

Written Right of Reply

TO: Hearings Committee

FROM: Nigel Bryce, Consultant Planner

DATE: 18th August 2017

SUBJECT: **RESOURCE CONSENT APPLICATION**
LUC-2017-48 & SUB-2017-26
193 to 143 Moray Place, Dunedin
NZ Horizon Hospitality Group Limited

INTRODUCTION

1. My name is Nigel Bryce and I am the author of the section 42A report relating to the abovementioned application. The following provides my formal written right of reply to matters raised during the hearing dated 31st July to 4th August 2017. This right of reply also considers that amended material submitted by the Applicant on the 9th of August 2017 ('Revised Proposal'), as well as the outcomes of the urban design caucusing undertaken on the 14th of August 2017.
2. The design of the building has been amended as described in the Revised Architectural Statement prepared by Thom Craig, dated 9th August 2017 and includes:
 - Stepping down of each of the 3 towers by one floor; and
 - Aligning the pedestrian Hotel entrance with Harrop Lane, this includes the incorporation of an internal staircase which retains boundary formation, as well as recognising the heritage surroundings; and
 - Dropping the whole building down one additional level into the site so that there is greater connectivity between the main hotel floor and the new Moray Place pedestrian entry; and
 - The incorporation of a courtyard garden accessible from level 4. This promotes and engages further streetscape activity along Moray Place;
 - The realignment of parking and vehicle passage, which has been facilitated by the excavation of an extra level of parking.
3. My reply covers the following issues raised during the course of the hearing and my position on the same and includes:
 - Revised Proposal and Adequacy of Information Response;
 - Economic Effects;
 - Unbundling;
 - Reference to Dominance;
 - Relevance of Amenity Considerations; and
 - Impacts Upon Dunedin's Heritage Character.

MATTERS RAISED

REVISED PROPOSAL AND ADEQUACY OF INFORMATION RESPONSE

4. I have considered the Revised Proposal and agree with the agreed position of the urban design experts, that the street edge has been improved and the retail spaces appear spatially practicable.¹ I note, however, that there remains no final canopy details for the Revised Proposal. The canopy details shown on Drawing -Level 4, dated 7/06/2017 and Drawing Section XX attached as Appendix F of the section 42A report do not demonstrate compliance with Rule 9.5.2(iii) of the Operative Plan, so this component of the Application remains a non-complying activity. Should the Panel look to grant consent, the final details of the canopy will need to be submitted for final approval.

Earthworks

5. The Revised Proposal will result in additional earthworks, however no additional information has been provided by the Applicant to quantify the additional earthworks volumes and extent of cuts contained within the building envelop that will be required.
6. A range of construction related concerns have been raised by submitters, which I respond to at paragraph 253 to 264 of the section 42A report. In my opinion, the Revised Proposal will likely prolong construction related activities on site and generate additional heavy truck movements on the roading network. It is difficult, however, to gauge the extent of any material difference in construction effects without more detailed information. As the Applicant has sought consent for earthworks, it would have been reasonable to expect this to have been addressed as part of the Revised Proposal. This is certainly the case given the fact that immediately adjoining landowners/tenants have submitted on this application raising construction activity related concerns.

Unit Title Subdivision

7. The Revised Proposal will alter the unit tile configuration and no revised unit title plans have been submitted by the Applicant. I simply raise this here because unit title subdivision is sought as part of this application.

Glare

8. One of the outstanding issues before the Panel is the concerns that the Development will generate glare and reflection and this information was sought in the Panel's minute dated 3rd August 2017. This was in part a follow on from information that had been requested at paragraph 125 of the section 42A report. The information presented by the Applicant to date, has not, in my opinion, fully addressed the potential for this Development to result in adverse glare effects on the receiving environment. The key issue lies in the fact that there is no standards in the Operative Plan that specify a reflectivity standard.
9. I note that a similar issue was raised with the earlier Hotel scheme on the waterfront and in that case the reporting officer addressed this matter under Section 21 - Environmental Issues of the Operative Plan, which sets out a policy framework that specifically addresses reflectivity through Objective 21.2.3, which seeks "*ensure that the finishing of structures, the construction of signs and the shielding of light sources avoids, remedies or mitigates nuisance glare.*"

¹ At paragraph 8 of the Expert Design Conference dated 14th August 2017.

10. It is my recommendation that should the Panel look to grant consent then my recommended condition 16 in Appendix 7 be further amended to adopt an objective statement consistent with the outcome of Objective 21.2.3 and that the consent holder adopt all necessary measures to ensure that light reflection off all external materials is appropriately mitigated.

Wind Effects

11. There has been a number of issues raised with respect to wind effects and one of the key issues raised is in the submission of Dr Holmes, who raised concerns that the wind data used in the JDH Consulting report employs wind recordings taken at the Airport and not more relevant local wind recordings in or near the City Centre.
12. I agree with Dr Holmes's concerns and should the Panel look to grant consent then my recommended condition 17 in Appendix 7 be further amended to require a two staged approach, including the need for the wind tunnel study to take into account local wind data and prevailing wind conditions, as well adopting a more prescriptive objective statement in the draft condition that requires best practicable measures to be adopted to ensure that the Development accords with the *criteria for human comfort stated in the Wellington District Plan [2], Section 13.6.3.5 Wind*.

ECONOMIC EFFECTS

13. The Otago Chamber of Commerce (submitter 137), Otago Southland Employer's Association (submitter 208) and Property Council of New Zealand (submitter 563) have all reinforced the positive economic benefits of providing a 5 Star Hotel. The submission of Mr Nidd also went into some detail that the Proposal is economically critical for the City.
14. In the section 42A report, I recommend² that the Applicant provide a more detailed overview of these benefits, including how the Proposal is meeting any shortfall in supply of hotel accommodation in the City to assist with quantifying the nature and extent of positive effects, including economic benefits to the City. This request was underpinned by the additional information requested by the Panel's minute dated 3rd August 2017, which resulted in the tabling of the Infometrics Report along with a request for the short and long-term employment predictions arising from the development. I understand that Infometrics was not available to produce additional information concerning short and long-term employment predictions arising from the development.³
15. It is clear⁴ that the Proposal will have positive economic benefits both through the construction phase⁵ and long term⁶. The Development has been designed to accommodate 420 visitor nights as part of the hotel component and will clearly provide for additional high end accommodation to meet the needs of the City's growing conference and tourism markets. The evidence of Mr Tosswell identified that the Development will deliver the equivalent of 130 full time equivalent jobs. These are all positive economic benefits.
16. Mr Page's opening legal submissions⁷ argues that the *"benefits of the proposal to the vibrancy of the City Centre will vastly outweigh the costs of the sunshine loss at mid-winter"*. He reaches this conclusion on the basis that *"the only material adverse*

² At paragraph 97.

³ As set out in Memorandum of Counsel for the Applicant dated 9th August 2017

⁴ based on the assumptions employed in the Infometrics Report.

⁵ With a lift in equivalent to 0.64% of GDP in year one and 0.32% of GDP in year two.

⁶ With a lift in equivalent to a range between 0.32% and 0.54% of GDP.

⁷ At paragraph 89 of Mr Page's legal submissions.

*effect arising from the height of the building is shading a public place, and especially the Octagon.”*⁸

17. Putting to one side, the assertion that the only material effect of this Development is on the loss of sunlight into the Octagon, the Applicant has not provided any detailed economic analysis that quantifies how the loss of sunlight to a public place is offset by the positive economic benefits of this scheme. This is the role of an economist and the Applicant has not called economic evidence.
18. I note that Otago Chamber of Commerce (submitter 137) has caucused hospitality businesses that rely on the Octagon for patronage, however, this only deals with businesses that have a licence to occupy road frontages along Moray Place and does not address the wider use of the Octagon by the public. Mr Wilkinson⁹ who is a retail strategist, produced evidence that discusses shading impacts on Dunedin's hospitality precinct and uses venue visitation data from Google that demonstrates peak shading periods are when most businesses are at their quietest. Mr Wilkinson highlighted that his evidence was purely based on his own observations and that he had not undertaken a formal survey of users of the Octagon or associated hospitality premises.
19. Mr Nidd (submitter 326) concluded that the balancing exercise is “clearly in favour of the Applicant.” In my opinion, there is limited economic evidence before me that enables a judgement of whether the loss of sunlight penetration over the Winter Solstice is offset by the economic benefits of the Proposal.
20. Further, the urban design evidence of both Mr Falconer, Mr McIndoe and Ms Skidmore all identify that the effects of this Development extend to wider considerations than just loss of sunlight penetration into the Octagon. Materially, the Proposal has the potential to adversely affect townscape values of the City Centre and the important landmark setting of two of Dunedin's category 1 heritage listed buildings.
21. For the reasons set out in my section 42A report and detailed in this right of reply, I am not persuaded by the evidence before me that the economic benefits of the Proposal outweigh the actual and potential adverse effects of this Development.

UNBUNDLING

22. I have carefully considered the evidence presented by the Applicant¹⁰, evidence presented by submitters and written responses advanced by counsel for submitters on the issue of un-bundling. As I will discuss, I maintain my position that the Panel should apply the bundling principle to this application and that the application be assessed as a non-complying activity.
23. Mr Page sets out that the evidence of Mr Anderson discusses why there is no link to the height of the building. In relation to yards, he argues that the non-compliance is due to obligations to provide vehicle access. However, the Applicant's own evidence also states that the building has been setback off the boundary to assist with mitigating the bulk of the development.
24. Mr Page sets out that *“the building design has been progressively refined to remove all unnecessary bulk”* and that the building design *“makes a more elegant contribution to the City skyline than a rectilinear block form built to the site boundaries”*.

⁸ At paragraph 86 of Mr Page's legal submissions.

⁹ For the Applicant

¹⁰ Legal submissions by Mr Phil Page (dated 31st July 2017), evidence of Mr Tom Craig, Mr Tosswell, and Mr Don Anderson.

25. As reinforced by Mr Craig¹¹, the Applicant has intentionally moved away from the 'perimeter typology'. Mr Craig submitted an earlier perimeter scheme showing a development with a gross floor area of approximately 19,767m² in area, which shows the building located to the front and the full length of the southern side boundary and which achieves a lower height limit to that proposed. Mr Tosswell's evidence reinforces that the project can be no less than GFA of 20,823m² in area¹² and *"that in terms of height, to attain a sustainable development and taking into consideration community and residents behind we took the following into account...reduced the width of the building as much as possible so we could provide view channels for the residents behind us on the hill. This understandably resulted in some further elevation"*¹³.
26. Further, Mr Anderson's planning evidence states that *"the bulk and location of the building has been mitigated by breaking up its footprint and by siting it away from the site boundaries, both as described in the architectural statement"*¹⁴.
27. As is clear, the Development has moved away from a more typical perimeter design response anticipated by the Operative Plan and that is found within the City Centre and along Moray Place and Filleul Street. Reinforcing this, the Operative Plan sets out the character and amenity of the Inner-City Area arise from *"continuous frontages of buildings on the main streets"*.
28. Mr Page, when addressing Policy 9.3.3¹⁵ states that "side yards are typically required to protect solar access". I do not agree with this statement for the reasons outlined above. As I have presented to the Panel, it is my opinion that the 'no front and side yard' requirements in the CAZ seeks to ensure a uniform and harmonious design response is provided for along the street frontage of all sites located within the CAZ, along with avoiding the creation of gaps. This is complemented by the veranda requirements.
29. The Proposal will not achieve a perimeter building typology that is typical of development found on the western side of Filleul Street and Moray Place¹⁶ and therefore it will result in modifications to the streetscape amenity both in terms of building modulation and how the building presents itself to the street and to neighbouring properties. Both the building's height and its relationship to the street and neighbouring sites generates streetscape and townscape issues that are, in my opinion, ultimately intertwined.
30. I believe that a good example of what the Operative Plan is seeking to achieve through the avoidance of gaps and consistent façade modulation is the Wall Street centre carpark access off St Andrews Street, as set out in Photographs 1 and 2 below. While in this example the entrance creates a physical gap to the street frontage, the façade modulation above retains a consistent height and building form to both side boundaries to ensure that as far as practicable this access is designed to integrate with its surroundings. The above discussion is important because it leads into the discussion of whether the 'no front or side yard' requirement is linked with the issue of height.

¹¹ The Applicant's project architect.

¹² At paragraph 26 of primary evidence.

¹³ At paragraph 4 of summary of evidence.

¹⁴ At page 7 of Mr Anderson's primary evidence.

¹⁵ At paragraph 24 and 25 of Outline of Opening Oral Submissions

¹⁶ refer Mr MacIndoe's Building Façade Alignments Drawing A2.3



Photograph 1 – Wall Street Mall carpark entrance off St Andrews Street.



Photograph 2 – Wider view of Wall Street Mall carpark entrance off St Andrews Street.

31. In relation to legal submissions, I have considered the case law and presentations by the Applicant and Submitters. I agree with the legal submissions of counsel for Millenium and Copthorne Hotels New Zealand Limited on the issue of unbundling, particularly as this relates to the three criteria¹⁷ established in the *Southpark Corp Ltd v Auckland City Council* case ('*Southpark case*').

¹⁷ (a) one of the consents sought is for a controlled activity or a restricted discretionary activity; and
(b) the scope of the consent authority's discretionary judgement in respect of one of the consents required is relatively restricted or confined, rather than covering a broad range of factors; and
(c) the effects of exercising the two consents would not overlay or have consequential or flow-on effects on matters to be considered on the other application, but are distinct.

32. In considering the three criteria established in the *Southpark* case, where a hybrid approach was adopted, I agree that the Proposal meets the first criteria (in that one of the consents sought is for a controlled activity or a restricted discretionary activity). The Proposal before the Panel, consent is sought as a controlled activity¹⁸ and a restricted discretionary activity¹⁹, as well as a non-complying activity²⁰. The first criteria of the *Southpark* case would therefore be met. I understand, however, that the three criteria are to be considered together.
33. The legal submissions of the Millenium and Copthorne Hotels New Zealand Limited state “[t]he second of the *Southpark* criteria requires that the discretion afforded to the decision maker on one of the consents is confined rather than covering a broad range of factors.”
34. In my opinion, the discretion afforded to the consent authority, in this case, is not confined. I agree with Ms Semple²¹ that the assessment matters supporting Rule 13.7.2 provides for the consideration of “*the relationship of the building with the setting*”, which itself overlaps with the matters of discretion under assessment matters identified under Rule 9.9 of the Operative Plan for the breach to the maximum height limit and ‘no front or side yards’ under Rule 9.5.3. Put another way, the structure of the assessment criteria is such that the issues of building bulk and location, height and relationship to the street are relevant to the controlled activity consent, the restricted discretionary components, as well as the unrestricted components of the Proposal. Put it simply, they overlap.
35. The evaluation of effects set out in the section 42A report is structured around the consideration of the assessment matters under Rule 9.9 of the Operative Plan. In my opinion, there is a very broad level of overlap between the assessment matters relevant to the consideration of the various consents sought by the Applicant, particularly as this relates to the controlled activity consent sought under Rule 13.7.2(i), Rule 9.5.2(i) Yards, Rule 9.5.2(ii) Height, Rule 9.5.2(iii) Verandas. These include:
- Townscape Rule 13.7.2 (i) with “*Council’s control limited in respect of external design and appearance of the building, including building material and external colour. Further, in assessing any application the Council will, in addition to the matters contained in the Fourth Schedule of the Act, have regard to:*
 - (i) *The values of the townscape precinct within which the site is located. (Refer to Subsection 13.6 (Townscape Precincts)*
 - (ii) *The relationship of the building with the setting.*”
36. The consideration of the relationship with buildings under assessment matter (ii) above, overlaps, in my opinion, with assessment matter 9.9.4 Bulk and Location, which requires consideration of “*the bulk and location of buildings associated with the proposed activity and their effects on amenity values of the environment in which they are located and the environment of surrounding areas.*” Further, assessment matter 9.9.4 would apply to the consideration of both the ‘no front or side yard’, and ‘verandas’ breaches and the height breach sought within the application.
37. The response by Ms Skidmore²² to questions relating to whether there is a relationship between setback and height is of particular assistance to the issue of

¹⁸ Under Rule 13.7.2 of the Operative Plan

¹⁹ Under Rule 9.5.2(ii) Height

²⁰ Under Rule 9.5.2(i) Yards and Rule 9.5.2(iii) Verandas

²¹ for Millenium and Copthorne Hotels New Zealand Limited

²² On behalf of Misbeary Holdings Limited

un-bundling. Ms Skidmore reinforces *“that when considering the effects of a building on the character and amenity of the surrounding environment, it is appropriate to holistically consider the various design aspects that come together to create the overall proposal.”*²³ Ms Skidmore stated that it is inappropriate to consider the height aspect in isolation and that the visual, character and amenity effects arising from the building result from the way a range of design aspects come together. These include the building typology (podium and linked tower), footprint and building mass, form, height, articulation and materials palette. Further, Mr McIndoe²⁴, in response to Commissioner Daysh’s question relating to bundling, stated that *“it is artificial to separate the consents sought and they should be considered in the round.”*

38. As such, I agree that the discretion afforded to the consent authority is not confined and the interplay between issues raised by this Proposal should be considered as a whole and not broken down in their component parts.
39. In terms of the third criteria of the *Southpark* test²⁵, as was identified at paragraph 55 of the section 42A report, the Development is setback off the southern boundary by 12 metres to accommodate a bus drop off, bus parking and driveway access. The resultant setback will generate a departure from the uniform street appearance of buildings located along Filleul Street and located along Moray Place, and while I note that the urban design statement states *“that the street edge can include breaks for lanes and vehicle access and still retain successful definition.”*²⁶, the Operative Plan reinforces the importance placed on ensuring buildings are located to the street and side boundaries. Section 13.9 of the Operative Plan sets out Anticipated Environmental Outcomes envisaged for the townscape precincts is that *“[t]he enclosing sides of important public spaces such as the Octagon, George Street and Moray Place will not be interrupted by gaps.”*
40. In terms of building height, the visual effects of the Development clearly generate both streetscape and townscape effects that are required to be considered, in conjunction with the stepping of the building and the effects that this create. For example, Section 13.9 of the Operative Plan sets out Anticipated Environmental Outcomes and Section 13.9.10 requires *“Development will be consistent with the existing character of the townscape”* and Section 13.9.18 *“Development will be appropriate to and will enhance the character of the townscape.”* As I have set out above, both the visual separation between buildings and the scale of development collectively inform the character of the respective townscape values present within the City Centre.
41. Overall, I concur with the legal submissions of Millenium and Copthorne Hotels New Zealand Limited that the Proposal fails to meet the second and third criteria set out in the *Southpark* case. As such, through the application of the principle of bundling, which requires that the most stringent activity status applies to an application, overall the Proposal should be assessed as a non-complying activity.
42. Lastly, I note that Mr Anderson is the only planning witness to suggest that there is no connection between height and the side yard, and with over 30 years planning practice in Dunedin, he was not able to provide any examples, when questioned, of where an application for an over height development was unbundled in the manner proposed.

²³ Refer paragraph 5.1 of evidence in chief.

²⁴ for Millenium and Copthorne Hotels New Zealand Limited

²⁵ Whether the effects of exercising the two consents would not overlay or have consequential or flow-on effects on matters to be considered on the other application, but are distinct.

²⁶ At paragraph 5 of the Expert Design Conference dated 14th August 2017.

REFERENCE TO 'DOMINANCE' IN SECTION 42A REPORTS

43. The Applicant's evidence is critical of reference made to the building being 'dominant'. Mr Page's legal submission sets out that *"you should be very cautious about planning and urban design evidence that advance the idea that building 'dominance' is a relevant adverse effect. An expert witness should explain what the term means in relation to the values that are derived from the District Plan itself."*²⁷
44. In response, I note that the Operative Plan does not specifically refer to 'building dominance', however, for development that exceeds the maximum 11 metre height limit there is a need to consider the effects of "the bulk and location of buildings" under assessment matter 9.9.4. The section 42A report, in addressing the height of the Development, is guided by assessment matter 9.9.4, which requires consideration of the bulk and location of buildings and their effects on the amenity values of the environment in which they are located (including surrounding areas). In other words, the key issue raised by a tall building relates to its scale, bulk and visual relationship with its setting. In my opinion, these matters are all fundamentally linked to visual amenity considerations. Reinforcing this point, the Expert Design Conferencing statement concludes that the *"principles for determining appropriate building height on any site above the permitted threshold includes: ...e) visual effects including impacts on view connections and visual dominance."*²⁸
45. In almost all instances where reference is made to the 'dominance' of the building in the section 42A report, it is made in the context of the physical characteristics of the building and its direct effects on the visual amenity of adjoining or distant properties. These are all matters that clearly overlap with Assessment Matters set out under 9.9.3 (adverse effects on other areas), 9.9.4 (Bulk and Location) and 9.9.5 (Amenity Values) and are matters that the Panel are required to turn their attention to when considering this application.
46. Given the above, I am comfortable with the use of the term 'dominance' in the section 42A report providing that it is used in the context of describing the visual appearance of the building and its direct effects on the visual amenity values of the environment within which it is located.
47. I note that while Mr Craig's evidence is critical of the use of the term 'dominance', he himself concluded that the building would be 'dominant'. Similarly, Mr Compton-Moen, when asked about the scale of the development by Commissioner Lister, agreed that it would be the tallest building in the city centre.
48. I note that the Expert Design Conferencing statement concludes that the revised Proposal will have minimal effect on reducing the visual effects of the building. Based on this conclusion, and my review of the relevant planning documents, I agree with this conclusion and therefore maintain the conclusion that I have reached at paragraph x to x of the section 42A report.

RELEVANCE OF AMENITY CONSIDERATIONS

49. Mr Page sets out that *"at common law and in planning law there is no right to the preservation of sun or a view"* and that legitimate expectations are derived from the Plan provisions.²⁹ He also goes on to highlight that in *'our post King Salmon and Davidson world, 'amenity' is refined by the features that have been identified as important within the District Plan.*³⁰

²⁷ At paragraph 71 of Mr Page's legal submissions.

²⁸ At paragraph 6 of the Expert Design Conference dated 14th August 2017.

²⁹ At paragraph 32 of Mr Page's legal submissions.

³⁰ At paragraph 35 of Mr Page's legal submissions.

50. Mr Page, goes to some lengths to reinforce caselaw (refers to the *Duxton* case) that highlights that effects on views and shading may not be relevant to the Panel's consideration. He addresses the Panel on shading and loss of views.
51. Mr Page, when addressing amenity considerations relevant to the consideration of outlooks from the adjoining City Rise area zoned Residential 4 under the Operative Plan states *"there is no suggestion, anywhere, that views of the City, heritage buildings, or of the harbour are residential amenity values that require protection."*³¹ Further, Mr Page states *"[a]lthough the complaints of Cargill Street residents about views are understandable at a personal level, the Plan provisions do not provide for any foundation for such complaints.....it is the Plan's identification of amenity values that must prevail"*.³²
52. I do not agree with the assertions made by Mr Page that because the Residential 4 Zone does not specify outlooks from the City Rise properties as forming part of the amenity values that residents enjoy, that the visual effects of the Development on these properties should be ignored. Ultimately, the Development is significantly larger than neighbouring development within the CAZ and challenges the existing character values of the CAZ and associated townscape values. The proximity of the Site immediately adjoining a residential zone to the west is also a relevant consideration.
53. Mr Anderson for the Applicant sets out that *"there is nothing in either the District Plan or Central City Plan to indicate that these zones (referring to Residential 4 Zone to the west of the Site) require different management at their boundaries."* I agree with this conclusion, and note that the relevant standard that seeks to respond to amenity values of the adjoining Residential 4 Zone is the minimum 9 metre and maximum 11 metre height limit provided for within the CAZ.
54. While I agree that the Operative Plan establishes the legitimate expectations of the bulk and locations parameters within which loss of sunlight and views are to be considered against, the Operative Plan also provides for very broad array of assessment matters over which discretion falls when considering adverse effects associated with an over height development. These assessment matters give effect to the policy direction of the Operative Plan, not just the policy framework of the CAZ, but also the broader 'overarching'³³ guiding principles in Section 4 of the Operative Plan³⁴. The Principal reasons for adopting objectives in Section 4 of the Operative Plan, sets out that *"the Council wishes to protect the existing amenity and character of the various parts of the District. Primarily that will be achieved through managing the density and intensity of development."*
55. The Operative Plan provides for a broad range of considerations relevant to 'amenity values' when considering the effects of this Development, which requires the Council to have regard to:
 - Adverse effects on Other Areas under assessment matter 9.9.3, including proximity to residential areas;
 - Bulk and Location under assessment matter 9.9.4, requires consideration of the bulk and location of buildings associated with the proposed activity and their effects on amenity values of the environment in which they are located and the environment of surrounding areas;

³¹ At paragraph 61 of Mr Page's legal submissions.

³² At paragraph 61 of Mr Page's legal submissions.

³³ As described by Mr Anderson when addressing questions from Commissioner Daysh on the relevance of Section 4 policy framework.

³⁴ The objectives and policies of the Sustainability Section are guiding principles around which the other sections of the District Plan have been based as set out at section 4.4 of the Operative Plan.

- The impact on amenity values in general under assessment matter 9.9.5 (Amenity Values).
56. In describing the character and amenity of the Central Activity Zone, the Operative Plan states:
- “The character and amenity of the Inner City Area arise from:*
- *the presence of a significant number of heritage buildings, some of which are also of historic importance*
 - *a dominance of Victorian and Edwardian design*
 - *views of skylines and rural areas*
 - *the presence of amenity open space, particularly the Octagon*
 - *continuous frontages of buildings on the main streets.*
- These are the features which make the City’s central area different from other centres in New Zealand.”*
57. I do not consider these to be the only amenity values relevant to the Panel’s consideration and there are also the townscape and character values of the City recognised within the Townscape Precincts.
58. In discussing the townscape values of the City the Operative Plan states *“Although Dunedin has grown in size over the years, its appearance is still strongly that of a Victorian/Edwardian City. The design and appearance of buildings of that era, particularly those of significant size, such as the churches, banks, the Municipal Chambers, the railway station and the University Registry, individually and collectively give Dunedin an appearance of grandeur and permanence. The development that has since taken place has generally retained and enhanced the values of the Victorian/Edwardian period, cumulatively giving Dunedin a unique and coherent townscape character. Sustainability of that character requires consideration of the effects of:*
- *alterations to the external appearance of buildings*
 - *demolition and removal of buildings*
 - *constructing new buildings*
 - *transportation routes and vehicles generally.*
- These effects may be significant, not only on the particular site, but also on the area within which it is located, and in some instances on the City as a whole. Cumulative effects are especially important.”*
59. Overall, the Proposal is a very tall and visually prominent Development and will have materially different effects to a building of 11 metres in height. This is clearly evident by comparing Paterson Pitts Anticipated View No 4 with Sheet 12 of the Revised Shading Analysis (attached as Appendix 2E to the section 42A report. As a consequence, I do not agree that the visual effects of this Development on the amenity values of City Rise residents should be ignored. If you took Mr Page’s argument to its extreme, you could advance a building of any height in the CAZ, and visual effects on neighbouring residents would have to be ignored.

60. In relation to shading effects on the Kingsgate Hotel, Mr Page argues that private access to sunlight in the CAZ is irrelevant, given that “side yards are typically required to protect solar access” and in the CAZ buildings are required to be built to the side yards. While I agree that a neighbouring property owner within the CAZ cannot expect to receive sunlight within the minimum 9 metre and maximum 11 metre height limit provided for within this zone, assessment matter 9.9.4, clearly requires consideration of the bulk and location of buildings associated with the proposed activity and their effects on amenity values of the environment in which they are located and the environment of surrounding areas. In my opinion, there is nothing in this assessment criteria that would limit a consent authority considering the loss amenity associated with an over height development. Indeed, the apartment development at 97 Filleul Street required a very detailed consideration of visual amenity and shading effects on adjoining properties, as a consequence of the over height aspect of the Proposal (including shading effects on an adjoining restaurant and its associated outdoor seating area).
61. In the case of the Kingsgate Hotel, this is an existing building and forms part of the existing environment and the Development will clearly generate effects that extend beyond the anticipated height limits along the northern boundary of the Kingsgate Hotel. The information presented by Mr Bowen demonstrates that while the shading effects will be transitory in nature, they will be prolonged and extend above the respective maximum height limits anticipated on the adjoining properties to the north of the Kingsgate site. While Mr Bowen’s drawing Sheet 13 of 13 (Shading of Possible 9m / 11 metre high Building on Southern Boundary) is useful, his analysis focusses on the Winter Solstice, and his analysis does not demonstrate the additional shading over the Kingsgate Hotel during the Equinox. This would also appear to cover a greater area of the Kingsgate Hotel for most of the morning and given the scale of the Development will likely extend above what could reasonably be expected to occur from a complying building.
62. Overall, I maintain my position that the Development is considered to result in more than minor visual amenity and shading effects on Kingsgate Hotel to the south of the Site. I also consider that the Development will result in more than minor visual effects on the amenity values of properties to the west and north of the Site, due to the significant change in scale between the Development proposed and predominant building character in the neighbouring Residential 4 Zone.

IMPACTS UPON DUNEDIN’S HERITAGE CHARACTER:

Adverse Effects on the Townscape Values of Octagon Townscape Precinct

63. I have considered the additional photomontage and shading information provided by the Applicant on the 10th of August 2017. I maintain that the key issue raised by the scale of the Development when viewed from the Octagon, is that the building will be viewed within the backdrop of the existing St Paul’s Cathedral and Municipal Chambers and will generate additional shading over the Octagon.
64. Mr Page, in addressing listed Octagon townscape precinct values, states “*this does not anticipate a blanket protection over the views to or from the Octagon or other landmark buildings. None of the important Octagon vistas are affected by this application.*”³⁵ Mr Page does not identify “*the landmark potential of buildings that occupy corner sites*” in his identified list of values and I note the urban design evidence of Mr Falconer, Mr McIndoe and Miss Skidmore all conclude that the Development will adversely impact upon the setting of both St Paul’s Cathedral and

³⁵ At paragraph 46 of Mr Page’s legal submissions.

the Municipal Chambers building. Both buildings are recognised for their landmark status.³⁶

65. The Council seeks to enhance, through the District Plan provisions, the landmark potential of buildings that occupy corner sites, in the Octagon Townscape Precinct. The Development will 'compete'³⁷ with both St Paul's Cathedral and the Municipal Chambers building, due to its scale and proximity to the Octagon. This is, in my opinion, reinforced by the Anticipated View B (dated 8th August 2017) located close to the corner of the Octagon/Princess Street, which shows approximately half of the development visible to the rear of the St Paul's Cathedral. Even relatively minor changes in the position of the viewing angle, i.e. when standing in the Octagon grassed area would mean the building would be visually prominent along Harrop Street, when viewed in the context of these two heritage buildings. Further, the Development also has the potential to diminish the setting of the Municipal Chambers building when viewed from Lower Stuart Street (within the Lower Stuart Street Heritage Precinct), particularly when viewing the Development within proximity of the corner of Lower Stuart Street and the Octagon.
66. I concur with both Mr Falconer and Mr McIndoe³⁸ and I do not agree that the scale of this development can be mitigated by reduced tinting as advanced by Mr Compton Moen. The Development will not be made less prominent because of this design response.
67. In addressing townscape and character issues, Mr Compton Moen's assessment, out of all urban design witnesses, appears to have provided far less analysis of the actual sensitivity of adjoining heritage buildings to the proximity and height of the Development and he has not considered the relevant objectives and policies of the Townscape section of the Operative Plan.
68. It is evident that when considering the visual effects of this Development that the relationship between existing heritage buildings is an important consideration. This is particularly the case when dealing with Development that has the potential to impact upon identified townscape values. In response to Commissioner Lister's questions, Mr Craig, Mr Falconer and Mr McIndoe all confirmed that "character and materials" would form part of an assessment of visual effects. Mr Falconer confirmed that the matters considered "*fall across the range, including massing, materiality, reflectivity, relationships with surroundings, blocking of views.*" Mr McIndoe reiterated that his considerations are set out at paragraphs 67 and 68 of his EIC, and that the relationship with buildings and townscape are important within any visual assessment and that character is implicated in considering visual effects.
69. Conversely, in response to Commissioner Lister, Mr Compton Moen stated that he had considered the relationship of the Development with the character of the city centre and typologies of buildings in "*a more general description of built form*".³⁹
70. In terms of statutory planning assessment, Mr Anderson has not considered the relevant objectives and policies of Section 13 (Townscape) in his planning evidence. He focusses on Objective 9.2.1, 9.2.3 and Policy 9.3.3 of the Operative Plan in his EIC. I believe that the Section 13 objectives and policies are relevant to the consideration of the Proposal.
71. I note that Expert Design Conferencing statement records that the reduction in height of parts of the top of the Building will have minimal effect on reducing the visual effects of the building.⁴⁰ I agree with this conclusion.

³⁶

³⁷ As confirmed by Commissioner Lister's questioning of Mr Compton Moen.

³⁸ As confirmed by Commissioner Lister's questioning of both witnesses.

³⁹ As confirmed to Commissioner Lister following questioning of Mr Compton Moen.

72. Overall, I remain of the opinion, that the Development has the potential to greatly diminish the high visual amenity values of the setting within which St Paul's Cathedral and the Municipal Chambers building are viewed.

Loss of Sunlight

73. A precinct value identified for the TH02 Octagon townscape precinct is *"the penetration of the maximum amount of sunshine possible"*, with the District Plan identifying that the Octagon is recognised for its *"sunny and pleasant microclimate."*
74. Mr Page states *"we must also acknowledge that the Octagon precinct values identify the need to allow the maximum amount of sunshine "as possible". As previously stated this is not a rule within the plan, but a value that must be considered amongst the various other considerations."*⁴¹ He then refers you to the evidence of Mr Bowen and Mr Wilkinson.
75. Mr Bowen's evidence for the Applicant (includes Sheets dated 30/06/17 and numbered 4-7) illustrate the impact of shading from the proposed Hotel on the Octagon at various times in the afternoon of the Winter Solstice. The times used are: 2pm, 2:25pm, 3pm and 4pm. The time at 2:25pm corresponds to the angle of the sun matching the orientation of Harrop Street⁴². Mr Bowen calculates (although does not provide any evidence of this his calculations) indicates that the period over which the Octagon will be shaded over the Winter Solstice is 11 weeks, occurring from approximately 14 May to approximately 29 July.
76. While this additional information is helpful, it demonstrates that from early afternoon over the Winter Solstice, the Development will diminish sunlight penetration at a time of the year when sunshine hours are typically reduced. This is a point reinforced by Mr McIndoe in his supplementary response.
77. As noted above, Mr Wilkinson's evidence discusses shading impacts on Dunedin's hospitality precinct, however he has not undertaken a formal survey of users of the Octagon or associated hospitality premises.
78. I have reviewed the additional information provided by the Applicant (prepared by Paterson Pitts) that provides weather conditions in Dunedin and re-annotated their shading diagrams to more clearly show shading at different times of the day. In reviewing this information, I agree with the findings of Mr McIndoe that *"the issue of concern is not how much sun there is or how often it rains, but retaining the sunshine that is currently received by the city's premier central public open space."* Reinforcing this point, I note that amongst other values listed, the Council wishes to enhance the penetration of the maximum amount of sunshine possible as part of the Octagon townscape precinct. These values form an important consideration when determining appropriateness of the scale of development in the CAZ.
79. In terms of urban spaces, Mr McIndoe is the only witness to undertake a detailed analysis of research into the importance of the winter sun (as identified by the data reiterated by empirical research set out in his supplementary evidence). As noted, this information is helpful to assist with informing the value placed on access to sunlight in urban spaces over winter.
80. Overall, I remain of the view that the loss of sunlight penetration into the Octagon is a more than minor adverse effect on the townscape values of the Octagon townscape precinct. The Proposal ultimately will not deliver the Anticipated Environmental Outcomes for the Octagon Townscape Precinct, with Section 13.9.5

⁴⁰ At paragraph 9 of the Expert Design Conference dated 14th August 2017.

⁴¹ At paragraph 47 of Mr Page's legal submissions.

⁴² At Mr Bowen's paragraphs 21 and 22 of his EIC.

requiring that *“existing open spaces will be maintained and enhanced”* and Section 13.9.15 *“the integrity of identified townscape precincts will be maintained”*.

CONCLUSION

81. I maintain my position that the actual and potential effects associated with the Development are unable to be mitigated and that the Proposal will have more than minor effects on the receiving environment. Therefore, in my opinion the first limb or ‘gateway’ test of Section 104D is failed.
82. Further, I maintain my position that the Proposal is assessed as being contrary to a number of the relevant objectives and policies of the Sustainability Section, Central Activity Zone, and Townscape Section of the Operative Plan. In particular, I consider that the Development is contrary to those provisions that seek to enhance the amenity of Dunedin (Objective 4.2.1 and supporting policy 4.3.1), more particularly that seek to avoid, remedy or mitigate effects on activities undertaken within the Inner City Area and to enhance amenity values in the Central Activity Zone (Objective 9.2.3 and Policy 9.3.3) and fails to ensure that the City Centre continues to develop as a ‘people place’ (Objective 9.2.4) and does not protect and enhance the townscape values of the TH02 Octagon townscape precinct (Objective 13.2.5 and Policy 13.3.4, Objective 13.2.6). In my opinion, the proposed development also fails the second ‘gateway’ test outlined by Section 104D.
83. In summary, I consider that the application, in its current form, fails both ‘gateway’ tests in Section 104D of the Act. I therefore maintain earlier recommendation to the Panel that the application should not be granted resource consent.
84. I propose to verbally respond to changes to the draft conditions of consent, once I have heard Mr Fishers closing statement.