

**Statement to Hearing Commission re application of
Regina Properties Limited, 1-3 Dawson Street, New Plymouth
Ref: – NPDC Ref: LUC21/47890**

We, **Colin Michael Comber** and **Margaret Josephine Comber** lodged a formal submission opposing the above application for resource consent. We now state in evidence before the Hearing Commission as follows:

Introduction

This statement of evidence is comprised in two parts. Firstly, matters specific to us personally and our residence at 122A St Aubyn Street, and secondly, matters relating to statutory planning.

Up until June 2014 I (Colin Comber) worked for a period of some 20 years (1989 - 2001 and 2006 - 2014) with the New Plymouth District Council. During this time, I worked across both consents and policy planning. Following the promulgation of the RMA in 1991 I was a member of the team that wrote the (first generation) Operative District Plan. In my final five years with the council, I was Manager Environmental Policy. I have been a planning consultant (sole practitioner) on my own account since July 2014.

I hold the qualification of the NZ Certificate in Town Planning and have been a full member (MNZPI) of the New Zealand Planning Institute since 1989. I also hold Diplomas from the Royal Society of Health (RSH) in Public Health Inspection and Air Pollution Control.

I have been a full member of the New Zealand Planning Institute (MNZPI) since 1989. As I am personally affected by the application I will tender evidence to the Commission on planning matters as a submitter.

A - Matters specific to 122A St Aubyn Street

1. Margaret and I are the owners and occupants of **122A St Aubyn Street, New Plymouth**. We have owned and resided at the property since January 2020.

2. We are one of three dwellings in the 'Oceanview' cluster, built as one development (c2018) and all being of similar architectural style and materials. The design of each of the three residences optimise the coastal location as to views, daylight and sunlight while maintaining privacy. The three properties were built 'on spec' by a developer; we had no input into the design or build and purchased our residence complete ready to move into.
3. Our property has a common boundary with the subject site and immediately adjoins the subject site on its eastern aspect.
4. Our residence, while being of three stories, is somewhat less in height than the Operative District Plan (ODP) permitted height level of 10m.
5. The design of our residence takes account of the applicant's adjoining existing building, the former 'GQ Building'. This building is three stories high, being three floors of offices plus an open deck over the full extent of the roof. The BOON plans show it to be 1.7m above the Operative District Plan (ODP) and Proposed District Plan (PDP) maximum permitted height level of 10m.
6. The glazing on the eastern aspect of our residence is limited to a bathroom on the lower ground (obscure glass), laundry and pedestrian access to garage (obscure glass). On the upper floor we have a bathroom (obscure glass) together with a kitchen scullery window (clear glass). We rely on daylight to provide natural light to each of these rooms.
7. Regarding the kitchen scullery, we enjoy the natural light this window admits. More importantly the direct afternoon sunlight that this window provides to this part to our house is valued. This window is the only window with clear glazing on the western wall of the residence and the only window that allows for direct sunlight and a sky view. In the summer we are also able to enjoy the benefit of the direct light of the setting sun through this window. This window also provides us with a view through to the dwellings on the western side of lower Dawson Street and the open sky beyond.

8. The applicant's existing building is 3 metres from our common boundary. We have a view of the south wall of applicant's existing building from the kitchen window and along part of the eastern wall. We can see the entire height of the south wall.
9. Refer Photo 1 in Attachment – pg. 22
10. The applicant's proposal to add an additional 3.7m in vertical height to the exiting GQ building coupled with bulk of the new build at 11.4m (1.4m above maximum permitted height) attached to the south wall of the existing building will mean that natural daylight to all windows on our western wall will be significantly diminished. We will also lose the benefit of the direct afternoon sunlight into our kitchen scullery attributable to additional height to the existing GQ building alone.
11. We acknowledge that the applicant can build up to 10m above ground level on the subject site. In that regard we will have to accept the lost of our view to the west from our kitchen scullery in due time. However, we do not accept the diminution of daylight and loss of direct afternoon sunlight through our kitchen-scullery that we will suffer due to the excessive height that the proposal is attempting to achieve.
12. Loss of privacy will also become a factor. The three floors of floor-to-ceiling style glazing together with their balconies shown on the western elevation of the new build on the western elevation (Ref: Boon SK3.03.1) will have direct line of sight to our kitchen/scullery window.
13. Refer Blue Marble images in Attachment. pg. 23. These images are not as helpful as they could be as they place emphasis on the horizontal window mullion and show only a partial view of the window frame. They are not representative of the view as the human eye perceives the view standing at the scullery bench. The second Blue Marble image does give some indication of the view we will have if the development proceeds which will be a wall of bedroom windows and the eastern wall of the lift well.
14. The north elevation shown in Boon SK3.02.1 and east elevation in Boon SK3.03.1 clearly show how incompatible the proposal is with the character of existing

residences in the immediate environment. The north elevation shows the residences of Comber 122A, St Aubyn St, and alongside, Lynskey, 122B St Aubyn. The east elevation shows the MacArthur resident at 122 St Aubyn St. It is clearly shown that the three named residences (the Oceanview cluster) are built in conformance with the ODP maximum height of 10m. The proposal, in exceeding the maximum permitted height by some 54%, clearly visually dominates the amenity of the immediate environment and adversely affects the character of the locality to such an extent to be unacceptable.

15. The excessive height exceedance has the knock-on adverse effect of creating excessive shading. Our residence is the worst affected. The 12-month shading study (Boon SK5.10) clearly demonstrates this. Our residence, already in the shadow of the GQ building, will suffer up to 5 hours additional shading per day in the summer months; we will experience additional loss of sunlight and daylight to the windows on the western elevation of our residence throughout the year and on our roof. This is confirmed in the evidence of Emily Batchelor, architect. Unfortunately, this evidence draws no conclusions as to the adverse environmental effects that could arise from this additional shading. For example, what will be the effect of these extended periods of shading on light levels in the rooms affected within our residence. What will be the effect on ambient room temperatures in the affected rooms? What will be the effect on the ambient interior temperature overall where greater roof area will be in shade and for longer periods of time than that currently being experienced?
16. The daylight levels in our garage, laundry, and lower bathroom, currently benefit from the light reflected off the light-coloured exterior of the western exterior wall of the GQ building. If the exterior colour of the building is to be changed to a lower light reflectivity, we will experience lower natural daylight levels in these rooms, particularly on overcast days. Such an adverse effect does not appear to have been addressed by the applicant nor the Council Planner.
17. We live in a residential neighbourhood. Notwithstanding that the land on which we and our immediate neighbours live is within a Business Environment Area ODP), the character of the locality we live in is clearly residential. The character and use of the

neighbouring buildings on the seaward side of St Aubyn Street, that is Oceanview and the Richmond Estate, is residential. The Devonport Apartments on the southside of St Aubyn Street were purpose-built as residential and have been used as residential dating back to the 1920's. The character and use of the buildings on the western side of lower Dawson Street is residential.

18. The Proposed District Plan has zoned (in error in our view) our neighbourhood as Mixed Commercial Use with provision for living activities. From what I have previously described as the character of the area, the PDP has failed to recognise that the well-established predominant use of the use of the locality is residential living.
19. The community has decided over the past 100 years that highest and best use of the locality is residential. The PDP also maintains the maximum permitted height at 10m. My point here is that given the predominance of residential living in the locality, equitable access for all residential living activities to natural daylight and direct sunlight is of primary importance for community health and wellbeing. Adherence to the maximum permitted 10m height limit therefore ought to be a key consideration in decision-making toward maintaining that equity.
20. The proposed development, due to its location and height, is out of character with the existing built development in the local environment. With the exception of the Richmond Estate tower block, the local built environment is one, two, and three stories in height. The proposal seeks to impose the bulk of a five-six storey equivalent development into what is predominantly a residential neighbourhood of one, two and three level properties.
21. The proposal will exceed the permitted height of 10m by some 5.4 metres i.e., 54% more than the permitted building height, both for the Environment Area and the Cameron Street and Marsland Hill/Pukaka Viewshafts. As such it will be out of character with the environmental amenity of the Business B Environment Area and the Viewshafts in which it is to be located.

22. The AEE, in large part, fails to acknowledge that the proposed development is in a neighbourhood that is primarily residential in character and fails to consider the adverse effects that will be visited upon the occupants through excessive building height and loss of sunlight and shading.
23. Uncertainty as to Location of Mechanical Services – Para.102 of the applicant's Planner's evidence states the proposed building will comply with the ODP permitted standard Bus85 Emission of Noise. We believe this assessment is inadequate as it is general in nature and fails to identify the proposed noise sources that have been assessed. In the interests of completeness and transparency it would be helpful if the type, number, and location of the mechanical services (e.g., swimming pool equipment, HVAC etc) for the total building were identified along with the sound attenuation proposed and the acoustic design certificate sighted. Our preference is for such equipment to not be located in the eastern yard, but to be wholly within the building or on the western side of the building. Excessive noise emission will have the potential to adversely affect the amenity of our home and property.

Concluding comments

24. The application seeks to establish an apartment dwelling designed to maximise unobstructed and expansive sea views while enjoying all day sun in a neighbourhood predominantly residential in character, but which has been designed with little regard for neighbouring residential properties.
25. The location and excessive height of the proposal will result in a building that will visually dominate nearby properties. It will also result in excessive shading of neighbouring properties, an adverse effect while varying with the seasons, is nevertheless a permanent adverse effect that will diminish the quality of life and the health and wellbeing of the neighbouring residents.
26. The former GQ Building at 1 Dawson Street in the ownership of the applicant could be adapted/re-purposed within its existing built envelope to provide an executive apartment/family home (perhaps two) with expansive sea views and all-day sun while

preserving the existing amenity in the immediate built environment. It is respectfully suggested that the applicant should pursue this alternative. With good design we are confident a more than adequate apartment could be developed that would be in keeping with, and respectful of, the character and amenity of the immediate neighbourhood and environment. Such an outcome would result in a building that would be considered a good neighbour by the majority of neighbouring residents. Such an approach would also most likely overcome the need for a notified land use resource consent application.

27. Regardless of the outcome of this application we would urge the Council to review within the Proposed District Plan the proposed Commercial Mixed-Use zoning of the locality with a view to preparing and promoting a variation reflective of the predominant and longstanding residential character and use of the neighbourhood and the maintenance of an environment conducive to residential living.

B - Statutory Planning matters

Introduction

1. My evidence will, in the main, be confined to matters related to rule Bus13 – Maximum permitted height of buildings within the Business B Environment Area. The subject site is within the Business B Environment Area.
2. My evidence is arranged in an order similar to that set out in the s42A Report.

ODP Provisions

1. The proposal falls for restricted discretionary consideration as it does not comply with a range of rules within the Business and Overlay provisions of the Operative District Plan (ODP). The rules triggered for consideration are Bus13 – Maximum Height; Bus19 – landscaping trees; Bus87 – carparking; Bus88 – loading and standing space; Bus91 - vehicle queuing; OL63 – Maximum height within

Cameron Street Viewshaft and OL71 – Maximum height within Marsland Hill/Pukaka Viewshaft.

2. Rule Bus13 provides for buildings to be of a maximum permitted height of 10m above ground level. Ground level is a defined term in the ODP. Where a building greater than 10m in height is proposed six matters are detailed in the ODP to which the Council has restricted the exercise of its discretion in decision making.¹ Of these six matters, the following are relevant to this application:

1) The extent to which the extra HEIGHT of the proposed BUILDING will:

- adversely affect the character and visual amenity of the surrounding area;

And

2) The extent to which SITE layout, separation distances, topography, planting or setbacks can mitigate the adverse effects of extra HEIGHT.

Permitted Baseline

3. The applicant's application and the expert evidence of Ms. Martin and Ms. Batchelor and the s42A report place emphasis on permitted baseline considerations. In this case the applicant experts draw significant attention to the Bus B rules which provide for 100% percent site coverage and a permitted height at 10m at any/all boundaries. A 3D image is included in the application (BOON SK3.13), and this has been reproduced in the S42A report (pg.14 of S42A), to illustrate a hypothetical scenario. It is described in the application as 'non fanciful' and this view has been adopted in the S42A report.

¹ ODP – Vol 1, pg. 284,285

4. I would suggest this approach is somewhat simplest. It is well-established and evidential that the preferred use of the land in this coastal locality is for residential living. Given land values in the locality and having regard to considerations of viable economic return, non-habitable buildings such as warehousing or offices are most unlikely to be future uses in my view.
5. With regard to non-habitable uses, the GQ office building on the subject site has been vacant for several years as have the commercial warehouse-type buildings adjoining. The GQ building is now aging office accommodation in the New Plymouth context and there is a surplus of such office accommodation in the city. A case in point is the Shell Todd Oil Services (STOS) at 167 Devon Street West, located just three blocks south of the subject site along Dawson St. The building, which formerly housed 300 office workers has been for sale since 2016. STOS have left town and the building is currently vacant with little prospect of being leased as office space. The current owner is looking at alternate uses. Apartments and hotel/motel would be likely options. In like manner, highest and best use considerations suggest the most probable future use of the subject site and the adjoining vacant warehousing is for accommodation and hospitality of some form, e.g., apartments, café, motels, hotel or similar.
6. At 10m in height such uses will more than likely be designed to maximise views of the coastal environment and admit daylight on all walls at all levels. Glazed facades will also need to give consideration in fire design to separation from adjoining buildings. Access within the site to carry for repairs and maintenance to the exterior of the building will also be an important consideration. Accordingly, I believe a more conservative approach to permitted baseline considerations is called for.
7. A more realistic and non-fanciful use of the site is a building setback from the eastern boundary like the existing GQ building. i.e., 3m. Such a setback on the eastern boundary would result in lesser adverse effects, particularly from shading on adjoining and nearby residences than the 100% site coverage scenario.

8. The permitted baseline Rule Bus 19 also calls for landscaping trees (one every six metres) along each of the road frontages (Dawson St and Regina Place). The applicant's emphasis on 100% site coverage seems to have overlooked this. Further, no mention is made of how the onsite parking, queuing and other traffic and transport matters would be addressed.
9. In summary, the 100% site coverage scenario is invented or hypothetical and cannot be considered as 'non-fanciful, i.e. credible.
10. The 'permitted baseline' test as provided for in RMA section 104 (2) is a consideration that is optional for a consent authority to adopt. On this point MfE – RMA Guidance advises "An activity which is permitted but 'fanciful' (purely hypothetical) should not be considered part of the permitted baseline.

Environment

11. The RMA defines of 'environment'² as:

environment includes—

- (a) ecosystems and their constituent parts, including people and communities; and
- (b) all natural and physical resources; and
- (c) amenity values; and
- (d) the social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) or which are affected by those matters

12. In defining the environment, the RMA specifically includes people and communities, physical resources, amenity values and the social and aesthetic conditions which affect such matters. These are all matters germane to the application.

² RMA s2 Interpretation

13. Section 104 Subsection (1) (a) states:

(1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to [Part 2](#), have regard to—
(a) any actual and potential effects on the environment of allowing the activity;

14 MfE – RMA Guidance³ advises the effects of an activity are to be assessed against the ‘existing environment’.⁴ This includes existing use rights, existing activities carried out under existing consents and resource consents which have been granted where it appears those consents will be implemented.

The Court of Appeal has explained the difference between the concepts of permitted baseline and the existing environments as follows:

*In the RMA context, the environment and the permitted baseline concepts are critically difference. Both are discrete statutory considerations. The environment refers to a state of affairs which a consent authority must determine and take into account when assessing the effects of allowing an activity; by contrast, the permitted baseline provides the authority with an optional means of measuring – or more appropriately excluding – adverse effects of that activity which would otherwise be inherent in the proposal.*⁵

15 Reflecting on the above matters, it is not appropriate in my view, to adopt an approach based on the premise that because the subject site is in a Business B Environment Area that business type activities take precedence over any existing and lawfully established non-business activities in the subject environment.

³ <http://www.environmentguide.org.nz/rma/resource-consents-and-processes/notification-of-resource-consent-applications/when-are-adverse-effects-more-than-minor/>

⁴ *Queenstown Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA 424

⁵ *Far North District Council v Te Runanga-A-Iwi O Ngati Kahu* [2013] NZCA 221, at [90]

16 As a ‘first generation’ plan specifying permitted uses within Environment Areas was assiduously avoided. The ODP effects-based approach is especially permissive of mixed uses. The ‘state of affairs’ I take to mean, in addition to lawfully established or existing uses, the actual environment, something already in existence which includes people, the buildings they inhabit and those about them, the local amenity values, and the prevailing social and aesthetic conditions.

17 It is also relevant to consider that the Richmond Estate buildings (built as a hotel c1960s) predate the GQ building (c 2007) by many decades and that many of the current residents who consider they will be adversely affected by the development have resided in Richmond Estate for a good number of years.

Surrounding Environment

18. Under the matters to which discretion is required to be exercised, OPD Rule BUS 13 requires articular regard to be had to the surrounding environment.

Surrounding is not a defined word in the ODP, so the ordinary meaning applies.

The MS Word Thesaurus advises that ‘surrounding’ includes the following meanings: ‘nearby, close, adjacent, neighbouring, immediate, adjoining, contiguous, near, proximate’

19. The extent of the surrounding area has essentially been defined by those 34 persons who owned or resided in property who were considered by the Council to be adversely affected to a minor or more than minor extent and were limited notified. These persons and their physical addresses are set out at in Table 1 of the s42A Report at page 17.

20. The physical addresses include persons in 13 of the Devonport Apartments, 127-131 St Aubyn Street, properties on the western side of Dawson St from Regina Place to the St Aubyn St, and two properties further west in Hine Street. On the eastern side of the subject site the owners of the adjoining three properties within the Oceanview cluster

were notified along with 11 units within the Richmond Estate and together with the Body Corporate.

21. The extent of the surrounding area was essentially the same as that defined by Mr Bain in the Dawson Developments Ltd application (LUC08/4474) on the adjoining property at what is now 122 St Aubyn Street. I quote from the decision:

Mr Bain's assessment differed from Ms Buckland's as to the geographical extent of the 'surrounding area'. For Mr Bain, this is focused on the immediate surrounding area of the 'triangle' formed by St Aubyn Street, Dawson Street and Regina Place. For Ms Buckland, it is a wider area including large parts of the Business 'A'-zoned CBD and the coastal walkway extending quite a distance to the east of the site. Ref: Para 11.2 pg. 23.

20. In Dawson Developments the Commissioner also noted:

The relevant point, in terms of the objectives and policies, is to consider the actual or potential effects of the proposed height above 10 metres. Some effects will be experienced in the near surrounding area and some in the further distant area. They will be of different nature, scale and intensity depending on the nearness to the site. Ref: Para 11.3 pg. 24

The Dawson Developments application was for a seven-story apartment block to be developed on the site at 122 St Aubyn Street. While the application was declined, the transition of the character of the locality from commercial to residential has continued. The three Oceanview residences have subsequently had built on this site c2019. The three apartments at 2,4 and 4A Dawson Street were built c2007.

In considering the Rule Bus 13 Height matter I consider for the purposes of this application the '...surrounding area...' should be considered to be well defined and well understood.

Effects on Character and Visual Amenity

21. In the Dawson Developments Ltd application (LUC08/4474) the decision of the independent commissioner describes the character and visual amenity of the surrounding area as follows:

'The character of the area is transitional from commercial to residential. This project [the proposed Kawaroa Apartments] is a continuation of this trend. Clearly the area is becoming increasingly used for apartment living. The high visual amenity of the sea views (particularly to the north) and the close proximity to the walkway and CBD make it a highly desirable place to live.'

Some 13 years on, this description is still accurate and it is agreed by the applicant's experts and the s42A author that the immediate locality is residential.

Existing building contrasted with proposed development

22. The plans provided in the application clearly show the extent of the extra height above the permitted maximum. BOON elevations SK3.01.1, SK3.02.1, SK3.03.1 and SK3.04.1 (refer to images) illustrate the extent to which the permitted maximum is to be exceeded. The height exceedances vary about the building, these variations being influenced by ground topography and building design.

On the west elevation the extra height will be from 2m up to 3.7m. (20% - 37% exceedance). The north elevation gives an extra height of 3.7m to 4.7m exceedance (37% - 47%). The east elevation results in extra height from 1.4m to 5.4m (14% - 54% exceedance). The south elevation shows exceedance of 0.6m to 2.1m (6% - 21%).

23. In evaluating the *extent* of the effect of the extra height, the horizontal building dimensions (width and depth) are also relevant. It is the height together with the horizontal dimensions that ultimately determine the degree of effect, be that an assessment of character or visual amenity. The ODP recognises this consideration of building bulk with the over-permitted height allowances that are made for tall narrow structures attached to buildings or roofs. The 5.5m 'maximum combined dimension' provision is included in Rule Bus13.

24. Taking into account the width and depth dimensions, the proposal will result in a building currently some 20m wide and varying in length from some 25m (east elevation – Dawson St) to 19m (west elevation) to a building that will present as 36m long overall in

length when viewed from Dawson St and 30m long overall when viewed from the east. The uppermost height exceedance portions will present as 27m long when viewed from Dawson St and 23m long when view from the east.

The north elevation will present as some 25m wide.

25. It is the overall building height coupled with the length of the uppermost portions, i.e., those portions exceeding the permitted height above the existing use height, that give rise to the significant shading effects described in the BOON shadow studies (refer evidence of Emily Batchelor) that will cast onto the western and eastern neighbours.
26. My observation is that existing GQ Building nestles reasonably comfortably into its surroundings. It sits one full floor below the adjoining Dawson Street footpath and carriageway and is set well back from the Dawson St kerb. The balconies on the northern aspect progressively step back from the Regina Place coastal walkway; this diminishes a perception of building dominance for passers-by.
27. By contrast the proposed development will bring the resultant-built form, actually and visually, closer to Dawson Street. Its substantial increases in both length and height will result in a building that will be dominate its surroundings and will adversely impact to a more than minor effect on the character and visual amenity of the locality.
28. A review of the north elevation (BOON SK3.02.1) clearly shows that the proposed building dominates over the dwellings at 122A and 122B St Aubyn St, (both built to conform to the maximum permitted height of 10m), by a total of 5.4m (54%). The proposal will add an additional 3.7m of vertical height over and above the 1.7m by which the existing building already (lawfully) exceeds the maximum permitted height.
29. Turning to the eastern elevation (BOON SK3.03.1) the south-east corner of the proposal will be some 5m in overall height above the neighbouring MacArthur residence at 122 St

Aubyn St. While there will be approx. 15m metres horizontal separation between the two buildings, Mr and Mrs. MacArthur will nevertheless experience a sense of visual dominance of the proposed development when viewed from any room on the northern aspect of their dwelling.

30. In the Blue Marble memo dated 5 July 2021 Rev 3, Mr Bain in Landscape and Visual Assessment evidence concerning the 122 St Aubyn Street states (in part), ‘with regard to 122 St Aubyn Street, (MacArthur), this property will likely experience dominance effects, but as an amenity effect, this does not necessarily translate to a loss of pleasantness or coherence (notwithstanding shade effects), especially when compared to a permitted activity.’ The series of images titled ‘Submitter Visual Amenity Images’ forming part of the memo clearly illustrate the dominating effect Mr and Mrs. MacArthur will experience when the proposed development is viewed from their property. I would venture that most of the surrounding properties from which these views have been rendered will also experience some sense of visual dominance. Such perceptions of dominance coupled with the varying shading effects will in turn translate to a loss of pleasantness and negatively impact to a more than minor extent on amenity values and the social and aesthetic conditions of the area.
31. In essence the application is seeking to develop what will be a large building on a site the surrounding area of which is residential in character. The closest residential buildings in Dawson St, Oceanview and the low rise of Richmond Estate are all two and three stories.
32. The height and bulk of the proposed development it will render it out of character with the surrounding area. The proposal will increase the height of the existing GQ building by varying amounts up to 15.4m some 5.4m or 54% above the maximum height provided for in both ODP and also the Proposed District Plan. The evidence of others has established that the height will have a dominating visual effect on buildings in the surrounding area and will have adverse shading effects on properties to the west and east.

33. In the Sort Trust Waterfront Hotel decision of 2010, (Ref LUC 09/45042) it was proposed to add an additional three stories to an existing three-story hotel building in the Bus A Environment Area, some 350m to the west along St Aubyn Street from the subject site. This proposal would have exceeded the Bus A maximum permitted height limitation by some 56%.

34. In the decision concern was expressed that it was not appropriate to ‘...*just consider building height on a case-by-case basis. There does need to be a more clear policy and rule framework in the District Plan that provides certainty and takes a more holistic view of such matters as opposed to a case-by-case approach.*

The 2010 decision went on to say:

The maximum permitted building height has been in place for a number of years and apart from some exceptions, provides for a scale and cohesiveness of development that results in no one building dominating the area or adjacent sites. Furthermore, the height provisions provide certainty that there are clear limitations on the height of the buildings along the coastal edge and that there is an appropriate scale of development adjacent to significant open space and pedestrian areas such as the coastal walkway.

The decision also said:

If the application was granted it could well result in others wishing to erect similar height buildings and therefore compromise the integrity of the current district plan policy framework.

35. Regarding the application under consideration, I have a concern that if the application is granted it also could give rise to applications for buildings of similar or greater height to be erected on the site adjoining to the south which is also effectively in the applicant's ownership. The proposed development is in such a location that the additional height sought will disrupt views toward the coast over and across it from the south site. The extra height will also cause shadowing across the south of the site.

36. With the total land area between Regina Plan and St Aubyn Street (physical addresses 1-3 Dawson St and 126-132 St Aubyn St) now being in the applicant's ownership the wisest and best use of the area would result from this total site being comprehensively planned. It is a prime site for residential living in the coastal environment and is deserving of a comprehensive approach to ensure it's sustainable management.

Mitigation

37. The other relevant matter that falls for consideration in the exercise of discretion in relation to Rule Bus 13 is:

2. The extent to which SITE layout, separation distances, topography, planting or setbacks can mitigate the adverse effects of extra HEIGHT.

38. The proposed site layout, i.e., the way in which the building is be arranged through its extra height and bulk on the subject site will exacerbate adverse effects arising from impacts on local character and visual amenity, not mitigate them.

39. Inherent in the opinions of the experts Jackson and Bain, the separation distances, and setbacks to neighbouring buildings from the extra height of the proposed building will not reduce the effect of visual and perceived dominance.

40. The topography under the existing GQ building does allow it to sit reasonably comfortably in its surroundings. This mitigation benefit will be lost due to the extra height and overall bulk of the proposed development.

41. The proposed planting along the Dawson Street frontage will help to soften the north and southern corners of the development when viewed from the public realm and the Dawson Street neighbours opposite. However, it is unlikely the planting will have little visual migration benefit against the overall height of the building on its eastern elevation. The

same will apply more so along the northern boundary adjoining the coastal walkway, where dispensation is sought from the minimum tree planting requirements (Rule Bus 19); seven trees is the minimum requirement; two are offered.

42. The most effective mitigation would be adherence to the maximum permitted height of 10m. This was sought by submitters when the first application was limited notified. While the second (current) application proposes some marginal reduction in height when compared to the original proposal it is insufficient to overcome the more than minor adverse effects that will be experienced in the surrounding environment.

Other Matters – Section 7

43. There are three matters with Section 7 that I consider should be given particular regard to.

These are:

7 Other matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

(b) the efficient use and development of natural and physical resources:

(c) the maintenance and enhancement of amenity values:

(f) maintenance and enhancement of the quality of the environment:

Efficient use of a physical resource

44. I am of the view that the proposal does not make for the efficient use and development of the GQ building. The building is an aging office complex but now outdated. I understand that placing the proposed development atop (in part) the building will necessitate structural strengthening of the building. Given the oversupply of office space prevailing in New Plymouth and the obvious desire for people to live in vicinity of the coast, with ready access to the coastal amenities and the nearby CBD, I would venture that a more

efficient use of the resource would be to convert the building into two or three apartments. This would provide desirable accommodation for several families rather than just the one proposed.

Maintenance and enhancement of amenity values

45. As has been previously discussed, rather than maintaining and enhancing the amenity value of the surrounding environment, the proposal runs contrary to the local character and amenities to such an extent to be of more than minor effect.

Maintenance and enhancement of the quality of the environment

46. As previously described, imposing an oversized development into a residential neighbourhood in the manner proposed will not maintain and enhance the quality of the surrounding environment. It will detract from it to such an extent as to be of more than minor adverse effect.

Plan Integrity – a further matter

47. At para. 76 of the s42A report states ‘In my opinion, the proposed building plays a key role in the continuation of defining the edge of the business zone.’

In my view placing a five-storey residence alongside and atop an existing office block does not assist in defining the edge of the business zone. Further, I can find no reference in the ODP of a need or requirement, nor reference to a ‘a key role’, to define the edge of any business zone.

The adjacent Business D Environment Area with a maximum permitted height of 8m, extends beyond Dawson Street, westward along St Aubyn Street for a further two blocks to Morley Street.

I cannot agree that exceeding the maximum permitted height in the Business B by 54 percent can be used as a justification for something that is not referenced in the OPD.

Concluding Comments

48. I am aware that all relevant matters have to be considered in terms of section 104 and 104C. These are subject to Part 2. An overall judgement has to be made as to the merits of the proposal considering both potential adverse effects and its potential benefits.
49. For the reasons set out in this section of my evidence I consider the potential adverse effects outweigh any positive effects. Positive effects will be limited to short-lived economic benefits, principally employment and business for local merchants, that will arise from the proposed development of the site. The proposal is essentially the building of a large private dwelling for one family.
50. The potential adverse effects on the character and visual amenity of the local residential environment, and on many people, who for the most part are senior citizens, far outweigh any positive benefits.
51. Such an outcome does not contribute to the sustainable management of the natural and physical resources of the site and the surrounding environment. Residents about the site will experience the dominating effect of the bulky over height development coupled with shading, reduced daylight, and sky factor, and in some cases reduced views to the coastal environment, an essential component of the local amenity they experience daily.
52. The application does not propose any mitigation measures of substance, and certainly none sufficient to mitigate the potential adverse effects that have been identified in this evidence, the evidence of Mr Jackson and, last but not least, the residents objecting to the proposal.
53. Taking a broad view, for the reasons set out, and having regard to the need to take a consistent approach in administering the maximum permitted height provisions of the

OPD, particularly in proximity to central New Plymouth and its coastal edge, I am of the view the application should be declined.

I am happy to answer questions.

Colin Comber MNZPI

And on behalf of submitters Colin and Margaret Comber

Photo 1 – View from Comber Scullery – 15 August 2021



Photo 2 – Images from Blue Marble memo 5 July 2021



Tennent Apartment Project
122A St Aubyn Street (Comber)
Existing view from soullery window



Tennent Apartment Project
122A St Aubyn Street (Comber)
Potential view from soullery window