

**BEFORE THE INVERCARGILL CITY COUNCIL**

**RMA/2018/148**

**IN THE MATTER**

An application for resource consent by  
HWCP Management Limited

**BETWEEN**

**HWCP MANAGEMENT LIMITED**  
Applicant

**AND**

**INVERCARGILL CITY COUNCIL**  
Consent Authority

**AND**

**H&J SMITH LIMITED**  
Submitter

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**EVIDENCE OF CAREY VIVIAN  
(RESOURCE MANAGEMENT PLANNER)  
18 March 2019**

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## 1. Qualifications and Experience

- 1.1 My name is Carey Vivian. I hold the qualification of Bachelor of Resource and Environmental Planning (Hons) from Massey University. I am a Full Member of the New Zealand Planning Institute. I am a director of Vivian + Espie Limited, which was established in 2004, and is a resource management, landscape planning and urban design consultancy based in Queenstown. I have been practising as a resource management planner in Queenstown for twenty-four years, having held positions with the Davie Lovell-Smith Limited (Christchurch) Queenstown-Lakes District Council, Civic Corporation Limited, Clark Fortune McDonald and Associates and Woodlot Properties Limited (all of Queenstown).
- 1.2 I have read the Code of Conduct for Expert Witnesses contained within the Environment Court Practice Note No. 2014 and agree to comply with it. This evidence is within my area of expertise, except where I state that I am relying on information I have been given by another person. I confirm that I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed herein.

## 2. Purpose and Scope of this Evidence

- 2.1 The purpose of this evidence is to assist the Commissioners on matters within my expertise of resource management planning in relation to a resource consent application by HWCP Management Limited (“HWCP”) RMA/2018/148. This evidence is being called as part of H&J Smith Limited’s (“H&J”) case as a submitter to the proposal.
- 2.2 In preparing this statement of evidence I have considered the following documents:
- (a) The resource consent application dated 2 October 2018 and Assessment of Effects dated October 2018; and
  - (b) The RFI requested dated 28 November 2018 and response dated 11 February 2018 (which I assume should be correctly dated 2019); and
  - (c) Letters from Holland Beckett Law dated 2 October 2018 and 11 February 2019; and
  - (d) Various reports attached the application and responses to the RFI (but not all of them); and
  - (e) H&J’s submission; and
  - (f) The section 42A report prepared by Mr Johnathon Clease; and
  - (g) The evidence prepared by the applicant;
  - (h) The economic evidence prepared by Ms Natalie Hampson called on behalf of H&J.

- 2.6 I am familiar with the site, having visited and viewed the site on many occasions.
- 2.7 To assist the Hearings Panel I have structured my evidence the same as the section 42A report. I agree with and adopt the following sections of Mr Clease's 42A report:

- 2.0 The application;
- 3.0 Description of site and surrounding environment;
- 4.0 The planning framework;
- 5.0 Notification;
- 6.0 Statutory Consideration;
- 11.0 Relevant Other Matters;

- 2.8 I note that Mr Clease, in his section "2.0 The Application", does not discuss the timing of the demolition and reconstruction. The application states:

*"The demolition phase of the development is expected to take up to 24 months. The demolition will be staged with work starting at the eastern end of the site and working towards the west. The following plan sets out the proposed staging methodology during the demolition works:"*

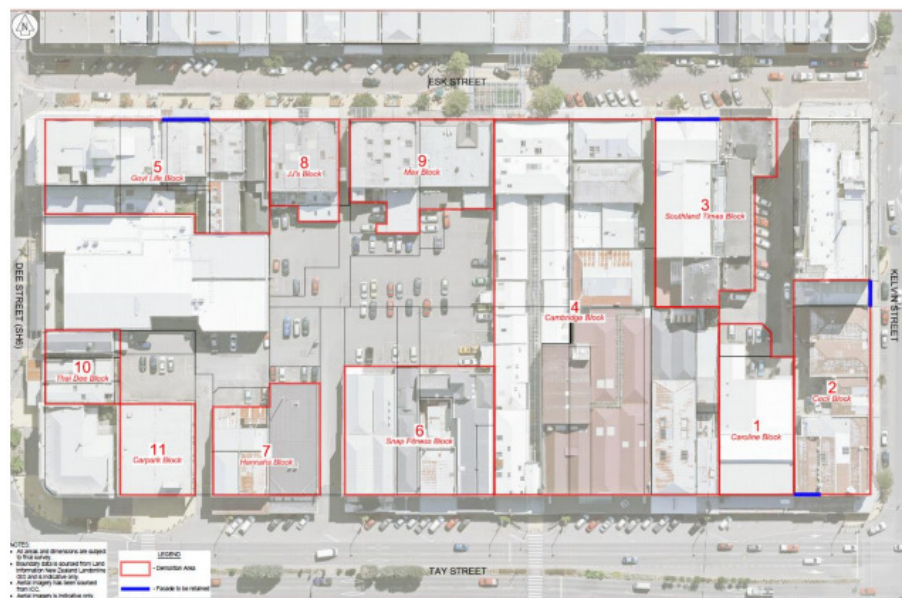


Figure 4: Proposed Demolition Staging

*This staging program is intended to reflect the construction programme, with construction intended to begin while later stages of the site are undergoing demolition. Stages 3 and 4 generally correspond to the location of the anchor tenant with this area to be developed as a priority. Stage 1 will be undertaken first to allow a staging area*

*and suitable entry/egress point for the demolition contractor. No demolition will be undertaken until such time as an anchor tenant has been confirmed for the site.”*

- 2.9** The timing of the demolition and reconstruction is of significant concern to H&J. Ms Hampson considers that the longer the demolition and construction programme takes, the greater the economic effect on the CBD core.
- 2.10** The application (as quoted above) creates, in my opinion, significant uncertainty as to when the demolition and construction programme will start and finish. This appears to be, in the first instance, conditional on an anchor tenant being confirmed for the site. There is no way of knowing when/if this will occur.
- 2.11** Ms McMillan’s evidence adopts the proposed development as contained in Section 3 of the AEE (which the quote above is taken from) and does not reference any changes to when the demolition and construction programme will start and finish.
- 2.12** Mr Cotton’s evidence takes a different stance. In paragraph 58(d)(iii) he states that since the original consent documentation was submitted a thorough review of the development programme has now been completed. This development programme includes the design, consenting, asbestos removal, demolition, heritage and archaeology assessments, contamination surveys and the construction sequence and timing. Mr Cotton advises that the programme for works is now planned to commence *in earnest* in the middle of 2019 and be completed by the end of 2022, a period of three and a half years. Mr Cotton considers the first retail openings will occur with the anchor tenant and associated retail in November 2021 and phased openings will occur from that point. Mr Cotton considers the core project will be completed by the end of 2022.
- 2.13** Mr Cotton considers this reduced period represents a significant reduction on the period of disruption for the affected parties from what was originally proposed. I also note Mr Cotton does not mention if the development programme is conditional on the applicant finding an anchor tenant or not (as the application states). I therefore assume, this is no longer a prerequisite to the applicant starting and finishing the development.
- 2.14** The remainder of my evidence addresses the following headings of Mr Clease’s 42A report:

- 7.0 Assessment of Effects;
- 8.0 Relevant Objectives, policies, rules and provisions of the RPS;
- 10.0 Proposed District Plan objectives and policies;
- 12.0 Part 2 Assessment and Overall Conclusion;
- 13.0 Recommendation.

### **3. Assessment of Effects**

#### **Adequacy of Information and Changes to the Application**

- 3.1** Mr Clease considers submissions which raise concern about various aspects of the proposal that were not addressed in sufficient detail in the application as lodged. In response to this Mr Clease notes that an RFI under section 92(1) was subsequently issued to the applicant in November 2018 and a response was received in February 2019. Mr Clease was satisfied that the RFI response addressed all of the questions raised in the RFI and the merit of the response and the degree to which effects can be managed through conditions is considered in his assessment.
- 3.2** The H&J submission raises concern about various aspects of the proposal that were not addressed in sufficient detail in the application as lodged. The H&J submission raises concern as to inadequate information in respect of the following:
- Lacking detail on the scale and timing of the project and the proposed methodology relating to the demolition and construction to enable the submitter to fully assess the effects the proposal will have on it as a neighboring property owner and retailer;
  - Lacking an assessment of the economic effects the project will have on the Invercargill CBD during construction, redevelopment and beyond so that submitters and the consent authority can properly assess the impacts and effects of the proposal;
  - The AEE only assesses post development and fails to consider the relevant objectives and policies during the period of demolition and development;
  - Inadequate information on how the impacts on users of the CBD during demolition and redevelopment will be avoided, remedied or mitigated;
  - The lack of comprehensive draft demolition, construction and traffic management plans so that submitters could have commented on them;
  - Measures to enhance connectivity within the wider CBD from the proposed development;

- Insufficient and inadequate detail around the timing of the project to enable potentially affected parties to assess the effects and to take measures to mitigate or avoid such.
- Certainty when the project will commence and or if it will ever be completed;
- Potential health risks given it is acknowledged that some of the buildings contain asbestos;
- Lack of consultation with the submitter, as an adjoining neighbor;
- The acoustic assessment fails to take account of the length of time the demolition and construction activities are likely to occur over and the likelihood this will have on those experiencing noise and vibration.

**3.3** The RFI has addressed some of these concerns, but not all of them. In particular the RFI does not address H&J's concern in relation to an assessment of economic effects (or lack of it). This is the primary focus of the evidence being called by H&J.

#### **Permitted Baseline**

**3.4** Mr Clease considers the permitted baseline in paragraphs 7.6 to 7.9 of his section 42a report. Mr Clease finds that the permitted baseline is of very limited relevance to this application. I agree with Mr Clease.

#### **Assessment of Actual or Potential Effects**

**3.5** Mr Clease assesses the following actual and potential effects of the proposal in Part 7 of his section 42A report:

- (a) Heritage values;
- (b) Urban design, character, and height of the replacement buildings;
- (c) Amenity effects on future residents;
- (d) Traffic & parking;
- (e) Demolition & construction effects;
- (f) Contaminated land management;
- (g) Airport Approach Slopes;
- (h) Infrastructure servicing; and
- (i) Positive effects.

**3.6** I have no comment with respect to (a), (c), (d), (g), (h) and (i). I do however wish to comment on the remainder issues.

### **Urban design, character, and height of the replacement buildings**

- 3.7** Mr Clease considers the effects on urban design, character, and height of the replacement buildings under paragraphs 7.54 to 7.67 of his section 42A report. My concern is particularly in relation to the building height and the effect this could have on the amenity of the streetscape along Kelvin Street (which is shared with the H&J building). In paragraph 7.61 Mr Clease concludes that overall, the proposed heights are considered to be generally consistent with the built form outcomes sought in the District Plan insofar as the design provides a continuous frontage along all four road boundaries that is at least two stories in height, the taller elements located on the block corners or within the centre of the site, and the comprehensive nature of the development means there is no compatibility issues with immediate neighbours, and the taller building elements are separated from other sites through road corridor, which in the case of Tay Street to the south is particularly wide.
- 3.8** Pages 62-68 of the Buchan Masterplan / Design Statement (dated 29 January 2019) contains a number of shading diagrams of both the existing situation and the proposed situation. The shading diagrams have been completed to assess the effects on streetscape and Neighbours as at 9am, 12pm, 3pm and 5pm for March 21<sup>st</sup>, June 22<sup>nd</sup> and December 22<sup>nd</sup>. Mr Clease acknowledges in paragraph 7.56 of his section 42A report that a low height limit will enable daylight penetration to the pedestrian footpath environment, and is also in keeping with the existing built form of Invercargill which is generally 2–3 stories. With respect, that does not appear to be the case in terms of the shadows cast onto the footpath on the eastern side of Kelvin Street (and the H&J building) from the proposed seven storey building on the corner of Kelvin Street and Tay Street (and extending to the north to the Kelvin Hotel).
- 3.9** The shadow diagrams show significantly more shading of the eastern side of Kelvin Street (towards the Kelvin and Tay Street intersection), due to the construction of the seven storey building on the corner of Kelvin and Tay Streets, from between 3pm and 5pm on March 21<sup>st</sup> and December 22<sup>nd</sup>. I acknowledge there is not much difference over the existing situation for June 22<sup>nd</sup>.
- 3.10** In my opinion, the erection of a seven storey building on the corner of Kelvin and Tay Streets (and extending to the north to the Kelvin Hotel), will result in more than minor adverse shading effects (in excess of the existing situation or the three storey height anticipated by Rule 3.23.19) on the eastern side of Kelvin Street (towards the Kelvin and Tay Street intersection).

## **Demolition & construction effects**

- 3.11** Mr Clease addresses demolition and construction effects in paragraphs 7.87 to 7.95 of his section 42A report. Mr Clease correctly identifies that a significant number of submitters (including H&J) have raised concern about the demolition and construction phases of the development. Mr Clease notes at paragraph 7.87:

*Many of these submitters are generally supportive of the end outcomes, provided the potential effects relating to construction noise, dust, vibration, loss of parking and road access (particularly to Esk Street), and loss of amenity for retail customers and town centre visitors are able to be appropriately managed. Submitters have noted that unlike typical CBD construction projects that relate only to one building, this project involves an entire city block and will be undertaken in a staged manner such that construction-phase effects will potentially extend over a number of years.*

- 3.12** Mr Clease acknowledges that a Demolition Management Plan (DMP) has not been prepared to date and accepts it will not be possible until detailed design has been completed and contractor engagement confirmed. Mr Clease states, and I agree, that the size of the site and the length of time over which such works will occur does mean that the management of demolition and subsequent construction effects is important to resolve.

- 3.13** At paragraph 7.92 Mr Clease acknowledges, given the size of the site, that it is likely the demolition will be undertaken in stages and there is potential for there to be a time lag between demolition and construction occurring such that the parts of the site may sit vacant for a considerable amount of time. Mr Clease recommends imposition of condition 7 that demolition does not occur until the Building Consent has been lodged for the replacement building as follows:

*7 No demolition is to occur prior to a Building Consent for the replacement building(s) on the same or similar footprint having been lodged with the Council.*

- 3.14** Mr Clease acknowledges that condition 7 does not guarantee that the replacement building will be built. However, he opines, and I agree, that completion of detailed design demonstrates a reasonable level of commitment to proceed:

*Given that Building Consents typically take several months to process, with tenders to be let and contractors engaged, such a condition should not unduly delay redevelopment, whilst at the same time avoiding large parts of the site from being cleared with a long lag before redevelopment begins.*



**3.15** I consider the wording of Mr Clease's recommended condition could be improved. At present condition 7 requires no demolition to occur prior to the *lodgment* of Building Consent. I consider the condition should be amended to *approval* of Building Consent as per below:

7 *No demolition is to occur prior to a Building Consent for the replacement building(s) on the same or similar footprint ~~having has been lodged with approved by the Council.~~*

**3.16** The added benefit of my wording is that the Building Consent holder would, theoretically, have to start construction within 1 year and complete construction within 2 years. However, I acknowledge there is provision in the Building Act to extend these timeframes (or reapply at a later date if the consent lapses).

**3.17** Mr Clease has also recommended conditions 13 and 14 requiring the preparation of a site management plan in the event that portions of the site are to remain vacant for more than six months:

13 *Where portions of the site are to remain vacant for a period of more than six months, the Consent Holder shall provide to Council's Director of Environmental and Planning Services a Vacant Site Management Plan (VSMP) for certification which provides suitable measures to avoid or mitigate the amenity effects of such vacancy on neighbouring sites and the adjacent streets. The VSMP shall include, but not be limited to, the following matters:*

- a. *Details of how that area will be maintained in a clean and tidy manner.*
- b. *Details of how the site boundary perimeter fencing will be managed to provide an acceptable level of amenity and safety for pedestrians. These details are to include the use of B class hoardings where necessary. All hoardings are to be customised to share with the public the story of the redevelopment and the history of key buildings or art in conjunction with Arts Murihiku or other similar community groups.*
- c. *Details of any short-term interim use of the site for commercial, civic, or carparking activities.*
- d. *Provision of a mid-block pedestrian route between Tay Street and Esk Street where such provision can be made in a safe and practicable manner.*
- e. *Measures for erosion and sediment control and prevention of sediment being carted onto roads, or entering the public stormwater system.*
- f. *Measures for the suppression of dust to be employed whilst the site is vacant to ensure dust emissions beyond the site boundary are not offensive or objectionable to pedestrians on the adjacent street network or business occupier.*
- g. *Note: The Council will either certify, or refuse to certify, the VSMP within 20 working days of receipt. Should the Council refuse to certify*

*the VSMP, then they shall provide a letter outlining why certification is refused based on the parameters contained in this condition.*

- 14 *The certified VSMP under Condition 13, shall be implemented for the duration of the site remaining vacant.*

**3.18** I support the intent of these proposed conditions in avoiding or mitigating the amenity effects of such vacancy on neighbouring sites and the adjacent streets. I consider, if the application is to be granted, that the VSMP should be subject to a Communications Plan with affected parties, similar to what Mr Clease recommended for Condition 8 in respect of a DMP, as follows:

*h. A Communications Plan with affected parties, including adjoining land owners and occupiers and those on the opposite side of the street to the vacant site. The Communication Plan shall include procedures to ensure consultation on the vacant site management occurring, and the receipt, recording, and resolution of complaints.*

**3.19** Mr Clease also recommends, in the absence of a detailed demolition or construction management plans, condition 8 as follows:

- 8 *Prior to the demolition of any of the existing buildings commencing, the Consent Holder shall provide to Council a Demolition Management Plan (DMP) for certification which provides suitable measures to avoid or mitigate the effects of demolition activities on neighbouring sites and the adjacent streets. The DMP shall include, but not be limited to, the following matters:*
- a. *Details of how demolition will be staged and measures to minimise disruption to pedestrian access to the adjacent footpaths.*
  - b. *Measures to investigate the presence of asbestos containing material (ACM). If ACM is confirmed the preparation of an asbestos removal plan which provides for the removal of asbestos in accordance with approved methods, and its disposal at a facility authorised to accept the material to ensure effects on human health are avoided.*
  - c. *Measures to facilitate a Detailed Site Investigation being undertaken as part of the demolition process and measures to avoid undertaking earthworks that would pose a risk to human health until Conditions 20 and 21 have been fulfilled.*
  - d. *Measures to facilitate the recovery of heritage materials for reuse, in accordance with Conditions 4 and 5.*
  - e. *Measures to provide adequate protection of heritage kerbstones listed in Appendix II.4 of the District Plan.*
  - f. *Measures to avoid the collapse of weakened structures and the management of hazards to health and safety.*
  - g. *A Communication Plan with affected parties, including adjoining land owners and occupiers and those on the opposite side of the street to the proposed works. The communication plan shall include procedures to ensure consultation prior to high noise generating activities occurring, and the receipt, recording, and resolution of complaints.*

- h. *A Traffic Management Plan (TMP) which includes measures for the control of vehicle and pedestrian movements, including full or partial road closures, to ensure the safety of the public, and the continued safe and effective operation of the road network. The TMP is to also demonstrate how demolition activity will be staged across the site to minimise the need for road and footpath closures. Where the TMP includes measures relating to State Highway 1 and State Highway 6, input from the New Zealand Transport Agency is required.*
- i. *A Demolition Noise and Vibration Management Plan (DNVMP) outlining how noise and vibration nuisance will be mitigated during demolition activities. The plan shall specify any restrictions on work hours, physical noise mitigation to be employed, and limitations on the timing of specific activities including high noise generating activities. The DNVMP must address the relevant measures in Annex E of NZS 6803:1999 “Acoustics – Construction Noise” and Appendix B of DIN 4150-3:1999 “Structural vibration – Part 3 Effects of vibration on structures” or equivalent standard. The DNVMP is to be consistent with Conditions 11 and 12.*
- j. *The DMP and DNVMP shall include a specific section prepared with the input of a heritage expert, specifying how demolition and vibration effects on the former Bank of New South Wales Building (corner of Dee and Tay Streets) are to be managed to minimise adverse effects on heritage fabric.*
- k. *Measures for erosion and sediment control, including the prevention of sediment being carted onto roads, or entering the public stormwater system during demolition activity and prior to construction starting.*
- l. *Measures for the suppression of dust to be employed during demolition activity and prior to construction starting. Such measures are to ensure dust emissions beyond the site boundary are not offensive or objectionable to pedestrians on the adjacent street network or business occupiers.*
- m. *Details of the steps to be taken to ensure that demolition plant (particularly cranes) does not extend into Invercargill Airport Limited’s “Horizontal Surface” as specified in Designation 74 in the District Plan.*
- n. *Details of how the site boundary perimeter fencing will be managed to provide an acceptable level of amenity and safety for pedestrians. These details are to include the use of B class hoardings where necessary. All hoardings are to be customised to share with the public the story of the redevelopment and the history of key buildings or art in conjunction with Arts Murihiku or other similar community groups.*

**3.20** In relation to (b) I understand from the e3 Scientific PSI that the buildings are very likely (or certainly) to contain asbestos. The predominant wind direction in Invercargill is a westerly wind, and the H&J buildings are located to the east of the subject site. H&J therefore are very concerned about airborne asbestos fibres the result of the demolition blowing onto their property and their customers.<sup>1</sup> Clause (b) implies that all of the asbestos will be removed prior to

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<sup>1</sup> I understand H&J have a duty to protect their customers under the Health and Safety Act from airborne asbestos.

demolition and that is supported by Mr Cotton's evidence. However, that may not always be possible. For example, the PSI states that asbestos enters into building materials from the early 1900s, so there is potential for any materials used from these dates to contain asbestos fibres:

*"Particularly with the larger brick buildings, it is possible that roof coverings or sealants used in the 20th century may have contained asbestos fibres. There was always a concern with fire in close packed commercial buildings, and asbestos fibres are naturally fire retardant, so they may have been used more liberally than in a domestic setting."*

**3.21** While I am not an expert in this matter, in my opinion, if there is any possibility that airborne asbestos fibres could be blown from the site during demolition then that possibility should be monitored and acted upon. For this reason, I recommend, if the application is granted, clause (b) is amended as follows:

b. *Measures to investigate the presence of asbestos containing material (ACM). If ACM is confirmed the preparation of an asbestos removal plan which provides for the removal of asbestos in accordance with approved methods, and its disposal at a facility authorised to accept the material to ensure effects on human health are avoided. If it is not reasonably practicable for the consent holder to remove the asbestos before demolition, then the consent holder must use methods to minimise airborne asbestos fibres during the demolition, such as using a wet spray method. The ACM shall include air monitoring for all asbestos removal work. This includes during the removal work and upon completion as part of the clearance before reoccupation of the asbestos removal work area. The air monitoring must be carried out by an independent licensed asbestos assessor.*

**3.22** At paragraph 7.95 Mr Clease concludes:

*Provided that the above demolition, vacant site, and construction management plans are developed and implemented, I am satisfied that the transitional effects arising from these phases of the project are able to be managed. I agree with the Applicant that the effects will be temporary (albeit potentially extending over several years), and through the implementation of demolition, vacant site, and construction management plans will be remedied or mitigated as far as practicable by the proposed management measures.*

**3.23** I support Mr Clease's conclusion subject to the recognition the demolition could occur over an extended period and the effects of such will have on neighboring owners and occupiers. For this reason, the recommended amendments to the conditions I have outlined above need and should be imposed if consent is granted.

### **Economic Effects**

- 3.24** Ms Hampson has presented evidence in relation to the likely and anticipated economic effects arising from the proposal, with a specific focus on the short-term (or temporary) effects leading up to and including the demolition and construction period and immediately after completion.
- 3.25** With respect to the CBD core, Ms Hampson concludes that the economic health is at an all-time low and the proposal is clearly supported by her assessment of economic data.
- 3.26** However, in Ms Hampson's opinion, the proposal is going to make the economic wellbeing of the CBD core significantly worse, before improving.
- 3.27** Ms Hampson considers the direct and indirect economic effects of the proposal. With respect to the direct economic effects Ms Hampson concludes that the proposal has already started adversely impacting on the functional amenity and vitality of the CBD core for some months. This is through business closures and, loss of workforce and reduced shoppers in the area subject to the application, which accounts for a significant share of economic activity within the CBD core.
- 3.28** With respect to the indirect economic effects of the proposed development, Ms Hampson finds that effects (such as noise, vibration, dust, access and general ambience of the CBD core) may be able to be mitigated but cannot be practicably avoided. Ms Hampson considers these effects are cumulative to the direct effects and will further reduce the vitality and vibrancy of the CBD core, further impacting on local business.
- 3.29** Ms Hampson considers these effects cannot be fully offset until the development is complete and fully occupied. Ms Hampson considers that given the decanting that has already occurred and delays in commencing any extended period of demolition and construction will prolong the economic effects of the CBD core. In Ms Hampson's opinion, the longer the overall development process takes, the greater the CBD core businesses will suffer.
- 3.30** Ms Hampson also concludes that the short-term economic effects have not been considered by the applicant or Mr Cleese in his section 42A report. In Ms Hampson's opinion, such short-term economic effects cannot be ignored and she considers all possible measures should be taken to help avoid, remedy or mitigate adverse economic effects, including cumulative effects, on the CBD core. I agree with and rely on Ms Hampson's predictions and opinion in that regard.

**3.31** With respect to medium-long term economic effects, it is Ms Hampson's opinion, that the benefits of such would outweigh the short-term effects as described above. I agree with and rely on Ms Hampson's predictions and opinion in that regard.

**3.32** The meaning of effect is defined in section 3 of the RMA as follows:

*In this Act, unless the context otherwise requires, the term effect includes—*  
*(a) any positive or adverse effect; and*  
*(b) any temporary or permanent effect; and*  
*(c) any past, present, or future effect; and*  
*(d) any cumulative effect which arises over time or in combination with other effects—*  
*regardless of the scale, intensity, duration, or frequency of the effect, and also*  
*includes—*  
  
*(e) any potential effect of high probability; and*  
*(f) any potential effect of low probability which has a high potential impact.*

**3.33** In my opinion, the short-term economic effects assessed by Ms Hampson are temporary adverse effects that have occurred in the past, currently and in the future and therefore fall under section 3(a), (b) and (c). Based on the evidence of Ms Hampson, they have high probability or at the very least, must be seen as low probability with a high potential impact and therefore fall under 3(d) and (e) as well. As such, in considering this application under section 104D(1)(a) of the RMA, I consider, in reliance on the evidence of Ms Hampson, that such adverse economic effects will be more than minor.

### **Conclusion on Effects**

**3.34** I conclude, in terms of a section 104D(1)(a) assessment, that the proposal will result in the following adverse effects on the environment in a more than minor way:

- Heritage value effects (adopted as per Mr Cleese's assessment);
- Shading effects on Kelvin Street;
- Short-term (at a minimum) economic effects.

## 4. Objectives and Policies of the relevant plans

### Regional Policy Statement (RPS)

- 4.1 Mr Clease correctly identifies, in paragraph 8.1, that under section 104(1)(b)(v) of the RMA, that the consent authority shall have regard to the relevant provisions of an RPS.
- 4.2 Mr Clease assessment of the RPS primarily focuses on Historic Heritage Objective HH1, HH2 and HH3 and supporting policies. I generally agree with his assessment in this regard.
- 4.3 At paragraph 8.8 and 8.9 Mr Clease considers the Chapter 17 Objective URB.1 and associated policies. At paragraph 8.10 Mr Clease finds that the proposed development is consistent with these provisions. Objective URB.1 states:

*Objective URB.1 – Urban development  
Urban (including industrial) development occurs in an integrated, sustainable and well-planned manner which provides for positive environmental, social, economic and cultural outcomes.*

- 4.4 With respect, I cannot see how Mr Clease has arrived at his conclusion without an economic analysis to rely upon. While, in the long term the proposal may have economic benefits for the community, in the short-term, as Ms Hampson finds in her evidence, the economic effects of the proposal will be adverse. The development therefore does not provide for positive economic outcomes in the short-term consistent with this objective. The proposal is, in my opinion, contrary to this objective.

### Proposed District Plan (PDP)

- 4.5 Mr Clease correctly identifies, in paragraph 10.1, that under section 104(D) of the RMA, the second threshold test is that the activity “will not be contrary to the objectives and policies of the District Plan”. Mr Clease continues that given the effects of the activity on heritage values are at least more than ‘minor’ the proposal needs to pass the second test in order for the Council to progress to considering the application more broadly under the provisions of section 104(1). I agree with this statement, however add that wider amenity (shading) and economic effects, should also have been considered in this light.
- 4.6 In paragraphs 10.3 to 10.8, Mr Clease considers the relevant heritage Objectives and Policies of the District Plan. Mr Clease concludes, in paragraph 10.8, that the proposal that the proposal

will result in the loss of some heritage values but does not consider the proposal to be contrary overall with the heritage provisions. I consider Mr Clease's consideration of these objectives and policies is very well balanced and I support his conclusions in this regard.

**4.7** In paragraphs 10.9 to 10.12 Mr Clease considers the relevant natural features, landscapes and townscapes objectives and policies of the District Plan. Again, I consider Mr Clease's consideration of these objectives and policies is very well balanced and I support his conclusions in this regard.

**4.8** Part 22.2 of the PDP contains the issues, objectives and policies for the Business 1 (Central Business District) Zone (**B1Z**). Part 22.2 states:

*The Zone seeks to maintain and reinforce the viability and vibrancy of Invercargill's City Centre by enabling a wide range of activities, by encouraging and maintaining a high level of amenity, and by encouraging good urban design.*

**4.9** Amenity is defined in Part 2.2 of the PDP (as per the RMA definition) as follows:

*Those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes*

**4.10** Part 2.2 of the PDP further notes:

*"It is these amenity values when combined that provide the context and opportunity for the District to evolve and develop.*

*Amenity values vary from place to place and according to the perspective of the individual. However, shared common amenity values are apparent. Areas which share amenity values in this way are identified and recognised in this District Plan as Zones.*

*Amenity values are an amalgamation of physical qualities and attributes of an area and development decisions made in the past.*

...

*Note: Objectives and Policies relating to "amenities" are set out on a Zone by Zone basis."*

**4.11** Part 2.22.2 lists the Objectives for the B1Z:

*Objective 1: Maintenance and enhancement of the primacy of the Invercargill Central Business District as the primary centre for retailing, business, culture, entertainment, education and social services for Invercargill City and the wider Southland region.*



*Objective 2: Inner city living is part of the land use mix within the Invercargill Central Business District other than in the Entertainment Precinct.*

*Objective 3: Identification, maintenance and enhancement of the amenity values of the Business 1 Zone.*

*Objective 4: Protection of the heritage values of the Central Business District.*

*Objective 5: An holistic approach to economic, social and geographical issues in the Central Business District is complemented through the District Plan.*

**4.12** These Objectives are to be achieved by 23 policies, of which I consider policies 1, 15 and 16 are of particular relevance to H&J's submission. I discuss each of these in turn.

**4.13** Policy 1 relates to the economic health of the CBD:

***Policy 1 Business 1 CBD Zone:***

*To establish and implement a Business 1 Zone to retain existing and encourage new commercial/retail activities in the Central Business District.*

***Explanation:*** *Maintaining and reinforcing the viability and vibrancy of Invercargill's City Centre is of widespread concern to the Invercargill people and is a key priority for the Council. Specific provisions in the District Plan are one method of many that the Council has chosen to address this issue.*

**4.14** Ms Hampson has given evidence that the economic health of the CBD core is at an all-time low and the proposal is going to make the CBD core the proposal is going to make the economic wellbeing of the CBD core significantly worse, before improving. The proposal is unlikely to retain existing retail/commercial activities in the CBD consistent with this policy in the short-term. However, in the long-term, assuming construction goes ahead, the proposal is likely to encourage new retail/commercial activities in the CBD consistent with this policy. The difficulty is this policy that is seeks to retain existing commercial activities as well as encourage new commercial activities.

**4.15** Mr Cleese, at paragraph 10.14 of his section 42A report, states that provided the construction phase effects on nearby retailers can be appropriately managed via conditions, the proposal is clearly consistent with this outcome in that it is seeking to transform a rundown and largely vacant block in high quality office, retail and hospitality hub that will invigorate Invercargill's town centre. I disagree with Mr Cleese that it is accurate to say the block is "largely vacant" (especially at street level).<sup>2</sup>

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<sup>2</sup> Ms Hampson finds that based on data in 2018 (proper to the proposal having a direct decanting effect), the block had 54 businesses (67.5% of its maximum occupancy assessed in 2000 – 2017).

4.16 In my opinion, forcing nearly 50 existing businesses to go is not retaining existing activities in the short-term is not consistent with the intent of this policy. It is directly contrary to it.

4.17 Policy 15 relates to demolition activities:

**Policy 15 Demolition or removal activities:**

*(A) To encourage owners to consider the restoration, and adaptive re-use of buildings in preference to demolition.*

*(B) To manage the adverse effects of demolition or removal on amenity values by ensuring the clean-up, screening and maintenance of sites.*

*(C) To encourage active utilisation of sites post-demolition by encouraging their prompt redevelopment and in the meantime encouraging use of the site for such activities as car parking or public open space.*

**Explanation:** *It is good practice to consider the restoration and adaptive re-use of any building or structure as part of the redevelopment process, in order to identify opportunities to reduce waste entering the waste stream and to ensure best use of existing resources and infrastructure.*

*Although normally temporary and localised, demolition activities can create a significant nuisance. There is an obligation to ensure that demolition materials are disposed of responsibly. There is also a need to ensure that the site is made safe, clean and tidy in a timely manner.*

*Vacant, derelict sites would be detrimental to the anticipated character, vibrancy, amenity and function of this Zone. Where a site is to be left empty post-demolition, adaptive ways to use the space and opportunities for active reutilisation of the sites in the interim are to be encouraged.*

4.18 In my opinion, the proposal is consistent with Policy 15(A) to the extent that the applicant will retain some of the facades and buildings in preference to demolition. I also consider, in respect of 15(B), the adverse effects of demolition on amenity values will be avoided or mitigated through imposition of consent condition as recommended by Mr Cleave.

4.19 With respect to Policy 15(C), Mr Cleave's recommended Condition 13 (requirement for a vacant site management plan be submitted for certification) deals with the second part of the policy. However, it is the first part of the policy, the requirement for prompt redevelopment, which is of significant concern to H&J as the timing of demolition and construction will have a significant economic effect on the CBD core. Mr Cotton's evidence states that the demolition and construction will start in earnest mid this year and be completed within a 3 ½ year timeframe. While that timeframe is supported by H&J, there is no guarantee or commitment<sup>3</sup> that such a

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<sup>3</sup> A commitment could be, for example, the offering of a performance bond.

timeframe will be achieved. Often such timeframes are pushed out further and further due to externalities beyond the developer's control<sup>4</sup>.

**4.20** Mr Cleese's Condition 7 attempts to deal with the timing issue, however this has been opposed by Ms McMillan as it will create a lengthy time lag for the development. Mr Cleese admits that the imposition of Condition 7 would not guarantee a replacement building will be built.

**4.21** The PDP's reasoning for Policy 15(C) that vacant, derelict sites would be detrimental to the anticipated character, vibrancy, amenity and function of this Zone. I agree with that reasoning. In the absence of any guarantee or commitment that the demolition and construction works will be completed in 3 ½ years (as evidenced by Mr Cotton), I consider the proposal is contrary to the intent of Policy 15(C).

**4.22** Policy 16 relates to the height of structures:

**Policy 16 Height of structures:**

- (A) *To control the height of structures in order to create aesthetic coherence along frontages, avoid the creation of adverse microclimate effects, and promote availability of sunlight to the public street.*
- (B) *To require that replacement buildings within the Central Business District that are required to have a Pedestrian-Friendly frontage have a two storey frontage to the public street or streets.*
- (C) *To require new buildings within the Priority Redevelopment Precinct and also on a street corner to be an appropriate form and scale to address and articulate the street corner.*

**Explanation:**

- (A) *The majority of the commercial buildings in the CBD are one to two storey. Although winter sun angles in Invercargill are only about 20 degrees at midday, the combination of wide streets, the north/south orientation of the grid pattern, and low building height ensures that there is incidence of sunlight to Invercargill's CBD streets throughout the year. Where development economics indicate that a new building must be more than two storey, its effects on its neighbours and on the street need to be identified, considered, and addressed in building design.*
- (B) *A two storey frontage within the Pedestrian-Friendly Frontages Precinct will help achieve a scale appropriate to a pedestrian-friendly environment and will help maintain aesthetic coherence along the street frontage.*
- (C) *An implication of Invercargill's grid street pattern is that buildings located at the corners are particularly important aesthetically.*

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<sup>4</sup> An example is "Hendo's hole" in Queenstown which sat vacant for several years due to the GFC.

- 4.23 I have previously discussed the effect of shading from the proposed seven storey building on the corner of Kelvin and Tay Streets (and extended to the north). In my opinion, the proposed seven storey building on the corner of Kelvin and Tay Streets (as it extends to the north) is contrary to Policy 16(A) to (C).

#### **Overall Conclusion on Objectives and Policies**

- 4.24 I disagree with Mr Clease, where he finds at paragraph 10.2, that the proposal is broadly consistent with the PDP objectives and policies in the Business 1 Zone. In my opinion, the proposal is contrary to 15(C) and 16 (in terms of the proposed building on the corner of Kelvin and Tay Street and extending to the north). In my opinion, Policies 15(C) and 16 are fundamental to the consideration of this proposal against the relevant objectives and policies of the PDP. As such, in the absence of certainty relating to the timing of demolition, construction and occupation of the redeveloped premises, I consider the proposal is overall contrary to the objectives and policies of the PDP.

## **5. Part 2 Assessment**

- 5.1 Mr Clease considers Part 2 of the RMA in part 12 of his section 42A report. I agree that even though the objectives and policies of the PDP have been developed as a local expression of how to give effect to Part 2, that given the scale of the proposal and the fact that the complete redevelopment is unique, there is a risk that such was not contemplated when the PDP policy framework was developed.
- 5.2 Mr Clease considers section 6 and 7 matters in paragraphs 12.2 to 12.9 of his section 42A report. I generally agree with Mr Clease's findings.
- 5.3 Mr Clease then considers section 5 in paragraphs 12.11 to 12.13 of his section 42A report. Mr Clease concludes that allowing the demolition and thereby enabling the site to be redeveloped for commercial purposes better achieves the purpose of the RM Act than retaining the buildings. While I do not disagree with the reasoning for Mr Clease's conclusion, I maintain concern as to whether sustainable management is achieved due to the uncertainty with timing of the demolition and construction.

- 5.4** My concern stems from the fact that sustainable management means *managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while...*. Mr Clease’s conclusion addresses *in a way*, but does not, in my opinion, address *at a rate*. In my opinion, *in a way* or *at a rate* are not mutually exclusive. Sustainable management, in my opinion, requires the consideration of both at the same time.
- 5.5** I therefore conclude, that without the certainty of a timeframe for demolition, construction and occupation of the redeveloped premises, the proposal cannot be considered (with any certainty) “*at a rate*” which enables people and communities to provide for their social, economic, and cultural well-being. As such, I consider, for the reasons expressed in this evidence, that sustainable management is not achieved.