

EVIDENCE OF DUNCAN MCKENZIE

FURTHER NOTES

The purpose of these notes is to

in the legal submissions

- 1 Respond to Ms Hamm's suggestion that "it is doubtful that ... Duncan McKenzie ... can present expert opinion in support of a submission made in [his] own name".
- 2 Suggest a way forward if the Commissioners were of a mind to grant consent but are concerned (as I am) with *unaddressed adverse effects and* some of the vagueness and lack of detail in the application.
- 3 Summarise in a few bullet points the major "expert" conclusion of my evidence, ~~and the major "lay" conclusion;~~
- 4 Offer some brief comments on the matters raised in the cross-examination of Dr Cawte.
- 5 Reiterate my laypersons concerns about "economic" risks.

1 My claim to expertise

- 1.1 I consider that the commissioners are entitled to enquire into the motives for my submission as well as how helpful it might be to your determination, before determining the weight to be given to it. My submission was made largely on the basis that if something looks too good to be true, it probably is, as well as a respect for the planning process that forty years as a practitioner has ingrained into me.
- 1.2 I do see that it is more expedient for Ms Hamm to attempt to have my evidence dismissed out of hand than to respond to the very real issues that I believe it raises.
- 1.3 I further note that these issues are not directly addressed in the written statements of either Ms McMillan or Mr Cleese. Sadly, a family bereavement has meant that I was unable to attend the hearing yesterday or this morning so I have not had the opportunity to hear Ms McMillan's presentation or associated questions and answers.
- 1.4 But on the basis of the written presentations, I consider that my evidence does provide an "expert" analysis of the policy and of s 104D of the RMA that none of the other planners have.
- 1.5 I found myself in a similar position at the Board of Inquiry hearing into the Waterview Tunnel project. I gave evidence in support of a submission I wrote on behalf of a community group that I actively supported. I gave the Board of Inquiry a full explanation of my involvement. I am pleased to say that my evidence was not only accepted but was also given considerable weight, to the extent that it was instrumental in securing significant mitigation for the project.

2 Suspension of the hearing?

- 2.1 A technique that the Board of Inquiry used at that time, when it became apparent that the effects on the environment of the proposal would not be adequately mitigated, was to inform the NZTA that, on the basis of what it had heard (including my evidence), it was of a mind to decline the application, invite the NZTA to modify the proposal, including incorporating conditions that addressed the concerns of the residents that I was supporting, these in many cases being "offsetting" or "Ogier" conditions (therefore unable to be directly ordered by the Board), and suspend the hearing until those modifications were available
- 2.2 If the Commissioners have concerns about this particular application, whether through unaddressed adverse effects on heritage or on neighbouring sites (including during the construction phase) or because of the lack of detail, you could consider a similar suspension.

The applicant would presumably not have the same statutory time constraints that a Board of Inquiry hearing has, so a more fundamental re-design could be sought. In particular I would support the kind of redesign outlined in paragraph 4.13 of my main statement.

2.3 So while my view remains that the application should be declined, at the very least the Commissioners could order a Waterview-type suspension with a view to seeking modifications to the proposal.

3 Application contrary to policies

3.1 The major expert conclusion of my evidence is that the proposal is contrary to many of the relevant policies of the District Plan. Appendix One of that statement provides that analysis.

3.2 I note that in the analysis of Heritage Policy 3 (Appendix One) should read "The token measures proposed (facadism) scarcely **comprise** avoiding, remedying or mitigating adverse effects."

3.3 I also note that in respect of Business 1 Zone Policies 16 to 21 I stated that "I have not analysed the development in terms of its consistency with these policies but assume that they can be achieved". I seek to have the qualifier removed, so ask that you delete the words "but assume that they can be achieved".

3.4 I therefore reiterate my conclusion of paragraph 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". This conclusion is repeated, in similar terms, in paragraph 5.1.

3.5 Although I have not at the time of writing been able to hear the presentations or responses to questioning of the other planners, I have been somewhat puzzled at their not reaching a similar conclusion to mine. But having heard the evidence of Dr Cawte, I can see how they may have been misled. For this reason, I would like to make some comments on that.

4 Dr Cawte's Presentation on Heritage Values

4.1 Dr Cawte undertook an analysis of the affected buildings using currently accepted heritage assessment methodology. I am familiar with, and fully support, that methodology. While working with Heritage NZ I supported and helped refine the inclusion of this methodology into the Auckland Unitary Plan. I then participated in a process that assessed a large tranche of Heritage NZ listed properties in accordance with those criteria with the objective of determining which were worthy of scheduling in the Unitary Plan. This included presenting the planning evidence in support of that.

4.2 Perhaps unfortunately for the current project, that is NOT the methodology adopted by the Invercargill City Plan. That instead appears to use a mixture of Heritage NZ listing status and (apparently) public opinion, informed by the architectural/aesthetic analysis of particular consultants who did not use the full gamut of factors that indicate heritage significance.

4.3 The policies therefore apply to buildings that are classified as having heritage value, not to those which Dr Cawte, or indeed myself or the other planners involved in the case, would consider have such values.

5 Economic Factors and My Lay Opinion.

5.1 The second major point of my written statement is, that If the Commissioners are not convinced that the proposal is contrary to the policies, then you will need to look at the sum total of effects, both positive and negative.

5.2 The obvious negative effects relate to the demolition of heritage. The applicant contends that the positive economic effects of the completed development will compensate for if not outweigh those negative effects.

5.3 There are several ways, in my view, that an unsuccessful development will manifest itself:

- It will not be completed
- It will be completed but only partially occupied
- It will be completed but only occupied because of substantial incentives.
- Or a combination of these factors.

5.4 Any of these outcomes would be an adverse economic effect. My lay reading of the economic evidence has done little to allay my fears that there is a quite high risk of these negative economic effects occurring.

Duncan McKenzie

27 March 2019