

11 February 2019

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BY EMAIL
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Attention Boyd Wilson

Dear Boyd

HWCP Management Ltd - changes to resource consent application

1. HWCP Management Ltd (**HWCP**) made a resource consent application in October 2018 regarding the re-development of central Invercargill and in particular the block bounded by Tay, Dee, Esk and Kelvin Streets (the **Application**).
2. The Application was publicly notified, and submissions closed on the application on 16 November 2018. We understand that HWCP wishes to make amendments to the Application so that while it is still seeking resource consent to re-develop the block with a range of dining, retail, office, residential and other opportunities, as well as carparking, there are some changes proposed.
3. You have sought our view on whether the changes are within the scope of the Application and we advise accordingly.

Summary of advice

4. In summary, we consider that the changes are within the scope of the Application. We have reached that conclusion for the following reasons:
 - (a) Fundamentally, the Application remains an application for the re-development of the block bounded by Tay, Dee, Esk and Kelvin Streets, with a range of dining, retail, office, residential and other opportunities, as well as carparking.
 - (b) Consideration has been given to whether the changes increase the scale or intensity of the activity, or exacerbate or mitigate the impacts of the activity. The changes largely require this to be assessed in terms of the following key areas:
 - (i) Heritage values; and
 - (ii) Visual and urban design considerations.
 - (c) The changes also have the potential to affect traffic and carparking.
 - (d) These areas have been assessed by the relevant expert assessments and which conclude that:
 - (i) Heritage values: there is a neutral effect to the scale or intensity of the activity with regards to heritage values.

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- (ii) Visual/urban design: the overall bulk and mass of the development is similar to or less than the originally proposed plans.
 - (iii) Traffic and carparking: these have been reassessed by Abley. Traffic generation has decreased slightly, and carparking remains acceptable.
- (e) In addition to that, a senior planner has considered whether the changes exacerbate or mitigate the impacts of the activity in terms of the planning documents, and whether the changes mean that parties who have not made submissions have done so if they were aware of the change. The assessment concludes that there is no effect on plan provisions from what was originally proposed, and that no additional submissions would result if the application had been notified with the design as proposed now - there are no new issues raised as a result of the revised plans (effects on heritage, mass and activities within the Business 1 Zone remain the same).
- (f) In terms of the relevant tests set out by the Environment Court in *Coull v Christchurch City Council*¹ and the assessments which have been carried out, we have not identified any changes which would warrant re-notification of the Application.
- (g) Accordingly, it is our view that the changes are within the scope of the Application and can be considered accordingly.
5. This matter will need to be canvassed in evidence presented at the resource consent hearing. In practical terms, the changes should be provided to the Council as further information in advance of the s 42A report, so that the Council is able to consider and report on the changes, and so that the submitters are appraised of the changes. Ideally, an early indication (including directions from the Hearings Panel if possible) on Council's position regarding scope can be obtained so that all parties involved in the resource consent hearing have clarity about whether the original or amended proposal is being considered.

Relevant background

6. The resource consent application lodged with the Council contained a 'Design Statement' from Buchan which included the plans associated with the development. The plans have been revised, and a revised Design Statement has been produced by Buchan titled "Resource Consent Amendment, 29 January 2019" (the **Resource Consent Amendment**).
7. The Resource Consent Amendment helpfully describes the changes which have been made to the proposal in a "Summary of Changes, Description of Revisions to Design from 15 Oct Submission" (the **Changes**).² This includes a summary description of the changes, as well as a line-by-line (plan-by-plan) description. This information includes the changes which have been made to carparking numbers (by floor and overall), and where heights have been increased. It also considers on page 5 whether the Changes increase the scale or intensity of the activity, or exacerbate or mitigate the impacts of the activity.
8. The Resource Consent Amendment also contains the following plans which are helpful in understanding the Changes:

¹ EnvC Christchurch C77/06, 14 June 2006.

² Pages 5-6.

- (a) Amended Ordering (page 7);
 - (b) Street Scene Adjustment (page 18);
 - (c) Mass Adjustment plans for each of the Tay, Dee, Esk and Kelvin Streets (pages 19-22) which depict 'before and after' elevations;
 - (d) Car Park Screen plans (pages 26-28).
9. HWCP has also obtained the following additional assessment relating to the Changes:
- (a) Addendum from Heritage Properties Limited dated January 2019. This is a reassessment of the proposal *incorporating* the Changes rather than a comparison of the Changes against what was lodged. The Addendum includes a letter from Heritage Properties Limited dated 1 February 2019 which specifically lists the key heritage changes that were made to the proposal since it was notified, and forms a view on the impact of those changes in heritage terms.
 - (b) Invercargill Central Integrated Transport Assessment from Abley dated 11 February 2019 which is a reassessment based on the Changes (**Abley Report**).
 - (c) Letter from Bonisch Consultants dated 11 February 2018 (prepared by Christine McMillan, Senior Planner).

Relevant legal framework

10. We consider that the following two cases are the most relevant to the question of whether changes to a resource consent application are within the scope of the application originally lodged.

Darroch v Whangarei District Council

11. The Planning Tribunal in *Darroch v Whangarei District Council*³ considered two appeals arising from a proposal by the Mid Northern Rodeo Association for the use of stockyards for public auction sales of livestock. The appeals concern decisions by the local authorities regarding land-use and water and discharge consents. As part of the appeals, the Tribunal addressed whether amendments can be made to a resource consent application up to the close of a hearing.
12. The Tribunal held that the original application and any documents incorporated in it by reference defines the scope of the consent authority's jurisdiction. Amendments are only permissible if they are within the scope defined by the original application. A new application would be required if the amendments go beyond that scope by increasing the scale or intensity of the activity or proposed building or by significantly altering the character or effects of the proposal.

Coull v Christchurch City Council

13. The Environment Court in *Coull v Christchurch City Council*⁴ addressed an appeal relating to an application for land use consent to erect a dwelling. The Court considered whether a change in the position of the building platform was within the scope of the application and appeal.

³ (1993) 2 NZRMA 637.

⁴ EnvC Christchurch C77/06, 14 June 2006.

14. The Court concluded that three tests should be applied when considering whether an application amendment is within jurisdiction:
- (a) Does it increase the scale or intensity of the activity?
 - (b) Does it exacerbate or mitigate the impacts of the activity, both in terms of adverse effects and in terms of the Plan and other superior documents?
 - (c) Would parties who have not made submissions have done so if they were aware of the change?

Analysis

15. We have considered the Changes, and then considered more generally which of the Changes deserve closer attention in terms of the tests set out in *Coull*. We note for example, that revised overshadowing diagrams have been produced (revised plans 9700-9705) which identify that there is little or no additional overshadowing.⁵
16. Bonisch Consultants describe the “most significant changes” to the plans as:
- (a) Removal of the heritage facades on Tay Street (Fairweather building) and Kelvin Street (Thompson Building);
 - (b) Retention of the Cambridge Arcade façade on Esk Street;
 - (c) Reorganisation of car park building mass with reduced area over the site but an additional floor added;
 - (d) Increased height and area on the medical centre – Tay and Dee Street elevations;
 - (e) Removal of heritage images on Tay Street and inclusion of ‘southern lights’ screens on car park building.
17. We agree with that, and would add that the configuration of activities within the development has changed, and overall carparking numbers have been reduced, so consideration should be given to the traffic/carparking implications of the Changes.
18. We also note that *Coull* calls for assessment of the impacts of the amended activity in terms of the relevant planning documents, and consideration of whether parties who have not made submissions would have done so if they were aware of the change.
19. We now address each of these matters in turn.

Heritage values

20. Given that a key aspect of the Application is its effects on heritage values, it is important that this area is closely assessed. For that reason, Heritage Properties Limited have properly prepared a full reassessment of the development proposal as it now is (i.e. *incorporating* the Changes).
21. In our view this lends some weight to the assessment by Heritage Properties Limited (Dr Hayden Cawte) as to whether the changes increase the scale or intensity of the activity, or exacerbate or mitigate the impacts of the activity, in terms of heritage values.
22. Heritage Properties Limited consider that the following are the *key* heritage changes between the original proposal and the amended proposal:

⁵ Appendix/Shadow Studies to the Resource Consent Amendment.

- (a) Removal of heritage façade on Kelvin Street (Thomson’s Building, 18 Kelvin Street)
- (b) Removal of heritage façade on Tay Street (Fairweather’s Building, 58 Tay Street)
- (c) Removal of mitigation with the use of historic building facsimile on Tay Street
- (d) Removal of mitigation for total loss of street furniture by incorporating design of Fairweather verandah design into new verandah on retained façade (etched glass)
- (e) Retention of Cambridge Arcade façade (59-61 Esk Street)
- (f) Inclusion of recycled heritage building fabric (bricks) in food precinct design
- (g) Changes to mass of buildings either side of Southland Times building
- (h) Increase in scale of buildings to either side of the BNSW

23. In respect of these matters, Heritage Properties Limited state that:

In respect of those changes, we have carried out a reassessment of effects (Woods & Cropper, 2019). Subject to the mitigation and recommendations, we support the proposal.

On that basis, we have also considered whether the changes increase the scale or intensity of the activity, or exacerbate or mitigate the impacts of the activity, in terms of heritage values. Overall, we consider that, when compared to the earlier versions, the revised proposal delivers a neutral effect to the scale or intensity of the activity with regards to heritage values.

24. On this basis, we consider that the (heritage related) Changes to the Application are within the scope of the Application.

25. Of the heritage changes, we note that there has been a reconfiguration of what heritage facades are to be retained, so that rather than one façade being retained on each of the four streets in question, more facades are now to be retained on Esk Street. On this particular matter, the Addendum from Heritage Properties Limited states:⁶

Retaining three representative façades (two scheduled and one listed) on Esk Street has numerous benefits over keeping single examples on each frontage of Block II as previously proposed and assessed for effects in Woods et al. 2018. Having the three on the same street allows for members of the public to see them together and visualise the progression of Invercargill’s architectural heritage more easily. Having one or two

⁶ Page 24. And further:

Esk Street is the obvious choice for the locations of the retained façades, given previous recognition of its high quality heritage character and recent upgrades to the street itself to encourage pedestrianism. Farminer and Millar (2016), in their review of Invercargill’s built heritage, reaffirmed previous descriptions of the stretch of Esk Street between Dee and Kelvin Streets as a key heritage streetscape group and as one of the city’s ‘crown jewels’ thanks to its collection of well-preserved commercial heritage façades. Particular note was made in this report of the developments that have occurred on the north side of this street that sympathetically incorporated heritage features and frontages, and encouragement given to look here for inspiration during future developments elsewhere in the central city. Upgrades to this section of Esk Street, completed in 2015, included installation of seating, covered areas, planting boxes and paving designed to encourage people to spend more time in the area (Woolf, 2015). This, combined with the heritage buildings and façades on the north side of the street, make this the ideal frontage to concentrate the retention and celebration of Block II’s heritage architecture. The three other streets that border Block II are main thoroughfares and, while Tay and Dee Street are both also recognised for their built heritage stock, are not areas in which people tend to linger. Retaining single façades on each of these other frontages runs the risk of preserving heritage simply for the sake of it, whereas focusing efforts on Esk Street will ensure that the preserved façades are appreciated and interacted with as much as possible.

examples of retained façades on each side of Block II would act as a physical memorial to the heritage buildings that are currently present throughout this block; however, the associations and impact of the façades would be diminished. It is also more likely that dispersed façades would end up getting lost within the broader design, whereas having the retained heritage façades inter-visible means it is near impossible to ignore their contribution to the design and new streetscape.

26. We highlight this particular change as it may be a change which receives attention. However the assessment of Heritage Properties Limited on this particular matter, is that this is beneficial.

Visual and urban design

27. The Resource Consent Amendment discusses the Changes at pages 4-5. We note the following key points in terms of visual and urban design matters:

- (a) Massing upon Tay Street has been 'centralised', and building limited over the eastern anchor retailer. This will relieve the façade wall length – whilst increasing resulting in marginal increase of one floor (3.1m) to the centre of the development;
- (b) The increased height of the car park mass will not impact Esk Street; due to the narrow nature of the street the car park will not be visible even from the northern footpath;
- (c) There has been an increase in mass of the Civic Precinct in the South East of the Development - framing the Bank of New South Wales. An additional floor of development has been added - to mitigate this additional mass; the top floor has been set back from the street edge. Maintaining a similar building mass hierarchy between the Bank of New South Wales and its neighbours;
- (d) The carpark façade is to reflect the 'Southern Lights' and be lit, and is no longer a 'backdrop' but rather a 'beacon of arrival' to Invercargill Central;
- (e) In terms of the *impacts* of these changes, as against the application as lodged:
 - (i) The primary change to scale of the development is to reduce the overall wall length of car park facade upon Tay Street;
 - (ii) Minor adjustments have occurred to overall development programme increasing the density to the Civic Precinct by a floor - This does not change the overall bulk and street scene of the any of the street edges;
 - (iii) As the mass has been consolidated centrally - then the overall massing of the development has been reduced and thus mitigated the effects of the activity.

28. Christine McMillan, Senior Planner, has considered these matters and concurs with the assessment in the Resource Consent Amendment. She also notes the design principles that remain in place for the proposal notwithstanding the Changes:

- (a) Activation of street edge
- (b) Provision of gateway entrance
- (c) Strengthening of existing pedestrian routes
- (d) The creation of central weather protected plaza

- (e) A clear phasing strategy, operation and delivery
- (f) Respect of existing urban grain and façade ordering
- (g) Respect of existing heritage and built edge datums
- (h) Respect of canopy heights and street edge.

29. She concludes on this issue:

I concur Buchan’s assessment and consider the overall bulk and mass of the development is similar to or less than the originally proposed plans. It is noted that buildings shown on both the notified plans and the revised plan set exceed the maximum height for buildings within the Business 1 Zone of 10 metres.

30. We think these assessments are borne out by the Mass Adjustment ‘before and after’ plans contained in the Resource Consent Amendment. From these, we note that:

- (a) For the Esk Street elevation (page 19), there is relatively limited change. (The Street Scene Adjustment for Esk Street on page 18 also shows the set back of the carpark from Esk Street);
- (b) The amendments to Kelvin and Dee Streets are relatively minor;
- (c) Although the carpark building is higher, the Tay Street elevations present as much less of a solid wall, with breaks, which supports the assessment that the length of the Tay Street façade has been relieved, and that with centralisation of mass, overall massing has been reduced.

31. Having regard to the above information, we agree that the overall bulk and mass of the development is similar to or less than the originally proposed plans, and that the Changes are therefore within the scope of the Application.

Traffic and carpaking

32. The Abley Report has considered the Changes - it has reassessed the configuration of land uses which has changed, and has considered the revised carparking numbers.

33. For traffic generation, we note that the revised floor areas result in less traffic generation (1413 two-way movements compared to 1522 originally assessed).⁷

34. The Abley Report also addresses carparking, noting that 859 spaces is considered “more than adequate for Invercargill Central”.⁸

35. Based on the Abley Report, we do not think the Changes have exacerbated any traffic generation or carparking effects.

Planning matters / other parties

36. *Coull* calls for assessment of the impacts of the amended activity in terms of the relevant planning documents, and consideration of whether parties who have not made submissions would have

⁷ Page 28 of the Abley Report.

⁸ Page 26 of the Abley Report.

done so if they were aware of the change. Christine McMillan, Senior Planner, has considered the Changes and confirms in the letter from Bonisch Consultants that:

The effect of these changes has been considered in terms of the Invercargill City District Plan, the Regional Policy Statement and the Resource Management Act 1991. In assessing the conclusions of Buchan and Heritage Properties, it is considered that there is no effect on plan provisions from what was originally proposed.

It is also considered that no additional submissions would result if the application had been notified with the design as proposed now. There are no new issues raised as a result of the revised plans, the effects on heritage, mass and activities within the Business 1 Zone remain the same.

- 37. We have identified no reason to depart from this assessment.

Conclusion

- 38. Our conclusion is set out under "Summary of advice" at the start of this letter.
- 39. In practical terms, the Changes need to be communicated to the Council and submitters so that it is clear what proposal is to be considered at the resource consent hearing. In that regard, we suggest that you seek an early indication (including directions from the Hearings Panel if possible) on Council's position regarding scope so that all parties involved in the resource consent hearing have clarity about whether the original or amended proposal is being considered.

Yours faithfully
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