. The consent authority is then required to consider the application for the resource consent ...

[379] Accordingly we hold that the Association's submission is based on an incorrect understanding of section 105(2)(b), and we do not accept it.

#### Application of the limits

[380] As the port company has accepted that some of the effects on the environment of the proposal will be more than minor <sup>30</sup>, we have now to consider whether we are satisfied that granting the consent will not be contrary to the objectives and policies of the various plans and proposed plans.

[381] We have set out our analyses of the plans in an earlier chapter of this document, and we do not repeat it here.

[382] In his evidence, Mr Gee considered in detail the objectives and policies of the operative regional coastal plan, and concluded that they support the continuing operation and development of the eastern section of the commercial port and afford it high priority for harbour space.

[383] Mr Gee also referred in detail to the objectives and policies of the proposed regional coastal plan. He referred to a policy which would require new port development outside of port management areas to be avoided, and gave the opinion that although the proposed development would extend beyond those areas, it would not be contrary to the policy when read in context, because the policy is directed at new port facilities and because, with

<sup>29</sup> [1996] NZRMA 179, 186; 2 ELRNZ 73, 79.

<sup>30</sup> See footnote 2 above.

relatively minor adjustment to the boundary of the relevant port management area, the proposal would not be outside it.

[384] Further, Mr Gee analysed the relevant objectives and policies of the transitional and proposed Auckland City district plans, and found nothing to which the granting of resource consent would be contrary.

[385] In his evidence Mr Bradbourne addressed the transitional regional coastal plan, the proposed regional coastal plan, the transitional district plan, and the Central Area section of the proposed district plan, and found no conflict with their objectives and policies.

[386] Mr H D Brookes addressed in detail the relevant objectives and policies of (among other instruments) the proposed regional coastal plan and the transitional regional coastal plan, and concluded that, subject to the conditions set out in the primary decision, granting consent would not be contrary to the provisions of those instruments.

[387] In his evidence Mr E D Wren examined in detail the objectives and policies of (among other instruments) both relevant sections <sup>31</sup> of the Auckland City transitional district plan, and the sections of the proposed district plan for the central area and the isthmus, and gave the opinion that the application passes the test in section 105(2)(b) of the Act.

[388] Mr D M Hill also addressed the policies of the transitional regional coastal plan, and those of the proposed regional plan: coastal. He referred to a policy of the former that development of the commercial port is to be contained within the limits shown on a map and defined by the seaward limits of the port zones, and to a policy about the desirability of concentrating port development between the western side of Kings Wharf and the eastern tide deflector, and gave the opinion that use for port-related activities of land

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<sup>31</sup> That is the provisions of the former Auckland City district scheme, and the provisions of the former Waitemata Harbour Maritime Planning Scheme.

reclaimed from the harbour outside the Port A zone would be contrary to the intent of the policies.

[389] Similarly in respect of the proposed regional plan: coastal, Mr Hill gave the opinion that to the extent that it is noncomplying, the activity is contrary to the objectives and policies of the proposed plan, because it is valued public open space that is under consideration.

[390] In cross-examination by Mr Nolan, Mr Hill would not suggest what use might properly be made of land reclaimed from the harbour outside the Port A zone of the transitional plan; he agreed that the area proposed to be reclaimed outside the Port A zone could fit within the Port A zone to the east of the Option B2 configuration; that the objectives of the plan recognise the national and regional importance of the port of Auckland and provides for its continues operation and development; and that the policies contemplate reclamation for purposes for economic welfare of the community. In cross-examination by Mr Burns, the witness agreed that if the proposal was reconfigured to be within the Port A zone, his opposition to it on the basis of being contrary to the transitional plan would disappear.

[391] Mr Gee observed that the relevant policy cited by Mr Hill specifically contemplates future development outside the zone boundaries, to be justified by showing need for further port facilities and that further development of the type proposed is neither practicable or desirable within the commercial port area. Mr Gee also referred to evidence that reconfiguration of the reclamation so that it is entirely within the Port A zone boundaries would not be practicable or desirable for constructional, operational, and environmental reasons.

[392] In deciding this question, we bring to mind authoritative statements about the application of section 105(2)(b)(ii).

[393] In *New Zealand Rail v Marlborough District Council* <sup>32</sup> Justice Greig referred to the word "contrary" in subparagraph (ii) <sup>33</sup> and said -

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<sup>32</sup> [1994] NZRMA 70, 80.



The [Planning] Tribunal correctly I think, with respect, accepted that that should not be restrictively defined and that it contemplated being opposed to in nature, different to or opposite. The *Oxford English Dictionary* in its definition of "contrary" refers also to repugnant and antagonistic. The consideration of this question starts from the point that the proposal is already a non-complying activity but cannot, for that reason alone, be said to be contrary. "Contrary" therefore means something more than just non-complying.

[394] In *Elderslie Park v Timaru District Council* <sup>34</sup> Justice Williamson said of subparagraph (ii)-

... it is important to read these words in a real and sensible manner. Mere non-compliance with the strict terms of the plan would not be sufficient. The council must consider whether the non-complying activity applied for is opposed in its nature to the objectives and policies of the plan. Again this process involves an overall consideration of the purpose and scheme of the plan rather than a checking of whether the non-complying activity fits exactly within the detailed provisions of the plan.

[395] We have found those statements helpful in resolving the difference between Mr Hill and the other planning witnesses in this case.

[396] The texts of the policies of the transitional regional coastal plan relied on by Mr Hill are -

The development of the Commercial Port shall be contained within the limits shown on Map 3 and defined by the seaward limits of Port Zones A-E in Section 8.4.

Future development of port facilities in the existing Commercial Port should have regard to the desirability of concentrating development in the area between the western side of Kings Wharf and the Eastern Tide Deflector ...

[397] Mr Hill considered that these policies should be read together with a planning goal of providing for the present use and development of the harbour and its shoreline while protecting it as a resource for the benefit of future generations.

[398] We read the policies in that context, and also in the manner indicated by the passages quoted from those High Court judgments. Although the proposal would not be entirely contained within the limits prescribed, we find that it could have been configured so that it was, that there are sound reasons why it has been configured differently, and that although it does not comply in detail to a relatively small extent, in substance the proposal is not contrary to

<sup>33</sup> The Court was there concerned with the version of section 105(2)(b)(ii) prior to the 1993 Amendment, but the relevant phrase is repeated in the post 1993-amendment version of the subparagraph which we have to apply.

<sup>34</sup> [1995] NZRMA 433, 445.

the policies in the sense of being repugnant or antagonistic to the nature of the policies. In short we find that the proposal is not contrary to the objectives and policies of the transitional regional coastal plan.

- [399] Turning to the proposed regional coastal plan, the objectives and policies with which Mr Hill considered granting consent would be contrary are -

The development of new port facilities for cargo handling and passenger movement outside of Port Management Areas shall be avoided.

To facilitate the efficient use and development of Port Management Area 1A and 1B for commercial working port activities, in particular container and bulk cargo handling, by providing for the consolidation and intensification of these port activities and associated structures:

The development of new port facilities for cargo handling and associated passenger movement should be consolidated and intensified within Port Management Area 1A and 1B.

- [400] Mr Hill stated that "even a relatively small bit of noncompliance is contrary rather than merely contravening because it is valued public open coastal space that is under consideration."
- [401] That does not recognise that the extent to which the proposal is complying corresponds with an equivalent extent within the defined area where development would comply but which is to be left as open harbour space. We consider that Mr Hill's opinion was not based on the understanding of subparagraph (ii) set out in the passages of the High Court judgments which we have quoted.
- [402] Applying that understanding of that subparagraph, we find that granting consent to the part of the proposal beyond the prescribed limits, while noncomplying in detail, would not be contrary to that objective and those policies in the sense of repugnant or antagonistic to their main thrust.
- [403] In short, we adopt the opinions of the other planning witnesses mentioned, rather than Mr Hill's opinions in this respect; and we are satisfied that granting the resource consents would not be contrary to the objectives and policies of any of the relevant plans and proposed plans. Accordingly we

hold that the threshold <sup>35</sup> is crossed, and that a consent authority is not precluded by section 105(2)(b) from granting the resource consents for the proposal.

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<sup>35</sup> The threshold metaphor was used of section 105(2)(b) by Tompkins J in *Hopper Nominees v Rodney District Council* [1996] NZRMA 179, 186; 2 ELRNZ 73, 79.

## Resource Management Act, Part II

### Introduction

[404] In deciding a resource consent application for a non-complying activity, a consent authority has to make a discretionary judgment under section 105(1)(c) of the Act to grant or refuse consent. That section does not expressly direct that the judgment has to be made for the purpose of the Act stated in section 5, and in compliance with the directions in the other sections of Part II of the Act. However the general language of those provisions of Part II apply to the exercise of the consent authority's discretionary judgment; and we hold that they should be applied accordingly.

[405] Section 6(a) directs functionaries to recognise and provide for the preservation of the natural character of the coastal environment. It has been authoritatively held <sup>36</sup> that –

... the preservation of natural character is subordinate to the primary purpose of the promotion of sustainable management. It is not an end or an objective on its own but is accessory to the principal purpose.

[406] It has also been held that the Act has a single purpose <sup>37</sup>. Consistent with that we hold that the other provisions of sections 6 to 8 are also subordinate and accessory to the primary or principal purpose of the Act. We therefore proceed to consider such of them as are applicable in this case, before coming to the discretionary judgment whether for that purpose the resource consents should be granted or refused.

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<sup>36</sup> *NZ Rail v Marlborough District Council* [1994] NZRMA 70, 85 per Greig J.

<sup>37</sup> *North Shore City Council v Auckland Regional Council* [1997] NZRMA 59, 94; 2 ELRNZ 305, 347.

## Natural character of the coastal environment

- [407] The national importance attaching to the preservation of the natural character of the coastal environment (including the coastal marine area) arises primarily from section 6(a)-

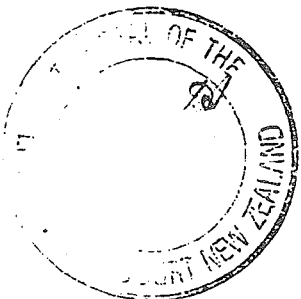
In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:

- [408] Our attention was drawn to the location of the proposed development as being an extension of the existing terminal reclamation and construction, to the modifications represented by the immediately adjoining tide deflectors and reclamation, and to the line of the Tamaki Drive (all having rock protection walls), as well as to the effects of urbanisation in the wider setting.

- [409] The coastal marine area is defined in section 2(1) of the Act so as to include the foreshore, seabed, coastal water and the air space above the coastal water. Coastal water is defined so as to include sea water in harbours. The coastal environment then includes such elements as the harbour waters and air space above which are in a natural form, the foreshore (which is entirely the result of former reclamation, rock-lined and man-made), and the landward area, which consists of the existing port and a substantially modified urban environment.

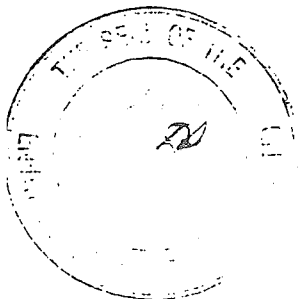
- [410] Ports of Auckland Limited asserted that the extension proposed is in a place where the coastal environment has already been heavily modified. It submitted that the preservation of the natural character of the coastal environment is subordinate to the primary purpose of the Act, that absolute preservation is not required nor is it to be achieved at all costs, and the matter becomes one of appropriate use and development.



- [411] In considering Policy 1.1.1 of the *New Zealand Coastal Policy Statement*, Mr Goodwin observed that the proposed extension of the Fergusson Terminal is located adjacent to an area where the natural character has already been significantly compromised.
- [412] Mr Gee gave the opinions that the proposal would not compromise any outstanding natural features or landscapes, and also that, while the reclamation will occupy harbour water space, it does not utilise or remove any existing natural coastline, being wholly an extension of an existing reclamation. The foregoing opinions were largely unchallenged.
- [413] The present open waters of the harbour, which include the area to be reclaimed, remain in their natural state and may be recognised as a natural element in the coastal environment. Within the setting now existing however the landward containment is completely man-made and not natural. We find that the character of the coastal environment cannot be held to be natural in the manner in which that term is used in section 6(a).

#### Outstanding natural features and landscape

- [414] Section 6(b) requires functionaries to recognise and provide for the protection of outstanding natural features and landscape from inappropriate use and development. Earlier in this document, in having regard to the adverse effects on the environment of allowing the proposal, we considered the evidence about the extent to which the coast of the harbour may be an outstanding natural feature and landscape requiring protection in terms of section 6(b). Although the harbour in general is an outstanding natural feature and landscape, the site of the proposal is highly modified. The proposal would have the effect of moving to the east the transition point between the highly modified and intensively used part of the harbour edge and the less modified part used for recreational and residential activities. Accepting the need for more container handling capacity for the port, and that there is no other practicable site, we find that development of the site



and its use for that purpose is not inappropriate, and is not required by section 6(b) to be protected.

#### Public access

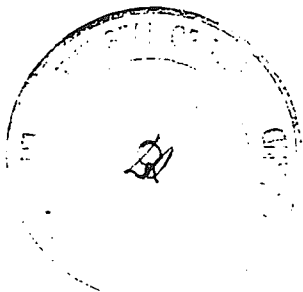
- [415] Another matter of national importance to be recognised and provided for is that described in section 6(d)-

The maintenance and enhancement of public access to and along the coastal marine area...

- [416] Two aspects arise in respect of this proposed development : first, the extent to which the development of port activities at the eastern end of the port has freed up areas at the western end for 'people activities'; and secondly, the provision for a public coastal walkway along the eastern edge of the proposed development.

- [417] Mr Vazey deposed that the relocating and consolidating of the main cargo activities of the port to the eastern (Freyberg Wharf) end of the port was also freeing up areas to the west for 'people places' and other kinds of waterfront activities. He mentioned the development of 'Quayside' in the Princes Wharf Basin, the provision for 'people activities' in buildings on Princes and Hobson Wharves, and land being made available for public use around the Viaduct Basin. He considered that those provisions should be seen in terms of significant offsetting mitigation when assessing the effects of development proposals in the eastern port area. Mr Vazey's views in this regard were not challenged.

- [418] The primary consent authority imposed a condition of consent, Condition 12, that the applicant make provision for an esplanade reserve along the eastern face of the reclamation over the area between mean high water springs and the crest of the reclamation; and further, that a public access structure no less than 3 metres wide be provided over and along the esplanade reserve from the Solent Street end of the reclamation to the second truck turning area on the eastern face of the reclamation. Mr Goodwin testified that this would be



a length of some 390 metres. The design is to include a deck which would widen to 6 metres at the terminus of the boardwalk, with a similar provision at a point about halfway.

- [419] The applicant is to have financial and maintenance responsibility for both the esplanade reserve and the access structure, as well as financial responsibility for replacement of the latter. Condition 13 requires a landscaping and maintenance plan for this same stretch of the reclamation, with trees to be located and planted.
- [420] Mr Goodwin produced three plans which illustrated the provisions intended, and which also indicated a pedestrian link proposed over the port company land from the end of the walkway to Teal Park on Tamaki Drive. Mr J E Youdale also produced a plan showing the proposed walkway and a typical cross-section.
- [421] Mr Vazey gave evidence about earlier provisions which had been made for public access and facilities in this vicinity, and their decommissioning because of damage caused by vandals. He commented that monitoring by the Company had indicated very little or no public use of access areas.
- [422] In respect of the current requirements he advised that while the port company has not appealed against these conditions, it considered they were a more than generous provision for the public in the light of the minimal use made of the previous facilities. In his opening address, Mr Nolan accepted that in terms of section 6(d) public access is an important issue, and submitted that in the design of the proposal it has been recognised as such both in the east/west focus and in the provision of a significant coastal walkway which is not available at present.
- [423] Giving consideration to all those matters, as well as the functional need to exclude the public from ship berthing and working areas, we find that provision of the proposed public access would be sufficient to respond to the requirement of section 6(d).



## Maori relationship and kaitiakitanga

[424] Section 6(e) requires functionaries to recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga. Ngati Whatua O Orakei Trust Board withdrew its appeal against the port company's proposal, and no party raised any claim that the values of national importance referred to in section 6(e) would be adversely affected by the proposal.

[425] Section 7(a) requires functionaries to have particular regard to kaitiakitanga. Again no party claimed that exercise of kaitiakitanga would be hindered by the proposal.

## Stewardship

[426] Section 7(aa) <sup>38</sup> requires functionaries to have particular regard to the ethic of stewardship. Because this appeal was commenced before the commencement of the Resource Management Amendment Act 1997, we have to decide it as if that paragraph had not been inserted in the Act <sup>39</sup>. In any event there was no claim made that the proposal would offend the ethic of stewardship.

## Efficient use of resources

[427] Section 7(b) requires functionaries to have particular regard to –

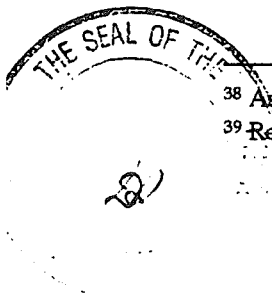
(b) The efficient use and development of natural and physical resources.

[428] In that regard, counsel for the Association made no direct submission, but observed that –

If there is any inconsistency or even conflict between competing considerations, there must of necessity, be some balancing which takes into account the finite characteristics of our natural and physical resources to protect the quality of a particular environment.

<sup>38</sup> As inserted by section 3 of the Resource Management Amendment Act 1997.

<sup>39</sup> Resource Management Amendment Act 1997, section 78(5).



[429] Mr Brookes and Mr Gee both gave the opinions that the proposal has been designed in a way that would meet the expectation of section 7(b). As there is no contest on the point we do no more than state our finding on the evidence for Ports of Auckland Limited that the proposal would make efficient use and development of the natural and physical resources involved.

#### Amenity values, environment quality and finite characteristics

[430] Other relevant provisions in section 7 refer to the maintenance and enhancement of amenity values <sup>40</sup>, maintenance and enhancement of the quality of the environment <sup>41</sup>, and any finite characteristics of natural and physical resources <sup>42</sup>. These raise questions which we have already addressed in considering adverse effects of the proposal on the environment. In the light of our findings in those respects, we conclude that there is no need for us to give particular regard to them in deciding this appeal.

#### Treaty principles

[431] Section 8 of the Act directs functionaries to take into account the principles of the Treaty of Waitangi.

[432] Ports of Auckland Limited had commissioned a report from a Mr Kapea of Te Hao o Ngati Whatua about the attitude of Ngati Whatua on the proposal.

[433] Regional Council staff who are expert in tangata whenua liaison had evaluated submissions received from tangata whenua and had also consulted with them.

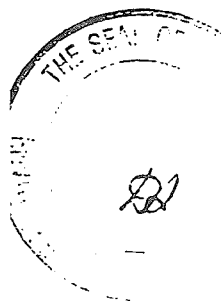
[434] The Regional Council had included conditions of consent to remedy or mitigate concerns of Ngati Whatua, including provision for them to be informed of the construction schedule for the proposed reclamation, for them

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<sup>40</sup> Section 7(c).

<sup>41</sup> Section 7(f).

<sup>42</sup> Section 7(g).



to comment on results of monitoring, and for them to be consulted on matters of tikanga Maori in respect of significant events.

- [435] It was not contended by any party before the Court that any principles of the Treaty relevant to the decision of this appeal, have not been taken into account, and we hold that granting the resource consent sought would not conflict with section 8.

### Summary

- [436] In summary, having applied the relevant directions of sections 6, 7 and 8 of Part II of the Act, we conclude that there is nothing in those provisions which should influence the decision of this appeal.

##





### Conditions

[437] Section 108(2) of the Resource Management Act 1991<sup>43</sup> authorises a consent authority to grant resource consents on conditions that the consent authority considers appropriate.

[438] Extensive and detailed conditions were imposed by the primary consent authorities on the consents granted by them. During the course of the appeal hearing, some alterations to those conditions appeared desirable. In particular amendments were proposed to conditions about noise and lighting. There was no dispute among the parties about the conditions that it would be appropriate to attach to the resource consents if granted.

[439] Ports of Auckland Limited presented to the Court three draft consents incorporating the revised conditions. The first, attached as Appendix A, would replace the coastal permits that were granted by the Auckland Regional Council; the second, Appendix B, would replace the recommendations made by it to the Minister of Conservation to the extent that the coastal permits are restricted coastal activities; and the third, Appendix C, would replace the resource consents that were granted by the Auckland City Council.

[440] We are satisfied that, if the relevant resource consents are granted, the respective revised conditions would be appropriate to attach to them, and would avoid, remedy or mitigate any adverse effects of the activities on the environment to the extent practicable.

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<sup>43</sup> As amended by section 58(5) of the Resource Management Amendment Act 1993; section 78(5) of the Resource Management Amendment Act 1997 having the effect that this appeal is to be considered and completed as if that Amendment Act (section 24(1) of which amended section 108 of the principal Act) had not been enacted.

## XI

## Judgment for the purpose of the Act

[441] Section 105(1) of the Resource Management Act 1991 <sup>44</sup> provides —

**105. Decisions on applications** —(1) Subject to subsections (2) and (3), after considering an application for —

- (a) A resource consent for a controlled activity, a consent authority shall grant the consent, but may impose conditions under section 108 in respect of those matters over which it has reserved control;
- (b) A resource consent for a discretionary activity, a consent authority may grant or refuse the consent, and (if granted) may impose conditions under section 108:  
Provided that, where the consent authority has restricted the exercise of its discretion, [consent may only be refused or] conditions may only be imposed in respect of those matters specified in the plan or proposed plan to which the consent authority has restricted the exercise of its discretion;
- (c) A resource consent (other than for a controlled activity or a discretionary activity or a restricted coastal activity), a consent authority may grant or refuse the consent, and (if granted) may impose conditions under section 108.

[442] The exercise of the discretion conferred by paragraphs (b) and (c) of that subsection to grant or refuse consent has to be informed by the single purpose of the Resource Management Act set out in section 5, that is, to promote the sustainable management of natural and physical resources <sup>45</sup>.

[443] The discretion has to be exercised by —

- having regard to all the relevant matters identified under section 104(1);
- avoiding consideration of irrelevant matters including those excluded under section 104(6) <sup>46</sup> and section 104(8);
- giving different weight to the matters identified under section 104(1) depending on how they are affected by application of the contents of section 5(2) and sections 6, 7 and 8 to the case;
- (in the light of the above), making comparison of conflicting considerations, the scale or degree of them, and their relative significance or proportion in the final outcome <sup>47</sup>.

<sup>44</sup> As substituted by section 55 of the Resource Management Amendment Act 1993; section 78(5) of the Resource Management Amendment Act 1997 having the effect that this appeal is to be considered and completed as if that Amendment Act (section 22(1) of which amended section 105(1) of the principal Act) had not been enacted.

<sup>45</sup> *Minister of Conservation v Kapiti Coast District Council* [1994] NZRMA 385, 393; 1B ELRNZ 234, 243.

<sup>46</sup> Subject to section 104(7).

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( ) [444] Of the relevant matters identified under section 104(1), actual or potential effects on the environment of allowing the activity would include the loss of open public harbour water for reclamation and berthage of an area of about 11 hectares. The term "effect" is to be given a meaning that includes cumulative effects.<sup>48</sup> That loss would be cumulative on previous considerable losses for reclamation of over 220 hectares. The harbour is highly valued by the public of Auckland. The further loss of harbour space would be permanent loss, and it would be an adverse effect which cannot itself be avoided, remedied or mitigated. However there would be remedial measures of value to the public in two respects. One would be provision of a public boardwalk at the eastern end of the development. The other is that to the extent that cargo handling activities are concentrated at the eastern end of the commercial port, it allows for use and activities by people in the part of the port to the west of Queens Wharf.

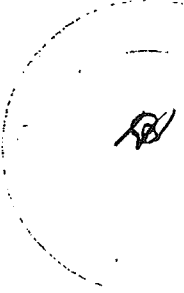
[445] In addition, views of the Waitemata Harbour are much valued, and the proposed extension of the terminal would, from some vantage points, have adverse visual and landscape effects that would be more than minor. To the extent practicable the effects would be remedied or mitigated by good design and planting.

[446] We have found that there would not be adverse effects on the environment in respect of wind, tidal currents, sedimentation, wave effects, stormwater discharges, dredging of the harbour bed, navigation and recreational use of the harbour, or marine life of the harbour. We have also found that compliance with uncontested conditions which we could impose or recommend would result in effects of noise, and lighting being suitably avoided, remedied or mitigated. We have found, too, that any effects associated with movement of traffic to and from the extended terminal would be acceptable.

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<sup>47</sup> *Baker Boys v Christchurch City Council* Environment Court Decision C60/98, paragraph 109.

<sup>48</sup> Resource Management Act 1991, section 3(d).

- [447] The other relevant matters identified under section 104(1) to which we should have regard are the various policy and planning instruments under the Resource Management Act. We have applied them to the proposal, and have found that there is nothing in them which would preclude granting the resource consents sought, subject to compliance with appropriate conditions.
- [448] We have also found that the continuing growth of container cargoes requires additional handling capacity to enable the community of the Auckland region to provide for their economic welfare, and that a sound case has been made for consideration of the present proposal for expansion of the Fergusson Container Terminal, rather than any of the options identified.
- [449] In addition we consider that other matters raised by the Association, including indications in non-statutory documents about the eastern limit of the commercial port, sales of port land elsewhere, and postponing a decision for more investigation and planning for comprehensive development of the port as a whole, are not relevant or reasonably necessary for deciding the application.
- [450] We have applied the relevant directions of sections 6, 7 and 8 of Part II of the Act, and concluded that there is nothing in those provisions which should influence the decision of this appeal.
- [451] We have examined the sets of conditions for attaching to the resource consents sought. There is no dispute among the parties, and we accept, that if those consents are granted, those conditions would be appropriate to attach to the respective consents, and would avoid, remedy or mitigate any adverse effects of the activities on the environment to the extent practicable.
- [452] We have now to weight the factors indicating grant or refusal of consent according to application of the contents of section 5(2), 6 and 7 to the case.
- [453] Section 5(2) provides –
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- (2) In this Act, "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.

[454] By that provision, Parliament has made managing the use and development of natural and physical resources in a way which enables people and communities to provide for their economic wellbeing a focus of sustainable management. The proposed expansion of the Fergusson Container Terminal involves management of the natural and physical resources involved so as to enable the community of the Auckland region to provide for their economic welfare. We have not found a practicable alternative to doing so.

[455] By section 5(2) Parliament has also given equivalent value to managing the protection of natural and physical resources in a way which enables people and communities to provide for their social and cultural wellbeing, and to sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations, and avoiding or remedying any adverse effects of activities on the environment. The loss of open public harbour would not be consistent with that, nor would adverse visual and landscape effects, which would be more than minor. Both would degrade the highly valued Waitemata Harbour. Accordingly in this case there is no assistance in making the final judgment to be gained from considering the relative scale of importance of matters under sections 5(2), 6 and 7<sup>49</sup>.

[456] The ultimate judgment therefore involves making a comparison of conflicting considerations of the first significance and importance. In doing so, we recognise that any development of the commercial port of the scale needed to meet the growth of container cargoes generated by the economic activity of the Auckland region would unavoidably involve loss of open public harbour, and development which would have visual and landscape effects that cannot

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<sup>49</sup> *Baker Boys*, footnote 47, paragraph 110.



be entirely screened from view. Selection of a site in a locality already committed to port facilities and other urban infrastructure would reduce the adverse effects compared with those that might be caused if the additional container handling capacity were developed elsewhere. That is why the otherwise adverse environmental effects do not involve conflict with the various policy and planning instruments.

[457] In our opinion, that provides the key to resolving the conflict between the competing factors in this case. We remind ourselves that promoting the sustainable management of natural and physical resources is a single purpose.<sup>50</sup> In general the Act contains no preference for managing use and development of resources for enabling communities to provide for their economic wellbeing over protection of resources for enabling communities to provide for their social and cultural wellbeing, sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations, and avoiding, remedying adverse effects on the environment. However in the context of the present application it is our judgment that the loss of public open harbour, and the adverse visual effects, to the extent that is unavoidable, should yield to managing the resources for development and use of the container terminal expansion, in compliance with the proposed conditions including the provision and maintenance of the public boardwalk and screen planting. In short, we judge that the purpose of the Act would be better served by granting the consents sought, and by attaching the proposed conditions, rather than by refusing them.

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<sup>50</sup>*North Shore City Council v Auckland Regional Council* [1997] NZRMA 59,94;2 ELRNZ 305, 347.

## XII

## DETERMINATION AND RECOMMENDATIONS

[458] For the foregoing reasons the Court makes the following determinations and recommendations:

- a) To the extent that the resource consents sought are for coastal permits which are not restricted coastal activities, it grants them on the terms and subject to compliance with the conditions, set out in Appendix A:
- b) To the extent that the resource consents sought are for restricted coastal activities (that is, for reclamation and dredging of harbour bed), it recommends to the Minister of Conservation that he grant coastal permits in the terms, and subject to the conditions, set out in Appendix B:
- c) That the other resource consents sought are granted on the terms and subject to compliance with the conditions set out in Appendix C.
- d) That Appeals RMA 880/96 and RMA 914/96
- e) are allowed to that extent only, and in all other respects are disallowed.
- f) That the question of costs on Appeal RMA 880/96 is reserved.

DATED at AUCKLAND this *24<sup>th</sup>* day of June 1998.



DFG Sheppard  
Environment Judge  
fergcont.doc

## **APPENDIX A**

**CONSENTS HOLDER:** Ports of Auckland Limited

### **PURPOSE OF COASTAL PERMITS:**

To carry out the following works and activities, to the extent that they are not restricted coastal activities, on the terms and conditions set out below:

- (a) Construct and use a 320m long wharf structure at the northern end of a proposed reclamation of approximately 9.4 ha, to be carried out to the north and east of the existing Fergusson Container Terminal in the Port of Auckland.
- (b) Demolish the existing turning dolphin and construct and use a new mooring dolphin with a connecting link.
- (c) Occupy for the duration of the construction, that part of the coastal marine area to be reclaimed and dredged, where that area is outside the area for which the consent holder already holds an occupation consent pursuant to section 384A of the Resource Management Act 1991.
- (d) Occupy for a period of 35 years, commencing from completion of construction, of that part of the coastal marine area in which the new wharf structure, mooring dolphin and connecting link, new northern berth and vessel maneuvering area are all located, and a 10m strip along the eastern side of the new reclamation, being an area in total of approximately 4.25 ha.
- (e) Discharge seawater and stormwater containing some fine silts from the new reclamation during construction, by diffuse discharge through the bund walls.
- (f) Discharge stormwater from the extended terminal after completion of construction, including an extension to existing Outfalls D and E and increasing their volume by up to 200 litres per second and 1,000 litres per second respectively; the combination of existing Outfalls F and G to a single Outfall H with its volume increased by up to 1,200 litres per second; and the construction and use of a new Outfall I with a volume of up to 900 litres per second.
- (g) Construct two container cranes for use on the new wharf structure, together with use of existing container cranes.
- (h) Use the new berthage for loading and unloading of vessels and cargo, storage of cargo, servicing of vessels and equipment, and providing and bunkering of vessels.
- (i) Construct and use utilities and services on or under the new wharf structure and mooring dolphin and link.

**LOCATION:** Ferguson Container Terminal and vicinity, Port of Auckland, Waitemata Harbour.

**TERRITORIAL AUTHORITY:** Auckland City Council.

## CONDITIONS OF CONSENTS

### A. STANDARD CONDITIONS OF CONSENTS:

1. That the servants or agents of the Auckland Regional Council shall be permitted access to the relevant parts of the property at all reasonable times for the purpose of carrying out inspections, surveys, investigations, tests, measurements or taking samples.
2. That the Auckland Regional Council may at any time on the giving of not less than 3 months notice in writing, serve notice on the consent holder of its intention to review, under section 128 of the Resource Management Act, any of the conditions of these consents for any of the following purposes:
  - (i) To deal with any adverse effect on the environment which may arise from the exercise of the consents and which it is appropriate to deal with at a later stage; or
  - (ii) To require the holder of a discharge permit or coastal permit to adopt the best practicable option to remove or reduce any adverse effect on the environment; or
  - (iii) To deal with any adverse effect on the environment which may arise from the exercise of the consents which was not foreseen at the time the application was considered and which it is appropriate to deal with at the time of review.
3. The resource consent holder shall pay to the Auckland Regional Council any administrative charge fixed in accordance with s.36(1) of the Resource Management Act 1991, or any additional charge required pursuant to s.36(3) of the Resource Management Act 1991, payable in respect of these resource consents.
4. The applicant may, pursuant to Section 127(1)(b) of the Act, apply to the Group Manager to change or cancel any of the conditions of these resource consents (except those conditions which relate to the duration of the consents).

### B. SPECIAL CONDITIONS OF CONSENTS (GENERAL):

5. Pursuant to Section 125(1) of the Act, these consents shall not expire for a period of eight (8) years from the date of commencement of the consents. The resource consents will however lapse if the consents are given full effect to before the end of that period.
6. The work and other activities shall be undertaken generally in accordance with:
  - (a) the Beca Carter Hollings & Ferner Ltd and Ports of Auckland Limited plans as identified below:

- (i) "General Arrangement, Drawing No 1" (Option B2), Cad File Name 0026C001, dated 21.10.97.

- (ii) "Earthworks and Wharf Sections, Drawing No 2", Cad File Name 0026C002, dated 21.10.97.
- (iii) "Dredging Areas, Drawing No 3", Cad File Name 0026C003, dated 21.10.97.
- (iv) "Stormwater Drainage Concept and Details, Drawing No 6", Cad File Name 0026C006, dated 21.10.97.
- (v) "Walkway Layout, Drawing No 7", Cad File Name 0026C007, dated 21.10.97.
- (vi) "Additional Area to be Occupied within the Coastal Marine Area for Option B2, Figure 8", Cad File Name 0026C030, dated 21.10.97.

(b) The Boffa Miskell plans as identified below:

- (i) "Esplanade Reserve Public Access and Planting Plan", Drawing No 95074-01, Revision 1.
- (ii) "Cross Section/Elevation of Boardwalk and Tree Pit", Drawing No 95074-02.
- (iii) "Detail of Expanded Area at Mid Point of Boardwalk", Drawing No 95074-03.

7. That the consent holder shall notify the Group Manager in writing at least ten working days prior to the commencement of any works, of the proposed commencement date of the work.
8. The consent holder shall at all times be responsible for the work undertaken and ensure that it complies with these consent conditions.
9. Construction work shall be as defined in clause 1.3.1 of NZS 6803P: 1984.
10. Construction noise shall not exceed the following levels when measured in accordance with clauses 3.2.1 or 3.2.2 of NZS 6803P: 1984:
  - (i) when measured on any residentially zoned property (excluding areas north of The Stand).

	L <sub>10</sub>	L <sub>95</sub>	L <sub>max</sub>
Monday to Saturday 7am to 8pm	75	60	90
At all other times (night time)	50	45	75

- (ii) when measured on any other site to the south of Quay Street or Tamaki Drive

	L <sub>10</sub>	L <sub>95</sub>	L <sub>max</sub>
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Monday to Saturday 7am to 8pm	80	65	90
At all other times (night time)	60	55	75

The noise shall be measured in accordance with clause 3.2.1 of NZS 6803P: 1984 unless measurement cannot be made outside affected buildings. In cases where noise cannot be measured outside, measurements shall be taken inside the building either in affected habitable space (as defined by the NZ Building Code) or work areas. Levels measured within the building shall be 10dBA or more below those in the above tables.

The Group Manager may allow these standards to be exceeded for emergency works.

When undertaking pile driving in the coastal marine area, the limit of particle velocity (peak particle velocity) measured on any foundation or uppermost full story of any building not on Ports of Auckland Limited land, related to the frequency of ground vibration, shall not exceed the limits of Table I of German Standard DIN 4150 Part 3: 1986 "Structural Vibration in Buildings- Effects on Structures".

Peak particle velocity means the maximum particle velocity in any of three mutually perpendicular directions. The units are millimetres per second (mm/s).

If requested by the Auckland Regional Council the consent holder shall engage a suitably qualified acoustic engineer to monitor noise levels at the nearest residential zoned property (excluding areas north of The Strand). If the noise levels exceed those specified in this condition the applicant shall cease work on that particular activity until either compliance is attained, or approval of the Group Manager is obtained.

11. At least one month prior to the commencement of work the consent holder shall provide the following information to and obtain the approval of the Group Manager;
  - (a) a detailed construction timetable that identifies the significant events, their sequence and duration,
  - (b) Details of the proposed method and management of the works,
12. Within ten days of the completion of all works, the consent holder shall notify the Group Manager in writing of the date of completion.
13. All debris and surplus construction materials shall be removed from the coastal marine area and all damage to that area shall be reinstated to the satisfaction of the Group Manager.
14. The consent holder shall maintain the works in good sound condition and shall not modify, alter or extend these without having obtained all necessary approvals.

5. Within one month of the completion of the works, the consent holder shall provide to the Auckland Regional Council a complete set of "As-Built" plans.

C. SPECIAL CONDITIONS OF CONSENTS (TANGATA WHENUA)

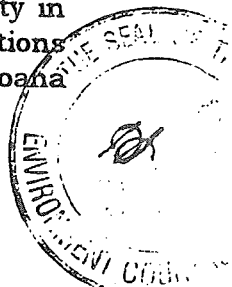
16. The consent holder shall provide to the iwi organisations listed below the following information. The information shall be forwarded no less than one month prior to any construction or works commencing;
- a schedule of the dates of all significant events, their sequence and duration;
  - a summary of all measures being taken to ensure that adverse effects on the environment are avoided, remedied or mitigated;
  - a summary of measures being taken by Ports of Auckland Limited to ensure that terrestrial pests are not being introduced by way of containers handled by the Fergusson Container Terminal; and
  - any measures being taken by Ports of Auckland Limited or the operators using the Fergusson Container Terminal, to reduce the risk of marine organisms entering New Zealand waters.
17. The consent holder shall provide to the listed iwi organisations, a copy of all monitoring and investigation results which are required by special conditions of the consents, and, an invitation to respond, comment or meet to discuss any results (see NB2 below).
18. The consent holder shall consult with the listed iwi organisations to determine, in accordance with tikanga Maori, if there are any matters of protocol which tangata whenua wish to undertake in relation to the commencement, significant events or commissioning of the completed terminal works.

NB 1: The iwi organisations who shall be consulted in relation to the above conditions are:

Te Hao o Ngati Whatua  
Ngati Whatua o Orakei  
Ngaati Te Ata  
Ngai Tai Ki Tamaki Tribal Trust  
Hauraki Maori Trust Board

NB2: The consent holder shall notify the Group Manager of all information provided to the listed iwi groups and any responses received. If appropriate, and with the agreement of the consent holder and the iwi groups, the ARC shall convene meetings/hui should any of the information or issues require further discussion.

NB3: The ARC shall ensure that all the listed iwi groups are provided with monitoring information relating to air, water and sediment quality in the central city area, and shall also advise iwi of any applications referred to it in relation to the disposal of sediment in Tikapa Moana within or beyond the coastal marine area



**C. SPECIAL CONDITIONS OF CONSENTS (STORMWATER):**

19. That the works shall be in general accordance with the information provided in the Assessment of Environmental Effects, dated May 1996, prepared by Ports of Auckland Ltd, and supplied with the application, except as modified by other terms and conditions of these consents.
20. That the final location, design, and maintenance regime of all catchpits and stormwater treatment devices shall be approved by the Group Manager prior to construction.
21. That the consent holder prepare a stormwater management plan for the entire Ferguson Container Terminal site outlining the site practices, and maintenance procedures to be employed to minimise the potential contamination of stormwater discharges from the site for the approval of the Group Manager prior to construction. The plan shall not apply to those stormwater outfalls which are not modified or affected by this proposal.

The management plan should address amongst other things:

- the terminal surface cleaning and maintenance procedures (including frequency) including the disposal procedures for all materials removed;
  - the catchpit cleaning and maintenance procedures (including frequency) including the disposal procedures for all materials removed;
  - spill contingency procedures for both hazardous substances and petroleum spillages;
  - the proposed stormwater grate identification system; and
  - any proposed educational programmes for staff and terminal users including the proposed frequency of the programmes and refresher courses.
22. That a complete set of "as built" plans shall be submitted to the Group Manager within one month of completion of the stormwater system.
  23. The consent holder shall not commit or allow contaminant or material associated with the consent holder's activity to be released otherwise than in conformity with the consent. In the event of any unforeseen release, the consent holder shall:
    - (i) take immediate steps to ensure mitigation of any adverse effects on the environment.
    - (ii) proceed with all diligence to take all reasonable steps to remedy the effects of any unforeseen releases.
    - (iii) notify the Group Manager of the release of any contaminant or material within 12 hours of the first detection.



- (iv) within 24 hours, if so required in writing by the Group Manager provide a written report detailing the nature, manner and cause of the release and steps taken (and being taken if appropriate) to remedy and control the release, and to prevent any further release of such contaminant or material.
- 24. That the consent holder shall ensure that any structures are maintained in a good and sound condition, and shall make any repairs that are necessary, to the satisfaction of the Group Manager.
- 25. That the consent holder shall not modify, alter or extend the structures or any of the works without obtaining all or any necessary resource consents.

**D. SPECIAL CONDITIONS OF CONSENTS (SEDIMENT AND WATER QUALITY)**

**D1. TENDER DOCUMENTS**

- 26. Prior to the calling of tenders for the proposed Fergusson Terminal extension, Tender Documents shall be submitted to the Group Manager for approval.
- 27. The tender documents shall contain detailed design plans and specifications for the proposed works which shall be in compliance with the special conditions on this consent and, amongst other things, shall address matters relating to the operation, management and maintenance of the works, environmental protection measures to be employed and any other relevant details relating to this consent that may be required by the Group Manager at that time.
- 28. Amongst other matters, and where this information is not required by the tender document to be supplied by the successful contractor, the detailed plans and specifications included in the Tender Documents shall contain the following:
  - (i) Details of the equipment and methods to be used for under-bund dredging and for dredging of the new northern berth, for transport and transfer of dredged material, and details of any temporary holding areas for dredged material including storage capacity, design plans and assessment of the effectiveness of any sediment retention systems to be employed, along with identification of any related processes with a high potential for sediment and associated contaminant discharge and the methods to be employed to minimise these discharges,
  - (ii) Details of the equipment and methods to be employed to mix cement and dredged material to form mudcrete and to place this material within the reclamation, along with identification of any related processes with a high potential for sediment and related contaminant discharge, the methods to be employed to minimise these discharges and an assessment of the expected effectiveness of these methods,
  - (iii) Details of the design and construction methods proposed for the reclamation bund walls including design of any sediment retention systems, along with identification of any related processes with a high potential for sediment and related contaminant discharge, the

methods to be employed to minimise these discharges and an assessment of the effectiveness of these methods,

- (iv) Details of the equipment, and methods of construction proposed for filling of the reclamation with material other than mudcrete, details of the quantities, sources and physical (textural and geological) and chemical (bulk chemistry and leaching potential) characteristics of the general fill materials along with identification of any related processes with a high potential for sediment and related contaminant discharge, such as contamination of the general fill material, displacement of existing seabed sediments and seawater within the reclamation, the methods to be employed to minimise these discharges and an assessment of the effectiveness of these methods,
- (v) Details of the proposed equipment and methods of construction proposed for the construction of the new piled wharf structure, along with identification of any related processes with a high potential for sediment and related contaminant discharge, such as discharges during pile drilling and general concreting operations, the methods to be employed to minimise these discharges and an assessment of the effectiveness of these methods,
- (vi) Details of monitoring procedures proposed to provide initial verification that estimates of potential adverse effects associated with the construction works provided in support of the application for this consent were accurate, monitoring procedures proposed to provide ongoing verification that the construction works continue to only have acceptable environmental effects, along with procedures to ensure that appropriate remedial action is taken in the event that any significant adverse effects are detected.

## **D2. PROJECT QUALITY PLANS**

- 29. Prior to the commencement of any works, a Project Quality Plan (or plans) shall be submitted to the Group Manager for approval.
- 30. The Project Quality Plan shall contain the details of how the successful contractors intend to carry out the relevant operation, management and maintenance requirements for the works specified in the approved Tender Documents and shall also contain any relevant details of equipment, methods of construction, and methods intended to minimise potential adverse effects where such proposed final details have been left up to the successful contractor by the Tender Document.
- 31. Amongst other matters, and where relevant measures and requirements are not specified in the approved Tender Document, the Project Quality Plan shall include the following;
  - (i) The name, qualifications and relevant experience of an appropriately qualified and experienced quality systems manager, who shall be responsible for overseeing compliance with the Project Quality Plan.
  - (ii) Names and methods for contact of principal staff members employed by successful contractors, along with details of their defined roles and

responsibilities particularly in relation to ensuring that the Project Quality Plan is adhered to throughout the development project.

- (iii) Proposed detailed construction plans, methods and equipment to be used,
- (iv) Proposed measures designed to minimise the potential for adverse effects of the construction works upon the surrounding harbour environment,
- (v) Proposed programmes to monitor potential adverse effects of the construction works upon the surrounding harbour environment,
- (vi) Definition of a process which will provide the Group Manager with a monthly update or report on the results of monitoring of compliance with the Project Quality Plan and with Special Conditions of this Consent.

In the event that non-compliance with the Project Quality plan is identified then consultation between the following parties or their agents; (Ports of Auckland Ltd, the company supervising the development operation, relevant contractors, ARC), shall be undertaken with a view to producing as soon as practicable a remedial works programme, including additional monitoring, which addresses the issues of non-compliance with the Project Quality Plan or other conditions of this consent. The Group Manager shall approve the proposed remedial works programme, prior to these works commencing.

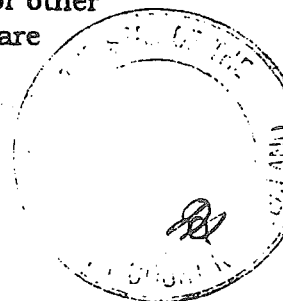
### D3. MONITORING OF DISCHARGES DURING CONSTRUCTION

32. That prior to the proposed works commencing the consent holder or its agents nominated in the Tender Document or Project Quality Plan shall, in consultation with ARC technical staff, finalise an environmental monitoring programme that gains the written approval of the Group Manager.

Amongst other matters and where relevant to the various components of work proposed, the environmental monitoring programme shall address the following;

- (i) As soon as practical after the start of each major component of the proposed works, the carrying out of "intensive monitoring" to verify that estimates, given in information provided in support of the application for this consent, of the magnitude of relevant potential adverse effects were accurate, particularly for discharge of suspended solids, pH, and soluble and sediment-bound contaminants. Major components of the works include; under-bund dredging, dredging the new berth, construction of the reclamation bund walls, construction of the wharf piles, placement of dredgings in temporary storage areas, mixing of mudcrete and its placement within the reclamation, filling of the reclamation with other general fill material. 'Intensive monitoring' of all major components of the works will be required unless the consent holder can demonstrate to the Group Manager's satisfaction that it is unreasonable or unnecessary to require such monitoring of specific areas of proposed works.

- (ii) A programme for ongoing "regular monitoring" of potential adverse effects of the construction works to provide verification that the discharge of suspended sediment, alkalinity (pH) and soluble and sediment-bound contaminants from the works remains within acceptable levels. "Regular monitoring" of the discharge of suspended sediment and pH shall be carried out on at least a fortnightly basis and of soluble and sediment-bound contaminants on a monthly basis unless the consent holder can demonstrate to the Group Managers satisfaction that it is unreasonable to require monitoring of specific areas of potential adverse effect this frequently.
- (iii) Identification of suitable numbers of sample sites and their locations for compliance monitoring "control" sites for ebb and flood tides, of compliance monitoring "test" sites at the 200m and 50m mixing zone boundaries, and of sufficient additional monitoring test sites to provide information on dilution gradients within the mixing zone.
- (iv) For "regular monitoring" of potential effects of sediment discharges from the dredging works each monitoring sample shall be a composite of a surface (approximately 1m below surface) and a depth (approximately 1m in above the seabed) sample. Samples shall be collected on a day that the dredger is operating and, where relevant, shall be representative of the plume generated by the dredging operation (ie. not collected before the plume has had a chance to develop upon the start of dredging activities and not after the plume has had a chance to dissipate upon the completion of dredging activities), and shall be collected as close as practicable to the time of maximum tidal movement (mid ebb and flood tide).
- (v) For "intensive" or "regular" monitoring of potential effects other than the discharge of sediment from dredging operations samples shall also be composites of surface and depth samples as defined in (iv ) above.
- (vi) Notes shall be made for each sampling run recording sampling date, general observations, weather/sea conditions, sampling location, depth and time, high tide and low tide times, and where relevant the time that works, such as dredging, commenced and were completed on the sampling day.
- (vii) Samples shall be analysed for suspended solid levels, pH, and concentrations of key (or indicator) contaminants (measured as total extractable contaminant concentrations) as appropriate for the relevant monitoring programmes. Detection limits shall be sufficient to determine compliance with the acceptable levels defined in special conditions 33-36 below. Samples shall be collected and analysed in accordance with APHA Standard Methods (I 8th edition) or equivalent as approved in writing by the Group Manager. Analytical results for pH and suspended solids shall be copied to the Group Manager within three working days of sample collection. Analytical results for other contaminants shall be copied to the Group Manager as they are received by the consent holder.



- (b) Pursuant to section 116(1) occupation for a period of 35 years commencing from completion of construction, of that part of the coastal marine area in which the new wharf structure, mooring dolphins and connecting link, near northern berth and vessel manoeuvring area are all located, and a 10m strip along the eastern side of the new reclamation, being an area of approximately 4.25ha.

#### REVIEW CONDITION

41. That the conditions of these consents (including any specified quantity) may be reviewed (in accordance with Section 128 of the Resource Management Act 1991) by the Group Manager on the second annual anniversary of the commencement of these consents and subsequently at not less than yearly intervals until construction is completed. Thereafter, the conditions may be reviewed at three yearly intervals in order:
- (i) to deal with any adverse effect on the environment which may arise or potentially arise from the exercise of these consents, and in particular effects on the water quality biota, and the community of the Waitemata Harbour from the discharge of contaminants into the harbour;
  - (ii) to alter the monitoring requirements in light of the results obtained from any monitoring or investigations;
  - (iii) to implement the rules of any relevant regional plan which is proposed or becomes operative after the date of commencement of these consents; and
  - (iv) to consider the development and integration of new technology and/or management practices that would enable practicable reductions in the discharge of contaminants and improved environmental outcomes.

#### DEFINITIONS:

- (i) "Group Manager" means the Group Manager, Environmental Management, Auckland Regional Council or his or her nominated representatives.
- (ii) "Consent Holder" means the Ports of Auckland Limited or its nominated representatives.

## APPENDIX B

**CONSENTS HOLDER:** Ports of Auckland Limited

**PURPOSE OF COASTAL PERMITS:** To carry out the following works and activities which are restricted coastal activities, on the terms and conditions set out below:

- (a) Reclaim an area of seabed to the north and east of the existing Fergusson Container Terminal in the Port of Auckland, of approximately 9.4 hectares (measured on top of the reclamation and excluding the sloping seawalls).
- (b) Dredge the bed of the Waitemata Harbour to the north and east of the existing Fergusson Container Terminal, involving an area of approximately 6 hectares, to facilitate construction of the new reclamation bunds and to provide sufficient water depth (minus 35 metres chart datum) for the new berth.

**LOCATION:** Fergusson Container Terminal and vicinity, Port of Auckland, Waitemata Harbour.

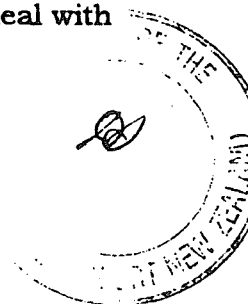
**TERRITORIAL AUTHORITY:** Auckland City Council

**REGIONAL COUNCIL:** Auckland Regional Council

### CONDITIONS OF CONSENTS

#### A. STANDARD CONDITIONS OF CONSENTS:

- 1. That the servants or agents of the Auckland Regional Council shall be permitted access to the relevant parts of the property at all reasonable times for the purpose of carrying out inspections, surveys, investigations, tests, measurements or taking samples.
- 2. That the Minister of Conservation may at any time on the giving of not less than 3 months notice in writing, serve notice on the consent holder of his intention to review, under section 128 of the Resource Management Act, any of the conditions of these consents for any of the following purposes:
  - (i) To deal with any adverse effect on the environment which may arise from the exercise of the consents and which it is appropriate to deal with at a later stage; or
  - (ii) To require the consent holder to adopt the best practicable option to remove or reduce any adverse effect on the environment; or
  - (iii) To deal with any adverse effect on the environment which may arise from the exercise of the consents which was not foreseen at the time the application was considered and which it is appropriate to deal with at the time of review.



3. The consent holder shall pay to the Auckland Regional Council any administrative charge fixed in accordance with s.36(1) of the Resource Management Act 1991, or any additional charge required pursuant to s.36(3) of the Resource Management Act 1991, payable in respect of these resource consents.

4. The consent holder may, pursuant to Section 127(1)(b) of the Act, apply to change or cancel any of the conditions of these resource consents (except those conditions which relate to the duration of the consents).

**B. SPECIAL CONDITIONS OF CONSENTS (GENERAL):**

5. Pursuant to Section 125(1) of the Act, these consents shall not expire for a period of eight (8) years from the date of commencement of the consents. The resource consent for dredging will however lapse if the consent is given full effect to before the end of that period.

6. The work and other activities shall be undertaken generally in accordance with:

- (a) the Beca Carter Hollings & Ferner Ltd and Ports of Auckland Limited plans as identified below:

- (i) "General Arrangement Drawing No 1" (Option B2), Cad File Name 0026C001, dated 21.10.97.
- (ii) "Earthworks and Wharf Sections, Drawing No 2", Cad File Name 0026C002, dated 21.20.97.
- (iii) "Dredging Areas, Drawing No 3", Cad File Name 0026C003, dated 21.10.97.
- (iv) "Stormwater Drainage Concept and Details, Drawing No 6", Cad File Name 0026C006, dated 21.10.97.
- (v) "Additional Area to be Occupied within the Coastal Marine Area for Option B2, Figure 8", Cad File Name 0026C030, dated 21.10.97.

- (b) The Boffa Miskell plans as identified below:

- (i) "Esplanade Reserve Public Access and Planting Plan", Drawing No 950474-01, Revision 1.
- (ii) "Cross Section/Elevation of Boardwalk and Tree Pit", Drawing No 95074-02.
- (iii) "Detail of Expanded Area at Mid Point of Boardwalk", Drawing No 95074-03.

7. That the consent holder shall notify the Group Manager in writing at least ten working days prior to the commencement of any works, of the proposed commencement date of the work.

8. The construction of the works shall be supervised by a qualified geotechnical engineer experienced in dredging, bund construction and reclamation works.
9. The consent holder shall at all times be responsible for the work undertaken and ensure that it complies with these consent conditions.
10. Construction work shall be as defined in clause 1.3.1 of NZS 6803P: 1984.
11. Construction noise shall not exceed the following levels when measured in accordance with clauses 3.2.1 or 3.2.2 of NZS 6803P: 1984:

- (i) when measured on any residentially zoned property (excluding areas north of The Strand).

	L <sub>10</sub>	L <sub>95</sub>	L <sub>max</sub>
Monday to Saturday 7am to 8pm	75	60	90
At all other times (night time)	50	45	75

- (ii) when measured on any other site to the south of Quay Street or Tamaki Drive

	L <sub>10</sub>	L <sub>95</sub>	L <sub>max</sub>
Monday to Saturday 7am to 8pm	80	65	90
At all other times (night time)	60	55	75

The noise shall be measured in accordance with clause 3.2.1 of NZS 6803P: 1984 unless measurement cannot be made outside affected buildings. In cases where noise cannot be measured outside, measurements shall be taken inside the building either in affected habitable space (as defined by the NZ Building Code) or work areas. Levels measured within the building shall be 10dBA or more below those in the above tables.

The Group Manager may allow these standards to be exceeded for emergency works.

When undertaking pile driving in the coastal marine area, the limit of particle velocity (peak particle velocity) measured on any foundation or uppermost full story of any building not on Ports of Auckland Limited land, related to the frequency of ground vibration, shall not exceed the limits of Table I of German Standard DIN 4150 Part 3: 1986 "Structural Vibration in Buildings- Effects on Structures".

Peak particle velocity means the maximum particle velocity in any of three mutually perpendicular directions. The units are millimetres per second (mm/s).

If requested by the Auckland Regional Council the consent holder shall engage a suitably qualified acoustic engineer to monitor noise levels at the nearest



residential zoned property (excluding areas north of The Strand). If the noise levels exceed those specified in this condition the consent holder shall cease work on that particular activity until either compliance is attained, or approval of the Group Manager is obtained.

12. The consent holder shall make provision for an esplanade reserve along the eastern face of the proposed reclamation. The esplanade reserve will in part accommodate a structure of no less than 3.0 metres width for the purpose of providing public access, as well as providing a reasonable access and egress point at the Solent Street end of the proposed reclamation. The esplanade reserve shall extend over the area between MHWS and the crest of the reclamation.

The design and extent of the public access structure along and over the esplanade reserve shall be submitted to the Regional Conservator of the Auckland Conservancy, Department of Conservation, and the Group Manager, prior to the commencement of any works.

Notwithstanding the requirements of condition 12 above, the plans for the boardwalk shall include the following matters:-

- (a) the boardwalk structure shall extend to the beginning of the second truck turning area on the eastern face of the reclamation, but shall extend no further;
- (b) the design shall include a deck of up to a total width (including the boardwalk) of 6.0 metres at the terminus of the boardwalk, and shall also include a similar structure at an appropriate location at or near half way along the length of the boardwalk;
- (c) the design shall include the provision of at least one steel rung vertical ladder at the terminus of the boardwalk, and also another of the same design at the mid-way wide deck area, to ensure that safe egress from the coastal marine area can be made in the event of an emergency;
- (d) the design and location of lighting for the boardwalk to ensure it is adequately lit at all times of the day and night;
- (e) details of all safety features to be incorporated into the boardwalk, including handrails.

The consent holder shall have the financial and maintenance responsibilities for the esplanade reserve.

The consent holder shall have the financial and maintenance responsibility for the structure facilitating useable public access and the financial responsibility for the replacement of the structure.

13. The consent holder shall submit to the Group Manager, a landscaping and maintenance plan for the eastern face of the proposed reclamation. The plan shall indicate the species and location of trees to be planted, and their relationship to the boardwalk structure to secure public access in accordance with special condition 12 of this consent. The plan shall be submitted at least one month prior to tenders for this aspect of the project being called.

14. At least one month prior to the commencement of work the consent holder shall provide the following information to and obtain the approval of the Group Manager.
- (a) A detailed construction timetable that identifies the significant events, their sequence and duration,
  - (b) Details of the proposed method and management of the works,
  - (c) Design details of the reclamation and bund wall and boardwalk,
  - (d) Plans and calculations that provide an assessment of the volume of dredge material to be placed in the reclamation, and that to be disposed of elsewhere.
15. Prior to the commencement of any work the consent holder shall lodge a bond with the Auckland Regional Council. The purpose of the bond is to ensure that final finishing and the provision of an accessible esplanade reserve is undertaken. The amount of the bond shall be determined by the Group Manager, following consultation with the consent holder.
16. Within ten days of the completion of all works, the consent holder shall notify the Group Manager, in writing of the date of completion.
17. All debris and surplus construction materials shall be removed from the coastal marine area and all damage to that area shall be reinstated to the satisfaction of the Group Manager.
18. The consent holder shall maintain the works in good sound condition and shall not modify, alter or extend these without having obtained all necessary approvals.
19. Within one month of the completion of the reclamation and dredging, the consent holder shall provide a copy of the "As-Built" plans to the Hydrographer, Royal New Zealand Navy, PO Box 33341, Takapuna, Auckland.
20. Within one month of the completion of the work, the consent holder shall provide to the Auckland Regional Council a complete set of "As-Built" plans.
21. Prior to the approval of final designs for the reclamation and bund wall, the consent holder shall consult with the Regional On-Scene Commander (ARC) as to the most effective means by which Ports of Auckland Limited can assist the ARC to meet its responsibilities in terms of the provisions of the Maritime Transport Act 1994.

**C. SPECIAL CONDITIONS OF CONSENTS (TANGATA WHENUA)**

22. The consent holder shall provide to the iwi organisations listed below the following information. The information shall be forwarded no less than one month prior to any construction or works commencing;



- a schedule of the dates of all significant events, their sequence and duration;
  - a summary of all measures being taken to ensure that adverse effects on the environment are avoided, remedied or mitigated;
  - a summary of measures being taken by Ports of Auckland Limited to ensure that terrestrial pests are not being introduced by way of containers handled by the Fergusson Container Terminal; and
  - any measures being taken by Ports of Auckland Limited or the operators using the Fergusson Container Terminal, to reduce the risk of marine organisms entering New Zealand waters.
23. The consent holder shall provide to the listed iwi organisations, a copy of all monitoring and investigation results which are required by special conditions of these consents, and an invitation to respond, comment or meet to discuss any results (see NB2 below).
24. The consent holder shall consult with the listed iwi organisations to determine, in accordance with tikanga Maori, if there are any matters of protocol which tangata whenua wish to undertake in relation to the commencement, significant events or commissioning of the completed terminal works.

NB 1: The iwi organisations who shall be consulted in relation to the above conditions are:

Te Hao O Ngati Whatua  
 Ngati Whatua O Orakei  
 Ngaati Te Ata  
 Ngai Tai Ki Tamaki Tribal Trust  
 Hauraki Maori Trust Board

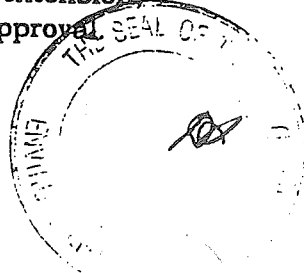
NB2: The consent holder shall notify the Group Manager, of all information provided to the listed iwi groups and any responses received. If appropriate, and with the agreement of the consent holder and the iwi groups, the ARC shall convene meetings/hui should any of the information or issues require further discussion.

NB3: The ARC shall ensure that all the listed iwi groups are provided with monitoring information relating to air, water and sediment quality in the central city area, and shall also advise iwi of any applications referred to it in relation to the disposal of sediment in Tikapa Moana within or beyond the coastal marine area

## **C. SPECIAL CONDITIONS OF CONSENTS (SEDIMENT AND WATER QUALITY)**

### **C1. TENDER DOCUMENTS**

25. Prior to the calling of tenders for the proposed Fergusson Terminal extension Tender Documents shall be submitted to the Group Manager, for approval



6. The tender documents shall contain detailed design plans and specifications for the proposed works which shall be in compliance with the special conditions on this consent and, amongst other things, shall address matters relating to the operation, management and maintenance of the works, environmental protection measures to be employed and any other relevant details relating to this consent that may be required by the Group Manager, at that time.
27. Amongst other matters, and where this information is not required by the tender document to be supplied by the successful contractor, the detailed plans and specifications included in the Tender Documents shall contain the following:
- (i) Details of the equipment and methods to be used for under-bund dredging and for dredging of the new northern berth, for transport and transfer of dredged material, and details of any temporary holding areas for dredged material including storage capacity, design plans and assessment of the effectiveness of any sediment retention systems to be employed, along with identification of any related processes with a high potential for sediment and associated contaminant discharge and the methods to be employed to minimise these discharges,
  - (ii) Details of the equipment and methods to be employed to mix cement and dredged material to form mudcrete and to place this material within the reclamation, along with identification of any related processes with a high potential for sediment and related contaminant discharge, the methods to be employed to minimise these discharges and an assessment of the expected effectiveness of these methods,
  - (iii) Details of the design and construction methods proposed for the reclamation bund walls including design of any sediment retention systems, along with identification of any related processes with a high potential for sediment and related contaminant discharge, the methods to be employed to minimise these discharges and an assessment of the effectiveness of these methods,
  - (iv) Details of the equipment, and methods of construction proposed for filling of the reclamation with material other than mudcrete, details of the quantities, sources and physical (textural and geological) and chemical (bulk chemistry and leaching potential) characteristics of the general fill materials along with identification of any related processes with a high potential for sediment and related contaminant discharge, such as contamination of the general fill material, displacement of existing seabed sediments and seawater within the reclamation, the methods to be employed to minimise these discharges and an assessment of the effectiveness of these methods,
  - (v) Details of the proposed equipment and methods of construction proposed for the construction of the new piled wharf structure, along with identification of any related processes with a high potential for sediment and related contaminant discharge, such as discharges during pile drilling and general concreting operations, the methods to be employed to minimise these discharges and an assessment of the effectiveness of these methods,

- (vi) Details of monitoring procedures proposed to provide initial verification that estimates of potential adverse effects associated with the construction works provided in support of the application for this consent were accurate, monitoring procedures proposed to provide ongoing verification that the construction works continue to only have acceptable environmental effects, along with procedures to ensure that appropriate remedial action is taken in the event that any significant adverse effects are detected.

## **C2. PROJECT QUALITY PLANS**

28. Prior to the commencement of any works, a Project Quality Plan (or plans) shall be submitted to the Group Manager for approval.
29. The Project Quality Plan shall contain the details of how the successful contractors intend to carry out the relevant operation, management and maintenance requirements for the works specified in the approved Tender Documents and shall also contain any relevant details of equipment, methods of construction, and methods intended to minimise potential adverse effects where such proposed final details have been left up to the successful contractor by the Tender Document.
30. Amongst other matters, and where relevant measures and requirements are not specified in the approved Tender Document, the Project Quality Plan shall include the following;
- (i) The name, qualifications and relevant experience of an appropriately qualified and experienced quality systems manager, who shall be responsible for overseeing compliance with the Project Quality Plan.
  - (ii) Names and methods for contact of principal staff members employed by successful contractors, along with details of their defined roles and responsibilities particularly in relation to ensuring that the Project Quality Plan is adhered to throughout the development project.
  - (iii) Proposed detailed construction plans, methods and equipment to be used,
  - (iv) Proposed measures designed to minimise the potential for adverse effects of the construction works upon the surrounding harbour environment,
  - (v) Proposed programmes to monitor potential adverse effects of the construction works upon the surrounding harbour environment,
  - (vi) Definition of a process which will provide the Group Manager, with a monthly update or report on the results of monitoring of compliance with the Project Quality Plan and with Special Conditions of this Consent.

In the event that non-compliance with the Project Quality plan is identified then consultation between the following parties or their agents; Ports of Auckland Ltd, the company supervising the development operation, relevant

contractors, ARC), shall be undertaken with a view to producing as soon as practicable a remedial works programme, including additional monitoring, which addresses the issues of non-compliance with the Project Quality Plan or other conditions of this consent. The Group Manager shall approve the proposed remedial works programme, prior to these works commencing.

**C3. NOTIFICATIONS, FINAL DETAILS AND OTHER PRE-REQUISITES FOR COMMENCEMENT OF DREDGING, BUND WALL CONSTRUCTION AND RECLAMATION FILLING ACTIVITIES**

31. That the consent holder shall notify the Group Manager in writing of the proposed date of commencement of each major component of dredging activity (staged under-bund, and new berth dredging) covered by these consents at least one month prior to the proposed start date for each component. That the consent holder shall also keep the Group Manager advised in writing of changes, as they occur, in scheduling of the dredging works (such as interruptions, delays, and separation of dredging activities into a number of discrete periods), particularly where such changes will affect compliance with any notification and monitoring requirements in special conditions of these consents.
32. That as soon as practicable for each calendar year's dredging works the consent holder shall notify the Maritime Safety Authority (PO Box 27006, Wellington) and the Hydrographic Office, (P O Box 33341, Takapuna, Auckland) of the start of the dredging operation and its expected duration and shall notify the Hydrographic Office of the extent of the resultant changes to the seabed contour once the operation is complete.
33. Any subsequent proposed change of dredging technique from that previously approved in the Tender Document or Project Quality Plan (see special conditions 28-30) must receive written approval from the Group Manager before it commences any works relevant to this permit. Before such approval is given, the consent holder shall provide information, to the satisfaction of the Group Manager, showing that the proposed change of technique will not result in a significant increase in adverse environment effects above those associated with the technique previously approved under this permit.
34. Material (excluding dredged material) imported for use as general fill in the reclamation shall be granular material free of organic matter and containing less than 5% fines. The applicant shall provide to the ARC a statement of the proposed sources of material, its geological composition, its proposed mean size and range of sizes. The applicant shall also clearly state if there are any other materials in the fill other than natural aggregate (e.g. steel, metal etc) which, when placed in the reclamation may cause the release of contaminants into the surrounding environment. This information shall be supplied to the ARC no less than one month prior to the commencement of placement of imported fill material, and shall be updated in the event that alternative sources are used.
35. That for each calendar year's dredging works where not all material dredged is to be disposed of to the Fergusson Terminal reclamation, and at least five working days prior to any dredging activity taking place the consent holder shall provide written confirmation to the Group Manager that all relevant approvals have been obtained for the disposal of the dredged material.

elsewhere than in the reclamation. This confirmation shall include copies of letters of acceptance from an approved sanitary landfill if the material is to be disposed of on land, or copies of a Dumping Permit from the MSA or other relevant consent or permit if marine disposal is to be used. This confirmation shall be updated and any relevant new approvals provided to the Group Manager at least five working days prior to any changed method of disposal being used during the dredging operation.

#### C4. MONITORING OF DISCHARGES DURING CONSTRUCTION

36. That prior to the proposed works commencing the consent holder or its agents nominated in the Tender Document or Project Quality Plan shall, in consultation with ARC technical staff, finalise an environmental monitoring programme that gains the written approval of the Group Manager.

Amongst other matters and where relevant to the various components of work proposed, the environmental monitoring programme shall address the following:

- (i) As soon as practical after the start of each major component of the proposed works, the carrying out of "intensive monitoring" to verify that estimates, given in information provided in support of the application for this consent, of the magnitude of relevant potential adverse effects were accurate, particularly for discharge of suspended solids, pH, and soluble and sediment-bound contaminants. Major components of the works include; under-bund dredging, dredging the new berth, construction of the reclamation bund walls, construction of the wharf piles, placement of dredgings in temporary storage areas, mixing of mudcrete and its placement within the reclamation, filling of the reclamation with other general fill material. 'Intensive monitoring' of all major components of the works will be required unless the consent holder can demonstrate to the Group Managers satisfaction that it is unreasonable or unnecessary to require such monitoring of specific areas of proposed works.
- (ii) A programme for ongoing "regular monitoring" of potential adverse effects of the construction works to provide verification that the discharge of suspended sediment, alkalinity (pH) and soluble and sediment-bound contaminants from the works remains within acceptable levels. "Regular monitoring" of the discharge of suspended sediment and pH shall be carried out on at least a fortnightly basis and of soluble and sediment-bound contaminants on a monthly basis unless the consent holder can demonstrate to the Group Managers satisfaction that it is unreasonable to require monitoring of specific areas of potential adverse effect this frequently.
- (iii) Identification of suitable numbers of sample sites and their locations for compliance monitoring "control" sites for ebb and flood tides, of compliance monitoring "test" sites at the 200m and 50m mixing zone boundaries, and of sufficient additional monitoring test sites to provide information on dilution gradients within the mixing zone.
- (iv) For "regular monitoring" of potential effects of sediment discharges from the dredging works each monitoring sample shall be a composite

of a surface (approximately 1m below surface) and a depth (approximately 1m above the seabed) sample. Samples shall be collected on a day that the dredger is operating and, where relevant, shall be representative of the plume generated by the dredging operation (ie. not collected before the plume has had a chance to develop upon the start of dredging activities and not after the plume has had a chance to dissipate upon the completion of dredging activities), and shall be collected as close as practicable to the time of maximum tidal movement (mid ebb and flood tide).

- (v) For "intensive" or "regular" monitoring of potential effects other than the discharge of sediment from dredging operations samples shall also be composites of surface and depth samples as defined in (iv) above.
- (vi) Notes shall be made for each sampling run recording sampling date, general observations, weather/sea conditions, sampling location, depth and time, high tide and low tide times, and where relevant the time that works, such as dredging, commenced and were completed on the sampling day.
- (vii) Samples shall be analysed for suspended solid levels, pH, and concentrations of key (or indicator) contaminants (measured as total extractable contaminant concentrations) as appropriate for the relevant monitoring programmes. Detection limits shall be sufficient to determine compliance with the acceptable levels defined in special conditions 37-40 below. Samples shall be collected and analysed in accordance with APHA Standard Methods (18th edition) or equivalent as approved in writing by the Group Manager. Analytical results for pH and suspended solids shall be copied to the Group Manager within three working days of sample collection. Analytical results for other contaminants shall be copied to the Group Manager as they are received by the consent holder.
- (viii) For "intensive monitoring" in the event that any trigger level is exceeded in any test sample collected at a mixing zone boundary (see special condition 37) the consent holder shall, as soon as practicable, consult with the Group Manager over possible explanations and shall implement any modifications to the relevant works operation that the Group Manager considers appropriate following this consultation.
- (ix) For "regular monitoring" in the event that any trigger level is exceeded in any test sample collected at a mixing zone boundary (see special condition 37) the "intensive monitoring" procedure shall be repeated within three working days of receipt of the results showing the exceedance or when the relevant activity (eg dredging) next takes place (if this does not occur within the three day period given above).
- (x) In the event that the repeat "intensive monitoring", required by (ix) above, also detects exceedance of the trigger level in any test sample collected at a mixing zone boundary, the consent holder shall, as soon as practicable, consult with the Group Manager over possible explanations and shall implement any modifications to the relevant works operation that the Group Manager considers appropriate following this consultation.



- (xi) In the event that the works operation is modified, following consultation, required by (x) above, the repeat "intensive monitoring", required by (ix) above, shall be repeated. Consultation, modification and sampling shall be repeated until the trigger level is no longer exceeded in any relevant test sample or the Group Manager is satisfied that the continued exceedance has no associated risk of significant adverse environmental effects.
37. That the mixing zone boundary for compliance with acceptable levels of sediment discharge from the proposed construction works into the harbour waters shall be a seaward line 200m out from and parallel to the edge of proposed new reclamation wall to the east and north and parallel to the existing reclamation wall to the west. Acceptable levels of sediment discharge (trigger level) shall be a suspended solids level in any test sample collected at the mixing zone boundary downdrift of the dredging site exceeding 25 g/m<sup>3</sup> above the suspended solids level measured in the updrift control sample collected during the same sampling run (see special condition 36).
38. That, other than for pH, the mixing zone boundary for compliance with acceptable levels of soluble and sediment-bound contaminants discharged from the proposed dredging activities into the harbour waters shall be a seaward line 200m out from and parallel to the edge of proposed new reclamation wall to the east and north and parallel to the existing reclamation wall to the west. Acceptable levels (trigger levels) shall be concentrations equal to or less than relevant USEPA chronic criteria for protection of marine biota unless ambient concentrations present within harbour waters can be shown to equal or exceed these criteria.
39. That the mixing zone boundary for compliance with acceptable levels of soluble and sediment-bound contaminants, including pH, discharged from the proposed reclamation filling activities into the harbour waters shall be a seaward line 50m out from and parallel to the edge of proposed new reclamation wall to the east and north and parallel to the existing reclamation wall to the west. Acceptable levels for pH (trigger level) shall be an increase up to but not exceeding a pH of 8.5 and for all other chemicals shall be concentrations equal to or less than relevant USEPA chronic criteria for protection of marine biota unless ambient concentrations present within harbour waters can be shown to equal or exceed these criteria.
40. The trigger levels given in the above special conditions may be reviewed by the Group Manager at any time that the consent holder is able to demonstrate to the Group Manager's satisfaction that alternative trigger level will provide a more appropriate indicator of adverse environmental effects likely to be associated with the construction works.
- C5. NOTIFICATION REQUIREMENTS UPON COMPLETION OF DREDGING**
41. That within ten working days of each calendar year's dredging works being completed the consent holder shall notify the Group Manager in writing of the date of completion of the relevant dredging works.
42. That the consent holder shall oversee all dredging operations and upon their completion shall provide written certification, accompanying the information

required by special condition 41, that the works have been carried out in accordance with the conditions in this permit.

43. That within one month of the completion of each discrete period of dredging works identified by special conditions 41 and 42 (above) the consent holder shall provide the Group Manager with the best available estimate of the volume of material removed from the seabed along with copies of the information upon which the estimate is based.

**D. SPECIAL CONDITIONS (GEOTECHNICAL)**

44. No less than one month prior to the construction of the bund and reclamation, the final design including any additional investigations, construction drawings, reports, calculations and construction specifications shall be submitted to the Group Manager. The information shall detail the date of commencement of construction of the bunds, and a construction sequence (including dates to the nearest week) for the bund construction and filling of the reclamation.
45. The applicant shall ensure that a geotechnical engineer, experienced in the design and construction of reclamation bunds and reclamations be commissioned to observe, inspect and report during the construction of the proposed works. The consent holder shall supply the Group Manager a report at the end of each calendar month which details the construction undertaken in the preceding calendar month, any unforeseen issues or incidents arising, and any remedial works that need to be undertaken in the event of unforeseen events such as partial failure.
46. Notwithstanding special condition 45, any partial or complete failure of the bund walls shall be reported to the Group Manager within 24 hours of the failure. The information shall detail the location of the failure, the approximate volume and composition of any material released into the CMA, any actual or potential effects, and a description of the remedial works necessary.
47. The consent holder shall include in the documentation accompanying the final design, a report summarising the sensitivity analysis undertaken in the design process and any relevant conclusions and recommendations. The report shall be submitted to the Group Manager no less than one month prior to any works commencing.
48. The consent holder shall provide to the Group Manager a schedule of the location of piezometers and settlement monitoring points in the reclamation. The schedule shall also identify the range of acceptable piezometric pressures at stages in the construction of the reclamation, and threshold values related to these stages. If the piezometric levels at any stage exceed those threshold values, the consent holder shall:
- (a) Monitor piezometric values and settlement rates for three consecutive days and report to the Auckland Regional Council on the third day;
  - (b) Should piezometric values still exceed the threshold values for more than three consecutive days, the consent holder shall take all

necessary steps to reduce the pressure to below the threshold value, and

- (c) Once piezometric pressure has stabilised to below threshold values, the consent holder shall submit to the Group Manager, ARC Environment a report on the incident, any adverse effects which arose, and what measures are being taken to avoid any further such incidences in the future.

49. Imported hardfill used in the lower levels of the pavement construction, shall comply with the definition provided in Section 3d(ii) "Quality of Fill Material" for the ARC Technical Publication No. 60 "Water and Soil Management Guideline for Cleanfill Operations."

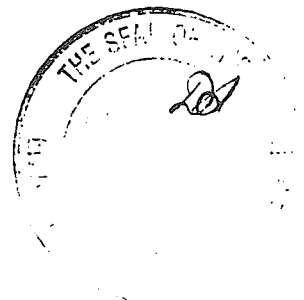
#### E. NAVIGATION

50. Prior to the completion of the works, the consent holder shall submit to the Group Manager a navigation and safety management plan for the expanded Fergusson Container Terminal. The plan shall identify:

- (a) Berthing practices for the new northern berth including information on manoeuvring areas and likely frequency of ship turning based on existing and projected future vessel traffic;
- (b) Steps taken by Ports of Auckland Limited since the granting of this resource consent to improve warning to other users of the harbour of the departure of a vessel from any berth at the Fergusson Container Terminal. The consent holder shall consult with the Auckland Regional Council, the Maritime Safety Authority, Fullers Ferries Limited and the Auckland Yachting and Boating Association when preparing this report;
- (c) The expected changes in volumes and types of vessels using the Fergusson Container Terminal in the next 10 years; and
- (d) Any recommendations which the consent holder considers would improve the safety of users of the waterway between the Fergusson Container Terminal and Devonport Wharf, including the possibility of a "nowcasting" point on the proposed eastern mooring dolphin, and a day and night signal on Mt Victoria.

51. The consent holder shall consult with:

- (a) the Auckland Regional Council, the Maritime Safety Authority, the Auckland Coast Guard; and
  - (b) Fullers Limited and the Auckland Yachting and Boating Association
- in the development of the plan.



## **HYDRAULICS AND SEDIMENTATION**

52. The consent holder shall undertake a monitoring programme in order to assess the long term and cumulative effects of the construction of the reclamation and facilities on the following matters:

- (a) Long term changes in tidal velocities and distributions between the Fergusson Container Terminal and Devonport Wharf;
- (b) Patterns and rates of sedimentation (especially deposition) in the Waitemata Harbour in the area bounded by a line from Stanley Point to Marsden Wharf, and a line from North Head to Tamaki Drive.

The methodology for the monitoring shall be determined, in consultation with the ARC technical staff prior to the proposed works commencing. The finalised monitoring programme shall gain the approval of the Group Manager. In particular, the methodology design shall ensure that the following matters can be investigated and addressed:-

- (i) whether the effect of the proposed development will be to lead to a long term increase in tidal velocities, or an adjustment in channel geometry;
- (ii) whether long term sedimentation patterns in the harbour will be altered by the expansion of the Fergusson Container Terminal;
- (iii) whether a cumulative adverse effect can be identified, and whether a threshold for reclamation or channel restriction in this part of the harbour can be determined.

The consent holder shall report to the Group Manager on these matters at intervals of: -

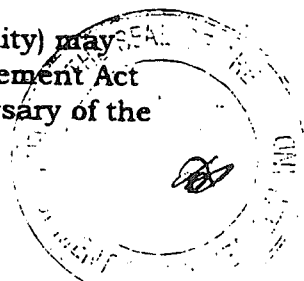
- every six months during construction of the facility;
- every twelve months for the first 5 years after completion of the construction of the project;
- every five years thereafter.

## **G. DURATION OF CONSENTS**

53. Pursuant to Section 123(a) and (b) of the Act, the consent for the reclamation shall be granted for an unlimited time, and the coastal permit for the dredging works in the coastal marine area shall be for a period of 35 years from the date of the commencement of this consent under sections 116(3) and 119(7).

## **H. REVIEW CONDITION**

54. That the conditions of these consents (including any specified quantity) may be reviewed (in accordance with Section 128 of the Resource Management Act 1991) by the Minister of Conservation on the second annual anniversary of the



commencement of these consents and subsequently at not less than yearly intervals until construction is completed. Thereafter, the conditions may be reviewed at three yearly intervals in order:

- (i) to deal with any adverse effect on the environment which may arise or potentially arise from the exercise of these consents, and in particular effects on the water quality biota, and the community of the Waitemata Harbour from the discharge of contaminants into the harbour;
- (ii) to alter the monitoring requirements in light of the results obtained from any monitoring or investigations;
- (iii) to implement the rules of any relevant regional plan which is proposed or becomes operative after the date of commencement of these consents; and
- (iv) to consider the development and integration of new technology and/or management practices that would enable practicable reductions in the discharge of contaminants and improved environmental outcomes.

**DEFINITIONS:**

- (i) "Group Manager": means the Group Manager, Environmental Management Auckland Regional Council or his/her nominated representatives.
- (ii) "Regional Conservator": means Regional Conservator, Department of Conservation, Auckland Conservancy or his/her nominated representatives.
- (iii) "Consent holder": means Ports of Auckland Limited or its nominated representatives.



## APPENDIX C

**CONSENTS HOLDER:** Ports of Auckland Limited

### **PURPOSE OF LAND USE CONSENT:**

To carry out the following works and activities, on the terms and conditions set out below, on the proposed new reclamation of approximately 9.4 hectares to the north and east of the Ferguson Container Terminal at Solent Street in the Port of Auckland.

- (a) Use of the proposed new reclamation for the loading and unloading of vessels and cargo, storage of cargo, truck exchanges, and servicing of vessels and equipment, and to construct and use reefer towers for power and refrigeration and to construct and use a connecting link to the new mooring dolphin.
- (b) Construct and use seven light poles 30m high and 18 light poles up to 15m high.
- (c) Construct and use two container cranes, together with the use of existing container cranes.
- (d) Construct and use utilities and services including:
  - (i) the demolition of the existing northern substation and the construction of a new substation on the NE corner of the new reclamation (approximately 12m long, 6m wide, 4m high);
  - (ii) the provision of cables within the reclamation and on the mooring dolphin connecting link;
  - (iii) the possible removal of the existing northern toilet block and the construction and use of new toilet facilities on the new reclamation, including the laying of a new sewer line; and
  - (iv) an additional 200mm diameter water main along the eastern side of the reclamation.

### **CONDITIONS**

- (A) The development shall be in general accordance with the plans and assessment of environmental effects submitted by Ports of Auckland Limited in May 1996, except as modified by the plans specified below, or as may be needed to be changed to meet other conditions of consent:
  - (a) the Beca Carter Hollings and Ferner Limited and Ports of Auckland Limited plans as identified below:
    - (i) "General Arrangement Drawing No 1" (Option B2), Cad File Name 0026C001, dated 21.10.97.
    - (ii) "Earthworks and Wharf Sections, Drawing No 2", Cad File Name 0026C002, dated 21.20.97.

- (iii) "Lighting Tower and Layout, Drawing No 5", Cad File Name 0026C003, dated 21.1.0.97.
- (iv) "Stormwater Drainage Concept and Details, Drawing No 6", Cad File Name 0026C006, dated 21.10.97.
- (v) "Walkway Layout, Drawing No 7", Cad File Name 0026C007 dated 21.1.0.97.

(b) The Boffa Miskell plans as identified below:

- (i) "Esplanade Reserve Public Access and Planting Plan", Drawing No 950474-01, Revision 1.
- (ii) "Cross Section/Elevation of Boardwalk and Tree Pit", Drawing No 95074-02.
- (iii) "Detail of Expanded Area at Mid Point of Boardwalk", Drawing No. 95074-03.

- (B) All relevant bylaws are complied with and all necessary consents obtained.
- (C) A wheel wash shall be installed and used on the site during the period of construction to ensure that loose material is not carried by vehicle types and deposited on public roads in wet weather or at other times. During such times the road carriageway adjacent to the site shall be hosed down at the end of each working day.
- (D) During construction of the site all stormwater runoff from the site is to be managed and controlled to minimise silt, sediment or water containing silt or sediment being discharged into stormwater pipes, drains, channels or soakage systems by generally employing the methods of control stormwater outlined in "ARC Technical Publication No. 2, Erosion and Sediment Control Guidelines for Earthworks, 1992".
- (E) The loading and unloading of all vehicles associated with the building construction shall take place within the site boundaries of the Port.
- (F) That carparking be provided in accordance with the provisions of the Operative Transitional District Plan being the former Waitemata Harbour Maritime Planning Scheme.
- (G) All parking and loading spaces shall be designed in accordance with rule 10.10.04 Size and Access to Parking and Loading Spaces of the 1991 Operative District Plan.
- (H) The whole of the site not used for landscaping shall, before the commencement of the use, and thereafter for as long as the use is continued, be formed, provided with a sealed all weather surface, drained, and maintained to the satisfaction of the Council. This condition shall not apply to areas of the site that are not in use while consolidation of fill its taking place.

## Activity Noise

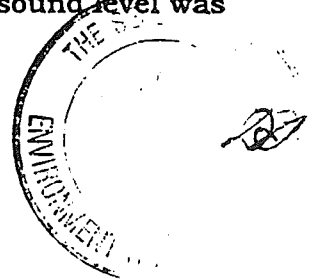
1. The short-term average sound level ( $L_{10}$ ) and  $L_{95}$  and  $L_{max}$  levels arising from any activity occurring on the Fergusson container Terminal shall not exceed the limits stated in paragraphs 2 and 3 of this condition.
2. When the second levels identified in clause 1 above are measured at or within the boundary of any adjacent residentially zoned site, excluding areas to the north of The Strand:

On all days 7am to 11pm	$L_{10}$ 55dBA
On all days 11pm to 7am	$L_{10}$ 50dBA $L_{max}$ 75dBA

3. When the sound levels identified in clause 1 above are measured on the southern side of Quay St as defined from time to time:

On all days 11pm to 7am	$L_{10}$ 60dBA $L_{95}$ 55dBA $L_{max}$ 75dBA
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4. Noise measurements shall be taken when wind speed is less than 10 knots. Subject to the express provisions in these conditions, sound levels shall be measured and assessed in accordance with the requirements of NZS6801:1991 "Measurement of Sound" and NZS6802:1991 "Assessment of Environmental Sound". The noise shall be measured with a sound level meter complying at least with the international Standard IEC 651 (1979) Sound Level Meters, Type 1.
5. Terms used shall be defined as in NZS 6801:1991 Measurement of Sound. The following definitions shall apply for terms not defined in NZS 6801:1991: SHORT-TERM AVERAGE SOUND LEVEL - shall be the inverse-logarithmic average of any four  $L_{10}$  (15 minutes) values obtained during a single day (7am to 10pm) or night (10pm to 7am the following day).
6. In determining compliance with clause 1 of this condition, an exceedance of 5 dBA or less (eg, a night-time short-term average sound level of 55 dBA or less) shall be deemed to be marginal. The holder of this consent shall not be in breach of these conditions of consent for marginal compliance, unless it is proven that the precision and accuracy of the measurement system and methods is superior to the amount of the marginal exceedance. Note: the effect of this clause is to ensure that the long-term average sound level (measured over 7 sequential suitable days) cannot increase to more than 53 dBA due to the statistical variation in the short-term sound level.
7. Care shall be taken to ensure that the short-term average sound level represents noise from port activities, and is not influenced by noise from other sources. The time period between 3:00 a.m. and 5:00 a.m. daily shall be the preferred time for noise measurements. If the short-term average sound level is wholly or partly determined from measurements at other times, then records shall be adequate to demonstrate that the short-term average sound level was not influenced by noise from non-port sources.





8. If the wind speed in the vicinity of both the subject site and the receiver, (any intervening area, is known to have exceeded 10 knots during any measurement interval, then that measurement interval shall not be used to determine the short-term average sound level. The holder of this consent shall maintain an anemometer at or close to the site that is the subject of this consent, and shall make data gathered freely available to any person requiring it for monitoring purposes. That shall not preclude the use of wind data from other locations. Measurements shall be accompanied by records of air temperature. There are no other restrictions on weather conditions.
9. Unattended (automated) measurements may be satisfactory for long-term monitoring of port noise. Data from unattended monitoring shall not be relied upon exclusively to prove a breach of these conditions, and validating data from attended measurements shall be required.
10. The holder of this consent shall prepare, maintain and implement a noise management plan, with the assistance of a person suitably qualified and experienced in acoustics. The plan is to identify all potential noise sources as far as they can be ascertained, and indicate the means that will be implemented to achieve compliance with the noise limits specified in this consent, and the duty under section 16 RMA. The plan is also to include a provision for ongoing liaison with the Parnell community, including liaison with representatives of residents groups. A copy of the plan shall be provided to the City Council and any incorporated residents groups in Parnell within one month of the consent commencing, and while the Council may have the plan audited at the consent holder's expense, any such audit shall not prevent the consent holder from proceeding. The goals of the management plan shall include a short-term average sound level from operation of the expanded Fergusson Container Terminal measured at land zoned residential (excluding land north of The Strand), of 45 dBA between the hours of 11pm to 7am in areas having low background sound level, by the application of practicable measures.

(J) Construction Noise and Vibration

1. Construction work shall be as defined in clause 1.3.1 of NZS 6803P:1984.
2. Construction noise shall not exceed the following levels when measured in accordance with clause 3.2.1 or 3.2.2 of NZS 6803P: 1984:
  - (i) when measured on any residentially zoned property (excluding areas north of The Strand).

	L <sub>10</sub>	L <sub>95</sub>	L <sub>max</sub>
Monday to Saturday 7am to 8pm	75	60	90
At all other times (night time)	50	45	75

- (ii) when measured on any other site to the south of Quay St or Tamaki Drive

	L <sub>10</sub>	L <sub>95</sub>	L <sub>max</sub>
Monday to Saturday 7am to 8pm	80	65	90
At all other times (night time)	60	55	75

3. The noise shall be measured in accordance with clause 3.2.1 of NZS 6803P:1984 unless measurement cannot be made outside affected buildings. In cases where noise cannot be measured outside, measurements shall be taken inside the building either in affected habitable space (as defined by the NZ Building Code) or work areas. Levels measured within the building shall be 10 dBA or more below those in the above tables.
4. The Council may allow these standards to be exceeded for emergency construction work.
5. When undertaking pile driving, the limit of particle velocity (peak particle velocity) measured on any foundation or uppermost full storey of any building not on Ports of Auckland Ltd land, related to the frequency of ground vibration, shall not exceed the limits of Table 1 of German standard DIN 4150 Part 3:1986 "Structural Vibration in Buildings-Effects on Structures".

Peak particle velocity means the maximum particle velocity in any of three mutually perpendicular directions. The units are millimetres per second (mm/s).

- (K) That the height of the lighting poles including any ancillary structures shall not exceed 30 metres for the 7 new larger lighting poles and 15 metres for the 18 smaller poles.
- (L) That all luminaries shall be so aimed and/or screened so that they do not detrimentally affect drivers on Quay St, to the satisfaction of the Manager; Development Planning.
- (M) That all luminaries shall be aimed so that the angle between the lighting post and the luminaire direction of aim (the tilt angle) does not exceed 70 degrees.
- (N) That the maximum illuminance from the lights when in use measured on the wharf or reclamation on a horizontal or vertical plane shall not exceed 125 lux at 2000 hours.
- (O) That the maximum illuminance from the lights when in use measured 10 metres from the north and eastern edge of the wharf or reclamation on a horizontal or vertical plane shall not exceed 50 lux at 2000 hours.
- (P) That the light poles and associated structures be maintained or painted in neutral colours to blend in as far as practicable with other port activities, to the satisfaction of the Manager; Development Planning subject only to any requirements of the Civil Aviation Authority.

- (Q) The resource consent holder shall adopt all reasonably practicable measures to minimise the effects of lighting, especially glare, on the existing residential area of Parnell from the expanded terminal operation.
- (R) To reduce the effects on the environment of spill light and glare when viewed from a distance, the design of the new lighting shall be carried out using luminaries having asymmetrical optics and sharp front cut-off characteristics.
- (S) Prior to the commencement of any building development, the resource consent holder shall pay to the Council as a reserve contribution, an amount equal to 0.5% of the assessed value of the development as determined by the Development Services Manager, Hobson Eastern Bays Area Office. For the this purpose assessed value shall be as defined under section 270 of the Local Government Act 1974.
- (T) This resource consent will lapse if not given effect after 8 years from the date of commencement of this consent.



△ Approved by the Council

