

Report / Decision on Change or Cancellation of Condition(s)

(Section 127 and Section 104B)

s127 Application number:	RMA/2018/148/B¹
Original application number:	RMA/2018
Applicant:	HWCP Management Limited
Site address:	Block generally bounded by Dee, Tay, Kelvin, and Esk Streets, as specified in the original application
Legal description:	Multiple lots as described in the original application
Zoning	Business 1 Zone
Overlays and map notations:	Entertainment Precinct; Priority Redevelopment Precinct; Pedestrian Friendly Frontages and Centre City Heritage Precinct
Activity status:	Discretionary activity
Description of application:	Change of conditions pursuant to Section 127

Introduction

Following consideration of a separate Notification Report prepared under sections 95A, 95B and 127(4) of the RMA, Commissioner John Maassen, acting under delegated authority, determined that this application be processed on a non-notified basis on 9 March 2020 (Notification Decision). The purpose of this report is to determine whether the application should be granted or declined pursuant to Sections 104, 104B of the RMA and whether conditions should be imposed under section 108 and 108AA of the RMA. To avoid duplication this report does not repeat information contained in the Notification Report and Notification Decision. These documents are included in Attachment 1 and should be read in conjunction with this report.

The consent holder is seeking to vary conditions of resource consent RMA 2018/148A to develop Invercargill Central. Invercargill Central is a comprehensive redevelopment of the majority of the Invercargill City Centre Block bounded by Dee, Esk, Kelvin and Tay Streets to establish a mixed-use commercial centre. RMA 2018/148 was granted on a notified basis by a Hearings Panel (Panel) on 4 June 2019 and was subsequently amended by a non-notified application to vary consent conditions, RMA/148A, which was granted on 17 November 2019 by Commissioner John Maassen.

The scope of the section 127 application is to amend condition 1 to substitute the approved plans with a revised plan set prepared by Buchan marked Resource Consent Amendment Rev 0B, 12 February 2020. The proposed changes to the plans relate to the reduction of the car parking building by one floor and reducing the overall number of car parking spaces from 859 to 700 spaces. The application also seeks a change to condition 49, which requires a design statement prior to any construction, to update the date to correspond with the proposed approved plan date.

More specifically the application seeks to amend Conditions 1 and 49 as follows (changes shown in strike through for deleted text and underlined for new text).

1. The development must proceed in general accordance with the information and plans submitted with the application and as amended by the evidence and plans produced at the Hearing (~~Plan Ref: Buchan Resource Consent Amendment Rev 0A, 29 March 2019~~) and the plans submitted with variation application ref (Plan Ref: Buchan Resource Consent Amendment Rev 0B, 12 February 2020). The approved consent documentation has been entered into Council records as number RMA/2018/148 and RMA/2018/148B.
49. At least 15 working days prior to the commencement of construction of any stage of the development, the consent holder must provide the Council with a design statement prepared by a suitably qualified design expert certifying that the buildings and the stage comply with the approved plans and meet the design outcomes set out in the "Invercargill Central Design

¹ The section 95A and 95B notification report for the same application incorrectly referred to the application reference as RMA/2018/148/A/1 when it should have been RMA/2018/148/B.

The application also includes the Invercargill Central Car Parking Reassessment prepared by Abley consultants, the authors of the Integrated Transport Assessment submitted with the original application (Abley Assessment).²

I considered the completeness of the application under section 88(3) of the Resource Management Act (RMA) and determined it to be complete. I clarified an application detail with the applicant but did not request any further information under section 92 of the RMA.

Description of site and existing environment

The application site (known as the Block) encompasses the area bounded by Dee, Esk, Kelvin and Tay Streets in the Invercargill CBD, excluding the Kelvin Hotel (20 Kelvin Street) and Reading Cinema (29 Dee Street) which are owned by third parties and not part of the application site. Figure 1 shows the Block and the excluded buildings.



Figure 1: Application site (shown in light green). Source: ICC Aerial and Photo Viewer

The Block formerly contained commercial premises and is now vacant or in the process of being demolished. No residential activity is located within the Block boundaries.

The surrounding area comprises a mix of similar commercial uses with some visitor accommodation, and residential use on Tay and Dee Streets. H&J Smiths is located opposite the site on Kelvin St. Wachner Place, a public open space, is located on the western side of Dee Street. Dee and Tay Streets are State Highways (SH6 and SH1 respectively) that both comprise four dual lanes in each direction separated by central medians. Angled public car parking is available on the north and south sides of Tay Street and the western side of Dee Street. Bus parking is available on the eastern side of Dee Street.

Kelvin Street is a two-lane local road with parallel parking and a taxi stand on the western side. Esk Street comprises a single lane, one-way road with angle parking on each side of the road. Esk Street operates as a mixed-use space with traffic calming measures allowing for free movement of pedestrians. The eastern end of the street is two-way to allow for service vehicles to enter the lane behind the Kelvin Hotel.

² I note that the Abley Assessment is dated 30 September 2019 prior to the date of the amended plans as I understand that the car park reduction has been planned for a period of time. I do not consider that the Abley Assessment requires any updating as it assessed the same scale of car parking reduction and was not reliant on a specific plan set.

Statutory considerations

Section 127 of the Resource Management Act 1991 states:

127 Change or cancellation of consent condition on application by consent holder

- (1) *The holder of a resource consent may apply to the consent authority for a change or cancellation of a condition of a consent, subject to the following:*
 - (a) *the holder of a subdivision consent must apply under this section for a change or cancellation of the consent before the deposit of the survey plan (and must apply under section 221 for a variation or cancellation of a consent notice after the deposit of the survey plan); and*
 - (b) *no holder of any consent may apply for a change or cancellation of a condition on the duration of the consent.*
- (2) *[Repealed]*
- (3) *Section 88 to 121 apply, with all necessary modifications, as if-*
 - (a) *the application were an application for resource consent for a discretionary activity; and*
 - (b) *the references to a resource consent and to the activity were references only to the change or cancellation of a condition and the effects of the change or cancellation respectively.*
- (4) *For the purposes of determining who is adversely affected by the change or cancellation, the local authority must consider, in particular, every person who –*
 - (a) *made a submission on the original application; and*
 - (b) *may be affected by the change or cancellation.*

Type of application

In my opinion this application can be processed as a change of conditions to RMA/2018/148A under section 127(1) of the RMA. The scope, nature, extent and magnitude of the consented activity will not increase as a result of the proposed amended conditions. In addition, the adverse effects will not be materially different from those associated with the original consent as discussed in the Notification Report, and will likely, on balance be less. This application will not result in any new matters of non-compliance with the Invercargill City District Plan (District Plan). I note the Notification Decision supports this conclusion.

In accordance with section 127(3)(a) of the RMA, applications for change of conditions are required to be assessed as a discretionary activity.

Written approvals 104(3)(a)(ii)]

No written approvals have been provided with the application and there is no requirement to have regard to any effect on a person who has given written approval.

Actual and potential effects on the environment [Section 104(1)]

Pursuant to Section 127(3) the application must be assessed as a discretionary activity. As such, the Council's assessment under section 104(1)(a) is unrestricted and all actual and potential effects of this proposal must be considered.

The adverse effects of the proposed change in conditions on the wider environment and on persons are discussed in the Notification Report and Notification Decision and that discussion is equally applicable here. The Notification Report concluded that the effects on the environment associated with the proposed change of conditions relate to the effects of:

- On-site reduction of car parking on inner-city car parking supply.
- Reduction in the car parking building height.

In the Notification Report I concluded that the adverse effects of the on-site parking reduction will be less than minor or nil (when applying the permitted baseline) and the removal of one floor of the car park building will have a positive visual effect. I also concluded that the proposed amendment to condition 49 is an administrative change and the effects of this change are nil and do not require any further assessment.

The Notification Decision generally concurred with my effects recommendations and considered that the effects relate to; the reduction in carparking; the impacts on safety and efficiency of the road network and impacts on

CBD amenity arising from unsatisfied demand for carparking increasing use on existing infrastructure. The Commissioner concluded that there is no evidence that the proposed reduction in car parking will affect the safety and efficiency of the existing roading network and agreed with the expert consensus is that the effects will be negligible and essentially unmeasurable. The Commissioner also concluded that the retention of the façade to mitigate the effects of the car park building's mass and form is important.

Based on this assessment in the Notification Report and subsequent Notification Decision by Commissioner Maassen, I consider that the actual and potential effects of this application on the environment are less than minor or nil. I consider that it would add little value to repeat the effects assessment previously undertaken in the Notification Report and Notification Decision.

Notification assessment [Section 95A and 95B and 127 (4)]

The Notification Report recommended that this application is processed on a non-notified basis. This report took into account all relevant matters under Section 95A, 95B and 127(4) of the RMA including consideration of whether parties who made a submission to the original application RMA 2018/148 were affected by the proposed change in conditions. Following consideration of the Notification Report, Commissioner Maassen determined on 9 March 2020 that the application should be considered on a non-notified basis. Therefore, this report does not make any further consideration of full or limited notification and relies on the previous decision made by Commissioner Maassen to process this application on a non-notified basis.

Relevant objectives, policies, rules and other provisions of the Plan and proposed Plan [Section 104(1)(b)(vi)]

Regard must be had to the relevant objectives and policies in the Invercargill City District Plan (District Plan). The applicant's AEE does not specifically address any District Plan objectives or policies. However, I note that objectives BUS1Z-01 and BUSIZ-03 are relevant in that they seek to maintain and enhance the primacy of the Invercargill Central Business District (CBD) as the primary centre for retailing and business and to maintain and enhance the amenity values of this zone. Policy BUS1Z-P21 requires provision of off-street car parking outside the Priority Redevelopment Precinct and by default encourages on-street parking within the Priority Redevelopment Precinct as a tool for encouraging CBD regeneration.

In my opinion the proposed change of conditions is consistent with these objectives and policies as the reduction in car parking will not affect the primacy of the CBD as it is consistent with the policy position of not requiring off-site parking and encouraging on-street parking to encourage increased foot traffic in the CBD. The reduction in height of the car park building is consistent with Policy BUSIZ-03 as it will lead to positive visual effects by reducing the visual dominance of the car park along Tay Street and reinforcing the dominance of corner sites encouraged in BUSIZ-P16.

Relevant provisions of a National Environmental Standard, National Policy Statement, Regional Plan, Regional Policy Statement or Coastal Policy Statement [Section 104(1)(b)]

I am satisfied that the District Plan gives effect to the relevant provisions of the higher order documents referred to in 104(1)(b) of the RMA. While I have not addressed them specifically in my report and consider that to do so in any detail would add little additional value, I have nonetheless had regard to the relevant higher order planning instruments.

Part 2 of the Resource Management Act and any other relevant matters [Section 104(1)(c)]

Taking guidance from recent case law³, the District Plan is the mechanism by which Part 2 is given effect to in the Invercargill District. The Plan has recently been reviewed, and was competently prepared through an independent hearing and decision-making process in a manner that appropriately reflects the provisions of Part 2. In my opinion the District Plan contains a clear and coherent set of policies relevant to this application. I see no reason to question the competency of the relevant planning provisions in the circumstances and consider that a more comprehensive assessment under Part 2 of the Act is not necessary. In any case, my assessment would be that the proposed condition changes are consistent with the sustainable management purpose and principles in Part 2 of the RMA.

In my opinion, there are no other relevant matters under section 104(1)(c) of the RMA which require consideration.

³ R J Davidson Family Trust v Marlborough District Council [2018] NZCA 316

Section 104(3)(d) notification consideration

Section 104(3)(d) states that consent must not be granted if an application should have been notified and was not. The decision not to notify the decision was made on 9 March 2020. No matters have arisen in the assessment of this application which would indicate that the application ought to have been notified.

Section 108 and 108AA – Conditions

The applicant has offered the proposed changes to the RMA 2018/148A conditions to reflect proposed changes to the approved plans. The proposed conditions offered by the applicant are accepted and consequently no further discussion with the applicant regarding conditions has occurred.

Recommendation

That for the above reasons the application be **granted** pursuant to Sections 104, 104B, 108, 108AA and 127 of the Resource Management Act 1991, subject to the following conditions:

The conditions of consent shall now read as follows:

1. The development must proceed in general accordance with the information and plans submitted with the application and as amended by the evidence and plans produced at the Hearing (~~Plan Ref: Buchan Resource Consent Amendment Rev 0A, 29 March 2019~~) and the plans submitted with variation application ref (Plan Ref: Buchan Resource Consent Amendment Rev OB, 12 February 2020). The approved consent documentation has been entered into Council records as number RMA/2018/148 and RMA/2018/148B.
49. At least 15 working days prior to the commencement of construction of any stage of the development, the consent holder must provide the Council with a design statement prepared by a suitably qualified design expert certifying that the buildings and the stage comply with the approved plans and meet the design outcomes set out in the "Invercargill Central Design Statement" Rev 0AB dated ~~29 March 2019~~ 12 February 2020 and prepared by Buchan.

A full copy of the recommended revised conditions is included in Attachment 2 of this report.

Reported and recommended by: Rachel Ducker, Consultant Planner

Date: 11/03/2020

Peer reviewed by: Glen Cooper, Consultant Planner

Date: 11/03/2020

Decision

That the above recommendations be adopted for the reasons outlined in the report.

Commissioner

Name: John Maassen

Signature: _____

Date: _____