

BEFORE DUNEDIN CITY COUNCIL

IN THE MATTER of the Resource
Management Act
1991.

AND

IN THE MATTER an application for
resource consent from
NZ Horizon Hospitality
Group Limited to
construct and operate
a 17 storey
commercial residential
development s at 143
– 193 Moray Place,
Dunedin. Land Use:
LUC-2017-48
Subdivision: SUB-
2017-26

DECISION OF COMMISSIONERS APPOINTED BY DUNEDIN CITY COUNCIL

29 SEPTEMBER 2017

Commissioners:

Andrew Noone (Chair), Waikouaiti
Stephen Daysh, Napier
Gavin Lister, Auckland

DECISION

- 1. Having carefully considered all the relevant reports and documentation supplied with the application, submissions received, along with legal submissions, expert evidence, lay submitter evidence and the s. 42A report presented to us during the course of the hearing, we have resolved to refuse the application from NZ Horizons Hospitality Group Limited to construct, operate and subdivide a 17 storey commercial residential development at 143 – 193 Moray Place, Dunedin.**
- 2. We have determined that the application is a non-complying activity and therefore we were required to consider the particular restrictions of s. 104D of the Resource Management Act 1991. Having considered these, we are not satisfied that the adverse effects on the environment would be minor (s. 104D(1)(a)), nor are we satisfied that the activities associated with the application would not be contrary to the objectives and policies of both the Operative Dunedin City Plan and Proposed District Plan (s. 104D(1)(b)). Having made these determinations, in terms of s. 104D, we are unable to grant consent.**
- 3. In Section 5 of this decision we have focused on the principal issues and effects associated with the proposal and have made our own evaluation based on the evidence before us on the effects, and then after considering potential mitigation opportunities, we have made findings on each of those principal effects issues. This detailed assessment informed our s.104D determination and has also led us to the conclusion that we would have been inclined to refuse consent in terms of s.104 in any event, due to the significant effects we have identified and the sensitivity of the surrounding environment.**

Contents

DECISION

	Page
1 INTRODUCTION	1
1.1 Background	1
1.2 Hearing Procedures.....	2
1.3 Appearances	3
1.4 Procedural Matters.....	4
1.5 Acknowledgements	9
2 THE APPLICATION	10
2.1 Description of the proposed activity	10
2.2 Description of the site and location	10
2.3 Consents sought.....	11
3 SUMMARY OF EVIDENCE AND SUBMISSIONS	13
3.1 Applicant's legal submissions	13
3.2 Summary of evidence presented on behalf of the applicants	16
3.3 Submissions and Evidence from Submitters	22
3.4 Applicant's right of reply	35
4 COUNCIL CONSULTANT'S REPORTS	38
4.1 Section 42A Report on Application	38
4.2 Assessment of Urban Design Issues	39
5 PRINCIPAL ISSUES AND EFFECTS.....	41
5.1 Introduction	41
5.2 Economic and employment effects	41
5.3 City vitality and vibrancy	44
5.4 Height.....	46
5.5 Urban character (design and appearance).....	51
5.6 Visual effects	57
5.7 Street frontage.....	60
5.8 Heritage values	62
5.9 Shading.....	63
5.10 Other amenity value effects	67
5.11 Cultural values and archaeology	71
5.12 Traffic and parking.....	71
5.13 Services	73
5.14 Hazards.....	74
5.15 Construction and earthworks.....	75
5.16 Subdivision	77
6 STATUTORY PROVISIONS.....	78
6.1 Overview	78
6.2 Section 86F and the Operative Plan Townscape Provisions	78
6.3 Consent Status of the Proposal.....	79
6.4 Section 104D	84
6.5 Section 104 Matters.....	89
7 DETERMINATION	91
7.1 Decision	91
7.2 Reasons	91
8 APPENDICES.....	95
Appendix 1 – Summary of Submissions.....	96

Appendix 2 – Plans 102

Appendix 3 – Analysis of Objectives and Policies..... 113

1 INTRODUCTION

1.1 Background

- [1] NZ Horizons Hospitality Group Limited (**the applicant**) is seeking land use and subdivision consents to construct and operate a commercial residential development (the proposal) comprising a building of 17 stories (with three lower levels partially below ground) at 143-193 Moray Place, Dunedin. The proposal involves 210 visitor accommodation rooms (hotel rooms), 64 self-contained apartments, 4 self-contained penthouse suites, together with licenced premises, retail, conference, meeting facilities and on-site amenities, parking and servicing. The land use consent sought also includes earthworks required for the proposed site development. A subdivision consent is sought for a unit title division of the proposed building.

- [2] The application was received by the Dunedin City Council (**the Council**) on 3 February 2017 and further information was requested by the Council on 20 February 2017, pursuant to s.92 of the Resource Management Act 1991 (referred to hereafter as the RMA). Following the receipt of information in response to this request, the application was publicly notified in the Otago Daily Times on Saturday, 8 April 2017 and two signs were placed at the site. Notice of the application was sent to those parties whom the Council considered could be directly affected by the proposal. The submission period closed on 10 May 2017, with a total of 265 submissions received, 206 submissions in opposition, 58 submissions in support and 7 submissions were neutral on the proposal. In addition 6 further submissions were received after the closing date. The Panel issued a minute prior to the hearing on 27 July 2017 advising all parties that after consideration under s. 37 (1)(b) of the RMA, all six late submissions would be accepted. The Panel noted in this minute that the applicant had advised that they had no objection to the acceptance of the late submissions.

- [3] A table highlighting submitters support, opposition or neutral position is attached to this decision as **Appendix 1**. All submissions together with the application and other documentation were made available on the Council website www.dunedin.govt.nz/luc-2017-48.

- [4] The site at 143-193 Moray Place, Dunedin is owned by the Council, therefore the Council engaged an independent planning consultant, Mr Nigel Bryce, and

an independent urban design expert, Mr Garth Falconer, to assess the application. Mr Bryce prepared a report on the application in accordance with s.42A of the RMA and Mr Falconer prepared a statement of evidence that informed the analysis set out in the s.42A report.

- [5] Following an initial assessment of the submissions received on the application, and a related analysis of the environmental effects by Mr Bryce and Mr Falconer, an additional request for a range of further information, pursuant to s92 of the RMA was issued by the Council on 8 June 2017. The response from the applicant was received by the Council on 3 July 2017.

1.2 Hearing Procedures

- [6] The following Independent Commissioners were appointed by the Council to hear and determine the Resource Consent application:

- **Andrew Noone**, Dunedin – Chair
- **Gavin Lister**, Auckland
- **Stephen Daysh**, Napier

- [7] The following staff and consultants were in attendance at various times during both the initial hearing (31 July, 1 August to 4 August 2017) and the reconvened hearing (17 and 18 August 2017):

- **Campbell Thomson**, Senior Planner and advisor to the Panel
- **Wendy Collard**, Governance Support Officer
- **Lynne Adamson**, Governance Support Officer
- **Rachel Brooking**, Legal Counsel from Anderson Lloyd
- **Nigel Bryce**, Processing Planner (Consultant)
- **Garth Falconer**, Urban Designer (Consultant)
- **Grant Fisher**, Planner/Engineer, Transport

- [8] The following staff and consultants provided written evidence but did not appear at the hearing:

- **Chelsea McGaw**, Consents and Compliance Officer, Water and Waste Services
- **Lee Paterson**, Geotechnical Engineer, MWH (Consultant)

- [9] The hearing was held in the Edinburgh Room at the Dunedin City Council and commenced on 31 July 2017 and was reconvened on the 17 August 2017. The hearing was held on the following dates, 31 July, 1 August, 2 August,

3 August, 4 August, 17 August and 18 August 2017. A site visit was undertaken on the afternoon of 30 July 2017 by the Panel and Campbell Thomson (Senior Planner and advisor to the Panel).

1.3 Appearances

[10] Legal submissions on behalf of the applicant were presented by Mr Phil Page (Gallaway Cook Allan). Mr Anthony Tosswill, Director of NZ Horizon Hospitality Group Limited, gave evidence for the applicant, along with following witnesses:

- Mr Ken Harris, Hotel Investment Specialist
- Mr Chris Wilkinson, Commercial Strategist (Retail and Service)
- Mr Antoni Facey, Traffic and Transportation Engineer
- Mr Thom Craig, Architect
- Mr David Compton-Moen, Urban Designer
- Mr Kurt Bowen, Surveyor
- Mr Don Anderson, Consultant Planner.

[11] Ms Lauren Semple, Legal Counsel for Millennium and Copthorne Hotels New Zealand Ltd (neighbours of the subject site) presented legal submission, Ms Semple called expert witnesses being:

- Mr Graeme McIndoe, Urban Designer
- Mr Andrew Carr, Transportation Engineer
- Mr Graham Taylor, Consultant Planner

[12] Mr John Hardie, Legal Counsel, presented the submission on behalf of Misbeary Holdings who are the owners of 8A and 14 Smith Street, both neighbouring properties of the subject site. Mr Hardie's submission was not focused on the effects on the nearby properties which are owned by Misbeary Holding, but assessed the effects of the proposal on the wider Dunedin environment. Mr Hardie called Ms Rebecca Skidmore, an Urban Design expert.

[13] The majority of submitters appearing at the hearing presented their own submission or those of organisations. Some called witnesses to support their submission. The names of those who appeared at the hearing are as follows:

Barry Simpson	Virginia Nichols, The Otago Southland Employers Assn
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Peter Entwisle	Les Wilson
Dougal McGowan, Otago Chamber of Commerce	Mike Parkes
Anita Brosnan and Karen Dooher, Property Council of New Zealand	Jenny Bunce
Hilary Hunt	Meg Davidson, City Rise Up
Greg Sligo	Denise Snell
Dr John Holmes	Russell Lund on behalf of Suzanne Lund
Norman Ledgerwood	Rosemary McQueen
David Tucker, St Paul's Cathedral Church	Richard Wilson
Rose McRobie	Campbell Shaw
Stuart Griffiths	Elizabeth Kerr
Michael Nidd	Dennis Dorney
Ceri Warnock	Madeleine McCoy & Henry Easton
Briar Comins	Gavin Turner
Stephen Macknight	Roderick MacLeod
Catherine Spencer	Rev Dr Selwyn Yeoman
Liz Angelo	Dr Brent Lovelock and Lois Galer, Southern Heritage Trust
Dave Hanan on behalf of Elizabeth and Murray Hanan	Valeri Schillberg
Michael Baker	Frances Ross

[14] Ms McQueen; Mr Entwisle; Dougal McGowan on behalf of the Otago Chamber of Commerce; and Dr Holmes presented further oral submissions on the additional evidence requested of the applicant by the Panel.

1.4 Procedural Matters

[15] The Panel issued the following minutes:

- a) 29 June 2017 relating to hearing procedures
- b) 27 July 2017 relating to late submissions.
- c) 3 August 2017 relating to further evidence required by the Panel

[16] The Panel sought written legal opinions from Council's solicitors on three matters during the hearing process as follows:

- a) Relevance of 2GP rules
- b) Bundling
- c) Procedural challenges raised by Ceri Warnock

A copy of the minutes and legal opinions is on the DCC website www.dunedin.govt.nz/luc-2017-48

[17] There are two preliminary procedural matters that we need to consider as outlined below:

Procedural matters raised by Ceri Warnock

[18] Ms Ceri Warnock, a submitter on the application, presented an oral submission to the Panel on Friday 4 August 2017 covering a number of procedural matters. Ms Warnock subsequently filed a written statement including case law references, dated 7 August 2017 covering the following matters noted in her oral presentation:

- a) New economic evidence will lock out potential submitters
- b) The disadvantage to submitters from expert caucusing at a late stage in a hearing because of the inability for submitters to cross-examine
- c) That any change in design will impact on amenity effects and is therefore out of scope
- d) The Assessment of Environmental Effects is so deficient that there is no jurisdiction to consider the application.

[19] The Panel is very mindful that a fair process is followed for all parties and appreciated Ms Warnock raising her concerns with us as an experienced legal practitioner. The Panel asked the Council's legal advisors, Anderson Lloyd to

consider the various challenges and received this advice in a letter signed by Ms Rachel Brooking dated 16 August 2017.

[20] During the presentation of the applicant's case the Panel made enquiries of the applicant's Counsel as to whether there was any further specific information and data that could be presented relating to the claimed economic and employment benefits of the proposal, noting that Mr Bryce had recommended that such information be provided¹. Mr Page responded by saying that a report had been prepared for the applicant by Infometrics that could be made available and this was formally requested by the Panel in its minute relating to further information dated 3 August. This Minute also requested that further information on employment be provided and that the author of the Infometric report attend the reconvened hearing so he could be questioned on the report. We also provided an opportunity for any submitter to respond to the further information and present further evidence to us.

[21] Ms Warnock has questioned whether the lack of any economic assessment in the application as lodged and our subsequent request and receipt of the Infometrics Report may have locked out submitters who may have submitted on economic effects. Assessment of economic and employment effects are a valid effect for us to consider in our decision making (s 3 of the RMA defining the term "effect" to include any positive or adverse effect). Several submitters supporting the application touched on the positive economic and employment effects that would come with a new 5-star hotel development in Dunedin, and the applicant did present some evidence on economic benefits in the evidence of Messrs Tosswill, Harris and Wilkinson.

[22] Having considered this matter we agree with Ms Brooking in her advice to us that *"the new information provided in the Infometrics report would not, in our opinion, act as a catalyst for someone who had not made a submission"*.

[23] As it eventuated the applicant did not provide any further employment information as requested, nor did they take up the opportunity for the author of the Infometrics report to answer questions from us. Accordingly, as this is an expert's report whose author could not be tested by us, we have had to give only limited weight to the Infometrics Report in our decision making.

¹ Paragraph [97] of the s. 42A Report dated 7th July 2017

- [24] Ms Warnock was concerned that the expert caucusing we requested the design experts to undertake could disadvantage submitters on the basis that submitters are not able to cross-examine experts at a consent authority level citing an unreported Environment Court case as authority².
- [25] We do not think that the Gisborne case provided to us is relevant. In that case the Commissioners appointed additional engineering experts as a Peer Review Panel to assess the competing evidence to assist the Commissioners effectively as “Judges” of that particular evidence. We did not do anything like this.
- [26] Our caucusing request concerned only the existing design experts called by the respective parties, and was targeted at whether through further expert to expert discussion, the respective evidential positions might be modified by changes to the existing design. This was in the context that a reduction in height as a design response had been suggested to us by Mr Falconer, an urban design expert appointed by the Council to assist Mr Bryce in the preparation of the s. 42A Report. In her advice to us Ms Brooking pointed out that our obligation under s. 39 of the RMA includes establishing a procedure that is appropriate and fair in the circumstances. We do not consider anyone was prejudiced by the caucusing that was undertaken and it was appropriate in the circumstances.
- [27] As it transpired no agreement or modification of position came about from the caucusing, although the outcome of the process did identify some areas of common ground between the experts which assisted our understanding of the urban design issues. As a result we are very clear on the positions of the various design experts on the key matters before us that we need to determine in this decision.
- [28] Any design changes that might have been agreed to by the design experts would also have had to be in scope, which was the third procedural matter raised by Ms Warnock on the basis that any design change will potentially create “different” amenity effects, which we acknowledge. Ms Brooking points out in her advice that: *If the design changes in a way that does create different and new effects then the Commissioners should assess whether*

² *Gisborne District Council v Gisborne District Council* A 230/2002 paras [13 to 16].

anyone would be prejudiced by accepting the new design. If there are effects that were new and potential submitters would be affected then the design changes would be out of scope.

[29] We are very alert to the question of scope as the applicant has presented some changes to the design as set out in the revised set of plans dated 16 August 2017 (see **Appendix 2**) and we consider these later in our decision when assessing effects.

[30] The final procedural matter raised by Ms Warnock is that there is no relevant Assessment of Environmental Effects (AEE) for the proposal, and therefore we have no jurisdiction to determine the matter, referring us to an Environment Court case in Taranaki³. Ms Brooking has advised us that:

Ceri Warnock cites Scott v New Plymouth District Council (1993) 1B ELRNZ 43 at 48, a case where there appears to have been hardly any AEE at all. That can be distinguished from the current application. In this case there has been a substantial AEE with many technical reports. The AEE is the first assessment, supplemented by evidence from all parties given throughout the hearing process. We do not consider the AEE in this case can reasonably be found so inadequate, to create a lack of jurisdiction.

[31] We have not had an opportunity to assess the AEE tabled in the Scott case as a comparison, and while we do not necessarily agree with Ms Brooking that *there “has been a substantial AEE”*, we do consider that the information in front of us including the original AEE, associated technical reports, submissions and evidence has provided us with sufficient information on the proposal and its effects to make an informed decision.

Trade competition matter

[32] The closing legal submissions of counsel for the Applicant made an assertion that one of the submitters, Misbeary Holdings, is a trade competitor. Counsel referred to Part 11A of the RMA which specifically manages trade competition. He correctly notes that a trade competitor can only make a

³ *Scott v New Plymouth District Council* [1993] 1B ELRNZ 43

submission if "*directly affected by an effect of the activity to which the application relates*".

[33] We note that there is potential for the Environment Court to make a declaration that a submitter is a trade competitor and therefore should not participate unless directly affected by an effect (this was the case in *General Distributors Limited v Foodstuffs Promised Properties (Wellington) Limited* [2011] NZEnvC212, the case cited by Mr Page). In that case the Environment Court noted that a council decision maker could invoke s41C(7) for a submission made by a trade competitor not directly affected. However, the Court said that it "is almost certainly better placed to resolve it than is the Council..." (at [21]) and consequently made a declaration.

[34] While invoking s41C(7) may be an option it is not our preferred approach. We have not heard submissions from the submitter Misbeary Holdings as to whether or not it is a trade competitor. This procedural matter could have been raised either before the hearing, or at the start of the hearing when the Chairperson of the Panel asked the parties present if there were any procedural matters. It was not raised with us by the applicant in time to hear any submissions on it from Misbeary Holdings, who were represented by counsel. In addition to the late request to strike out the submission we note that none of our findings on the evidence rest solely on the evidence presented by the submitter Misbeary Holdings. For these reasons we decline to strike out the submission.

1.5 Acknowledgements

[35] We gratefully acknowledge the contributions and help received from Counsel, witnesses, submitters, consultants and Council staff. In particular, we thank all parties for the manner in which they conducted themselves during the hearing.

2 THE APPLICATION

2.1 Description of the proposed activity

[36] The proposed activity as notified is to construct and operate a commercial residential development comprising a building of 17 stories (with three lower levels partially below ground) at 143-193 Moray Place, Dunedin. The proposal involves 210 visitor accommodation rooms (hotel rooms), 64 self-contained apartments, 4 self-contained penthouse suites, together with licenced premises, retail, conference, meeting facilities and on-site amenities, parking and servicing. The land use consent sought also includes earthworks required for the proposed site development. A subdivision consent is sought for a unit title division of the proposed building.

[37] The plans as submitted with the proposal were revised both prior to the hearing⁴ and also during the course of the hearing. The latest versions dated 16 August 2017 were filed by the applicants at the reconvened hearing on 17 August 2017. A selection of key plans from this 16 August 2017 set of plans showing elevation, perspective, and access and parking arrangements is attached as **Appendix 2**.

2.2 Description of the site and location

[38] The Site is located at 143-193 Moray Place, Dunedin, and comprises a sloping site that is presently utilised as a part of a public car park.

[39] The subject site is legally described as Lot 2 Deposited Plan 334892 (CFR 142952), Part Section 19-21 Block XVII Town of Dunedin (CFR OT3D/890), Lot 1 Deposited Plan 15383 (CFR OT6C/1038), Part Section 17, 17B Block XVII Town of Dunedin (CFR OT185/28), Part Section 17, 17B Block XVII Town of Dunedin (CFR OT185/29), Part Section 16 Block XVII Town of Dunedin (CFR OT187/241), Part Section 19-20 Block XVII Town of Dunedin and being more partially shown on DP2837 (CFR OT235/275), and Section 18 Block XVII Town of Dunedin (CFR OT278/22).

[40] The Site comprises an area of 3,668m² and is located on the edge of the Central City area, which is zoned Central Activity Zone in the Operative District Plan and Central Business District in the Proposed District Plan. The

⁴ See Appendix 2 of the s. 42A Report dated 7th July 2017

site borders an area which is zoned Residential in the Operative District Plan but which is transitioning into a mixed-use character area containing both residential and commercial businesses. There are medium density residential units, including a large number of multi-unit residential properties, as well as standalone dwellings, typically being 2 to 3 storeys. Many of the dwellings to the west of the Site are used for small businesses and not all sites are developed to their full potential with a number of sites used for carparking.

[41] The Site is located on Moray Place, which forms the outer ring of The Octagon road feature, in the heart of the city centre. On the opposite side of the road quadrant adjacent to the proposal is a continuous built edge containing the Public Library and the Town Hall, with St Paul's Cathedral nearby.

2.3 Consents sought⁵

[42] Land use consent is sought to construct and operate a commercial residential development comprising 17 storeys (with three lower levels partially below ground) involving 210 visitor accommodation rooms (hotel rooms), 64 self-contained apartments, 4 self-contained penthouse suites, together with licensed premises, retail, conference, meeting facilities and on-site amenities, parking, servicing (herein referred to as 'the Development' or 'the Building').

[43] Land use consent is also sought to undertake up to 9,537m³ of earthworks and undertake a maximum cut depth of 7.35 metres from the existing ground level, as part of the site development required for the proposed building.

[44] Unit title subdivision is sought⁶, in order to subdivide to separate ownership the private apartments and penthouse units from the Hotel ownership, and includes:

- Unit 1 – all parts of the Hotel building that will form part of the Hotel operation;

⁵ As summarised in the s. 42A Report dated 17 July 2017 page 3.

⁶ While the application documents include a copy of a proposed freehold subdivision required to define the subject site as a separate land parcel from the remainder of the land in the subject land titles, consent is not sought for this subdivision as part of the application subject of this decision.

- Common Property – all parts of the Hotel building that will be needed to support both the Hotel operation and the new private apartments and penthouse units.
- Individual 64 private apartments and 4 penthouse units (being a total of 68 units contained on Levels 13, 14, 15 and 16).

3 SUMMARY OF EVIDENCE AND SUBMISSIONS

3.1 Applicant's legal submissions

[45] **Mr Philip Page**, counsel for the applicant, introduced the proposal and presented the applicant's case. He returned to his legal submission at the conclusion of the evidence from the applicant's witnesses.

[46] Mr Page commented on the unsuccessful Betterways Advisory Ltd application LUC 2012-212. He noted that the site was within an Industrial Zone that had no building height limit rule and advised: "Despite acceptance that a 5 Star hotel was needed in the city, the Betterways project failed for three reasons – what did we learn?

- a) The building was to be too tall;
- b) The architecture did not achieve a high level of excellence; and
- c) It failed to achieve an adequate connection with the CBD."

[47] He told us that the only available site (143-193 Moray Place, owned by Dunedin City Council) is currently being used as a ground level public carpark. NZ Horizon Hospitality Group Limited has secured the exclusive right to negotiate the purchase of the site, with a condition of that right that only a 5 Star or better hotel may be constructed.

[48] In Mr Page's submission the proposed hotel requires a minimum ground floor area (GFA) of 20,000m² to be an economic proposition, and a tall building form is preferred over a shorter structure because it achieves some important objectives:

- a) It enables the quality needs of a 5 Star hotel to be met
- b) It makes a more elegant contribution to the City skyline than a rectilinear block form built to the site boundaries
- c) A narrow structure adversely affects the views of fewer people in the York Place/Cargill Street area than a shorter wider building would.

[49] Mr Page went on to explain the reason why in his view the application should not be considered as having one overall activity status i.e.: non-complying as per the s.42A report. This is called "bundling". The reason : "bundling or not to bundle" is such an important issue is because the Operative District Plan

specifies that non-compliance with the permitted height condition of 11m as a restricted discretionary activity. In his view, the Council when developing the District Plan made a deliberate decision that breaches of that rule will not be required to pass the s.104D threshold test. The rule breaches that lead to the non-complying activity status are:

- a) 9.5.2(i) - no front or side yards
- b) 9.5.2 (iii) – continuous verandah required.

[50] Mr Page referred to evidence of Mr Don Anderson (Applicant's consultant planner) which goes into detail on the reason of non-compliance discussing each standard and states why there is no link to the height of the building. We consider the question of bundling and the consent status in Section 6 of our decision.

[51] Mr Page then went on to discuss evidence submitted by Ms Semple on behalf of Millennium and Copthorne Hotels, suggesting a lower building built to the boundary would be a better outcome. Mr Page explained the criteria required for a 5 Star Hotel would not be met and covering or incorporating the perimeter access road within the building was not feasible or practicable.

[53] He submitted that since the Betterways decision, the decision making framework under s.104 has undergone major revision. The Supreme Court has reminded decision makers of the importance of the hierarchy of statutory instruments prepared under the RMA. Mr Page elaborated that the Court has held, that only where there had been invalidity, incomplete coverage, or uncertainty of meaning within the planning documents, then the decision makers should resort to Part 2 of the RMA for clarification.

[54] Mr Page explained that in relation to the preservation of sun and views, there are no rights for private landowners; however public view shafts and people places such as The Octagon were recognised for their important amenity values. He mentioned Townscape Rule 13.5.2 and what it aims to protect.

[55] Mr Page then discussed the Operative District Plan, the various values, different precincts, the importance of the Central Activity Zone as expressed in the plan provisions Section 9, in particular he made reference to the enhancement of the Central City Vitality that this proposal would achieve.

[56] In summary, Mr Page concluded that amenity provisions are very specific, and included valued views and places where sunlight should be maintained,

where possible. He concluded by saying this proposal does adversely affect some public sunlight values, in particular the southern half of The Octagon between 2 pm and 4 pm at winter solstice.

[57] Mr Page considered that very little weight could be given to the 2GP, but he highlighted that the provisions relating to heritage issues in the Operative District Plan had not carried through to the 2GP. He stated "the values attached to the site in the 2GP are confined to streetscape issues".

[58] We were also provided submissions regarding the s. 104D gateway tests by Mr Page, and consider these in our analysis of statutory provisions in Section 6 of our decision.

[59] Mr Page then summarised his position by making the following points:

- The over-arching District Plan policy goal for the Central Activity Zone is social and economic vibrancy
- Height should be considered as a stand-alone issue
- There were no issues raised regarding height during pre-application consultation
- There is acceptance that there is some adverse effect from shading a public place – however, the maximum extent of sunshine into The Octagon as is possible has been preserved.
- The building could have been shorter; however would not meet 5 star objectives
- The economic benefits of the proposal far outweigh the loss of sun in The Octagon between 2 pm and 4 pm – during winter solstice.
- The achievement of sustainable management expressed in the Operative District Plan therefore favours granting consent.

[60] In response to the minute issued on 3 August 2017 by the Panel, Mr Page provided an overview of the further information provided by the applicant explaining that:

- Infometrics could not produce any additional information concerning short and long term employment predictions and the Infometric authors were not available to answer questions of the Panel due to other commitments
- That further information had been provided including three dimensional renderings of existing building heights and forms, updated shading

diagrams with colour coding, information on winter sunshine hours and temperatures, additional view simulations and a set of amended plans dated 9th August 2017

- A further statement by Mr Craig explaining the changes in the plans had been provided
- A technical traffic response to the issues raised to Mr Carr had been provided
- The applicant had been unable to produce documentation in relation to glass reflectivity.

3.2 Summary of evidence presented on behalf of the applicants

[61] **Mr Anthony Tosswill**, who is a Director of NZ Horizon Hospitality Group Ltd, spoke to his written submission, outlining his background in the hospitality sector (noting that NZHHG is a hotel developer not a hotel operator). Mr Tosswill explained that 5 Star brands have very firm requirements such as:

- a) can justify a room rate to attract a 5 Star brand
- b) will provide a return to development investors
- c) can be granted a Resource Consent

[62] These three requirements are referred to by Mr Tosswill as the "Triangle", explaining that it is easy to design hotels that can achieve one of the three requirements but it's a major challenge to achieve the "Triangle" in Dunedin. He confirmed that NZHHG has entered into a Memorandum of Understanding with the Dunedin City Council, and the purchase of the site is only triggered if a 5 Star hotel is consented, otherwise the deal is off.

[63] Mr Tosswill commented on tourism in New Zealand; its projected growth of international visitors; the expected increase in spend and the significant increase in airline seat capacity, particularly in relation to the Chinese market.

[64] Mr Tosswill provided a background on "What is a 5 Star hotel" and reiterated the importance of views from the hotel rooms, these views needed to be more than looking at the back of other buildings. Guest rooms would be on levels 6 to 12 with each storey having approximately 24 to 30 rooms, a total of 210 rooms. Levels 1 to 5 are taken up by carparking; staff areas;

reception; guest facilities including conference, business centre and art gallery. Levels 13 to 15 will contain up to 54 apartments; however the final number will depend on market demand for apartment size. The top level 16 will have a number of apartments and penthouses. Mr Tosswill went on to explain how the capital raised by selling the apartments and penthouses on levels 13 to 16 would help to offset the borrowing cost for the construction of the balance of the hotel. This helps to bring a rate of return within acceptable investment parameters. He explained that a profit was not achieved until 7 years of operation.

[65] Mr Tosswill commented on the relationship NZHHG was developing with Dunedin Venues Management Ltd (DVML), the operator of the Dunedin Centre facilities which includes the Town Hall and the Glenroy Auditorium. A PowerPoint presentation from DVML which was attached to his evidence identified destination advantages and destination challenges such as the lack of 5 Star hotel accommodation to help compliment the 5 Star conference facilities DVML managed.

[66] Finally Mr Tosswill commented on reasons why the proposed hotel was so high, the need for outstanding views and why building costs for a tall building are more economic with services arranged around a central core.

[67] **Mr Ken Harris** a hotel investment specialist with expertise in hotel management, development and investment spoke to his evidence. Mr Harris had been working with Mr Tosswill on the development of the business case for the hotel for approximately 12 to 18 months. Several hotel operators including Mantra and Accor have expressed interest in operating this hotel. In his view Dunedin requires an international branded hotel to become a credible destination internationally. Domestically branded hotels have good exposure in the New Zealand domestic market; however Dunedin lacked international exposure to draw new international tourist business to the city.

[68] **Mr Chris Wilkinson** is the Managing Director of First Retail Group Ltd, a Wellington based consultancy that operates internationally with over 30 years' experience. First Retail Group Ltd have been asked by NZHHG to provide specialist advice on the commercial and social benefits the proposed hotel and apartment complex will deliver to Dunedin's inner-city appeal, amenity value and economy. Mr Wilkinson commented on data supplied by

Marketview (a company that analyses customer spending patterns) explained the impacts a hotel would have on greater spending power which would help stimulate re-generation in The Octagon and the surrounding Central Activity Zone. He believed that the shading effects on The Octagon were limited to a very short period during the height of winter.

[69] In summary, Mr Wilkinson's evidence was that the proposed hotel is a unique and much needed opportunity for Dunedin with benefits outweighing negatives. He believes the commercial community will welcome the project and those with a passion for Dunedin's future success as a destination to live, work and visit.

[70] **Mr Antoni Facey** is a director of Avanzar Consulting Ltd and practices as the company's Traffic and Transportation Engineer, he has 30 years' experience working with Central/Local Government and private consultancies.

[71] Mr Facey's original Integrated Transport Assessment conclusions were that there would be effects on the traffic environment as a result of the hotel development which were both negative and positive but that the overall traffic effect of the development would be less than minor. Mr Facey commented that, the proposed development complies with all of the traffic and transport standards for a permitted activity except for one minor issue where the sixth coach park cannot be marked on site, it is clear that this proposed development meets with the criteria expected by Council on the site. Mr Facey then outlined the required improvements proposed to the roading network such as the Moray Place/Filleul Street roundabout, the vehicle access and egress. He also responded to traffic and transport related concerns raised by submitters

[72] **Mr Thom Craig**, director of Thom Craig Architects with 30 years' experience has been engaged to deliver a 5 Star hotel on the 3,650m² site. The functional requirement for NZHHG was to deliver 20,000m² of floor space within a building that is evocative of its place and location. Mr Craig described the overall design as a pin-wheel solution with its three slender towers (further articulated to six finely cut vertical slices of accommodation) is the best massing outcome and generates the smallest ground footprint and ground floor area required to achieve the hotel's functional needs. He went on to further describe that the building had a slender tapering profile and

tartan tectonic detailing on a 120 degree structural set out grid, coupled with its lightly tinted glass curtain wall and fine/pointed/angular vertical lines, engages with its immediate/local surroundings and built historical styles/context at various scales.

[73] In reference to the hotel podium form, Mr Craig said it was an integral part of the structure offering its neighbours a unique garden connectivity between its interior and exterior. The podium extends to its street boundary (Moray Place) where a 9 to 11 metre high semi-glazed steel structure is placed following its shape of its round boundary. This occupied structure contains retail spaces, lighting, seating, cycle parks and planting as it steps down the site along Moray Place towards Filleul Street. Public connectivity and the transparency of glazed street level enhance both the visual and physical activity with the existing urban streetscape.

[74] Mr Craig spoke about concerns raised in relation to height, scale, bulk, views and shading, particularly the use of the term dominance used by Mr Falconer. Mr Craig was not in favour of removing floors from the design; he said the building must make a positive contribution to the City. In his view once the initial shock of changed has passed, Dunedin people would come to recognise that a shorter building would make an inferior contribution to the City's skyline.

[75] Mr Craig concluded by saying that the design offers the city of Dunedin a contemporary iconic solution that addresses, and is respectful of, the city's evolving context and heritage at both an urban design and architectural level, while delivering a strong confident economic statement that builds on its past.

[76] **Mr David Compton-Moen** is a director of David Compton-Moen Urban Design Limited where he holds the position of Urban Designer/Registered Landscape Architect. Mr Compton-Moen has 19 years' experience working in New Zealand and overseas.

[77] Mr Compton-Moen's summary of evidence addresses the following key issues:

- a) Urban Character and Built Form
- b) Active frontages, vibrancy and activity

- c) Visual Impact
- d) Shading effects
- e) Options to reduce the building's height
- f) Pedestrian Connectivity and Planting of Street Trees
- g) Effects on people staying at the Kingsgate Hotel

[78] Urban Character and Built Form. Mr Compton-Moen said both the urban character and built form varied with heritage and modern buildings, varied setbacks, active and inactive frontages, carparks and accessways. His view was although the proposed hotel is taller than surrounding buildings, the development is considered an improvement on the current carpark which is a gap in the urban pattern and weakens the overall legibility of Moray Place.

[79] Active Frontages, Vibrancy and Activity. Mr Compton-Moen commented that the proposal will have a significant positive effect by providing an active edge along this portion of Moray Place. He then went on to say in terms of vibrancy and activity hotels, restaurants and supporting retail add significantly to the vibrancy and activity of an urban environment.

[80] Visual Impact. Mr Compton-Moen considered that the proposal could have a 'More than Minor' adverse effect for residents living in houses at the upper ends of Cargill and London Streets where the building will partially interrupt views of the harbour and peninsula. He was less concerned where views were already interrupted by the built environment closer and lower down as in the case of York Place and Haddon Place and the lower sections of Cargill and London Streets where the skyline is formed by a built cityscape.

[81] Shading Effects. Mr Compton-Moen thought that the surrounding receiving environment has a medium sensitivity to shading due to its location to the southeast of the nearest residential areas, and the amount of existing shading in commercial/open space areas. The effects on The Octagon are measurable but limited to a relatively small window of the day and year. He does not think the impact on the public amenity is significant with the potential year round benefits in terms of vibrancy and activity.

[82] Options to reduce building height. Mr Compton-Moen commented that he was in agreement that the shadowing on The Octagon would be removed by a lower building as well as reducing the number of dwellings affected by the

building at the upper end of London Street. He concluded by saying he agrees that the building will mostly affect views from the west where views of the harbour and peninsula will be partially lost, he therefore considered views from the north less affected and less sensitive to change; however as the skyline of the current view is formed by building and not natural features, the reduction to 9 stories would not change this outcome.

[83] Pedestrian Connectivity and Planting of Street Trees. Mr Compton-Moen referred to a sketch (tabled with his evidence) highlighting the enhanced pedestrian connectivity proposed being a raised platform to create a flush crossing point lining up with the Harrop Street footpath so improving accessibility for pedestrians. The sketch identified where additional tree planting would occur.

[84] Effects on people staying at the Kingsgate Hotel. It was Mr Compton-Moen's view that this situation is a common occurrence in many cities with hotels and offices close together, and most rooms in these situations have net curtains for this reason with occupiers choosing whether to have them open or not.

[85] **Mr Kurt Bowen** is a surveyor and director of Paterson Pitts Management Ltd. Mr Bowen presented evidence addressing the shading assessment material that has been provided with the application in particular comparing the proposed with the permitted baseline in relation to shading effects. He also referred to the anticipated views assessment in his evidence and explained the methodology behind both the shading and views assessment. Mr Bowen commented on his infrastructure demand assessment, subdivision matters and the s. 42A Report. His evidence included shade diagrams relating to Summer and Winter solstice, both the Autumn and Spring equinox; and while he submitted 21 different view montages from various public viewing locations around the CBD and nearby suburbs.

[86] **Mr Don Anderson** is a Dunedin based Consultant Planner with Paterson Pitts Management Ltd. He has had over 35 years' experience in planning matters in Dunedin. Mr Anderson's initial involvement with the hotel proposal was after Council had entered into a Memorandum of Understanding with Mr Tosswill for the sale of the subject site.

[87] Mr Anderson considered the application to be a unique proposal in the Dunedin context. His overall assessment of the associated planning matters is that the breaches of the plan provisions attaching to the permitted activities that require consent as a non-complying activity, when considered on their merits, are not contrary to the Objectives and Policies in Operative District Plan, and with suitable conditions of consent will have no more than minor adverse effect on the environment. He said the Objectives and Policies in the 2GP are still subject to decision on submissions and as recommended in the s. 42A report, little, if any weight should be given to them at this time.

[88] Mr Anderson considered that an unbundling approach for this proposal was justified because the various aspects of the application are in his view unrelated and do not justify a holistic assessment.

[89] Mr Anderson went on to say in terms of the restricted discretionary considerations, the height of the building does have effects on adjoining and adjacent neighbours but those effects are not fatal to granting consent. He commented that the 9m to 11m or 16m height limits in the Operative District Plan/2GP are rules that simply trigger the need for a resource consent.

[90] Mr Anderson concluded by saying granting consent as sought subject to conditions of consent is appropriate and that Council can weigh up the positive effects of having a 5 Star hotel on its land adjacent to the Dunedin Centre within the CBD verses the effects that arise from the building height.

3.3 Submissions and Evidence from Submitters

[91] **Mr Barry Simpson** described Dunedin as a regional centre servicing Otago. Mr Simpson felt that the 2GP proposed height restriction of 16m is a reasonable height allowing residential views to be retained. Dunedin markets itself as one of the World's Great Small City's; therefore height should be adhered too. Mr Simpson believed precast concrete panels would be a better outcome of external cladding.

[92] **Mr Peter Entwistle**, a resident of Cargill Street, was against the height of the hotel particularly in relation to impacts on views from Cargill and London Streets. Mr Entwistle believed the design was modernist style, in particular the glass gladding was not in keeping with heritage buildings and his preference for architecture design was the gothic approach common place in

Europe. Mr Entwisle raised concerns which included wind effects and parking issues.

[93] **Mr Dougal McGowan**, on behalf of the Otago Chamber of Commerce, stated that their members (1000 Otago businesses) were large stakeholders in the economic, social and environmental future of the Otago region due to the estimation that their members contribute significantly in fact, more than half of Dunedin City's \$5.75 billion GDP. Mr McGowan referred to a survey conducted by the Chamber of their members about the hotel, where the results were that out of 402 members who had completed the survey 79.6% supported the proposal, 10.95% opposed and 9.45% were unsure. Mr McGowan had recently spoken to a number of bars and cafes in the Octagon and lower Stewart Street, all favoured the proposal due to the economic benefits that the hotel would bring.

[94] Mr McGowan presented a promotional video highlighting Dunedin's inner city vibrancy, with café, bars, shops, visitor attractions all contributing positively to the look and feel of Dunedin. He went on to say that the Chamber's submission is made in the positive spirit of developing a partnership with Council that supports and encourages business friendly innovation and growth for the benefit of all Dunedin residents.

[95] **Ms Anita Brosnan and Karen Dooher on behalf of the Property Council NZ** stated that this development will promote growth for Dunedin by offering increased tourism and visitor opportunities with more accommodation options,

[96] Ms Brosnan went on to say there is a gap in Dunedin's facilities to offer high end accommodation to high profile visitors and investors, and this project will fill these needs. This development will promote further use of major facilities such as Forsyth Barr Stadium, and would send a clear message out that Dunedin is a place to come to.

[97] **Ms Hilary Hunt** commented she was against the height of the hotel and felt its design was out of character with Dunedin architecture. Ms Hunt was also concerned about the shading, loss of parking particularly the effects on the elderly who park close to the Town Hall when attending functions and events.

[98] **Mr Greg Sligo** advised that he was a former DCC employee employed as a Special Projects Officer for the Urban Design Department. Mr Sligo commented that his concerns were traffic congestion; parking reduction; and wind turbulence causing inconvenience for pedestrians. He also raised the issue of shading pointing out Dunedin residents appreciate sunshine and referred to the "Duomo effect" no new buildings should be taller than the famous St Paul's Cathedral. He agreed that Dunedin needed a 5 Star hotel and the site was well suited for such a development however the design needs to be done in sympathy of the surrounding city built environment.

[99] **Mr Norman Ledgerwood** is a retired Architect and author of "Heart of the City". He submitted in support of the hotel development and considered the design to be very good. Mr Ledgerwood suggested that we no longer notice the impact of 20th Century architecture on the city of varying degrees of visual prominence. He believed the hotel will have an "ever changing appearance due to the inter play of light and shade as the sun moves" and in his view it will in as few years be regarded as one of the best early 21st century buildings in Dunedin.

[100] **Dr John Holmes** was concerned the wind data submitted by the applicant was sourced from the wind station situated at the Momona Airport. In his view there were far too many unanswered questions in relation to wind. His concerns are highlighted by comment in the application such as "that wind conditions on the Moray Place footpath will be in excess of the criteria for safety". Dr Holmes provided wind (modelling) data sourced from Meteoblue.com showing wind speed and prevailing winds, he believed more in-depth wind modelling would be required before construction commenced.

[101] **Mr John Hardie – Legal Counsel on behalf of Misbeary Holdings Ltd** referred to the primary issues being urban design and visual effects of the proposed structure. Mr Hardie highlighted that the notion that you can unbundle cannot be justified, he suggested this approach was a clever attempt to get around the non-complying test of s. 104D, but rather misses the point about the scale of the effects, even if it is considered detrimental effects of the proposed structure was at the heart of the hearing. He went on to say nothing like this had been contemplated by the District Plan and

because the effects are so great in so many areas that the Panel have no option but to decline consent.

[102]**Ms Rebecca Skidmore (called by Mr Hardie as the Urban Design witness for Misbeary Holdings).** Ms Skidmore is a director of RA Skidmore Urban Design Ltd with over 22 years' experience.

[103]Ms Skidmore made reference to the existing built environment particularly the heritage buildings in the CBD and believed the proposed building contrasts dramatically with buildings in both the immediate and wider context. She said that in her opinion, the design approach for this location in central Dunedin is fundamentally flawed and by removing the upper four floors (as recommended by Mr Falconer) would change the proportion of the building. Ms Skidmore concluded by saying the design and form of the building, in combination with its large scale, is incompatible with the established character of the Octagon.

[104]**Ms Lauren Semple – Legal Counsel on behalf of the Millennium and Copthorne Hotels.** Ms Semple is a Solicitor with Greenwood Roche.

[105]Ms Semple referred to the Betterways Hotel proposal by saying this proposal suffers from many of the same deficiencies, another example of a lack of looking closely at what the Plan values are, and to work with rather than against these matters.

[106]Ms Semple also referred to on the District Plan goals for the Central Activity Zone which is the enhancement of amenity values. She commented the proposal significantly and adversely affects such values. Ms Semple believes that any positive effects that may evolve from the development of a 5 Star Hotel in Dunedin do not outweigh the adverse effects on amenity and townscape/precinct values given the significant and consistent emphasis that the Plan places on such values. Given the significance of these adverse effects, and the consistent emphasis placed on townscape and amenity values in the Plan, the proposal is also contrary overall to the objectives and policies of the Plan. Finally, the proposal fails to meet either of the s. 104D gateway tests and consent cannot lawfully be granted.

[107]**Mr Graeme McIndoe (called by Ms Semple as the Urban Design witness for the Millennium and Copthorne Hotels).** Mr McIndoe is a registered architect and qualified urban designer with 34 years professional experience.

[108]Mr McIndoe's conclusions regarding the urban design outcome are that, the proposal is over-scaled, leads to major adverse visual and shading effects, and does not fit within its townscape context. He considered that some individual effects were 'significant' many were 'unacceptable, and therefore cumulatively, the effects overall were unacceptable. Mr McIndoe said the mitigation methods proposed by Mr Compton Moen will not mitigate the visual domination effects of the proposal.

[109]Mr McIndoe participated in the caucusing session with Mr Compton Moen, Mr Falconer and Mr Craig, held on the 14th of August 2017 at Mr Craig's Christchurch office. Although overall agreement of an appropriate design for the hotel wasn't achieved there were some principles agreed to, such as the recent amendments promoted by the applicant to better connect the main pedestrian entrance and the street edge and the alignment with Harrop Street, and that an architectural approach can allow a new building to sit comfortably (or) close to heritage buildings.

[110]**Mr Graham Taylor (called by Ms Semple as the Consultant Planner witness for the Millennium and Copthorne Hotels).** Mr Taylor has 28 years' experience as a planner.

[111]Mr Taylor said that 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. He went on to say 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. Mr Taylor stated that 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. It therefore fails to meet either of the gateway tests of s. 104D, and consent must be declined.

[112]**Mr Andrew Carr (called by Ms Semple as the Traffic Engineer witness for the Millennium and Copthorne Hotels)** has had 28 years' experience in traffic engineering. Mr Carr was critical of the proposed traffic and transportation solutions; he stated that guidelines and standards were not being met. Mr Carr believed there were significant design deficiencies that needed to be addressed. Further evidence provided by the applicant's traffic engineer addressed all of Mr Carr's concerns except bus movement on the north-eastern side of the hotel otherwise Mr Carr accepted measures promoted by Mr Facey there were viable transportation solutions.

[113]**Mr Grant Fisher, Council Planner Engineer Transportation.** The application was accompanied by an Integrated Transport Assessment prepared by Mr Facey, the overall conclusion is that vehicular traffic generated by the proposal can be safely and efficiently accommodated by the transport network, especially once the layout of the Moray Place/Filleul Street intersection is improved.

[114]Mr Fisher's conclusion in his written evidence was that the proposed hotel can be supported from a transport perspective, and is unlikely to give rise to adverse effects on the safety/functionality of the transport network that could be considered to be "more than minor".

[115]In response to Mr Carr assessment and Mr Facey's additional evidence, Mr Fisher felt all transportation issues can be resolved through conditions of consent that required the applicant to submit detailed engineering plans addressing all issues to the satisfaction of the Council.

[116]**Ms Rose McRobie** was against the design and suggested that there would be negative effects on people using the Octagon and Moray Place as it will affect demand for parking, access to business, entertainment and leisure, church and ecumenical activities, hospitality and other services in the central city.

[117]**Ms Virginia Nichols on behalf of the Otago Southland Employers Association** said with increasing tourism numbers a hotel of the stature would be welcomed. Economic benefit in the short and long term with increased jobs plus additional spend particularly in the retail sector with the

proposed hotel being situated very close to the conference facilities i.e.: walking distance.

[118]**Mr Les Wilson** supported the proposed hotel and believed Dunedin needed to expand its operations and investment into tourism.

[119]**Mr David Tucker on behalf of St Paul's Cathedral.** Mr Tucker is a retired consulting engineer who is currently Chairman of the Works Committee at St Paul's Cathedral. Mr Tucker raised concerns about the direct impact on the Cathedral particularly reduction of sunlight inside and outside St Paul's. Mr Tucker spoke of the importance of tourism to the city and was concerned the proposed had on the experience visitors had when viewing the Town Hall and St Paul's. He also raised issued of increased traffic and fire safety associated with a large high rise building.

[120]**Mr Stuart Griffiths** lives in Cargill Street. Mr Griffiths submitted an alternative design for the hotel being lower overall and stepped up the site. He believed the proposed hotel would adversely affect events at the Town Hall such as graduations because of shade and increased wind. Mr Griffiths was concerned that this proposal didn't meet the intent of some City strategies such as Ara Toi Strategy (developed in partnership with Transforming Dunedin).

[121]**Mr Mike Parkes** raised concerns about the impact on the Dunedin brand which relies on high tech/knowledge and heritage mix plus the hospital/university link. Mr Parkes used Queenstown as an example where height restrictions have not deterred 5 Star Hotels. Would like developer to share Dunedin vision.

[122]**Ms Jenny Bunce** believes the design is outdated and not sympathetic to its surrounding heritage building. Ms Bunce doubted the need for a 5 Star hotel in Dunedin, she was against the apartments included in the proposal and felt that apartment were added for financial gain. Ms Bunce mentioned about building restrictions she was aware of in Oxford, England where height in particular was limited to ensure the skyline views are preserved.

[123]**Ms Meg Davidson on behalf of City Rise Up** (CRU is a community group with the aim of smartening up City Rise and protecting its heritage and

amenity values). She said that CRU would prefer small eco-based type of hotels using existing unused built heritage. Ms Davidson believes the site is prized real estate and deserves a truly iconic building.

[124]**Ms Denise Snell** advised that she was opposed to the development because of the detrimental effect on the environment. The size, location, views, shading and heritage all impact negatively in her view. Ms Snell spoke of the known hazard zone close to Hadden Place.

[125]**Mr Russell Lund on behalf of his wife Suzanne Lund**, believes the design, the height, the scale would create negative effects. The proposal lacked serious regard to the District Plan Townscape and other provisions, a shortfall of parking, lack of rigour and completeness of the application were all issues of concern. Mr Lund went onto to talk about the economics of restoring heritage, and he questioned the overall benefit of the proposed development to the local economy suggesting most construction materials would not be sourced locally and may be sourced overseas. Mr Lund also provided some background on a development he was recently involved in at Queenstown and spoke of the rules in the QLDP that limited height.

[126]**Mr Richard Wilson** felt that having a Town Hall at the foot of an accommodation block was not a good idea. He believed the centre of town was a place for people to come too, not a place for people to live in, not in the very centre, the heart of Dunedin. Mr Wilson made further comment on better design and in his view Dunedin is too precious a place to be lost to ad-hoc development.

[127]**Mr Campbell Shaw** said the proposal would clash with existing buildings and would not appeal to the tourist who visits to view the heritage buildings. Mr Shaw believed the removal of public carparking from the site would have a serious effect on his ability to attend events and do business in the CBD.

[128]**Ms Elizabeth Kerr** a Dunedin based heritage advocate stated that the proposal does not meet the s.104D tests of the Act, she went on to say the application is insufficient in verifiable analysis and that the geotechnical report is general in nature. Ms Kerr believes there will be cumulative effects including negative effects on vision, architectural coherence and notions of

liveability. Ms Kerr expressed concern about the height, width and podium of the hotel, and she believed a narrower building could be a solution.

[129]**Mr John Madden** commented that he was not concerned about the design, breach of height restrictions which alone was not sufficient argument to reject consent, he believed consent should be granted with conditions controlling construction times and earthworks.

[130]**Mr Michael Nidd** spoke about the economic benefits; he believed both the visitor accommodation and apartments were critically important for Dunedin's future.

[131]**Ms Ceri Warnock** is an Associate Professor in the Faculty of Law at the University of Otago. Ms Warnock raised procedural matters regarding the process being followed during the Hearing. The panel has already commented on these matters in section 1.3 of this decision. Ms Warnock suggested the AEE is incomplete, inaccurate, incorrect in some places and inadequate. She went on to say that deficiencies needed to be addressed and the matter re-notified. Ms Warnock was concerned that the Hotel would undermine the integrity of the District Plan.

[132]**Ms Briar Comins** lives in Cargill Street, was concerned that her home and others close by will be damaged financially by reduction in values. Ms Comins raised concerns about light strike and bird strike from mirrored glass.

[133]**Mr Stephen Macknight**, a Dunedin based Engineer Consultants who felt the proposed hotel would have negative effects on Dunedin's demand for extra accommodation and should be done so with a more sympathetic design, in other words build on what we have. He said winter sun was most important and he was concerned about the loss of sun during winter in such an important place as the Octagon, and thought this effect will be more than minor. Views from the lower Octagon were iconic and St Pauls and the Municipal Chambers created a delightful skyline.

[134]**Ms Madeeline McCoy and Henry Easton (Ms McCoy's witness)** a neighbour of the subject site (on Top Backpackers, 12 Filleul Street), Ms McCoy and Mr Easton both raised concerns relating to parking around Moray Place and Filleul Street. Ms McCoy spoke about alternative sites, such as the

Cadbury's site. She also mentioned that the removal of trees in the vicinity was a concern. Ms McCoy believed that there was a lack of economic evidence proving the positive benefits to the City.

[135]**Mr Gavin Turner** raised concerns regarding height that would disrupt views of Dunedin skyline, would create wind and shade effects. Mr Turner felt there was not enough on-site parking proposed.

[136]**Mr Roderick McLeod** raised concerns about the external cladding of the proposed hotel, noting it was not in keeping with neighbouring buildings. Mr McLeod felt the apartments were not necessary and should be removed if the Hotel was consented.

[137]**Rev Dr Selwyn Yeoman** felt the proposal was an architectural failure and would be severely detrimental to the architectural attractiveness of the Octagon. He went on to say the architecture of the inner-city is a distinctive part of New Zealand's built heritage, highly valued by residents and visitors alike, there's no reference in the design to the classical theme of Dunedin's heritage.

[138]**Mr Nic Bollen** commented on his concerns which included over height breach, width of the building both out of scale. Traffic effects could not be dealt with by conditions such as the proposal roundabout for the Moray Place/Filleul Street intersection.

[139]**Ms Clare Munro-West** felt that the design was very dated and preferred re-use of existing unused built heritage such as referred to by Mr Lund.

[140]**Ms Catherine Spencer** believed design should be special and aesthetically pleasing, not necessarily in keeping with heritage but still sympathetic to it especially for a hotel to be allowed to breach the District Plan. Ms Spencer felt that the proposal does not even attempt to address the values laid out in the District Plan.

[141]**Ms Frances Ross** believed the height of the hotel would dwarf the surrounding buildings and obscure views, especially for people living and working uphill of the hotel. She also believed there were better locations for a hotel and preferred a low rise type building.

[142]**Ms Liz Angelo**, who lives in Arthur Street, raised issues regarding the adverse effects on views, impact on tourists who come to the city to view our built heritage. Ms Angelo commented that our most iconic buildings such as the Town Hall and St Paul's Cathedral needed to be respected when new buildings are proposed nearby.

[143]**Ms Valeri Schillberg**, an Architect with international experience residing in Dunedin, believes the project is out of scale for the area and does not fill in with the "surrounding fabric" or in a way that is "juxtaposing". Contextually not working in her view. Ms Schillberg requested the application be rejected in its current form.

[144]**Mr David Hanan on behalf of Elizabeth and Murray Hanan** (Mr Hanan's parents) spoke about traffic related concerns including carparking on the subject site. Mr Hanan felt the proposal will dominate and diminish heritage buildings close by. Overall the proposal was well outside the "vibe of the District Plan" and that Dunedin could be defined by this proposal. He raised shading and podium design issues as well.

[145]**Ms Rosemary McQueen** believed that the height stated in the District Plan should be respected and had been set after extensive consultation during the District Plan public process. Ms McQueen was concerned with the shading of The Octagon and the blocking of existing views for businesses and residents. She did not approve of apartments being part of proposal and felt that the podium steps and entrance fail to engage with the street. Ms McQueen also expressed concern that retail within the hotel could have a negative impact on existing retail in the CBD.

[146]**Ms Katrina Toovey** commented that she felt the hotel will increase shading over the inner-city, create a wind tunnel, and obscure views for residents and workers beside and above the building. Ms Toovey believed there are examples where beautiful cities combine commercial activities sympathetically within the existing architectural framework which she felt the proposal does not.

[147]**Dr Brent Lovelock and Lois Galer on behalf of the Southern Heritage Trust (SHT)**. Dr Lovelock advised that the SHT is a NGO who had concerns

about the negative impact. However, it agrees on the economic need for a 5 Start hotel in Dunedin. It believed heritage views would be adversely affected and a more gradual heightening of buildings from residential zones to the CBD. SHT suggest that Dunedin is already suffering from a loss of character through modern style buildings in The Octagon, and that this proposal would erode those values still further. Dr Lovelock suggested the Dowling Street carpark would be their preferred option.

[148]Following the request by the Panel as per the Minute issued on the 3rd of August for further information all submitters were circulated the additional evidence, listed below are the submitters who provided comment with three of them, Dr Holmes; Ms McQueen and Mr Entwisle appearing before the Panel to speak.

[149]**Liz Angelo** said the latest evidence would make very little difference, Ms Angelo concluded by saying "Put community and cityscape first – don't kill the goose that laid the golden eggs"

[150]**Nicholas Bollen** commented the proposal was still too tall, and was concerned tall towers are not going to help establish Dunedin as one of the world's great small cities.

[151]**Peter Entwisle** believed the new evidence doesn't overcome his earlier objection that views of nearby heritage buildings will be blocked, and the style and materials are too much of a contrast. Mr Entwisle pointed out the successful architectural outcome with the glass pyramids at the Palai's du Louvre in Paris.

[152]**Esther Gilbert** had not changed her mind in light of the new information, she is not convinced the project will be beneficial to Dunedin.

[153]**Stuart Griffiths** position remained the same, being opposed to the proposal.

[154]**Dr John Holmes** reinforced his concern about the lack of wind (modelling) data and said the JDH assessment may not be appropriate for local conditions and stressed the importance of localised data before consideration of mitigation of wind effects.

[155]**Duncan and Lynne Keen** still believe the proposal was out of place when viewing from a number of nearby public spaces.

[156]**Rosemary McQueen** confirmed that the proposal lacked connection with the streetscape's existing values and it interrupted view shafts.

[157]**Counsel for the Millennium and Copthorne Hotels, Ms Semple** remained concerned at the lack of detail provided by the applicant, together with its numerous and on- going attempts to redesign on the 'fly' to resolve deficiencies. Mr McIndoe finds that the amendments proposed will result in a negligible change in adverse visual and townscape effects. Mr Taylor reconfirmed his opposition, Mr Carr agreed all his concerns had been met with the exception of the bus manoeuvring around the North Eastern side of the hotel.

[158]**Chris Naylor and Debbie Robb** said after considering the additional data they still oppose the proposal.

[159]**Athol Parks** commented contrast per se is not necessary bad, the question must be, does this contrast work? I confirm that my opinion hasn't changed after viewing the additional information – the contrast is too extreme.

[160]**Frances Ross** said she remained opposed as the modified design does nothing to mitigate the effects of the original proposal.

[161]**Valeri Schillberg** said she still opposed and sees no reason to allow this project to be granted consent.

[162]**Catherine Spencer** is not influenced by the new information and believes the proposal remains well outside the spirit of the Operative District Plan, as well as the 2GP.

[163]**David Tucker** noted the modifications proposed cannot disguise the fact that the hotel remains an over height bulky building which will significantly dominate and change the ambiance of the Town Hall and Octagon area.

[164] **Paul Wernham** says the newly supplied images of the hotel increase my concern for the adverse effects this structure will have on the inner City precinct.

[165] **Dr Selwyn Yeoman** referred to the new information, in terms of design changes as being “unnoticeable to the unaided eye” his concerns had not been addressed.

[166] There were many other written submissions received and considered, those submissions spoke of similar issues and themes to those referred to in the above section – Submissions and Evidence from Submitters.

3.4 Applicant’s right of reply

[167] Mr Page presented his right of reply explaining that in his view Misbeary Holdings failed to qualify as a submitter and should be considered by the Panel as a trade competitor because of its relationship with Scenic Circle Dunedin Hotels. Mr Page quoted several sections of the Act that are relevant when considering trade competition.

[168] Mr Page reconfirmed that the ‘unbundling’ approach was appropriate and referred to the ‘Southpark’ caselaw being the appropriate test when a hybrid application was being considered, he discussed in detail the three limbs of the test that need to be met, giving reasons why this proposal could be considered ‘unbundled’.

[169] Mr Page addressed a number of points regarding Plan interpretation, particularly the relationship and inconsistencies between Objective 9.2.3 and Policy 9.3.3 in the ODP. The High Court in *Naden v Wellington CC*, set out the following:

- a) It is desirable for an interpretation to be adopted which avoids absurdity or an anomalous outcome; and
- b) It is also desirable for an interpretation to be adopted which is likely to be consistent with the expectation of property owners; and
- c) Practicality of administration by city council officers is also an important consideration.

[170] The Policy 9.3.3 clearly goes further than Objective 9.2.3, the policy is to enhance amenity values, and plainly cannot implement an objective of the “avoid, remedy, or mitigate” formulation.

- [171] Mr Page said that the Duxton case was a guide the Panel may find helpful as that case had similarities where objectives and policies had inconsistencies.
- [172] Mr Page then commented on the s.42A report and its conclusions, he made it clear that the Applicant does not agree that the whole proposal should be assessed as non-complying, matters concerning height are restricted under s.104C.
- [173] Mr Page claimed that Chapter 13 Townscape Precinct overlay within the Operative District Plan is not a method that finds equivalent expression in the 2GP, as drafted but dependant on final 2GP outcome, the intent is that heritage provisions will not apply to this site. Instead the 2GP will operate under a different policy and heritage overlay method that identifies specific heritage buildings and precincts that will have protection placed over them. No such protection will be placed over this site.
- [174] This means that the development performance standards that relate to Chapter 13, (2GP) Heritage matters (Rule 18.6.2 and 18.6.11) are treated as operative (in the sense that we know that they will not apply to the site) and the corresponding provisions in the Operative Plan are inoperative. He commented that it's not saying design is entirely irrelevant to any consent application under the Operative Plan, but rather design is only relevant in so far as it relates to the remaining townscape values specified for townscape precinct, or the considerations arising under the resource consents required under the Chapter 9 provisions of the Operative Plan.
- [174] Regarding s.104D, Mr Page said, if the Commissioners should elect to bundle, this application cannot be contrary to the objectives and policies of the Operative Plan and the 2GP as a whole because of the policy focus on the vibrancy of the CBD.
- [175] Mr Page then listed a number of aspects of the proposal that all parties agreed upon including the positive effects that a 5 Star Hotel would bring to Dunedin.

[176] Mr Page then talked about overall height, stating neither Plan provided maintenance of private views, he said in relation to wind the Wellington standard should be adopted for design criteria and there was no relevant sun reflection policy framework as such to decide that reflected sun is an adverse effect on the environment, however a condition of consent could ask for a "best practicable" option be adopted.

[177] Finally Mr Page referred to the maximum height his client 'can' live with considering Mr Falconer's recommendation, being 168.38m (MSL), he added his client 'could' live with slightly less at 164.86m (MSL). Mr Page reminded the Panel that architectural design was a subjective matter and everyone comes from a position of absolute faith in their own good taste.

4 COUNCIL CONSULTANT'S REPORTS

4.1 Section 42A Report on Application

[178]The s.42A report was prepared by an independent planning consultant, Mr Nigel Bryce. The report provided a description of the proposed activity, and set out an analysis of the proposal against the rule provisions of the Operative and Proposed District Plans. Mr Bryce determined the activity status of the proposal to be a non-complying activity for both the land use and subdivision consents sought under the Operative District Plan, and commented accordingly on a contrasting view expressed in the application on the interpretation of the plans rules and whether the matters subject of consent should be bundled for consideration. Details of the notification process were set out in the report, with a summary of the submissions, together with an analysis of the main points raised by submitters attached to the report as Appendices.

[179]Mr Bryce, in his report, set out an analysis of the environmental effects of the proposal, taking into evidence provided in the application documents and plans, and matters raised in the submissions. The starting point for his analysis was an assessment of the 'permitted baseline' effects. He determined that it was not appropriate in this case to apply the baseline, because all development on the site would need a consent under the Townscape rules of the Operative District Plan. However, he noted that he did consider it important for the Panel to have regard to the fact that the Central Activity Zone envisaged development to be built a height of 9 to 11 metres, occupying 100% of the site area, and that the land usage proposed (residential and commercial residential) was able to be undertaken in the zone. He also identified some matters he adjudged were not relevant to consideration, such as the viability of hotel construction.

[180]The panel were satisfied that the analysis of the environmental effects by Mr Bryce was comprehensive, and the report identified all environmental effects that were relevant to the proposal. Where appropriate, we have referred to the views expressed in the s.42A Report with respect to the environmental effects of allowing the activity in our discussion of the principal issues and effects in Chapter 5 of this decision. The Panel noted that Mr Bryce concluded that in his opinion the effects of the proposal will be more than minor.

[181]The s.42A report provided a helpful analysis of the objectives and policies in the District Plans. This analysis, together with the evidence given by the other planning experts provided a framework for the Panel's own analysis, which is set out in **Appendix 3** to this decision. The report then set out an assessment of the proposal against the relevant statutory considerations, including the particular matters that we have to consider for non-complying activities. We have canvassed these matters later in this decision in Chapter 6. It is noted that Mr Bryce determined the proposal to be contrary to a number of key objectives and policies relating to amenity values in both District Plans and townscape values in the Operative District Plan. Mr Bryce came to a view that the proposal was unable to pass either limb of the s.104D 'threshold test', and he recommended that the application be declined. However, he did provide a number of suggested conditions to assist the Panel should we be of a mind to grant consent to the proposal.

4.2 Assessment of Urban Design Issues

[182]Mr Falconer prepared a statement of evidence on urban design issues. The Council engaged Mr Falconer as an independent consultant for this assessment as an urban design review was considered to be a critical element necessary to enable Mr Bryce to complete his assessment of environment effects set out in the s.42A Report. Mr Falconer's evidence was attached to the s.42A report as an Appendix, and referred to in the analysis of environmental effects by Mr Bryce in relation to issues concerning the design and setting of the proposed building. The statement of evidence provided an assessment of the building form, contextual and site analysis, and environmental effects including visual effects and shading effects. A key issue canvassed in the evidence was the matter of visual dominance arising from the height and form of the building.

[183]In his evidence, Mr Falconer concluded that the proposed building would result in effects of visual dominance and shading due to the height and location of the building. He suggested that a reduction in the height of the building by four levels could reduce effects to an extent that the application could be supported. This was provided that the applicant could address some gaps in the information submitted with the application, which Mr Falconer identified in his evidence. At the request of Mr Bryce, Mr Falconer set out for comparison an analysis of the effects of the proposed building at different maximum heights. This was to provide some guidance as to the tipping point

beyond which the anticipated adverse effects of the bulk of the building would change from minor to more than minor.

5 PRINCIPAL ISSUES AND EFFECTS

5.1 Introduction

[184]This section considers the principal issues and effects relevant to this proposal. Because of the effects-based nature of the Act, we shall review the effects of the proposal on a range of relevant matters, largely as identified in the Fourth Schedule. This approach is consistent with s.104 of the Act. We have specifically assessed each of the effects identified for the purposes of s.104D(1)(a) and have identified those effects that we consider to be more than minor.

[185]In carrying out our assessment, we have reviewed the submissions and evidence concerning each of the principal issues and the effects on the environment that were brought to our attention. While we have not repeated everything we heard, we have endeavoured to record here the more important aspects of the evidence presented to us on behalf of the applicant and submitters, and also from the consultants engaged by the Council, and related advice from Council staff and reviewers. At the conclusion of our discussion of each issue we provide our findings with respect to that issue. This, in due course, provides the basis for our decision and, in terms of our duties under the Act, this section is also consistent with s.113 of the Act.

[186]We signal at the outset that, while we had regard to Ms Skidmore's evidence, we were careful not to rely on it solely in any of our findings, being mindful that there has been a challenge that Misbeary Holdings may be a trade competitor. We relied on the evidence of other experts in each case.

5.2 Economic and employment effects

[187]We heard a range of submissions and evidence that the proposed hotel would have economic and employment benefits for Dunedin. Submitters supporting the proposal on these grounds who attended the hearing included the Otago Chamber of Commerce, the Property Council, and Otago Southland Employers Association, Mr Nidd (a retired lawyer and long term Dunedin resident), and Mr Wilson (a tourism operator).

[188]The applicant and submitters told us that tourism is of increasing importance to New Zealand's economy and that Dunedin is not capitalising on this growth because of gaps in the city's accommodation. We were told that a 5-star hotel would attract visitors – particularly international visitors – who might

not otherwise come to Dunedin. We were referred to 'Dunedin's Economic Development Strategy' which sets out a vision of 'Dunedin (as) one of the world's great small cities.'⁷ The Strategy sets out several strategic themes, including 'a compelling destination' based around increasing the numbers and value of visitors.⁸ Characteristics listed in this regard include 'the largest concentration of heritage buildings in New Zealand...'; 'outstanding natural beauty and wildlife including the Otago Peninsula; 'quality healthcare'; 'first class leisure facilities including Forsyth Barr Stadium, Edgar Centre and Dunedin Ice Stadium'; 'creative, educated, multi-cultural and innovative community that comes from a true university city'; 'cultural, arts and recreational activities and facilities'; and 'a compact, safe metropolitan area'.⁹ This was confirmed by Mr Wilson, a tourism operator, who gave us personal insight into Dunedin's attractions – highlighting the landscape and wildlife attractions of Otago Peninsula, and the city's heritage character.

[189]Mr Wilkinson, a retail consultant, gave evidence that visitors make a greater contribution to retail spending growth than local people. He said that, while Dunedin is undergoing a 'steady renaissance', the city centre retailing was challenged by a number of factors (online shopping, unsuitability of space, seasonality, loss of supporting businesses, upcoming construction disruption) and that retail spend from visitors would help compensate. As well as the direct economic activity generated by the hotel and visitors, we understood Mr Wilkinson's evidence to also be that an 'icon' development would provide a confidence boost to the city. Overall, Mr Wilkinson considered the proposed hotel would *"...stimulate regeneration in the surrounding area, inspire commitment from businesses and further demonstrate Dunedin as a progressive city people want to live, invest in and visit."*¹⁰ This was supported by Mr McIntyre who submitted that the proposal would likely spur on other hotel developments.

[190]Submitters also referred to under-utilisation of such facilities as the Town Hall and the Forsyth Barr Stadium. The applicant stated that 5-star hotels often included their own conference facilities but in this case there was the opportunity for synergy between the hotel and Town Hall facilities. Ms

⁷ Dunedin's Economic Development Strategy, page 1

⁸ Dunedin's Economic Development Strategy, pages 34-35

⁹ Dunedin's Economic Development Strategy, page 4

¹⁰ Wilkinson, EIC, paragraph 15

Copeman attached to her written submission a recent study by the Ministry of Business, Innovation and Employment (MBIE) which said the average spend by domestic and international conference delegates is approximately \$1500 and \$2000 respectively. She submitted that some sectors of the conference market (particularly upmarket sectors) will not come to Dunedin because of the lack of a 5-star hotel.

[191]Mr Wilkinson stated that the Forsyth Barr Stadium attracted events to Dunedin because of its size and all-weather venue, and provided anecdotal evidence drawn from an article in the Otago Daily Times that “...*the availability of sufficient, quality accommodation has compromised the city’s destination value and reputation.*”¹¹

[192]Submitters supporting the project also said it would provide needed jobs – some referring to the loss of employment from the closure of enterprises such as Cadbury.

[193]In response to questions, the applicant made available a report on the economic impacts of the hotel prepared by Infometrics – an economics consultancy. The report said there would be a one-off lift to economic activity during construction and an ongoing lift to GDP once the hotel was operational.¹² The report calculated the contribution to Dunedin’s GDP during construction to be \$44.6m over an eighteen-month construction period. The calculation assumed the project did not displace other construction activity. Once the hotel was operational, the report calculated it would contribute between \$14.6m and \$25m per annum to Dunedin’s GDP, equivalent to 0.32% and 0.54% of the city’s GDP respectively. The calculations assumed the hotel would not displace other accommodation and only attract guests who would not otherwise have visited Dunedin and was based on spend and occupancy rates provided by the applicant.

[194]Some submitters criticised the assumptions and caveats in the Infometrics report. They said it was common for jockeying to occur with major construction projects to avoid double-ups, and that a new hotel would likely take custom from existing hotels rather than attracting solely new visitors. Mr

¹¹ Wilkinson, EiC, paragraph 28

¹² Economic impact of Dunedin hotel, June 2017, Infometrics, page 2

Lund questioned the economic benefits if building materials were to be purchased from overseas.

Our evaluation

[195]We did not have adequate evidence to make a quantitative finding on the economic benefits of the proposal. We were unable to give much weight to the figures in the Infometrics report because of the assumptions and caveats. The report's authors were unable to attend the hearing so we were unable to question them which might have given us more confidence in their figures and enabled us to test the extent to which the figures may have been either optimistic or conservative. We agree with some submitters that there would likely be at least some displacement of other construction and existing accommodation. Likewise, the applicant was not able to provide us with employment data.

[196]However, we accept the submissions and evidence that the proposed hotel will have economic benefits arising from the activity of the hotel itself, the support of (synergy with) other facilities such as the Forsyth Barr Stadium and Town Hall, and downstream benefits for other Dunedin businesses such as tourism, retail, and food and beverage. While there was uncertainty of the magnitude, there was little dispute of the benefits themselves. They stand to reason. Similarly, although we could get no data on employment, it stands to reason the proposal would generate some employment.

[197]We therefore conclude that there would be positive economic and employment benefits for Dunedin.

5.3 City vitality and vibrancy

Evidence on effects

[198]We heard from submitters and experts that the hotel in the proposed location will promote vitality and vibrancy of Dunedin's city centre.

[199]We were informed that Dunedin City Council has sought to retain and promote the vitality of the city centre. It is reflected in the provisions of the Operative District Plan, the 2GP Plan, and other documents such as the 'Central City Plan'. Mr Sligo, a former long-term project manager of Council's Architecture and Urban Design Department, informed us that Dunedin City Council acquired the site some decades ago and has earmarked it for a hotel

for some time. Even some submitters in opposition to this application acknowledged a 5-star hotel would be positive for Dunedin and that the site is a good location for a hotel.

[200]The applicant stated that the site is close and has good connectivity with such places as the Octagon, the Stuart Street hospitality area, the George Street retail area, the Princes Street and warehouse precincts (currently being rejuvenated), and other attractions a little further away such as the Railway Station and the Forsyth Barr Stadium. Specifically, the site is opposite the Dunedin Town Hall such that it would support events and conferences.

[201]Mr Wilkinson, a retail consultant, said that the location will encourage guests to patronise businesses – such as shops, bars, cafes and restaurants – in the city centre rather than remaining sequestered in the hotel.¹³

[202]Mr Compton-Moen provided urban design evidence that a hotel in this location will “*build on the existing civic infrastructure of the immediate area*” and “*... reinforce this area as the centre to the city.*”¹⁴ In his view, the proposal will have “*significant positive benefits adding to the vitality and vibrancy of the city centre.*”¹⁵

[203]Ms Skidmore likewise acknowledged that the hotel will “*...contribute to the vitality of the city centre. In this respect, the Site is well located to accommodate such a use.*”¹⁶

[204]We also heard that the site in its current condition (i.e. an open car park) detracts from Dunedin’s city centre and that the hotel would help repair this situation. Mr Falconer pointed out that Moray Place is the outer ring of the distinctive octagon at the centre of Dunedin’s street plan laid out in 1846 by Charles Kettle and echoing features of Edinburgh’s New Town.¹⁷ He characterised the north-western side of Moray Place as the “*failed section of the Octagonal central city and (that) it lacks the built form and activity of the other quadrants.*” He went to say that the proposed building will “*...positively*

¹³ Wilkinson, EIC, paragraph 31

¹⁴ Compton-Moen, EIC, paragraph 5

¹⁵ Compton-Moen, EIC, paragraph 6

¹⁶ Skidmore, EIC, paragraph 4.1

¹⁷ Falconer, Urban Design Report, section 6

*reinforce the crescent, fill in the gap and provide substantial activity to complete the urban design of the outer ring (of the octagon)."*¹⁸ He concluded that *"...as a 5 star hotel the proposal would bring much needed activity to the central city particularly in this weaker area north of the Octagon."*¹⁹

[205]Conversely, some submitters considered the car park helped support activities in the central city.

Our evaluation

[206]We agree with the evidence of Mr Compton-Moen and Ms Skidmore that the site is a good location for a hotel. It has strong connectivity to the different quarters of Dunedin's central city, and a hotel in this location will contribute to the city centre's vitality and vibrancy. We agree with the evidence of Mr Falconer that the proposal will help repair the north-west quadrant of Moray Place with regards both activity and urban form. We heard no evidence to the contrary.

[207]Likewise, we agree with Mr Wilkinson's evidence that the location will help support a range of retail and hospitality businesses in the central city, and we accept it stands to reason that the proposal will support the adjacent Town Hall's events and conference facilities.

[208]We therefore conclude that the proposal will have significant positive effects on the vitality and vibrancy of Dunedin's central city.

5.4 Height

[209]The height of the proposed building is one of the key issues. The height standards for the site are a minimum of 9m and a maximum of 11m. The notified proposal is 62.5m high above ground level at its highest point, well above the 11m standard. It would be the highest building in the city centre. Non-compliance with the standards is a Restricted Discretionary activity with Council's discretion restricted (somewhat unhelpfully) to 'height'.

[210]Potential adverse effects of height raised in submissions and evidence include the scale relationship with adjacent heritage buildings (Municipal

¹⁸ Falconer, Urban Design Report, paragraphs 6.10-6.11

¹⁹ Falconer, Urban Design Report, paragraph 13.1

Chambers/Town Hall and St Paul's Cathedral) – including the effects on these buildings as they are seen from the Octagon – effects on the urban character of the city centre, and shading.

[211]Mr Page submitted that we should treat height as a stand-alone matter. He pointed out that Council's discretion with respect to height is restricted to 'height' and assessment of the effects of height should be limited to values or matters in the Operative District Plan.²⁰ He submitted that the only adverse effect arising from height that we should consider is shading. Specifically, he was critical of evidence relating to 'dominance' as a relevant adverse effect because it does not relate to a matter in the Plan.

[212]We think there is a risk of being overly schematic. Effects occur with respect to context. In this case we consider the effects of height can only be sensibly assessed as the effects of the building's height on the amenity values of its surroundings. The assessment matters listed in Section 9.9 of the Operative District Plan include "amenity values in general"²¹ and *"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."*²² Contrast in scale, and visual dominance (along with shading) are potential effects arising from the height of a building on the amenity values of its surroundings.

[213]The surroundings in this instance include the Municipal Chambers/Town Hall and St Paul's Cathedral – two of Dunedin's landmark heritage buildings – and The Octagon – Dunedin's central public space.

[214]We also need to consider the effects of the height of the particular building proposed. For example, a conventional building will have different shading and visual dominance effects than a spire of the same height.

Evidence on effects

[215]Mr Falconer states that *"one of the key issues is the relationship between the scale of this development and the more sensitive heritage buildings (Municipal Chambers/Town Hall and St Paul's Cathedral) situated across*

²⁰ Page, legal submissions, paragraph 71

²¹ Section 9.9.5

²² Section 9.9.4

*Moray Place...*²³ He goes on to say that the proposed building has the potential to visually dominate these buildings when viewed from within the Octagon.²⁴ He also says the height of the proposed building would *"...make it significantly the tallest building in the central city and create significant adverse effects to its north and west where there is a sharp transition into a low rise commercial and residential area."*²⁵

[216]Mr Craig did not assess the building's height in relation to its surroundings but instead focused on the design and proportions of the building itself. It was clear from his answers during the hearing that his focus was the requirements of the 5-star hotel (floor area and views) rather than relationship of the proposed building to its surroundings.²⁶ In response to Mr Falconer's evidence that the building would potentially be visually dominant he stated that dominance *"...connects several ideas concerning height, scale, bulk, views and shading into a single terminology. This is not standard terminology and is therefore difficult to relate into distinct elements of the design."*²⁷ In answers to questions, though, he did volunteer that the building would be visually dominant although he considered that was not an issue.

[217]Mr Compton-Moen considered that other buildings in the city centre created a precedent for the proposed building's height. He referred to the height of the adjacent Municipal Chambers/Town Hall and St Paul's Cathedral as 34m and 32m respectively (although we noted that these are the heights of the clock tower and spires rather than the buildings' main mass). He listed other modern buildings in the city centre including the Westpac Building (~34m), Kingsgate Hotel (~30m), John Wickliffe Building (~42m), Burns House (~35m), and Forsyth Barr Building (~35m). He therefore considered that the *"proposed built form including the proposed height is not out of context, albeit constructed of different material and taller."*²⁸

[218]Mr McIndoe provided a plan of Dunedin's city centre depicting the location of the taller buildings and their number of storeys. He said the plan

²³ Falconer, Urban Design Report, paragraph 6.7

²⁴ Falconer, Urban Design Report, paragraph 8.10

²⁵ Falconer, Urban Design Report, paragraph 13.3

²⁶ For instance, Joint Witness Statement, paragraph 3

²⁷ Craig, EIC, paragraph 15

²⁸ Compton-Moen, EIC, paragraph 10

demonstrated the site is at the margin of where taller buildings occur.²⁹ By reference to the photomontages he said that “*(the proposed building) contrasts by being much taller than the buildings that it is seen with...*”³⁰

[219]Ms Skidmore, also with reference to the photomontages, stated that “*...the scale of the proposed building contrasts dramatically with buildings in both the immediate and wider context.*”³¹

Our evaluation

[220]We prefer the evidence of Messrs Falconer and McIndoe, and Ms Skidmore that the proposed building would be visually dominant and ‘out of scale’ because of its height in relation to its surroundings. This evidence is supported by photomontages from within a few blocks of the site (for example, from the Octagon, the intersection of Moray Place/Stuart Street, and the intersection of Filleul Street/St Andrew Street), and the fact the 62.5m height would be the highest building in the city centre, higher than the other tall buildings by some margin and, specifically, higher than the clock tower/spires of the adjacent Municipal Chambers/Town Hall and St Paul’s Cathedral. We therefore agree that the adverse scale effects arising from the height of the proposed building with respect to its surroundings will be ‘more than minor’.

[221]Height alone is one matter. Tall buildings can co-exist with shorter buildings, depending on the overall relationship of the building to its context. In order to consider the overall effects of the building on the amenity values of its surroundings we need to take into account a broader range of matters which we address under ‘Urban character (design and appearance)’ below.

Mitigation of adverse height effects

[222]Mr Falconer recommended reducing the height of the building by four storeys which he considered would be sufficient to avoid significant adverse effects arising from height. His recommendation was based on a methodical analysis

²⁹ McIndoe, EIC, Appendix 2

³⁰ McIndoe, EIC, paragraph 33

³¹ Skidmore, EIC, paragraph 4.3

of different building heights with respect to visual dominance (i.e. scale) and shading effects.³²

[223] We had reservations about such a course. Firstly, the Applicant said it would make the project unviable. Secondly, deleting several floors might affect other aspects of the building's design and appearance resulting in other adverse amenity effects. For instance, Mr Craig said removing four storeys would adversely affect the proportions of the tower. He stated that the *"Simply removing four floors robs the building of its elegant proportions without achieving anything of substance in return."*³³ Rather, he suggested, *"...the key dimension to reduce the building's apparent mass is width, not height."*³⁴ Mr McIndoe likewise considered that the removal of four floors would require reconsideration of the design as a whole. Ms Skidmore similarly said *"simply removing the upper floors would further emphasise the horizontal proportion of the building"* and that the development *"requires a re-consideration rather than amendments to the current proposal."*³⁵ During the hearing the Applicant did offer changes to the building height of a lesser extent than those recommended by Mr Falconer. These included excavating the car parking one floor deeper into the site (effectively reducing the height by one storey), and removing the lift overrun and circle feature at the top of the building. In his closing Mr Page said the applicant could live with a height of RL164.86. While this would reduce the shading effects, we considered these measures would not fundamentally change the scale relationship between the building's height and that of the surroundings.

[224] The other measure proposed to mitigate the effects of scale is to reduce the tinting of the glass curtain wall. Mr Compton-Moen explained the purpose of this measure is to *"avoid the building appearing as a single heavy mass with no detailing"* and *"to provide more opportunity for people to be seen in the building"*.³⁶ Mr McIndoe in response said that *"...while heavy dark tinted façades have the greatest visual weight, typically lack detail and are monotonous, even with clear or lightly tinted glass type, such buildings have*

³² Falconer, Urban Design Consultant's Report, paragraph 12.3

³³ Craig, EIC, paragraph 18

³⁴ Craig, EIC, paragraph 19

³⁵ Skidmore, EIC, paragraph 4.17

³⁶ Compton-Moen, Urban Design and Visual Impact Assessment, page 23

considerable visual weight. Use of a clear or lightly tinted glass does not mean that the building will have no visual impact, or that the visual impact of a building that rises conspicuously above others around would be minor."³⁷

Mr Falconer similarly considered such measures would have "a very small mitigating effect, and will not mitigate the visual dominance down to a level where the proposal will have a minor effect."³⁸ He also noted that the application already stipulated only 'lightly tinted' glass.³⁹

[225]We accepted that lightly tinted glass would help humanise the building and mitigate its bulk to some extent, but we agree with Messrs McIndoe and Falconer that it would not significantly alter the adverse effects (such as visual dominance) arising from the building's height relative to its surroundings.

5.5 Urban character (design and appearance)

[226]Notwithstanding that we have addressed height as a stand-alone matter, the architecture and urban design experts (Messrs Craig, Falconer, McIndoe and Compton-Moen, and Ms Skidmore) agreed that other aspects of the design influence the effects of height. For instance, the Joint Witness Statement records that "*The experts agree principles for determining appropriate building height on any site above the permitted threshold include:*

- (a) Relationship and degree of fit with the existing and anticipated character of the setting.*
- (b) Presence of nearby heritage buildings and relationship to these.*
- (c) Shading of the public realm, and in particular any space that the public may occupy rather than predominantly move through.*
- (d) Shading to residential neighbours and public/community facilities.*
- (e) Visual effects including impact on view connections and visual dominance.*"⁴⁰

[227]Similarly, Ms Skidmore said that "*it is not appropriate to consider the height aspect of the proposal in isolation. The visual, character and amenity effects*

³⁷ McIndoe, EIC, paragraph 85

³⁸ Falconer, Urban Design Consultant's Report, paragraph 13.3

³⁹ Falconer, Urban Design Consultant's Report, paragraph 8.6

⁴⁰ Joint Witness statement, paragraph 6

arising from the building result from the way a range of design aspects come together.”⁴¹

[228]A number of submitters raised concerns that the proposed building would not be in keeping with Dunedin’s urban character.

[229]The site falls within the ‘North Princes Street/Moray Place/Exchange Townscape Precinct’ under the Operative District Plan. New buildings are a controlled activity within Townscape Precincts in respect of external design and appearance. Assessment matters include the relationship of the building with its setting and the values of the Precinct as listed in Subsection 13.6. The latter values generally seek buildings of perimeter block form (not set back from the street frontage, substantial and monumental, full width of their site at the street frontage), clad with solid materials (such as plaster, red brick, stone, concrete or materials giving similar visual effect), containing details reflective of heritage architecture (such as traditional fenestration proportions and patterns, ornaments, skyline features), and shop-front glazing at street level.

[230]The height and yard standards are consistent with such a traditional perimeter block form of around three storeys. The height standard, for instance, has a minimum as well as a maximum height.

Evidence on effects

[231]While Mr Craig claimed the proposed building would be “*evocative of its place and location*”,⁴² he did not analyse the proposed building with respect to the characteristics of its surroundings or the values set out in Subsection 13.6 of the Plan. In his answers we understood that the ‘evocation of place’ related to references to a tartan pattern in elements of the building, an analogy of the building as an ‘electric thistle’, and capturing something of the commercial spirit of former times.

[232]Mr Compton-Moen’s evidence under the heading ‘Urban Character and Built Form’ made three main points.; The positive effects of a street frontage in Moray Place (in place of the existing car park), the contribution to the vitality and vibrancy of the city centre, and the height precedent set by existing taller

⁴¹ Skidmore, EIC, paragraph 4.4

⁴² Craig, EIC, paragraph 7

buildings. Although he quoted characteristics of Dunedin's central city from the introduction to the Central Activity Zone (Section 9) in the Operative District Plan, he did not analyse the proposed building with respect to these characteristics with the exception of the street frontage matter. He also did not assess the proposal against the values listed in Subsection 13.6, or carry out his own analysis of the characteristics of Dunedin's urban form beyond an observation that it was 'mixed'. Mr Compton-Moen instead used a matrix to calculate the magnitude of effects on urban character – determining such effects to be 'less than minor'.⁴³

[233]Messrs Falconer⁴⁴ and McIndoe⁴⁵, and Ms Skidmore⁴⁶ each stated that the application did not adequately assess the proposed building against Dunedin's urban characteristics.

[234]Mr McIndoe, on the other hand, analysed the urban characteristics of Dunedin's city centre, referred to the values identified in the Plan, and assessed the proposal against this context. His conclusion was that the proposed building will contrast with the character of the area in its height, its lack of alignment to the street or cadastral pattern, and its glass curtain-wall cladding.

[235]Ms Skidmore similarly said that in her opinion *"...the scale, form and articulation of the proposal is completely at odds with the established character of the precinct."*⁴⁷ She said *"while I agree ...that the height proposed is of concern, in my opinion the adverse visual effects arising from the additional height is exacerbated by the building mass, its design and the external cladding and articulation proposed"* and went on to conclude that the *"...visual simulations clearly demonstrate how the various building elements will be viewed collectively to create a very large mass that is completely at odds with the established character of the city centre."*⁴⁸

⁴³ Compton-Moen, Urban Design and Visual Impact Assessment, section 3.2

⁴⁴ Falconer, Urban Design Consultants Report, paragraph 6.1

⁴⁵ McIndoe, EIC, paragraph 29 (and paragraphs 25-28 relating specifically to height), paragraphs 61-62

⁴⁶ Skidmore, EIC, paragraphs 3.1-3.7

⁴⁷ Skidmore, EIC, paragraph 5.2

⁴⁸ Skidmore, EIC, paragraph 4.5

Our evaluation

[236]We agreed with Messrs McIndoe and Falconer, and Ms Skidmore, that the evidence on behalf of the applicant did not adequately assess the effects of the proposed building on Dunedin's urban character.

[237]We also had concerns with the matrix method by which Mr Compton-Moen arrived at his conclusion that effects would be 'less than minor'. Firstly, the matrix is weighted towards findings of 'minor' or less. For instance a 'medium sensitivity to change' and a 'moderate degree of change' calculates to a 'minor effect' (rather than two 'moderate' inputs leading to a 'moderate' outcome), the matrix outcomes do not accommodate the top end of the scale, and three-quarters of the possible results are 'minor' or less (rather than balance between minor, moderate and major outcomes). Secondly, we consider Mr Compton-Moen understated his inputs. For instance he rated the urban context as having only 'medium sensitivity to change' despite the proximity to Dunedin's central public space and two of its key heritage buildings. And he rated the proposal as only a 'moderate change' despite the building being the tallest in the city centre by some margin, comparatively bulky, and contrasting in appearance. Thirdly, we had reservations about the reduction of such urban character matters to such a formulaic methodology.

[238]We preferred the evidence of Messrs Falconer and McIndoe, and Ms Skidmore, on urban character, based on their urban design experience and the corroborating evidence of the photomontages. In particular, we placed weight on the thoroughness of Mr McIndoe's analysis and his measured approach.

[239]We therefore concluded the proposed building would contrast with Dunedin's urban character – specifically Dunedin's characteristic scale, typical perimeter block form, solid cladding materials, and façade patterns. We concluded that such adverse effects would be 'more than minor' having regard to the building's prominence and sensitive location.

Exceptional design

[240]However, that is not the end of this matter. We consider there is a place for exceptional modern buildings where they are designed in a way that creates a positive relationship between both the modern and heritage. A Dunedin example of such a situation that was mentioned by submitters is the 'Centre

for Innovation’ at the University of Otago. Other well-known overseas examples mentioned were Pei’s steel and glass pyramid in front of the Louvre, and Foster’s ‘Gherkin’ in London.

[241]The Joint Witness Statement also recorded that the experts “...agree that the architectural approach can allow new buildings to sit comfortably adjacent or close to heritage buildings. We consider that scale, form, alignment, material and facade composition are all relevant to an appropriate architectural approach. We note that there have been many examples of contemporary buildings that respond in this way but that are architecturally in contrast with surrounding heritage fabric, and which celebrate contemporary technologies and respond to city growth imperatives.”⁴⁹

Evidence on effects

[242]We asked each of the expert witnesses – and those submitters interested in architecture – whether the proposed building would complement the Municipal Building/Town Hall and St Paul’s Cathedral in such a manner.

[243]Some of the submitters agreed that contrast and juxtaposition could work in some circumstances. Ms Kerr, an architectural historian, said that even a tall building might (in theory) be appropriate on the site, but the proposed building did not have either the proportions or exceptional design qualities to achieve this. Ms Schillberg, an architect, considered the proposed design “...is contextually not working with surrounding fabric whether fitting in or juxtaposing it.”⁵⁰ On the other hand, Mr Ledgerwood, a retired architect and author on central Dunedin, said that in his view the proposed building “will come to be considered as the best multi-storey building in the inner city zone.”⁵¹

[244]Several submitters said that the building’s proportions detracted from its appearance – describing it in such terms as ‘squat’ and ‘bulky’. We considered the tower’s proportion as being relevant specifically because the tower would be seen in composition with buildings comprising horizontal mass and slender vertical elements (clock tower and spires). The proposed building is approximately 43m and 50m wide (the width varying depending

⁴⁹ Expert Design Conferencing joint witness statement, paragraph 7

⁵⁰ Schillberg, submission

⁵¹ Ledgerwood, submission, page 4

on cross-section because of the tower's 'pin-wheel' plan form) relative to the 62.5m height. Mr Falconer stated that *"...the cumulative effect of three towers together does create a broad building form."*⁵² Ms Skidmore similarly said the *"...visual simulations clearly demonstrate how the various building elements will be viewed collectively to create a very large mass..."*⁵³ Mr Craig said that in his opinion *"...the key dimension to reduce the building's apparent mass is width, not height."*⁵⁴

[245]Mr Craig said the proposed building would form a 'triumvirate' of 'iconic stand-alone buildings' with the two heritage buildings. He provided photos depicting a range of positive and negative examples from overseas. However, he did not demonstrate a complementary composition of the three buildings or explain one in terms of (for example) scale, massing, proportion, materials, patterns or theme. Rather, he was consistent in his focus on the proposed building itself. The Joint Witness Statement records Mr Craig as noting that *"...the hotel has taken its current form and massing in response to his client's brief and consultation with a potential 5-star hotel operator."*⁵⁵ He referred to the building as an "object in space". It seemed that if there were to be a complementary relationship between the proposed building and the heritage buildings it would need to occur from happenstance rather than design.

[246]Mr McIndoe stated that an iconic building in urban design terms *"...should be distinctive and memorable, but also respond to its context in a considered and sophisticated way."*⁵⁶ While he agreed that the proposed building is 'a highly modulated and elegant architectural outcome', he went on to say that *"Architectural merit demands both elegant form-making and appropriate relationship to setting in every way. A critical challenge is whether this building is suitable in this setting, and for reasons relating to height, plan alignment of the tower and materiality, I consider it is not."*⁵⁷ In response to Mr Craig's descriptions of the proposed building as 'iconic' and as part of a

⁵² Falconer, EIC, paragraph 5.8

⁵³ Skidmore, EIC, paragraph 4.5

⁵⁴ Craig, EIC, paragraph 19

⁵⁵ Expert Design Conferencing joint witness statement, paragraph 3

⁵⁶ McIndoe, EIC, paragraph 56 (b)

⁵⁷ McIndoe, EIC, paragraph 139

*'triumvirate', Mr McIndoe stated that Dunedin "...already has two iconic buildings immediately across Moray Place, being the Cathedral and Town Hall. The attempt to place a third here, being a hotel tower and apartments, visually overwhelms these and undermines their status as landmarks."*⁵⁸

[247]Ms Skidmore similarly stated that *"...while I agree that contemporary design responses can successfully integrate with more traditional cityscapes, in this instance I consider the proposal conflicts with and will adversely affect the character of the surrounding area."*⁵⁹

Our evaluation

[248]Despite extensive questions on this matter, we did not receive persuasive evidence that the building would have the qualities to 'pull off' the contrast in scale, form and materials between it and the Municipal Chambers/Town Hall and St Paul's Cathedral. Rather, the weight of evidence was that the design (proportion, form and materials) would exacerbate the effects of height. We concluded the adverse effects on amenity values of the surrounding area arising from the combination of height, proportion, form (typology), alignment and cladding materials would be significant.

[249]For the avoidance of doubt, our findings are not based on the contemporary nature of the proposed building or that it is a tall building per se. Rather, we have concluded on the evidence that this particular proposal will not be in keeping with Dunedin's urban character and specifically will visually dominate, and will not complement, two of Dunedin's landmark heritage buildings.

5.6 Visual effects

[250]Visual effects overlap with matters discussed above under height and urban character. Visual effects are typically assessed from representative viewpoints, taking account of the nature and sensitivity of the viewpoint (or 'audience'), such matters as the building's visibility or prominence, and its scale and appearance with respect to context. Such an assessment helps describe the spatial disposition of (in this case) height and urban character effects.

⁵⁸ McIndoe, EIC, paragraph 57

⁵⁹ Skidmore, EIC, paragraph 4.8

Evidence on effects

[251]Mr Compton-Moen carried out a visual effects assessment in his 'Urban Design and Visual Impact Assessment'. He applied the same matrix that he used for his assessment of urban character to determine the magnitude of visual effects, and also applied a 'mitigated' assessment to take account of the use of low-tint glass. He rated 9 of his 13 representative viewpoints as having 'indiscernible' adverse visual effects, and the remaining 4 as having 'less than minor' effects.

[252]Mr McIndoe was the only other expert to carry out a methodical visual assessment. He adopted Mr Compton-Moen's scale for the sake of comparison but used the photomontage locations as his viewpoints. He arrived at quite different findings. He rated 5 of his 23 representative viewpoints as having 'less than minor' adverse visual effects, 7 as having 'minor' effects, and 11 as having 'unacceptable' effects. By way of comparison, Mr McIndoe ranked the visual effects from the Octagon opposite Harrop Street (Photomontage viewpoint 5) as 'unacceptable' whereas Mr Compton-Moen ranked the visual effects from the same location as 'less than minor'. These are the opposite ends of the scale rather than the small differences one might reasonably anticipate. Spatially, Mr McIndoe tended to rank the effects 'minor' or 'less than minor' from the more distant viewpoints, and 'unacceptable' where the building was clearly visible and within a block or two – including the residential area immediately to the west. Mr McIndoe considered the effects from the Octagon, where views are not otherwise restricted by trees, would be 'significant and unable to be mitigated'.⁶⁰ He said that the proposal would "...appear behind and above (the Municipal Chambers and St Paul's Cathedral) and can be expected to dominate views of them. The landmark Town Hall (sic) clock tower and Cathedral spires are prominent on the skyline and these are likely to be subsumed into the Proposal, compromising their visual singularity and prominence."⁶¹

[253]Mr Falconer reviewed Mr Compton-Moen's visual assessment and concluded that *"in general, I believe the DCM visual assessment underestimates the visual effects and overestimates the effect of the proposed mitigation measures."*⁶² With respect to the Harrop Street example (Photomontage

⁶⁰ McIndoe, EIC, paragraph 80

⁶¹ McIndoe, EIC, paragraph 81

⁶² Falconer, Councils Urban Design Consultant's Report, paragraph 8.11

viewpoint 5), Mr Falconer said he was 'baffled' how the adverse visual effects could be considered 'less than minor'. He went on to say that, in his view, the proposed building has the potential to visually dominate the setting created by the heritage buildings (Municipal Chambers and St Paul's Cathedral) and form the skyline from viewpoints within the Octagon and top of Lower Stuart Street.⁶³

[254]Ms Skidmore similarly notes that the site forms the backdrop to Municipal Chambers/Town Hall and St Paul's Cathedral from the Octagon. In this context she says that, in her opinion, the proposal "*...forms part of the setting of (the) identified heritage structures. Its scale will completely overwhelm and dominate the Town Hall, Municipal Chambers and St Pauls Cathedral. This is clearly demonstrated in Viewpoint 5 of the visual simulation package.*"⁶⁴

[255]Submitters, such as Mr MacKnight and the Southern Heritage Trust, also commented on the aesthetic qualities and significance to Dunedin of the skyline of the Municipal Chambers and St Paul's Cathedral as seen from the Octagon.

Our evaluation

[256]We have already mentioned our concerns with the matrix used by Mr Compton-Moen. Overall, we could not reconcile Mr Compton-Moen's assessments with the photomontages or the facts of the proposal. For example, his assessment that the visual effects from the corner of Stuart Street and Moray Place would be 'indiscernible' did not tally with the photomontage from that location (which illustrates a prominent building that contrasts in scale and appearance with the context), or the facts of a 62.5m high x 50m wide building in full view approximately 100m away. In answers to questions Mr Compton-Moen explained that 'indiscernible' meant the building would have no adverse visual effects rather than it would not be discernible and that his assessment was limited to effects on specific views.

[257]We considered Mr McIndoe's visual assessment as the more useful because he addressed the matters we would normally expect to be covered. He confirmed to us that his assessment was of the effects of the proposed

⁶³ Falconer, Councils Urban Design Consultant's Report, paragraph 8.10

⁶⁴ Skidmore, EIC, paragraph 5.2

building on visual amenity, including taking into account such things as the scale and appearance of the building in relation to its context. His assessments were also more consistent with the photomontages and the facts of the application.

[258]While we appreciate that Mr McIndoe adopted the scale used by Mr Compton-Moen for the sake of comparison, we note that a simple ranking of magnitude would be more appropriate. A 'significant' or 'more than minor' adverse effect may or may not be 'unacceptable' depending on context and other matters.

[259]We also agree with Mr Falconer's review of Mr Compton-Moen's assessment, in particular his observations around potential adverse effects on the Municipal Chambers, St Paul's Cathedral and backdrop skyline from the Octagon. This was consistent with Mr McIndoe and Ms Skidmore's evidence.

[260]We therefore conclude that the proposed building will have adverse visual effects that are 'more than minor' – and in some instances 'significant' – from a number of places in the immediate locality within a few blocks of the site. The adverse effects will arise from the building's prominence (as a consequence of its height) and its contrast with the scale and character of the area. Specifically, we concluded it would have 'significant' adverse visual effects from places in the Octagon where the proposed building would form a backdrop to the Municipal Chambers and St Paul's Cathedral.

5.7 Street frontage

[261]The Operative District Plan standards for the site require buildings to be constructed to the street frontage and side boundaries. Such development standards, in conjunction with the minimum and maximum height standards of 9m and 11m respectively, is consistent with a 'perimeter block' type of streetscape characteristic of the main streets in Dunedin's central city. By contrast, the proposed building is a tower that is not aligned with the street but it does include a type of podium that would result in a street edge to Moray Place. The podium would provide retail frontage to the street and sleeve the car parking floors excavated into the rising site.

[262]Streetscape matters relating to height, urban character and visual effects are discussed under separate headings above. This section focuses on the street edge.

[263]The details of the podium were revised since the application and during the hearing in response to concerns about the resolution of different floor and ceiling levels, the connection between floor levels and the slope of Moray Place, and the depth of the shops. The design was also revised to address concerns about the hotel entrance. The pedestrian entry from the street on the notified proposal was via a outdoor flight of some 32 steps and an indirect route through shops to the hotel lobby. The legibility of the entrance was compounded by the location of the porte-cochère so that it did not face the street. The revised design incorporates a more legible pedestrian entrance at street level, and escalators that would take people directly to the lobby floor, which was dropped the equivalent of one storey closer to the street. The entrance was also located in a more legible position opposite Harrop Street which would promote connectivity between the hotel and the Octagon.

Evidence on effects

[264]The joint statement from the 'Expert Design Conferencing' notes that the *"...experts agree the latest changes to the street edge (drawing dated 11 August 2017) will provide an appropriate main entry connection to the street and edge definition and action along much of this edge, that is, from the new street entrance north-east toward Filleul Street."*⁶⁵ The experts went on to agree that *"...a street edge can include breaks for lanes and vehicle access and still retain street successful (sic) edge definition."*⁶⁶ They also agreed that *"...the alignment of the entry on Harrop Lane and the lowering of the public lobby down a level strengthens the connection with the street and the public realm. The space provided for retail in the amended drawings (north-east of the new main entrance) appears to be spatially practicable for a retail operation."*⁶⁷

Our evaluation

[265]We accept this evidence signed by Messrs Craig, Falconer, McIndoe and Compton-Moen relating to the street edge.⁶⁸ We were given no expert evidence to the contrary. We also agree with Mr Compton-Moen that the

⁶⁵ Expert Design Conferencing joint witness statement, paragraph 4

⁶⁶ Expert Design Conferencing joint witness statement, paragraph 5

⁶⁷ Expert Design Conferencing joint witness statement, paragraph 8

⁶⁸ Mr Compton-Moen was party to the joint witness statement up to and including paragraph 7

north-west side of Moray Place currently has poor street definition and activity (because it has been an at-grade car park for decades) and the proposal would have positive effects in comparison with the existing situation in that regard.⁶⁹ We considered his suggested street works would also improve the pedestrian amenity of the street.

5.8 Heritage values

Evidence on effects

[266]Expert and submitter evidence highlighted the extent to which Dunedin's city centre has retained its heritage character. Relevant factors mentioned include the Charles Kettle street plan (particularly the distinctive Octagon shape encompassing Moray Place), the relative intactness of the low-rise perimeter-block form, the proportion of Victorian and Edwardian buildings, and such landmark historic buildings as the Railway Station, First Church, Municipal Building/Town Hall, and St Paul's Cathedral. We were told by several submitters, including those involved in tourism, that heritage is one of Dunedin's main visitor drawcards and points of identity.⁷⁰ Of particular relevance, Southern Heritage Trust submitted that the *"...Municipal Chamber/St Paul's Cathedral view at ground level has an international profile among tourists and the media, who use these two heritage structures as signifiers of Dunedin, and of the heart of the city."*⁷¹

[267]Maintaining heritage character features in the objectives and policies of the Operative District Plan (for instance Sections 9 and 13) and proposed '2GP Plan', and also in other documents we were referred to including the 'Dunedin Central City Plan', 'Ara Toi Otepoti' and 'Dunedin's Economic Development Strategy'.

[268]Submitters pointed to a contradiction between the promotion of Dunedin's urban heritage to attract visitors, and visitor accommodation they considered would detract from that heritage. On the other hand, submitters with direct involvement in tourism (such as Mr Wilson) did not consider there was a tension.

⁶⁹ Compton-Moen, EIC, paragraph 14

⁷⁰ Along with wildlife/natural landscape, culture, education/medicine, and sport.

⁷¹ Southern Heritage Trust, submission, page 2

Our evaluation

[269]We consider Dunedin's heritage values – and the role of such values in the city's identity – provide context for weighing the significance of effects with respect to height, urban character and visual effects. For instance, we placed greater weight on the visual effects of building height and character with respect to the Municipal Building and St Paul's Cathedral because of the significance of those landmark heritage buildings and their skyline as the backcloth to the Octagon.

[270]Beyond that, we did not consider it necessary to make a separate finding on heritage values. Rather, they are encompassed in our findings above.

[271]Some submitters suggested that boutique hotels in converted heritage buildings would be more in keeping with Dunedin's character – we considered that not relevant.

[272]We record that Heritage New Zealand did not submit with respect of the adjacent registered historic buildings (Municipal Chambers/Town Hall and St Paul's Cathedral).

5.9 Shading

[273]A related effect of height is shading. Submissions with respect to shading focussed mainly on the Octagon, although we also received submissions and evidence relating to effects on St Paul's Cathedral, Dunedin Town Hall, Otago Girls High School, residential areas to the west (York Place, Smith Street), and the adjacent Kingsgate Hotel.

Evidence on effects (shading of the Octagon)

[274]Mr Bowen provided diagrams indicating shading that would occur in the Octagon from the proposed building over-and-above that which would be cast by existing buildings. The diagrams demonstrated that the building would increase the extent of shade in mid-winter, and that such shade would move from the south to the south-east parts of the Octagon between approximately noon and 4pm. Such shade would fall on the area of outdoor tables in the south-east quarter of the Octagon between approximately 2pm-3.30pm. Mr Bowen stated that shading would begin to encroach into the Octagon around 11 May, reach its maximum at mid-winter, and recede again by around 29 July – a period of around 11 weeks.

[275]The question is the significance of such shading. On the one hand Mr Compton-Moen did not think the shading would have a significant adverse effect on public amenity because it would be "*limited to a relatively small part of the day and year*" and that such effects would be outweighed by the vibrancy and activity generated by the hotel. On the other hand Mr McIndoe's evidence was that the shading would have significant adverse effects because of the importance of the Octagon as Dunedin's "*signature urban open space*", and because it would affect a "*high proportion of the remaining sunny space within the Octagon*" not otherwise shaded at mid-winter (i.e. it would be a cumulative effect on shading by existing buildings). He observed that all the bars and cafes in the south-east corner of the Octagon have outdoor tables. He said that mid-winter is when sun is most appreciated.

[276]Mr Falconer also considered the shading effects on the Octagon would be 'significant' given its sensitivity as a public space.

Our evaluation (shading of the Octagon)

[277]We were told in submissions that the proprietors of the cafes and bars consider the additional trade generated by the hotel would be of greater value than the sun. While that may be true, we consider a sunny corner of the Octagon suitable for outdoor tables is a public amenity value. Likewise, we were given anecdotal submissions that the tables are not well used – 'a few hardy smokers'. That was not consistent with our observations during our site visits. The small area of tables appeared to attract people as a concentration of outdoor dining in the centre of the city. It would seem unlikely that bars and cafes would go to the trouble of setting up tables if they were not used

[278]We concluded the winter shading in the Octagon contributed to the adverse effects arising from the height and bulk of the building. While limited to mid-winter afternoons, we consider the adverse effects would be 'more than minor' for the reasons Mr McIndoe described, namely the importance of the Octagon as a public place, that the shading will affect a residual sunny corner when much of the rest of the Octagon is shaded, the evident use of this area for outdoor dining, and that sun is particularly appreciated during winter.

Evidence on effects (shading of other areas)

[279]Mr McIndoe observed that an 11m (or 16m) high building would not cast any shade on the Cathedral grounds but that Mr Bowen's diagrams indicate the proposal would cast shade over the eastern façade of the Cathedral at mid-winter between around 11.45am and 3pm. He considered this would affect the amenity of the Memorial Garden and backlighting of the stained glass windows. We heard submissions from Mr Tucker about the significance of the Cathedral's stained glass, which we observed during a site visit. Mr McIndoe appraised the adverse effects as being 'more than minor' having regard to the limited duration and the significance of the Cathedral.

[280]Relying on Mr Bowen's diagrams, Mr McIndoe observed the proposal would shade the forecourt to the Dunedin Town Hall in Moray Place to a greater extent during the summer and equinoxes than a building complying with development standards but that the shading would be less than such a 'complying' building at mid-winter. He assessed the degree of adverse effect as minor – noting that, while it is the main entrance to a civic building, it is not otherwise a prime destination.

[281]Mr McIndoe observed that the proposal would cast shading over a part of the grounds (tennis and netball courts) of Otago Girls High School prior to 9.30am at mid-winter. Mr McIndoe considered these effects as fleeting and 'less than minor'.

[282]Mr McIndoe observed that the proposal would cast shade at mid-summer over some residential properties on York Place between approximately 7am and 9am. At the equinox it would cast shade over some residential properties on Smith Street to around 8am. At mid-winter it would cast shade over some properties on Smith Street between 9am and around 10am. He considered that shading on residential properties would generally be 'minor' but that effects on some individual properties (in Smith Street) might be 'more than minor'. Mr Compton-Moen also identified a small section of Smith Street as being the most affected.

[283]Mr Bowen's diagrams demonstrated that the proposed building would not cast shade on the Kingsgate Hotel at the summer solstice but the equinoxes and during winter it would cast shade over parts of the Hotel façade in the morning up to around 11am. Mr Bowen also produced diagrams depicting the shading from what he considered was a 'non-fanciful' building mass consistent with the development standards for the site (i.e. a building

constructed to the boundary and the 11m maximum building height standard). Mr Taylor considered that Mr Bowen's hypothetical development was not a "credible complying height development" taking into account the site's topography and levels with the Moray Place streetscape. Mr Taylor considered the hypothetical development would be some 5m lower.⁷² Regardless, Mr Bowen's diagrams indicated that the proposed building would cast greater shade than what might be anticipated by the District Plan development standards.

[284]Mr Compton-Moen considered the shading effects on the Kingsgate Hotel would be 'less than minor' because "shading of (the Hotel) would occur under the permitted baseline, and is generally accepted as common situation in most inner city situations."⁷³

[285]Mr Falconer considered the shading effects on the Kingsgate Hotel would be 'significant' because it would affect the building for 'most of the morning during the equinox and winter periods'.⁷⁴

[286]Mr McIndoe's evidence was that the effects of shading on the Kingsgate Hotel would be 'severe' because it would occur over a significant portion of the façade over a significant portion of the year, at a part of the day when the Hotel would be occupied by guests.⁷⁵

Our evaluation (shading of other areas)

[287]We accept Mr McIndoe's evidence that there will be 'more than minor' adverse shading effects on St Paul's Cathedral, that adverse effects on the Town Hall will be 'minor', those on Otago Girls High 'less than minor', and those on residential properties generally 'minor'. Mr McIndoe's evidence was consistent with the shading diagrams and we received no expert evidence to the contrary.

[288]While there were some questions over the 'permitted baseline' comparison with regards shading effects on the Kingsgate Hotel, we accept that the proposal would nevertheless cast some additional shading onto the facade of

⁷² Taylor, EIC, paragraph 17

⁷³ Compton-Moen, EIC, paragraph 24

⁷⁴ Falconer, Urban Design Report, paragraph 9.12

⁷⁵ McIndoe, EIC, paragraph 117

the Kingsgate Hotel. We consider Mr McIndoe overstates the degree of effect on the Hotel – having regard to development that might reasonably be anticipated on the neighbouring property – and that Mr Compton-Moen understates the degree of effect – having regard to the diagrams that indicate the proposal would cause greater shading than a building meeting the development standards and that such shading would occur over a reasonable portion of the morning for much of the year. We concluded the adverse effects will be ‘more than minor’.

Our overall evaluation on shading

[289]Overall we considered that the shading effects would be ‘more than minor’ – particularly with respect to the Octagon and (to a lesser extent) St Paul’s Cathedral and the Kingsgate Hotel – and would contribute to the adverse effects arising from the building’s height and bulk.

[290]We note that the various reductions in building height suggested by Mr Falconer and the applicant would reduce such shading effects.

5.10 Other amenity value effects

[291]The main potential effects on the amenity values of Dunedin’s central city are discussed above under separate headings relating to height, urban character, visual effects, heritage values and shading. This section of the decision addresses other potential effects on amenity values resulting from wind, glare, privacy and loss of views.

Wind

Evidence on effects

[292]Expert evidence on wind effects was limited to a report by JDH Consulting, a Melbourne wind expert consultancy. The JDH report was qualified as an ‘opinion piece’ on the proposed building. It did not entail computer modelling and relied on wind data from Dunedin Airport and it adopted the criteria for safety and human comfort from the Wellington District Plan – there not being an equivalent in the Dunedin Plan. The JDH Report estimates that ground level wind speeds are likely to exceed the criteria for safety and comfort at the main entrance in the SW corner of the building – the report recommended shifting the entrance from the direction of the prevailing wind. The report estimated a high probability that the criteria for safety would be exceeded on the Moray Place footpath, and a possibility that the cumulative

criteria for human comfort would also be exceeded. The Report recommended that consent should be conditional on successful wind tunnel testing. It stated that adverse wind effects could be mitigated by changes to the façade or by architectural devices.

[293]Dr Holmes in his submission questioned the JDH Report's reliance on data from Dunedin Airport at Momona nearly 25km away rather than data specific to the different topographic setting within Dunedin's city centre. He contrasted a wind rose from the airport and Musselburgh respectively which he said demonstrated a higher proportion of wind at Dunedin from the NE and NW, and that this could exacerbate wind effects in Moray Place and funnel wind between the Town Hall and Cathedral. He had relied for his submission on a website 'MeteoBlue' which we understood to provide wind projections based on modelling.

Our evaluation

[294]We were concerned by the lack of certainty on wind effects. The only expert analysis, the JDH report, identified a high probability of adverse wind effects and recommended that consent be conditional on successful wind tunnel testing. We sought a draft condition that would enable such testing to certify the building against a measurable standard. However, we were left with the possibility that the building might well fail such a standard, that the architectural treatments might not be able to adequately mitigate effects, or that design changes required to address wind effects could have other adverse effects.

Glare

Evidence on effects

[295]Submitters raised potential concerns regarding glare and reflectance that may arise, particularly when the sun is low in winter, given the extent of the curtain-wall glazing.

[296]The Applicant confirmed that the glass curtain-wall is to have only the 'lightest tint of green', avoiding the degree of reflectivity associated with 'mirror glass'. A memo from Viridian Glass states the proposed glazing would have a reflectance value of 14%, similar to normal domestic double-glazing (By comparison, the memo notes, high reflective glass would have a reflectance of 34%).

[297]Mr Bryce did not consider this provided sufficient confidence that the extent of the curtain-wall glazing would remove all glare or reflectivity issues, and requested the Applicant provide further information to the hearing. While the Applicant provided a glass sample, no further information was provided.

[298]In his right of reply Mr Bryce recommends a condition with a quantifiable outcome to address potential glare.

Our evaluation

[299]We accept that the glass will have an appropriate degree of reflectance and that the outstanding matter is glare. The issue is whether the extent of curtain-wall glazing and its particular modulation will create glare to an unreasonable level of nuisance. We have no evidence one way or the other.

[300]However, we do not consider it necessary to avoid all glare. Fleeting glare off windows is to be expected with any building, particularly when the sun is low. Curtain-wall glazing is also not uncommon in other cities – the unusual factor in this case is the extent of façade modulation. In the absence of definitive evidence on glare from the Applicant we therefore adopt Mr Bryce’s advice of a quantifiable outcome-based condition. We appreciate that this places risk with the Applicant.

Privacy

Evidence on effects

[301]Submitters raised potential privacy concerns resulting from rooms in the hotel overlooking neighbouring properties. Of particular relevance are submissions relating to the ‘Kiddie Campus’ day care facility at 52 York Place, and the Kingsgate Hotel.

[302]The proposed hotel would be approximately 7.5m from the boundary with the ‘Kiddie Campus’ site and rooms would look down on an outdoor play area. The proprietors are naturally concerned with privacy for the children.

[303]The proposed hotel would be some 40m from the Kingsgate Hotel building at the closest corner. The proposed hotel would not be directly in front of the Kingsgate Hotel but located just off to one side.

Our evaluation

[304]We accept there will be a reduction in privacy for the neighbouring properties. However, the site is within the central city (Central Activity Zone in the Operative Plan) where overlooking from adjacent buildings is not uncommon. Privacy is not given any particular protection by the provisions for this zone.

[305]Buildings complying with the development standards could be built close to the boundaries overlooking adjoining properties, albeit such buildings would be limited in height.

[306]We consider the further loss of privacy resulting from the height of the proposed building will be mitigated by the set-back of the tower from the property boundaries. In particular, we consider there is ample separation from the Kingsgate Hotel building in this regard – at their closest the two buildings are separated by twice the width of a city street.

[307]We consider, though, that there is a special circumstance with the day care facility. We therefore accept Mr Bryce's recommendation that if we were to grant consent that the conditions require mitigation of privacy along the boundary, such mitigation to be undertaken in consultation with the proprietors of the 'Kiddies Campus' facility.

[308]Subject to implementation of that condition, we therefore considered that adverse effects on privacy would be minor and acceptable.

Private views

Evidence on effects

[309]A number of submitters raised concerns about the effects of the proposal on views from their properties. Some of these effects relate to scale and visual dominance which we addressed under 'Visual effects'. To recap, we concluded there would be adverse visual effects from some residential properties close to the site to the west and northwest, such as those in York Place and Cargill Street.

[310]Submitters also raised concern about effects on the views from their properties – for instance views of the harbour and heritage buildings – from places such as further up 'City Rise'.

[311]We understand that Mr Compton-Moen concentrated on effects on views in his visual assessment. He ranked visual effects less for properties close to the building where views could be blocked by a building complying with the 11m development standard, and greater for properties further away and higher on the hill where the proposed building would affect views residents may have felt entitled to by the Plan provisions.

Our evaluation

[312]It is an accepted principle that there is no right to preservation of views per se and that, while the provisions of the Plan establish legitimate and reasonable expectations with respect to amenity values, the provisions also allow for applications to be made for developments that do not comply with development standards. We considered that the degree of effect was also overstated by some submitters in this regard. While we took visual amenity for private properties into account when considering visual effects above, we gave no additional weight to effects on views per se from properties.

5.11 Cultural values and archaeology

Evidence on effects

[313]We did not receive evidence that the site has specific significance to tangata whenua.

[314]Heritage New Zealand submitted that the site is an archaeological site as defined by the New Zealand Pouhere Taonga Act 2014 because it previously contained pre-1900 buildings. Heritage New Zealand requested an archaeological assessment be undertaken and an authority sought prior to construction.

Our evaluation

[315]We consider that standard 'accidental discovery' conditions would cover the possibility of any kōiwi or cultural items that might be uncovered during construction. Likewise, we consider archaeological matters can be addressed by standard conditions requiring a pre-construction archaeological investigation and an advice note that an authority would be required from Heritage New Zealand.

5.12 Traffic and parking

[316]The proposal is that vehicles will enter the site at the uphill end of the Moray Place frontage, circulate one-way around the outside perimeter of the building, and exit at the downhill end. A roundabout is to be built incorporating the exit with the intersection of Moray Place and Filleul Street. The porte-cochère and hotel entrance is on the south-west side of the building (i.e. facing away from Moray Place). Most parking is to be provided in semi-basement floors excavated into the rising ground on the site (the exposed downhill sides of the parking floors would be sleeved with wrap-around podium structure).

Evidence on effects

[317]Mr Fisher, Council's Transportation Planner/Engineer, reported that Moray Place is appropriate with regards to Dunedin's roading hierarchy (Commercial Centre Street) and observed that traffic volumes are in line with this classification.

[318]He reported that the location of the vehicle entrance from Moray Place is acceptable, has sufficient sightlines, and would not have significant impact on the intersection of Moray Place and Harrop Street.

[319]He reported that a round-about is the most appropriate option to accommodate the exit with the intersection with Moray Place and Filleul Street.

[320]Substantial changes to onsite circulation and parking were made by the Applicant during the hearing to address a number of issues raised by Mr Carr's traffic evidence. The changes included lowering the ground level around the site perimeter, adjusting the grades on circulation within the site, adjusting the floor levels within the building, shifting the entrance to the parking basement, adopting internal circulation within the parking basement and 'chamfering' the NW corner of the building (with cantilevered upper floors) to enable buses to negotiate that corner. The internal circulation had earlier also been changed to one-way traffic – a consequence being that vehicles would need to use Moray Place in order to access the porte-cochère from the car park (i.e. for valets to retrieve a vehicle for departing guests).

[321]We were surprised at the extent of such unresolved aspects of the design prior to the hearing. Nevertheless, Mr Carr said that the subsequent revised

design would address the issues he had raised⁷⁶ - with the exception of the constricted north-east corner which the applicant subsequently addressed with the chamfer. Council's traffic expert, Mr Fisher, was also satisfied with the revised design. In response to questions, he was satisfied that an acceptable roundabout could be accommodated at the junction of Moray Place, Filleul Street and the site exit – and that the detail design of changes to Moray Place and Filleul Street could be addressed by way of condition.

[322]Submitters raised concern about the loss of the current car park which contains metered parking available to the public. Mr Fisher considers this is not a relevant matter as development of the site has been anticipated and the site is held in 'private title' for that purpose.

Our evaluation

[323]We accept the expert evidence that the revised traffic circulation and parking will not cause adverse effects on the public street network, and the on-site circulation and parking will operate adequately in accordance with the appropriate standards. We heard no expert evidence to the contrary.

5.13 Services

[324]Ms McGaw, Council's Consents Officer Water and Wastewater Business Unit, provided a memo on services and infrastructure.

Evidence on effects

[325]Ms McGaw reported that there would be an increase in **storm-water discharge** flow from 70.3 litres/sec to 77.1 litres/sec during a 1 in 10 year rainfall event. The Applicant proposes to install a 12,000 litre storage tank with variable discharge outlet to accommodate the difference. Ms McGaw provided a recommended condition that would require the Applicant to provide a 'Stormwater Management Plan' detailing such matters prior to construction commencing.

[326]Ms McGaw reported that the 6.5 litre/sec average peak wet-weather **waste-water discharge** modelled by Paterson Pitts Group on behalf of the Applicant could be accommodated in the existing wastewater network. She

⁷⁶ Carr, Supplementary Evidence, paragraph 36

recommended, nevertheless, that water saving devices be installed to reduce wastewater volumes.

[327]**Water supply** is available from the city's network. Ms McGaw reported that new connections must be in accordance with the requirement of Section 6.6.2 of the Dunedin Code of Subdivision and Development.

[328]The proposal includes hot pools to be supplied by an **artesian bore** to be drilled on the site. Ms McGaw reported that separate resource consents would be required for the bore from the Otago Regional Council.

[329]Ms McGaw reported that there is available **water for firefighting** that is in accordance with the relevant standard (SNZ PAS 4509:2008).

Our evaluation

[330]We accept Ms McGaw's advice that the proposal would not have any adverse effects on the Council's infrastructure network that cannot be adequately addressed by consent conditions and advice notes. We received no contrary evidence.

5.14 Hazards

Evidence on effects

[331]The site is not identified in the Plan as being at risk of flooding, coastal inundation or land instability.

[332]The Applicant provided a geotechnical report from 'Geosolve Ltd' – a specialist engineering consultancy – who carried out investigations on the site including seven boreholes drilled to depths between 7.60m and 21.28m. The report states that the site is underlain with volcanic rock at a moderate depth – approximately 7m below ground level near Filleul Street and at shallower depths further up the slope. This is overlain with a generalised subsoil profile comprising slope wash deposits, and a surficial uncontrolled fill layer. The water table was at approximately 4m to 4.5m at two boreholes but was not observed elsewhere. The report notes that the investigations are general in nature and that further investigations would be required as part of the detailed design of the project.

[333]Lee Paterson, a consultant Geotechnical Engineer with MWH, provided input to the AEE. He concluded that "*Whilst the scale of the proposed is significant,*

the natural hazards associated with the project are not major. The positioning of the structure away from the boundaries is significant in managing these risks."

Our evaluation

[334]We accept the evidence of Geosolve and Mr Paterson that there are no hazard risks that could not be adequately addressed by consent conditions – including the further investigation and appropriate engineering design at the detailed design of earthworks and foundations.

5.15 Construction and earthworks

[335]The notified application is for up to 9,537m³ of earthworks with a maximum cut depth of 7.35m. Such works exceed the 'volume of excavation' and 'change in ground level' standards of the Operative District Plan of 100m³ and 1.5m respectively and require consent as a Restricted Discretionary Activity. Potential adverse effects are indicated by the matters to which Council restricts its discretion which include adverse effects on the amenity of neighbouring properties, landscape and visual effects, effects of on the transport network of transporting fill, effects on cultural and/or archaeological sites, sediment discharge associated with earthworks, design and engineering, stability of land and buildings, surface storm water flows, and impacts on underground services.

[336]The applicant provided a Construction Management Plan (CMP) which is to be given effect to by condition of consent. The Reporting Planner recommended additions to the CMP requiring active consultation with neighbours, and dust suppression.

Evidence on effects

[337]Mr Paterson, Council's Consultant Engineer, reviewed the application and considered the works could be managed by way of conditions having regard to such matters as the geotechnical nature of the site (supported by the Applicant's geotechnical investigations), the positioning of the building (and therefore the deepest excavation) away from the boundaries, and assuming design in accordance with engineering standards.

[338]Otago Hearing Ltd (Audiology South) submitted that earthworks would adversely affect their business and compromise their viability. They stated

that even the geotechnical investigations of the site interfered with their hearing tests.

[339]Erinic Investments Ltd submitted that piling should be eliminated or the effects mitigated to 'less than minor' in terms of vibration and noise.

[340]Aurora Energy Ltd, who has a substation on Smith Street, sought conditions to do with communication prior to excavation, and reverse sensitivity (i.e. to noise from the substation).

Our evaluation

[341]While the proposed building is larger than might generally be expected on the site, such construction works in themselves are to be reasonably anticipated in the central city. The adverse effects arising from earthworks and other construction activities are temporary. We accept the advice of Messrs Paterson and Bryce that the works can be carried out in a way that satisfies the relevant assessment criteria, and that they do not raise issues beyond those that are normally managed by way of conditions of consent, the relevant standards (such as noise standards), and such mechanisms as the proposed CMP. We therefore consider such temporary construction effects would be 'no more than minor.'

[342]With respect to the submission from Otago Hearing Ltd, we consider development is to be reasonably anticipated on the site given its zoning and location. While the proposal exceeds the development standards, any development of the site can be expected to require earthworks. It would be unreasonable to limit development rights because of a particular sensitivity of a commercial activity to construction activities.

[343]We have considered the increased earthworks – with regards effects and scope – as a result of the proposed changes to the building design during the course of the hearing. The changes would increase the excavation of the car park floors into the site, and also further reduce the ground level around the uphill perimeter of the site. We were told⁷⁷ that the changes would increase the quantity of earthworks by approximately 6000m³. Such an increase would not change the nature or spatial extent of effects (i.e. it would not create new affected parties) but it would likely extend the duration of works. As above, we consider such effects are temporary, might reasonably be

⁷⁷ Page, verbal submission

anticipated in the central city and are the type of effects normally managed by way of conditions of consent, relevant standards, and the proposed CMP. We consider the adverse effects of the increased earthworks would therefore be 'no more than minor.'

5.16 Subdivision

[344]The proposed unit title subdivision SUB-2017-26 is a consequential development that is designed to follow on from consent to the proposed building. The Panel recognise that the subdivision will have few, if any, environmental effects independent of the land use, as the proposed title division is only an attempt to define and separate the land tenure of the apartments from the hotel. It makes no difference to the physical reality of the building. However, this also means the subdivision is inextricably linked to the proposed land use. Granting the subdivision consent would serve no purpose unless the land use consent is approved, because the proposed unit titles cannot be created without the building. The panel have therefore assessed the subdivision consent sought together with the proposed land use, as issuing a separate decision on the subdivision would be meaningless and serve no purpose.

6 STATUTORY PROVISIONS

6.1 Overview

[345]We heard a range of legal submissions and expert planning evidence as to the statutory criteria that we are required to apply from a range of parties including Mr Page and Mr Anderson for the applicant, Ms Semple and Mr Taylor for the Millennium and Copthorne Hotels, Mr Hardie for Misbeary Holdings, and Mr Bryce in his role as the s. 42A report writer commissioned by the Council. We also sought legal advice on some specific matters from Council's solicitors, Anderson Lloyd.

[346]The matters we need to consider (in order) are:

- a) Are some of the Townscape provisions in the Operative Plan now inoperative under Section 86F.
- b) Should the suite of applications be bundled as a non-complying activity or can the matter of building height be "unbundled" and considered separately as a restricted discretionary activity.
- c) If all or part of the applications fall to be considered as a non-complying activity are we satisfied that the proposal can meet one of the s. 104D gateway tests for further consideration and determination under s. 104.

6.2 Section 86F and the Operative Plan Townscape Provisions

[347]We heard submissions and evidence from the applicant regarding the Townscape Provisions of the Operative Plan suggesting some of these provisions are no longer operative as they have been overtaken by the 2GP, under s. 86F of the RMA.

[348]Having considered the applicant's legal submissions and evidence, along with the legal advice on this matter we received from Anderson Lloyd⁷⁸ the Panel is not satisfied that section 86F applies and that any of the existing Townscape provisions of the Operative District Plan can be deemed "inoperative" for the purpose of our decision making.

[349]In regard to townscape and heritage issues the Proposed District Plan (2GP) sets out objectives and policies with similar themes to those contained in the

⁷⁸ Anderson Lloyd legal advice – Hotel on Moray Place – relevance of 2GP rules, 2 August 2017

Operative District Plan, which are encapsulated in both the strategic directions of the Plan (section 2.4) and zoning provisions relating to the land subject of the application.

[350] However, there are a number changes and refinements in the 2GP compared to the Operative Plan regarding the manner in which these policy provisions are to be given effect through the proposed rules. The identification of precincts is retained in the 2GP as a key means of recognising and protecting heritage values, but more emphasis is given to protection of townscape values and other matters related to urban design in the provisions for specific zones. This includes the Central Business District and the relevant rules were identified in the s. 42A report prepared by Mr Bryce. He also identified the submissions relating to these rules. No decisions have been released on these or any other submissions on the Proposed District Plan at the date of this consent decision. Whether or not there are submissions seeking or opposing provision of a townscape precinct on the subject land will therefore not necessarily determine if there will ultimately be rules concerning townscape matters applying to the site when the 2GP does become operative.

[351] On this matter we concur with the opinion in the Anderson Lloyd advice to us that:

“There are many submissions on the Commercial and Mixed use Zone provisions. These include a general request for a new strategic direction (Robert Tongue). There are submissions on height and other rules. Given the breadth of submissions and the inter-relationship of the rules with performance standards in our opinion none of the Commercial and Mixed Use Zones rules can be “deemed operative”. This means that the Operative Plan applies for the application of Central Activity rules.”

6.3 Consent Status of the Proposal

[352] As set out in Section 2.3 of this decision, the proposal comprises an application for a land use consent and associated earthworks for a Commercial Residential Activity in the Central Activity Zone of the Operative Dunedin City Plan (**Operative Plan**), along with a subdivision consent to subdivide the proposed building under the provisions of the Unit Titles Act 2010.

[353] Commercial Residential Activities are a permitted activity under Rule 9.5.1 (iii) of the Operative Plan, however the final activity status of any proposal needs to be determined with reference to whether a range of permitted activity performance standards in the Operative Plan are met or not, and what consent status any breach triggers.

[354] The well-established approach⁷⁹ to determining the consent status of an application is to assess the proposal as a whole under the rules of the relevant plans with the consent status determined by the highest level of activity status (in this case "non-complying"). This approach is commonly called "bundling".

[355] In his s. 42A Report, Mr Bryce has assessed the proposal against the relevant performance standards in the Operative Plan and has determined that there are some elements of the land use consent required for the proposal that breach certain performance standards and fall to be considered as being non-complying⁸⁰. These relate to:

- a) Rule 9.5.2 (i): no front or side yards
- b) Rule 9.5.2 (iii): continuous verandah required.

[356] Mr Bryce also concludes that the unit title subdivision *"is a Non-Complying Activity in accordance with Rule 18.5.3."*⁸¹

[357] We agree with Mr Bryce's assessment, and we understand that the applicant also acknowledges this position.

[358] The applicant has however argued that there is a case for its proposal to be "unbundled" in relation to the status of the consents required, and has encouraged us to take a hybrid approach whereby we consider the height exceedance component of the proposal separately as a "restricted discretionary activity". The general proposition for this is that the applicant contends (based on the assessment and evidence of Mr Anderson) that there is no connection between the overall height of the building and the proposal's

⁷⁹ See *Locke v Avon Motor Lodge* (1973) 5 NZTPA 17

⁸⁰ See Tables 1 and 2 of the s. 42A Report, pages 6 to 11

⁸¹ s. 42A Report [36] at page 11

non-compliance with the yard and verandah breaches that trigger the non-complying status of the land use consent.

[359]In his opening submissions Mr Page discusses a range of cases which deal with the bundling issue and how the Courts have dealt with circumstances where different elements of a proposal might be considered in an “unbundled” way in relation to their consent status⁸².

[360]Mr Page cited a case, *Southpark Corp Ltd v Auckland City Council*⁸³ where the Environment Court reviewed the *Bayley* and *Body Corporate* cases and defined the circumstances where an “unbundled” or hybrid approach could lawfully be adopted with reference to 3 criteria, as follows:

- 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.

[361]We heard and have considered wide ranging legal arguments on this issue primarily from Mr Page (in both his opening and closing submissions), and from Ms Semple on behalf of Millennium and Copthorne Hotels New Zealand Limited. We also requested specific advice from Anderson Lloyd on this matter⁸⁴.

[362]The applicant is suggesting that we should assess the primary land use application for the building separately in relation to the different built form elements of the proposed building, and in particular the effects of height. In the circumstances of this case (and setting aside the separate subdivision application which is distinct from the effects of the building itself), we are

⁸² i.e. *Bayley v Manukau CC* [1998] NZRMA 513, *Body Corporate 97010 v Auckland City Council* [2000] 3 NZLR 513, and *Urban Auckland v Auckland City Council* [2015] NZHC 1382 at [90]

⁸³ *Southpark Corp Ltd v Auckland Cc* [2001] NZRMA 350

⁸⁴ Anderson Lloyd legal advice – Hotel on Moray– Bundling, 17 August 2017

dealing with an integrated application for one land use consent for a new building. The primary effects of the proposed new land use relate to townscape and visual amenity effects and shading associated with the building as a whole, and therefore we do not favour an approach of severing and assessing different built form elements of the building in a separate and “unbundled” way.

[363]After carefully considering the expert planning evidence we heard from Mr Anderson, Mr Bryce and Mr Taylor on this matter we do not consider an “unbundling” approach is appropriate and can be justified for this proposal. We consider that there is undoubtedly a connection between the various built form elements of the building as they relate to the associated flow-on effects on the environment.

[364]In this regard we consider the unbundling proposition fails both items (b) and (c) of the *Southpark* criteria in that the height and yard standards are not distinct but are connected:

The standards are connected. They are both intended to maintain Dunedin’s characteristic townscape of 2-3 storey perimeter-block streets. That the standards include both a maximum and minimum height is informative in this regard.

The breaches are connected. The breaches of the height and yard standards are both a consequence of the tower form (compared to a perimeter block building).

The effects are connected. The effects of height cannot be treated in isolation but are influenced by other parameters of the building.

Also, Council’s scope also is not relatively constricted or confined. While the discretion for height is limited to the effects of the building’s height, that covers a wide range of consequential matters including scale and character, visual effects, shading and wind. This is supported by the wide ranging nature of the assessment matters in 9.9.4. of the Operative Plan.

[365]Overall we favour and agree with the position outlined by Mr Bryce and Mr Taylor in their evidence, as summarised below:

*"I do not agree with the Applicant's approach to unbundling. In my opinion, it would be artificial to separate the infringement of the maximum height limit from those performance standards triggering the need for resource consent as a non-complying activity (particularly in the case of yards). This is especially the case given the principal components of building are height and mass, depth, and setback, which in turn influences the overall shape of the building."*⁸⁵

*"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."*⁸⁶

[366] This is also consistent with the advice received from Anderson Lloyd where they state:

"While we see some merit in the approach of 'unbundling' the height breach we tend not to favour it. This is a single building, on one site and the height, setback, pedestrian facilities and earthworks all tend to be inter-related in our assessment. To try and treat height as somehow unrelated to the rest of the planning issues, and assess it under a different test, is likely artificial."

[367] We also note that the standard bundling approach was applied for a recent building development proposal in Dunedin's Central Activity Zone, as outlined to us by Mr Bryce.

"In terms of consistent plan administration, I note that an apartment development at 97 Filleul Street (located to the north of the subject site) was recently approved by the Environment Court under decision No [2017] NZEnvC30. This development exceeded the 11 metre maximum height limit, and also infringed both the 'no front and side yard setbacks' and did not provide for a veranda. In this case, the development was treated as a non-

⁸⁵ s. 42A Report paragraph 53, at page 16

⁸⁶ Evidence of Mr Taylor paragraph 21, at page 5

complying activity and this was accepted as being the activity status both at the Council hearing and by the Environment Court in its subsequent decision.”⁸⁷

[368] Given this finding, we consider the proposal as a whole should be assessed as a non-complying activity and now move to the matters we are required to consider under s. 104D of the Act.

6.4 Section 104D

[369] For the purposes of our decision s.104D (1) provides that:

*....a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—
(a) the adverse effects of the activity on the environment will be minor; or
(b) the application is for an activity that will not be contrary to the objectives and policies of both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity⁸⁸*

[370] These matters are commonly described as the s.104D gateway or threshold tests and we are required to consider the application in terms of both of these tests. As a non-complying activity we can only determine the proposal under the broader decision making matters in s. 104 of the Act if we first decide it meets one of these tests.

Section 104D(1)(a) Threshold Test - Adverse Effects of the Proposal

[371] In Section 5 of our decision we assess the primary issues and effects based on the application documentation, submissions lodged, the s. 42A report, and the evidence we heard during the hearing. In summary we find that the adverse effects of the proposed activity on the environment will be more than minor in relation to the following aspects (conclusions summarised from Section 5 of our decision):

- a) The 62.5m height would be the highest building in the city centre, higher than the other tall buildings by some margin and, specifically, higher than the clock tower/spires of the adjacent Municipal Chambers/Town Hall and St Paul’s Cathedral. We therefore agree that the adverse scale effects

⁸⁷ s. 42A Report paragraph 58, at page 17

⁸⁸ Relevant extracts taken from the Resource Management Act 1991

arising from the height of the proposed building with respect to its surroundings will be 'more than minor'.

- b) The proposed building would contrast with Dunedin's urban character – specifically its scale, typical perimeter block form, solid cladding materials, and façade patterns. We concluded that such adverse effects would be 'more than minor' having regard to the building's sensitive location and prominence.
- c) Despite extensive questions on this matter, we did not receive persuasive evidence that the building would have the qualities to 'pull off' the contrast in scale, form and materials between it and the Municipal Chambers/Town Hall and St Paul's Cathedral. Rather, the weight of evidence was that the design (bulk, form and materials) would exacerbate the effects of height. We concluded the adverse effects on amenity values of the surrounding area arising from the combination of height, bulk, form and materials would be significant.
- d) The proposed building will have adverse visual effects that are 'more than minor' – and in some instances 'significant' – from a number of places in the immediate locality within a few blocks of the site. The adverse effects will arise from the building's prominence (as a consequence of its height and bulk) and its contrast with the scale and character of the area. Specifically, we concluded it would have 'significant' adverse visual effects from places in the Octagon where the proposed building would form a backdrop to the Municipal Chambers and St Paul's Cathedral.
- e) Overall we considered that the shading effects would be 'more than minor' – particularly with respect to the Octagon and (to a lesser extent) St Paul's Cathedral and the Kingsgate Hotel – and would contribute to the adverse effects arising from the building's height and bulk.

[372] Accordingly our decision is that the proposal does not meet s. 104(1)(a) threshold test.

[373] We note that this finding is generally consistent with the effects assessment conclusion in the s.42A report where Mr Bryce concluded that:

“After considering the likely effects of this proposal, as has been applied for by the applicant, it is my opinion that the effects of the proposal will be more than minor with regard to the following areas:

- I consider that the proposal will likely result in adverse effects on the amenity and character of the receiving environment that are more than minor in extent;*
- The Development will have the potential to over-dominate the Kingsgate Hotel to the south and result in more than minor shading effects over this property as a consequence;*
- The Development will over-dominate properties located on the more elevated hill suburbs to the west of the Site and will greatly diminish the views and outlooks for these residential properties and adversely impact upon their visual amenity and outlooks.*
- The Development will result in adverse shading effects on the Octagon, because of the additional shading that is experienced over this important urban space during the Winter Solstice. This will reduce the amenity and use of this area.”⁸⁹*

Section 104D(1)(b) Threshold Test – Objectives and Policies

[374] We have been assisted in our consideration of this second threshold test by the expert planning opinion of Messrs Bryce, Anderson and Taylor. To assist with our analysis of this matter we have compiled a table of what we consider to be the relevant Objectives and Policies of both the Operative Plan and the 2GP and this is attached as **Appendix 3** to this decision. In this Appended table we have:

- a) Included the relevant objectives and policies
- b) Summarised the position of the three planners in terms of their assessment of each objective and policy as we understand it, drawing both on their written evidence and responses to questions from the Panel
- c) Inserted a statement of our own findings in relation to whether we consider the proposal is contrary to, inconsistent with, or consistent with the objective or policy, and where we find it to be contrary we have qualified this to note if we either consider that contradiction is

⁸⁹ Section 42A Report paragraph 338 at page 66.

key/important or not, and also where we see it being balanced out by another “competing” policy.

[375] We have completed the table in **Appendix 3** in this way as we are mindful that this threshold test is not always clear cut and in this regard we have considered in particular the submissions of Mr Page for the applicant where he provided us with a useful summary of relevant case law on how to apply this test, where he noted in particular at paragraphs 80 and 81 of his opening submissions that:

“There are two approaches from the cases: the High Court’s “Queenstown Central” approach, and the Court of Appeal’s Dye approach. It is submitted that the Dye approach should be preferred. It enables the Court to take a holistic approach to the assessment of the application against all of the objectives and policies which is consistent with the drafting of the provision itself.

You should appraise the objectives and policies as a whole when examining the application⁹⁰. This is the orthodox approach under s. 104D and has most recently been taken in Clearwater Mussels Ltd v Marlborough District Council⁹¹, and R J Davidson Family Trust v Marlborough District Council⁹².”

[376] We also record that we understand the legal position to be that in order to be considered contrary to the objectives and policies it really has to be more than just non-complying but has to be “repugnant” to the policy framework. Again, Mr Page provided us with a helpful summary of the case law on this point at paragraph 77 of his opening submissions:

“For a proposal to be contrary to a Plan’s objectives and policies, an activity must be more than simply non-complying. It requires that the proposal is repugnant to the outcomes sought in the relevant policy framework. The High Court in New Zealand Rail Ltd v Marlborough District Council⁹³ stated:

The Tribunal correctly I think, with respect, accepted that (“contrary to”) should not be restrictively defined and that it contemplated being

⁹⁰ *Dye v Auckland Regional Council* [2002] 1 NZLR 337 (CA) at [25].

⁹¹ *Clearwater Mussels Ltd v Marlborough District Council* [2016] NZEnvC 21 at [242].

⁹² *R J Davidson Family Trust v Marlborough District Council* [2016] NZEnvC 81 at [248].

⁹³ *New Zealand Rail Ltd v Marlborough District Council* [1994] NZRMA 70 (HC) at. 80.

opposed to in nature, different to or opposite. The Oxford English Dictionary in its definition of "contrary" refers also to repugnant and antagonistic. The consideration of this question starts from the point that the proposal is already a non-complying activity but cannot, for that reason alone, be said to be contrary. "Contrary" therefore means something more than just non-complying".

Overall findings under Section 104D(1)(b) threshold test

[377] We note that where there is both an operative plan and a proposed plan (as is the case with the Dunedin City District Plan) we are required to decide that the application is for an activity that will not be contrary to the objectives and policies of both the relevant plan and the relevant proposed plan. We have therefore assessed all the relevant Objectives and Policies under both Plans in the table in **Appendix 3** of this decision. Our overall findings in relation to the objectives and policies derived from this table in relation to whether the proposal is "contrary" or not are:

- a) While Objective 4.2.1 in the sustainability chapter of the operative plan to *"enhance the amenity values of Dunedin"* and the associated Policy 4.3.1 to *"maintain and enhance amenity values"* are an important overarching objective and policy, they are very broadly couched in our view and should be interpreted with reference to the more specific zone based objectives and policies.
- b) The proposal is contrary to Central Activity Zone Objective 9.2.3 to *"avoid, remedy or mitigate the adverse effects of activities undertaken in the Inner-City Area and Local Activity Zones"*.
- c) The proposal is not contrary to Central Activity Zone Objective 9.2.5 to *"ensure that the Central Activity and Local Activity Zones continue to develop as 'people places'"*.
- d) Central Activity Zone Policy 9.3.3 to *"enhance amenity values in the Central Activity Zone"* appears to sit underneath both Objectives 9.2.3 and 9.2.5, and as explained above these are essentially contradictory objectives in relation to the activity proposed, with it being contrary to one objective but not the other.
- e) The proposal is contrary to Townscape Objective 13.2.5 to *"Ensure the character of significant townscape and heritage precincts is maintained or enhanced"* and the associated Policy 13.3.4 as we have assessed

there will be significant adverse effects on the character of parts of the precincts in the area.

- f) The proposal is contrary to Townscape Objective 13.2.6 to “*Ensure that development (including alterations and additions to buildings) does not adversely affect the character and amenity of the central City precincts* and the associated Policy 13.3.5 as we have assessed there will be significant adverse effects on the character of parts of the central City precincts.
- g) While the 2GP objectives and policies are not operative and accordingly have lesser weight we have assessed that the activities proposed are consistent with Objective 2.3.2 and associated Policy 2.3.2.1 concerning a *hierarchy of vibrant centres anchored around one CBD* while it will be contrary to Objective 2.4.1 and associated Policy 2.4.1.4 concerning *protection and enhancement of a number of urban design aspects*.

[378] Our overall finding in relation to the Objectives and Policies of the Operative Plan after appraising these as a whole based on our assessment of the principal issues and effects of the proposal as outlined in Section 5 of this decision is that while it is consistent with many objectives and policies, it offends a number of the most important elements of the Policy Framework and therefore in our opinion, the activity will be contrary to the Objectives and Policies of this Plan.

[379] Our overall finding in relation to the Objectives and Policies of the Proposed Plan (the 2GP) is that while the proposal is consistent with many objectives and policies, it is contrary to the important Objective 2.4.1 and Policy 2.4.1.4 concerning the protection and enhancement of a number of defined urban design aspects. Given the current status of the 2GP we have given this finding minimal weight in our overall assessment of objectives and policies.

[380] We determine that the proposal does not pass the second arm of s.104D relating to objectives and policies of both the relevant plans. As neither arm of the s.104D can be met in our view, accordingly we are unable to grant consent to the proposal.

6.5 Section 104 Matters

[381] While we are not able to determine the application under s.104 (given our finding under s.104D above) we think it is important to signal that in line with

our detailed assessment of principal issues and effects in Section 5 of our decision report we would have been inclined to refuse consent under s. 104 in any event, in particular due to the significant effects we have identified and the sensitivity of the surrounding environment.

7 DETERMINATION

7.1 Decision

[382] Having carefully considered all the relevant reports and documentation supplied with the application, submissions received, along with legal submissions, expert evidence, lay submitter evidence and the s.42A report presented to us during the course of the hearing, we have resolved to refuse the application from NZ Horizons Hospitality Group Limited to construct, operate and subdivide a 17 storey commercial residential development at 143 – 193 Moray Place, Dunedin.

[383] We have determined that the application is a non-complying activity and therefore we were required to consider the particular restrictions of s.104D of the Resource Management Act 1991. Having considered these, we are not satisfied that the adverse effects on the environment would be minor (s.104D(1)(a)), nor are we satisfied that the activities associated with the application would not be contrary to the objectives and policies of both the Operative Dunedin City Plan and Proposed District Plan (s.104D(1)(b)). Having made these determinations, in terms of s. 104D, we are unable to grant consent.

[384] In Section 5 of this decision we have focused on the principal issues and effects associated with the proposal and have made our own evaluation based on the evidence before us on the effects, and then after considering potential mitigation opportunities, we have made findings on each of those principal effects issues. This detailed assessment informed our s.104D determination and has also led us to the conclusion that we would have been inclined to refuse consent in terms of the s.104(1)(a) matters in any event, due to the significant effects we have identified and the sensitivity of the surrounding environment.

7.2 Reasons

[385] There is undoubtedly a demand for and potential positive benefits for Dunedin associated with a 5-star hotel development and we are very mindful that the Council has identified the Moray Place site as an appropriate location for such a development.

[386] We have concluded that there would be positive economic and employment benefits for Dunedin from the development. Although we considered the

applicant's decision not to properly provide us with quantitative evidence on these matters was a shortcoming of the application, we nevertheless agreed with submissions and evidence that it stands to reason there would be economic and employment benefits.

[387] Likewise, we have found that the proposal would add to the vitality and vibrancy of the City as set out in section 5.3 of our decision. In particular we consider the Moray Place site has strong connectivity to the different quarters of Dunedin's central city, and will help support a range of retail and hospitality businesses in the central city, and in particular will support the adjacent Town Hall's events and conference facilities.

[388] Despite these positive factors, based on all the information and evidence before us we have significant concerns with the proposal in relation to height, urban character, visual effects and shading – and uncertainty over wind effects – as discussed in Section 5 of our decision and summarised below.

[389] In terms of height we agreed with the evidence of Messrs Falconer and McIndoe, and Ms Skidmore that the proposed building would be visually dominant and 'out of scale' in relation to its surroundings.

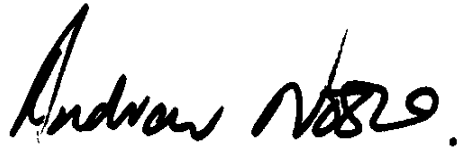
[390] We have concluded based on the evidence that this particular proposal will also not be in keeping with Dunedin's urban character because of contrast in scale, form, alignment with the street, and cladding material. We were conscious that there is a place for exceptional modern buildings that create a positive relationship between the modern and heritage. However, following extensive questioning, we concluded that the building would not have the qualities to 'pull off' the contrast in scale, form and materials between it and the Municipal Chambers/Town Hall and St Paul's Cathedral. Rather, the weight of evidence was that the design (form, proportion, materials) would exacerbate the effects of height. We concluded it will visually dominate, and will not complement, two of Dunedin's landmark heritage buildings.

[391] We have concluded that the proposed building will have adverse visual effects from a number of places in the immediate locality within a few blocks of the site arising from the building's prominence (as a consequence of its height and bulk) and its contrast with the scale and character of the area. Specifically, we concluded it would have 'significant' adverse visual effects from places in the Octagon where the proposed building would form a backdrop to the Municipal Chambers and St Paul's Cathedral.

[392]We considered that the shading effects would be 'more than minor' – particularly with respect to the Octagon and (to a lesser extent) St Paul's Cathedral and the Kingsgate Hotel – and would contribute to the adverse effects arising from the building's height and bulk.

[393]We were also troubled by the lack of certainty on wind effects. The expert analysis, the JDH report, identified a high probability of adverse wind effects and recommended that consent be conditional on successful wind tunnel testing. However, we were left with the possibility that the building might well fail such testing, that the architectural treatments might not be able to adequately mitigate effects, or that design changes required to address wind effects could have other adverse effects. When asked how we might craft a valid and enforceable condition to adequately deal with this quandary, neither Mr Bryce nor Mr Page could offer any assistance.

[394]As a concluding comment we have no doubt that a hotel and commercial development on this site would certainly have potential positive effects, in terms of both economic and employment outcomes, and would also add to the vitality and vibrancy of the Dunedin City Centre. While this particular proposal did not adequately deal with the sensitive surroundings in our view, this does not mean the site is inappropriate. We agree with, and it is worth repeating, what the design experts said in their Joint Witness Statement, where they *"...agree that the architectural approach can allow new buildings to sit comfortably adjacent or close to heritage buildings. We consider that scale, form, alignment, material and facade composition are all relevant to an appropriate architectural approach. We note that there have been many examples of contemporary buildings that respond in this way but that are architecturally in contrast with surrounding heritage fabric, and which celebrate contemporary technologies and respond to city growth imperatives."*



Andrew Noone (Chair



Gavin Lister



Stephen Daysh

8 APPENDICES

Appendix 1 – Summary of Submissions

Summary of Matters Raised by Submitters – LUC-2017-48 & SUB-2017-26

	Added income	Tourism	Reverse sensitivity	Noise	Job creation	Detrad from area	Zoning of land	Financial issues hotel	Plan integrity issues	Sustainability	Hazards	Earthworks	Applicant identity	Economic benefit	Infrastructure capacity	Heritage	Development of CBD	Sets precedent	Visual impact	Mind effects	Shading	Pollution	Connectivity	Transport effects/parking	Design/appearance	Context	Location	Height	Benefit to Dunedin?	Oppose	Neutral	Support	
1. Tom Rutherford																																	1
2. Ruth Houghton																																	
3. Kathleen Aloniu																																	
4. Vivienne Cuff																																	
5. Hansborough Partnership																																	
6. David Ryan																																	2
7. Patricia Shaw																																	
8. John Madden																																	3
9. Carolyn Burns																																	
10. Timothy Marshall																																	
11. Ernest Jefferson Munro																																	
12. Image Services																																	4
13. Frances Ross																																	
14. E & M Hanan																																	
15. John Cutler (Cutler Investments)																																	5
16. Ulla Reyman																																	
17. Neville Butcher																																	
18. Jacqueline Fraser																																	6
19. Jennifer Frost																																	
20. Rosemary McQueen																																	
21. Roderick Keith Macleod																																	
22. Jacob Bosshard																																	
23. Tracy Sarah Jones																																	
24. Patricia Browne																																	
25. John Crump																																	
26. Mark Brunton C/O Erinic Investments Limited																																	7
27. Barry Graham Ward																																	
28. Peter Malcolm William Entwisle																																	
29. Carolyn Rennie																																	8
30. Stuart Laing																																	1
31. Hilary Hunt																																	
32. Sandy Ross																																	
33. Penelope Sell																																	
34. Richard Roberts																																	9
35. Rod McMeeken																																	
36. Caroline Hensley																																	
37. Gavin Turner																																	
38. Wendy Turner																																	
39. Madeleine McCoy																																	
40. John & Nicola Ferguson																																	
41. Lucy Marr																																	
42. Yolanda van Heezik																																	
43. Phil Seddon																																	
44. Jocelyn Harris																																	
45. William Burton																																	
46. Judith Burton																																	
47. Andrea Wilson																																	

NZ Horizons Hospitality Group Limited Moray Place Hotel Application ~ Commissioners' Decision 29 September 2017

[illegible]

[illegible]

[illegible]

Added Income	
Tourism	
Reverse sensitivity	
Noise	
Job creation	
Detract from area	
Zoning of land	
Financial issues hotel	
Plan integrity issues	
Sustainability	
Hazards	
Earthworks	
Applicant identity	
Economic benefit	
Infrastructure capacity	
Heritage	
Devlopmt of CBD	
Set's precedent	
Visual impact	
Mind effects	
Shading	
Pollution	
Connectivity	
Transport effects/parking	
Design/Appearance	
Context	
Correct site?	
Height	
Benefit to Dunedin?	
Response	
Neutral	
Benefit	

Appendix 2 – Plans



**DUNEDIN MORAY PLACE HOTEL -
HEIGHT / MASS OPTION
MORAY PLACE, DUNEDIN
CONTEXT PLAN**

DATE: 16/06/2017 NOT TO SCALE

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DUNEDIN MORAY PLACE HOTEL -
HEIGHT / MASS OPTION
MORAY PLACE, DUNEDIN

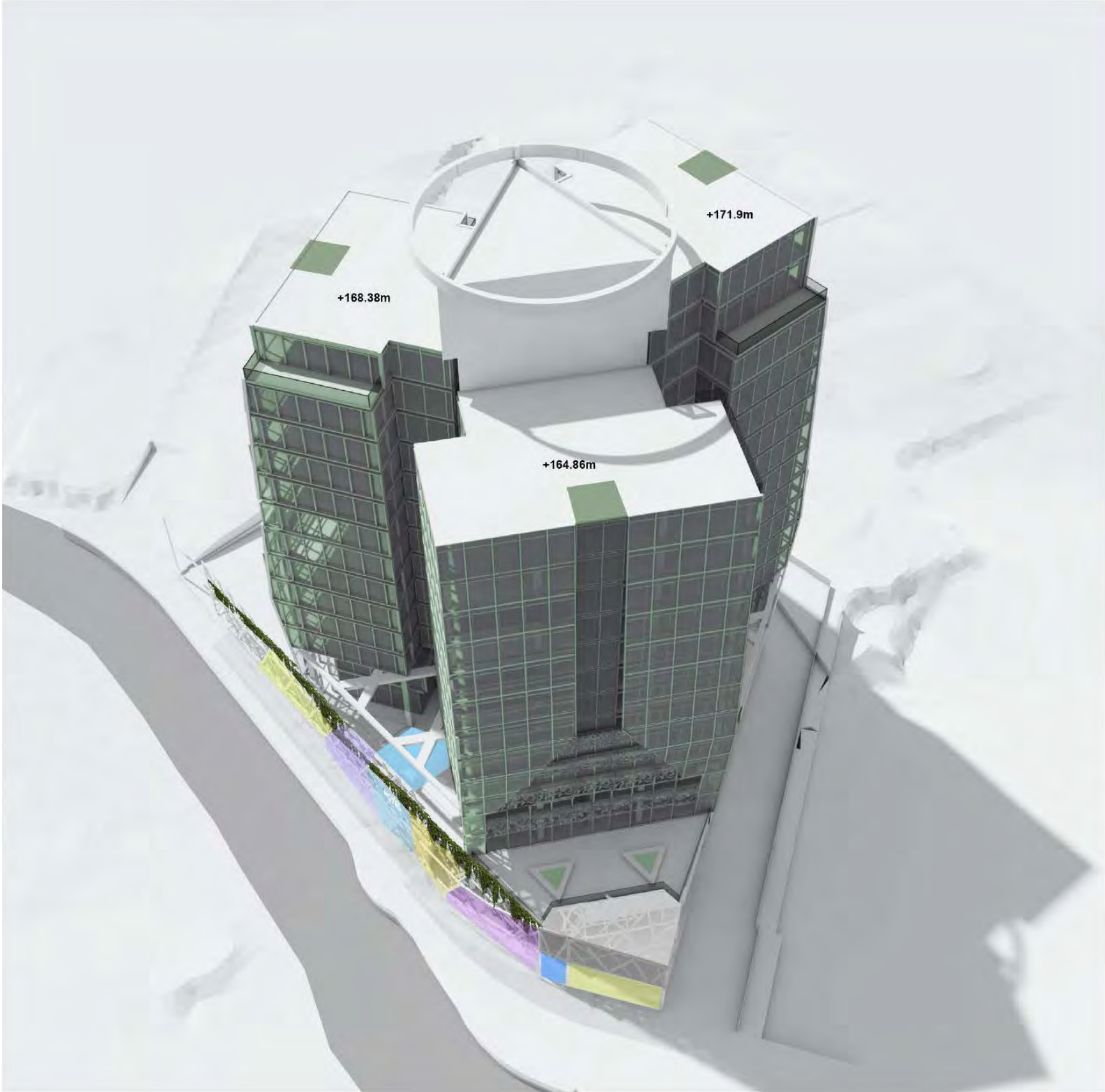
Perspective

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DUNEDIN MORAY PLACE HOTEL -
HEIGHT / MASS OPTION
MORAY PLACE, DUNEDIN

Perspective

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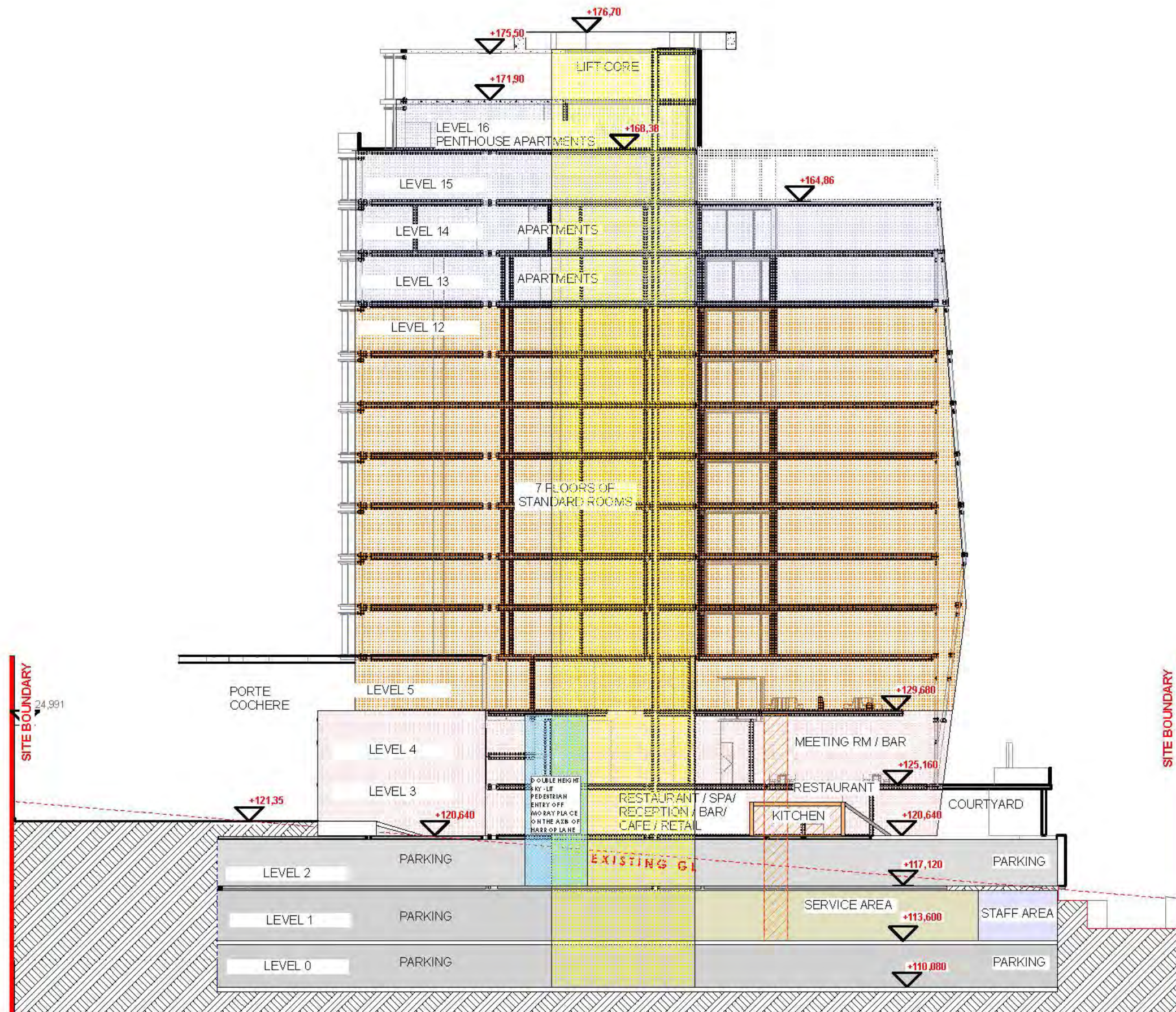


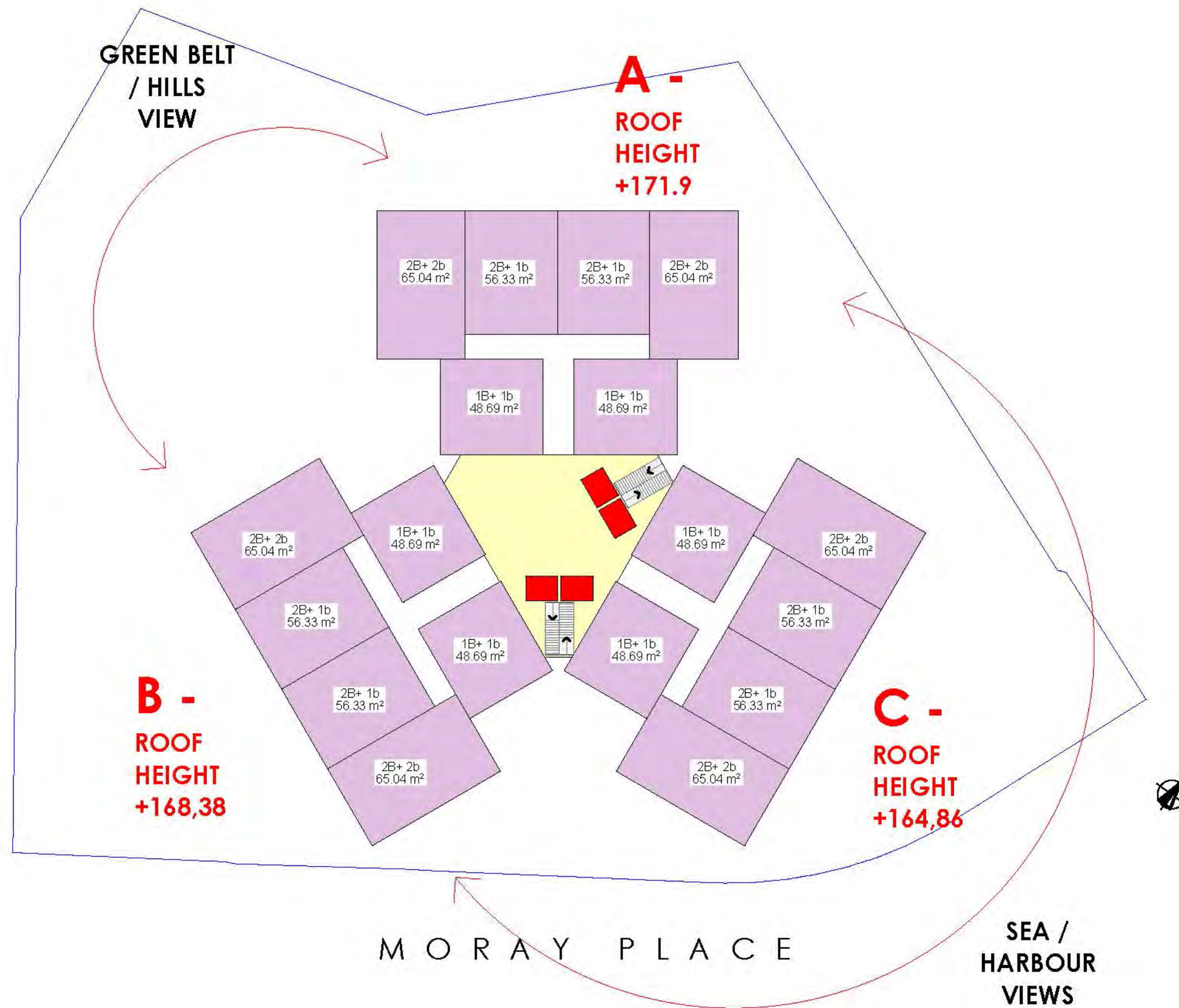
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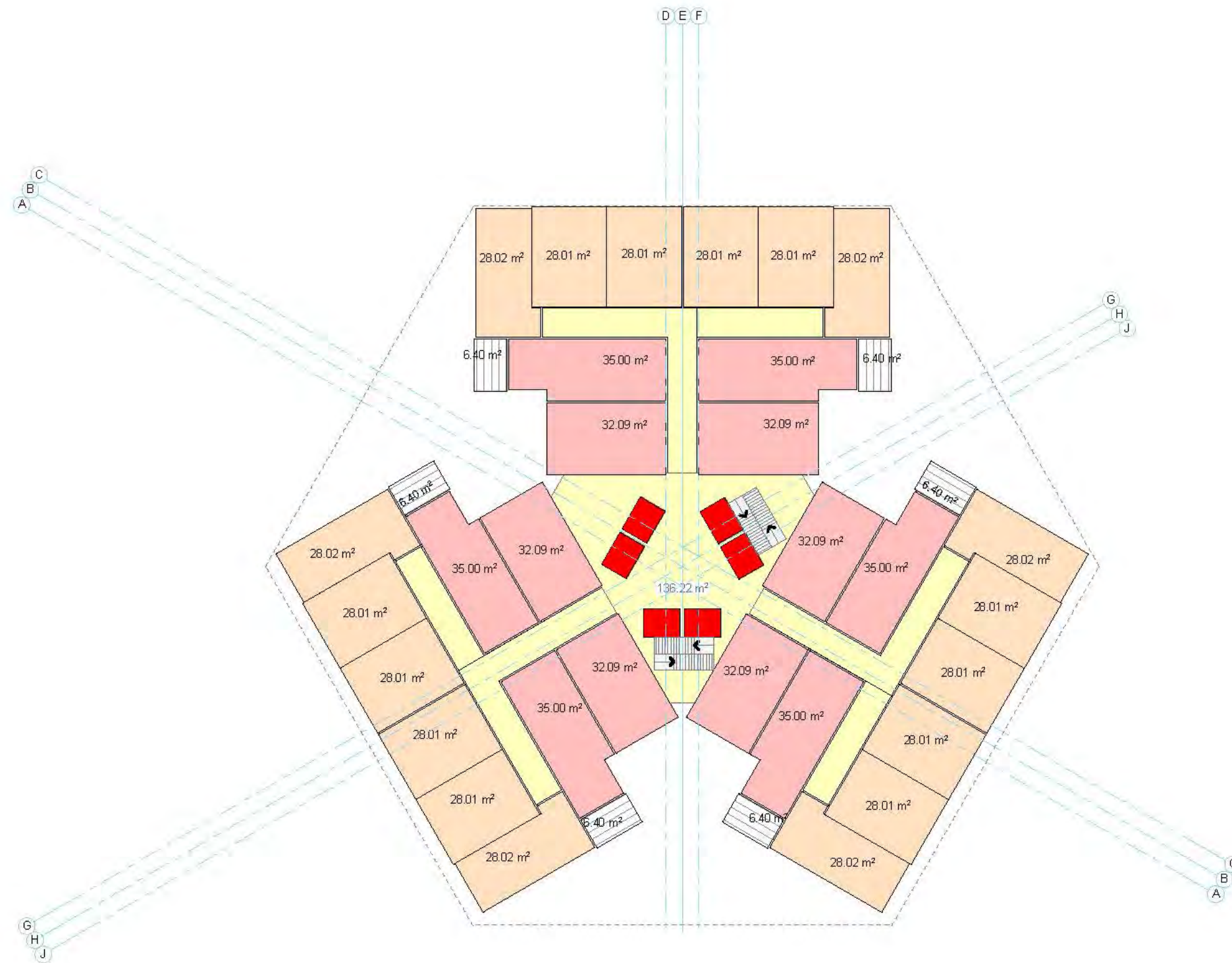
DUNEDIN MORAY PLACE HOTEL -
HEIGHT / MASS OPTION
MORAY PLACE, DUNEDIN
LEVEL 13- 16 TYPICAL PLAN
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LEVEL 5 - 12 TYPICAL PLAN



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HEIGHT / MASS OPTION
MORAY PLACE, DUNEDIN
LEVEL 5-12 TYPICAL PLAN
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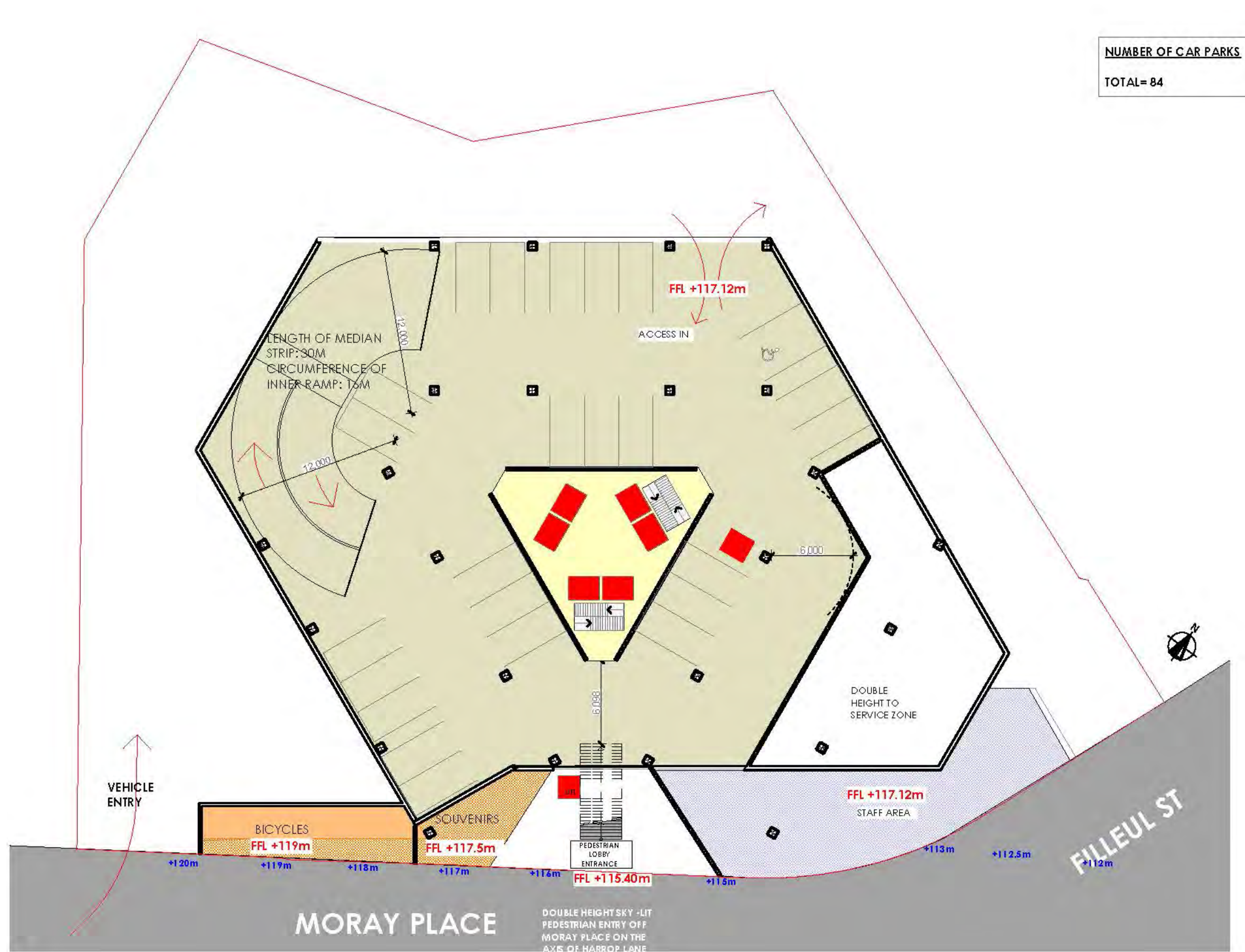
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DUNEDIN MORAY PLACE HOTEL -
HEIGHT / MASS OPTION
MORAY PLACE, DUNEDIN
LEVEL 2

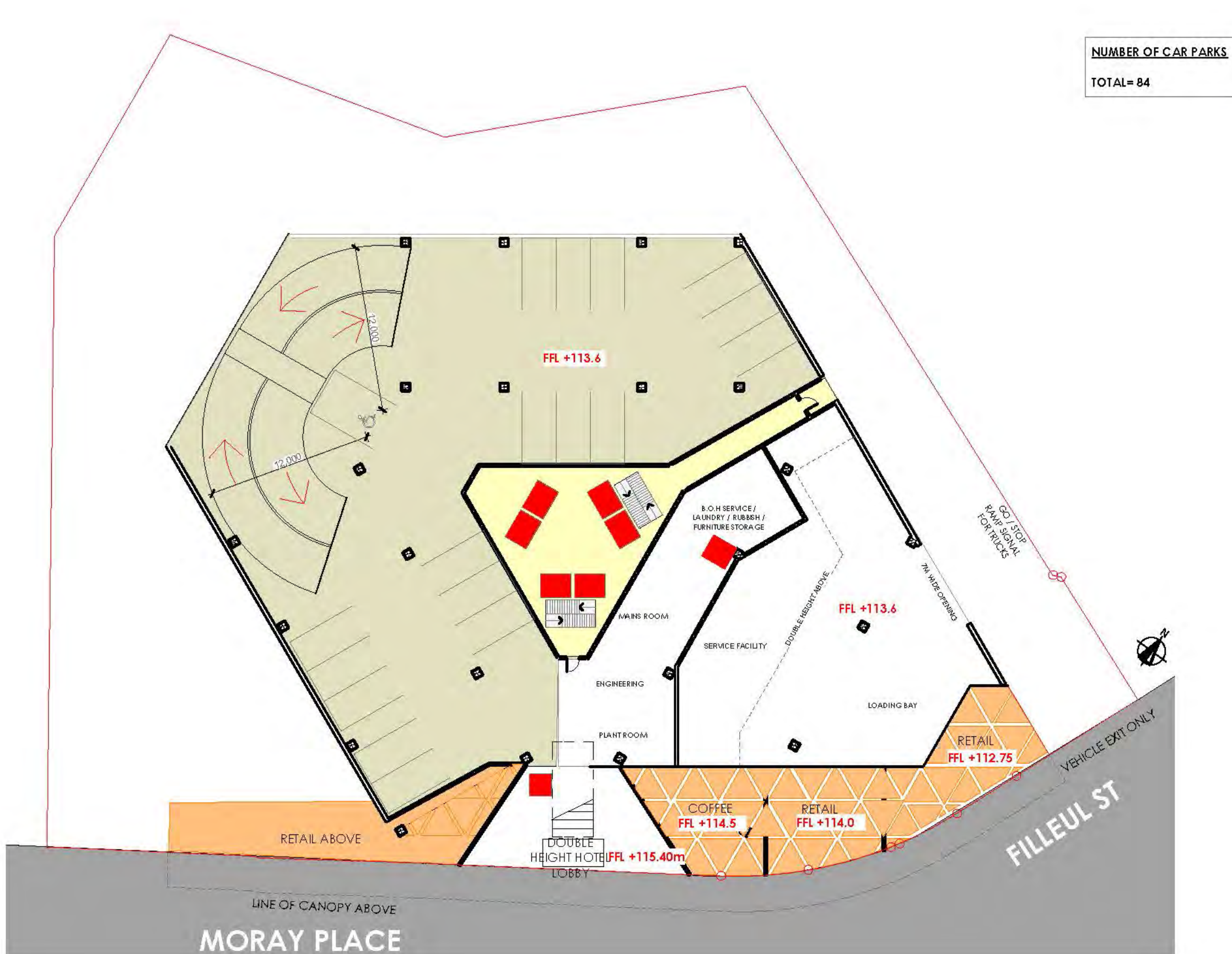
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DUNEDIN MORAY PLACE HOTEL -
HEIGHT / MASS OPTION
MORAY PLACE, DUNEDIN
LEVEL 1

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TOTAL= 84



NZ HORIZON
HOSPITALITY GROUP

DUNEDIN MORAY PLACE HOTEL -
HEIGHT / MASS OPTION
MORAY PLACE, DUNEDIN
LEVEL 0

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Appendix 3 – Analysis of Objectives and Policies

LUC 2017-48 & SUB 2017-26 – PROPOSED MORAY PLACE HOTEL

Assessment of the proposal in terms of the Objectives and Policies of the District Plans

NB: Objectives and policies listed are those cited in the Sec42A Report and during evidence presented at the hearing, including responses to questions from the Panel

Objective/Policy	What it says (full text set out below except for two policies and an objective of the Proposed District Plan where sub-clauses not relevant to proposal+)	Assessment of the proposal			
		Sec42A Writer: Mr Bryce	Report Mr Anderson	Applicant's Planning Witness: Mr Taylor	Planning Witness for submitter: Mr Taylor
Operative District Plan					
Sustainability					
Objective 4.2.1	Enhance the amenity values of Dunedin.	Contrary	Acknowledged that the objectives and policies for sustainability set an overarching direction for the City, but they are superseded (given effect) by the objectives and policies for the zones	Contrary due to significant adverse impact of visual dominance and shading effects on surrounding public areas and Kingsgate Hotel	While this is an important overarching objective it is very broadly couched and we agree with Mr Anderson that this objective needs to be interpreted with reference to the more specific zone based objectives and policies
Policy 4.3.1	Maintain and enhance amenity values.	Contrary	As Above	Contrary for reasons noted above	As above
Objective 4.2.2	Ensure that the level of infrastructural services provided is appropriate to the potential density and intensity of development and amenity values of the area.	Consistent	As Above	Concur with Sec42A report	Agree
Objective 4.2.3	Sustainably manage infrastructure.	Consistent	As Above	Concur with Sec42A report	Agree

Objective/Policy	What it says (full text set out below except for two policies and an objective of the Proposed District Plan where sub-clauses not relevant to proposal+)	Assessment of the proposal				
		Sec42A Writer: Mr Bryce	Report	Applicant's Planning Witness: Mr Anderson	Planning Witness for submitter: Mr Taylor	Our Finding
Policy 4.3.2	Avoid developments which will result in the unsustainable expansion of infrastructure services.	Consistent		As Above	Concur with Sec42A report	Agree
Policy 4.3.5	Require the provision of infrastructure services at an appropriate standard.	Consistent		As Above	Concur with Sec42A report	Agree
Policy 4.3.3	Promote the renovation and redevelopment of those sites within existing urban areas where there is under-utilisation of urban service infrastructure.	Consistent		As Above	Concur with Sec42A report	Agree
Policy 4.3.7	Use zoning to provide for uses and developments which are compatible within identified areas.	Consistent		As Above	Concur with Sec42A report	Agree
Policy 4.3.8	Avoid the indiscriminate mixing of incompatible uses and developments.	Consistent		As Above	Concur with Sec42A report	Agree
Manawhenua						
Objective 5.2.1	Take into account the principles of the Treaty of Waitangi in the management of the City's natural and physical resources.	Consistent		No specific comment	Concur with Sec42A report	Agree

Objective/Policy	What it says (full text set out below except for two policies and an objective of the Proposed District Plan where sub-clauses not relevant to proposal+)	Assessment of the proposal				
		Sec42A Writer: Mr Bryce	Report	Applicant's Planning Witness: Mr Anderson	Planning Witness for submitter: Mr Taylor	Our Finding
Policy 5.3.2	Advise Manawhenua of applications for notified resource consents, plan changes and designations.	Consistent		No specific comment	Concur with Sec42A report	Agree
Central Activity Zone						
Objective 9.2.1	Provide for business, recreational, social, cultural, religious and commercial activities in the Central Activity Zone and Local Activity Zones and enhance the amenity there to make them pleasant for people.	Consistent		Considered relevant and stated that proposal consistent in evidence	Concur with Sec42A report	Agree
Policy 9.3.1	Provide for a compatible mix of business, social, cultural, religious and commercial activities in Activity Zones.	Consistent		Given assessment of 9.2.1 implicit that considered consistent.	Concur with Sec42A report	Agree
Policy 9.3.6	Require, where necessary, the formation of service lanes in Activity Zones, to provide off-street access and loading to activities.	Consistent		No specific comment.	Concur with Sec42A report	Agree
Policy 9.3.7	Require verandah on premises within identified pedestrian frontages in the Central and Local Activity Zones.	Consistent		No specific comment on policy although verandah requirement addressed in evidence.	Concur with Sec42A report	Agree

Objective/Policy	What it says (full text set out below except for two policies and an objective of the Proposed District Plan where sub-clauses not relevant to proposal+)	Assessment of the proposal			
		Sec42A Report Writer: Mr Bryce	Applicant's Planning Witness: Mr Anderson	Planning Witness for submitter: Mr Taylor	Our Finding
Objective 9.2.3	Avoid, remedy or mitigate the adverse effects of activities undertaken in the Inner-City Area and Local Activity Zones.	Contrary to objective as adverse effects of proposal cannot be mitigated. Noted that related more directive and gives effect to objective. Explanation of objective important to assessment, as well as broader direction of sustainability objectives.	Considered relevant and that objective should be considered in the realm. Implied that proposal not contrary to objective. Related policies sit under the objective and must be assessed in this context in light of Davidson decision Where there is a contrast concerning directive objective overrides policy.	Contrary as proposal does not avoid, remedy or mitigate adverse effects on Central Activity Zone amenity values. When consider effects of proposal need to consider everything including the location.	Agree that this is a relevant and important/key objective and that our analysis is some effects of the proposal cannot be avoided, remedied or mitigated.
Policy 9.3.3	Enhance amenity values in the Central Activity Zone.	Contrary to policy as amenity values are not enhanced. acknowledged that policy more directive than objective and a tough test. Explanation of policy and objective important to assessment, as well as broader direction of sustainability objectives.	Considered that policy is too directive, as enhance goes further than the objectives it relates to. Enhancement should not be considered in a black and white situation, given broader direction of objective to avoid, remedy or mitigate effects.	Contrary for reasons above, and noted that considerations include protection of townscape values and admission to sunlight. When consider effects of proposal need to consider everything including the location.	This policy sits under both Objectives 9.2.3 and 9.2.5 which are contradictory objectives in relation to the proposal
Policy 9.3.4	Avoid, remedy or mitigate the adverse effects of car parking for large scale retail or commercial residential activities within the Central Parking Area	Effects of parking addressed but policy not specifically addressed in assessment (part of the subject land is situated within the Central Parking	Not specific comments on policy	No specific comments on policy	Not addressed by any of the Planners but potentially inconsistent, however the Council is actively promoting this area as a 5-star hotel location and our view is they

Objective/Policy	What it says (full text set out below except for two policies and an objective of the Proposed District Plan where sub-clauses not relevant to proposal +)	Assessment of the proposal			
		Sec42A Report Writer: Mr Bryce	Applicant's Planning Witness: Mr Anderson	Planning Witness for submitter: Mr Taylor	Our Finding
		Area shown on Map 35A)			have the responsibility to mitigate central city car parking effects that may arise.
Objective 9.2.5	Ensure that the Central Activity and Local Activity Zones continue to develop as 'people places'.	Inconsistent	Considered relevant and objective should be considered in the realm. Related policies sit under the objective and must be assessed in this context in light of Davidson decision. Where there is a contrast concerning directive objective overrides policy.	Concur with Sec42A report	This is an important / key objective. We disagree with the Section 42A report that the proposal is inconsistent with this objective, considering the explanation of the objective that discusses the fact that people bring "vitality and vibrancy" to activity areas.
Objective 9.2.6	Avoid conflict between pedestrian and vehicle use in the Activity Zones,	Consistent	Considered relevant and implied that consistent.	Concur with Sec42A report	Agree
Policy 9.3.5	Avoid vehicle crossings providing access to and egress from sites along 'Identified Pedestrian Frontages'.	Consistent	No specific comment. General contention above that policy must be assessed in context of objective.	Concur with Sec42A report	Agree
Townscape					
Objective 13.2.5	Ensure that the character of significant townscape and heritage precincts is	Contrary	Contended that some of the Townscape provisions no longer operative, but	Contrary as significant adverse effects due to shading and visual	Agree this is a key/important objective and our

Objective/Policy	What it says (full text set out below except for two policies and an objective of the Proposed District Plan where sub-clauses not relevant to proposal+)	Assessment of the proposal				
		Sec42A Writer: Mr Bryce	Report	Applicant's Planning Witness: Mr Anderson	Planning Witness for submitter: Mr Taylor	Our Finding
	maintained or enhanced.			we were not clear as to this witnesses view on this also extended to the objectives and policies?	dominance on Moray Place and Octagon Townscape precincts, and out of character with values of precincts.	findings in Part 6 of our Decision is that on an effects basis there will be significant adverse effects on the character of the area. We disagree with Mr Anderson that some of the Townscape provisions of the Operative Plan are no longer operative.
Policy 13.3.4	Protect and enhance the heritage and townscape values of the following precincts: (i) North Dunedin Residential (ii) The Octagon (iii) North Princes Street/Moray Place/Exchange Townscape (iv) South Princes Street (v) Crawford Street (vi) South Dunedin (vii) St Clair Esplanade (viii) Campus (ix) Royal Terrace/Pitt Street/Heriot Row (x) George Street (xi) Lower Stuart Street (xii) Anzac Square/Railway Station (xiii) Queens Gardens (xiv) Vogel Street	Contrary		As above	Contrary for reasons noted above.	As above.

Objective/Policy	What it says (full text set out below except for two policies and an objective of the Proposed District Plan where sub-clauses not relevant to proposal+)	Assessment of the proposal				
		Sec42A Writer: Mr Bryce	Report	Applicant's Planning Witness: Mr Anderson	Planning Witness for submitter: Mr Taylor	Our Finding
	(xv) High Street (xvi) Port Chalmers (xvii) Willowbank.					
Objective 13.2.6	Ensure that development (including alterations and additions to buildings) does not adversely affect the character and amenity of the central City precincts.	Contrary		As above	Contrary for reasons noted above.	Agree this is an important/key objective and that our findings in Section 6 of our decision demonstrates that there will be adverse effects on the character and amenity of parts of the central City precincts.
Policy 13.3.5	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.	Contrary		As above	Contrary for reasons noted above.	As above
Policy 13.3.7	Exclude signs which adversely impact upon the townscape or heritage values of buildings or precincts.	Contrary		As above	Concur with Sec42A report	Disagree that the proposal includes signs that are contrary to this policy.
Subdivision						

Objective/Policy	What it says (full text set out below except for two policies and an objective of the Proposed District Plan where sub-clauses not relevant to proposal+)	Assessment of the proposal			
		Sec42A Writer: Mr Bryce	Report Mr Anderson	Applicant's Planning Witness: Mr Taylor	Planning Witness for submitter: Mr Taylor
Objective 18.2.1	Ensure that subdivision activity takes place in a coordinated and sustainable manner throughout the City.	Consistent	No specific comment	Concur with Sec42A report	Agree
Policy 18.3.3	Allow the creation of special allotments that do not comply with the subdivision standards for special purposes.	Consistent	No specific comment	Concur with Sec42A report	Agree
Policy 18.3.6	Control foul effluent disposal and adequately dispose of stormwater to avoid adversely affecting adjoining land.	Consistent	No specific comment	Concur with Sec42A report	Agree
Objective 18.2.2	Ensure that the physical limitations of land and water are taken into account at the time of the subdivision activity.	Consistent	No specific comment	Concur with Sec42A report	Agree
Objective 18.2.3	Ensure that the potential uses of land and water are recognised at the time of the subdivision activity.	Consistent	No specific comment	Concur with Sec42A report	Agree
Policy 18.3.4	Subdivision activity consents should be considered together with appropriate land use consent and be heard jointly.	Consistent	No specific comment	Concur with Sec42A report	Agree

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		Sec42A Writer: Mr Bryce	Report	Applicant's Planning Witness: Mr Anderson	Planning Witness for submitter: Mr Taylor	Our Finding
Objective 18.2.6	Ensure that the adverse effects of subdivision activities and subsequent land use activities on the City's natural, physical and heritage resources are avoided, remedied or mitigated.	Consistent		No specific comment	Concur with Sec42A report	Agree
Objective 18.2.7	Ensure that subdividers provide the necessary infrastructure to and within subdivisions to avoid, remedy or mitigate all adverse effects of the land use at no cost to the community while ensuring that the future potential of the infrastructure is sustained.	Consistent		No specific comment	Concur with Sec42A report	Agree
Policy 18.3.7	Require the provision of all necessary access, infrastructure and services to every allotment to meet the reasonably foreseeable needs of both current and future development.	Consistent		No specific comment	Concur with Sec42A report	Agree
Policy 18.3.8	Control foul effluent disposal and adequately dispose of stormwater to avoid adversely affecting adjoining land.	Consistent		No specific comment	Concur with Sec42A report	Agree

Objective/Policy	What it says (full text set out below except for two policies and an objective of the Proposed District Plan where sub-clauses not relevant to proposal+)	Assessment of the proposal				
		Sec42A Writer: Mr Bryce	Report	Applicant's Planning Witness: Mr Anderson	Planning Witness for submitter: Mr Taylor	Our Finding
Transportation						
Objective 20.2.1	Avoid, remedy, or mitigate adverse effects on the environment arising from the establishment, maintenance, improvement and use of the transportation network.	Consistent		No specific comment	Concur with Sec42A report	Agree
Policy 20.3.1	Avoid, remedy or mitigate the adverse effects on the environment of establishing, maintaining, improving or using transport infrastructure.	Consistent		No specific comment	Concur with Sec42A report	Agree
Policy 20.3.3	Provide for activities on roads and footpaths where this: (a) is compatible with the function of the road. (b) Is safe for road users and pedestrians. (c) Has no more than minor adverse effects.	Consistent		No specific comment	Concur with Sec42A report	Agree
Objective 20.2.2	Ensure that land use activities are undertaken in a manner which avoids, remedies or mitigates adverse effects on the transportation network.	Consistent		No specific comment	Concur with Sec42A report	Agree
Policy 20.3.4	Ensure traffic generating activities do not adversely affect the safe, efficient and	Consistent		No specific comment	Concur with Sec42A report	Agree

Objective/Policy	What it says (full text set out below except for two policies and an objective of the Proposed District Plan where sub-clauses not relevant to proposal+)	Assessment of the proposal				
		Sec42A Writer: Mr Bryce	Report	Applicant's Planning Witness: Mr Anderson	Planning Witness for submitter: Mr Taylor	Our Finding
	effective operation of the roading network.					
Objective 20.2.4	Maintain and enhance a safe, efficient and effective transportation network.	Consistent		No specific comment	Concur with Sec42A report	Agree
Policy 20.3.5	Ensure safe standards for vehicle access.	Consistent		No specific comment	Concur with Sec42A report	Agree
Policy 20.3.8	Provide for the safe interaction of pedestrians and vehicles.	Consistent		No specific comment	Concur with Sec42A report	Agree
Environmental Issues						
Objective 21.2.2	Ensure that noise associated with the development of resources and the carrying out of activities does not affect public health and amenity values.	Consistent		No specific comment	Concur with Sec42A report	Agree
Objective 21.2.3	Ensure that the finishing of structures, the construction of signs and the shielding of light sources avoids, remedies or mitigates nuisance glare.	Consistent		No specific comment	Concur with Sec42A report	Agree
Policy 21.3.3	Protect people and communities from noise and glare which could impact upon health, safety and	Consistent		No specific comment	Concur with Sec42A report	Agree

Objective/Policy	What it says (full text set out below except for two policies and an objective of the Proposed District Plan where sub-clauses not relevant to proposal+)	Assessment of the proposal			
		Sec42A Writer: Mr Bryce	Report Mr Anderson	Applicant's Planning Witness: Mr Taylor	Planning Witness for submitter: Our Finding
	amenity.				

Objective/Policy	What it says (full text set out below except for two policies and an objective of the Proposed District Plan where sub-clauses not relevant to proposal+)	Assessment of the proposal				
		Sec42A Writer: Mr Bryce	Report	Applicant's Planning Witness: Mr Anderson	Planning Witness for submitter: Mr Taylor	Our Finding
Proposed District Plan						
Strategic Direction						
Objective 2.2.4	Dunedin stays a compact and accessible city with resilient townships based on sustainably managed urban expansion. Urban expansion only occurs if required and in the most appropriate form and locations.	Consistent		No specific comment	Concur with Sec42A report	Agree
Policy 2.2.4.2	Encourage new residential housing development in the central city and larger centres, through: a. the use of mixed-use zoning that provides for residential development in the central city and centres;+	Consistent		No specific comment	Concur with Sec42A report	Agree
Objective 2.3.2	Dunedin has a hierarchy of vibrant centres anchored around one Central Business District (CBD), which provides a focus for economic and employment growth, driven by: a. an attraction of business to these areas based on the high level of amenity and density of activities in the area:	Consistent		No specific comment but evidence implies that proposal consistent with direction given.	Concur with Sec42A report	This is an important/key Objective and we agree the proposed activity is consistent with this objective

Objective/Policy	What it says (full text set out below except for two policies and an objective of the Proposed District Plan where sub-clauses not relevant to proposal +)	Assessment of the proposal			
		Sec42A Writer: Mr Bryce	Report Mr Anderson	Applicant's Planning Witness: Mr Taylor	Planning Witness for submitter: Mr Taylor
	b. opportunities for social interaction, exchange of ideas and business cooperation; c. public investment in public amenities and other infrastructure in the CBD; and d. opportunities for agglomeration benefits form the co-location of activities.				
Policy 2.3.2.1	Identify and protect the existing hierarchy of centres in Dunedin, which includes: a. the CBD including the commercial core of the city centred around George Street, the Octagon, Princes Street to the Exchange and connecting down to the Railway Station;+	Consistent	No specific comment but evidence implies that proposal consistent with direction given.	Concur with Sec42A report	This is an important/key Policy and we agree the proposed activity is consistent with this policy
Objective 2.4.1	The elements of the urban environment that contribute to residents' and visitors' aesthetic appreciation for and enjoyment of the city are protected and enhanced. These include: a. important green and other open spaces; b. trees that make a significant contribution to the visual landscape and history of	Contrary	No specific comment apart from implied reference from comments on related policy 2.4.1.4 that objective is not contrary.	Concur with Sec42A report	Agree this is an important/key Objective and the proposal will be contrary to some of these aspects, based on our assessment

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	neighbourhoods; c. built heritage; d. important visual landscapes and vistas; e. the amenity and aesthetic coherence of different urban environments; and f. the compact and accessible form of Dunedin.				
Policy 2.4.1.4	Identify and protect key aspects of the visual relationship between the city and its natural environment or heritage buildings and landmarks through rules that: a. restrict the height of buildings along the harbourside to maintain views from the central city and Dunedin's inner hill suburbs across the upper harbour toward the Otago Peninsula; and b. manage the height of buildings in the CBD to maintain a primarily low-rise heritage cityscape.	Contrary	Contended that proposal is not contrary to policy and implied that consistent. The proposal is consistent with the heights of the buildings in CBD and caution needs to be exercised as the objective can be read as going much farther than objective 2.4.1 from which it is derived. The CBD is not a historical museum of "low rise heritage city scape", and it is not understood how as a consequence of development of site CBD would cease to have a primarily low-rise heritage cityscape. Given lack of certainty and contrast with objectives about vibrancy of CBD little	Concur with Sec42A report	Agree this is an important/key policy and that the proposal will be contrary to some elements based on our own assessment.

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		Sec42A Writer: Mr Bryce	Report Mr Anderson	Applicant's Planning Witness: Mr Taylor	Planning Witness for submitter: Mr Taylor
			weight should be given to 2GP provisions.		
Central Business District					
Objective 18.2.1	Dunedin has a well-structured and economically and socially successful range of commercial and mixed-use environments based on: a. the CBD, which is the focus for employment, retail, entertainment, leisure, visitor accommodation, and arts and culture activities;+	Consistent	No specific comment	Concur with Sec42A report	Agree
Policy 18.2.1.1	Provide for a wide range of commercial, residential and community activities in the CBD and in all centre zones in order to encourage vibrant and viable centres.	Consistent	No specific comment	Concur with Sec42A report	Agree
Objective 18.2.2	The potential for conflict between activities within the commercial and mixed use zones, including residential activity and noisier activities, and between activities within the commercial and mixed use zones and sensitive land uses in the adjoining	Not Assessed as relevant	One of two objectives for the zone considered relevant to the proposal. Evidence indicates that proposal considered to be consistent with this objective.	Not referred to in evidence	This Objective does not seem to be particularly relevant in our opinion.

Objective/Policy	What it says (full text set out below except for two policies and an objective of the Proposed District Plan where sub-clauses not relevant to proposal +)	Assessment of the proposal			
		Sec42A Writer: Mr Bryce	Report Mr Anderson	Applicant's Planning Witness: Mr Taylor	Planning Witness for submitter: Mr Taylor
	residential and recreation zones is minimised through adequate separation distances and other mitigation measures which ensure: a. The amenity of adjoining residential and recreation zone sites is maintained; and b. the potential for reverse sensitivity effects from more sensitive land uses (for example residential activities) on other permitted activities in the commercial and mixed use zones is minimised				
Policy 18.2.2.1	Require fencing along property boundaries that adjoin residential or school zoned properties, to be of an adequate height and design to provide screening for the purposes of privacy and security.	Not Assessed as relevant	Implicit in comments in evidence that proposal not contrary to policy.	Not referred to in evidence	This Policy does not seem to be particularly relevant in our opinion
Policy 18.2.2.3	Require development to maintain the amenity of adjoining residential, school and recreation zoned sites, by:	Not Assessed as relevant	As Above	Not referred to in evidence	This Policy does not seem to be particularly relevant in our opinion

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		Sec42A Writer: Mr Bryce	Report	Applicant's Planning Witness: Mr Anderson	Planning Witness for submitter: Mr Taylor	Our Finding
	a. requiring buildings to be of a height in relation to boundaries and setback from side boundaries that maintains a reasonable level of sunlight access to adjoining residential and recreation zoned sites;and b. require fencing along property boundaries which adjoin residential or school zoned properties, to provide screening for the purposes of privacy and security.					
Objective 18.2.3	Land use and development maintains or enhances the amenity of the streetscape, including the visual and environmental amenity for pedestrians along identified pedestrian street frontages	Contrary		One of two objectives for the zone considered relevant to the proposal. Evidence indicates that proposal considered to be consistent with this objective.	Concur with Sec42A report	While the proposal does maintain and potentially enhance the streetscape through the introduction of an active frontage to Moray Place and Filleul Street, the proposal has potential to generate adverse wind affects for pedestrians, which have not been adequately assessed so on balance we consider the proposal is inconsistent with,

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		Sec42A Writer: Mr Bryce	Report	Applicant's Planning Witness: Mr Anderson	Planning Witness for submitter: Mr Taylor	Our Finding
	glazing.					
Policy 18.2.3.3	Require buildings in a secondary pedestrian street frontage to provide a good level of pedestrian amenity by: a. providing a regular frontage of buildings along the street, with limited interruptions for vehicle accesses; b. providing a clear and direct visual connection between the street and the building interior; c. providing an architecturally interesting façade and human scale design, through building modulation and consistent alignment of windows; and d. providing shelter for pedestrians at pedestrian entrances.	Not specifically addressed in assessment	Not addressed in assessment	Not addressed in assessment		Not assessed by any of the planners, but our assessment is that the proposal is consistent with this policy.
Objective 18.2.4	Ensure earthworks necessary for permitted or approved land use and development are enabled, while avoiding, or adequately mitigating, any adverse effects on: a. Visual amenity and character;	Consistent	No specific comment	Concur with Sec42A report		Agree

Objective/Policy	What it says (full text set out below except for two policies and an objective of the Proposed District Plan where sub-clauses not relevant to proposal+)	Assessment of the proposal				
		Sec42A Writer: Mr Bryce	Report Mr Anderson	Applicant's Planning Witness: Mr Taylor	Planning Witness for submitter: Mr Taylor	Our Finding
	b. The stability of land, buildings, and structures; and c. Surrounding properties.					
Policy 18.2.4.1	Require earthworks, and associated retaining structures, to be designed and located to avoid adverse effects on the stability of land, buildings, and structures by: a. being set back an adequate distance from property boundaries, buildings, structures and cliffs; and b. using a batter gradient that will be stable over time.	Consistent	No specific comment	Concur with Sec42A report	Agree	
Policy 18.2.4.3	Only allow earthworks that exceed the scale thresholds (earthworks - large scale) and any associated retaining structures, where all of the following effects will be avoided or, if avoidance is not possible, adequately mitigated: a. adverse effects on visual amenity and character; b. adverse effects on the amenity of surrounding	Consistent	No specific comment	Concur with Sec42A report	Agree	

Objective/Policy	What it says (full text set out below except for two policies and an objective of the Proposed District Plan where sub-clauses not relevant to proposal +)	Assessment of the proposal			
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	properties, including from changes to drainage patterns; and c. adverse effects on the stability of land, buildings, and structures.				
Transportation					
Objective 6.2.3	Land use, development and subdivision activities maintain the safety and efficiency of the transport network for all travel methods.	Consistent	No specific comment	Concur with Sec42A report	Agree
Policy 6.2.3.3	Require land use activities to provide adequate vehicle loading and manoeuvring space to support their operations and to avoid or, if avoidance is not possible, adequately mitigate adverse effects on the safety and efficiency of the transport network.	Consistent	No specific comment	Concur with Sec42A report	Agree
Policy 6.2.3.4	Require land use activities to provide the amount of car parking space necessary to ensure that any overspill parking effects that could adversely affect the safety and efficiency of the transport network are avoided or, if avoidance is	Consistent	No specific comment	Concur with Sec42A report	Agree

Objective/Policy	What it says (full text set out below except for two policies and an objective of the Proposed District Plan where sub-clauses not relevant to proposal +)	Assessment of the proposal			
		Sec42A Report Writer: Mr Bryce	Applicant's Planning Witness: Mr Anderson	Planning Witness for submitter: Mr Taylor	Our Finding
	not possible, adequately mitigated.				
Policy 6.2.3.9	Only allow land use, development, or subdivision activities that may lead to land use or development, where there are no significant effects on the safety and efficiency of the transport network.	Consistent	No specific comment	Concur with Sec42A report	Agree

