

**IN THE MATTER OF:**

The Housing Accords and Special  
Housing Areas Act 2013

**AND**

**IN THE MATTER OF:**

A 39-unit residential development  
within the grounds of the Mary  
Potter Hospice Foundation's In-  
Patient Hospice at 48-62 Mein  
Street, Newtown.

**DECISION OF THE INDEPENDENT HEARING COMMISSIONER  
APPOINTED BY  
WELLINGTON CITY COUNCIL UNDER DELEGATED AUTHORITY**

**Independent Commissioner:**  
Gina Sweetman

**11 September 2017**

## WELLINGTON CITY COUNCIL

### DECISION OF INDEPENDENT COMMISSIONER

#### 1.0 Introduction

1. This is an application under the Housing Accords and Special Housing Areas Act 2013 (“HASHAA”) to construct 39 residential dwelling units within a ‘stepped’ building of up to six storeys on the site of and adjacent to the existing Mary Potter Hospice at 48-62 Mein Street, Newtown (Parts Section 790 City of Wellington; Lot 1 DP 76525).
2. The HASHAA has as its express purpose the facilitation of an increase in land and housing supply in certain regions or districts, including Wellington City.
3. The proposal meets the requirements for a Qualifying Development under section 14 of the HASHAA.
4. The Council notified 14 landowners in accordance with its discretion under section 29 of HASHAA. All 11 submissions received opposed the application.
5. I visited the site and surrounds on the 27th July 2017.
6. A hearing was held on the 3<sup>rd</sup> and 4<sup>th</sup> August 2017. I adjourned the hearing on the 4<sup>th</sup> August and I issued a minute recording further information to be prepared and circulated, as discussed with the parties. Following receipt of this information, I then provided parties to the hearing with an opportunity to comment on the information. Finally, on receipt of those comments, I requested that the closing statement be provided by Wednesday 30<sup>th</sup> August 2017. On receipt and review of that statement, I closed the hearing on 31 August 2017.

#### 2.0 The Proposal

7. The section 42A report sets out a description of the proposal that I do not need to repeat here. Effectively, the applicant wishes to construct a new building comprising 39 apartments and six ‘stepped’ levels which would be retained in Hospice ownership, and rented out. A new café is proposed as part of the development, housed in the new building, but serving both the existing Hospice and the new apartment building. It would replace the existing Hospice café. Plans show that there would be access from both the Hospice and the apartment building. Earthworks will be required to prepare the site for the new building, in particular a basement carparking area.
8. I consider it appropriate to set out aspects of the proposal as further described and amended by the applicant through the course of the hearing, as this with the AEE forms the scope of the application that under consideration. I note that this does not constitute the full range of the matter that is applied for. The scope of the consent is determined by the Assessment of Environmental Effects and accompanying documents submitted with the application and the evidence and legal submissions presented during the course of the hearing.
9. In particular:

- The proposed building would accommodate 29 studio units, seven one-bedroomed units and three two-bedroomed units.
- The building would be 16.2m at its highest northern point.
- Communal outdoor space would be provided to the east and west of the building. All but one unit would have its own private balcony.
- The applicant proposes to provide 21 parking spaces for the residential units, which includes existing and new parking on site.
- A new low fence is proposed between 36 Owen Street and the parking spaces.
- The lean-tos located at the rear of 58 – 62 Mein Street are to be removed to enable the construction of the building.

### **3.0 The Hearing and Attendances**

10. The hearing was held at the Wellington City Council building on 3<sup>rd</sup> and 4<sup>th</sup> August 2017.
11. The following parties and witnesses appeared.

#### **For the Applicant:**

Ms. Jill Gregory (Counsel)  
 Mr. Malcolm Bruce (Representative of the Mary Potter Hospice Foundation)  
 Mr. Jon Devine (Engineer)  
 Mr. Huw Parslow (Urban Design)  
 Mr. Chris Stevens (Shading)  
 Mr. Gary Clark (Traffic)  
 Mr. Mark St Clair (Planning)

#### **For Wellington City Council (WCC):**

Ms. Julia White (Counsel)  
 Mr. Bill Stevens<sup>1</sup> (RMA planning and s42A reporting officer);  
 Mr. Morten Gjerde (Urban Design)  
 Mr. John Dennison (Noise)  
 Mr. Soon Tech Kong (Traffic)

#### **Submitters:**

Mr. Morgan Slyfield (acting on behalf of all the parties who filed submissions in opposition, Counsel)  
 Mr. Lindsay Daysh (acting on behalf of the combined notified landowners, Planning)  
 Mr. Tim Kelly (acting on behalf of the submitters in opposition, Traffic)  
 Mr. Tony Rogers (owner of 28 Owen Street)  
 Mr. Nick and Mrs. Alex Granville (owners of 34 Owen Street)

12. I was assisted in an administrative capacity by Ms. Hayley Scurr, Hearings Administrator, WCC. I was also assisted by Ms. Angela Penfold, an independent planning consultant, who took notes for me through the hearing.
13. All of the material presented by the above parties is held on file at the Council. For the sake of brevity, I do not repeat all the material put before me in the

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<sup>1</sup> I note that the s42A report was authored by Mr. Vincent Murphy who has since left the Council. Mr. Stevens acted as peer reviewer of the report and has adopted the report as his own. As such, and for simplicity, I refer to Mr. Stevens through this decision, rather than Mr. Murphy.

decision. I do, however, refer to relevant matters raised in the material in the decision.

#### 4.0 Notification and Submissions

14. The Council's s42A (RMA) report summarises the notification and submission process. I have adopted this summary, amending as appropriate.
15. Notice of the application was served on the following owners of adjacent land on 30 May 2017, in accordance with section 29(3) of the HASHAA:
  - 64 Mein Street (AKA 20 Owen Street)
  - 66 Mein Street
  - 72 Mein Street
  - 17 Owen Street
  - 17A Owen Street
  - 23 Owen Street
  - 25 Owen Street
  - 24A Owen Street
  - 24B Owen Street
  - 26 Owen Street
  - 27 Owen Street
  - 28 Owen Street
  - 34 Owen Street
  - 36 Owen Street

#### Submissions:

16. A total of 11 submissions were received by the close of submissions on 29 June 2017 at 4pm. One of these submissions was re-submitted with additional information after the 4pm closing time of the submission period, at 11.39pm on 29 June 2017. The Council accepted this submission given the revisions were the insertion of pictures only, and that the submission was received on the same date as the close of submissions.
17. The following parties submitted on the application:

Submitter Number	Name	Street	Support/Oppose
1	Tony Rogers & Janine Fitzgerald	28 Owen Street	Oppose
2	Paul Ward	25 Owen Street	Oppose
3	Jennifer Shand	24 Owen Street	Oppose
4	Amy White	40 Owen Street	Oppose
5	Neil Thornton and Stephen Pool	36 Owen Street	Oppose
6	Fiona Luey	23 Owen Street	Oppose
7	Joycelyn Raffils	26 Owen Street	Oppose
8	Maryana Forde	27 Owen Street	Oppose
9	Lindsay Daysh	On Behalf of all owners of adjacent	Oppose

		land served notice of the application	
10	Bernie Tkacz	17 Owen Street	Oppose
11	Alex and Nick Granville	34 Owen Street	Oppose

18. I note that submission 4 was received from a person who was not served notice of the application. As the Act only allows persons who are notified to make a submission, I am unable to accept the submission.
19. The issues raised in the submissions were summarised by the Council's reporting officer as follows:

*Residential Amenity:*

- Noise effects from the use of proposed dwellings
- Loss of sunlight and additional experience of shading, and associated increased likelihood of damp conditions/heat loss within dwellings on adjacent sites
- Bulk and dominance
- Loss of privacy
- Glare from parked vehicles during night-time hours
- Parking displacement
- Future additional parking demand generated by the hospice to be transferred to the street
- Unsightly rubbish bins (visual effects)
- Lack of open space, and issues with tree protection and landscaping
- Pedestrian access routes, and additional privacy effects of increased pedestrian use of the site
- Mitigation measures by way of reducing the scale of the proposed development not being sufficient to address adverse residential amenity effects

*Earthworks and Construction:*

- Construction-related effects (disrupted access, dust, construction noise and traffic)
- Earthworks having to be undertaken on adjacent land
- Cranes overhanging private sites

*Other effects:*

- Traffic generation (including traffic generated by the café)
- Urban design/neighbourhood character outcomes

*Planning arguments:*

- Appropriateness of a permitted baseline comparison
- Inconsistency with objectives and policies of the District Plan
- Argument that if assessed against the 'gateway test' which applies under section 104D of the RMA, which applies under the RMA given the non-complying activity status of the proposal, the proposal would fail to pass the two limbs of the gateway test and consent should not be granted

- Opposition to the inclusion of a café, dispute as to the use of the term ‘café’, and implications of the inclusion of the café in terms of the proposal being a qualifying development under the Act

*Housing affordability and the gazetting of the site as a Special Housing Area:*

- The proposal not alleviating the need for affordable dwellings in Wellington
- Lack of transparency in gazetting the site as a Special Housing Area, issues with the site being gazetted as a Special Housing Area
- Inconsistency with the Wellington Housing Accord

*Positive sentiments:*

- Supportive of the hospice in terms of the services it provides to the wider Wellington community

*Other matters:*

- Previous consent history and lack of compliance with previous consent conditions. This has been dealt with separately by Council’s Compliance team.
- Credibility of applicant’s specialist traffic report.

## **5.0 Relevant Statutory Framework**

20. Sections 34 and 35 of the HASHAA provide the statutory framework for consideration of an application for a qualifying development in a Special Housing Area. Where consent is granted, conditions may be imposed (sections 37 and 38 of the HASHAA).
21. Section 34(1) details the matters to which the Authority must have regard in considering this application and the submissions received. Section 34 dictates an order of weighting from sub section (1)(a) to sub section (1)(e). The key considerations are, in descending order of priority:
  - (a) The purpose of the HASHAA;
  - (b) The matters in Part 2 of the Resource Management Act (“RMA”);
  - (c) Any relevant proposed plan;
  - (d) Any relevant consideration arising under sections 104 to 104F of the RMA (were the application to be considered under that Act); and
  - (e) The key qualities set out in the Ministry for the Environment’s “Urban Design Protocol”.
22. In terms of section 34(1)(a), the purpose of the HASHAA is to “enhance housing affordability by facilitating an increase in land and housing supply in certain regions or districts, listed in Schedule 1, identified as having housing supply and affordability issues”.
23. Wellington City Council is a district listed in Schedule 1.
24. Section 34(1)(b) addresses the matters in Part 2 of the RMA. Part 2 covers sections 5 to 8.

25. Section 5 of the RMA sets out the purpose of the Act as being to promote the sustainable management of natural and physical resources. Sustainable management under section 5 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 well-being 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.”*
26. Section 6 of the RMA lists matters which are to be recognised and provided for as matters of national importance in achieving the purpose of the RMA. The planners all agreed that none of these matters are relevant to this proposal.
27. Section 7 of the RMA lists other matters that must be had particular regard to in achieving the purpose of the RMA. The section 42A report raised the following as being of relevance:
- 7(b) efficient use and development of natural and physical resources*
  - 7(c) the maintenance and enhancement of amenity values*
  - 7(f) the maintenance and enhancement of the quality of the environment*
28. No parties disagreed.
29. Section 8 of the RMA requires decision makers to take into account the principles of the Treaty of Waitangi. This was not raised as a relevant consideration.
30. Section 34(1)(c) of the HASHAA refers to proposed plans. As there is no proposed district plan or relevant plan changes, this matter is not relevant.
31. Section 34(1)(d) refers to section 104 of the RMA. This is set out below:

**104 Consideration of applications**

- (1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—*
- (a) any actual and potential effects on the environment of allowing the activity; and*
  - (b) any relevant provisions of—*
    - (i) a national environmental standard:*
    - (ii) other regulations:*
    - (iii) a national policy statement:*
    - (iv) a New Zealand coastal policy statement:*
    - (v) a regional policy statement or proposed regional policy statement:*
    - (vi) a plan or proposed plan; and*

- (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*
  - (2) *When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.*
  - (2A) *When considering an application affected by section 124, the consent authority must have regard to the value of the investment of the existing consent holder.*
  - (3) *A consent authority must not,—*
    - (a) *when considering an application, have regard to—*
      - (i) *trade competition or the effects of trade competition; or*
      - (ii) *any effect on a person who has given written approval to the application:*
    - (c) *grant a resource consent contrary to—*
      - (i) *section 107, 107A, 107E, or 217:*
      - (ii) *an Order in Council in force under section 152:*
      - (iii) *any regulations:*
      - (iv) *a Gazette notice referred to in section 26(1), (2), and (5) of the Foreshore and Seabed Act 2004:*
    - (d) *grant a resource consent if the application should have been notified and was not.*
  - (4) *A consent authority considering an application must ignore subsection (3)(a)(ii) if the person withdraws the approval in a written notice received by the consent authority before the date of the hearing, if there is one, or, if there is not, before the application is determined.*
  - (5) *A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for.*
  - (6) *A consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.*
  - (7) *In making an assessment on the adequacy of the information, the consent authority must have regard to whether any request made of the applicant for further information or reports resulted in further information or any report being available.*
32. Sections 104(2A) to (7) are not relevant to this decision. Neither are Sections 104A, 104C, 104E or 104F.
33. Section 104D of the RMA sets out particular restrictions for non-complying activities.

**104D Particular restrictions for non-complying activities**

- (1) *Despite any decision made for the purpose of section 95A(2)(a) in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—*
  - (a) *the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*
  - (b) *the application is for an activity that will not be contrary to the objectives and policies of—*
    - (i) *the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*

- (ii) *the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
    - (iii) *both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*
  - (2) *To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity.*
34. In this case, whether an application meets or does not meet the “gateway” test is a relevant matter to be had regard to as part of consideration of s34(1)(d), but is not determinative of whether consent may be granted under s34 of HASHAA.
35. Section 104B is also relevant. It states:
- 104B Determination of applications for discretionary or non-complying activities***  
*After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—*
- (a) *may grant or refuse the application; and*
  - (b) *if it grants the application, may impose conditions under section 108.*
36. Section 34(2)-(5) of the HASHAA addresses the availability of infrastructure for a proposed development. In particular, s34(2) states that “an authorised agency must not grant a resource consent that relates to a qualifying development unless it is satisfied that sufficient and appropriate infrastructure will be provided to support the qualifying development”.
37. Section 34(3)-(5) set out the relevant processes and considerations to support 34(2).
- (3) *For the purposes of subsection (2), in order to be satisfied that sufficient and appropriate infrastructure will be provided to support the qualifying development, the matters that the authorised agency must take into account, without limitation, are—*
    - (a) *compatibility of infrastructure proposed as part of the qualifying development with existing infrastructure; and*
    - (b) *compliance of the proposed infrastructure with relevant standards for infrastructure published by relevant local authorities and infrastructure companies; and*
    - (c) *the capacity for the infrastructure proposed as part of the qualifying development and any existing infrastructure to support that development.*
  - (4) *In considering an application for a resource consent under this section the authorised agency—*
    - (a) *may direct an affected infrastructure provider to provide any information that the authorised agency considers to be relevant in the circumstances to its consideration of the application; and*
    - (b) *if the authorised agency is the chief executive, may also direct any local authority to provide any information that the authorised agency considers to be relevant in the circumstances to its consideration of the application.*
  - (5) *If an authorised agency makes a direction under subsection (4), the infrastructure provider or local authority must provide the information requested as soon as is reasonably practicable.*

## 6.0 Activity Status and Relevant Planning Provisions

### Qualifying Development

38. The site is located in the Mein Street, Newtown Special Housing Area (SHA), as shown in Schedule 2 of the Housing Accords and Special Housing Areas (Wellington – New Zealand 2015 areas) Order 2015. This SHA was notified in the Gazette on 10 December 2015. Under section 18(1)(a) of the HASHAA, this SHA was disestablished on 10 December 2016. However, as this application was accepted on 5 December 2016, under the transitional provisions of the HASHAA, and in particular, Clause 1(2)(a) of Schedule 3, any resource consent application that existed at the date of disestablishment must continue to be processed under the HASHAA.
39. Under s25(1) of the HASHAA, a person may apply to the relevant authorised agency, in this case, Wellington City Council, for a resource consent that relates to a qualifying development in a SHA.
40. Under s14 of HASHAA, a qualifying development in a SHA is a development that:
  - will be predominately residential,
  - contains no fewer than the prescribed minimum number of dwellings to be built, and
  - does not involve the construction of buildings that will be higher than 6 storeys and a maximum constructed height of 27 metres.
41. The Housing Accords and Special Housing Areas (Wellington – New Zealand 2015 areas) Order 2015 prescribes that the minimum number of dwellings that must be built on this site to be a qualifying development is two.
42. Under s14(2), a development is defined as predominantly residential if:
  - (a) the primary purpose of the development is to supply dwellings; and
  - (b) any non-residential activities provided for are ancillary to quality residential development (such as recreational, mixed use, retail, or town centre land uses).
43. The Council and the applicant both agreed that the proposal fits within the definition of a qualifying development. Some of the submitters disputed whether the proposal met the requirement to be predominantly residential, a matter which I address within the decision.

### District Plan:

44. The site is subject to the Operative Wellington City District Plan 2000 (the District Plan).
45. The site is zoned Inner Residential under the District Plan and is subject to the following notations:
  - Pre-1930s demolition controls apply (Appendix One, Chapter 5)
  - IR 4 Area – 9m height limit, 3m front yard requirement
46. The Council's s42A report usefully contains a table setting out the reasons for consent under the District Plan. I have reproduced it here:

<p><b>Rule 5.3.1 – Residential Activities:</b></p> <p>The proposal does not provide the required number of car parks on-site as required by Standard 5.6.1.3 (39 car parks are required for residents and 10 for visitors; 25 are proposed to be provided to serve residents of and visitors to the complex).</p> <p>Pursuant to <b>Rule 5.3.1</b>, resource consent for a <b>Discretionary (Restricted) Activity</b> is required, with discretion limited to the effects generated by the standards not met (traffic safety and congestion).</p> <p>There are no relevant conditions under this rule. A non-notification clause applies.</p>	<p><b>Discretionary (R)</b></p>
<p><b>Rule 5.5 – Residential Buildings and Structures:</b></p> <p>The proposal does not provide 35m<sup>2</sup> of ground level open space per unit as required by Standard 5.6.2.3.</p> <p>The building will have a maximum non-compliance of 7.2m with respect to the maximum building height (Standard 5.6.2.5), which occurs at the elevator shaft of the complex.</p> <p>While the proposal also requires resource consent as a multi-unit development, it fails to meet the conditions specified under Rule 5.3.4 as the maximum building height will be exceeded by 20%. Therefore, the proposal must be assessed as a <b>Non-Complying Activity</b> under <b>Rule 5.5</b>.</p>	<p><b>Non-Complying</b></p>
<p><b>Rule 5.4.1 – Non-Residential Activity:</b></p> <p>Resource consent is required as a <b>Discretionary (Unrestricted) Activity</b> pursuant to <b>Rule 5.4.1</b> with respect to the proposed café at the site.</p> <p>There are no relevant conditions under this rule.</p>	<p><b>Discretionary (U)</b></p>
<p><b>Rule 30.2.1 – Earthworks:</b></p> <p>Resource consent is required as a <b>Discretionary (Restricted) Activity</b> pursuant to <b>Rule 30.2.1</b> for earthworks necessary to facilitate the proposed building, as the area to be affected by earthworks exceeds 250m<sup>2</sup> which is the maximum area permitted under Rule 30.1.1.1(b), and the maximum permitted cut height (2.5m) is also exceeded. The area of the site to be disturbed by earthworks is 587m<sup>2</sup>, whilst the maximum cut height is 7.5m.</p>	<p><b>Discretionary (R)</b></p>

47. However, the Council's s42A table appears to have missed out Rule 5.3.7 Multi-unit developments, whereby two or more households on any site in the Inner

Residential Area is a **Discretionary (restricted) activity**. The applicant requests consent for this activity in the application. I accept the applicant's position that consent is also required under this rule.

48. The application also identified Rule 5.3.6 as being applicable to the proposal due to the proposed partial demolition of the pre-1930s buildings fronting Mein Street. As the only components of the existing pre-1930s buildings being removed are the secondary-form lean-to additions at the rear elevation of each building, the Council assessed that this rule of the District Plan is not breached by the proposal, i.e. no change is proposed to the primary form of these buildings. I accept this advice.
49. There was no disagreement between the parties that the proposed development itself required any further consents. Mr. Slyfield, however, raised concerns that the proposed development necessitated new consents, or changes to consents, for the Hospice itself. I deal with this further in this decision.

#### **National Environmental Standards:**

50. Both the Council and applicant agreed that the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health is not relevant to this application. As there was no dispute to this point of agreement, I accept their advice.

#### **Summary of relevant planning provisions**

51. In conclusion, I am satisfied that the proposal overall is a **non-complying activity**.

### **7.0 The Site and Surrounding Area**

52. Both the application and the Council's s42A report contain descriptions of the site and its surroundings. Effectively, this is the site of the Mary Potter Hospice and associated ancillary activities such as a café and parking. The site includes the three sites at 58-62 Mein Street, which do not form part of the original Mary Potter Hospice site, but as I understand, were purchased subsequently. For the most part, the new development is proposed at the rear of 58-62 Mein Street, but also involves part of the original Hospice site.
53. I find it useful to set out the summary included in the Council officer's s42A report.

*In summary, the application site comprises four individual but contiguous allotments which are owned by the Mary Potter Hospice Foundation. The existing Mary Potter Hospice building is located within the largest of these allotments (48 Mein Street, 5190m<sup>2</sup>). This allotment is the westernmost of the four allotments owned by applicant, and has access from Mein Street and Owen Street which are connected via an internal circulation route through the site. The Mein Street access also provides access to the Wellington Artificial Limbs Centre, which adjoins the subject site to the west. The three other sites forming the application site are smaller sites (58, 60, and 62 Mein Street containing multiple flats, the sites being 245-647m<sup>2</sup> in area) which have direct frontage to Mein Street only. The proposed apartment and café complex is proposed to be constructed on vacant land within all four of the aforementioned sites.*

*The existing Mary Potter Hospice building, as a non-residential building, is of a different typology, scale and design to neighbouring residential dwellings.*

*The underlying topography slopes, mostly gently, from west/north-west to east/south-east. A large pohutukawa tree is located in the north eastern portion of the subject site, and other vegetation of varying types and scale are located around the subject site.*

*Wellington Regional Hospital buildings, the University of Otago Wellington medical campus, the Total Energy Centre servicing the hospital, and the previously mentioned Artificial Limbs Centre, comprise the surrounding context to the north and west. Residential properties otherwise surround the site to the west, east and south.*

54. Further, I also consider it relevant to set out the following:
- the site is accessed from both Mein and Owen Streets. Presently, vehicles can exit and enter the site from both accesses.
  - The surrounding residential environment comprises a mixture of older dwellings, with more recent multi-unit development, including at 40 Owen Street which abuts part of the site to the south.
  - There is a more distinct change in topography between the Mary Potter Hospice site and the adjacent sites at 34-40 Owen Street, whereby these properties are located substantially lower.

## **8.0 Evaluation Approach**

55. Section 34(1) of HASHAA requires me to evaluate the proposal by undertaking four weighted considerations, as set out earlier in this decision. To undertake this task, I have firstly identified the significant matters in contention, then considered these matters in terms of policy direction offered by the District Plan and higher order planning documents, the actual and potential effects they might have on the environment and how they might be mitigated. Following that, I have considered these effects and their possible mitigation in relation to the matters set out in section 34(1), taking into account their relative importance.

### **The Issues in Contention**

56. Having read the application, Council's reports, the evidence presented by experts and submitters, the submissions by Counsel, and heard responses to the questions I posed, I have identified the principal issues in contention as being:
- A. Whether the activity falls within the definition of a qualifying development
  - B. Ability to consider granting consent – notification issue
  - C. Relevance of and relationship with the existing consents for the Mary Potter Hospice; and in particular, parking, landscaping, and on-site activities
  - D. Traffic and parking
  - E. Shading
  - F. Bulk, dominance and urban form
  - G. Privacy and amenity
  - H. Construction effects, including use of a crane and parking
  - I. The overall intensity of development, plan consistency and Part 2 of the RMA

57. I note that matters E to G are inter-related. As such, when I come to consider them and the evidence before me, I have set out the relevant District Plan objectives and policies prior to separate consideration of these matters.
58. I note that there are other matters which the submitters raised, both in their submissions, and at the hearing, which relate more specifically to the current Hospice activity and engagement with the Hospice. I have before me an application for a new residential multi-unit development. Any issues in respect to current Hospice activities are matters that need to be addressed directly with the Hospice and the Council and fall outside the scope of this consent, except where they intersect, which I specially address in this decision. In respect of the approach taken by the Hospice in engaging with the community, again this is a matter outside of the scope of this consent. I consider that the Hospice has undertaken to report on consultation undertaken with the community in its Assessment of Environmental Effects, and as such has met the requirement of the RMA. That the relationship between the Hospice and the neighbouring residents has suffered through this process is a matter that I hope and trust the Hospice will look to address in moving forward.
59. The impact on property values and the sale-ability of adjacent properties is another matter than was raised. Mr. Stevens addresses this in his s42A report. I accept and adopt Mr. Stevens' position that case law has determined that property values are not appropriate to be considered as an effect on the environment. I do not address it further.
60. Matters A to C are to a large degree procedural and jurisdictional matters. As such, I address these first.

#### **A. Qualifying development**

61. Some submitters stated that the proposal failed to fulfil the criteria for a qualifying development under HASHAA because it included non-residential activities such as a café and open spaces that are shared with the hospice (a non-residential activity), and that it was inconsistent with the Wellington Housing Accord. There were also concerns raised that the apartments were to be rented, and so therefore would not contribute to housing affordability' the purpose of the HASHAA.
62. Council's section 42A report considered that the café and open spaces are ancillary to and support quality residential development being achieved at the site. The section 42A report concluded that the proposal was considered to be 'predominantly residential' as defined by HASHAA.
63. The three planners in their expert statement all concurred that the proposal is a qualifying development.<sup>2</sup>
64. In her opening submissions Ms. Gregory also considered that the 'predominantly residential' test was fulfilled, stating that non-residential activities may be included, provided they are ancillary to quality residential development. She further noted that examples are provided within HASHAA such as recreational, mixed use, retail or town centre land.

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<sup>2</sup> Page 2 of the Planning Expert Witness Conference Notes.

65. I also note that submissions raised the lack of transparency in the gazettal of the site as a Special Housing Area in the first instance. As this is a matter over which I have no jurisdiction, I do not address it further.
66. I also queried whether that the apartments were proposed to be rented and not owner occupied would make any difference to their being included as a qualifying development. Ms. Gregory and Ms. White both agreed that the intention to rent the apartments is irrelevant to the assessment of the application. Mr. St Clair and Mr. Stevens also concurred on this point. Neither Mr. Daysh nor Mr. Slyfield addressed this point. Ms. White sets out that HASHAA requires that to be a qualifying development that it must be predominantly residential. Her advice was that there is nothing in the HASHAA or in the Order that precludes a development being rental accommodation.
67. I find that the café and shared open spaces do not disqualify the proposed development from being a qualifying development under the HASHAA. Both the café and open spaces are shown to be ancillary to the proposed development. I also do not believe it is the intent of the HASHAA that any non-residential ancillary activities be exclusively for the use of a development to supply dwellings. I also accept the advice from Ms. Gregory and Ms. White find that there is nothing that would preclude rental accommodation as a qualifying development under the HASHAA.
68. I therefore find that the proposal does meet the requirement to be a qualifying development under the HASHAA.

#### **B. Ability to grant consent – notification**

69. Mr. Slyfield raised a concern about the Council's use of discretion in the notification decision. Mr. Slyfield's position was that 22 Owen Street should have been notified for consistency purposes because it was as affected by parking as the other parties who were notified. This was based on the premise of a permitted activity being undertaken at 22 Owen Street to convert the existing dwelling into two household units, for which all parking on the site could be removed. If this was to occur, which it could at any time since the activity is permitted, Mr. Slyfield considered that the owners of 22 Owen Street would be as affected as those parties who were notified. He contended that Council erred in not considering how the proposal would affect people who undertook permitted activities on the site and that Council had been inconsistent in its decision making regarding notification.
70. Mr. Slyfield also considered that the owners of 22 Owen Street should have been notified on amenity and parking grounds.
71. Mr. Slyfield submitted that section 104(3)(d) of the RMA applied, which holds that the consent authority cannot grant a consent that should have been notified. He noted that there are no notification standards under HASHAA, only a discretion for Council to notify or not, but considered that Council is still subject to fundamental standards of reasonableness, which it had failed.
72. Mr. Slyfield also noted that decision makers under HASHAA aren't bound by section 104D, but have to have regard to it.

73. Ms. White addressed the issue in her statement, submitting that s104(3)(d) of the RMA did not apply for two reasons; being because it has little weighting in the HASHAA statutory context and that there was a reasonable basis for not notifying 22 Owen Street. She considers that under the HASHAA Councils may notify but are not bound to do so and hence a case cannot be developed that the consent 'should' have been notified, which is the section 104(3)(d) test. She also submitted that the notification or lack of is not significant enough as a fourth tier issue under HASHAA to refuse consent.
74. A final point from Ms. White is that Council notified with the purpose of obtaining information from parties able to provide further information about the parking effects, and that as 22 Owen Street has an existing on site carpark, the owners would not contribute further information.
75. Mr. Stevens advised that:
- The intention at the time of notification was to draw on the existing experience of those adjacent property owners who do not have any car parking, noting the HASHAA section 29 notification provisions do not require application of the RMA section 95 approach.*
76. In her closing legal submissions Ms. Gregory<sup>3</sup> was of the same view as Ms White. She also raised that judicial review to the High Court is the appropriate mechanism to challenge non-notification in the HASHAA context.
77. The HASHAA does have a different statutory framework to that of the RMA. I find it helpful to reproduce the relevant parts of section 29 HASHAA here.

*29 Authorised agency may notify application to certain persons only*

- (1) *An authorised agency must not notify, or hold a hearing in relation to, an application for a resource consent made under section 25, except as provided in subsections (3) to (5).*
- (2) *Subsection (1) applies despite anything to the contrary in any other enactment, rule, national environmental standard, or other document.*
- (3) *The authorised agency may notify the application to the following persons if, in each case, the person has not given prior written approval to the activity:*
  - (a) *the owners of the land adjacent to the land subject to the application; and*
  - (b) *the local authorities in whose district or region the land subject to the application falls; and*
  - (c) *any infrastructure providers who have assets on, under, or over the land subject to the application or the land adjacent to that land; and*
  - (d) *if the land subject to the application or land adjacent to that land is subject to a designation, the requiring authority that required the designation.*
- (4) *The authorised agency must, within 10 working days after the date that the application is first lodged,—*
  - (a) *decide whether to notify the application to any of the persons referred to in subsection (3); and*
  - (b) *notify the application to those persons if it decides to do so.*

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<sup>3</sup> Pages 11 and 12 of closing statement.

- (5) *Despite subsection (3), an authorised agency must not notify, or hold a hearing in relation to, an application for a resource consent made under this Act if, were that application to be made under the Resource Management Act 1991, that Act, or regulations made under that Act, would direct that the activity that is the subject of the application not be notified.*
78. In particular, this section of HASHAA does not have the same form and type of assessment as that of s95 of the RMA, which requires public or limited notification to occur in certain circumstances<sup>4</sup>. As Ms. White and Ms. Gregory have rightly pointed out, there is full discretion whether the Council chooses to notify any of the defined parties in s29(3).
79. Further, as Ms. White and Ms. Gregory have identified, s104 to s104F sit within the decision making “hierarchy” under s34 of the HASHAA; they are a matter for consideration, rather than a substantive determinative matter. I also agree with Ms. Gregory that I have sufficient information before me to understand the likely effects of the proposed development on 22 Owen Street.
80. I find that for the purpose of making a decision on this application, that the fact that the owners of 22 Owen Street were not notified of this application is not of such substance that the application should be declined under s104(3)(d) of the RMA.

### **C. Mary Potter Hospice Consents**

81. A recurring theme through submissions and the hearing was the extent of compliance of the existing hospice operation in relation to the scale of the activity, the amount of parking provided on site and the provision of landscaping. In particular, the Granville’s in their submission and at the hearing, and Mr. Slyfield in his legal submissions, spent some time addressing issues of alleged non-compliance with the Hospice’s existing consents and the effects of those non-compliances.
82. By way of background the hospice operates under two consents, being:
- a) Establishment of the hospice (1988) – approval was granted for a 22-bed hospice with a condition requiring a minimum of 25 parking spaces be provided. The approved plans only showed 20 parking spaces. A landscaping plan was required by a condition and was required to be registered by a Memorandum of Encumbrance on the Certificate of Title. While landscaping was implemented, there is no evidence that the plan was ever registered on the Title.
  - b) Provision of additional parking (1989) – approval was granted to utilise the site at 48 Mein Street for parking and access in conjunction with the approved Hospice at 52 Mein Street, meaning that the hospice had a total of 29 spaces. This consent was also subject to conditions relating to signage, final design and layout of the accessway and parking area, and the approval of a landscape plan.

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<sup>4</sup> Public notification is required where the effects on the environment are more than minor and limited notification is required where written approval has not been obtained from all persons who are adversely affected.

83. One issue that was particularly unclear was whether the parking provision specified in the consent documents was an upper or lower limit.
84. Mr. Slyfield took the view that having more spaces on the site would have required additional planning approvals, particularly because the original consent specified a minimum of 25 parks, but the 1989 consent specified 29 with no minimum or maximum. He submitted that the hospice could not rely on the 1988 and 1989 consents for the current situation of approximately 55 parking spaces on the site and that 26 of the parks on the site are unlawful. Mr. Slyfield usefully provided a copy of the District Scheme provisions that would have applied at the time. The two particular clauses of interest under 9G.5 Conditional Uses are as follows:
5. *Private hospitals, nursing homes and convalescent homes, but not premises used for the treatment of animals.*
  8. *Groups of garages or parking spaces for letting and provision for public parking provided that:*
    - (1) *no more than 20 vehicles shall be accommodated on the site; and*
    - (2) *the site shall be used only by vehicles associated with predominant or conditional uses in the zone.*
85. Both Council and the applicant took the view that the information contained in two letters from Council dated 1 and 3 May 2017 took the correct view of the matter and that the existing hospice operations, including the parking, are within the scope of the consents granted in 1988 and 1989. Ms. White submitted that the wording of the 1988 consent meant that the hospice could provide as many parks as it chose on the Hospice site, provided that there was a minimum of 29 parking spaces and they were to the satisfaction of the Council's Traffic Engineer.
86. Mr. Stevens advised that *"car parking associated with the Hospice was approved as part of the overall resource consent granted for the proposal in 1988. The requirement was for the Hospice to provide a minimum number of 25 car parks to the satisfaction of the Traffic Engineer. There was no specified limit placed on the maximum number of spaces. It is noted that the plans we can find on record associated with the application documents did not show the minimum number of spaces when consent was granted so clearly more needed to be found. The 1989 resource consent for additional car parking related to an adjoining site which was not part of the site to which the Hospice resource consent was approved which would be why a further consent was necessary."*
87. Mr. Daysh advised from his experience that it was likely that the Council may well have welcomed the Hospice providing additional parking on site above the 29 minimum required parking spaces. Mr. Daysh was of the same view as Mr. Stevens that the parking associated with the Hospice was deemed to be ancillary to the conditional use. The second consent applied to another title and which involved removal of the house and that required consent. In this particular location Council was concerned at the time about the spread of the hospital. In terms of the first consent it [parking and the hospice] would have been all bundled together.
88. In her right of reply, Ms. Gregory submitted that Rule 8 outlined above only applied to the second approval<sup>5</sup>, which was solely for carparking (and not the Hospice activity) itself. The Hospice was granted consent under the 1988 consent,

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<sup>5</sup> Page 12

requiring a minimum of 25 parking spaces to be provided. Ms. Gregory submits that I can and must rely on the Council's recent assessment of the Hospice's compliance with its existing consent, and in particular that the consents authorise a minimum of 29 carparks to be provided on site and that the current operations on site are also within the scope of the consent.

89. The Council's assessment<sup>6</sup> states that "the consents did not restrict the number of car parks on site (on the condition the minimum number was provided) but required onsite carparking to be to the satisfaction of the City Traffic Engineer. The Council's assessment reinforces that it is a minimum of 29 parking spaces to be provided on the site. Ms. Gregory notes that the Council Traffic Engineer's recent assessment was that four of the onsite parking spaces were not satisfactory (three carparks along the U bend beside 40D Owen Street) and one space directly accessed off Owen Street, and that no issues of compliance were raised in relation to any of the other car parking spaces.
90. Another matter that was raised was the removal of landscaping from the site to accommodate the new development. Mr. Slyfield's position was that the landscaping requirements under the Hospice's existing consents would need to be varied for the application to be granted, as the new development would remove some of that landscaping. Mr. Slyfield sought that I exercise s91 of the RMA, through s32 of the HASHAA, to defer the consideration of this consent until such time as the landscaping requirements for the Hospice consent be varied.<sup>7</sup>
91. Ms. Gregory<sup>8</sup> and Ms. White<sup>9</sup> both agreed that the landscaping was of limited relevance to this application as the two previous consents related to differently activities on generally different parts of the site (noting that the proposed development is mainly located on the more recently purchased 58-62 Mein Street).
92. A landscaping plan was made available at the hearing. However, it was unclear if this was the final approved landscaping plan. The Council advised that they were unable to find the approved landscaping plan, but they did find record of a bond being entered into, confirmation that the landscaping works had been completed, and the repayment of the bond.<sup>10</sup> In respect of the encumbrance, Ms. White advised that while there is no encumbrance registered on the title, the failure to do so is a technical non-compliance only, with its purpose having been met. Her opinion was that the compliance issues around the encumbrance are not relevant to these proceedings.<sup>11</sup>
93. Mr. Slyfield also raised concern that the community service component of the Hospice was an area of non-compliance with the Hospice consent; that it had grown over time and was outside the scope of the consent.<sup>12</sup>
94. Mr. Stevens advised at the hearing that the scope of the consent as applied for was for:

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<sup>6</sup> Page 3 of assessment dated 1 May 2017

<sup>7</sup> Page 15 of Mr. Slyfield's legal submissions.

<sup>8</sup> Pages 16 and 17 of opening legal submission from Ms. Gregory

<sup>9</sup> Page 2 of legal submission from Ms. White

<sup>10</sup> Page 72 of Ms. White's legal submissions.

<sup>11</sup> Page 17 of Ms. White's legal submissions.

<sup>12</sup> Page 16 of Mr. Slyfield's legal submissions.

- 22 in-patient beds
  - An out-patient clinic (5 to 10 patients per week, but with a desire to expand this)
  - Day care service (approximately 30 patients per week)
  - An education service
  - Community counselling
  - A sleep over family accommodation unit.
95. Mr. Stevens advised that the Council considers the current operation of the Hospice is within the scope of its granted consent, including the carparking which was not capped and simply needed to be to the satisfaction of the Traffic Engineer. The conclusion of the Council in its letters of 1 and 3 May 2017 is that:  
*“we are of the opinion that the current Hospice activities/operations are within scope of the consented activities at the site. While there have been some changes in the scale and intensity and character of the Hospice’s activities (in terms of the extent of the offsite care service, and the numbers of carparks and traffic movements as a result), these changes have resulted in only minimal parking / traffic, noise, privacy and landscaping effects. We do not consider that these changes present any potential prejudice to the public, and are therefore satisfied that the Hospice continues to operate within the scope of its existing resource consents.”<sup>13</sup>*
96. I appreciate and understand the submitters’ concerns regarding aspects of the Hospice’s operation, particularly after having seen photos and videos of vehicle movements and parking on site and having observed these on site myself and the demand for parking in the surrounding streets.
97. However, I am tasked with the role of making a decision on an application for a new residential apartment building, rather than determining matters of compliance with the existing consents. I agree with Ms. Gregory that the matters of non-compliance are outside of my jurisdiction and that *“under the RMA the Council is the appropriate person to determine compliance with existing resource consents, and where necessary take enforcement action. If the submitters consider the Hospice does not comply with its existing consents, and disagree with the decision of the Council, an application for an enforcement order in the Environment Court is the appropriate mechanism to pursue that. The submitters have not taken that route to date. In the absence of such action, the Hospice and the Commissioner must be able to rely on the Council’s decision.”*
98. What I must consider is the relationship between the existing activity on the site; and in particular, the provision of parking and any impact on landscaping. It is apparent that over the years the amount of space dedicated to parking and access has increased on the site. How this has related to the landscaping is unknown, due to the absence of a final approved landscaping plan. In respect of landscaping, what is clear is that the proposed apartment building is primarily located at the rear of the three more recently acquired sites, and only a small part of the original Hospice site will be affected.
99. I prefer the advice of Ms. White that it would be an inappropriate use of my discretion to defer the hearing under s91 of the RMA in respect of the landscaping, for the reasons given by her.<sup>14</sup>

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<sup>13</sup> Page 3 of letter dated 3 May 2017

<sup>14</sup> Pages 2 and 3 of Ms. White’s legal submission.

100. In respect of parking, I concur with the Council and the applicant, that together the two consents require a minimum of 29 parking spaces to be provided on the site. I concur that the 9 parking spaces granted through the 1989 consent were required as a conditional use, as being a parking activity to serve the Hospice. Additional parking above the minimum 29 parking spaces on the Hospice site for the Hospice activity is, in my opinion, also within the scope of the approved existing resource consents, but is not necessarily required given that the consent specifies only that a minimum of 29 spaces be provided. As we know, a land use consent once granted and given effect to, is unlimited in its duration subject to it remaining within its scope.
101. In terms of the scope of the activities on site, I rely on the Council's assessment that they remain within scope, albeit, as stated above, this is a matter of compliance with the existing consents.

#### **D. Traffic and Parking**

102. Many of the submissions raised concerns about the potential impact of additional parking on the site, the ability of the site to accommodate additional parking, and the likely spillover effect into the surrounding street network. Mr. Stevens summarised this as parking displacement in his s42A report. Mr. Soon Teck-Kong for the Council also expressed concern about spillover parking effects.
103. Submitters also raised concerns about the ability of the surrounding road network to accommodate additional traffic movements. The Granville's expressed particular concern about the servicing of both the proposed apartments and existing Hospice, especially the current practice of some service vehicles backing into the site from Owen Street including during night time hours.
104. Mr. Stevens in his s42A report recommended that any adverse parking displacement effects would be tentatively considered to be no more than minor, subject to a workable travel demand management plan being developed for the Hospice activity.
105. The Council officer's s42A report identifies the following District Plan objective and policies as being relevant to this application:

*Objective 4.2.12 (Access); Policies 4.2.12.1, 4.2.12.2, 4.2.12.4*

*The objective is "to enable efficient, convenient and safe access for people and goods within Residential Areas". Policy 4.2.12.1 is to "seek to improve access for all people, particularly people travelling by public transport, cycle or foot, and for people with mobility restrictions". Policy 4.2.12.2 is to "manage the road network to avoid, remedy or mitigate the adverse effects of road traffic within Residential Areas". Policy 4.2.12.4 is to "require appropriate parking, loading and site access for activities in Residential Areas".<sup>15</sup>*

106. Neither Mr. Daysh or Mr. St Clair identified any other objective or policies relevant to traffic and parking. These provisions are useful guidance as to the effects that the District Plan anticipates on the roading and parking environment from development.

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<sup>15</sup> Page 24 of the s42A report.

107. It was clear from my site visit, the evidence presented by the submitters and their traffic expert, the Council's traffic expert and the applicant's traffic expert that the site and surrounding area is regularly subject to high demand for parking. My observation from my site visit, midday during the week, was that the site had a high demand for parking, with all spaces being utilised. I also observed that the on-street parking on surrounding streets was being well used.
108. The matter of parking was a "moveable feast" through the consent process, both before and during the hearing. As the end of the hearing, as I understand it and in summary, the proposal and applicant's position is as follows<sup>16</sup>:
- The parking demand of 21 spaces generated by the residents of the parking will be provided for onsite.
  - The remaining car parks on the site continue to provide more than necessary spaces to meet the minimum requirements in the Hospice consents; that is, 29.
  - A minimum of 50 parking spaces is required to meet the minimum needs of the Hospice and the apartments. There will be an additional 12 parks provided beyond the minimum for the Hospice activities.
  - In total, there is a minimum of 62 parking spaces available on the site.
  - The four parking spaces identified in the Council assessment of 3 May 2017 as being unsuitable do not form part of the parking available or to be used on the site.
  - Two conditions offered as follows:
    - (x) The car parks must be clearly marked in terms of any applicable time restrictions as well as designated uses 'RESIDENTS' and 'RESIDENTIAL VISITORS' to the satisfaction of the Council's Compliance Monitoring Officer, prior to the residential occupation of any of the apartments or the commencement of trading of the café.
    - (y) The consent holder shall develop and implement a Travel Demand Management Plan (TDMP) for the operation of the Mary Potter Hospice. It is expected that this will be through the implementation of travel demand mitigation measures as detailed in the report prepared by Traffic Design Group dated 22 February 2017 (TDG Reference No. 14253.000). A copy of the TDMP shall be provided to Council's Compliance Monitoring Officer for their information.

*Advice note:*  
This condition is offered on an *Augier* basis.
  - That all of the 21 car parks proposed for the residential apartments will comply with AS/NZ2890.1:2004 (Standard), and the detailed design process will ensure that the car parks that will be provided under this consent do comply with the Standard.
  - That the remainder of the car parks on the site are authorised by Council under the Hospice's existing consent and very recently were confirmed to be lawful. As Mr. Clark's second addendum evidence records, those car parks have operated for many years with no efficiency or safety issues.
  - That a final parking plan should be required as a condition of consent.
109. Ms. Gregory's position is that the proposal before me provides adequate parking for the apartments and that they will not cause any additional on-street parking. Ms. Gregory records that Mr. Clark and Mr. Teck-Kong agree that 21 spaces is an

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<sup>16</sup> Pages 4 to 7 of Ms. Gregory's closing right of reply.

appropriate number of spaces for the apartment residents, based on their research. She notes Mr. Kelly's disagreement.

110. Overall, Ms. Gregory's position is that the parking effects are at the lower end of the scale, and are acceptable in the HASHAA decision making context.
111. Prior to the hearing the three traffic experts partook in a conference and prepared a Traffic Joint Expert Witness Statement<sup>17</sup>. The experts agreed:
  - That traffic safety and capacity are able to be managed by the current road network.
  - That the parking demand in the vicinity of the site is very high with both commuter and residents seeking on street spaces.
  - The occupancy of the Hospice parking between 9:30am and 3pm on weekdays ranges from 45 to 55 spaces. After 3pm the demand drops off down to around 33 spaces at 6pm.
  - That the café is unlikely to generate a customer parking demand.
  - That the District Plan requirement for one parking space per dwelling unit is excessive in the context of the proposed apartment types and location.
  - That visitor parking is unlikely to generate a significant parking demand when the general levels of parking demand are at their highest.
  - The proposal will highly likely result in an increase in kerbside demand.
112. The statement also set out several areas of contention, most significantly for:
  - Allocation of parking spaces. Mr. Kelly and Mr. Teck-Kong considered that provides certainty. Mr. Clark considered that it would lead to an inefficient use of a valuable parking resource.
  - Mr. Kelly and Mr. Clark disagreed on the appropriate parking ratio to be applied for the apartment residents with each basing their ratio on different Area Units of census data.
113. Mr. Kelly and Mr. Teck-Kong considered that Travel Demand Management Plans are rarely effective in achieving any substantive changes in travel behavior, noting that given the importance of the parking issue there should be no reliance on a TMD plan a condition of the consent. Mr. Clark considered that a travel demand management plan is able to reduce the parking demand to a point where the effect is neutral with the current number of vehicles that are displaced by the SHA development are the same as the reduction in the on-site and on-street parking demand. There was agreement that some reduction could be achieved, but the extent of it was not agreed.
114. It became apparent through the course of the hearing that there was contention on how efficient a travel demand or parking management plan applying to the Hospice would be. A complete condition volunteering such a plan was submitted by the applicant through the course of the hearing. However, following receipt of comments on the proposed condition, the applicant subsequently withdrew it. Instead, the applicant has offered the condition set out at the start of this section.
115. In summary, as I understand it, the contention between the traffic experts is as follows:
  - A. The parking demand for the residential units;

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<sup>17</sup> Traffic Joint Expert Witness Statement 17 July 2017

- B. The impact of displacing existing Hospice parking from the site on on-street parking, and any additional demand on on-street parking resulting from the residential units;
- C. The effectiveness of a travel demand or parking management plan;
- D. Compliance of the parking spaces with parking standards, including servicing and access.

116. I address each of these matters, and the position of the parties, in turn.

*A. Parking demand for the residential units*

117. As outlined earlier, there was disagreement between Mr. Kelly and Mr. Clark and Mr. Teck-Kong on the parking demand for the residential units. Mr. Teck-Kong agreed with Mr. Clark regarding the census area units that would provide the most meaningful comparison to generate a parking ratio. As Ms. Gregory recorded, Mr. Clark and Mr. Teck-Kong agreed that 21 parking spaces was appropriate. I note there that in his speaking notes, Mr. Teck-Kong advised that there is no single correct and exact number but there will always be a range and variability of parking demand generated.
118. Mr. Kelly stated that he did not know of any conventional residential developments for which such low rates of parking provision have been approved and adopted.<sup>18</sup> In his opinion, the likely parking demand would be in the range of 22 – 29 spaces, excluding visitor requirements<sup>19</sup>. This was based on Mr. Kelly's consideration of the Area Unit table provided by Mr. Clark (as taken from Statistics NZ) and studies he has undertaken for upgrades of social housing in the Wellington area. His view was that parking demand would also be greater because they would be available for rent on the open market.
119. Mr. Clark considers that Mr. Kelly has not provided any data to support his position<sup>20</sup>. In his addendum to his statement of evidence, Mr. Clark has also set out further data in support of his position. He remained of the view that 21 parking spaces would be adequate for the 39 proposed residential units.

*B. Effects on on-street parking*

120. Mr. Kelly and Mr. Teck-Kong were both concerned about the overspill effects that would result from the loss of on-site parking spaces to serve the Hospice activity, and any overspill from the residential apartments. Mr. Clark was of the opinion that the effect on the surrounding environment from the overspill parking will be indiscernible. As I understand it from the evidence before me, the greatest demand for on-site parking at the Hospice is during the day, with demand reducing outside of work hours.
121. Mr. Clark considered that if the on-street parking demand was increased as a result of the proposal, the effects on residents could be mitigated by the provision of additional on street residents only bays. Mr. Teck-Kong disagreed, stating that it would be inconsistent with the Council's 2009 policy and that it would not solve the problem, just relocate it. Further, this was not an offer made by the applicant,

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<sup>18</sup> Page 6 of Mr. Kelly's statement of evidence.

<sup>19</sup> Page 8 of Mr. Kelly's statement of evidence

<sup>20</sup> Page 2 of Mr. Clark's addendum to his statement of evidence

and beyond their ability to require it to occur. I therefore do not consider this further as an option.

122. Mr. Kelly considers that the proposal will result in a parking overflow of approximately 19 to 30 vehicles<sup>21</sup>. Mr. Clark considers that the overflow is 14 parking spaces, before any mitigation. Mr. Kelly was concerned that there would be a ripple effect where demand for parking moves to adjoining areas when one area is saturated. He considers the cumulative effect is a significant degree of inconvenience. Mr. Kelly was of the opinion that it is reasonable for residents to expect to locate a vacant parking space within a reasonable walking distance of their property, and that this would be made more difficult.<sup>22</sup>
123. Mr. Clark considered that any overflow – be it 4 parking spaces if travel demand management measures are implemented, or 14 – would have an indiscernible increase in the availability of unrestricted space through the area. Through the survey work undertaken by Mr. Clark, he estimates that there are around 360 (357 to 375) unrestricted spaces and around 70 (69-75) resident only spaces within the area surveyed. The surveys show that around 340 residents rely on on-street parking and around 180 commuters park in the area during the day. Ms. Gregory pointed out that Mr. Kelly did not provide any evidence of the scale of likely effect<sup>23</sup>.
124. Mr. Clark had also considered the visitor demand peaks for the apartments would occur at different times to that of the Hospice and that parking demand for the Hospice as a whole peaks during the day, rather than in the evenings. His evidence was also that the large daytime demand for on-street parking is from commuters, and that the times commuters are seeking on-street parking is largely different to the times that residents require car parks. In respect of demand for parking of the Hospice activities, Mr. Clark stated that he did not expect demand to have changed greatly since the consents were granted, and with better public transport, the parking demands would have reduced<sup>24</sup>.
125. Mr. Teck-Kong was concerned that there is a parking situation where the existing Hospice operation is fully utilizing the on-site parking spaces, with a small quantity of overspill on adjacent streets. The residential development will in his opinion add to this parking demand.<sup>25</sup>
126. Mr. Teck-Kong and Mr. Kelly both sought that on-site parking spaces be clearly marked so as to provide certainty for people parking on the site. I note that the applicant has now offered a condition of consent that would see resident parking being clearly marked. Mr. Teck-Kong also recommended that staff parking also be marked out, to ensure that one type of user does not overwhelm the other. He noted there can be some flexibility for shared use spaces, such as visitors to the Hospice and apartments, with clear signage, given the likely difference in visitor demand.
127. Mr. Slyfield expressed concern about the cumulative effects of the use and demand for both lawful (29 parking spaces for the Hospice and the proposed parking for the residents) and unlawful (26 parking spaces above the 29 approved)

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<sup>21</sup> Page 9 of Mr. Kelly's statement of evidence.

<sup>22</sup> Page 12 of Mr. Kelly's statement of evidence.

<sup>23</sup> Page 6 of Ms. Gregory's closing right of reply

<sup>24</sup> Letter of Mr. Clark to Mr. Diggle dated 13 April 2017

<sup>25</sup> Speaking notes of Mr. Teck-Kong.

parking spaces. He noted that if only 29 parking spaces are lawful, then this frees up a significant number of parking spaces for allocation to the proposal; but that it does not provide a sound basis to assess what the cumulative on-street effects would be if an additional number of Hospice-related cars were required to join the hunt for on-street parking. He also expressed concern of the reluctance of the Hospice to allocate parking spaces between the Hospice and the residential units.<sup>26</sup>

128. Ms. Gregory's position was that the demand created by the Hospice is not a matter before me, with at best, the overflow of parking being an indirect effect of the proposed apartments<sup>27</sup>. Ms. Gregory summarised the Hospice's position as follows:

*The Hospice (staff and visitor) demand for parking fluctuates, depending on the day, the time of day, and other influences such as shift changes and patients with large immediate families. The surveyed information indicates that the peak of demand for Hospice parking is 55 spaces. This is a worst case scenario. It is submitted that it is inefficient to require the worst case scenario to be internalised on the site, just as parking for shopping malls does not provide for the Christmas period demand and a residential dwelling may host a birthday party requiring additional on-street parking.*

129. Ms. Gregory considered I needed to keep the following matters in mind:
- There is no legal right for anyone to park in the street.
  - Beyond residents, the main contributors to parking demand are the Wellington and Ewart Hospitals.
  - The key concern raised by submitters is the availability of parking for their own needs, many of who do not have off-street parking; and that this is an existing effect residents face.
  - There is no evidence that the Hospice is generating the parking problem on the surrounding streets, as opined by Mr. Kelly. The 1988 consent notes the high level of on-street parking demand in this area.
  - The Hospice activities are de-intensifying, rather than intensifying.
  - The Hospice does have the ability to reduce demand through fleet management.
  - There are residents' parking spaces currently underutilised within the area, and residents are reluctant to have more provided.

*C. Effectiveness of a travel demand or parking management plan; the availability of mitigation measures*

130. The proposed travel demand management plan arose through work undertaken by the Hospice following the close of submission to identify how the Hospice could reduce on-site parking demand to free up parking spaces for the proposed residential units. The Council reporting officer supported the provision of a Travel Demand Management Plan, which would demonstrate how the applicant would reduce parking demand for the Hospice activity on-site. At the commencement of the hearing, Ms. Gregory offered to circulate a condition for consideration, which included an "adaptive management" approach to on-street parking, which would include:

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<sup>26</sup> Page 14 of Mr. Slyfield's legal submissions.

<sup>27</sup> Page 5 of Ms. Gregory's closing right of reply

- Preparation of a parking plan; aimed to achieve a balance of parking supply and demand on the site;
  - The undertaking of parking surveys and monitoring reports;
  - Certification of the parking plan;
  - The facilitation of a community Liaison Committee, which would receive and comment on reports, and raise concerns; and
  - A s128 review.
131. This condition was circulated for comment by all parties prior to the applicant's right of reply.
132. Mr. Teck-Kong did not support this approach through the course of the hearing, due to the uncertainty involved and preferred that the applicant implemented measures to reduce demand before any resource consent is considered<sup>28</sup>. He remained of that view through the hearing. He also considered that the future of the plan would be difficult to manage and enforce once the apartments are fully occupied, as non-compliance would not result in the closure of any activities. Mr. Teck-Kong's position was that the applicant has relied almost entirely on the travel demand management plan to free up and provide the on-site parking spaces for the residential apartment instead of providing sufficient additional on-site or off-site parking to address the current and future demand. He remained concerned at the end of the hearing, having reviewed the drafted conditions by the applicant, that the plan did not include specific actions to address and mitigate the unmet parking demand arising from the Hospice operations and the full occupation of the residential apartments.<sup>29</sup>
133. Ms. White advised that I would need to be satisfied that adverse parking displacement effects are acceptable, or if not acceptable, consider whether the applicant's proposed conditions, in particular relying on existing Hospice parks, adequately mitigate those effects. She considered I would need to be confident that third parties, staff, would change their behavior. In terms of a s128 review condition, she advised I would need to consider what further measures could realistically be imposed if parking effects were found not to be adequately managed<sup>30</sup>. She agreed with Mr. Slyfield in this regard. Mr. Stevens noted in this supplementary evidence that if the travel demand management approach proved ineffective, once the new housing development is in place there would be significant limitations on what could then be done to address the issue. Requiring removal of the development again would not be practicable, nor would measures for the Hospice to change its operation to reduce its parking demand.
134. Mr. Kelly agreed that an aggressive package of traffic demand management measures may achieve some changes in travel behavior, but questioned the scale and permanence of the behavior change that would be required, and thought it unlikely to be achieved or relied upon in the long term. Mr. Kelly preferred that the scale of the proposal be reduced and combined with more achievable traffic demand management targets to result in a development with a neutral effect upon parking conditions, or potential a win-win and relief.<sup>31</sup> Mr. Kelly also considered that an arrangement as proposed, where one activity is required to constrain its parking demand to mitigate the effects of another activity, is unusual. Mr. Kelly

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<sup>28</sup> Report appended to Council s42A report.

<sup>29</sup> Speaking notes from Mr. Teck-Kong and Traffic supplementary evidence.

<sup>30</sup> Page 8 of Ms. White's legal submissions.

<sup>31</sup> Page 3 of Mr. Kelly's statement of evidence.

agreed with Mr. King and Mr. Stevens that compliance needed to be demonstrated prior to construction commencing.<sup>32</sup>

135. Mr. Kelly did not comment further on the circulated conditions; however, Mr. Slyfield and the Granville's did provide comments on the draft conditions; expressing concern about their effectiveness and enforceability. Both reinforced the view that the Hospice is currently operating outside the scope of its consents in respect of parking, whether a liaison group would be effective given the current relationship, and raise concern about the scope of what a s128 review could achieve to the existing Hospice activity.
136. In response to the comments received back, the Hospice withdrew their offer of conditions. As stated in the closing:  
*If the Commissioner was minded, the Hospice would accept on an Augier basis the requirement for the consent holder to develop and implement a travel demand management plan for the Hospice activity. However, given the low level of the effect, and concern about what the conditions would achieve, it is submitted that no surveying is required, and the success of the travel demand management plan should not be linked to the construction or occupation of the apartments. At worst the evidence indicates 14 additional on-street vehicles over a single peak. It is submitted that it would not be proportionate to have such a low level of effect preventing the ability to provide for much needed housing.*
137. In respect of the parking effects, without mitigation, Ms. Gregory was of that view that:  
*In the worst case scenario, the Proposal may create the potential for 14 vehicles to overflow from the Hospice site into the adjacent road network.<sup>33</sup> As accepted by all planning experts at the hearing, the RMA is not a no-effects statute. Mr Clark considers this overflow would not result in any discernible difference on residents' ability to find a car park in this area of Newtown.<sup>34</sup> The parking effects created by the Proposal without mitigation are therefore at the lower end of the scale.<sup>35</sup>*
138. The ability to mitigate any effects of parking displacement, and the magnitude of such effects, was an outstanding point of contention at the end of the hearing.  
  
*D. Compliance of the parking spaces with parking standards, including servicing and access*
139. The Granville's in particular identified concerns with compliance of the proposed new parking spaces, and some of the existing, with parking standards, as well as concerns with the servicing of existing activities on the site and proposed servicing. Concerns raised also included traffic circulation on the site, and in particular the safety with additional residential users on the site.
140. The Council officer's s42A report did not raise any concerns with the parking layout, being accompanied by a report by Ms. Patricia Wood, Vehicle Access Engineer, who was generally satisfied with the vehicle parking and manoeuvring. The Council's assessments on the scope of the existing consents also addressed

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<sup>32</sup> Pages 14 and 15 of Mr. Kelly's statement of evidence.

<sup>33</sup> Clark SOE, paragraph 23.2 with addition of three spaces for on-site reduction from 65 to 62.

<sup>34</sup> Clark SOE, paragraph 102.

<sup>35</sup> Page 6 of Ms. Gregory's closing right of reply.

parking on the site, stating that there was adequate manoeuvring and circulation space for traffic through the site. The Council's assessments recommended the removal of four parking spaces from the existing parking layout, which the applicant has adopted as their final parking position.

141. In respect of traffic safety and access, Mr. Clark's traffic report states that there would likely be no change to the current situation, where there is effectively a one-way flow from Mein Street through the site, at the top end of the site. The Owen Street access would continue to allow for two-way access. Submitters and Mr. Teck-Kong expressed concern about vehicle access safety through the site, and in particular, that some delivery and service vehicles were backing into the site from Owen Street. Some of these deliveries were occurring outside of normal daytime hours.
142. An issue that was raised at the hearing was compliance with District Plan (AS/NZS1890.1:2004) requirements. In response, Mr. Clark provided a larger to scale plan of the proposed parking spaces for the residential units. This was circulated for comment. The comments in response from Mr. Teck-Kong, Mr. Kelly and the Granville's all found fault with the proposed parking plan<sup>36</sup>.
143. Mr. Teck-Kong's position was that:
  - Only carparks 18 – 26 meet the parking standard
  - Parks 27 – 29 do not provide the required 300mm clearance
  - Carparks 10 – 12 are underlength
  - Carpark 13 should be removed
  - Carpark 14-17 need to have 300mm clearance provided
  - It is a safety concern that service vehicles are reversing onto the site
144. Mr. Kelly's position was that:
  - Carparks 9 to 12 are underlength
  - Concern with carpark 13
  - Concern with aisle depth for carparks 1 to 8
145. In respect of the parking standards, Mr. Stevens' position was that some of the current parking may not meet the current parking standards, although there is no council record of traffic engineer approval. He considered that as there was a reliance on some of the current parking arrangements, applying the parking standard to some of the existing parking is appropriate. Mr. Stevens considered that there is no specific provision for small cars within the standard.
146. Mr. Teck-Kong and Mr. Kelly also queried the ability to provide additional parking on the site.
147. Mr. and Mrs. Granville's position raised concerns with carparks 9, 10-12, 13 – 17, 27 – 29, and also with carparks 1 to 8, particularly if new fencing was to be erected.
148. In his supplementary evidence, Mr. Clark disagreed with the comments, stating that all the car parks, except for park 13 will comply with the standard. In respect of park 13, he considered that the non-compliance does not result in any efficiency or safety effects, and will assist with traffic calming on the site. He also noted that

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<sup>36</sup> Supplementary evidence of Mr Teck-Kong and Mr. Kelly and response to amended consent conditions from Nick and Alex Granville.

all the parking on the site is existing, with the exception of proposed new parking spaces 14 to 26. His advice is that the existing parking spaces have proved workable and safe over many years. He recommended that there be minor modifications during the design process, and that the final parking layout be required to be certified, in accordance with the proposed conditions. Ms. Gregory reinforced that only 21 car parks for the apartments need to comply with the standard, and that the remainder of the car parks are authorised by the Council under the Hospice's existing consent, and were very recently confirmed to be lawful. In respect of the ability to put additional parking spaces on the site, Mr. Clark advised that he considered that realigning car parks 51 to 56 and 61 to 65 would provide the opportunity for additional parks, as would minor modifications to other parking on the site.

149. Ms. Gregory's advice in her closing right of reply was that the existing servicing of the existing activities on site is not a matter before me, and that it cannot be constrained when it is authorised by consent. She advised that in the absence of any safety issues with service vehicles reversing on site this cannot be controlled through the apartment application. In terms of servicing of the apartments, her advice was that the only regular servicing envisaged is the collection of rubbish and recycling which would be carried out in conjunction with the Hospice, and currently occurs around 7am (similar time to usual residential waste collection). Based on the advice of Mr. Clark, she considered that in the absence of any effects relating to apartment servicing, it is not considered necessary to impose timing requirements or limits on reversing of vehicles.

*The positions of the planning experts*

150. In respect of consistency with the objective and policies, relying on the evidence of Mr. Teck-Kong, Mr. Stevens considered that the proposal was overall inconsistent with Objective 4.2.12 and Policy 4.2.12.1. In summary, this was because of the shortfall in the number of parking standards and the reliance on the travel demand management plan to reduce the likely demand and effects on on-street parking. He found that it was consistent with Policies 4.2.12.1 and 4.2.12.2 in respect of access and the roading network.
151. Mr. St. Clair, relying on the evidence of Mr. Clark, expressed his view that Policy 4.2.12.4 does not require the provision of all parking on site, as it also makes provision for the consideration of public transport and travel demand management plans. He considered, based on the implementation of a travel demand management plan, and the fact that it is close to public transport, that it is not contrary to this policy. He was of the same view as Mr. Stevens in respect of access and the roading network.
152. Mr. Daysh, relying on Mr. Kelly's, Mr. Teck-Kong's and his own experience, considered that this proposal represented over development of a highly constrained site and therefore effects beyond the site cannot be considered to be minor. He also was concerned with the effectiveness of a travel demand management plan in a residential context in Newtown. Mr. Daysh did not give his own view as consistency with the specific objective and policies relating to traffic and parking; rather he relied on Mr. Kelly's position that the proposal is inconsistent with Objective 4.2.12 and Policy 4.2.12.1. Mr. Kelly noted the explanation to Policy 4.2.12.1, which sets out that all new developments must be reasonably self-sufficient with regard to parking" and that "parking is not required

for every person on a site who may own a vehicle". Mr. Kelly's opinion was that reasonableness should be governed by the receiving environment.

153. During the hearing, I queried compliance of new developments in the surrounding area with the parking standards. I was advised that compliant parking had been provided.

*Overall finding*

154. In terms of traffic generation, the other matter raised by submitters, the three traffic experts all agreed that traffic capacity and safety was considered and any effects are able to be managed by the current road network<sup>37</sup>. I had no expert evidence provided to the contrary. I therefore accept the experts' evidence and find that any effects on traffic capacity and safety are able to be managed. I concur with the planners' positions that the proposal is consistent with the two relevant policies.
155. In reviewing the evidence before me, I summarise the positions of the experts and counsel as follows:
- Mr. Teck-Kong was generally comfortable with the level of parking being provided for the residential units, but was concerned about the resultant decrease in parking spaces available for the Hospice, the likely success of a travel demand management plan, and the resultant offsite parking effects on the street network. Mr. Kelly did not agree with the level of parking, but did concur that the District Plan standard was excessive due to the nature of the application and location of the site. He was of the same mind as Mr. Teck-Kong in respect of the other points.
  - The applicant has offered a condition to mark out resident and resident visitor parking on site, should I consider it appropriate to impose one.
  - The applicant has offered a condition for the development and implementation (but not certification of) a travel demand management plan for the Hospice, should I consider it appropriate to impose one.
  - The Council has confirmed that the 1988 and 1989 required a minimum of 29 parking spaces to be provided for the Hospice, and that the Hospice was not constrained in increasing parking supply on site through its consents.
  - The Hospice is of the view that they only lawfully have to provide 29 parking spaces to meet the requirements of their 1988 and 1989 consents.
  - Mr. Slyfield is of the view that the additional parking above 29 is unlawful.
  - Mr. Kelly and Mr. Teck-Kong have expressed concern about compliance with parking standards; Mr. Clark considers that this can be resolved through a final parking plan;
  - Mr. Clark considers that concerns regarding onsite servicing of the Hospice is satisfactory; Ms. Gregory considers this is outside the scope of the consent.
156. At this point, I note the contention raised by Mr. and Mrs. Granville regarding the expertise of Mr. Clark and the accuracy of his reports. Mr. Clark has confirmed that his evidence has been prepared in accordance with the Environment Court and IPENZ codes of conduct. Apart from an identified issue of having a time of day wrong in one of the survey tables, I was not made aware of any material inaccuracies by his fellow traffic experts. As such, as the Council has done<sup>38</sup>, I put faith in the name and professional integrity of Mr. Clark as well as his statements

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<sup>37</sup> Page 1 of the Traffic Joint Expert Witness Statement.

<sup>38</sup> Page 29 of the Council s42A report

of compliance with the codes of conduct. As with any application, should there be found to be material inaccuracies in the matters presented through an assessment of environmental effects, the Council may resort to reviewing and potentially cancelling a consent pursuant to s128(1)(c) of the RMA. Presently, I have nothing in evidence before me that gives me rise to consider that there are inaccuracies. Rather, there are clearly differences in professional opinion.

157. In terms of the likely parking demand from the residential units, I prefer the evidence of Mr. Clark and Mr. Teck-Kong, and in particular the level of analysis undertaken by Mr. Clark. I note Mr. St. Clair's observation that the site is well located for public transport, as it is for potential places of employment. Accepting this, and that the applicant has offered to mark out these parking spaces on site, I am satisfied that there will be adequate on-site parking provided to serve the needs of the proposed residential units.
158. The effect that will eventuate will be parking displacement from people currently parking within the Hospice grounds. This is somewhere between 14 (Mr. Clark) and 30 (Mr. Kelly) parking spaces. I prefer the estimate provided by Mr. Clark, again due to his time spent analysing the existing parking trends and demand on the site and in the surrounding street network. In short, taking 21 parking spaces as being what is required for the residential units, any effects that will be generated will be by parking displacement caused by an existing consented activity that is only required through its consents to provide a minimum of 29 parking spaces on the site.
159. In terms of the scope of the 1988 and 1989 consents and the parking required, I prefer the applicant's and Council's interpretation of the nature of these consents to Mr. Slyfield's. In particular, that the first consented the Hospice activity, and required a minimum of 25 parking spaces; and the second consented the use of the adjacent site to provide 9 parking spaces for the Hospice. The Council determined that a minimum of 29 spaces were required through the two consents (9 of which were provided on the adjacent site). I note Mr. Daysh's opinion that the Council would have been accepting of the Hospice providing additional parking on the Hospice site.
160. Today, the Hospice continues to enjoy the approvals given under the 1988 and 1989. As I outlined earlier, any land use consent exists in perpetuity under s123 of the RMA, unless it is limited in time duration, which the Hospice consents are not. Ultimately, any offsite effects would be generated by overspill from an existing consented activity that is only required to provide 29 parking spaces on the site, and that overspill is more than likely to occur during daytime hours. In the evenings and weekends, based on the evidence, there would be extra parking available on the site for visitors to the residential apartments.
161. Further, I concur with the planners and Ms. Gregory that the RMA, and I add, the HASHAA, are not no-effects statutes.
162. While I find that the existing consents do only require a minimum of 29 parking spaces, I find that there will be a resultant off-site effect from the loss of the additional parking spaces serving the Hospice that have been provided on the site. As identified by the reporting officer in his consideration of the submissions, many of the nearby properties do already have complying parking on site, and as such enjoy additional on street parking that cannot be relied on as a legal right.

163. Generally, I find that overall there will be a moderate, that is, more than minor, increase in offsite parking effects resulting from this proposal; noting that there were differing views between the three traffic experts as to the extent and consequence of this effect. The effect is one of parking displacement during the day for commuters and residents without onsite parking to meet their needs, and those relying on public on-street parking needing to potentially look further afield than they currently do. I agree with Mr. Kelly that this will have a ripple effect, but I have no evidence before me as to the magnitude of that effect. I noted with interest Mr. Clark's evidence in respect of the general availability of parking within resident's only parking spaces during most times, which indicates that residents have an option available for mitigation, albeit at a cost to them.
164. I therefore consider it is appropriate that a travel demand management plan for the Hospice activity be included in the conditions of consent as one means to mitigate or reduce any likely impact. With the demarcation of the parking spaces for the use of the residents and reduced on-site parking available, it is likely that Hospice workers and visitors will consider alternative means of transport to and from the site. It would be responsible for the Hospice to manage and reduce any adverse offsite effects that may be generated. I accept that the travel demand management plan may not fully mitigate the level of effect on the surrounding on-street parking, but it would reduce the level of effect. The degree to which this occurs, however, is uncertain.
165. I note that the applicant has offered the condition on an Augier basis. I have amended the condition as offered to provide certainty as to when the Plan would be provided, and what it was to include. I accept the concerns raised by Mr. Teck-Kong and Mr. Kelly of the uncertainty that these measures will be fully effective. However, I also heard evidence from the Hospice, and particularly Mr. Bruce, of the intent of the Hospice to change its practices and reduce the intensity and scale of activities on the site, including through dispersal to other areas of the wider Wellington region. I would hope that the Hospice would be a good neighbour and ensure that they pursue these avenues and options to reduce their demand on on-street parking.
166. With this mitigation, I consider that it could reduce the magnitude of the effect to one that is more towards the minor end of the effects scale, albeit without certainty of the effectiveness of the travel demand management plan, I remain of the view that the effect is a moderate, or more than minor one.
167. In respect of compliance with the on-site parking standards, I consider that the compliance and appropriateness of the layout and location through the final detailed design of the parking spaces to be specifically provided for the residential units be subject to a final parking plan, that is to be certified by the Council. This is to occur prior to construction commences to ensure it is addressed satisfactorily. This parking plan will need to clearly identify the 21 parking spaces for the use of the residential apartments, which are to be clearly marked and identified for that use. While I appreciated Mr. Clark's position that not having marked parking spaces could lead to a more efficient use of parking on the site, I consider that to be optimistic, and consider it appropriate that the spaces for the residential units are so marked, and that these should be identified for the exclusive use of the residential units. If the Hospice wishes to make additional parking available for the apartments outside of Hospice hours, then this is a matter for the Hospice to manage. I have therefore accepted the offered condition, with amendments to provide greater certainty of implementation.

168. In terms of servicing, I accept Ms. Gregory's position that the existing service vehicle movements on the site, serving the Hospice, are matters that are outside my scope of control. Similarly, are the hours that the servicing occurs. These are matters of compliance and enforcement of the Hospice operation. I find, however, contrary to the applicant's position, I prefer the evidence of Mr. Teck-Kong that it is appropriate to include a condition requiring that any service vehicles to those units should not reverse into the site, particularly since the increase in residential activity on site. I also consider it appropriate that this condition require servicing to occur during daylight hours.

***Introduction to shading, bulk and dominance, privacy and amenity***

169. In the next three sections, I address the above matters. While I address these separately, these are all related and fall within the following objectives and policies of the District Plan (as set out in the s42A report):

Objective 4.2.1 (Containment and Intensification); Policies 4.2.1.1, 4.2.1.5.

The objective is *"to enhance the city's natural containment, accessibility and residential amenity by promoting the efficient use and development of natural and physical resources in Residential Areas"*. Policy 4.2.1.1 is to *"encourage consolidation of the established urban area"* whilst policy 4.2.1.5 is to *"enable residential intensification within the Inner and Outer Residential Areas provided that it does not detract from the character and amenity of the neighbourhood in which it is located"*.

Objective 4.2.2 (Character and Sense of Place); Policy 4.2.2.1

The objective is *"to recognise and enhance those characteristics, features and areas of the Residential Area that contribute positively to the City's distinctive physical character and sense of place"*. Policy 4.2.2.1 is to *"maintain the character of Wellington's inner city suburbs"*.

Objective 4.2.3 (Urban Form); Policies 4.2.3.1, 4.2.3.5, 4.2.3.6, 4.2.3.7

The objective is to *"ensure that new developments within Residential Areas is of a character and scale that is appropriate for the area and neighbourhood in which it is located"*. Policy 4.2.3.1 is to *"ensure that new developments in the Inner and Outer Residential Areas acknowledge and respect the character of the area in which they are located"*. Policy 4.2.3.5 is to *"require on-site, ground level open space to be provided as part of new residential developments to enhance visual amenity and assist with the integration of new developments into the existing residential environment"*. Policy 4.2.3.6 is to *"minimise hard surfaces by encouraging residential development that increases opportunities for permeable open space areas"* whilst Policy 4.2.3.7 is to *"encourage the retention of mature, visually prominent trees and bush in associated with site redevelopment"*.

Objective 4.2.4 (Residential Amenity); Policies 4.2.4.1, 4.2.4.2, 4.2.4.4

The objective is *"ensure that all residential properties have access to reasonable levels of residential amenity"*. Policy 4.2.4.1 is to *"manage adverse effects on residential amenity values by ensuring that the siting, scale and intensity of new residential development is compatible with surrounding development patterns"*.

Policy 4.2.4.2 is to “*manage the design and layout of new infill and multi-unit developments to ensure they provide high quality living environments and avoid or mitigate any adverse effects on neighbouring properties*”. Policy 4.2.4.4 is to “*ensure that new residential developments recognise and provide for the health and safety of people*”.

Objective 4.2.7 (Residential Activities); Policies 4.2.7.1, 4.2.7.2.

The objective is to “*facilitate a range of activities within Residential Areas provided that adverse effects are suitably avoided, remedied or mitigated, and amenity values are maintained or enhanced*”. Policy 4.2.7.1 is to “*control the potential adverse effects of residential activities*” whilst policy 4.2.7.2 is to “*control adverse noise effects within Residential Areas*”.

170. In the AEE, Mr. St. Clair did not include Policies 4.2.3.5 and 4.2.3.6 as being directly relevant. He also referenced:
- Policy 4.2.1.6, *encourage the retention and adaptive -reuse of existing houses in the Inner and Outer Residential Areas*
  - Objective 4.2.5 (*Energy Efficiency and Sustainability*) and Policy 4.2.5.1 (*to promote a sustainable built environment in the Residential Area*)
  - Policy 4.2.7.3 (*to provide for a range of non-residential activities within Residential Areas, provided character and amenity standards are maintained, and any adverse effects are appropriately avoided, remedied or mitigated*).
  - Objective 4.2.8 (*maintain and enhance natural features*) and Policy 4.2.8.3 (*to encourage retention of existing vegetation, especially established trees and existing native vegetation*).
171. Mr. Daysh did not identify any additional objectives or policies.
172. However, I note in the Planning Expert Witness Conferencing Statement that all the planners agree to the relevant objectives and policies.
173. In the s42A report, Mr. Stevens was of the overall view that the proposal will be contrary to the residential amenity Objective 4.2.4 and related Policies 4.2.4.1 and 4.2.4.2. This was primarily due to the potential bulk, dominance and shading effects on 24 Owen Street, and the shading effects on 36 Owen Street. He considered the level of effects to be sufficiently adverse to render the proposal contrary. In all other regards, he considered that subject to recommended conditions, all adjacent properties would have access to residential amenity levels acceptable in the Inner Residential context. At the hearing, before the receipt of the final position by Dr. Gjerde on shading, which I address shortly, Mr. Stevens noted that he deferred to Dr. Gjerde in respect to Policy 4.2.4.1, but remained of the opinion that he considered the proposal to be contrary to Policy 4.2.4.2, as it requires the avoidance or mitigation of the effects of a multi-unit development on adjoining properties. This was for the reason of shading onto the properties at 24 and 36 Owen Streets.
174. Mr. St. Clair considered that the proposal is consistent with and not contrary to the objectives and policies. In respect of Mr. Stevens’ position in the s42A, he was of the view that the policy requires consideration of character and amenity at a neighbourhood level, rather than the amenity of a single dwelling within a neighbourhood. In his view, the policy should be assessed at a higher spatial

level, and that when considered in the wider context of the Zone and the site's location, it is not inconsistent at a neighbourhood level.

175. Mr. Daysh was of the same view as Mr. Stevens.

### **E. Shading**

176. The majority of the adjoining properties who were notified of the application raised concerns about the shading effects that would result on their properties. Ms. Raffills raised concerns about the potential for increased heat loss resulting from additional shading to the roof of the dwelling on her property. Otherwise the concerns were primarily in respect to the loss of amenity and enjoyment of their properties, as a result of shading.

177. The application was accompanied by an extensive series of shading diagrams, showing existing shading, shading that would occur using an anticipated building envelope/permissible volume approach, shading that would occur from the proposal, and shading that could occur under the anticipated building envelope, but would not under the proposal. It was helpful to have Mr. Chris Stevens, who prepared the diagrams, available at the hearing to explain them.

178. At the start of the hearing, it was Mr. Stevens' position in his s42A report that there would be more than minor adverse shading effects on the properties at 24 and 36 Owen Street, and in all other cases, the effects would be no more than minor, or minimal. In coming to this conclusion, he relied on the anticipated building envelope approach, and the advice of Mr. Donn and Mr. Sullivan that shading of roof spaces would not result in any perceptible effect upon residents and any associated degradation in amenity through heat loss would not be unreasonable.

179. In respect of the anticipated building envelope approach, Mr. Stevens stated at the hearing that he considers that the District Plan bulk and location controls provide an essential starting point for determining what effects can be reasonably expected to occur under the District Plan, and the final conclusion that considering shading and bulk and dominance effects of the permissible volume as a comparison to effects of the proposed development is appropriate. Overall, he considered it a useful tool to consider the proposal against.

180. Ms. White's position was that Mr. St. Clair's was correct when he said that "some weight should be given to the anticipated volume comparator, but it is not determinative".

181. Mr. St. Clair's also relied on the anticipated building envelope approach, and his position that the effects on 24 Owen Street would be moderate, and any effects on 36 Owen Street would be minor. He agreed in all other respects with Mr. Stevens. In respect of the anticipated envelope, his position was that he considered it an appropriate tool for assessing expected effects, while recognizing the shortcomings of using a three-dimensional shape compliant with District Plan bulk and location controls.<sup>39</sup>

182. Mr. Daysh's position was that he agreed with Mr. Stevens on the likely magnitude of effects on 24 Owen Street, but also considered that there are similar but lesser shading effects on 26, 28 and 34 Owen Street. He did not expressly address 36

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<sup>39</sup> Pages 4, 6 – 8 of Mr. St. Clair's statement of evidence

Owen Street. During the hearing, Mr. Daysh's position changed that he had greater concern about likely shading effects on 34 and 38 Owen Street. Mr. Daysh considered that a three-dimensional structure in one solid slab does not give an accurate portrayal on what could be a complying development, and that it would not represent the final form of development anticipated by the District Plan. He felt that it emphasized the degree of non-compliance, particularly in terms of the height of the building<sup>40</sup>. On questioning, however, Mr. Daysh clarified that he considered that the big slab shown by the applicant is useful for shading, but it lacks the subtleties of what would be approved having due regard to the Building Act, outdoor space, etc. He was of the view that it is not fanciful, but it is useful for shading purposes.

183. Mr. Slyfield advised, on questioning, that if the application suggests something else than the permitted baseline, then it departs from the Act's clear prescription. Something is either permitted, or not. In his opinion, if it is not permitted, then it is not sound practice to rely on it.
184. During the hearing, in response to my questions of the likely duration of additional effects, Mr. Chris Stevens usefully prepared additional information in the form of shading animations, which was later accompanied by a statement of evidence describing the findings of the animations. I found these animations very helpful.
185. Mr. Chris Stevens undertook multiple shading simulations to show the shading effects at various times of day and at various times of the year. These simulations compare the duration of shading on the neighbouring sites caused by the application proposal to the duration of shading on the neighbouring sites that would result from the permissible volume. No vegetation (including the large pohutukawa tree) was taken into account in the preparation of the shading simulations. However, I note that the applicant incorporated the pohutukawa as part of the mitigation package, including recommending a condition for its replacement should the need arise. Therefore, I find that it does fall within the existing environment, as do any shading effects generated by it.
186. The analysis shows that properties at 34-38 Owen Street will experience similar effects between the March equinox and the winter solstice. The winter solstice is shown as the worst-case scenario because the sun is at its lowest angle. As a result, the extent of additional shading will become lesser and lesser with each day that is further away from the winter solstice. The time of day that experiences the greatest increase in shading for these properties is 1pm, with an additional 84 days of shading resulting from the proposal compared to the permissible development.
187. For the properties at 22-28 Owen Street, the shading effects in the simulation are dynamic, varying across the year. The effects of both the permissible volume and the proposal vary from shadows never entering the sites to shadows never leaving the sites at various times of day. The shading simulations illustrate that there are no additional shading days on these properties from the proposal (when compared to the anticipated building envelope). This result is due to the proximity of the permissible volume to the properties at 22-28 Owen Street. At one time of day (2pm) across the entire year, the anticipated building envelope shades portions of the sites at 22-28 Owen Street for approximately 310 days longer than the proposal will.

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<sup>40</sup> Page 4 of Mr. Daysh's statement of evidence

188. I note that Mr. Parslow also commented on the shading, but generally deferred to Mr. St. Clair on the amenity effects of the shading on the neighbours.<sup>41</sup>
189. I also requested the view of Dr. Gjerde on the shading, who provided evidence on the basis of all the shading information available at the conclusion of the hearing. I note that no other party, including Mr.'s Daysh, Stevens and St. Clair, provided further evidence on the additional shading animations provided by Mr. Chris Stevens.
190. In summary, in his supplementary evidence, Dr. Gjerde set out his final position on potential shading effects. He firstly talked about the existing environment. I find it useful to set out this context first:  
*Access to direct sunlight into the living areas and onto the outdoor living spaces of the properties adjoin the development site to the east is challenging, particularly during the winter months. The site orientation and dimensions of existing buildings, all in relation to the topography, mean that the west facing living and outdoor areas are already significantly shaded. These circumstances are amplified when the larger trees in the area are taken into account. In these circumstances virtually any further development on the applicant's site is likely to lead to additional shading.*
191. Dr. Gjerde considered that the effects on 34, 36 and 38 Owen Street would be most noticeable between 2pm and 4pm with the magnitude of the effect increasing with proximity to the winter equinox. He described the effect as noticeable for these properties with 34 Owen Street experiencing the most effects as it is closest to the development. In relation to 22-28 Owen Street Dr. Gjerde considered that 'there is very little difference in the effects a building of permissible volume would create and the proposed building would create.'
192. Dr. Gjerde then assessed the additional shading not just in terms of its duration, but also in terms of how it would fall onto the individual properties, including windows and external living spaces. Again, I find it useful to set out his overall conclusion:  
*My overall assessment of the effects is influenced by the current conditions. Comparing the effect of the proposed building with the permissible volume, I do not consider the negative effects to be more than minor. The sun has low perceptual intensity at this time of year and people will generally spend less time outside. While there will be a difference in the period of time that the sun will shine into the large window of 24 Owen Street, this difference is able to be measured in minutes.*  
  
*Nos. 34 and 36 Owen Street would experience a reduction in direct sunlight when the effects of the proposed building are compared with the effects of the proposed building are compared with the permissible volume. In my opinion, because of the way the house and outdoor spaces of no. 36 are configured, the effect on that property would be more significant than the effect on no. 34.*  
  
*After weighing up the lesser shading that the proposed building would cause onto the neighbouring properties when compared with the permissible building and the increased shading that would occur over the whole of a year, I remain of the opinion that the shading effects would be appropriate. I must stress that the*

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<sup>41</sup> Page 6 of Mr. Parslow's statement of evidence.

*baseline for my evaluation is the shading that the permissible volume would create.*  
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193. In terms of the anticipated building envelope / permissible volume approach, Ms. Gregory submitted that:  
*In the evidence and at the hearing, all of the planners agreed that the “Anticipated Development Scenario” (a three dimensional shape compliant with District Plan bulk and location controls) is a “useful” planning tool as it provide a “form of reference” for assessing the effects of the Proposal, particularly shading effects. Mr Daysh, the planner for the submitters, confirmed at the hearing that he agrees that approach is reasonable. It is submitted that the Commissioner can and should rely on the comparison of the amenity effects of the Proposal against the amenity effects of the “Anticipated Development Scenario”.*<sup>43</sup>
194. In terms of shading, Ms. Gregory submitted that I should prefer the evidence of Dr. Gjerde, who is the most qualified person to have assessed the amenity effects at issue. I also note and accept Mr. Gjerde’s advice on the context of the area, noting from the site visit I undertook, in winter, that the sites concerned are already significantly shaded due to the topography, existing buildings, and existing large trees. I concur that virtually any development on the applicant’s site, a site identified as a Special Housing Area, will lead to additional shading.
195. Firstly, I address the issue of the anticipated building envelope. I accept the evidence of the three planners, who all agree that it is a useful tool for comparing the effects of a proposal against what could reasonably occur under the District Plan. I do not consider it unreasonable or fanciful that a development may occur at the rear of the three more recently incorporated sites to the Hospice land, particularly having seen the level of infill development and intensification in the surrounding area. I concur that the anticipated building envelope is a useful tool for comparison, while acknowledging that the actual end result is likely to be more refined, as was discussed with Dr. Gjerde during the hearing.
196. Secondly, having had the benefit of the extensive shading diagrams, the shading animations, the explanation from Mr. Chris Stevens and the evidence of Dr. Gjerde, who is well experienced and qualified in Architecture and Urban Design matters, I prefer the evidence of Dr. Gjerde and rely on his findings of the likely magnitude of effect on adjacent properties. While I appreciate that there will be an effect on the adjacent properties and the proposed development will result in a loss of amenity of the parts of their properties affected, the effect that will occur is for the most part an effect that would result from the bulk and mass of a non-fanciful development on the rear of the three properties. The additional effect, in light of Mr. Gjerde’s evidence, is likely to be no more than minor in nature.

#### **F. Bulk and dominance, urban form and character**

197. A number of submitters raised concerns about the bulk, dominance, neighbourhood character and urban form of the proposed development. Concerns raised were that the development would be significantly out of scale with the surrounding residential context, the form of development was not consistent with the urban form, and that the bulk of the building would dominate adjacent residential dwellings. Mr. Lindsay expressed concern about the potential

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<sup>42</sup> Supplementary evidence of Dr. Gjerde

<sup>43</sup> Page 7 of Ms. Gregory’s closing right of reply

dominance effects on the properties at 22 (whose owners had not been notified) and 24 Owen Street<sup>44</sup>. He considered that the effects on 24 Owen Street would be more than minor, due to their change of outlook from the existing Hospice building in the background to a 4.5 to 6 storey building. He noted the lower level of the property accentuated the level of dominance. In respect of 22 Owen Street, he particularly considered the effects on the property should the pohutukawa tree not be there, and considered if that occurred, then the effects upon 22 Owen Street would be significant and adverse, in respect of dominance and privacy. He notes that the effects of domination for other Owen Street properties are lesser due to distance and the stepping down of the building.

198. Mr. Stevens position was that the bulk and dominance effects were unreasonable in respect of 24 Owen Street, but not unreasonable in respect of other neighbouring sites<sup>45</sup>. In respect of 24 Owen Street, Mr. Stevens was of the view that:

*The building mass will range from 10.2m-16.2m above existing ground levels where it directly aligns to this property. There will be a separation distance of 9m. The rear back yard of this property has a similar ground level to the subject site. The relationship of the proposed building to this property is considered to result in a degree of adverse bulk and dominance effects upon the occupants of this property which is considered significant, even in the Inner Residential context and considering the effects of the permissible building volume.*

199. I note that in the s42A report, Mr. Stevens identifies that the submission does not oppose the application in respect of these grounds; but I note that there is general opposition to the development. Mr. Stevens considered that bulk and dominance effects were no more than minor on other properties due to the topography, the stepping down of the mass of the building so that the highest point was generally the furthest away, the articulation of the cladding, the location of building bulk and the separation from residential boundaries.
200. However, this position altered at the hearing, with Mr. Stevens that he defers to the urban design assessment of Dr. Gjerde in respect to building dominance, noting that this position differs from that contained in the s42A report, where the dominance effects were concluded to be more than minor. He notes that Mr. St. Clair also defers to Dr. Gjerde's assessment<sup>46</sup>, and notes that his view on dominance differs from Mr. Daysh's view in his statement of evidence. I note that Mr. St. Clair also relies on the evidence of Mr. Parslow.
201. Mr. Parslow's evidence was that the bulk and dominance was addressed by the reduction in scale through breaking down the building mass into a series of blocks down the hill. This limits the mass and breaks up the skyline, reinforcing a domestic scale. The building is also proposed to be set close to the Hospice, to provide separation. Balconies and differing materials are also used to break the form.<sup>47</sup> In terms of urban form, Mr. Parslow was of the view that the proposal needs to be considered in the context of its surroundings, which includes the Hospice itself, the Total Energy Centre, the dwellings on 58-62 Mein Street, and

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<sup>44</sup> Page 6 of Mr. Daysh's statement of evidence

<sup>45</sup> Page 19 of the s42A report.

<sup>46</sup> Page 6 of Mr. St. Clair's statement of evidence.

<sup>47</sup> Page 7 of Mr. Parslow's statement of evidence.

the surrounding area which includes a variety of 1920's villas and more recent intensive development.

202. Dr. Gjerde's view on dominance, as set out in the s42A report, is that the way the building has been modelled, the compliance with the building recession planes and the effective use of materials all help reduce any sense of overbearing or dominance. In respect of urban form and character, Dr. Gjerde considered that while the earlier character of the area may have been more consistent, the presence of the larger scale structures in the surrounding area allow for buildings of the scale proposed to be accommodated easily. He also considered that the proposal would fit appropriately into the existing neighbourhood.
203. Dr. Gjerde, Mr. Stevens, Mr. Parslow and Mr. St. Clair all concurred that the proposal was consistent with the urban form objectives and policies, considering that the character and scale of the proposed development is appropriate for the neighbourhood. Dr. Gjerde was of the view that the proposal meets the objectives and policies of the District Plan's Residential Design Guide and that the urban design outcomes would be appropriate. Mr. Daysh's view<sup>48</sup> was that the proposal is not consistent with what are reasonable levels of residential amenity.
204. Mrs. Granville brought to my attention a Ministry for the Environment commissioned case study prepared for a nearby Inner Residential area in Newtown. Mrs. Granville's view was that the design of the building ignores the lessons contained in that case study, particularly in respect of distancing between the Hospice and proposed building.
205. All the experts concurred that any bulk and dominance effects would reduce as the building steps down the slope of the site, from north to south.
206. I questioned the likely longevity of the pohutukawa tree and its likelihood to survive the construction works. The evidence provided by Mr. Parker is that pohutukawa trees are a very resilient species and that the likelihood of the survival of the tree is greater than 80%. The applicant has offered conditions in respect to the protection of the tree through the construction period, as well as for its replacement with a species of a size at planting that would grow to a similar height within 5 years.
207. I prefer the evidence of Mr. Parslow and Dr. Gjerde in respect to the fit of the proposed development with the character and urban form of the surrounding area. Having considered the evidence before me and spent time considering the context of the area, I find that the building would fit with that context.
208. In respect to the bulk and dominance of the proposed building, I find that the applicant has considered the potential effects and has incorporated mitigation in the form of stepping the building down the site, modulation, balconies and the retention of the pohutukawa, that will reduce the level of impact on adjacent residential properties. In saying this, I agree with Mr. Daysh that should the pohutukawa be removed that there would be a significant impact on the properties at 22 and 24 Owen Street. However, I accept that the mitigation offered by the applicant will mitigate this effect to be a minor effect. I therefore consider it important that the protection of the tree through construction and its replacement should it die be secured through conditions.

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<sup>48</sup> Page 14 of Mr. Daysh's statement of evidence.

## **G. Privacy and amenity**

209. Submissions from adjacent residential properties raised concerns about potential privacy effects on their properties arising from overlooking from the residential apartments. Concern was specifically expressed that the main outdoor area for many of these properties is adjacent to the application site, thereby reducing the amenity afforded the residents. Mr. Daysh, on the submitters' behalf and while acknowledging that he is not an urban designer, considered that these effects are adverse and more than minor. His opinion that the effects are more pronounced from the higher parts of the building, with some providing unrestricted views, noting that the effects do diminish with distance.<sup>49</sup>
210. Mr. and Mrs. Granville expressed concern about the potential loss of privacy to their property arising from pedestrians accessing the residential apartment building as well as the potential increase in frequency of headlight glare from vehicles using the parking spaces adjacent to their boundary. Ms. Raffills also raised concerns about headlight glare from the new parking area adjacent to her boundary at 26 Owen Street. Other concerns included screening of service areas, both for the existing Hospice and the residential apartments, landscaping and noise from the occupation of the residential units, traffic generated and the café. In respect of the service areas for the Hospice, I note that this is a matter beyond the scope of this application and I do not address it further.
211. The main potential cause of a loss of privacy to adjacent properties would result from overlooking from the units and from their associated balconies. One of my observations in reviewing the material was that I could not see where there had been particular consideration of the potential privacy effects from overlooking from the large balconies proposed for Units 02.07 and 03.06, which appeared to highlight Mr. Daysh's and the submitters concerns about unrestricted views into rear outdoor spaces. I asked Dr. Gjerde to give particular consideration to these potential effects. Dr. Gjerde's response was that he had concerns about the impact of the large balconies on the neighbours to the east, and recommended the balcony for unit 03.06 be deleted and that the balcony for Unit 02.07 be reduced in size to no greater than 10m<sup>2</sup> and located to the western side of the building.
212. By the end of the hearing, and through the course of amendments to the conditions initially recommended by Mr. Stevens, Dr. Gjerde, Mr. Stevens and Mr. Parslow had arrived at an agreed recommended set of conditions in respect of the treatment of all of the balconies.
213. In respect of noise, Ms. Raffills expressed concern about her tenant's peace and quiet being affected and Mr. and Mrs. Granville express consent about noise interrupting work activities and sleep times as a result of working late hours.
214. The Council's s42A report includes a report from Mr. Dennison, Council's Senior Environmental Noise Officer. Mr. Dennison's view was that he did not consider it would be unreasonable for existing householders to be subjected to the normal noise of residential activities arising from additional household units in a residential area. Mr. Dennison was also of the view that noise from traffic

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<sup>49</sup> Page 7 of Mr. Daysh's statement of evidence.

generated by the proposal would be within the permitted levels for noise, contained in the District Plan. Mr. Stevens accepted Mr. Dennison's advice and further noted that he did not believe an expectation of absolute peace and quiet in a residential appropriate is either appropriate or expected by the District Plan.

215. The applicant did not provide any expert evidence in respect to noise from the residential units, the café or traffic generation. Mr. Daysh did not address noise effects either.
216. In respect of the issue of privacy, like Mr. Daysh, I give little weight to the argument presented that there is already some overlooking from existing structures (the Hospice building). I agree with Mr. Daysh that the existing building is located further away, does not have balconies and is not as dominant as the proposed building. Having viewed the shading evidence, I do not agree with Mr. Daysh that the existing building does not cast a shadow<sup>50</sup>.
217. In respect of the mitigation to privacy effects offered by the applicant and accepted as appropriate by Mr. Stevens and Dr. Gjerde, I find that any effects on privacy are able to be mitigated to the degree that they will be no more than minor.
218. In respect to amenity effects associated with servicing, rubbish bins and privacy effects associated with pedestrian usage of the site, I agree with Mr. Stevens' position that these can be mitigated and addressed through the final landscaping details. I find that any effects would be no more than minor.
219. In respect of the headlight glare to the Granville's property at 34 Owen Street, having viewed their photos and visited their site, I appreciate and understand their concerns. I find that the condition offered by the applicant to provide screening on the Hospice side of the existing hedging will provide appropriate mitigation. I have amended the offered condition to reflect the suggestion of Mr. Stevens that the nature of the screening be confirmed in consultation with the Granville's. In terms of the headlight glare to Ms. Raffills property, given the difference in topography that will both exist and will result from the excavation for the basement carpark.
220. In respect to noise, I prefer the evidence of Mr. Dennison and find that any noise effects will be acceptable, and as expected by the District Plan.
221. My overall finding on privacy and amenity is that any adverse effects are able to be mitigated through the measures reflected in the conditions of consent to the extent that they are no more than minor in nature.

#### **H. Construction effects**

222. Many of the submitters raised concerns about potential construction effects, including construction parking, traffic, noise, dust, stability in respect to the earthworks, and the potential for a crane to overhang their properties.
223. Mr. Stevens identified the following District Plan provisions as being relevant:

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<sup>50</sup> Page 7 of Mr. Daysh's statement of evidence.

Objective 29.2.1 (Earthworks); Policies 29.2.1.3, 29.2.1.4, 29.2.1.7, 29.2.1.11.

The objective is “to provide for the use, development and protection of land and physical resources while avoiding, remedying and mitigating any adverse effects of earthworks and associated structures on the environment”. Policy 29.2.1.3 is to “ensure that earthworks are designed to minimise the risk of instability”; policy 29.2.1.4 is to “require earthworks to be designed and managed to minimise erosion, and the movement of dust and sediment beyond the area of the work, particularly to streams, rivers, wetlands and the coastal marine area”; policy 29.2.1.7 is to “ensure that earthworks and associated structures are designed and landscaped (where appropriate) to reflect natural landforms and to reduce and soften their visual impact having regard to the character and visual amenity of the local area”; policy 29.2.1.11 is to “ensure the transport of earth or construction fill material, to and from a site, is undertaken in a way that is safe and minimises adverse effects on surrounding amenity and the roading network

224. Mr. St. Clair also identified Policy 29.2.1.2 relating to minor earthworks. Mr. Daysh did not specifically identify or address these provisions. Mr. Stevens and Mr. St. Clair both considered the proposal is consistent with these provisions.
225. The Council’s s42A report included a report from Council’s earthworks engineer, Mr. John Davies, stating that he considered that the geotechnical methodology and recommendations are adequate for controlling the risk of instability, and notes that these recommendations will be utilised in the new development. Mr. Davies’ conclusion was that subject to compliance with a series of recommended conditions, the proposal is satisfactory from an earthworks point of view.
226. Mr. Dennison for the Council also addressed construction noise, who did not raise any concerns but did recommend a construction noise management plan. I note that that applicant’s recommended suite of conditions includes such a plan. Mr. Stevens adopted Mr. Dennison’s position and considered that noise during construction can be managed at a reasonable level through controlling working hours and requiring some specific mitigation. The applicant did not provide any expert evidence in respect to construction noise from the residential units. Mr. Daysh did not address construction noise effects either.
227. Mr. Devine for the applicant provided evidence on how any potential effects on ground stability through the construction and earthworks could be managed. Mr. Devine concurred with the report of Mr. Davies including the recommended conditions of consent.
228. In respect of the potential for a crane to overhand properties, Mr. Parslow stated that he was comfortable that the crane could be located to ensure that no lifting or loading of goods occurred over the adjacent properties. Ultimately, however, any overhanging into another property’s airspace is a civil law matter.
229. At the conclusion of the hearing, the applicant had offered a suite of conditions, based on those recommended by the Council, including:
- An earthworks and construction management plan
  - An earthworks and construction noise management plan
  - An earthworks and construction traffic management plan
  - A temporary traffic management plan
  - The requirement to engage a suitably experienced Chartered Professional Engineer to advise and oversee on earthworks stability

- General earthworks conditions which address runoff, clean up and dust.
230. These conditions included addressing the crane, how works would occur in relation to the pohutukawa tree and management of construction traffic and parking.
231. In all, I find that any potential construction related effects will be appropriately managed through the conditions of consent. Construction, while a disruption for a period of time, is not an unexpected occurrence within a residential area. I do not consider that the level of construction proposed on this site is of a scale or nature that cannot be managed through the conditions nor dissimilar to the type of infill development that has been occurring in the surrounding area.

### **I. Intensity of development, plan consistency and Part 2 of the RMA**

232. Certainly, a consistent message from the submitters was the intensity of development proposed on a constrained site, and the cumulative effects arising. Certainly Mr. Daysh's position was the cumulative effect arising from the proposed development made the proposal contrary to the District Plan's objectives and policies and that the proposal overall did not meet Part 2 of the RMA.
233. The District Plan addresses the intensity of development through the objectives and policies set out earlier in this section. Further direction on development is given through the Regional Policy Statement and the more recently introduced National Policy Statement on Urban Development Capacity. I note in the Planning Expert Witness Conferencing Statement that all the planners agree that this NPS is relevant. As outlined earlier, all planners agreed that the RPS is relevant, but it is not overly directive in respect to the matters raised in this application.
234. Mr. Stevens' view was that the proposal is consistent with the NPS, and specifically objectives OA1 – OA3 and policies PA2 – PA4<sup>51</sup>. Mr. St. Clair concurred with Mr. Stevens in this regard. He was also of the view that the proposal is consistent with the RPS, and in particular Objective 22 and Policies 54, 55 and 57, in that it maintains a compact urban form, adds to the range of housing types and achieves the urban design principles<sup>52</sup>.
235. Mr. Daysh's view of the NPS was that a high level the proposal could be supported as it is providing for additional housing stock where there is demand. However, he noted that while the NPS has an emphasis on appropriate development opportunities, it also recognises that development should not occur if effects are disregarded<sup>53</sup>. He concurred with Mr. Stevens and Mr. St. Clair that there is nothing in the application that is inconsistent with the RPS.
236. Mr. Daysh was of the view that based on the effects that he has identified as being more than minor or significant, that taken cumulatively, the proposal is an overdevelopment of a constrained site, and the overall effects are significant. Overall, he considered that the proposal is contrary to the suite of District Plan objectives and policies, which direct intensity of development<sup>54</sup>.

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<sup>51</sup> Page 27 of the Council s42A report.

<sup>52</sup> Pages 11 and 12 of Mr. St. Clair's statement of evidence.

<sup>53</sup> Page 12 of Mr. Daysh's statement of evidence.

<sup>54</sup> Pages 11 and 15 of Mr. Daysh's statement of evidence.

237. At the hearing, and before the receipt of the additional evidence in respect to shading, Mr. Stevens advised that he remained of the view that the proposal is contrary to Policy 4.2.4.2 which requires avoidance or mitigation of the effects of multi-unit development on adjacent properties. He was particularly concerned of the shading of 24 and 36 Owen Street, which as addressed earlier Dr. Gjerde is now of a view that it is acceptable. Overall, at the point he remained of a view that the proposal would be contrary to the objectives and policies of the Plan as a whole, particularly if parking effects are not able to be mitigated. Mr. Stevens did not provide an update of that view following receipt of the shading information and the view of Mr. Gjerde.
238. Mr. St. Clair was of the final view that while consistency with the Plan objectives is finely balanced, that overall the proposal is not contrary to those provisions.
239. In respect of achieving the purpose and principles contained in Part 2 of the RMA, I note that all the planners agreed that sections 6 and 8 were not relevant considerations. I note that Mr. St. Clair identified s6(f) as being relevant in the A.E.E, given the work proposed in respect of the three residential dwellings on the site.
240. Rather, their areas of difference focused on section 7 and then section 5 itself. Mr. Stevens and Mr. St. Clair both concurred that the proposal meets the purpose of the RMA, contained in Part 2.
241. Mr. Daysh acknowledged the positive effects that the proposal would bring<sup>55</sup> and that there would be wider social benefits by providing additional housing stock and economic benefits to the applicant, but that there would also be social costs to those affected by residential amenity and parking effects. He also noted that the use of the land came at the expense of the existing affected community, and that while there were positive effects, they should not be realised because adverse effects have not been avoided, remedied or mitigated. As noted, previously, all planners did agree, however, that the RMA is not a no-effects statute.
242. In respect of section 7 matters, Mr. Daysh raised concerns in respect of s7(c) amenity values and 7(f) quality of the environment. His overall view was that the level of intensity of the development means that it is too big and intense a use of the site and the amenity and quality of the environment for adjacent residents would be affected. Overall, his position is that the proposal does not represent sustainable management as the positive effects are directly at the expense of overall existing residential amenity. He considered the effects of such a scale that the purpose of the RMA is not achieved.<sup>56</sup>
243. Mr. Stevens' view was that:
- The proposal provides social benefits to Wellington through the provision of additional housing stock, of various typologies and with appropriate site-specific amenity
  - It would encourage the use of public transport
  - It will have a negative impact on the social wellbeing of nearby persons through the reduction in amenity. However, this reduction is in respect of two properties only (24 and 36 Owen Street)

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<sup>55</sup> Page 4 of Mr. Daysh's statement of evidence.

<sup>56</sup> Pages 15 to 17 of Mr. Daysh's statement of evidence.

- The proposal will enhance the economic welfare of the Hospice, which provides care services to the Wellington community
  - It will improve the ability to meet the reasonably foreseeable needs of future generations in respect of housing availability
  - It does not adversely affect natural and physical resources
  - It will not deplete life-supporting resources
  - It provides for the efficient use and development of natural and physical resources
  - Effects on the streetscape and character qualities of the environment are appropriately addressed and provided
  - There would be adequate on-site amenity, however the amenity to certain properties nearby would be reduced.
244. Overall, Mr. Stevens was of the view that there are more positive outcomes than negative when considered in light of the four wellbeings in the RMA.
245. Mr. St. Clair's final position was that the proposal would promote the purpose of the RMA, as it:
- provides a number of social benefits in terms of housing supply and facilitating continued supply of Hospice services
  - has only moderate effects on the amenity of one dwelling, and otherwise minor or less than minor effects; and
  - provides for the efficient use and development of scarce residential land, through intensification.
246. Mr. Slyfield's position was that an application that is inconsistent, or contrary to, the objectives and policies of a Plan cannot gain a positive assessment under Part 2, because the objectives and policies are an expression of Part 2.<sup>57</sup>
247. In response, Ms. Gregory's position was that:
- The key Part 2 matters of relevance to this application include the social benefits of the Hospice services and housing supply and the efficient use and development of scarce residential land. In comparison, the objectives and policies in the District Plan are focused on managing the adverse effects of activities, with only limited recognition of the benefits of residential intensification. In this circumstance, I submit that it is possible for an activity to be inconsistent with the objectives and policies of a plan, but consistent with Part 2 of the RMA.*
248. Ms. White did not address Part 2.

## 9.0 Evaluation

249. Having considered the principal effects in contention and made findings on them in terms of their nature and scale and possible mitigation, I now turn to consider these effects in light of the cascading priorities set out in HASHAA. In doing so, I have considered the combined and cumulative nature of the above effects, rather than individually.
250. In doing so, I note Mr. Slyfield's position that through the formulation of HASHAA, it was amended to ensure an appropriate balance between the HASHAA's purpose and the relevant RMA considerations.<sup>58</sup>

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<sup>57</sup> Page 18 of Mr. Slyfield's legal submissions.

**S34(1)(a) The purpose of HASHAA**

251. As set out earlier in this decision, the overall purpose of HASHAA, as it relates to this application, is to enhance housing affordability by facilitating an increase in housing supply in Wellington City, which is a City identified as having housing supply and affordability issues.
252. The granting of this consent will clearly enable an increase in housing supply in Wellington City. There will be benefits associated with this development, which have been recognised through the application material, submissions and the evidence before me.
253. I do note, and I agree with, Mr. Daysh's comment that any development on the site would meet the purpose of HASHAA, irrespective, given that the Accord only requires two dwellings to be constructed to be a qualifying development<sup>59</sup>. Mr. Stevens' agrees also with Mr. Daysh but expresses that 39 units achieves the purpose of the HASHAA to a much higher degree. Mr. Stevens' view at the conclusion of the hearing was that he supported the recommendation to approve the application taking into account the effects it will have on residential character and amenity. However, he considered that parking effects may tip the scale; noting that a reduced scale of residential development which could more readily meet the parking needs of both the Hospice and residential units is also likely to meet the HASHAA purpose.
254. Ms. Gregory's position in closing was that there was no dispute that the proposal achieves the purpose of the HASHAA. Her submission is that it maximises the housing yield while appropriately managing effects on the environment to the largest extent possible, and that this primary matter should be weighted accordingly.
255. Neither Mr. Slyfield or Ms' White specifically addressed the purpose of the HASHAA.
256. I consider that development on the site can occur in a manner that does not generate significant adverse effects on the wider environment. However, there will be minor adverse effects on some of the adjacent residential properties, as well as potentially more than minor ones on parking availability in the surrounding street network, subject to the success of the travel demand management plan. To this end, I agree with Mr. Stevens that the purpose of the HASHAA is not one to be achieved at any cost, and it is appropriate therefore to undertake a weighting exercise.
257. However, overall, I find that the proposal does meet the purpose of the HASHAA.

**S34(1)(b) Part 2 of the RMA matters**

258. I set out earlier the positions of the different parties in respect to Part 2 of the RMA.
259. I acknowledge Mr. Slyfield's position that it is difficult to reconcile Mr. Stevens' position that the proposal is consistent with Part 2 of the RMA<sup>60</sup>, yet contrary to the

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<sup>58</sup> Page 17 of Mr. Slyfield's legal submissions.

<sup>59</sup> Page 18 of Mr. Daysh's statement of evidence.

<sup>60</sup> Page 18 of Mr. Slyfield's legal submissions.

objectives and policies of the District Plan. I am mindful of the recent case law coming out of the Courts, and in particular King Salmon and Davidson. Davidson in particular picks up on Mr. Slyfield's position that the District Plan should represent Part 2. However, in this situation, I am also mindful that the District Plan largely predates the Wellington Regional Policy Statement and the National Policy Statement on Urban Development Capacity, and certainly is yet to be amended to give effect to the NPSUDC, albeit there have been some plan changes progressing to give effect to the RPS. To that end, I do not believe that I could give full weight to the objectives and policies of the District Plan representing Part 2 in Wellington.

260. The proposal will enable the provision of additional housing to meet the needs to Wellington City, which is a current need and foreseeable need for future generations. The development makes use of an existing land resource in an area identified for more intensive development. There was no evidence that the proposal would affect life-supporting capacity. While not all adverse effects may be fully avoided, remedied or mitigated, the RMA is not a no-effects statute, and I consider the level of adverse effects to be acceptable in the circumstances.
261. There are no matters of relevance from sections 6 or 8 of the RMA. In respect to section 7, I acknowledge the change for adjacent residents in respect to the amenity and quality of the environment that they current enjoy. I consider with the offered conditions of consent that these are not of a nature that would overturn an overall judgement under Part 2.
262. Based on my findings in respect to section 104 of the RMA, below, and in considering the evidence of the planning experts, I find that the proposal will achieve the overall purpose of sustainable management.

#### **S34(1)(d) Sections 104 – 104F of the RMA**

263. This application does require consideration under s104D as a non-complying activity. I have found that the development will result in a more than minor effect in respect of demand for on-street parking, although this may be reduced through travel demand management for the Hospice. There will also be minor adverse effects on some properties in respect to shading and dominance from the proposed building. The planners all concurred that the overall effects would be more than minor, and the first gateway test under s104D would not be met.
264. In respect of the second gateway test, Mr. St. Clair considered that it did meet this test, as not being contrary to the objectives and policies of the Plan. Mr. Daysh did not agree with this position, considering that it was contrary. At the end of the hearing, Mr. Stevens was of the view that it remained contrary to the Plan, albeit he did not provide an updated position on this after consideration of Dr. Gjerde's advice on shading effects.
265. In my opinion, based on the advice of Dr. Gjerde, I consider that any adverse effects on amenity and quality of the environment for the adjacent residents will be no more than minor. Therefore, I do not consider the proposal contrary to the District Plan in this regard. In respect to the access objective and policies, it is only 4.2.12.4 which was in contention, that is that new development should require appropriate parking, loading and site access. Which, I have found that it does. It is rather the effect of parking overspill from the Hospice, a consented activity, that will result in moderate, but not significant, adverse effects beyond the site. To that

end, overall, I find that the proposal is not contrary to the objectives and policies in the District Plan, and therefore that it can pass through to consideration under s104.

266. I have addressed the effects of the proposal earlier, where I have found that there will be both adverse and positive effects arising from the proposed development. In all, I consider that the parking effects will be more than minor, but not significant, and through implementation of the offered travel demand management plan, mitigated or reduced. I appreciate that this development will result in a changed environment for the adjacent residents, and that some will have reduced amenity. However, I have been mindful of the bulk of what could be anticipated to occur on this site and the nature and scope of the consents that the Hospice operates under.
267. I have already addressed the District Plan. I find that the proposal will achieve the objective of the NPSUDC and that it is consistent with the relevant objective and policies of the RPS.
268. There were no other matters brought to my attention.
269. I do not consider that ss104(2) – (7), 104A, 104C or 104E and F are relevant to my consideration. I have already addressed Mr. Slyfield's position in respect to s104(3)(d).
270. Overall, in this context, and taking into account the final recommended and offered suite of conditions and the adjustments to those identified in this decision, I conclude that the effects on the environment of allowing the proposal are appropriate, taking into account the objectives and policies of the District Plan, the RPS and the NPSUDC.

### **S34(1)(e) Urban Design Protocol**

271. The evidence before me is that the proposal is consistent with the Urban Design Protocol. I had no expert evidence presented to the contrary. I accept that the proposal is consistent with the outcomes sought in the Urban Design Protocol.

### **S34 Overall Evaluation**

272. I find that:
- The proposal meets the purpose of the HASHAA.
  - The proposal meets the purpose and principles contained in Part 2 of the RMA.
  - The proposal will not result in any unacceptable adverse effects on the environment that would override my finding in respect to Part 2 of the RMA. The conditions I have imposed will provide mitigation or reduction of adverse effects that may be generated.
  - The proposal is generally consistent with the objectives and policies contained in the District Plan, RPS and NPSUDC.
  - The proposal is consistent with the Urban Design Protocol.
273. In respect of s34(2), the Council has confirmed that the site has core network infrastructure and capacity available to serve the development<sup>61</sup>. I questioned

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<sup>61</sup> Page 30 of the Council's s42A report.

whether parking came within the definition of infrastructure under the HASHAA. Ms. Gregory and Mr. Slyfield both agreed that parking was not a matter covered by this section of the HASHAA. Ms. White was of the view that it may be. In any event, based on the evidence before me, I am satisfied that the development itself is providing adequate parking to meet its requirements. Therefore, consent can be granted.

**10.0 Decision**

- 274. Consent is granted, with conditions which are attached as Appendix 1.
- 275. The reasons for the decision are set out above.



**Commissioner Gina Sweetman**

**Date: 11 September 2017**

## APPENDIX 1

### CONDITIONS OF CONSENT

#### General:

1. Subject to compliance with other relevant conditions below, the proposal must be constructed in accordance with the information provided with the application Service Request No. 372834 (*Application*) and the following plans:

Plans prepared by Archaus, Project No. 15085, entitled 'Mary Potter Hospice':

- Sheet No. 01.00, 'Site and Location Plan', Revision 2 dated 17-03-2017;
- Sheet No. 01.05, 'Proposed Parking Plan', Revision 5 dated 01-08-2017;
- Sheet No. 01.20, 'Cladding Material Proposals', Revision 1 dated 17-01-2017;
- Sheet No. 02.00, 'Ground Floor Entrance Lobby and Parking', Revision 2 dated 17-03-2017;
- Sheet No. 02.01, 'First Floor Plan', Revision 2 dated 17-03-2017;
- Sheet No. 02.02, 'Second Floor Plan', Revision 2 dated 17-03-2017;
- Sheet No. 02.03, 'Third Floor Plan', Revision 2 dated 17-03-2017;
- Sheet No. 02.04, 'Fourth Floor Plan', Revision 2 dated 17-03-2017;
- Sheet No. 02.05, 'Fifth Floor Plan', Revision 2 dated 17-03-2017;
- Sheet No. 02.10, '58-62 Mein Street – Existing Houses – Ground', dated 17-03-2017;
- Sheet No. 04.00, 'Owen Street Site Elevation', Revision 2 dated 17-03-2017;
- Sheet No. 04.01, 'Mein Street Site Elevation', Revision 2 dated 17-03-2017;
- Sheet Nos. 04.02 and 04.03, 'Elevations', Revision 2 dated 17-03-2017;
- Sheet No. 05.00, 'Site Sections – A/A and B/B', Revision 2 dated 17-03-2017;
- Sheet No. 05.01, 'Site Section – C/C and F/F', Revision 2 dated 17-03-2017;
- Sheet No. 05.02, 'Site Section D/D', Revision 2 dated 17-03-2017;
- Sheet No. 05.03, 'Site Section E/E', Revision 2 dated 17-03-2017;
- Sheet No. 05.04, 'Site Section L/L', Revision 2 dated 17-03-2017;
- Sheet No. 00.91, 'Earthworks', Revision 4 dated 17-03-2017.

Plan prepared by Boffa Miskell, 'Mary Potter Hospice Apartments – Landscape Concept', Revision B dated 15 March 2017.

#### Earthworks and Construction Management Plan

2. No less than 20 working days prior to commencing any earthworks authorised by this resource consent, the consent holder must provide an Earthworks and Construction Management Plan (ECMP) for certification by the Council's Compliance Monitoring Officer.
3. The ECMP must:
  - be prepared by a suitably qualified and experienced expert; and
  - be peer reviewed by the CPEng (see condition 19) to ensure that the methodology is in accordance with the geotechnical assessment, by Spencer Homes Ltd (dated March 2017, reference 160328).
4. The ECMP shall be in general accordance with the draft Construction Methodology statement and draft Earthworks methodology statement prepared by Archaus Ltd (Architects) attached as Appendix 7 to the Application.

5. The purpose of the ECMP is to manage the effects associated with the undertaking of earthworks and building construction so as to ensure that environmental effects such as erosion and sedimentation, land stability, public safety, and residential amenity for neighbouring property owners and the general public are maintained at a reasonable level throughout the earthworks and construction period.
6. The ECMP must establish performance standards regarding public safety, amenity and environmental protection during the earthworks and construction period of the development which demonstrate that the purpose is being met.

The ECMP must include and address, but is not limited to, the following:

- a) The methods for managing and monitoring the ECMP controls;
- b) The roles and responsibility of key site personnel including nomination of a site person(s) responsible for the implementation of the ECMP;
- c) Contact details of the person(s) on site responsible for the implementation of the ECMP;
- d) A contact (mobile) telephone number(s) for the on-site manager where contact could be made 24 hours a day /7 days a week;
- e) Details of appropriate local signage/information on the proposed work including the location of a large (greater than 1m<sup>2</sup>) noticeboard on the site that clearly identifies the name, telephone number and address for service of the site manager, including cell-phone and after-hours contact details;
- f) A communication and complaints procedure for adjoining property owners/occupiers, passers-by and members of the public;
- g) Safety fencing and associated signage for the construction site;
- h) Details regarding gantries, scaffolding, crane (including boom) locations and duration of occupation of the legal road or any other site not under the control of the consent holder, if any such structures or similar are to be located outside of the subject site;
- i) Details to ensure, that unless agreement has been obtained from the relevant owner, construction equipment does not enter private airspace.
- j) Details to minimise vibration from construction works;
- k) Measures to ensure excavation and retaining structures are constructed incrementally to maintain stability of all the slopes;
- l) The maximum height increment of excavation before the structural support to that excavation is put in place;
- m) Measures to ensure excavations and retaining structures remain stable, including measures to limit the exposure of unretained earthworks at any one time;
- n) Details of the staging of work;
- o) Details of diversion bunds/cut off drains as required to prevent sediment runoff from the site;
- p) Details of the type and location of silt fences and/or catch fences;
- q) Measures for the protection of sumps from sediment infiltration;
- r) Details of adequate filters to be placed on any dewatering pumps, and details of dewatering ponds/pits;
- s) Application of silt fences;
- t) The management methods of sediment and erosion controls;
- u) Measures to ensure that the discharge of dust created by earthworks, construction and transport activities are suitably controlled to minimise dust hazard or nuisance including covering of soil or other material that is stockpiled on the site and covering of soil or other materials transported to, or from, the site;

- v) Measures for cleaning of vehicles, including trucks, before they exit the site and stabilisation of entrance to minimise sediment runoff;
- w) A site specific illustrated earthworks plan illustrating use of the erosion, dust, silt and sediment controls as identified in points a) – o) above; and
- x) Methods and measures to protect the Pohutukawa tree from life threatening damage during construction, including having a suitable qualified and experienced arborist on site when construction works occur in the vicinity of tree.

**Advice Note:**

*The Council's Compliance Monitoring officer will certify, or refuse to certify, the ECMP within 10 working days of receipt. The Council's Compliance Monitoring officer may consult with the Council's Earthworks Engineer as part of that determination. If the Council's Compliance Monitoring officer refuses to certify the ECMP the consent holder may submit a revised ECMP for certification. The certification process must follow the same procedure and requirements as outlined in conditions 2-7.*

- 7. The ECMP certified under condition (2) above must be implemented to the satisfaction of the Council's Compliance Monitoring Officer for the duration of the earthworks and construction period. The erosion and sediment control measures must not be removed until the site is remediated to the satisfaction of the Compliance Officer. If necessary, the Officer may require changes to the implementation of the plan, to address any problem that occurs during the work or before the ground surface is stabilised.
- 8. The consent holder may submit the ECMP for amendment at any time. Any amendments to the ECMP related to earthworks management once work starts must be for the purpose of improving the measures outlined in the ECMP for achieving the ECMP purpose (see condition 5) and must be certified by the following:
  - The consent holder's CPEng;
  - The consent holder's Construction Supervisor; and
  - The Council's Compliance Monitoring Officer.

**Earthworks and Construction Noise Management Plan**

- 9. A detailed Earthworks and Construction Noise Management Plan (ECNMP) prepared by a suitable expert(s) must be submitted to the Council's Compliance Monitoring Officer for certification at least 20 working days prior to the start of any earthworks or other site works authorised by this resource consent.
- 10. The purpose of the ECNMP is to manage the environmental noise effects associated with the undertaking of earthworks and building construction throughout the earthworks and construction period.
- 11. The ECNMP must describe the methods by which noise associated with the work will comply with the controls and noise limits set out in NZS 6803:1999 and how all persons undertaking day-to-day activity management will adopt the best practical option at all times to ensure the emission of noise from the site does not exceed a reasonable level in accordance with section 16 of the Resource Management Act 1991, and which demonstrates that the purpose is being met.

**Advice Note:**

*The Council's Compliance Monitoring officer will certify, or refuse to certify, the ECNMP within 10 working days of receipt. The Council's Compliance Monitoring officer may consult with the Council's Senior Environmental Noise Officer as part of that determination. If the Council's Compliance Monitoring officer refuses to certify the ECNMP the consent holder may submit a revised ECNMP for certification. The certification process must follow the same procedure and requirements as outlined in conditions 9-11.*

12. The ECNMP certified under condition (9) above must be implemented to the satisfaction of the Council's Compliance Monitoring Officer for the duration of the earthworks and construction period.
13. The consent holder may submit the ECNMP for amendment at any time. Any amendments to the ECNMP related to earthworks or construction noise management once work starts must be for the purpose of improving the measures outlined in the ECNMP for achieving the ECNMP purpose (see condition 10). Where an amended ECNMP is submitted, the relevant requirements of conditions (9) to (12) above will apply.

**Advice Note:**

*Where an ECNMP is being submitted for certification, the Consent Holder must allow for sufficient time for the Council's Compliance Monitoring Officer to consider the proposed amendments. The amended ECNMP cannot be implemented until certified.*

**Earthworks and Construction Traffic Management Plan:**

14. A detailed Earthworks and Construction Traffic Management Plan (ECTMP) prepared by a suitable expert(s) must be submitted to the Council's Compliance Monitoring Officer for certification at least 20 working days prior to the start of any earthworks or other site works authorised by this resource consent.
15. The purpose of the ECTMP is to avoid, remedy or mitigate adverse construction traffic effects during the development of the site to maintain public safety, and to ensure the safe and efficient operation of the road network.
16. The ECTMP must include and address, but not be limited to, the following matters which demonstrate that the purpose is being met:
  - a. Temporary pedestrian safety measures, including directional signage (where applicable);
  - b. A limit on the days and hours of work for trucks, which may be restricted to operating outside of commuter traffic peaks and school start and finish times;
  - c. An emergency (24/7) contact telephone number;
  - d. A public complaints register;
  - e. Measures to deal with any collateral damage to vehicles and property;
  - f. Any related occupation of the public footpath or road carriageway for construction related purposes, if applicable.;
  - g. Measures to ensure that all construction-related vehicles are accommodated on-site unless it is not otherwise possible;
  - h. Location of parking for construction vehicles on-site, and how the spaces provided will meet expected construction traffic demand;

- i. Mitigation measures to reduce the demand for on-street car parks by construction traffic during the construction period (eg construction staff parking off-site and being bused to site); and
- j. Identify construction traffic movement routes to be utilised by trucks, and measures for managing effects relative to sensitive sites along the routes i.e. schools.

**Advice Note:**

*The Council's Compliance Monitoring officer will certify, or refuse to certify, the ECTMP within 10 working days of receipt. The Council's Compliance Monitoring officer may consult with Council's Transport Engineer as part of that determination. If the Council's Compliance Monitoring officer refuses to certify the ECMP the consent holder may submit a revised ECNMP for certification. The certification process must follow the same procedure and requirements as outlined in conditions 13-16.*

- 17. The ECTMP approved under condition (13) above must be implemented to the satisfaction of the Council's Compliance Monitoring Officer for the duration of the earthworks and construction period.

**Temporary Traffic Management Plan:**

- 18. An approved Temporary Traffic Management Plan must be in place at all times during construction works. A Corridor Access Request must be opened prior to commencing works, with the approved Temporary Traffic Management Plan to be attached to the Corridor Access Request.

**Advice Note:**

*Temporary Traffic Management Plans can be approved through the Submitica online platform.*

**Earthworks Stability:**

- 19. The consent holder must engage a suitably experienced Chartered Professional Engineer (CPEng) to monitor and advise on the engineering aspects of the earthworks, during the development of the site.
- 20. The CPEng, required under condition 19 above, must advise on the best method to ensure the stability of the land, and to ensure that the work does not cause damage, or have the potential to cause damage, to neighbouring land or buildings. The consent holder must follow all the advice of the CPEng, in a timely manner.
- 21. A suitably experienced Construction Supervisor must be engaged during the detailed construction phase of the project.
- 22. A 'Construction Supervisor' is defined as a person with skills and experience in the construction of excavation and retaining works on steep slopes similar to those proposed and in similar ground conditions.
- 23. The name and the contact details of the Construction Supervisor must be provided to the Council's Compliance Monitoring Officer, at the time the person is appointed.
- 24. Daily excavation and retaining works construction must be directed by the Construction Supervisor.

25. The site must be inspected by the Chartered Engineer or by a person under the CPEng's direction following each increment of excavation that exceeds a cut height of 2.5m and prior to the construction of the structural support to that increment of excavation.
26. The CPEng must confirm the design of each increment of structural support subject to condition 25 above to the architect/project manager prior to the construction of that increment of structural support.
27. A copy of the producer statement 'PS4 – Construction Review' and its accompanying documents for structures/buildings, prepared for the associated Building Consent process, must be provided to the Compliance Officer within one month of the structures/buildings being completed.

#### General Earthworks Conditions

28. Run-off must be controlled to prevent muddy water flowing, or earth slipping, onto neighbouring properties or the legal road. Sediment, earth or debris must not collect on land beyond the site or enter the Council's stormwater system.
29. Condition 28 shall apply for the duration of the site works and until the site has been stabilised. The condition must be complied with to the satisfaction of the Council's Compliance Monitoring Officer.
30. Any earth, rock, vegetation or demolition material that falls on the road, footpath, berm or neighbouring property, must be cleaned up immediately. The material must not be swept or washed into street channels or stormwater inlets, or dumped on the side of the road. The clean-up must be carried out to the satisfaction of the Council's Compliance Monitoring Officer.
31. The discharge of dust created by earthworks, transport and construction activities must be controlled to minimise nuisance and hazard. The controls must be implemented for the duration of the site works and continue until the site stops producing dust. All parts of the condition must be complied with to the satisfaction of the Council's Compliance Monitoring Officer.

## Final Building Design

32. The consent holder must submit final construction plans and details for the project for review and certification by Council's Compliance and Monitoring Officer in conjunction with Council's urban design advisor prior to lodging building consent. The purpose of the review is to ensure that the cladding materials, surface finishes and detailing of the construction achieve the design outcomes anticipated by the information provided by the consent holder at the time resource consent was granted. This information is described in Condition 1. All works must be carried out in accordance with the certified final details.
33. The south facing rooftop balcony of dwelling 02.07 (as shown on Sheet 02.03 approved under condition 1) shall be reduced to a maximum size of 10m<sup>2</sup> and shall be located in on the western side of the roof. The south facing rooftop balcony on the south side of dwelling 03.06 (as shown on Sheet 02.04 approved under condition 1) intended for the use of this dwelling must be deleted. This is to limit overlooking to the neighbouring properties.
34. The eastern balustrade of the balconies associated with units 00.06 and 01.08 must be 1.5m above the finished floor levels of the balconies and treated to match the eastern balustrade of unit 00.05.
35. All balcony balustrades serving dwellings within the first and second floors of the apartment complex (as shown on Sheets 02.01 and 02.02 approved under condition (1) above) must have a height of 1.35m above the finished floor level of the balcony. The exception to this are the dwelling labelled 00.04, where the balustrade height must be 1.8m above the finished floor levels of the balcony and 00.05 where the balustrade height must be 1.5m above the finished floor levels of the balcony.

## Landscaping:

36. A final landscaping plan, based on the landscape concept plan prepared by Boffa Miskell dated 15 March 2017 approved under condition (1), must be submitted to Council for certification by the Council's Compliance Monitoring Officer in conjunction with Council's Urban Design and/or Landscape Architect advisor and the Council's Transport Engineer, prior to lodging building consent. This is to ensure that the landscaping will achieve the landscaping concept shown on the concept plan and that headlight glare screen fencing does not compromise the adjoining car parks.

The final landscaping plan must include planting details of all communal recreational areas on the site, as well as all hardstand surfaces, finished levels, walls, screens, gates, materials, plants and external lighting.

The following additional landscaping measures must be added to the landscaping plan to address the following:

- a) Screening the line of sight into the rear open space at 34 Owen Street from pedestrians moving to and from Owen Street to the apartments;
- b) Fencing to minimise headlight glare from vehicles using parking spaces numbered 01-08 on Sheet No. 1.05 Revision 5, affecting the property at 34 Owen Street. The fencing is to be provided on the consent holders site, on the north side of the existing planting. The fencing will be to the minimum height

- required to screen headlight glare, but shall not be higher than the existing hedge. The fencing shall not compromise the adjoining car parks; and
- c) Screening of the apartments servicing bay and rubbish bin storage area from surrounding residential properties.
37. In order to achieve a balance between achieving headlight glare screening at night time while minimising shading effects during the day, prior to submitting the final landscape plan for certification the consent holder must consult with the owners of 34 Owen Street in respect to the requirements of (b) in condition (36) above. When the final landscaping plan is submitted for certification under condition (36), the consent holder must provide details of this consultation and must set out how any issues raised in consultation with these owners have been incorporated, or if they have not been incorporated, the reasons why.
38. The landscaping must be completed in accordance with the certified final landscaping plan referenced in condition (36) within 3 months of completion of the building works and must be maintained thereafter by the consent holder.
39. If the existing Pohutukawa tree shown on the landscaping plan prepared by Boffa Miskell dated 15 March 2017 approved under condition (1) dies or otherwise needs to be removed from the site for reasons such as wind damage or for some other safety concern, the consent holder shall remove the dead tree and replace it with a specimen tree which at the time of planting provides diffuse screening and has the potential to grow to similar proportions as the existing tree within 5 years. The replacement tree and methodology for transplanting shall be approved by the Council's Compliance Monitoring Officer.

#### Travel Demand Management Plan:

40. Prior to the occupation of any of the apartments, the consent holder shall develop and implement a Travel Demand Management Plan (TDMP) for the daily operation of the Mary Potter Hospice. The TDMP shall include the implementation of travel demand mitigation measures as detailed in the report prepared by Traffic Design Group dated 22 February 2017 (TDG Reference No. 14253.000). A copy of the TDMP shall be provided to Council's Compliance Monitoring Officer for their information prior to the residential occupation of any of the apartments or the commencement of trading of the café.

**Advice note:** This condition is offered on an Augier basis.

#### Revised Parking Plan:

41. A revised Parking Plan, incorporating the 21 proposed parking spaces to serve the residential apartment complex and café based on the Parking Plan provided at the hearing (Sheet No. 01.05, 'Proposed Parking Plan', Revision 5 dated 01-08-2017 approved under condition 1), must be submitted to the Council's Compliance Monitoring Officer for certification prior to the installation or construction of any changes in parking layout, design, or allocation. The revised Parking Plan will be certified in consultation with Council's RMA Transport Engineer or Manager of Transport Network Operations.
42. The 21 car parks to serve the residential apartment complex must be clearly marked as designated uses 'RESIDENTS' and 'RESIDENTIAL VISITORS' to the

satisfaction of the Council's Compliance Monitoring Officer, prior to the residential occupation of any of the apartments or the commencement of trading of the café.

Servicing:

43. Any servicing of the residential apartment building (rubbish collection, maintenance etc.) must be carried out between the hours of 7.00am and 6.00pm Monday to Friday. No servicing vehicles may reverse into the site from Owen Street.

Monitoring and Review:

44. Prior to starting work the consent holder must advise of the date when work will begin. This advice must be provided at least 48 hours before work starts to the Council's Compliance Monitoring Officer either by telephone (801 4017), facsimile (801 3165) or email ([rcmonitoring@wcc.govt.nz](mailto:rcmonitoring@wcc.govt.nz)) and must include the address of the property and the Service Request Number.
45. The conditions of this resource consent must be met to the satisfaction of the Council's Compliance Monitoring Officer. The Compliance Monitoring Officer will visit the site to monitor the conditions, with more than one site visit where necessary. The consent holder must pay to the Council the actual and reasonable costs associated with the monitoring of conditions (or review of consent conditions), or supervision of the resource consent as set in accordance with section 36 of the Resource Management Act 1991. These costs\* may include site visits, correspondence and other activities, the actual costs of materials or services, including the costs of consultants or other reports or investigations which may have to be obtained.

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

**Advice notes:**

1. Under section 51 of the HASHAA, the land use consent must be given effect to within 2 years of the granting of this consent, or within such extended period of time pursuant to section 125 of the Resource Management Act 1991 (RMA) as the Council may allow.
2. This resource consent is not a consent to build. A building consent may be required under the Building Act 2004 prior to commencement of construction.
3. This resource consent does not authorise any works that also require consent from the Greater Wellington Regional Council. If necessary, separate resource consent(s) will need to be obtained prior to commencing work.
4. A vehicle access bylaw consent is required for the construction of the kerb crossings, driveways and parking facilities under Part 5, Section 16 of the Council's Consolidated Bylaw 2008. A heavy duty crossing is required in this instance.
5. No buildings, vehicles, materials or debris associated with construction may be kept on Council land, including the road, without prior approval from the Council.

6. Damaged areas of legal road vegetation or berm must be reinstated by the consent holder within three months of completion of construction and this includes suitable remedy of compacted areas, including removal of any building debris, ripping of compacted soil and new topsoil if required to ensure grass strike or planting success. Grass is acceptable for reinstatement if the area was previously grassed; however, it is preferable (and required if existing previously) that the berm is reinstated with Wellington native plant species planted at 900mm maximum spacing and mulched.
7. As far as practicable all construction activity related to the development must take place within the confines of the site. No buildings, vehicles, materials or debris associated with construction may be kept on Council land, including the road, without prior approval from the Council. Please note that land owner approval is required under a separate approval process and that this must be sought and approved prior to any works commencing.

For more information on the traffic management process and what further separate land owner approvals may be required in relation to the logistics of working within the legal road either contact the Transport Asset Performance team or visit this link: <http://wellington.govt.nz/~media/services/parking-and-roads/roadworks/files/traffic-management-process-2013.pdf>

Temporary traffic management approvals will be required if it is proposed to undertake loading activities or otherwise occupy legal road during earthworks/construction, in accordance with condition 15 above. This includes the locations of cranes on legal road.

8. It is possible that archaeological sites may be affected by the proposed work. Evidence of archaeological sites may include burnt and fire cracked stones, charcoal, rubbish heaps including shell, bone and/or glass and crockery, ditches, banks, pits, old building foundations, artefacts of Maori and European origin or human burials. The consent holder is advised to contact Heritage New Zealand if the presence of an archaeological site is suspected. Work affecting archaeological sites is subject to a consent process under the Heritage New Zealand Pouhere Taonga Act 2014. If any activity associated with this proposal, such as building modification or demolition, earthworks, fencing or landscaping, may modify, damage or destroy any archaeological site(s), an authority (consent) from Heritage New Zealand must be obtained for the work to proceed lawfully. The Heritage New Zealand Pouhere Taonga Act 2014 contains penalties for unauthorised site damage.
9. Rights of objection to this decision are set out at section 81 of the HASHAA. Any objection shall be made in writing, setting out the reasons for the objection within 15 working days of this notification or within such extended period as the Council in any special case may allow.
10. The following conditions will apply to the building consent with respect to the water supply infrastructure to be provided:

An appropriately sized water supply connection to the public main would need to be provided with any redundant connections disconnected at the public main. Application is to be made to Wellington City Council for these works.

A double check type back flow preventer would be required if the connection is greater than 25mm ID.

A separate private water supply shut valve is to be provided for each block/building. They shall be located such that each block/building can be independently isolated if required.

11. The following conditions will apply to the building consent with respect to the drainage infrastructure to be provided:

The development will need to be provided with a suitably sized, separate and direct connection to a public gravity stormwater and wastewater system or approved outfall (in the case of stormwater); at a location approved by the Wellington Water Land Development team.

A Drainage Consent or Building Consent will have to be obtained prior to commencing any private drainage work, and all construction will be required to be completed in accordance with the approved plans. This extends to the stormwater detention tanks proposed to serve the building.

Wastewater must discharge to the public wastewater network in Mein Street. Pumping of wastewater may be required.

12. If there is a consideration/intention to subdivide the property in the future the consent holder is advised to reticulate the development in a manner which meets the Code of Practice for Land Development as it applies to the likely preferred type of subdivision.
13. The re-use of a previously used lateral over 25 years old is not permitted. Where an existing building is to be demolished or replaced the end of the existing private stormwater and wastewater lateral(s) is / will need to be capped at the main or re-laid upstream of the connection for future use. Council shall be advised of the final treatment.