

BEFORE THE DUNEDIN CITY COUNCIL HEARING PANEL

IN THE MATTER OF The Resource Management Act 1991

AND

IN THE MATTER OF Land Use Consent Application LUC-
2017-418 by the Downie Stewart
Foundation

Expert Planning Evidence by Kirstyn Lindsay
Date: 16 January 2018

INTRODUCTION

- 1 My name is Kirstyn Lindsay and I am the sole director of Southern Planning Solutions Limited. I hold a Masters in Planning from the University of Otago. I have 15 years of experience in district and regional planning. I am an accredited RMA commissioner and hold full NZPI membership.
- 2 I did not prepare the resource consent application and was only engaged by the applicant once the application had been notified to affected parties.
- 3 I confirm that I have read the Environment Court's Code of Conduct for expert witnesses and, while this is not an environment court hearing, I agree to comply with the code. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

BACKGROUND TO THE APPLICATION

- 4 The Downie Stewart Foundation is a charitable trust which plays an essential role in the community by providing services and support to adult male offenders. These services and support, provided as part of the Moana House Programme, are well detailed in the application and the Mrs Darby's s42A report. The Moana House Programme currently operates across three sites being 401, 402 and 403 High Street, Dunedin. Each site is currently occupied by a well-established dwelling and Para [3] of the s42A report explains the current activities occurring on the site.

PROPOSAL

- 5 The applicant is outgrowing the composite sites as they are currently configured. The current layout adversely impacts optimal service delivery. As detailed below they propose to maintain the existing buildings 401, 402 and 403 High Streets as almost exclusively residential (except as detailed below) and concentrate the administration, workshops and training within a new purpose-built building at 403 High Street.
- 6 **At 401 High Street**, the activity will remain largely unchanged with a mix of residential facilities, minor administration and community support activities as required. The lean-tos along the western boundary will be removed to facilitate

improved linkages with 403 High Street. The existing garage will continue to be used for carving classes and tool and equipment storage. Consent is required for this site to authorise existing bulk and location and parking breaches and to authorise the on-going community support activities.

- 7 **At 402 High Street**, the upstairs flat will remain unchanged. It is proposed that the current training and workshops, which have been operating from the ground floor since this activity was consented in 2003, will be relocated to 403 High Street and ground floor revert to the pre-2003 residential use. No community support activities will occur on this site however, residents will be associated with the Moana House Programme.
- 8 **At 403 High Street**, the existing building will be used exclusively for residential activity. A new purpose-built building will be constructed at the rear of the site. The new building will consist of three levels, with the lower level containing two secure stores and car parking for three vehicles, the middle level will contain the main administration area for Moana House, staff room and toilets along with a large multi-purpose room which will be able to facilitate programme delivery to groups and the upper level, four counselling rooms and a sitting area are proposed to facilitate programme delivery on a one to one basis or to very small groups.
- 9 The new building will not contain a kitchen or living spaces and will respect the yard setbacks, separation distances and height plane angles to external boundaries of properties not owned by the applicant, as appropriate for the site's residential zoning. The building will result in the site exceeding 40% site coverage.
- 10 Given the sloping nature of 403 High Street, and that the building will be somewhat set down into the ground, earthworks will be required to establish the new dwelling. Volumes are expected to be in the vicinity of 210m³ of cut material and 2m³ of fill, with cut depths of 3.3m. Retaining will be by virtue of the lower level building walls. The site has been identified as a HAIL site and the volume of soil to be disturbed triggers the NES for contaminated soils. All fill will be disposed of to an approved facility which manages contaminated soil.

PLANNING ASSESSMENT

- 11 In her S42A report, Mrs Darby has completed an assessment of the application against the rules in the Operative District Plan, Proposed District Plan and NES. I acknowledge her assessment that the proposal should be assessed as a non-complying activity overall. I note that the nature of the activities occurring on three separate sites could be presented as a case for unbundling, especially with the non-complying activity proposed for 402 High Street being quite distinct from the discretionary activities on the other sites across the road. But I also accept that this is one application and the activities are inter-related. I note that Mrs Darby does unbundle the activities when discussing true exception at Para [180] during her S104(1)(c) assessment and I would not object if the panel does determine that the activities should be unbundled.
- 12 I note that Mrs Darby accepts that the rules set out at 8.7.2 of the district plan are not applicable to the non-complying activities but I acknowledge that these performance standards can be used as guide to assist the panel in gauging the appropriateness of the development.

NOTIFICATION

- 13 The application was notified to all surrounding neighbours. It is noted that the notification decision was made prior to the recent RMA amendments which came into effect on 18 October 2017. The owners of 409A-E High Street and 167 Maitland Street submitted in opposition to the application. The s95 report identified that the owners/occupiers of 409A-E High Street and 167 Maitland Street were potentially affected by the community support activity being located closer to their boundary when the new building at 403 High Street was built.

ASSESSMENT OF EFFECTS

Permitted Baseline

- 14 I have read Mrs Darby's permitted baseline assessment and primarily agree with her findings. Overall, I consider that it is appropriate to apply the permitted baseline in this instance.

Density

- 15 I note that the second unit at 402 High Street will not comply with the current density provisions of the operative District Plan. However, the site operated as two separate units until 2003 when it obtained a resource consent for the current activity on the site. The applicant seeks to surrender this consent and revert

back to the previous use. However, I recognise that existing use rights have been lost for the second unit and resource consent is required to authorise this re-conversion.

- 16 I note that the proposal does not seek to increase the overall number of residential beds occurring over the three sites as programme bed numbers are controlled by government funding. I also note that the additional unit proposed for this site complies with the density provisions signalled by the proposed district plan. Furthermore, there are no external changes to the site and, as discussed below, the Council's Water and Waste Group consider there is adequate capacity within the infrastructure network to accommodate the density increase.

Bulk and Location

- 17 In her report Mrs Darby accepts that the effects of the bulk and location breaches present on 401 and 402 High Street are well established and comprise the existing environment. She notes that the new building on 403 High Street will result in bulk and location breaches to 401 High Street but rightly dismisses these effects as the sites are in common ownership. The building is located at the rear of the site and does not introduce any bulk and location effects to the streetscape.
- 18 In their submission, the owners of 409A-E High Street raise concerns regarding shading effects on their property, while the owners of 167 Maitland Street believe there will be a significant reduction in sunlight hours. Both submitters raise concerns with the size and scale of the building.
- 19 The building will be set down within the site to reduce its dominance and the building does not breach the maximum 9m height performance standard for this zone. I agree with Mrs Darby's comment at Para [70] page 13 of the S42A report, which states that *"I will also note that the proposed building is not excessively large when compared to some of other historic two-storey homes along High Street, or the multi-unit building of 409 High Street"*.
- 20 It has been demonstrated that there will be some increased shading at the submitters' boundaries, especially as the area where the building is to be located is currently vacant. However, I note that the building does not breach the yard setbacks or height plane angles, identified as appropriate for this zone, at both

submitters' boundaries and, as such, it is assumed that these effects are deemed acceptable by the District Plan.

21 Furthermore, I note that while site coverage is slightly higher than expected within a residential zone, Mrs Darby's analysis of the surrounding areas finds that higher site coverage is typical of this area and, currently 403 High Street is the anomaly in respect of its low site coverage.

22 It is my opinion that the bulk of the building will not be incongruent with the surrounding environment and will not introduce greater bulk and location effects to the submitters' boundaries than that anticipated by the district plan.

Heritage

23 The submitter at 409A-E High Street consider that the proposal will adversely affect the heritage values of the area. Their submission does not include expert heritage evidence to support this claim. I note that the new building will be located at the rear of the site and screened by the existing dwelling on 403 High Street, meaning that there are very limited view shafts from a public place. I consider that the architect, Mr Reece Warnock, has been considerate of the heritage values of the area in his building design.

24 The Council's Heritage Planner, Mr Dan Windwood, has assessed the proposed building at 403 High Street and considers that *"the proposed development will not harm the townscape heritage values of the High Street Heritage Precinct"*. In lieu of any other expert heritage evidence to the contrary, Mr Windwood's assessment must be the ultimate finding in respect of effects on heritage and I have adopted his assessment, as has Mrs Darby in her S42A report.

25 For completeness, the proposal was assessed by Council's Landscape Architect, Mr Barry Knox, who also found that *"from an urban design perspective, the adverse effects of the proposal would be no more than minor"*. Again in lieu of any other expert urban design evidence to the contrary, I have adopted Mr Knox's findings, as has Mrs Darby in her s42A report.

Amenity Values and Character

26 This proposal does not seek to introduce a new activity to the area. The community support activity has been co-existing with its neighbours for many

years and the effects of the activity are already well established within the existing environment. As stated in the application, the community support activity is deliberately discreet. I consider that the new site configuration and continued activity will not distract from the character of the area.

- 27 I consider Mrs Darby's assessment regarding the effects of the proposal on amenity values and character to be comprehensive and I concur with her assessment, except as discussed below.
- 28 I note that 167 Maitland Street is topographically lower than 403 High Street and that submitter has raised concerns regarding privacy. I respectfully remind the panel that privacy is not protected by the District Plan. Mrs Darby, after discussion with the applicant, has recommended a condition (draft condition 33) to remove any windows located on the southern and eastern sides of the building or have these windows positioned to restrict views down onto neighbouring properties. I understand that there may have been some misunderstanding as to what was finally agreed.
- 29 The purpose of the community support activity is to enable their clients to integrate back into society. By suggesting that they are not permitted to have windows along the southern and eastern boundaries seems, in my opinion, contrary to this purpose.
- 30 The eastern side of the building faces 401 High Street and, as such, I suggest this part of draft condition 33 is not necessary. The submitter at 167 Maitland Street raised concerns regarding the windows of the large meeting room looking out onto their back garden. The windows servicing the first floor meeting room are high and not easily looked out of. I consider the position of these windows meet the second part of draft condition 33 and addresses the submitter's concerns.
- 31 The southern window on the top storey services a one-on-one meeting room and, therefore, will not have the group viewing opportunity to the back yard of 167 Maitland Street. The lower part of this single meeting window could be obscured, should the panel deem it necessary. However, I consider the submitter's concerns have already been met by the high positioning of the meeting room windows and it is not necessary to also obscure the single meeting room window.

- 32 For completeness, the submitter at 409 A-E High Street has not made comment regarding the windows along the western side of the building and, as such, I consider it is not necessary to restrict the windows along this side of the building.
- 33 The submitter at 167 Maitland Street has also requested a high fence be constructed on the boundary should consent be granted. Mrs Darby has not recommended this as a condition of consent. This request appears incongruent with their concern regarding shading effects discussed in their submission. Given the topographical difference, a fence is likely to introduce additional shading effects to their property. I also note that there are no outdoor amenity spaces proposed at the southern or western sides of the site and all outside use is to be directed towards 401 High Street.

Transportation

- 34 The lack of parking is a historic situation for these combined sites; with a parking shortfall being authorised in respect of 402 High Street in 2003. The submitter at 409A-E High Street raises concerns regarding the lack of parking. No transportation evidence was included in their submission to support their concerns.
- 35 The proposal has been assessed by the Council's Transportation Planner/Engineer, Mr Grant Fisher, who concluded that *"the proposed development to have no more than minor adverse effect on the safety/functionality of the transport network"*. In lieu of any other expert transportation evidence to the contrary, I have adopted Mr Fisher's evidence.
- 36 Mr Fisher does not recommend any conditions be imposed on the consent should it be granted nor does Mrs Darby discuss transportation conditions in her S42A report. However, draft condition 31 which relates to routing pedestrians through the site and draft condition 32 which relates to on-site parking for 403 High Street have been recommended all the same and I query this inclusion.
- 37 With regard to draft condition 31, it is unclear how the routing of pedestrians through the site will work, if this is achievable given the site and building configuration, and what effect this routing is intended to address.

- 38 In relation to draft condition 32 regarding on-site parking, the application specifically states that the residents do not have access to vehicles however, the condition seeks to confine the parking, in part, to resident parking. While it seems that this condition is not necessary, if this condition is to remain, restricting parking to vehicles associated with the community support activity would seem more practical.

Infrastructure

- 39 The application has been assessed by the Council's Water and Waste Group, who consider that the proposal can be adequately serviced for water, wastewater and stormwater, subject to conditions of consent. I adopt this finding and accept the conditions as reasonable. However, I wish to seek clarification regarding the following proposed conditions starting at page 41 of Mrs Darby's S42A report:
- a. Please confirm that the SWMP imposed by draft condition 4 is only required in respect of 403 High Street.
 - b. Please confirm that the water saving devices required by condition 28 are only necessary for the new building at 403 High Street and the second residential unit at 402 High Street and are not required to be retrofitted at 401 High Street and the existing residential unit at 402 High Street.
 - c. Please confirm that condition 34 is redundant as it is addressed by condition 28.

Natural Hazards and earthworks

- 40 It is necessary for a substantial amount of soil to be disturbed in order to set the new building at 403 High Street down into the site. The applicant has had the site assessed by Geosolve and submitted the assessment with the application.
- 41 The submitter at 167 Maitland Street has raised concerns regarding site stability and the accuracy of the Geosolve report. The proposal has been assessed by the Council's Consultant Engineer who peer reviewed the Geosolve report. The Engineer notes that no natural hazards have been identified for this site. He raised no concerns regarding stability of the site or quality of the Geosolve report.
- 42 In lieu of engineering advice to contrary, I adopt the assessment of the Council's Consultant Engineer and accept that the conditions proposed in the s42A report as reasonable, subject to clarification of the following:

- a. Conditions 12, 13 and 14 proposed by Mrs Darby (starting at page 41 of the S42A report) appear to be superseded by proposed condition 2. As such, I question whether some of these conditions necessary?
- b. For certainty, it would be helpful for a time frame to be placed on proposed conditions 21 and 22, (as per proposed condition 20). However, a longer time period of two months is requested to provide for unforeseen circumstances.

NES

- 43 The site has been confirmed as a HAIL Site and triggers the NES because of the volume of soil disturbance. A PSI report, with analysis from some soil sampling, was submitted with the application. The report included a Contaminated Site Management Plan (CSMP) for the site. The proposal has been assessed by both the Otago Regional Council's Contaminated Land Officer and Council's Consulting Engineer.
- 44 The Council's Consulting Engineer found the CSMP to be thorough and complete and considers that, if conscientiously implemented, an appropriate level of health and safety and environmental mitigation will be achieved. The Engineer does not recommend any additional conditions beyond the CSMP. The Otago Regional Council's Contaminated Land Officer also considers the CSMP to be generally comprehensive but suggested minor inclusions to the CSMP. These additions to the CSMP are addressed by draft condition 3 in Mrs Darby's report. I adopt the expert's findings and consider the proposed conditions of consent to be reasonable.
- 45 For completeness, I note a resource consent is also required for the disturbance of a contaminated site from the Otago Regional Council under the Regional Plan: Waste for Otago.

DECISION MAKING FRAMEWORK

Objectives and Policies

- 46 Mrs Darby has undertaken a fairly comprehensive assessment of the objectives and policies of the operative and proposed district plans and regional policy statements. She has found the proposal to be consistent overall with these

objectives and policies. I concur with her findings, with the exception of her finding of ~~on~~inconsistent for Objective 15.2.4 of the proposed district plan.

- 47 Objective 15.2.4 seeks to maintain or enhance the amenity of the streetscape and reflect the current or intended future character of the neighbourhood. Mrs Darby suggests that the proposal is inconsistent with this objective because of the proposed density for 402 High Street. It is my opinion that the proposed district plan signals a greater future density for this area and the proposal at 402 High Street falls within this intended density and, therefore, within the intended future character of the neighbourhood.
- 48 With respect to the supporting Policy 15.2.4.1, there are no external changes proposed for 401 and 402 High Street and the new development at 403 High Street is located to the rear of the site. I agree with Mrs Darby that the proposal will maintain the streetscape amenity of High Street as this finding is consistent with the expert evidence before the panel. Overall, it is my opinion that the proposal is consistent with Objective 15.2.4 and Policy 15.2.4.1 of the proposed district plan.
- 49 For completeness, I also find the proposal to be consistent with the following objectives and policies of the operative District Plan:

Relevant Townscape Objectives of the operative district plan	Relevant Supporting Policies	Commentary
Objective 13.2.4 <i>Ensure that buildings and places that contribute to the townscape character are recognised and maintained.</i>	Policy 13.3.10 <i>Encourage restoration, conservation, continued use and adaptive re-use of buildings with townscape and heritage values.</i>	Maintaining or re-using existing buildings maintains a degree of continuity with the City's history. Retention of townscape and heritage values establishes and sustains a sense of place and identity for present and future generations. The proposal will enable the retention and on-going use of the buildings on the sites. I find the proposal to be consistent with this objective and policy.
Objective 13.2.5 <i>Ensure that the character of significant townscape and heritage precincts is maintained or</i>	Policy 13.3.4 (XV) <i>Protect and enhance the heritage and townscape values of the High Street Heritage Precinct.</i>	The Council's heritage planner and urban designer have stated that the proposal will not compromise the High Street Heritage Precinct Values and, as such, it is anticipated that these values will be maintained. The introduction of the new building means that no

<i>enhanced.</i>		external renovation or alteration is required for the existing buildings on 401.402 and 403 High Streets and , as such, their heritage values are to be protected. I find the proposal to be consistent with this objective and policy.
Objective 13.2.6 <i>Ensure that development (including alterations and additions to buildings) does not adversely affect the character and amenity of the central City precincts.</i>	Policy 13.3.5 <i>Require within identified precincts that any development, including alterations and additions to buildings and changes to the external appearance of buildings, maintain and enhance the townscape, heritage character and values of that precinct.</i>	As discussed above, the new building at 403 High Street will not compromise the High Street Heritage Precinct Values. The new building is located at the rear of the site and has limited view shafts to public spaces. The building design is intended to be respectful to the values of the precinct. I find the proposal to be consistent with this objective and policy.

Part 2

- 50 The recent High Court decision, *R J Davidson Family Trust v Marlborough District Council* [2017] NZHC 52, applies the Environment Court's reasoning in *EDS v NZ King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 (commonly known as *King Salmon*) to resource consent applications. The High Court held that in most cases it is not necessary to refer back to Part 2 when determining an application for resource consent. This is because unless the District Plan(s), under which the resource consent is being considered, are deemed to be incomplete, invalid or uncertain, the District Plan(s) are assumed to have given effect to the higher order planning documents including Regional Policy Statements, National Policy Statements and Part 2, and no further consideration of those planning instruments is required. It is noted that *RJ Davidson* is under appeal and this position may be reviewed depending on the outcome of this appeal.
- 51 I consider that the policy direction given by the District Plans is not incomplete, invalid or uncertain, as such, there is no need to revert to higher order planning instruments or Part 2 of the RMA. I note Mrs Darby's reference to rural-zone land

at Para [161] is likely an error. Notwithstanding my position above, I note Mrs Darby has found the proposal to be consistent with Part 2.

Section 104 and 104D

- 52 Mrs Darby has found the proposal to be consistent with s104 of the Act. She has also found that the proposal meets both limbs of the tests set out in s104D, such that the panel are able to consider granting consent. I concur with Mrs Darby's findings.

Section 108

- 53 Section 108 provides the panel with the ability to impose conditions, should they be of a mind to grant consent. Mrs Darby has provided the panel with a suite of recommended conditions. These conditions appear reasonable, subject to the clarification sought or amendments discussed earlier in this evidence.

- 54 I note that the submitters at 409A-E High Street have also suggested a number of conditions that they would like to see imposed on the consent. They have not established to what extent any adverse effects would be avoided, remedied or mitigated by imposing these conditions.

Conclusion

- 55 Having completed a full planning assessment of the proposal, I consider there are no obvious planning reasons why consent cannot be granted, subject to conditions.



Kirstyn Lindsay
Resource Management Consultant
Southern Planning Solutions Ltd