

**BEFORE THE INVERCARGILL CITY COUNCIL HEARINGS COMMISSIONERS**

**IN THE MATTER OF** of the Resource Management Act 1991

**AND**

**IN THE MATTER OF** of an application for resource consent by HWCP Management Ltd to Invercargill City Council to undertake the comprehensive redevelopment of most of the City Centre block bounded by Dee, Esk, Kelvin, and Tay Streets to establish a mixed use commercial area

**AND**

**IN THE MATTER OF** the submission of Duncan McKenzie

**STATEMENT OF EVIDENCE OF DUNCAN MCKENZIE.**

**1. INTRODUCTION**

- 1.1. My name is Duncan McKenzie. I am qualified as a planner and worked as a planner for 40 years prior to retiring in 2016. I have worked in local and central government and the private sector, with a range of clients. I have worked in most aspects of resource management planning, including plan preparation and resource consents.
- 1.2. For the last four years of my working life, I was employed by the Auckland office of Heritage New Zealand. Here I became involved in the field of heritage planning, particularly in the protection of heritage places.
- 1.3. A specific project I worked on was the provision of input on behalf of Heritage New Zealand to the Proposed Auckland Unitary Plan. This included securing the scheduling in that plan of places that were listed by Heritage New Zealand, as well as assisting the Independent Hearings Panel with the formulation of appropriate planning controls for their protection, including objectives, policies and rules.

- 1.4. Whilst working with Heritage New Zealand and with its heritage conservation experts, I became exposed to the possibilities of rehabilitation and adaptive re-use of heritage places.
- 1.5. I am giving evidence in support of a submission lodged by myself opposing the application of HWCP Management Ltd.
- 1.6. I confirm that I have read the Code of Conduct for expert witnesses contained in the Environment Court Practice Note and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that my planning evidence is within my area of expertise.
- 1.7. I also express some views about the feasibility of the project which are lay opinions – that is, outside of my area of expertise, but nevertheless informed by my lengthy involvement in urban development issues. I put forward these views because I consider the hearings commissioners have an obligation to probe the applicant on the project feasibility. A financially unsuccessful or uncompleted project would, in my expert opinion, add to and exacerbate the negative environmental effects that this project will have. As an informed lay person, I have grave concerns about the project’s viability.
- 1.8. I note with some concern that this issue has not been addressed in any meaningful way in the application, in the s 42A report, or in the applicant’s lodged evidence (including the NZIER’s attachment to Ms McMillan’s evidence).
- 1.9. I have clearly identified in my statement those areas where I am expressing a lay opinion. Much of my evidence will however concentrate on the planning arguments on whether the application merits consent, - arguments which are within my area of expertise.

## 2. LEGISLATIVE FRAMEWORK.

- 2.1. It is common ground that the application should be considered as a non-complying activity. This is because the project includes the substantial demolition of several Class I heritage structures. While the demolition of a larger number of Class II structures has discretionary activity status, the “bundle of uses” doctrine requires the whole proposal to be considered as a non-complying activity.
- 2.2. The statutory tests are therefore:
  - 2.2.1. The proposal first needs to meet the threshold test of **s 104D** of the RMA, which involves a preliminary assessment to determine if EITHER
    - adverse effects on the environment are more than minor, OR
    - the activity is not contrary to the objectives and policies of the District Plan (which in this case is the 2017 Proposed District Plan Appeals Version).
  - 2.2.2. If one or other of these provisions is met, then the application can go on to be considered under s 104. If neither provision can be met, then the application **must be declined**.

- 2.3. I have summarised to provisions of s 104, in order to highlight those that would be relevant to this application should it survive the threshold test, as follows:
- The application has to be subject to Part 2 of the RMA (in particular s 5 purpose of the Act, s 6 matters of national importance which are to be recognised and provided for, and s 7 matters to be had particular regard to).
  - Consideration of the application is to have regard to any actual and potential effects on the environment of allowing the activity.
  - Consideration of the application is to have regard to relevant provisions of the District Plan;
  - Consideration of the application has to have regard to relevant provisions of other planning documents, including the Regional Policy Statement.
  - Other matters may be considered.

### 3. S 104D THRESHOLD TEST

#### *Adverse effects on the environment*

- 3.1. It is my opinion that the destruction of historic heritage at the scale proposed in the application will have an adverse effect on the environment that is more than minor. While it may be argued that protection from seismic risk is a positive effect, or even that the demolition will enable positive economic benefits to be achieved, this part of the test does not provide for the offsetting of one type of adverse effect with another type of beneficial effect. Neither does it provide for the consideration of effects other than effects on the environment. These are matters that could be considered under s 104 **if and only if** the threshold test is passed.
- 3.2. I note that the legal opinion provided with the application, the s 42A report and the planning evidence on behalf of the applicant also reach this conclusion.

#### *Objectives and policies of the Plan*

- 3.3. I have taken into consideration the objectives and policies of the 2017 Proposed District Plan Appeals Version. The relevant objectives and policies are those relating to heritage and to the Business 1 zone
- 3.4. I have reproduced the relevant objectives and policies in Attachment One to this evidence, along with a brief analysis and commentary on whether the activity proposed by the application is in accordance with, is not relevant to, or is contrary to those objectives and policies.
- 3.5. It is my opinion that the objectives and policies, taken as a whole, seek the retention of historic heritage structures particularly within the City Centre Heritage Precinct, of which the subject site is a substantial portion. There are various qualifications (such as the words “appropriate” and “inappropriate”), but these generally apply in order to allow modifications that provide for substantive retention, including modifications to provide for adaptive re-use, without the substantial diminution of heritage values.
- 3.6. While some redevelopment is envisaged, the policy framework clearly anticipates that this will be within the context of retaining heritage values.
- 3.7. It is therefore my opinion that the activity that is the subject of the application is contrary to the objectives and policies of the District Plan.

### ***Conclusion re s 104D***

- 3.8. It is my opinion that the test of s 104D is not met, and the application therefore fails to meet the threshold test. Resource consent cannot therefore be granted.
- 3.9. If the applicant wishes to proceed with the application, they would first be required to get the relevant provisions of the district plan changed –through changes to plan rules to make such destruction of historic heritage easier (through changing the heritage list classification, and/or the removal of certain structures from the list of protected heritage).
- 3.10. I am however aware that this opinion does turn on how qualifiers in the objectives and policies such as “appropriate”, “inappropriate” etc are interpreted, and whether (as the reporting planner appears to believe) the use of these qualifiers is sufficient to undermine the strong policy direction that seeks retention and rehabilitation of historic heritage.
- 3.11. Therefore, I will go on to provide an analysis of the application under s 104. This should not be taken as a concession on my part that the threshold test is met.

### **4. CONSIDERATION UNDER S 104**

- 4.1. Paragraph 2.3 above summarises the provisions of s 104 that I consider relevant to this application (should it survive the threshold test).

#### ***Part 2 matters***

- 4.2. Case law has established that Part 2 matters become an important consideration when considering a resource consent application when it is apparent that the District Plan provisions are at odds with Part 2. In my opinion the District Plan provisions relevant to this application do generally take account of the provisions of Part 2 (including s 6 *Matters of national importance* (f) the protection of historic heritage from inappropriate subdivision, use, and development).

#### ***Actual and potential effects on the environment***

- 4.3. The applicant (and the reporting planner) acknowledge that the demolition of historic heritage at the scale proposed will have significant adverse environmental effects. The applicant however maintains that the environmental benefits of a rejuvenated downtown area which are intended to be brought about by the development will compensate for and considerably outweigh the adverse effects of the demolition.
- 4.4. That happy outcome would depend on a development with a floor area exceeding 70,000 m<sup>2</sup>, incorporating 13,665 m<sup>2</sup> of retail, 10,234 m<sup>2</sup> of office and other commercial activity, substantial areas of civic activity, a medical centre and a great deal of carparking, being substantially tenanted and achieving commercial feasibility.
- 4.5. I do not have any particular expertise in the economics of commercial developments at this scale. But the fact that little information was provided on these issues by the applicant, there is no evidence that the applicant has this expertise either. This view of mine is not fundamentally changed by the “boosterish” statements included in the applicant’s evidence (including that of Messrs Thayer and Thomson), nor by the report of the NZIER attached to Ms McMillan’s planning evidence.

- 4.6. I am seriously concerned that the applicant may be basing its projections more on a “build it and they will come” style of optimism than on a hard-headed appraisal of who may be attracted to tenant such a development. Rents would be expected to provide a reasonable rate of return on the significant investment. This may be hard to achieve, given that bricks and mortar retailing of the scale proposed is struggling in the face of on-line competition, and that major retailers desiring a presence in Invercargill appear to have already established (or are in the process of establishing elsewhere).
- 4.7. A possibility may be to lure existing retailers to the new mall. That would be at the expense of their existing locations and may require the use of unsustainable financial incentives.
- 4.8. I emphasise again that these are lay opinions. They do however appear to be supported by the NZIER Report which in its paragraph 4.1 suggests that the private sector is unlikely to undertake the development without financial support from local or central government.
- 4.9. In fact, the NZIER Report appears to have the primary objective of making a case for support from the Provincial Growth Fund and Invercargill City Council, because the development will not be financially sustainable on its own.
- 4.10. I believe the applicant needs to be more up-front about what initial and ongoing financial support the development may require, and what the consequences might be if the support does not eventuate.
- 4.11. In normal circumstances it would not be the role of Hearings Commissioners to decline applications on the basis of dubious viability. One thing is however quite clear to me: failure to complete the development after the heritage buildings are demolished would compound the adverse effects and deliver few benefits. I have not seen anything in the evidence of the applicant that allays my concerns
- 4.12. I am also familiar with commercial developments (in Auckland) at a significantly smaller scale, that have been established within rehabilitated heritage and character places. These types of development attract both visitors and locals and provide experiences that are not able to be readily replaced by internet shopping or even in commercial areas that lack heritage character.
- 4.13. Mr Cleese has described quite an attractive alternative development scenario in paragraph 7.8 of his evidence, and Heritage New Zealand also seeks a similar outcome in its submission. This alternative would incorporate rehabilitation and adaptive re-use of heritage buildings. In my opinion such redevelopment has not been adequately considered for the Invercargill CBD.

***Provisions of District and Regional Plans, Regional Policy Statement, and other documents***

- 4.14. I have provided an analysis of the District Plan policy set as a part of my s 104 D analysis (Refer also to Attachment One). The District Plan also contains other provisions that, while seeking upgrading of the CBD, generally anticipate this happening on a more organic scale and generally having regard to heritage values and their protection.

- 4.15. The provisions of the Regional Plan and Regional Policy Statement are summarised in the reporting planner's s 42A report. These documents' provisions generally echo the District Plan's provisions relating to historic heritage. While placing an emphasis on economic rejuvenation of the CBD, they do not appear to anticipate redevelopment at the radical scale (including the large-scale destruction of heritage values) as proposed in the application.
- 4.16. I note that the Southland Regional Development Strategy is also quoted. This document sees rejuvenation of the CBD as being a strategic priority. This document, which is not a statutory document, does not appear to have the regard for heritage that a document prepared under the RMA must have. Nevertheless, I am of the opinion that an appropriate level of rejuvenation could take place without the destruction of heritage proposed in this application.
- 4.17. I have expressed my (non-expert) concerns that the development as proposed may not be the economic boon anticipated in the application. Even if completed, financial returns could be an ongoing burden for the project participants.

## **5. CONCLUSIONS**

- 5.1. It is my opinion that the application fails to meet the threshold tests of s 104D of the RMA that a non-complying activity must meet, and therefore should be declined. That is because the application is contrary to relevant objectives and policies, which seek protection of heritage values and retention, rehabilitation and re-use of identified historic heritage. While other policies seek the rejuvenation of the CBD area, it is clear that this is expected to be within the context of protection of heritage values.
- 5.2. Even if this is not considered the case, the development would appear to rely on significant subsidisation in one form or another from central and local government to be viable. Quite apart from the distortions this could impose on the Invercargill business environment, the likelihood of this assistance not being available for the duration or at the scale required to make the development viable, and the implications of that, will need to be considered.
- 5.3. If the development was to be financially unsuccessful (which appears to be a distinct possibility) the adverse economic effects of that would compound those of the demolition of heritage.
- 5.4. The possibilities of a more modest development that retains and draws upon heritage values as a unique selling point, and which is much more in accordance with Plan provisions, do not appear to have been properly explored.
- 5.5. Therefore, I consider that consent should not be granted to this application.

Duncan McKenzie

18 March 2019

Attachment 1: Analysis of Objectives and Policies

<b>Heritage Objectives and Policies</b>		<b>Analysis</b>
Objective 1	<i>Heritage values are identified and protected from inappropriate subdivision, use and development</i>	Given that subdivision, use and development that significantly compromise heritage values are inappropriate, the application is clearly contrary to this objective.
Objective 2	<i>The built heritage of Invercargill is appropriately recognised and utilised.</i>	Application clearly contrary
Objective 3	<i>Heritage values are appropriately managed to avoid or mitigate the potential adverse effects of natural processes and climate change.</i>	Earthquakes are arguably a natural process with adverse effects on heritage values. Avoidance or mitigation of effects could be achieved through seismic strengthening, not proposed by the application.
Policy 1 Promotion:	<i>To promote public awareness and appreciation of Invercargill's heritage</i>	The proposed demolition does not indicate awareness or appreciation
Policy 2 Identification:	<i>To identify and prioritise sites, structures, places and areas of heritage value</i>	While the District Plan implements this policy through the listing of four Class I and 18 Class II heritage buildings, the application pays this little heed
Policy 3 Effects on heritage:	<i>To avoid, remedy or mitigate the potential adverse effects of subdivision, use and development on heritage.</i>	The token measures proposed (facadism) scarcely compromise avoiding, remedying or mitigating adverse effects.
Policy 4 Integration:	<i>To encourage the integration of new subdivision, use and development with heritage.</i>	Limited to integration with BNSW building and some facadism
Policy 5 Active management:	<i>To promote the active management, in particular the adaptive reuse, of heritage buildings to: (A) Avoid serious risk to human safety. (B) Investigate and evaluate all reasonable means of restoration, adaption, reuse and relocation as alternatives to demolition.</i>	With the possible exception of the Newbury Bldg, strengthening and adaptive reuse appear to be feasible (if expensive) so the application is generally contrary to this.
Policy 6 Conservation and adaptive re-use:	<i>To promote the conservation and adaptive re-use of heritage buildings, groups of heritage buildings, heritage facades and heritage street furniture in the Central Business District of Invercargill.</i>	As above (although the application does include retaining one building and some facades).
<b>Business 1 Zone Objectives and Policies</b>		<b>Analysis</b>
Objective 1	<i>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.</i>	Not contrary

Objective 3	<i>Identification, maintenance and enhancement of the amenity values of the Business 1 Zone.</i>	To the extent that amenity values are defined by heritage character, the application is contrary to this objective.
Objective 4	<i>Protection of the heritage values of the Central Business District</i>	The application is clearly contrary to this objective
Objective 5	<i>An holistic approach to economic, social and geographical issues in the Central Business District is complemented through the District Plan.</i>	The District Plan's approach appears to favour a more gradualist approach that that proposed by the application.
Policy 3 Urban design	<i>To encourage the incorporation of the following urban design principles into the design of buildings and open space: (A) Buildings and land uses respect their context. (B) Buildings and land uses reflect and enhance the character of Invercargill (C) Building and land uses offer diversity and choice for people. (D) Building and land uses are clearly linked by appropriate connections (E) Buildings and land uses demonstrate creativity, encouraging innovative and imaginative solutions. (F) Custodianship - Buildings and land uses should be environmentally sustainable, safe and healthy. (G) Collaboration – stakeholders collaborate to achieve good urban design outcomes.</i>	The application is generally consistent with this policy, except to the extent that buildings do not particularly respect their context.
Policy 4 Pedestrian-friendly frontages:	<i>To create an environment along the identified frontages that will offer safety, comfort and a stimulating and enjoyable pedestrian experience within the recognised retail area.</i>	The application should be able to achieve this.
Policy 14 Dilapidated structures and ill-maintained lands:	<i>To require that buildings in the Central Business District will be sound, well maintained and tidy in appearance.</i>	This has always been an issue with remote and uninterested landlords, so hopefully the new ownership will see an improvement in the medium term.
Policy 15 Demolition or removal activities:	<i>(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</i>	The application will be contrary to clause A. B should be achievable, C could depend on the economic feasibility of the redevelopment.



	<i>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.</i>	
Policy 16 Height of structures: Policy 17 Public open space: Policy 18 Private open space: Policy 19 Crime Prevention Through Environmental Design (CPTED): Policy 20 Connectivity and circulation: Policy 21 Parking and vehicle manoeuvring		I have not analysed the development in terms of its consistency with these policies but assume that they can be achieved.
Policy 22 Heritage value:	<i>To promote the retention of the character and scale of the heritage structures, buildings and places within the City Centre.</i>	The application is clearly contrary to this policy.
Policy 23 Concept plan:	<i>To include in the District Plan as Appendix X a Concept Plan for the City Centre and encourage its implementation</i>	The Concept Plan referred to appears to anticipate a more organic and gradualist redevelopment than that proposed by the application, and to that extent the application is contrary to the policy