

## Report / decision to determine notification of a resource consent application

(Sections 95A / 95B)

<b>S127 Application number:</b>	<b>RMA/2018/148/A/1</b>
<b>Original application number:</b>	RMA/2018/148
<b>Applicant:</b>	HWCP Management Limited
<b>Site address:</b>	Block generally bounded by Dee, Tay, Kelvin, and Esk Streets, as specified in the original application
<b>Legal description:</b>	Multiple lots as described in the original application
<b>Zoning</b>	Business 1 Zone
<b>Overlays and map notations:</b>	Entertainment Precinct; Priority Redevelopment Precinct; Pedestrian Friendly Frontages and Centre City Heritage Precinct
<b>Activity status:</b>	Discretionary activity
<b>Description of application:</b>	Change of conditions pursuant to Section 127

### Introduction

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.

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.

I considered the completeness of the application under section 88 (3) of the Act 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 Act.

### Background

#### RMA 2018/148

RMA 2018/148 was granted on a notified basis by the Hearings Panel (Panel) (John Maassen, Chairperson/Commissioner; Gina Sweetman, Commissioner and Jane Black, Commissioner) on 4 June 2019.

The scope of resource consent RMA2018/148 (as initially granted) includes the following:

- a. The demolition of all 30 buildings on the site, except for:
  - i. the former Bank of New South Wales (BNSW) Building on the corner of Dee and Tay Streets; and
  - ii. the retention of the façades of the Southland Times Building (67 Esk Street), Coxheads' Building (31-35 Esk Street) and the Esk-Street end of the Cambridge Arcade Building (59-61 Esk Street).
- b. Construction of a number of new buildings across the site, comprising:
  - i. A seven-storey building on the corner of Dee and Esk Streets, comprising retail, offices, parking and residential apartments.
  - ii. A series of two-storey buildings along Esk Street, comprising retail and food and beverage outlets at ground floor, and food and beverage outlets and offices on the second floor.
  - iii. A new three-storey building behind the Southland Times façade containing a large anchor retail tenant split over two floors, which includes separate retail on the ground floor along the Esk Street frontage, and a childcare centre on the third floor.

- iv. A seven-storey hotel fronting Kelvin Street, with the potential for retail or commercial services at ground level<sup>1</sup>. A one-way service lane will run along the rear of the proposed hotel and the Hotel, linking Tay Street to Esk Street.
- v. A six-storey parking building containing 859 parking spaces with frontage and vehicle access to Tay Street. This building will include a mix of retail and food and beverage activities at ground floor. A ground level connection will be provided through the centre of the site to the retail and food and beverage activities on Esk Street. The southern wall of the car parking building will be illuminated with a 'southern lights' moving display.
- vi. A five-storey medical centre, with frontage to Tay Street and a five-storey civic building, with frontage to Dee Street is proposed to be established on either side of the BNSW Building.
- vii. A piazza to the north of the medical centre and east of the civic building will be linked by escalators/stairs to the retail and food and beverage outlets between Esk and Tay Streets.
- viii. A new entrance to Reading Cinemas will provide internal access to the development.

No works are proposed to the Bank of NSW building.

Demolition of Stages 1-3 is proposed over an 18-month period.

Construction is proposed to occur over six-stages, as follows:

- a. Stage 1 – the Southland Times precinct and anchor retail tenant.
- b. Stage 2 – the parking building, with retail and food and beverage outlets.
- c. Stage 3 – retail, food and beverage outlets, and offices along Esk Street and linking through to Tay Street.
- d. Stage 4 – the building at the corner of Esk and Dee Streets.
- e. Stage 5 – the medical centre and civic building wrapping around the BNSW building.
- f. Stage 6 – the hotel.

#### *Planning framework*

The provisions that triggered the need for a resource consent under the Proposed Invercargill City District Plan Decision Version 2017 (Proposed District Plan) were:

- Demolition (controlled activity – rule 3.4.2);
- Construction Noise (discretionary activity – rule 3.13.18);
- Earthworks (discretionary activity – rule 3.17.7)
- Transport (discretionary activity – rules 3.20.4 and 3.20.11);
- Heritage (restricted discretionary, discretionary, and non-complying – rules 3.8.4, 3.8.6, 3.8.7, 3.8.8, 3.8.9);
- Residential activity within an Entertainment Precinct (discretionary – rule 3.23.2);
- Veranda design (restricted discretionary – rule 3.23.10);
- Building height (restricted discretionary – rule 3.23.12);
- Pedestrian friendly frontages (buildings more than two stories)– (discretionary activity rule 3.23.17);
- Corner building heights (discretionary – rule 3.23.20);

I note that the Invercargill City District Plan is now operative and that the rules numbering has changed.

Overall, the application was assessed as a non-complying activity under the Proposed Invercargill City District Plan. Consent was required under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NESCS) for a discretionary activity under clause 11(2) of the NESCS.

Consent was granted with 52 conditions. No appeals were lodged on the consent decision.

#### Boundary adjustment RMA/2019/138

A boundary adjustment was approved in September 2019 to undertake a subdivision and various amalgamations to create three new allotments across the subject site with areas of 795m<sup>2</sup>, 1.5137ha and 1,063m<sup>2</sup>. The three lot boundaries approved in the subdivision consent application align with the stage boundaries approved in land use consent RMA/2018/148. Consolidation of these parcels will enable the development stages to be undertaken by different parties.

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<sup>1</sup> As lodged and publicly notified, the proposal was for a new commercial building. The proposal was amended to be for a hotel during the course of the hearing.

## Change of conditions RMA/2018/148A

An application under section 127 of the Resource Management Act 1989 to vary consent conditions was granted on a non-notified basis (RMA 2018/148A) by Invercargill City Council on 17 November 2019 following a recommendation by commissioner John Maassen.

This application amended the conditions described in Table 1 and an advice note viii to support condition 21 (regarding demolition management) of RMA/2018/148. This application did not amend any of the approved plans under RMA/2018/148.

**Table 1: Conditions Amended by RMA/2018/148A**

Condition number	Topic
3	Communications
4-8	Activation Management Plan
10	Heritage recording
13	Façade Retention Plan
17	Heritage fabric salvage
19-22	Demolition management
23	Amendments to the Demolition Management Plan
26	Vacant Site Management Plan
28	Construction Management Plan
43	Construction Traffic Management Plan implementation
45	Access design certification
50	Principal pedestrian entrance
Advice notes	Asbestos

A copy of the consent conditions as amended by RMA 2018/148A are included in **Appendix 1**.

### **Application**

The scope of the current section 127 application relates to changes to condition 1 and 49.

It proposes 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 Statement" Rev 0AB dated ~~29 March 2019~~ 12 February 2020 and prepared by Buchan.

Condition 1 proposes to substitute the approved plans with a revised plan set prepared by Buchan titled Resource Consent Amendment Rev 0B, 12 February 2020.

The key change to the consented application as described in the AEE and in the Buchan plans is:

- A reduction in scale of car parking building from five to four levels from a consented maximum height of 23.1 metres to 21.24 metres and a reduction from 859 car parks to 700 car parks.

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). 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.

### 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 predominantly vacant. 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.

## 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 condition to RMA/2018/148A under section 127(1) of the Act. The scope, nature, extent and magnitude of the consented activity will not increase as a result of the proposed amendments to the conditions. In addition, the adverse effects will not be materially different from those associated with the original consent as discussed in this report, and will likely, on balance be less.

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

## Written approvals [Sections 95D, 95E(3)(a)]

No written approvals have been provided with the application.

## PUBLIC NOTIFICATION TESTS [Section 95A]

Section 95A sets out the steps that must be followed to determine whether public notification is required:

<b>Step 1: Mandatory notification – section 95A(3)</b>	
<i>Has the applicant requested that the application be publicly notified?</i>	<b>No</b>
<i>Is public notification required under s95C (following a request for further information or commissioning of report)?</i>	<b>No</b>
<i>Is the application made jointly with an application to exchange reserve land?</i>	<b>No</b>

Public notification is not mandatory under this section.

<b>Step 2: If not required by Step 1, notification is precluded if any of the following apply – section 95A(5)</b>	
<i>A rule or NES precludes public notification for all aspects of the application</i>	<b>No</b>
<i>The application is a controlled activity</i>	<b>No</b>
<i>The application is a restricted discretionary or discretionary activity for a subdivision of land</i>	<b>No</b>
<i>The application is a restricted discretionary or discretionary activity for a residential activity</i>	<b>No</b>
<i>The application is a boundary activity (other than a controlled activity)</i>	<b>No</b>

Public notification is not precluded under this section as the application is a discretionary activity for a commercial development.

<b>Step 3: Notification required in certain circumstances if not precluded by Step 2 – section 95A(8)</b>	
Does a rule or NES require public notification?	<b>N/A</b>
Will the activity have, or is it likely to have, adverse effects on the environment that are more than minor? (discussed below)	<b>No</b>

### Assessment of effects on the environment

Pursuant to Section 127(3) the application must be assessed as a discretionary activity. As such, the Council’s assessment is unrestricted and all actual and potential effects of the proposed changes must be considered. Guidance as to the effects that require consideration is contained in the relevant objectives and policies, and any associated matters of discretion or control.

When assessing whether the adverse effects on the environment will be, or are likely to be, more than minor, any effects on the owners and occupiers of the application site and adjacent properties must be disregarded pursuant to section 95D(a). Accordingly, this part of my assessment focuses on the wider environment beyond the application site and adjacent properties.

Trade competition and its effects must be disregarded (section 95D(d)). Section 95D(b) allows the effects of activities permitted by the District Plan or an NES to be disregarded (the “permitted baseline”). In my opinion there is no reason why the discretion to disregard the adverse effects of permitted activities should not be exercised in this case.

In my opinion the effects on the environment associated with the proposed change of conditions relates to the effects of:

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

#### On-site parking reduction

The application proposes to reduce the number of on-site car parking spaces by 159 to 700 spaces as part of a reduction of the scale of the car parking building by one level (from five to four levels).

As noted in the applicant’s AEE, under Rule TRA-R1 of the Invercargill City District Plan on-site car parking is not required within the City Centre Priority Redevelopment Precinct within the Business 1 Zone of the Invercargill City District Plan. However, this application requires assessment of the effects of on-site parking reduction as on-site parking provision was included in the application and approved plans. I also note that the section 42A Officers report prepared for the original application shared this view:<sup>2</sup>

#### PARKING PROVISION

7.77 The District Plan includes an exemption from the need to provide any parking for sites located within the City Centre Priority Redevelopment Precinct in the Business 1 zone. This exemption is included in the District Plan as an incentive to facilitate and enable regeneration proposals in the City Centre. Whilst the District Plan does not require any spaces, the non-complying activity status does enable the adequacy of parking to be considered through this resource consent process. The ITA therefore quite appropriately provides a detailed assessment of parking demand.

Assessment matters included in TRA-R5 of the Invercargill City District Plan or applications requiring a consent under the transport chapter of the Invercargill City District Plan provide guidance for assessing this application. These matters relate to consideration of:

1. Alternative arrangements proposed for off-street parking.
2. Provision made for transportation modes other than private motor vehicle.

<sup>2</sup> page 36, Section 42A Officer’s report, RMA 2018/148

3. Effects on the transportation network.
4. Effects on adjoining properties and the immediate neighbourhood.

The Abley Assessment concludes that the site is well serviced by public transport with reasonable connectivity to residential areas of Invercargill and that cycle parking is provided within the development. It concludes that on this basis a high proportion of non-car based trips are anticipated which consequently results in a lower demand for parking. The Abley Assessment also refers to the lack of significant parking pressure within the Invercargill City Centre, the occurrence of linked trips (multi-purpose) and mixed-use nature of the development which typically results in lower peak parking demand than for individual activities. It also discusses potential measures to reduce the staff parking allocation to increase parking availability for customers and mitigate any adverse effects from overflow car parking.

The overall conclusion in the Abley Assessment is:

This technical note concludes that the central location and the mixed use nature of the development means that there are number of factors, which are no necessarily quantifiable, but will contribute to a notably low parking demand than that would be typically expected when the individual activities within the development are considered separately. It is also noted that, whilst highly unlikely, any occasional overflow of parking onto the adjacent streets is unlikely to result in any significant adverse impact in a traffic and transport perspective.

Mr Pravin Dayaram, Technical Director Transportation of Harrison Grierson reviewed the Abley Assessment and supports the report's conclusions that the original parking demand estimates in the ITA were "highly conservative" and that the proposed reduction in car parking spaces is still likely to provide sufficient capacity to meet the parking demand of the proposed development. I note that the permitted baseline for the subject site is that no on-site parking is required. After taking the technical advice of Mr Dayaram into account, and the Invercargill City District Plan's policy approach for no on-site parking and reliance on on-street parking as a tool for encouraging CBD regeneration, I consider that the adverse effects of the on-site parking reduction is less than minor or nil (when applying the permitted baseline).

Effects of reduced height of car parking building

I agree with the applicant's assessment in the AEE that the effect of removing one floor of the car park building will have a positive visual effect as it will reduce the dominance of the car park structure along the Tay Street frontage and reinforces the dominance of the corner sites consistent with the District Plan's policy objectives for the Business 1 Zone.

Overall, the potential adverse effects of the proposed change in conditions on the wider environment are considered to be nil as the effects of the reduced height and bulk are positive.

Administrative change

I consider that the proposed amendment to condition 49 of the amended plan set is an administrative change and the effects of this change are nil and do not require any further assessment.

I note that Condition 49 requires the final design before construction of each stage to be assessed to ensure that it meets the design outcomes set out in the "Invercargill Central Design Statement".

<b>Step 4: Relevant to all applications that don't already require notification – section 95A(9)</b>	
<i>Do special circumstances exist that warrant the application being publicly notified?</i>	<b>No</b>

The term special circumstances is not defined in the RMA. However, it is generally accepted by the courts in RMA proceedings that a special circumstance is something which is exceptional, abnormal or unusual but less than extraordinary or unique.

I note that the original consent application was publicly notified and received 44 submissions. The AEE submitted with this application concluded that no submissions discussed the scope of the current application being the proposed on-site car parking reduction and reduction in car parking building height. I have reviewed all submissions on RMA 2018/148 in relation to the current scope of this section 127 application and conclude that no submitter to RMA 2018/148 is affected by this application. Therefore, I do not consider that the public notification of RMA 2018/148 warrants special circumstances for notification of this section 127 application.

I have also considered whether the public interest in this development provides grounds for special circumstances requiring notification. In the recent judicial review case of *Aspros v Wellington City Council* [2019] NZHC 1684 Cull J concluded:

*“Being aware of public opinion stacked against a contentious proposal will not determine whether “special circumstances” exist, but may be a contributing factor. If what is proposed is specifically envisioned by the District Plan, it cannot be described as giving rise to special circumstances.”*

I acknowledge that there is considerable public interest in this development and it has had significant media coverage. This development was also the subject of a High Court appeal seeking interim orders, pending the outcome of an application for judicial review, to prevent HWCP Management Ltd (HWCP) from demolishing a large number of buildings in a block of the Invercargill CBD. This appeal was dismissed for the reasons recorded in *Thompson v Invercargill CC* (2020) NZHC 174 (refer to **Appendix 2**). The High Court judicial review appeal on this matter is scheduled for late March 2020.

I do not consider that the scope of the current section 127 application is the focus of public interest. It is my understanding that the public interest is more centred on demolition of heritage buildings, temporary construction effects, operation and activation of the CBD during demolition and construction and whether there is sufficient funding for the development to proceed. Furthermore, on site car parking is not required within this zone of the Invercargill City District Plan. In accordance with the *Aspros v Wellington City Council* [2019] NZHC 1684 decision, as no on-site parking is envisioned by the District Plan, the proposed reduction in on-site parking does not constitute special circumstances requiring notification. In addition, that I note that in *Thompson v Invercargill CC* (2020) NZHC 174 Council’s pecuniary interest was raised as a potential grounds for notification as HWCP is 50 per cent owned by Invercargill City Property Limited which is wholly owned by Invercargill City Holdings Ltd, which in turn is wholly owned by Invercargill City Council. Cull J concluded that:

*“73] Moreover, I do not consider the fact HWCP is half-owned by the Council to materially add to a claim of special circumstances. Miss Gepp cited Urban Auckland in support of her proposition. However, I consider that case to be distinguishable. There, the resource consent applicant, Ports of Auckland Ltd, was fully owned by the Council. In any event, Venning J said that alone could not be sufficient to find special circumstances. Venning J only found special circumstances to exist when the total ownership interest of the Council was put alongside (relevantly) the fact the Port of Auckland was of both national and regional importance; and there was significant public interest and controversy that “could be described as outside the common run of interest shown in applications for commercial development”. The present case, in my view, does not share similarly unusual features that would justify the conclusion that there are special circumstances.”*

On these bases, I consider that despite the public interest in the consented development, the scope of this application for a change in conditions is not a special circumstance that warrants notification.

**Conclusion on public notification**

Having evaluated the application against the provisions of section 95A, my conclusion is that the application must not be publicly notified.

**LIMITED NOTIFICATION TESTS [Section 95B]**

Where an application does not need to be publicly notified, section 95B sets out the steps that must be followed to determine whether limited notification is required.

<b>Step 1: Certain affected groups/persons must be notified – sections 95B(2) and (3)</b>	
Are there any affected protected customary rights groups or customary marine title groups?	<b>No</b>
If the activity will be on, adjacent to, or might affect land subject to a statutory acknowledgement, is there an affected person in this regard?	<b>N/A</b>

The proposed change in conditions does not affect any customary rights groups or any statutory acknowledgement area.

<b>Step 2: Preclusions to limited notification – section 95B(6)</b>	
Does a rule or NES preclude limited notification for all aspects of the application?	<b>No</b>

Is the application for a land use consent for a controlled activity?	No
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There are no preclusions to limited notification under this section.

<b>Step 3: Notification of other persons if not precluded by Step 2 – sections 95B(7) and (8)</b>	
For a boundary activity, are there any affected owners of an allotment with an infringed boundary under s95E?	N/A
For other activities, are there any affected persons under s95E, i.e. persons on whom the adverse effects are minor or more than minor, and who have not given written approval?	No

### Assessment of affected persons

The statutory context for assessing the adverse effects of this application on the environment is outlined earlier in this report. It is equally relevant to the assessment of affected persons, which extends to include the owners and occupiers of adjacent properties.

Pursuant to Section 95E (1) of the Act a person is not deemed affected by an activity where the adverse effects are less than minor. Additionally, there is discretion to disregard the effects of permitted activities where relevant (section 95E(2)(a)).

The above assessment concluded that the effects of the proposed reduction in on-site parking provision and reduction in scale of the proposed car park building are less than minor. The proposed amendments to approved plans are not considered likely to affect the owners and occupiers of any adjacent properties. The transportation effects of reducing on site parking are less than minor and no on-site parking provision is required in the Invercargill City District Plan. The proposed reduction of the car park building height is not considered likely to affect the owners and occupiers of any adjoining property as the visual and any overshadowing effects are likely to be lesser.

Section 127(4) of the Act also requires consideration of affected parties. It states that:

- (4) For the purposes of determining who is adversely affected by the change or cancellation, the consent 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.*

As discussed in the commentary above regarding notification under section 95A, I reviewed all submissions previously made on RMA 2018/148 and considered whether the proposed change in conditions will have any adverse effect on any person who made a submission on RMA 2018/148. In that assessment I concluded that no submissions were made regarding the subject of this section 127 application and on that basis I do not consider any submitter on RMA 2018/148 to be adversely affected by the change in conditions.

In my opinion, no persons including submitters on RMA 2018/148 are likely to be adversely affected by the proposed change.

<b>Step 4: Relevant to all applications – section 95B(10)</b>	
Do special circumstances exist that warrant notification to any other persons not identified above?	No

I have considered whether there are any special circumstances requiring limited notification and have concluded that none apply. For completeness I note that my earlier evaluation under Step 4 of the Public Notification Tests above is equally applicable here.

### Conclusion on limited notification

Having evaluated the application against the provisions of section 95B, my conclusion is that the application **must not be limited notified**.

## RECOMMENDATION

That, for the reasons outlined above, the application **be processed on a non-notified basis** in accordance with sections 95A and 95B of the Resource Management Act 1991.

**Reported and recommended by:** Rachel Ducker, Consultant Planner

**Date:** 03/03/2020

**Reviewed by:** Glen Cooper, Consultant Planner

**Date:** 04/03/2020

**Resource Management Act 1991**

**NOTIFICATION DECISION ON SECOND CHANGE OF CONDITIONS**  
(Section 127)

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<b>S127 application number:</b>	RMA/2018/148/B
<b>Original application number:</b>	RMA/2018/148
<b>Applicant:</b>	HWCP Management Limited
<b>Site address:</b>	Block generally bounded by Dee, Tay, Kelvin and Esk Streets, as specified in the original application
<b>Legal description:</b>	Multiple lots as described in the original application
<b>Zoning:</b>	Business 1 Zone
<b>Overlays and map notations:</b>	Entertainment Precinct; Redevelopment Precinct; Pedestrian Friendly Frontages and Centre City Heritage Precinct
<b>Activity status:</b>	Discretionary activity
<b>Description of application:</b>	Change of conditions pursuant to Section 127 for reduction of carpark building and carpark spaces other minor changes

- [1] I am appointed in writing to consider a second application for variation of RMA/2018/148 under section 127 of the Resource Management Act 1991. The first variation is in the decision RMA/2018/148A. This matter has the reference RMA/2018/148B.
- [2] The application is to vary conditions 1 and 49 in accordance with Appendix A to this decision.
- [3] My task is to first consider the question of notification. Then, if a non-notification decision is made to determine the application in due course.
- [4] The relevant material includes the following:
- (a) An assessment of environmental effects of the variation from Bonisch Consultants dated 14 February 2020.
  - (b) An Invercargill Central carparking reassessment by Abley Consultants dated 30 September 2019 considering the effects of a reduction in carparking spaces from that originally proposed of 849 to 700 parking spaces.
  - (c) Revised plans called Invercargill/Resource Consent Amendment Design Statement 12 February 2020/Rev0B.
  - (d) A notification report by consultant planner, Rachel Ducker, on the application for variation commissioned by the Council.
  - (e) A peer review of the transport assessment for the Applicant on behalf of the Council by Mr Dayaram dated 27 February 2020.
- [5] My conclusions are:
- (a) The changes can be made as a variation.
  - (b) The effects of the changes are negligible and the application should proceed on a non-notified basis.

- [6] In reaching my conclusions, I have considered and largely adopted the assessment by Rachel Ducker for the Council and Christine McMillan for the Applicant. However, I will add some additional reasoning of my own.
- [7] The most important change is the reduction in available carparking spaces with the consequential alteration in the scale and form of the carpark building. As the project designer Mr Burgess states in his letter dated 13 February 2020, the reduction in the mass of the carpark provides an improvement in street condition. This reduces mass in the mid block and therefore reinforces the aspiration of the District Plan for pronouncement of building mass at street corners. Mr Buchan in his letter dated 13 February 2020 also emphasises that the carpark façade is not compromised by the change. That façade with its design and lighting effects is an aesthetic to mitigate the effects of the car park building's mass and form modelled from examples in Christchurch. The fact this façade is retained as originally conceived is therefore important to my decision.
- [8] The reduction in number of carparks by a number of 159 represents a total carpark reduction of 19%. While in a numerical sense this appears significant, there are a number of reasons why the effects are negligible. The effects that are likely to be relevant to a reduction in carparking are first, impacts on the safety and efficiency of the road network and secondly, impacts on CBD amenity arising from unsatisfied demand for carparking increasing use on existing infrastructure. Concerning the first effect, there is no evidence that a reduction in carparks will affect the safety and efficiency of the existing roading network and I cannot imagine how a loss of one floor could have that effect.
- [9] Concerning the impact on the CBD environment from potentially unsatisfied parking demand the following factors were considered by

Abley Consultants in assessing the scale and effect of the reduction in parking:

- (a) The location within a central city environment where the District Plan contemplates high intensity uses generating public demand without provision of carpark spaces.
- (b) Proximity and availability of public transport.
- (c) Mixed use nature of the development.
- (d) The potential for allocated staff carparking to be allocated to visitor parking.

[10] Predicting carpark demand presents special challenges with unique large-scale developments in diverse urban catchments. Therefore, assumptions need to be made. In this case the transport experts all agree that the assumptions used in the original application were conservative and likely to result in an over supply of parking. There are no District Plan no parking standards based on GFA or some other metric that can be used as proxy for the community's expectation concerning supply

[11] As Ms Ducker points out the permitted baseline for parking in this case is nil. That reveals the community's expectations that the public resources of the street networks and other carparking will be available to meet parking demand. Where there are constraints perhaps alternative modalities will be used. This nudging effect of constrained supply is not negative where it promotes positive behaviour change .

[12] The expert consensus is that the effects will be negligible and essentially unmeasurable. That seems to me to be a rational assessment in all the circumstances.

**DATED** this 9th day of March 2020

A handwritten signature in blue ink, appearing to read 'J W Maassen', with a horizontal line extending from the end of the signature.

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J W Maassen  
Commissioner

## APPENDIX 1

### **Varied Condition 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 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.

### **Varied Condition 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 OB dated 12 February 2020 and prepared by Buchan.