

**BEFORE THE DUNEDIN CITY COUNCIL**

**IN THE MATTER OF**

Land Use Consent Application to  
construct and operate a commercial  
residential development by NZ  
Horizons Hospitality Group Limited.

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**STATEMENT OF EVIDENCE OF GRAHAM RUTHERFORD TAYLOR**  
**Planning**  
24 July 2017

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## **INTRODUCTION**

- 1 My name is Graham Rutherford Taylor. I am a Consultant Planner and a Director of Resource Management Group Ltd, a Christchurch based consultancy.
- 2 I have 28 years experience as a planner with local authorities and consultancies in Wellington and Christchurch, working predominantly in Canterbury and the wider South Island. I have been a director of RMG since 2000. I am a full member of the New Zealand Planning Institute, and an accredited hearings commissioner.
- 3 I have read and am familiar with the Code of Conduct for Expert Witnesses in the current (2014) Environment Court Practice Note. I agree to comply with this Code of Conduct in giving evidence to this hearing and have done so in preparing this written brief. The evidence I am giving is within my area of expertise, except where I state I am relying on the opinion or evidence of other witnesses. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed. I understand it is my duty to assist the hearing committee impartially on relevant matters within my area of expertise and that I am not an advocate for the party which has engaged me.
- 4 In preparing this evidence I have reviewed the following documents:
  - (a) Resource consent application and relevant appendices;
  - (b) The Millennium and Copthorne Hotels New Zealand (MCHL) Limited submission;
  - (c) The Council's section 42A report;
  - (d) The briefs of evidence for the Applicant, from Don Anderson, Thom Craig, David Compton-Moen and Kurt Bowen;
  - (e) The briefs of evidence from Graeme McIndoe and Andrew Carr;  
and
  - (f) The relevant planning documents.

## **SCOPE OF EVIDENCE**

- 5 My evidence is presented on behalf of MCHL, a submitter in these proceedings. It addresses the following:
  - (a) Operative and Proposed District Plan Status;
  - (b) Permitted Baseline;
  - (c) Effects Assessment; and
  - (d) Relevant Objectives and Policies.
- 6 Separate evidence has been provided from Andy Carr and Graeme McIndoe in relation to traffic impact and visual amenity and urban design matters respectively. I rely on this evidence and do not intend to repeat those assessments and conclusions.
- 7 I have concentrated my assessment on the particular aspects of the Proposal affecting the Kingsgate Hotel as raised in the MCHL submission.
- 8 I have not specifically commented on the concurrent subdivision consent application, other than noting the Proposal status.

## **THE PROPOSAL AND SUBMITTER PROPERTY**

- 9 The Proposal is described in detail in the application and subsequent amendments, and the s42A report of Mr Bryce therefore I do not intend to repeat that detail.
- 10 It is for consent to construct and operate a 17 storey commercial residential development comprising 210 hotel rooms, 64 self-contained apartments, 4 self-contained penthouse suites, with licensed premises, retail, conference and meeting facilities and on site amenities, parking and servicing. Most importantly in terms of the MCHL submission is that the proposed building will have a height of approximately 60.334m at the highest point (lift core) above existing ground level, as measured in accordance with the Operative Dunedin City Plan (ODP) definitions of ground level and maximum height.

- 11 The site comprises a proposed 3660m<sup>2</sup> allotment to be created by way of a subdivision of the existing DCC owned car park site located in Moray Place, opposite the Dunedin Town Hall and adjacent to the Filleul Street Intersection. A proposed 2780m<sup>2</sup> allotment to the southwest of the site is to be retained by the DCC as a carpark, and separates the application site from the MCHL Kingsgate Hotel.
- 12 The Kingsgate Hotel site is located to the south of the adjoining DCC carpark and is elevated above the application site on a long narrow site extending from Moray Place to Smith Street. It contains a six storey main block located near the middle of the site, and a lower three storey block at the Smith Street end. Rooms and balconies on both blocks are all oriented towards the north and overlook the site and the Dunedin CBD with views to Signal Hill and Mount Cargill. Land at the eastern end of the site fronting Moray Place is used for car parking.
- 13 My reading of the site survey plan included with the architectural plans is that the existing ground levels on the application site range from a low of RL112.29m at the eastern road boundary of the site, to a high of RL125.69 at the northwest corner of the site. The ground level of the proposed DCC carpark site on Lot 2 is RL130.5m at the western corner boundary shared with the submitters Kingsgate Hotel site. This location is more-or less opposite the main entrance to the main 6 storey Kingsgate Hotel building. It is unclear from the plans whether this level corresponds with the top or bottom of the car park retaining wall (approx. 1.5m height) located on the Kingsgate boundary.
- 14 Accordingly the maximum height of the proposed tower will be approximately 40.5 – 42m relative to the ground floor level of the Kingsgate Hotel.

#### **OPERATIVE PLAN RULES**

- 15 A detailed assessment against the relevant ODP rules is contained in Table 1 of Mr Bryce's s42A report. I concur with his assessment, except insofar that I consider that parking for the apartments should be assessed as unit type commercial residential activity under rule

9.5.2(v). I also note that several additional transport non-compliances are identified by Mr Carr.

- 16 The application site is located in the Central Activity Zone (CAZ) in the operative plan, as is the eastern part of the Kingsgate Hotel site fronting Moray Place. The western end of the Kingsgate site is located in the Residential 4 zone, as are other properties fronting Smith Street. The application site is also located within Townscape Precinct TH03 (North Princess Street/Moray Place/Exchange).
- 17 I agree that the hotel and ancillary activities fall within the definition of a *commercial residential activity*. I consider that the proposed apartments would be defined as *residential activity* only insofar as they are used as permanent residences. However I also note that the apartments will have an option to be managed by the hotel, in which case they would also be a *commercial residential activity*. Both are permitted in the CAZ subject to compliance with relevant performance standards.
- 18 The Proposal is a non-complying activity due to non-compliance with standards relating to:
  - 9.5.2 (i) Yards – the building is not erected up to the front or side yards.
  - 9.5.2 (iii) Verandas – Required veranda not provided along full Filleul Street frontage and does not achieve 3m width.
  - 18.5.3 Subdivision – Unit titles do not have legal access to formed road.
- 19 In addition the Proposal contravenes the following rules:
  - 9.5.2(ii) Height – the building exceeds 11m height (60.334m proposed) (Restricted Discretionary Activity).
  - 9.5.2(v) Car Parking – 100 spaces required on the basis that apartments are available for unit type accommodation. There will be a shortfall of 16 spaces (Restricted Discretionary Activity)
  - 9.5.2(v) Car Parking – Coach parking reduced from 6 to 5 spaces (Restricted Discretionary Activity).

- 17.7.3 Earthworks – Depth and volume limits exceeded (Restricted Discretionary Activity under rule 17.7.5).
  - 13.7.2(i) Townscape – erection of new buildings within TH03 requires consent as a controlled activity.
  - Rule 20.5.5(ii)(a) Maneuvring Areas – Coach parking in space 1 will be blocked by coaches parked in spaces 2 and 3, therefore could not move off the site without one (or possibly both) of the other coaches being moved also. (Restricted Discretionary Activity).
  - Rule 20.5.5(vi)(a) Maneuvring Areas - On-site maneuvring areas will not accommodate an 85th percentile design coach due to gradient changes. (Restricted Discretionary Activity).
  - Rule 20.5.6(i)(d) Vehicle Loading – Service vehicles will not have unobstructed access to a road or service lane due to gradient changes. (Restricted Discretionary Activity).
  - Rule 20.5.7(iv)(e) Vehicle Access - Change in gradient for vehicular access will exceed 1 in 8 for summit grade changes and 1 in 6.7 for sag grade changes. (Restricted Discretionary Activity).
- 20 Overall the Proposal requires consent as a non-complying activity. I note that the Applicant's planner Mr Anderson has suggested an 'unbundling' approach whereby the non-complying aspects of the Proposal would be separated from those matters where the plan rules limit discretion. I disagree with this approach.
- 21 Unbundling might occur in situations where different activities subject to an application can be completely severed from others. This is not the case here. The land use consent clearly relates to the whole of the proposed building. It would be artificial to separate a building into different component parts for the purpose of assessment. The ODP has deliberately made certain matters non-complying activities meaning that the whole of an activity requires consideration under section 104D. I do not consider it proper for an Applicant to separate out such non-compliances. To do so would be tantamount to saying that they should be treated as restricted discretions when they are

not, and effectively undermine the integrity of the plan rules. If the Council had intended that such non-compliances be limited as to discretion they would have not made them non-complying standards in the first place.

- 22 I also consider that there are potential inter-relationships between the matters requiring consent, such that they cannot be artificially separated. In particular the front and side yard requirement has a significant effect on the overall building mass, which in turn affects height in order to achieve the Applicants desired floor area. A building covering a larger site area as anticipated by the plan rules would not require the proposed height.
- 23 The proposed building also has a gross floor area that is approximately twice that which could be anticipated with a complying 11m height building covering 100% of the site. This in turn may give rise to adverse effects due to increased intensity of development.
- 24 Similarly the lack of yards and verandas has implications in terms of the urban design considerations under the Townscape rule.
- 25 I disagree with Mr Anderson's contention that section 87A limits the exercise of the Council's discretion. If the application were only for a controlled or restricted discretionary activity, then that would be the case. However the 'activity' to which the application relates is the whole of the Proposal, which cannot be severed into component parts. Accordingly the 'activity' to which section 87A refers is also the whole of the Proposal, and section 87A(5) applies.
- 26 The tests of section 104D therefore apply to the whole of the activity to which consent is sought – i.e.: the whole building and use.
- 27 That is not to say that the assessment matters for restricted discretionary and controlled activities are not relevant. Rather they will have relevance as a guide to assessment under sections 104 and 104D, whereby all actual and potential effects of the Proposal must be considered as a whole.
- 28 Therefore whilst I do not consider that the application can be unbundled in terms of its overall status and the application of section

104D, I do agree that the different rules and assessment matters are still relevant for the purpose of assessment.

- 29 Overall, whether or not the Proposal is treated as a non-complying or restricted discretionary activity makes no appreciable difference to my conclusion that consent should be declined. I consider that the adverse effects relating to the height breach are so severe that the application should be declined on the basis of that matter alone even if assessed as a restricted discretionary activity.

### **PROPOSED SECOND GENERATION DISTRICT PLAN (2GP)**

- 30 The proposed second generation plan (2GP) was publicly notified in September 2015, and is part way through hearings. No decisions have been released on the 2GP and none of the provisions relevant to this application have immediate effect under section 86B(3). I concur with Mr Bryce's assessment that the rules relevant to this application also do not yet have legal effect or operative status under either section 86B(1) or section 86F.
- 31 The site is located in the proposed Central Business District (CBD) zone. I note that under the 2GP, the whole of the Kingsgate site is also proposed as CBD zone. Other sites in Smith Street and in the block bounded by Smith Street and York Place which are presently zoned Residential 4 are proposed as Smith Street and York Place CBD Edge Zone.
- 32 The proposed residential, visitor accommodation, and ancillary activities would all be permitted activities subject to compliance with Land Use Performance Standards in section 18.5 and Development Performance Standards in section 18.6.
- 33 The main differences between the two sets of rules relevant to this application are that under the 2GP, the height limit is increased to 16m with a maximum of four storeys (although the rule is subject to submissions), and the Townscape provisions are not carried over. There are new rules relating to colour, materials, and design however they only apply in heritage precincts.

- 34 The Proposal would not comply with rules relating to earthworks, height, glazing, and building modulation, and road boundary setback (60% of boundary length to be within 400mm of road boundary on secondary pedestrian frontage) under the 2GP. The Proposal would comply with parking and loading standards as the new requirement of 1 space per 6 visitor accommodation units is less than that in the ODP. If parking were required for the apartments on the basis they may be used for visitor accommodation, this would be at the rate of 1 space per three units. Only one coach space would be required for visitor accommodation exceeding 50 guest rooms.
- 35 The building would be a restricted discretionary activity under the 2GP rules. Whilst it would not be a non-complying activity to which section 104D would apply, the matters of discretion are still relatively broad. Although the site is not located in a proposed heritage precinct, non-compliance with the glazing and building modulation rules would still require consideration of urban design outcomes similar to the current TH03 rule, and the breach of the height rules would require consideration of the overall amenity effect of visual impact, dominance and shading on streetscene and the surrounding environment. This would require assessment of the buildings overall built form, cladding, and other related features.
- 36 Given that the 2GP rules do not yet have legal effect under section 86B, they are not relevant in terms of the Proposal status, however must be had regard to under section 104(1)(b). Given my discussion above I do not consider that the 2GP should be accorded significant weight as they are still subject to submissions and decisions. In any case, I consider that similar conclusions as to effects and granting of consent would occur under the 2GP anyway.
- 37 Most importantly in relation to the MCHL submission, I consider that the issues concerning effects of building height on the Kingsgate Hotel property would still arise whether or not the height limit was 11m or 16m, given that the Proposal is so grossly over either limit.

## **EFFECTS ASSESSMENT**

- 38 I have focussed my assessment to the main matters of concern raised in the MCHL submission. These matters include:

- Permitted Baseline;
  - Urban Design;
  - Visual Amenity;
  - Shading;
  - Scale of Activity; and
  - Traffic.
- 39 I note that the submission also raised issues concerning wind tunnel effects and noise. I acknowledge that the Proposal will comply with noise standards.
- 40 I also acknowledge that the Applicant has provided a wind engineering report, which concludes that any increase in localised wind speed could be further mitigated by façade and other architectural devices, and recommends a scale model wind tunnel study as a condition of consent. I am not an expert in this matter and no other evidence has been provided, therefore I am unable to comment on this further.
- 41 Mr Bryce has carried out an overall assessment of the Proposal, which identifies a fuller range of effects. I accept his findings on those matters. In particular I accept that the Proposal will generate significant positive economic effects to the City.
- 42 I have considered the assessment matters contained in section 9.9 of the ODP which are to be had regard to – although also note that the opening statement to this section clarifies that the Council’s assessment is not restricted to these matters.
- 43 Assessment matters of particular relevance to this Proposal include:

*9.9.3 Adverse Effects on Other Areas*

*Proximity to residential areas*

*9.9.4 Bulk and Location*

*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*

#### *9.9.5 Amenity Values*

*The impact on amenity values in general.*

- 44 Whilst visual impact, shading, and access to sunlight are not specifically identified in the assessment matters, I agree with the opinion of Mr Bryce that they are key amenity issues, therefore must be had regard to. I concur with Mr Bryce's discussion of this in paras 192 – 200 of his report in this matter, and in particular disagree with the Applicant's contention that shading is not a matter requiring consideration.
- 45 I note that assessment matter 9.9.4 concerning bulk and location requires the Council to consider the effect of the bulk and location of buildings on the amenity values of the environment in which they are located and the environment of surrounding areas. Clearly when considering the effects of bulk and location of a building, shading, visual impact, and dominance are key issues affecting amenity values.
- 46 I do not agree with Mr Anderson's contention that assessment matter 9.9.3 means that effects relating to height should only be considered in relation to residential properties. Clearly 9.9.4 calls for a wider assessment of bulk and location matters in relation the whole of the surrounding environment.
- 47 Further, the explanatory statements to Policy 9.3.3 concerning CAZ amenity values clearly includes protection of townscape values, scale, and admission of sunlight as matters requiring consideration.

#### **Permitted Baseline**

- 48 All new buildings in the TH03 Townscape Precinct require resource consent as a controlled activity. Therefore new buildings cannot be erected as a permitted activity. There is therefore no permitted baseline for the purpose of section 104(2) of the RMA.

- 49 Notwithstanding this I agree with the approach adopted by Mr Bryce, which identifies a 'controlled activity building outline' which the Council may have regard to in respect of building bulk. I agree that this would be an 'other matter' in terms of section 104(1)(c) that the Council may consider.
- 50 The matters over which the Council has reserved control in the TH03 Precinct are limited to external design and appearance of the building. They do not include the key determinants of building bulk, which are controlled primarily through the setback and height standards.
- 51 I consider that a controlled activity building outline would have the following characteristics:
- It would have no front or side yards.
  - Based on a three storey building covering the whole 3660m<sup>2</sup> site it may have a gross floor area of approximately 10980m<sup>2</sup>.
  - It would be between 9m and 11m in height relative to ground level, with a maximum of 11m. For reasons which I outline below, such a building would be significantly lower than the examples used by the Applicant's surveyor, Mr Bowen in his shading diagrams.
  - A complying height building would not cause any significant shading on the Kingsgate Hotel site, with shading being limited to a small part of the ground floor areas only during the Winter Solstice between 9am – 10am and none at any other times.
  - A complying building would be entirely below the line of sight when viewed from hotel rooms therefore would not cause any adverse effects of outlook or visual dominance.
- 52 I note that Mr Bryce has stated that the plan envisages sites being built to 100% coverage, which I have presumed is due to the requirement not to have front or side yards. I am not sure that this is correct, as the CBD activity area rule 9.5.2(i) uses the term "side yard" as opposed to "other yard", which is defined in the ODP. I note that the term "rear yard" is also used elsewhere in the plan therefore a distinction is made between side and rear boundaries in some cases.

The terms "side yard" and "rear yard" are undefined in the ODP. Accordingly I consider that rule 9.5.2(i) only applies to the front (road boundary) and the side yards of the building – meaning that buildings are required to extend to the road boundary across the whole site frontage, and to the side boundary where there is a building. However this does not mean that they are required to extend to the rear boundary. There is however no rear boundary setback requirement, therefore a controlled activity building *can* be erected to the rear boundary to a height of 11m but need not be.

- 53 The highest point of the Applicant's site is at a level of RL125.69 in the northwest corner, therefore the maximum permitted height on the site is RL136.69 – which is approximately 6m higher than the ground level on the Kingsgate Hotel site.
- 54 It would however be impracticable to erect a building to this full permitted height, as this only occurs at the single highest point on the site. Due to the slope of the site, a building would need to contain multiple steps, both across and back into the site.
- 55 The Applicant's surveyor Mr Bowen has produced shading diagrams based on a potential 11m high building built to the site boundaries in sheets 8 - 10 attached to and discussed in paras 21 – 34 of his evidence. He has produced this on the basis that a building might be stepped across the site with four different roof levels that are each 3.5m apart. His diagrams show the higher (south west) part of the possible building abutting the DCC carpark and closest to the Kingsgate site having a ground floor level of RL123.0m, with a possible roof level of RL134.0m. This would result in a building approximately 3.5m above the ground floor level of the Kingsgate Hotel (relative to the Hotel main entrance).
- 56 However, I consider that a potential complying building would have to be even lower than this. Mr Bowen's scenario is based on a ground level of RL123.0m – however much of the land within the south eastern part of the site is lower than this, meaning that the 11m height limit will be less than RM134.0m. The southwestern corner of the site at the Moray Place frontage has an existing ground level of RL121.27 (refer sheet 9 of Architectural Plans) which would only

permit a height of RL132.27m at this point. The site then drops further along the Moray Place frontage, meaning that the height limit will drop further with it. The ground level on the Moray Place frontage corresponding with the first step in Mr Bowen's potential rooflines is at approximately RL118.0m. I have conservatively interpolated this from the RL117.7m level indicated close to this point in cross section BB (sheet 24) of the architectural plans.

- 57 I acknowledge that I have not based this on accurate survey data – rather I have used the information contained on the Applicant's plans to illustrate that the site levels are such that the roof levels used by Mr Bowen cannot possibly comply. The effect of the 11m height limit would be that using his stepped building example, the maximum height would be only around RL129.0m, as the height is limited by the level of the lowest point on the Moray Place frontage for each building section. This is 5m less than the height adopted by Mr Bowen. Such a building would have a roof level entirely below the floor level and lines of sight from the Kingsgate Hotel therefore would cause no shading, loss of outlook or visual dominance relative to that site whatsoever. I note that the level which I consider realistic is also consistent with the assessment of Mr McIndoe.
- 58 I do accept that as an alternative to Mr Bowen's scenario, a building roofline could be stepped back rather than across the site. However as the site falls diagonally relative to the south west rear corner boundary, such a scenario would result in complex roof forms. Some parts of the building near the rear south west corner of the site may potentially be higher as suggested by Mr Bowen however this would not occur across the full building length.
- 59 Accordingly I do not consider that the shading diagrams produced in sheets 8 – 10 of Mr Bowen's evidence represent a feasible complying baseline against which to assess shading. A complying building would cause no shading on the Kingsgate site at all.
- 60 I further note that in his sheets 12 and 13, Mr Bowen has shown further shading scenarios for 9m and 11m buildings erected on the immediately adjoining sites to the Kingsgate site (remaining DCC car park on Moray Place and private car park on Smith Street). Firstly,

these scenarios relate to completely separate sites that do not form part of the application site, therefore do not compare permitted development on the Applicant's site.

- 61 Secondly, as with sheets 8 – 10, the possible roof heights are based on incorrect site levels due to the sloping nature of the sites. The ground levels on the Moray Place frontage of the DCC carpark site range from RL121.27m to RL122.91m, therefore the maximum building height at the road boundary would be RL132.27m, which is 3.73m less than the roof level shown by Mr Bowen for a potential building on the front part of the site.
- 62 On the rear part of the site Mr Bowen has indicated a potential roof level of RL139.0m. However the ground level at the lowest part of this indicative roof section is only approximately RL124.0m (based on architectural cross section CC), which would equate to a maximum height of only RL135.0m, which is 4m less than shown by Mr Bowen.
- 63 The consequences of this are that the extent of shading shown for 'complying buildings' in Mr Bowen's sheet 12, and the vertical shading shown in sheet 13 are grossly exaggerated and do not represent a credible complying baseline.
- 64 I also note that the vertical shading diagram provided by Mr Bowen in his sheet 13 only shows shading for possible 11m and 9m buildings on the adjoining car park sites. No diagrams have been provided showing the extent of vertical shading for a complying height building on the Applicant's actual site. For the reasons outlined above, I do not consider that vertical shading from a complying height building would significantly affect the Kingsgate hotel.
- 65 For the reasons outlined above, I do not consider that the complying height scenarios provided by the Applicant represent a credible baseline against which to assess effects of shading and visual dominance on the Kingsgate Hotel site.

### **Urban Design**

- 66 Mr McIndoe has provided an assessment and evidence concerning the urban design effects of the Proposal, including townscape, podium and

street edge design and architectural approach. I rely on his assessment in relation to these matters.

- 67 Mr McIndoe has concluded that the Proposal is not consistent with the values and objectives identified in the Townscape section of the ODP for the Precinct in which it is located. In particular he disagrees with the comparisons made by the Applicant between the proposed building and other over height buildings in the city. Mr McIndoe's assessment shows that taller buildings are concentrated close to the north side of the Octagon and extending south along Princes Street. The Proposal itself is at the northern margin of this area, and there are relatively few taller buildings north of Moray Place. He notes that the Townscape Precinct provisions do anticipate taller buildings from 12m to 32m in other locations, however not for the subject site. Existing taller buildings in those other areas should not therefore be used as comparison or justification for a taller building on this site – particularly one which is over 40% higher than the next tallest building in the CBD.
- 68 I note with and agree with the conclusions of Mr Falconer and Mr Bryce that the Proposal will result in an abrupt change in scale on the edge of the CBD adjoining the low rise development to the west. This will be out of character with the anticipated urban form of the Townscape Precinct and CBD edge.

### **Visual Amenity**

- 69 Mr McIndoe has carried out a visual effects assessment from 23 locations with reference to the Applicant's photo montages, and using the rating scales adopted by Mr Compton-Moen for the Applicant. He agrees that the effects of the Proposal on long range views will be minor or less than minor. However effects on mid and short range views from 11 of the viewpoints were found to be significant, and of a scale and magnitude that he considers cannot be avoided, remedied, or mitigated. His overall conclusion is that the visual effects of the Proposal will be unacceptable, leading to visual domination and visual effects that cannot be mitigated.

- 70 I have considered the effects on visual amenity from the Kingsgate Hotel site and buildings, with reference to the effects of potential complying buildings which I have discussed above.
- 71 The Kingsgate site is elevated above the subject site, and the rooms and balconies enjoy relatively unobstructed views to the north over the CBD towards Signal Hill and Mount Cargill. There are no significant tall buildings in this vista, with the exception of hospital and university campus buildings, however the effect of these is mitigated by distance. The Town Hall, Council offices and Burns House are obliquely visible to the east but are not directly viewed from rooms. Other tall buildings in the CBD referred to by the Applicant are located well to the south of the site, concentrated on Princes Street and the Exchange, and are not viewed from the site.
- 72 As outlined above, a complying building on the application site would have a height of approximately RL129.0m which would be completely below the line of sight from the Kingsgate Hotel rooms. Even a higher building with a roof height of RL134.0m as shown in Mr Bowen's plans would be only 3.5m above the Kingsgate Hotel ground floor level. Accordingly a complying building would still be wholly contained below the line of sight of all hotel rooms at first floor level or above, and would only have a minor impact at ground level.
- 73 By contrast, the proposed building will be over 40m higher than the Kingsgate Hotel relative to ground level, and almost completely fill the visual field to the north from all rooms. I consider that the sheer bulk of the building will be completely out of scale with that which could be reasonably anticipated with a complying height development, and will be visually dominant and incongruous with its setting. I note that the photo simulations provided with the application do not include views from the Kingsgate Hotel itself, however sheet 16 does show the anticipated view from the Smith Street frontage. The views from the Hotel itself will be directly towards the hotel, and be even more dominant than shown in sheet 16.
- 74 I consider that the adverse visual effects of the dominant building bulk on outlook from the Kingsgate Hotel will adversely affect the enjoyment of hotel guests, and will be more than minor.

- 75 I have considered the alternative scenario put forward by Mr Falconer and Mr Bryce whereby the Proposal could be reduced in height to 13 storeys, with a maximum height of RL157.5m. This would reduce the height to 45.6m, which would still be a height of 27m relative to the Kingsgate ground floor level. The Kingsgate building is 30m high.
- 76 Whilst such a scenario might reduce visual dominance from upper levels of the Kingsgate, it would still be highly dominant from the lower hotel levels, and I consider would still be out of scale with the locality. With reference to the view shown in sheet 16, only the top three levels visible in that sheet would be deleted.

### **Shading**

- 77 Mr McIndoe has carried out an assessment of shading effects, and concluded that the cumulative effects of shade cast by the Proposal will be severe, being an accumulation of adverse effects on public and community facilities such as: the Octagon, St Pauls Cathedral, and the grounds of Otago Girls High, and on private facilities such as the Kingsgate Hotel and some residential properties to the west. I am reliant on his assessment.
- 78 I also note that Mr Bryce has concluded that the Proposal will result in adverse shading effects on the Kingsgate Hotel and over the Octagon and I concur with his assessment. The Proposal will result in significant prolonged shading effects over the Kingsgate Hotel site during morning periods. This shading will occur for most of the morning during the Equinox and Winter periods, comprising approximately  $\frac{3}{4}$  of the year.
- 79 In addition to Mr McIndoe and Mr Bryces' assessments I have also identified inaccuracy in the modelling undertaken by Mr Bowen, as it is not based on a feasible complying baseline. A complying building on the Applicant's or the adjoining site could not be built to the heights suggested by Mr Bowen, therefore the extent of shading caused by a complying development would be significantly less than shown on his plans.
- 80 Further, Mr Bowen has not undertaken an assessment of the vertical extent of shading that would be caused by a complying building on

the application site. I consider that the vertical extent of such shading into the Kingsgate Hotel building and rooms would be minimal (if at all when one considers a lower complying roofline). It is misleading to rely only on a plan view of shading as this only indicates the shading received at ground level, and does not take into account the vertical extent against receiving buildings.

- 81 The only plan provided that demonstrates the vertical extent of shading against the Kingsgate building is sheet 13 attached to Mr Bowen's evidence. This compares potential shading from 9-11m buildings on the adjacent DCC and private carpark sites with shading from the proposed building. It does not show shading from a potential complying building on the actual application site. As earlier explained I also consider that the 'complying' 9-11m building shading on this sheet to be exaggerated as a complying roofline would be some 3 – 4m lower than his model, meaning the vertical shading is shown too high.
- 82 However what I agree this sheet does accurately show is the vertical extent of shading from the proposed hotel tower, which will completely shade all 6 levels of the Kingsgate building for most of the morning during the winter solstice. This is a time of day when hotel guests are very likely to be in their rooms prior to daily activities or checkout.
- 83 I consider that the adverse effect of shading on the Kingsgate Hotel property arising from the building height and bulk will be severe, and is not able to be avoided, remedied, or mitigated.
- 84 As with visual impact I have also considered the effect of a lowered building on shading. Whilst shading effects would be eliminated or reduced for the upper levels of the Kingsgate Hotel, I consider that the effects of prolonged shading on lower levels would be little changed.

### **Scale of Activity**

- 85 The proposed hotel building will have a gross floor area of 20,823m<sup>2</sup> over 16 levels. This is approximately double that of a potential complying building which I have assessed would be around 11,000m<sup>2</sup>.

Whilst there is no floor area limit expressed in the ODP rules, I consider that there is a realistic upper limit for building size that could be expected, given the limitations of site area and building height. This in turn impacts on the potential intensity of development – put crudely, a doubling in floor area leads to a potential doubling in activity, or a more intensive site development than the ODP anticipates.

- 86 I consider that this has potential implications on the effects of the intensity of activity. The plan rules are predicated on an anticipated level of development that is limited by building size. These include rules such as parking and loading requirements. In particular I note Mr Carr's evidence that parking will be required for the apartment units if they are used for visitor accommodation – in which case the Proposal will be deficient in parking. Further, much of the parking will be inaccessible due to gradient issues which will further exacerbate parking and traffic issues. Traffic generation effects from a more intensive development will also be greater than that which might be expected from a complying building.
- 87 What is more relevant however is the effect on overall building bulk. The floor area of the building is double that which would be expected with a complying development, and this is reflected in the building height. It is further exacerbated by failure to build to the site boundaries, which means that more height is required to achieve the same floor area. Simply put, I consider that the Applicant is putting too much on the site, and the resultant bulk and height of the building is out of context with the receiving environment and contributes to the adverse visual amenity and shading effects outline above.

### **Traffic**

- 88 Mr Carr has identified several non-compliances with parking and transport standards which were not identified in the application, nor by Mr Bryce.
- 89 On the basis of Mr Carr's analysis, significant traffic issues arise due to:

- The 16 space parking shortfall, as the use of the apartments by the hotel should be assessed as a commercial residential activity;
  - The gradient of the access ramps which means that parking and loading areas cannot be accessed by vehicles including coaches and service vehicles; and
  - Coach parking which will prevent other coaches from exiting the site.
- 90 Specifically, I note that he considers the issue with access gradients to be the most significant, since it results in the perimeter roadway being impassable by cars and coaches, and in turn means that the on-site parking spaces are not accessible. As such, the site has a significant shortfall in parking spaces that are useable.
- 91 Such a shortfall will give rise to significant adverse effects on on-street parking and the roading network that are more than minor.

## **OBJECTIVES AND POLICIES**

- 92 I concur with the assessment of ODP objectives and policies carried out by Mr Bryce pages 66 – 81 of his report therefore do not intend to repeat this detail. In particular, and having regard to my assessments above:
- 93 The Proposal is contrary to Objective 4.2.1 and Policy 4.3.1 in that it does not maintain and enhance amenity values, due to the significant adverse impact of visual dominance and shading effects on surrounding public areas and on the Kingsgate Hotel.
- 94 The Proposal is contrary to Objective 9.2.3 and Policy 9.3.3 in that it does not avoid, remedy, or mitigate adverse effects of the Proposal on CAZ amenity values. The matters requiring consideration under policy 9.3.3 specifically include protection of townscape values and admission to sunlight.
- 95 The Proposal is contrary to Objective 13.2.5 and Policy 13.3.4 which seek to ensure that the character of significant townscape precincts are maintained or enhanced. As discussed by Mr McIndoe, the Proposal will have significant adverse effects due to shading and

visual dominance on the Moray Place and Octagon townscape precincts, and will be out of character with the townscape values of those areas.

- 96 For the same reasons I consider the Proposal to be contrary to Objective 13.2.6 and Policy 13.3.5 as it will adversely affect the character and amenity of the Central City Precincts, and not maintain townscape character and values.
- 97 I consider that the above objectives and policies reflect key outcomes that are expected in the CAZ. Maintenance of amenity and townscape values are essential elements to the form of the City Centre and ensuring that it is a pleasant place to work, visit and live.
- 98 I consider that the adverse effects of the Proposal on amenity values are so severe that the Proposal is contrary to the objectives and policies of the ODP as a whole.
- 99 I concur with Mr Bryce's opinion that due to the current state of the 2GP hearing process, little weight should be placed on the 2GP objectives and policies.

## **PART 2 RMA**

- 100 I have considered whether having regard to the recent decision of *RJ Davidson Family Trust v Marlborough District Council*<sup>1</sup> it is necessary in this case to have further regard to Part 2 matters to determine this application.
- 101 The *Davidson* decision determined that the provision of an operative plan have already given substance to the principles in Part 2. Therefore resort to Part 2 should only be necessary where the provisions contain invalidity, incomplete coverage, or uncertainty of meaning. Otherwise resource consent should be determined on the basis of the settled planning documents.
- 102 I consider that the ODP is clear in its objectives and policies relating to maintenance and enhancement of amenity values, which are the key matters in contention in this case. The ODP provisions

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<sup>1</sup> *Davidson Family Trust v Marlborough District Council* [2017] NZHG52.

adequately identify the environmental outcomes sought by the Plan, such that I do not consider it necessary to further assess against Part 2.

## **SUMMARY AND CONCLUSIONS**

- 103 The complying baseline scenarios provided by the Applicant to demonstrate shading effects are not based on credible complying buildings. The effects of complying buildings in terms of visual impact and shading will be far less than that indicated, meaning that the relative adverse effects of the proposed building will be significantly greater compared to a complying situation.
- 104 The Proposal will result in significant adverse effects due to building design and height which will be out of character with the anticipated urban form of the Townscape Precinct and CBD edge.
- 105 The adverse visual effects of the dominant building height and bulk on mid to close range public view points on the Kingsgate Hotel will be more than minor.
- 106 The adverse effects of shading on the Kingsgate Hotel property arising from the building height and bulk will be severe, and are not able to be avoided, remedied, or mitigated.
- 107 The proposed building floor area is twice that which might be expected for a complying development. The desire to achieve this level of development, tied with the reduced tower footprint means that the Proposal requires additional height. The resultant bulk and height of the building is out of context with the receiving environment and contributes to adverse visual amenity and shading effects which could be reduced or avoided with a different design.
- 108 The Proposal is deficient in car park numbers, and the design of the access and parking ramps will mean that access by coaches and cars to much of the parking and loading areas will be impracticable. This will lead to adverse effects on on-street parking and the roading network that are more than minor.

- 109 The Proposal is contrary to the objectives and policies of the ODP relating to maintenance of amenity and townscape values, and is contrary to the objectives and policies of the ODP as a whole.
- 110 The Proposal therefore fails to meet either the gateway tests of section 104D, and therefore consent must be declined.
- 111 I also consider that even if the application were not non-complying, having regard to the matters under section 104(1), the adverse effects of the height breach on amenity and townscape values are such that consent should still be declined under section 104C.

A handwritten signature in black ink, appearing to be 'GR Taylor', written in a cursive style.

**Graham Rutherford Taylor**

**24 July 2017**