

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

SUMMARY OF EVIDENCE OF GRAHAM RUTHERFORD TAYLOR

Planning
3 August 2017

GREENWOOD ROCHE
LAWYERS
CHRISTCHURCH
Solicitor: L J Semple
(Lauren@greenwoodroche.com)

Level 5
83 Victoria Street
P O Box 139
Christchurch
Phone: 03 353 0570

EVIDENCE SUMMARY

- 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 My Evidence in Chief dated 24 July 2017 outlines my experience and qualifications relevant to my evidence in respect of resource consent applications LUC2017-48 and SUB2017-26 by NZ Horizon Hospitality Group Ltd to construct and operate a 17 storey commercial residential development on a site in Moray Place, Dunedin. The following is a summary of the main points of that evidence.

OPERATIVE PLAN RULES

- 3 The hotel and ancillary activities fall within the definition of a *commercial residential activity*. However I consider that the proposed apartments would only be defined as a *residential activity* insofar as they are used as permanent residences. Management as serviced apartments for short term stays by the hotel would be a *commercial residential activity* and would therefore require car parking to be provided.
- 4 The proposal as amended 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
 - 18.5.3 Subdivision – Unit titles do not have legal access to formed road
- 5 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)
- 6 The car parking and transport rule non-compliances above were identified by Mr Carr in his evidence in chief of 24 July. I am aware that amended plans have been provided to the hearing which result in changes to these matters. Mr Carr has advised that these changes do not fully address the non-compliances, and have also introduced new ones. I rely on his assessment in this regard.
- 7 Whilst I disagree with the unbundling approach adopted by the applicant, 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 on amenity values including outlook, shading and visual dominance arising due 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)

- 8 I do not consider that the 2GP provisions 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.
- 9 The proposal would not comply with rules relating to earthworks, height (16m limit), 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.

EFFECTS ASSESSMENT

- 10 Assessment matter 9.9.4 concerning bulk and location requires the Council to have regard to 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. It is not limited to amenity effects on any particular place – therefore effects on all places including private properties within the surrounding environment require consideration.
- 11 Shading and visual dominance effects are a direct consequence of building height, and to this extent I agree with the applicants opening statement that legitimate expectations are derived from the Plan provisions. In this case there is a legitimate expectation that the effect of building bulk will be commensurate with that of an 11m high building.
- 12 The purpose of the no-side yard requirement is to provide continuous building frontages to achieve particular urban design outcomes. Whilst it impacts on sunlight admission to an immediately adjoining property, the main source of shading in this case arises from height over a wider area – not proximity to boundaries.
- 13 Assessment matter 9.9.5 requires assessment of amenity values in general. There is no limitation on what those amenity values might be – on the contrary the words “*in general*” require a wide assessment.

- 14 The Policy 9.3.3 concerning Central Activity Zone amenity values and its explanatory statements clearly identify protection of townscape values, scale and admission of sunlight as matters requiring consideration.
- 15 For these reasons I disagree with the applicant's contention that amenity effects including shading and visual dominance on the Kingsgate property are not a valid consideration.

Permitted Baseline

- 16 A 'controlled activity building outline' may be had regard to under s104(1)(c), with the following characteristics:
- It would have no front or side yards
 - A gross floor area of approximately 10980m².
 - 9m - 11m in height relative to ground level, with a maximum of 11m.
 - On this site would not cause significant shading on the Kingsgate Hotel site.
 - On this site would not cause adverse effects of outlook or visual dominance on the Kingsgate site.
- 17 The ground and roof levels used by Mr Bowen in his shading diagrams do not result in a credible complying height building, as he has failed to account for the cross fall of the site, and lower levels on the road boundary. Height is limited by the level of the lowest point on the Moray Place frontage for each hypothetical building section. This is 5m less than the height adopted by Mr Bowen and would result in a roof level entirely below the floor level and lines of sight from the Kingsgate Hotel.
- 18 Mr Bowen's further shading scenarios for 9m and 11m buildings erected on the boundary of the Kingsgate site are also inaccurate and do not compare permitted development on the applicant's site. They are again based on incorrect site levels due to not accounting for the sloping nature of the sites. The maximum building height at the Moray

Place road boundary is 3.73m less than the roof level shown by Mr Bowen for a potential building on the front part of the site. On the rear part of the site a complying building would be 4m lower than shown by Mr Bowen.

- 19 Mr Bowen's diagrams exaggerate the height and effect of shading of a 'complying' building and do not represent a credible complying baseline.

Urban Design

- 20 I rely on Mr McIndoe's assessment and evidence concerning the urban design effects of the proposal, including townscape, podium and street edge design and architectural approach.
- 21 Mr McIndoe has concluded that the proposal is not consistent with the values and objectives identified in the Townscape section of the ODP. He disagrees with the comparisons made between the proposed building and other over height buildings in the city.
- 22 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 Dominance

- 23 I rely on Mr McIndoe's visual effects assessment with reference to the applicant's photo montages, which use the rating scales adopted by Mr Compton-Moen for the applicant. His conclusion is that effects on mid and short range views from 11 of the viewpoints are significant such that visual effects including domination will be unacceptable, and cannot be avoided, remedied or mitigated.
- 24 A complying building would be wholly contained below the line of sight of all hotel rooms at first floor level or above, and would only have a minor visual impact at ground level.
- 25 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.

Shading

- 26 I rely on Mr McIndoe's assessment of shading effects which conclude that the cumulative effects of shade cast by the proposal will be severe.
- 27 The proposal will result in significant prolonged shading effects over the Kingsgate Hotel site that will occur for most of the morning during the Equinox and Winter periods.
- 28 A complying building on the applicant's or the adjoining site could not be built to the heights suggested by Mr Bowen due to inaccuracy in his approach, therefore the extent of shading caused by a complying development would be significantly less than shown on his plans.
- 29 Further, Mr Bowen has not undertaken an assessment of the vertical extent of shading from a complying building on the application site. The vertical extent of such shading into the Kingsgate Hotel building and rooms would be negligible (an even less allowing for the inaccuracy in his modelling). 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.
- 30 By contrast the vertical extent of shading from the proposed hotel tower will completely shade all 6 levels of the Kingsgate building for most of the morning during the winter solstice.

Scale of Activity

- 31 The almost doubling in floor area compared to a complying building leads to a potential doubling in activity, or a more intensive site development than the ODP anticipates.
- 32 More intense development may exacerbate adverse effects of the parking shortfall, and of the access and manoeuvring area non-compliances identified by Mr Carr.

- 33 The large floor area combined with failure to build to the site boundaries means that more height is required by the applicant, which exacerbates the adverse effects of bulk and height of the building on townscape character, visual amenity and shading.

Traffic

- 34 I rely on Mr Carr's traffic assessment and conclusions which have identified several non-compliances with parking and transport standards which were not identified in the application. Mr Carr has also advised that the latest amendments to the application have not addressed all matters, and have introduced new ones.
- 35 Specifically, I note that he considers the issue with access gradients to be the most significant, since it results in the perimeter roadway and some of the car park access areas being impassable by cars and coaches. There will also be a significant shortfall in parking spaces due to the apartments being managed for short term stays.

OBJECTIVES AND POLICIES

- 36 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.
- 37 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 Central Activity Zone amenity values. The matters requiring consideration under policy 9.3.3 specifically include protection of townscape values and admission to sunlight.
- 38 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.

- 39 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.
- 40 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.

PART 2 RMA

- 41 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 adequately identify the environmental outcomes sought by the Plan, such that having regard to the recent decision of *RJ Davidson Family Trust v Marlborough District Council*, I do not consider it necessary to further assess against Part 2.

SUMMARY AND CONCLUSIONS

- 42 The complying baseline scenarios provided by the applicant to demonstrate shading effects are not based on credible complying buildings.
- 43 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.
- 44 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.
- 45 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.
- 46 The proposed building floor area combined with the reduced tower footprint results in additional height. This contributes to adverse visual amenity and shading effects which could be reduced or avoided with a different design.

- 47 The proposal will result in adverse effects on on-street parking and the roading network that are more than minor.
- 48 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.
- 49 The proposal therefore fails to meet either the gateway tests of s104D, and therefore consent must be declined.
- 50 I also consider that even if the application were not non-complying, having regard to the matters under s104(1), the adverse effects of the height breach on amenity and townscape values are such that consent should still be declined under s104C.

A handwritten signature in black ink, appearing to be 'ST' followed by a long horizontal stroke.

Taylor

21 July 2017