

BEFORE THE NEW PLYMOUTH DISTRICT COUNCIL

INDEPENDENT HEARINGS COMMISSIONER

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

Residential apartment addition (one additional storey) to the top of an existing commercial building in the Business B Environment Area at 1-3 Dawson Street, New Plymouth

SUMMARY STATEMENT OF EVIDENCE OF DARELLE MARIE MARTIN (PLANNER)

ON BEHALF OF REGINA PROPERTIES LIMITED

23 SEPTEMBER 2021

INTRODUCTION

1. This summary of evidence provides a brief summary of my evidence and conclusions, and I also respond to relevant matters in the submitters' expert evidence.

SUMMARY OF EVIDENCE

2. My primary statement of evidence comprises the following key findings and conclusions.

Planning Status

3. The site is located in the Business B Environment Area of the Operative District Plan (ODP).
4. The proposal requires consent as a Restricted Discretionary activity, there are clear relevant matters of discretion applicable, and with this activity status I consider that the ODP contemplates buildings higher than 10 m in the Business B Environment Area.
5. The existing building is taller than 10 m and was constructed to this height as of right.
6. I consider it relevant and necessary to apply the permitted baseline when assessing this proposal and that it is feasible and not fanciful for the landowner to develop the application site as per the permitted baseline scenario outlined in the application.
7. The character of the surrounding area is of mixed business / commercial and residential uses which the application site forms a part of and is consistent with.
8. The Business B Environment Area is characterised as being for larger scale commercial buildings with anticipated lower levels of amenity than Residential Environment Areas. This is demonstrated through the more stringent amenity provisions that apply in the Residential Environment Area when compared to the Business B Environment Area.
9. Mr Balchin and I are in full agreement on the six points I that I have just mentioned.

Assessment of Environmental Effects

10. With regard to landscape and visual effects, I rely in part on the expert evidence of Mr Bain and consider that the character and visual amenity of the surrounding area, in the Business B Environment Area, will be maintained.
11. Shading is not specifically listed as a matter of discretion for the applicable rules but has a part in the consideration of effects on the character and visual amenity of the surrounding area. It is important to note that the Residential Environment Area has permitted daylight envelope standards designed to manage shading on neighbouring properties but there are no such rules that apply to the Business B Environment Area (refer to Table 1 below).

Paragraph	Response
Appendix 1	The most recent diagrams of the S92 information from July 2021 have not been used in this appendix. This appendix is not referenced in the body of the report so its application in Mr Jackson's evidence is unclear.

Darelle Martin

23 September 2021

Table 1: Comparison between Residential and Business Environment Area Rules

Residential Environment Area Rule number, name and matters of discretion	Equivalent Business B Environment Area Rule
<p>Res5 - daylighting requirement from SIDE BOUNDARIES</p> <p>1) The extent of additional shading from the projection beyond the daylighting envelope, taking into account the amount of shadow cast and the period of time the adjacent SITES are affected.</p> <p>2) The nature of the activities undertaken on any affected SITE.</p> <p>3) The extent to which the projection beyond the daylighting envelope is necessary due to the shape or natural and physical features of the SITE.</p> <p>4) The ability to mitigate adverse effects.</p> <p>5) Where the use of a SITE is for RENEWABLE ELECTRICITY GENERATION ACTIVITIES, the alternative locations and methods that have been considered to avoid, remedy or mitigate any adverse effects, recognising:</p> <ul style="list-style-type: none"> - the practical constraints associated with RENEWABLE ELECTRICITY GENERATION ACTIVITIES; and - the environmental benefits of RENEWABLE ELECTRICITY GENERATION ACTIVITIES. 	<p>Nil</p>
<p>Res6 daylighting requirement for BUILDINGS from a ROAD BOUNDARY within the FRONT YARD of a SITE</p> <p>1) The extent of additional shading from the projection beyond the daylighting envelope, taking into account the amount of shadow cast and the period of time the road frontage is affected.</p> <p>2) The extent to which the projection beyond the daylighting envelope is necessary due to the shape or natural and physical features of the SITE.</p> <p>3) The ability to mitigate adverse effects through the use of screening, planting or alternate design.</p> <p>4) Where the use of a SITE is for RENEWABLE ELECTRICITY GENERATION ACTIVITIES, the alternative locations and methods that have been considered to avoid, remedy or mitigate any adverse effects, recognising:</p> <ul style="list-style-type: none"> - the practical constraints associated with RENEWABLE ELECTRICITY GENERATION ACTIVITIES; and - the environmental benefits of RENEWABLE ELECTRICITY GENERATION ACTIVITIES. 	<p>Nil</p>

Residential Environment Area Rule number, name and matters of discretion	Equivalent Business B Environment Area Rule
<p>Res7 – maximum HEIGHT</p> <p>1) The extent to which the extra HEIGHT of the proposed BUILDING will:</p> <ul style="list-style-type: none"> - adversely affect the character and visual amenity of the surrounding area; - reduce privacy of adjoining SITES; - have an overbearing effect on SITES within the RESIDENTIAL ENVIRONMENT AREA; - adversely affect OUTSTANDING and REGIONALLY SIGNIFICANT LANDSCAPES; - intrude into and/or block an URBAN VIEWSHAFT (see section 3 of the planning maps); and - adversely affect the natural character of the coastal environment or PRIORITY WATERBODIES. <p>2) The extent to which topography, planting or set backs can mitigate the adverse effects of extra HEIGHT.</p> <p>3) Where the SITE is located in AIRPORT FLIGHT PATH SURFACE 1 (APFPS1 - refer to section 3 of the planning maps), the extent to which the additional HEIGHT of the proposed BUILDING will adversely affect the safe and efficient movement of aircraft in the vicinity of New Plymouth Airport.</p> <p>4) Any adverse visual effects on the New Plymouth entrance corridor.</p> <p>5) Whether the BUILDING is necessary for the operation of an EMERGENCY SERVICE and what alternative locations are available.</p> <p>6) Where the use of a SITE is for RENEWABLE ELECTRICITY GENERATION ACTIVITIES, the alternative locations and methods that have been considered to avoid, remedy or mitigate any adverse effects, recognising:</p> <ul style="list-style-type: none"> - the practical constraints associated with RENEWABLE ELECTRICITY GENERATION ACTIVITIES; and - the environmental benefits of RENEWABLE ELECTRICITY GENERATION ACTIVITIES. 	<p>Bus13 in the BUSINESS B ENVIRONMENT AREA</p> <p>1) The extent to which the extra HEIGHT of the proposed BUILDING will:</p> <ul style="list-style-type: none"> - adversely affect the character and visual amenity of the surrounding area; - have an overbearing effect on SITES within the RESIDENTIAL ENVIRONMENT AREA; - adversely affect OUTSTANDING and REGIONALLY SIGNIFICANT LANDSCAPES; - intrude into and/or block an URBAN VIEWSHAFT (see section 3 of the planning maps); and - adversely affect the natural character of the coastal environment or PRIORITY WATERBODIES. <p>2) The extent to which SITE layout, separation distances, topography, planting or set backs can mitigate the adverse effects of extra HEIGHT.</p> <p>3) Where the site is located in AIRPORT FLIGHT PATH SURFACE 1 (APFPS1 - refer to section 3 of the planning maps), the extent to which the additional HEIGHT of the proposed BUILDING will adversely affect the safe and efficient movement of aircraft in the vicinity of New Plymouth Airport.</p> <p>4) Any adverse visual effects on the New Plymouth entrance corridors.</p> <p>5) Whether the BUILDING is necessary for the operation of an EMERGENCY SERVICE and what alternative locations are available.</p> <p>6) Where the use of a SITE is for RENEWABLE ELECTRICITY GENERATION ACTIVITIES, the alternative locations and methods that have been considered to avoid, remedy or mitigate any adverse effects, recognising:</p> <ul style="list-style-type: none"> - the practical constraints associated with RENEWABLE ELECTRICITY GENERATION ACTIVITIES; and - the environmental benefits of RENEWABLE ELECTRICITY GENERATION ACTIVITIES.

12. I consider that shading over and above that generated by a permitted baseline development is generally limited to relatively small patches and slivers in terms of area, a noticeable proportion of which are on neighbouring roofs, with most shade on any location disappearing from one hour to the next. Shading is also generally limited to certain times of the year and hours of the day. Overall, with regard to shading effects I consider that the character and amenity of the Business B Environment Area and submitters' properties will be largely maintained.

13. I consider there will be minor bulk and dominance effects on the area and nearby properties.

14. I agree with the assessment by Council's traffic engineer that any effects of transport related matters with regard to parking, loading and queueing will be minor in nature.

15. Overall, I consider that adverse effects from the proposal will be acceptable.

The Operative District Plan

16. The ODP is an effects based plan rather than prescribing appropriate activities and prohibiting others.
17. There are multiple ODP development standards for building bulk and location which are applicable to Residential Environment Areas but are not applicable to the subject Business B Environment Area. I consider this demonstrates an intended lower level of residential amenity protection for the area recognising that the zone is predominately intended for business activities. On this basis I consider the effects of the proposal are compatible with the character of the area.
18. There are also multiple development standards for the interfaces between two different Environment Areas, in particular to ensure that the most sensitive area (the Residential Environment Area) is not affected by overspill from another type of Environment Area. The subject site is surrounded by Business Environment Area sites and accordingly no interface standards apply. Effects are considered to be acceptable within the character of this receiving environment, and the ODP does not specify a scale or intensity of over height buildings that is unacceptable (via a non-complying or prohibited status for a particular height). Each application must be judged on its merits.
19. I consider the proposal to be consistent with the objectives and policies of the ODP.

Proposed District Plan and National Policy Statement for Urban Development

20. The Proposed District Plan (PDP) has no rules with immediate legal effect of relevance to the application but indicates that the subject area remains with multi-storey buildings, in a Mixed Use Zone which is intended to have mixed commercial, recreational and community services activities.
21. The PDP has strategic objectives which I consider are higher ranking and have greater weight than any others in the PDP. The proposal demonstrates consistency with the relevant strategic Urban Form and Development objectives through qualities such as contributing residents near an urban hub, safety of public spaces through passive surveillance, comprehensive redesign of the whole building to enhance the site architecturally, providing quality office space for commercial tenants, creation of employment for design professionals and the construction industry, and increasing the variety of housing types in the area.
22. Overall I consider the proposal to be generally consistent with the relevant objectives and policies of the PDP, though I note that these are being further shaped by ongoing hearings so hold little weight in this process.

23. I consider the proposal is generally consistent with the directions of the National Policy Statement for Urban Development, including with regard to the proposed reduction of parking spaces.

Response to Submissions

24. With regard to points of submitters, I consider that:
- (a) Any effects of noise generation on the site will be indistinguishable from the surrounding noise and will be acceptable;
 - (b) The 10 m height of rule Bus13 is a permitted standard and is not a limit. Buildings over this height are contemplated by the ODP for both the Business B Environment Area and the Residential Environment Areas as restricted discretionary activities, but the assessment criteria for the former of the two has a lower standard of anticipated amenity;
 - (c) The proposal is considered to be compatible and fit well with the character of the area, including when considering both the business and residential aspects;
 - (d) The natural character of the coastal environment is maintained;
 - (e) The proposal has qualities that are consistent with the Urban Form and Development objectives addressed earlier and are attributable to a wider audience than just the applicants' family. Adverse effects on a wider community in my opinion are acceptable and similar to those that would result from a permitted baseline development;
 - (f) I consider the appearance of the area to be eclectic, without a particular high quality or trend that is vulnerable to effects as a result of the proposal. As the proposal has a comprehensive design intended to enhance the site, I consider the appearance of the proposal respects that of the wider area;
 - (g) The proposal would not set a negative precedent, and in any case a consent authority must determine every case on its merits.
25. Should the Commissioner be of the mind to grant the application, I have provided comments on the recommended conditions provided in the Addendum to Hearings Report.
26. Overall, I consider the proposal achieves the purpose of the RMA to promote the sustainable management of natural and physical resources, and that with the design

proposed and the suggested conditions of consent (with requested amendments), adverse effects will be appropriately avoided and mitigated. Accordingly, I agree with the Hearings Report that the application should be granted subject to conditions.

SUBMITTERS EVIDENCE

27. I have read the submitters' evidence prepared by Mr Jackson and respond as follows in Table 2. My response relates to matters of planning and I refer to paragraph numbers in Mr Jackson's evidence.

Table 2: Points and Responses

Paragraph	Response
3.3	<p>Mr Jackson has paraphrased the matters of discretion related to Rule BUS13 and subsequently changed the criteria. Please refer to paragraph 20 of my evidence in chief for the correct references of all relevant assessment criteria. In particular, the second matter should be "have an overbearing effect on SITES within the RESIDENTIAL ENVIRONMENT AREA", not the area in general. None of the sites owned by submitters Mr Jackson is representing are in the Residential Environment Area.</p> <p>Mr Jackson has also incorrectly referenced 'Amenity values'. Please refer to the LVEA of the application for the correct reference from the RMA which includes cultural attributes.</p>

Paragraph	Response
3.4	<p>I refer to sections 27 through 29 of my evidence with regard to the consideration of the area as being 'predominantly residential' and the anticipated amenity that is relevant for this Business Environment Area. I disagree with Mr Jackson that the application should be assessed differently to what it would be if it were in the middle of the Business B Environment Area. My opinion is that if that were the intention of the ODP, it would have rules with regard to the edge of the subject zone that would be applicable to this application. The application requires assessment against the matters of discretion for the relevant rules in the ODP and not what Mr Jackson thinks the relevant matters of discretion should be.</p> <p>With regard to Appendix 3 of Mr Jackson's evidence, I consider the material to be inaccurate because:</p> <ul style="list-style-type: none"> - The scale of the two cross-sections is warped when compared to the length of the section depicted on the zoning map. In reality there is a significant length of Business B Environment Area prior to transitioning to Business A Environment Area to the east. The changes in permitted heights are therefore not as pronounced as what the material suggests. - The cross sections therefore overemphasize the proposed building on the subject site, and selectively ignore the context of the area which includes the Richmond Estate Tower at eight storeys high, which has been avoided by the positioning of the cross section.
4.1	<p>I agree that Figure 4.1 of the application (referred to as 'the key' in Mr Jackson's evidence) should have had numbers 3 and 5 depicted slightly further north than what they are. However I consider that it makes no material difference to my assessment of effects as the parties who provided written approval were thereafter listed in text. With regard to 4A Dawson Street and the emphasis (via underlining of words) that other affected parties have not given written approval, I consider the correct limited notification process was followed with due time and opportunity for parties to make submissions. Plans for the proposal were also supplied to potentially affected parties in December 2020 (consultation from which six written approvals were received) and therefore parties had prior notice of the proposal and time to consider it for some four months before it was officially notified to them on 14 April 2021 (noting that Bill Williams was notified on 10 May 2021).</p>

Paragraph	Response
4.2	<p>The assessment Mr Jackson provides is not related to the section of the application quoted, which relates to safety of the Coastal Walkway. I maintain that the passive surveillance of the Coastal Walkway that would result from the proposal is a crime prevention enhancement through design. I have addressed the exclusion of privacy as a matter of discretion for the Business B Environment Area in section 39 of my evidence in chief.</p>
4.3	<p>I accept that the structural strengthening, redecorating, recladding and window upgrades for the existing building do not constitute positive effects in the context of this application, however I maintain that incorporating them into the proposed design provides for the existing building and new building addition to be complementary, and that the site will be enhanced from its current architectural state.</p>
4.4	<p>The duration, areas, and also timing of shading has been assessed extensively through all application material, Ms Batchelor's evidence, Council peer review and in my evidence in chief sections 36 through 48. In my evidence in chief, and earlier in this summary brief, I also covered the applicability of shading as a matter of discretion for Rue Bus13 in the Business B Environment Area, through it being a minor part of 'character and visual amenity'.</p> <p>Shading over and above the permitted baseline on the Richmond Estate properties is summarised in section 46 of my evidence in chief. In my opinion an important consideration is that outdoor decks are less likely to be used in the late afternoon and evenings in winter than they would be in summer. In winter I would anticipate average air temperatures to be around 14 degrees and with a reasonably high chance of wind or rain, as opposed to summer with temperatures around twenty degrees and more settled weather. Overall, character and visual amenity are maintained with living areas being shaded one hour earlier in the day in those two months.</p>

Paragraph	Response
4.5	<p>Clarification on effects on the natural character of the coastal environment have been addressed in section 101 of my evidence in chief. However, in response to Mr Jackson's evidence I will clarify that my understanding of natural character of the coastal environment is that it is a combination of:</p> <ul style="list-style-type: none"> - Natural elements (e.g. seabed, sea, shore, dune / foreshore, and flora and fauna that live in these areas); - Patterns (e.g. the repetition of the different tidal zones along a length of shore); - Processes (e.g. tides, winds, currents, transfer of sediment along a coastline); and - Human modification (e.g. dredging, ports, rock protection works, access features, fences, land uses). <p>I consider that the proposal affects none of the above and I maintain that my original assessment in section 4.6 of the application is correct.</p>

Paragraph	Response
5.1	<p>I disagree that “the vicinity of the subject site is characterized by 2 & 3 storey high residential buildings, not tall buildings”, for the reasons explained in sections 27 and 105 of my evidence in chief. I have also explained the anticipated residential amenity in the Residential versus the Business Environment Areas in sections 28 and 29 of my evidence and revisited this earlier in this brief.</p> <p>Mr Jackson states “While zoned Bus B and in the PDP ‘Mixed use commercial’ we suggest that the public have indicated that the preferred use of this area is residential.”. I disagree and query where this reference comes from, as I have reviewed relevant submissions on the PDP and found none that request that this area should be rezoned Residential rather than the operative Business B Environment Area or proposed Mixed Use Zone under the PDP.</p> <p>With regard to Mr Jackson considering the proposed addition to be significantly higher than the existing building, it is not an accurate comparison to state that the portion on 3 Dawson Street is 48% higher than the existing building, because the ground level on 3 Dawson Street is on average 3 m higher than that on 1 Dawson Street, with the permitted height standard being measured from ground level. With regard to it being significantly longer than the existing building, I consider this to have little relevance given there are no building length or site coverage rules applicable to the Business B Environment Area.</p> <p>Mr Jackson mentions more than once that he considers the glass will be tinted black. This is not proposed.</p> <p>On Page 10 of Mr Jackson’s evidence, under the extract of Viewpoint F, the text refers to View E of Hine Street and is considered to be an error which requires clarification by Mr Jackson.</p>

Paragraph	Response
5.2	<p>In my opinion this section can essentially be disregarded because it does not take permitted baseline shading into account. Shading over and above that in a permitted baseline situation is assessed in the S92 material of July 2021, in Ms Batchelor's evidence and in my evidence in chief as previously stated.</p> <p>Mr Jackson states that the study does not cover 120 St Aubyn Street however this property has been assessed within the collective Richmond Estate.</p>
6.1	<p>In my opinion it is incorrect to infer that any of the parties who did not give written approval automatically object to the proposal. As I explained earlier, the correct notification process was followed to provide the opportunity for affected parties to object, and this includes an avenue whereby a party can remain neutral or object and still have their objection considered without needing to present their submission any further, such as at this hearing. I consider that, should an affected party have had concerns about their interests, they would have submitted, however I consider their general interests remain considered anyway because of the assessments of effects on the general area that have been undertaken throughout this application.</p>
6.2	<p>It is incorrect to describe the Body Corporate submission as unanimous, as the 16th owners of Richmond Estate, Michael Douglas Hammond and Helen Mavis Schouten, provided written approval for the application.</p>
7.6	<p>Privacy is not a relevant matter of discretion in the Business B Environment Area. I will clarify that in the context of existing privacy for the three Oceanside apartments and the Richmond Estate, all of these properties have some form of outdoor deck space and north-facing living areas with relatively large windows, all of which are visible from the Coastal Walkway which is used by hundreds of people every day. In addition most of the submitters' apartments' northern facades and outdoor living areas are relatively exposed and overlook each other to some degree. The proposal is considered to have negligible effects in this context.</p>
8.1	<p>Mr Jackson is incorrect in stating that the Molesworth Street Viewshaft applies to the application. The site is not located within the viewshaft and therefore the associated rules do not apply.</p>