

BEFORE DUNEDIN CITY COUNCIL

IN THE MATTER of the Resource Management
Act 1991.

AND

IN THE MATTER an application for resource
consent from Betterways
Advisory Limited to construct
and operate a 27-storey hotel at
41 Wharf Street, Dunedin.
Land Use: LUC-2012-212

**DECISION OF COMMISSIONERS APPOINTED BY
DUNEDIN CITY COUNCIL**

4 JUNE 2013

Commissioners:

Colin Weatherall (Chair), Dunedin

Kate Wilson, Middlemarch

Andrew Noone, Waikouaiti

John Lumsden, Christchurch

DECISION

- 1** Having carefully considered all the relevant reports and documentation supplied with the application, submissions, and the evidence presented to us during the course of the hearing, we have resolved to refuse the application from Betterways Advisory Limited to construct and operate a licensed hotel with residential apartments at 41 Wharf Street, Dunedin.
- 2** Since the proposal is a non-complying activity we were required to consider the particular restrictions imposed by s.104D in the Resource Management Act 1991. This requires the proposal to pass at least one of two tests. Having considered these, we were not satisfied that the adverse effects on the environment would be minor (s.104D(1)(a)), and nor were we satisfied that the activities associated with the application would not be contrary to the objectives and policies of the Dunedin City District Plan (s.104D(1)(b)). Having made these determinations, in terms of s.104D, we were unable to grant consent.
- 3** Throughout Chapter 6 of this decision we considered the environmental effects that were brought to our attention and have drawn our own conclusions as to how each of these issues impacted on this decision. Having done so, we have also undertaken an overall evaluation of the adverse impacts of the proposal in light of the expected positive effects.
- 4** Having examined the proposal with reference to Part 2 and Section 104 of the Resource Management Act 1991, we have also concluded that the proposal is not consistent with the overriding sustainability purpose of the Act as expressed in s.5(1).

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1 INTRODUCTION

1.1 Background

[1] Betterways Advisory Limited (**the applicant**) is seeking land use consent to construct and operate a licensed hotel, together with residential apartments, restaurants and bars, within a new 27 floor (plus basement) building at 41 Wharf Street, Dunedin.. A graphic depiction of the site layout is attached to this decision in Appendix 10.2.

[2] The application was received by Dunedin City Council (**the Council**) on 11 May 2012 and was publicly notified in the Otago Daily Times, and a sign placed at the site, on 8 September 2012. Notice of the application was sent to those parties whom the Council considered could be directly affected by the proposal. A total of 507 submissions were received of which 457 were in opposition and 43 were in support. Seven submissions neither supported nor opposed the application. A table highlighting the issues raised in submissions is attached to this decision in Appendix 10.3. The submissions, together with the application and other documentation, was made available on the Council website at:

www.dunedin.govt.nz/council-online/notified-resource-consents/current-notifieds/luc-2012-212

[3] Following an initial assessment of the application by Council staff a request for a range of further information, pursuant to s.92 of the Resource Management Act 1991 (the Act), was issued by the Council on 25 May 2012. An addendum to the s.92 request, seeking additional urban design information, was issued on 30 May 2012. The response from the applicant was received by the Council on 31 August 2012.

1.2 Hearing procedures

[4] Commissioners, appointed by DCC to hear and determine the resource consent applications, were:

- **Colin Weatherall**, Dunedin, Chair;
- **Kate Wilson**, Middlemarch;
- **Andrew Noone**, Waikouaiti; and
- **John Lumsden**, Christchurch

[5] The hearing was held in the Edinburgh Room at Dunedin City Council and commenced on 3 December 2012 and was adjourned on 19 December 2012. The hearing was held on the following days 3-6 December 2012 and 17-19 December 2012. A site visit was undertaken on the afternoon of 19 December 2012. We also made an evening visit to the site.

[6] On 17 January 2013, having heard the applicant's case and from those submitters who wished to be heard, we requested the following further information from the applicant pursuant to Section 41C(3) of the Act:

- an assessment of environmental effects of the construction of the development;
- an assessment of wind effects;
- the provision of a physical marker on-site to represent the height of the proposed hotel;
- the provision of True's cape, or similar, images of the proposed development from selected viewpoints around the city; and
- An assessment of the landscape effects by a suitably qualified person.

[7] On 26 February 2013, the applicant responded with the following information:

- discussion of construction methods by Andrew Holmes of Hawkins Construction;
- a wind condition prepared by Opus International Consultants Ltd; and
- Imaging of the proposed development from additional locations around Dunedin.

The applicant declined to provide a visual marker on-site due to costs, and a landscape assessment.

[8] The hearing was reconvened on 18 March 2013 and was adjourned at 4.00 PM on 20 March 2013.

[9] The following Council staff and consultants were in attendance at various times during both the initial hearing and the reconvened hearing: **Lianne Darby** (Processing Planner) and **Campbell Thomson** (Senior Planner/Advisor to Committee). Also present as required were **Lynne Robins**, **Pam Jordan**, and **Wendy Collard** (Governance Support Officers), **Michael Garbett** and **Rachel Brooking** (Counsel), **John Sule** (Senior Planner/Advisor to Committee), **Ian Clark** (Consultant Transportation Planner), **Ian Munro** (Consultant Urban Designer and Urban Planner), **Rachel East** (Water and Waste Services Business Unit), **Jonathan Hewlett** (Consultant Architect), and **Carlo Bell** and **Wayne Boss** (Environmental Health).

1.3 Appearances

[10] Legal submissions on behalf of the applicant were presented by **Mr Philip Page** (Galloway Cook Allan) assisted by **Ms Bridget Irving** (also Galloway Cook Allan). We record that **Ms Jing Song**, representing the applicant, attended during part of the reconvened hearing. Mr Page called evidence from nine witnesses whose details are referred to below [at Section

4.2]. A further witness for the applicant, **Mr Andrew Holmes** (Hawkins Construction) appeared during the reconvened hearing.

[11] **Mr John Hardie** (Barrister) presented the submission from Capri Enterprises Limited and **Mr Leonard Andersen** (Barrister) represented Port Otago Limited.

[12] The majority of submitters appearing at the hearing presented their own submissions or those of their organisations. Some called witnesses to support their submission. The names of those who appeared at the hearing, with a short summary, is provided later [at Section 4.3] in this decision.

Procedural matters

[13] We accepted late submissions from M Morseth, K N Stene, P T Rodger, T Williams and J Jones. Mr Page, on behalf of the applicant, raised no objections.

[14] Subject to s.37 and s.37A of the Act, the time periods for closing the hearing and notifying the decision as prescribed in s.103A and s.115(1) were extended because of the complexity of the application.

1.5 Acknowledgements

[15] We gratefully acknowledge the contributions and help received from counsel, witnesses, submitters and council staff. In particular, we thank all parties for the manner in which they conducted themselves during the hearing.

2 THE APPLICATION

2.1 Description of the proposed activity

[16] The Council received an application for the construction and operation of a licensed hotel, with residential apartments, at 41 Wharf Street, Dunedin. The proposal was for a building of 27 floors plus a basement level, with the front façade facing Wharf Street and the harbour.

[17] The plans submitted with the application have been revised as part of the applicant's response to a s.92 further information request from the Council, so there is a discrepancy between the number of hotel rooms and apartments in the written documentation and the plans submitted. It is accepted that the proposed building will contain 215 bedrooms, 164 self-

contained apartments, two restaurants, two bars, and a swimming pool for in-house use. There will also be provision for on-site parking, and drops off/pick up area for two coaches.

[18] The land is zoned Industrial 1 in the Dunedin City District Plan (**the District Plan**) and is shown there shown on Map 49. There are no designations applicable to the site. Since the proposed hotel operation, the proposed bars and restaurants, and the apartments are not provided for in the Industrial 1 zone, the application was assessed as a non-complying activity.

2.2 Consents sought

[19] Details of the activities for which consents were sought from Dunedin City Council, were provided in the application, and in the s.42A Report.

Consent No and Type	Activity	Activity Status	Term sought
Land use consent LUC-2012-212	Construction and operation of a hotel and apartment block at 41 Wharf Street, Dunedin.	Non-complying	Unlimited

3 EXISTING ENVIRONMENT

3.1 The site

[20] The site that is the subject of the application is legally described as Lot 3 Deposited Plan 25158, held in Computer Freehold Register OT17A/1107, and has an area of 3961m². It is a long and narrow site, generally level, with frontage to the Harbour Arterial Route on Wharf Street along its east and southeast boundaries. The northwest and southwest boundaries abut railway land. The site is currently vacant land.

[21] Wharf Street has a four-lane carriageway next to the proposed site with the two central lanes linking to the railway overbridge. This bridge is situated close-by, to the southwest of the site, and connects Wharf Street to the one-way systems north and south, Crawford Street and Cumberland Street. These roads are part of State Highway 1, being a National Road managed by the New Zealand Transport Agency. The overbridge itself is an extension of Jetty Street. There are two intersections on Wharf Street in the vicinity of the proposed site; the intersection with Birch Street is located to the southeast more or less directly under the overbridge on/off ramps, and the second is with Fryatt Street, near the northern end of the site.

[22] Situated directly across Wharf Street from the proposed site is Steamer Basin. This is an enclave of Otago Harbour and has facilities for the docking of ships on its north and south

sides while a small area at its southwest end provides sheltered mooring for smaller boats. The wider area has historically been used for industrial purposes; some of this activity being in direct association with the port facilities. Land to the north of Steamer Basin is zoned Port and Industrial 1. Some of the Industrial 1 land to the southeast has recently been rezoned as 'Harbourside'.

[23] Along the western end of Steamer Basin, next to Wharf Street, there is a Council-owned walkway that has been developed as a public space with paving, seating, public toilets, and landscaping. Notable buildings on the waterfront include the historic Customhouse (currently a restaurant) next to Fryatt Street, and the Jade building (commercial use) next to Birch Street.

4 SUMMARY OF EVIDENCE AND SUBMISSIONS

4.1 Applicant's legal submissions

[24] **Mr Philip Page**, counsel for the applicant, introduced the proposal and presented the applicant's case. He returned to his legal submissions at the conclusion of the evidence from the applicant's witnesses.

[25] In his lengthy discussion of the 'Permitted Baseline' he argued that, since the District Plan manages activities rather than buildings, the reason why resource consent is required has nothing to do with the bulk or height of the proposed hotel but is because of its proposed use as a hotel and apartment complex. The present Industrial 1 zoning of the site places no restriction on bulk or height. He said [at Para 12] that our decision 'about whether the permitted baseline test can be applied should be driven by what the Council is trying to achieve through the performance standards in the Industrial 1 zone'. In his view there is no sound basis not to apply the permitted baseline test. He noted [at Para 16] that the policy framework does not give priority to amenity values in the Industrial 1 zone. Both this zone, and the adjacent Port 2 zone were created to facilitate economic activity and, as far as this proposal is concerned, prioritising economic activities over effects on amenity values would be consistent with the intent of Council policy.

[26] Mr Page then went on to discuss reverse sensitivity effects. He said talks have been held with Port Otago and KiwiRail representatives, and other submitters, so that ways can be found to ensure that reverse sensitivity effects do not arise. Conditions requiring 'no complaints' covenants have been offered by the applicant.

[27] Mr Page also discussed the prospect of a new pedestrian bridge crossing the railway corridor and over Wharf Street to the waterfront area. While the applicant commits to working with the necessary authorities to see if bridge crossings can be achieved, he made it quite clear that a bridge, or bridges, was not part of the application. He also discussed tourism in Dunedin and the need for a 5-star hotel. In his view:

... the social and economic wellbeing of Dunedin's present citizens and its future generations will be sufficiently enhanced by the proposal that the project warrants approval, with or without adverse effects.

[28] When questioned as to how to deal with activities not anticipated by the District Plan, Mr Page noted that the proposed activity was non-complying and it is the effects that are relevant. He said it was necessary to consider the scope of the effects to be taken into account. Firstly, the zoning. The District Plan did not control bulk and location in the Industrial 1 zone, so we need not concern ourselves about these matters. Secondly, the Port and Industrial 1 zones have a lower level of amenity, so why should we exclude the permitted baseline. As the building was permitted, it had no adverse effects. In his view, it is only the effects of using it as a hotel that are relevant. We note that others had more to say about this and we shall return to it later in this decision.

[29] Mr Page also told us that construction matters would be covered by Council requirements although he agreed consents for earthworks would be required.

4.2 Summary of evidence presented on behalf of the applicant

[30] As we have already noted above [at Para 10], Mr Page called nine witnesses to give evidence on behalf of the applicant. The following is a brief outline of their qualifications and evidence. We do not attempt to cover everything that was said here as, where relevant, detailed material is included in our discussion of the principal issues and effects in Chapter 6.

[31] **Mr Stephen Rodgers**, who is a solicitor (Rodgers Law), is the sole director and shareholder of the applicant company, Betterways Advisory Limited. Mr Rodgers presented a promotional video of the proposed hotel and apartment block, and spoke to his written submission. In response to a question from us, Mr Rodgers advised that the applicant had been progressing the project for approximately 18 months. He said there were basically two types of hotel design: 'city' and 'resort', which determines the dimensions of the building. 'City' hotels were upright with views. Mr Rodgers described the company's relationship with its Chinese investors, and how Dunedin and New Zealand would benefit from an increase in Chinese tourism, investment, and student numbers at the university.

[32] Mr Rodgers considered that the roading system made access to the proposed hotel easy as it was located on an arterial road and guests arriving by road would have time to react once they saw the building. He did not agree that pedestrian access to the Central Business District was lacking. He said there was no need to cross Wharf Street, and a railway crossing at Rattray Street has already been discussed at Council. The applicant wanted to be proactive about provision of a new bridge across the railway. He noted that there were only a few five-star hotels in New Zealand, and that most patronage was likely to come from overseas.

[33] **Mr Jeremy Whelan** is a registered architect with 25 years' experience and is a director of Ignite Architects who are the project architects. Mr Whelan spoke to his written submission on the design of the proposed development. In response to questions from us, he noted that the shape and form of the building was driven by the characteristics of the site. He said there was ample space between the proposed building and neighbouring properties, which was a very acceptable urban design method of introducing a tall building into an area. Mr Whelan said that, irrespective of the height of the building, any construction on this site would dominate because of the location of the site. He did not consider the height to be an issue, provided there was a three to four storey impression of the building at street level. There was no means of mitigating the height and design from a distant viewpoint without reducing the height.

[34] Regarding the potential for other development in the area, Mr Whelan thought that, with cooperation, other activities would occur. Good growth would follow sustainable foot traffic, and the subject site was a fantastic site on which to achieve the goals of the hotel. Any adverse wind effects would be due to the bulk of the building and the way it treated airflows. He said these effects could not be resolved at the concept design stage, and a wind tunnel test would be required to determine the nature and degree of wind effects. In his view, any problems could be mitigated by changes to the detailing of the building and would not require alteration of the bulk itself. Mr Whelan was supportive of a condition requiring review of the proposed design by a design panel as this would ensure that all matters concerning the function of the building would be carefully explored, and the works well-handled.

[35] When we commented on the limited design details in the application, Mr Page responded by saying that it was not practical for the main body of design detail to be provided prior to the consent decision. He said, if consent were to be granted with final details to be determined by the design panel, then we would need to provide the panel with a careful brief of expectations for the building.

[36] **Mr Stephen Hamilton** is a Director of Horwath HTL Limited, a consultancy firm specialising in the hotel and tourism industry. He holds a B.Com degree in accounting from the

University of Canterbury, and is an Associate of the New Zealand Institute of Chartered Accountants (CA) and a Member of the New Zealand Institute of Management Inc. (MNZM). Mr Hamilton presented his written submission about the hotel industry within New Zealand, and explained the rating system for hotels. He saw a need for a five-star hotel within Dunedin, which had the advantage of a diversified market base. Dunedin, he said, could be a gateway destination for Central Otago. Mr Hamilton considered that, if the hotel was built, it would be realistic to expect that it would be the only five star hotel in Dunedin for 25 years at least, minimising the likelihood of a downgrade in rating arising from the establishment of a newer hotel in town. He said no feasibility study for the hotel had been completed, but market demand would grow and he saw no reason for the proposed development not to be successful.

[37] Mr Hamilton noted that the current facilities for tourists in Dunedin were very good, except for a gap in the provision of high-end accommodation. Dunedin presently provided for a niche market of tourists, but the proposed hotel would attract a different group to the city. Mr Hamilton spoke of research undertaken on the Chinese tourist market, noting that they were interested in eco-tourism, agri-tourism, shopping and night-life activities. He told us the views visible from a hotel influenced the rates for rooms and were important for New Zealand hotels. Mr Hamilton considered that, in regards to the desirable factors for an up-market hotel, Dunedin 'had it all'. There were two requirements for a successful hotel, the brand and five-star rating. In his opinion, Dunedin would not be able to significantly improve its overall performance and competitiveness in the wider New Zealand tourism industry without a five-star hotel.

[38] **Ms Rachael Stanners** is a project manager for Truescape Limited and was responsible for production of the 41 Wharf Street photo simulations. Truescape has some 16 years' experience in the photo and video simulation industry. Ms Stanners provided us with an explanation of how the Truescape simulations, which showed the proposed hotel *in situ* from a variety of viewpoints, were created. No work had been done on night views but this was possible. She said Truescape could also provide animations of how the building would look during the day.

[39] **Mr Jon Farren** is a principal and director of Marshall Day Acoustics. He has a BE(Hons) degree in Electroacoustics from the University of Sanford in the United Kingdom and holds full Membership of the Institute of Acoustics (UK). Mr Farren presented evidence on noise, vibration and acoustic insulation. He said the critical matter for vibration is the construction of the building foundations, which can be designed appropriately once vibration effects are measured. According to Mr Farren, problems with wind noise around a building were rare. He said less than 1% of buildings had issues and any adverse effects could be

resolved through wind tunnel testing and changes to the aerodynamics of the building. These changes were normally quite minor. Mr Farren discussed the differences between L_{eq} and L_{max} , noting that it was usually easier to design for averages which, in turn, would usually address maximum noise events as well.

[40] We note that Council Environmental Health Officers, **Mr Boss** and **Mr Bell** commented that, at this site, the railway created significant peaks in noise (L_{max}) at all hours including mid-night and that this has the potential to compromise sleep for persons in the proposed hotel. As such, the Environmental Health Officers were not confident that the stated acoustic design levels for the development would provide adequate mitigation. They agreed to table their records of noise readings measured at the site over a 24-hour period.

[41] **Mr Peter White** is a civil engineer with MWH New Zealand Limited and has a BE(Hons) degree in Civil Engineering from the University of Canterbury. Mr White was responsible for the assessment of services and solid waste infrastructure for the AEE submitted with the application. He discussed the infrastructure requirements of the proposed building and noted there was capacity within the existing systems although some upgrade would be required for stormwater discharge. He did not see stormwater flooding being a problem at this site as it was close to the harbour. The building itself, he said, would need to be designed to allow for future sea level rise.

[42] **Mr Andrew Carr** holds Masters degrees in Transport Engineering and Business Administration. He is an Associate Principal with Abley Transportation Consultants Limited and has some 23 years' experience in traffic engineering. In his evidence he discussed the transportation effects of the proposed development. He noted that the proposal had been modified to include a three-high car stacker for parking within the building, increasing the number of on-site parking spaces to 247. Mr Carr spent some time explaining how the parking system would work. He also answered questions about how large vehicles would enter, exit, manoeuvre and park at the proposed site. Mr Carr expected that most attendees for conferences at the proposed hotel would stay as guests, while others would need to park off-site. Other large events could have a specific management plan for the operation of the drop-off/pick-up services and parking facilities. Mr Carr noted that the internal configuration of the parking area could be altered to provide for shuttles, SUVs, and/or cyclists, as required.

[43] In regard to egress from the site, Mr Carr noted that the District Plan does not specify sight distances for private accesses onto roads except for State Highways. He said this was not strictly a Resource Management Act matter. In this case, poorly sited or selected trees along the front of the proposed site could compromise sight lines from the exit, but this can be mitigated

by appropriate plantings, or no vegetation at all. The site was entitled to at least one access onto a legal road for a permitted industrial use. Mr Page noted that the plans showed trees, but these were not planting plans and the trees were on road reserve anyway.

[44] Mr Carr and Council's Consulting Transportation Planner, Mr Clarke, sought clarification of a number of technical matters until the Chair directed that this could be done via expert caucusing. The traffic engineers agreed to participate, and to return to the hearing at a later date with a joint statement.

[45] Council's Consulting Urban Designer and Urban Planner, Mr Munro, asked if the proposed hotel would increase pedestrian numbers in the area, and what effect the industrial nature of the environment would have on walking patterns. Mr Carr did not believe the environment would lead to fewer walkers or to pedestrians feeling unsafe. The pedestrian route to the Central Business District was, in Mr Carr's opinion, 'slightly good'. The route analysis took into account continuity, width, quality, hazards, litter, graffiti, and vegetation. Mr Rodgers noted that a pedestrian overbridge to Rattray Street was a long-term solution for the city, but other parties needed to be involved. He said it would solve connectivity problems and would look stunning.

[46] Among the further details sought by the Council in the s.92 request was information concerning solar access and shading. This was provided for the applicant by Arcon and **Mr Craig McAuliffe** from that company appeared to explain the methodology used to determine the shading diagrams. Mr McAuliffe said he had not undertaken a study on energy losses arising from the shading of other properties. The applicant provided, for the hearing, shading diagrams showing, in red, the effects of shading by a ten-storey building on the site. The effects on the waterfront area were similar, with shading starting mid-afternoon, year round. Mr McAuliffe noted that a reduced height for the proposed hotel could have greater shading effects if the building were to be wider as a consequence.

[47] **Mr Francis Whitaker** is a director of Mason and Wales Architects, Dunedin, and has been practicing architecture for 34 years. At the hearing he presented a design report on the hotel application. Mr Whitaker said he was not employed by the applicant except to give an independent expert view on the proposal. Mr Whitaker was enthusiastic in his appreciation of the site and building. The location, he said, was a 'fortuitous' site which could reconnect the city to the harbour and would create a fourth node of development within the inner city. The hotel was 'spectacular' and the car parking provision outstanding. The four-storey lobby and the roof garden would be very hard to improve. Mr Whitaker considered the building to be perfectly proportioned, and the application, 'very compelling'. When asked if the proposed

building would impact on the landscape of Dunedin, Mr Whitaker considered that Dunedin had wonderful hills which would always be there, containing the city, and that the hotel would be an element within the landscape. The building would reflect in the harbour water. Mr Whitaker did not believe the building would alter the public's view of the greater harbour as it would only affect a few degrees of view.

[48] **Mr Donald Anderson** provided planning evidence on behalf of the applicant. Mr Anderson is an architectural graduate from the University of Auckland and also has a Diploma in Planning from the same institution. He has some 30 years' experience in Dunedin as a planner. Mr Anderson was of the opinion that the Industrial 1 zone has no height limit because the Council has no interest in controlling height; not because of a general lack of intent to build high industrial buildings (i.e. there are few industrial buildings of great height). He indicated that the height of the proposed building should not be a matter for us to consider as a 27-storey building can be built at 41 Wharf Street in compliance with the District Plan. The non-existence of a height limit for this site was not an oversight but a deliberate action arising from the exclusion of the property from the Harbourside zone. Mr Anderson could not identify a feasible 96m high industrial building, but observed that planners cannot anticipate what communities do, and technology was changing.

[49] Mr Anderson recognised the importance of a pedestrian bridge over the railway to Rattray Street but, as the applicant has no rights to pass over railway land, this aspect was left out of the application. Mr Rodgers advised that, without a definite proposal, the applicant could not be expected to pay for, or contribute to, the cost of the bridge. No costs or details were available, and the applicant did not want to be party to a 'dumpy old bridge'. Schematic drawings of a possible pedestrian bridge had been prepared in good faith by the applicant, for the good of the city. Mr Anderson noted that the applicant acknowledged the need for a bridge, and would cooperate with Council. For the record, no deals had been discussed up to the time of the hearing.

[50] Mr Anderson noted that the proposal was a non-complying activity and, as such, the performance criteria for permitted activities did not apply to this proposal. There were no parking 'requirements'. Mr Anderson agreed with Mr Whitaker's appraisal of the site characteristics, and noted that there were no other suitable vacant sites in the area. He considered that there were solutions available for any technical issues arising with the proposal.

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[51] Mr Page introduced the new people presenting on behalf of the applicant. He noted that the applicant had not provided all the information requested, and while he was happy to answer questions on that matter, he believed his letter¹ spoke for itself.

[52] Mr Anderson spoke to his written statement and the additional visual simulations provided. He advised that the new simulations had been completed by an architectural technician and were not 'Truescape' images. The presentation set out to show the building's bulk and location, and did not represent its true appearance. The colour was chosen so as to be visible in all images. Mr Anderson answered questions regarding the accuracy of the images, and indicated that he considered it was sufficient to give a true representation of the bulk of the building. In response to further questions about the wind assessment, he commented on wind measurement standards but was unable to give much detail. He noted that the wind experts wanted to do testing and work with designers to achieve design parameters rather than provide definitive conclusions upfront. Mr Anderson stated that Mr Neil Jamieson (Consultant Research Leader – Aerodynamics) was confident that conditions can be imposed that will give an acceptable end result. He reminded us that the Act does not say 'no effects'; it allows mitigation.

[53] Mr Whelan described possible mitigation measures for wind effects that can be applied to an existing building. He said wind testing was usually done as part of the design process.

[54] Mr Holmes (Hawkins) spoke to his evidence regarding construction methods and mitigation. He answered questions regarding building on reclaimed land and potentially contaminated soils. Mr Holmes described how the site could be 'de-watered' during excavations, and what this could mean for neighbouring properties. The three key elements that would determine the technology used would be the soil quality, the depth to bedrock, and the behaviour of ground water.

[55] We asked Mr Page why the applicant had chosen not to provide a visual height maker on the proposed site. Mr Page responded that the matter had been investigated, but the applicant was not satisfied that a balloon would be safe or accurate. He said a crane would be feasible but would be very expensive (approximately \$22,000), as was a helicopter. He said the means available would not serve our purposes. Regarding the decision not to provide a landscape assessment by a professional landscape architect, Mr Page considered that we already had

¹ Letter dated 15 February 2013 from Mr Page in response to our request, dated 17 January 2013, seeking further information.

sufficient evidence to form an opinion. The Council had commissioned reports itself, and Mr Page maintained his view that the site was zoned Industrial and there were no controls on visual aspects.

4.3 Submissions and evidence on behalf of submitters

[56] In this section we report on those submitters who appeared at the hearing and we try to capture the essence of what they were saying in their submissions. For convenience we have included the submission numbers as recorded by the Council. This allows for the submission to be cross-referenced to the full list of submitters included in Appendix 10.3 attached to this decision. They are listed generally in the order in which they appeared at the hearing.

[57] **Capri Enterprises Limited (Capri) [434]**: Legal submissions were presented by **Mr John Hardie**. Mr Hardie called expert evidence from **Mr Clinton Bird** (urban design), **Mr Tony Penny** (traffic) and **Ms Megan Justice** (planning) in support of the submission from Capri.

[58] Mr Hardie stated he was ‘flummoxed’ by Mr Page’s interpretation of planning practice. He said Mr Page did not deal with issues and when he did he was ‘wrong’. The s.104D test (the Act) was ‘tough’, and Mr Hardie considered that the proposal met neither gateway. Mr Hardie noted that Policy 10.3.2 in the District Plan sought to exclude non-industrial activities from the zone. It was a strongly worded policy, and to omit it from consideration was unusual. The proposal could not meet this policy, so it needed to have effects, which were no more than minor. Mr Hardie told us that Capri’s expert witnesses for traffic and urban design would conclude the effects are more than minor.

[59] Mr Hardie disagreed with Mr Page’s view that height was irrelevant. If it were to be an industrial building, then the District Plan would be found wanting, but there were no industrial buildings of even 15 floors and the writers of the District Plan did not find a cause to limit height. An industrial building of such height is outside the realms of reality.

[60] Mr Bird, who is a director of Clinton Bird Urban Design Limited, has a B.Arch (Hons) from the University of Auckland, and also a Diploma in Urban Design (with Honours) and an MA (with Distinction), both from Oxford Brookes University (UK). Mr Bird presented his written evidence and responded to questions. He advised that good urban design has low buildings on flat land and higher buildings on hills, so as to preserve the landform. He considered that the proposed building was a huge leap in height and location for the context. Mr Bird was of the view that the benefits of a pedestrian bridge proposal were irrelevant when there were fundamental problems with the building’s bulk, location and design. We consider

Mr Bird's evidence in more detail in Section 6 in our examination of the evidence concerning landscape and visual amenity.

[61] Mr Penny is a director of Traffic Design Group and holds BSc (Mathematics) and BE (Civil) degrees from the University of Canterbury. He has 35 years' experience in traffic engineering. Mr Penny spoke to his written submission on transportation matters. He noted that there had been a lot of relevant evidence raised on the previous days, and he had tried to keep his submission up to date. Mr Penny considered the applicant's presentation to be deficient in regard to the transportation components. He also had concerns about the practicality and safety of the car parking and servicing provisions. We also refer to Mr Penny's evidence later in this decision when we canvass the issues concerning traffic in Section 6.

[62] Ms Justice is a senior environmental consultant with Mitchell Partnerships Limited and has 13 years' experience in environmental planning. She has a Masters degree in Regional and Resource Planning from Otago University. Ms Justice spoke to her written evidence on the planning matters of the application. She disagreed with the Council planner's 'inconsistent' assessment of some objectives and policies, arguing that the effects on the Harbourside zone would be major, making the proposal 'contrary' to the objectives and policies. She agreed there was no height limit for the subject zone, but only in regard to permitted activities.

[63] Mr Hardie, in closing, confirmed that Capri was not submitting on basis of effects on its own properties, but rather, public interest matters. Mr Hardie tabled, at the Committee's request, a plan showing his clients' properties.

[64] **Ms MMG (Glennie) Jamieson** [190]: Ms Jamieson asked if Dunedin is to be a heritage city, how could Dunedin want the proposed building? She did not believe that people would walk to the Central Business District because it was too far. The people would not patronise the restaurants or shops away from the hotel, and all profits would go offshore. A five to six-storey building would be better. The Chair noted that many of the matters raised by Ms Jamieson were beyond the scope of consideration under the Act.

[65] **Ms Tessa Mills [66]** and **Ms Jane Ashman [68]**: Ms Mills and Ms Ashman considered that the proposed building was not in character with Dunedin and was unsympathetic to people's views. In their opinion, its scale is completely wrong. The submitters thought that the building will cause glare and reflection in the morning light so that it will be dangerous for drivers, and will stand out. The shading created will limit enjoyment of the waterfront area and make the roads hazardous. Wind effects would increase, be unpleasant for pedestrians, and would be dangerous. Ms Mills and Ms Ashman commented that Paris did not have high rise buildings and Dunedin did not need them. They urged us to consider those tourists and

residents who like the character of Dunedin. Ms Ashman noted the possible social impact of the hotel, which would not connect with the local community. They felt that if the land were not to be used for productive purposes then it should be used for something more inclusive of the community.

[66] **Ms Elizabeth Rowe [174]:** Ms Rowe told us she was not anti-development, but considered that the proposed development needs to enhance Dunedin's culture, arts and heritage. She believed that the building would possibly become an iconic building, but would not be special, unique or a draw-card. Ms Rowe considered the whole city to be a heritage area with no clear-cut precincts. She suggested that the design of the proposed building could be grand like the older buildings, not mimicking them but being in scale. She said Dunedin does not have big buildings.

[67] **Mr John Milburn [60]:** Mr Milburn said he supported the project in its entirety because of the level of investment, job creation, and economic factors. He noted that much had been made of the height but the site was presently an eyesore and the building would enhance the area. The hotel would give vitality and life to Dunedin. Mr Milburn had operated his business within 100 m of the proposed site for 11 years and noted that the predominant wind was a nor-easter. He said the Steamer Basin was upwind and adverse wind effects would be minimal. Mr Milburn noted that the development would not involve public funds, and there would be no ratepayer exposure or risk. To emphasize his point, he offered the following quote: 'If you always do what you have always done, you always get what you have always got'. Mr Milburn advised that it was difficult for his customers to find his premises (harbour cruises), and he had been submitting to the Council for an access over the railway line for some time. He said Dunedin had a wonderful harbour and people needed to be able to get there to enjoy it.

[68] **Mr Robert Cunninghame [486]:** Mr Cunninghame spoke to his written submission. He did not oppose the development on the 41 Wharf Street site but he did not like the height or shape of the proposed building. He said he would be able to see the hotel from his home in Signal Hill.

[69] **Mr Dennis Dorney [53]:** Mr Dorney disagreed with those who considered the hotel would support Dunedin's economy. In his view, people would not come to Dunedin to see a hotel and he noted that much of Dunedin's present tourist market was from cruise ships, which were hotels in themselves. He asked if the hotel were to take trade from existing hotels, how would that help Dunedin's economy? Mr Dorney did not think the building would be 'modern and exciting', and if the majority of Dunedin's population found the structure offensive, then we should listen. He said Dunedin had insufficient industrial land available, and there was no

sense in putting the hotel on Industrial 1 land. Dunedin needed industry more than hotels, and industry, not hotels, would attract people to Dunedin.

[70] **Ms Pat Mark [134]** and **Ms Islay Little [465]**: Ms Mark and Ms Little spoke to their joint submission. They believe that any new development in the harbour area needs to reflect the character of the city. In particular, they did not consider the height of the proposed building as being appropriate or necessary. They perceive the site to be unsuitable for the development, and the proposed building would bisect the natural amphitheatre of Dunedin's harbour and hills.

[71] **Mr Jeff Dickie [207]**: Mr Dickie made comments concerning Council spending and was told by the Chair that his comments were not relevant to the application or the Committee's role. Mr Dickie said that he was cynical about the submission process, and he opposed the application because he did not want the Council to have any financial input into the project. The Chair advised Mr Dickie that the proposal was not a Council project and the Council had not been asked to, nor had it given any indication that it would, contribute to the proposal. When asked, Mr Dickie said he had no knowledge or experience of older buildings being reused for five-star hotels.

[72] **Mr Paul Pope** on behalf of **Dunedin Amenities Society [259]**: Mr Pope spoke to the written submission. He noted that the physical dominance of the proposed structure had not been seen in Dunedin before. He asked what sort of city Dunedin would be in the future and referred to the Spatial Plan. He believed that there needed to be clarification of any contribution made to the project by the Council prior to the issuing of consent, and commented on the pedestrian over-bridge proposal put forward by the applicant but not included as part of the application. Mr Pope said it was a mistake to make any bridge proposal a separate application as it limited understanding of the present proposal. Mr Pope also identified issues with parking in the area and supported the use of Wharf Street as an arterial route, as had been promoted previously in Council documentation. He said Steamer Basin was the only public access to the Harbourside and the proposed building would create shading, lighting, and reflection issues, as well as have a significant impact on views from the city's oldest reserve, the Town Belt. He considered the scale and context of the proposal was inappropriate from traditional viewing spaces.

[73] **Mr Murray Hanan [12]** and **Dame Elizabeth Hanan [11]**: Mr Hanan and Dame Elizabeth spoke to their written submissions. They did not understand the 'need' for 27 floors in order to make the hotel economically feasible and they were not convinced that there were engineering solutions for the problems that would arise with the construction of such a major

project on reclaimed land. They believed that the District Plan should be relied upon for decision-making and that the zone rules and objectives and policies should be maintained. They said the authorities should respect their own plans and they should be able to rely on the District Plan.

[74] Geography Department and Department of Applied Science, Otago University [222]: These two university departments were represented at the Hearing by: **Ms Rosalind Day, Dr Mark McGuire, Mr Michael Findlay and Professor Richard Morgan.** Ms Day spoke to her written submission. She expressed surprise that the Council planner had not referred to the recent Dunedin City Spatial Plan when assessing the proposal. When questioned, Ms Day explained that the staff members present at the hearing did not represent the corporate university. She discussed the Spatial Plan briefly with the Committee.

[75] Dr McGuire and Mr Findlay presented their written submission. Their main objection to the proposal was the low standard of design of the façade and the relationship of the building to its site and context. They believed that while appreciation of a building's aesthetics was subjective, there was only one opportunity to design it. They noted that Dunedin has not been well served by large buildings in the past, and there needed to be a raising of standards. Mr Findlay said he did not have any objection to the scale of the building but the proposed building was not good architecture. He disagreed with the assessment of Mr Whitaker but he approved of the idea of a review by an urban design panel. Dr McGuire commented that the building was already behind the times.

[76] Professor Morgan questioned the quality of the assessment of environment effects (AEE) submitted with the application, in respect of international good practice. He considered the tone of the AEE was one of advocacy and it was not well-reasoned. He said the AEE did not provide people with a basis on which to assess the proposal in terms of Section 5 of the Act. He also told us there had been no real visual impact assessment and not enough photo-montages of the proposal to enable a full assessment. He said there was also no site impact assessment to know what effects the development would have on the area. In his opinion there was not enough information to enable us to make a decision.

[77] Ms Helen Bradbury [201]: Ms Bradbury spoke to her written submission. She believed that we were getting a clear message about the proposal from the public. Ms Bradbury said she was not anti-progress but it was a question of priorities and values. It was her opinion that tourists coming to Dunedin were interested in nature and she asked who would benefit from a five-star hotel. If it was being built to attract Chinese tourists, then it was a very limited basis on which to base the project. The hotel may have magnificent views but this would be at

the cost of the local people. Ms Bradbury was also concerned about the access arrangements to the central business district from the proposed hotel and was cynical about the timing of newspaper articles regarding a possible new foot bridge. She did not accept that there would be no cost to the city and considered that there would be few benefits for the local community.

[78] **Mr Graham Black [58]**: Mr Black is an architectural designer. He said he was not against progress or a quality hotel, but this was not an acceptable building. He described it as boring with little architectural merit; a big glass box. He disagreed with Mr Whitaker's assessment of the building, and called it 'retrospective architecture' or 'plop architecture'. As this building would end up defining Dunedin he said it needed to be something iconic; a draw card. He said this building would destroy the identity of Dunedin. Mr Black considered the Harbourside to be under-utilised due to difficulties with access. While a better designed building could have merits, Mr Black said he would prefer a smaller building.

[79] **Southern Branch of the New Zealand Institute of Architects [360]**: The branch was represented by four members at the hearing: **Mr Simon Parker, Mr Tim Heath, Ms Hannah Sharp** and **Mr Richard Shackleton**. Mr Parker presented a scale comparison of Dunedin buildings to highlight his view that the hotel development ignored the context of the city. He said the proposed hotel should be a landmark building and had to be unique, of high quality, and instantly recognisable as belonging to Dunedin. He said the proposed building was none of these things. Mr Heath is a landscape architect and had concerns about omissions in the application. He described Dunedin's main two landscape attributes as being the harbour and the hills. In his view, the proposed building would diminish the landscape. Mr Heath told us he has had experience on urban design panels and noted that their make-up could vary enormously. They were dependent on how the Council ran the panel. He said there are many skills available within a community and it was possible to get a cross-section of views. Such panels could be very successful. He noted that little regard had been given to landscaping for this proposal. An appropriate development for this site had to be contextual.

[80] **Ms Lala Frazer [392]**: Ms Frazer noted that she had been involved in submissions over the last 25 years asking for greater use of the Harbourside but she opposed this proposal. She said the harbour is the jewel in Dunedin's crown. Ms Frazer stated she would love to see more use of the harbour area and tourism; however, the proposed building was so out of kilter with the context, she had to oppose it.

[81] **Otago Regional Council (ORC) [418]**: Legal submissions for ORC were presented by **Mr Alastair Logan** (Ross Dowling Marquet Griffin, Dunedin). Mr Logan called evidence from three witnesses in support of the submission from ORC: **Mr Gerard Collings** (Manager

Corporate Services ORC), **Mr David Smeaton** (TL Survey Services Limited), and **Mr John Kyle** (Mitchell Partnerships Limited). Mr Logan, in his submission, concluded that the proposal is out of zone, out of scale, and out of scope of District Plan expectations. Mr Logan advised that the applicant needed to advance a credible permitted baseline argument but had not done so. He said there were no comparable industrial buildings in Dunedin and silos, for example, were still much smaller than the proposed development. Because the Harbour zone had a northerly aspect, it had potential as an attractive location for development and use but this would be negated if shaded by the proposal. When questioned about the need for additional information from the applicant before consent could be granted, Mr Logan noted that the applicant had had plenty of opportunity to determine the matters of general concern but had not addressed many of the failings of the proposal in its assessment.

[82] Mr Collings spoke to his written submission regarding the property interests ORC has in the area, including the Customhouse, and the effects the proposed development could have on these properties. Regarding wind effects, Mr Collings did not see how we can grant consent if the effects are not known and the options for mitigation were not on the subject site.

[83] Mr Smeaton, who has BSc degree (surveying) from the University of Otago, presented his diagrams of the potential shading effects from the proposed building, including a time-progressive computer simulation of the shading of Steamer Basin. He noted that a structure 17m high on the subject site would have the same shading effect on this area. Mr Smeaton described the methodology he used in producing the shading information.

[84] Mr Kyle, who has an honours degree in Regional Planning from Massey University and has had 25 years' experience in planning and resource management, spoke to his planning assessment of the proposal. He concluded that, even if we formed the view that the proposal passed at least one of the gateway tests in s.104D, the proposal would still not meet the purpose of the Act, and consent should be declined via the broader jurisdiction available. In response to questions, Mr Kyle advised that the application had been submitted with insufficient information for a full assessment. He said it was valid to consider the effects of the proposed development on the heritage buildings of Dunedin, but not to apply Townscape objectives and policies to a site outside the precincts. Mr Kyle told us the New Zealand Coastal Policy Statement was relevant although it did not necessarily address highly modified coastal sites. He considered the policies were more about trying to consolidate development and to have the less modified areas left alone.

[85] **Ms Rosemary McQueen [84]**: Ms McQueen spoke to her written submission in opposition to the proposal. She addressed many of the supporting arguments and detailed why

she disagreed with them. As the claims of the benefits for the city could not be proved or disproved, Ms McQueen asked us to disregard all arguments about economic benefits, and to confine our assessment to the provisions of the District Plan. Ms McQueen responded to questions about a bridge to the waterfront area by noting that there was already a bridge at Jetty Street and asking why would the city want another bridge.

[86] Mr Greg Sligo [325]: Mr Sligo tabled his written submission. He referred to the zoning of the site, noting there was no compelling reason to allow the proposed development because of a lack of appropriate zone rules. Mr Sligo applied the Spatial Plan policies, noting that there was an expressed intention to discourage development in areas subject to future tidal inundation. Mr Sligo also noted that Council staff had identified a number of adverse environmental effects that could not be mitigated and this raised the question of the accuracy of some statements in the application.

[87] Ms Rose Cunninghame [485]: Ms Cunninghame opined that we should decline the application as it is a speculative proposal, with no occupier, promoted by a strange company. She said the proposed development was considered to be an 'outrage' by the majority of the city's residents. The height of the hotel could be negotiated but the applicants would not consider any reduction. Furthermore, she said the site was an extraordinary location to put a luxury hotel, as it was on the wrong side of the tracks. Ms Cunninghame considered that Dunedin's main attractions, being wildlife, were unlikely to appeal to wealthy Asians. She concluded that the proposed hotel would be out of place, would pre-empt Dunedin's Plans, and would be unaffordable to Dunedin's residents.

[88] Mr Peter McIntyre [317]: Mr McIntyre said he supported the Council's Economic Development Strategy and closer links to Project Shanghai. Dunedin should be 'open for business'. Mr McIntyre believed the proposed development would have a snowball effect leading to further investment in the area. Literature indicated that the economic benefit calculator was 2.2 times the investment. Mr McIntyre considered that the project was a once in a lifetime opportunity for the city. He noted that many of the opposing submitters were not residents of Dunedin and that we should give consideration to those who lived in the city. He said the city must adapt and take opportunities; to decline the application would be to lose another ten years in progress. The design of the proposed building appealed to Mr McIntyre and he noted it fitted with the key elements of the Economic Development Strategy.

[89] Mr Maurice Angelo [361]: Mr Angelo is a landscape architect and artist. He made a presentation showing his artwork and a PowerPoint slide show. Mr Angelo explained the principles represented by his paintings and how they related to the proposed development. He

said the aesthetics needed to give a ‘sense of place’ of Dunedin and the sea. He felt that if the building was constructed, the city could not meet the sea. Mr Angelo described the proposed development as ‘drop and plop’, and he believed it was totally wrong to put a built piece of architecture in the proposed location. In his words, ‘the design needed to be beautiful; beauty is a sense of place’.

[90] Ms Elizabeth Angelo [5]: Ms Angelo opposed the design of the proposed building, saying it was out of scale with the landscape of Dunedin and would stand out against the water. She considered Dunedin to be the ‘best preserved Victorian city in the world,’ and she preferred the Post Office building to the proposed structure. The proposed building, she said, would be odd, out of place, and a visual and physical barrier. Ms Angelo liked the current work in the warehouse precinct but would not want to invest there herself if the development were to proceed. She enjoyed reading at the Steamer Basin but would not if it were shaded. She reminded us of the impacts on buildings in Christchurch by the recent earthquakes.

[91] Ms Sheila Skeaff [378]: Ms Skeaff, who comes from Canada, has chosen to live in Dunedin for the past 23 years because it was a small and beautiful city. She opposed the design of the building. Ms Skeaff said she would like to see some use of the site for the benefit of the people of Dunedin. She noted that the Dunedin City Council had completed some amazing projects in 23 years and she would like to see the good development continue.

[92] Mr David Hanan [107]: Mr Hanan spoke to his written submission opposing the application. He said he had tenants in the area who would be affected, and there had been no proper consultation or social impact studies. He considered the proposed building to be ‘... architectural arrogance on the grandest scale’ and it would change the look of the city. In response to questions, Mr Hanan told us that his view of sustainability was weighted in order of the environment, social impacts, and economics. He said the proposed development might help economically by creating jobs but it would have a negative social impact for residents. He discussed the question of building size, permitted activities, and the effects on neighbouring properties.

[93] Mr Michael Macknight and Ms Kelly Macknight [99], Mr Stephen Macknight [131], and Mr Richard Macknight [171]: Mr Richard Macknight spoke to his PowerPoint presentation. He pointed out the location of their properties in the warehouse district and spoke of their passion for historic buildings. He considered that older buildings attracted creative people and was excited about the work being undertaken in the Warehouse Precinct. He said he would not have invested there if had known a hotel of this scale was proposed.

[94] Mr Michael Macknight spoke about his company, ADInstruments, which was housed in the nearby Donald Reid Building. They had wanted a building with character, nice views and a history, and were investing a considerable amount of money in the old building. He presented a before and after photomontage showing the impact on views the hotel would have from the Macknight's building.

[95] Mr Stephen Macknight said that the proposed building was out of scale for the Industrial zone and unexpected for this site. He said property owners had rights and any development beyond those rights should have effects that are no more than minor. He said they had rights to views over 15 m and considered that the effects of the proposed hotel would be more than minor. Mr Macknight estimated the costs of construction using the standard five-star hotel building prices at approximately \$200 million. He noted that the proposal was promoted by developers, not the property owners or hotel personnel. It was about making money for the developers. In his view, there would be few positive benefits for the people of Dunedin.

[96] **Ms Joanne Galer [37]:** Ms Galer spoke to her written submission in support of the proposal. She approved of the proposed site, noting its isolation from historic buildings, and that the proposed hotel would face the waterfront. She would not have supported the application had it involved demolition of old buildings. Ms Galer believed that peoples' perceptions changed over time and gave examples of other buildings that had not been appreciated when first built. In response to questions, Ms Galer said she had researched the history of the Warehouse Precinct for the university and did not think that the proposed development would affect the beauty or business of the area. She said it was possible to juxtaposition new with old. Glass is conducive to history because of its ability to reflect. The proposed building would have a classic structure.

[97] **Mr Peter Entwistle [140]:** Mr Entwistle, who is an art historian with an interest in Dunedin's architectural heritage, referred to his written submission. He spoke of the proposed building's modernist design disturbing the city's revivalist architecture, and that the development would diminish New Zealand's best built and best preserved colonial city. He told us the proposed building would shift the balance of the area and would become dominant because of its height and centrality. Mr Entwistle also drew attention to the building's resemblance to the United Nations Secretariat building in New York. He discussed aspects of the law as it related to intellectual property and copyright of an architect's work and recommended that we seek legal advice. The Chair commented that this was a matter for the applicant. When questioned, Mr Entwistle suggested an appropriate location for a group of high rise buildings would be on the reclaimed land on Portsmouth Drive.

[98] **Mr Ian McKay [308]**: Mr McKay spoke to his written submission. He discussed the nature of the proposed site, the shortage of industrial land, and that the infrastructure to support the proposed development was not in place. He said the bulk and location of the building was inappropriate and it would be better located near Logan Park. He raised issues concerning construction effects and noted the lack of a traffic management plan. Mr McKay considered that the application should be declined outright.

[99] **Mr Josh Thomas [450]**: Mr Thomas told us he had moved to Dunedin two years ago. He considered the city to be a beautiful place and on a human scale. Mr Thomas considered Dunedin needed growth, but that growth needed to contribute in a positive way; this development would not. He asked us not to let it happen. Mr Thomas considered that the developer had good intentions, but had not grasped that the scale was inappropriate for Dunedin.

[100] **The Otago Chamber of Commerce [365]**: This submission was presented by the Chief Executive of the Chamber, **Mr John Christie**. He told us the Chamber's submission was in support for economic reasons. He said the proposal was consistent with the strategic goals of the city, including the Spatial Plan. In response to questions, Mr Christie said he did not believe that the location of the hotel would make much difference economically, but the subject site had good linkage to the harbour and would suit the development. He noted, however, that there was limited industrial land near the central city, and we needed to be sure that the development would not impact negatively on industry. Mr Christie said the city needs a five-star hotel.

[101] **Ms Elizabeth Kerr [384]**: Ms Kerr spoke to her written submission, opposing the application. She disagreed with comments made by the Council's Consultant Urban Planner and Consulting Architect. Ms Kerr noted that the applicant had not provided a Heritage Impact Assessment, which should be essential for the overall assessment of effects. She considered that Dunedin's point of difference, which should be celebrated, was that the city had no towers. Ms Kerr sought that the application be declined. When it was noted that Ms Kerr had been critical of the consultants' opinions, she advised us that she had a Master of Architecture Degree from the University of Auckland.

[102] **Ms Meg Davidson [448]**: Ms Davidson described the proposed development as 'modernist', with a design 50 years out of date, which would be 'plonked' onto the landscape. Ms Davidson discussed the unwillingness of the applicant to compromise on scale, and questioned the motives for proposing this building in this location. She did not believe that the proposal would help the Harbourside zone proceed, and the proposed building would destroy any chance of achieving an attractive waterfront setting.

[103] **Mr Craig Werner [80]**: Mr Werner, who comes from Chicago and has lived in Dunedin for 10 years, raised some interesting questions in his written submission. He discussed aspects of the Act, the balance between economic benefits and people, the need for a 'landmark' building, the potential for mitigation of the visual effects, effects on views, and European experience of new development within old cities. Mr Werner considers the Council has an obligation to create a plan and vision for the kind of city its residents want, and to have the courage to turn away those that are not consistent with that vision.

[104] **Mr Paul Douglas [135]**: Mr Douglas, who told us he was a former land surveyor, spoke to us about shading effects and possible problems that could arise due to sunlight reflection. Mr Douglas considered that the shading diagrams submitted with the application seemed to be accurate but he thought there should have been earlier and later shading diagrams included. He said it was also possible that there would be problems with reflection of morning sunlight affecting east-moving traffic on the Jetty Street over-bridge.

[105] **Mr James Fyfe [43]**: Mr Fyfe drew comparisons between the proposal and development in Honolulu. He spoke of likely traffic congestion should the proposal proceed, and adverse effects arising from wind and the impediment of sunshine. He said the proposal would not serve Dunedin's aspirations well. He was not against a new hotel, but this was not the right site; it was a 'special place'.

[106] **Mr Norcombe Barker [344]** presented his submission on behalf of **Larnach's Castle**. He told us he had been the director of Larnach's Castle for 20 years and was supportive of the proposal. Mr Barker considered the positives to be 'huge'. He noted that Dunedin misses out on business because there are no facilities for the high-end market. He said Dunedin needs to show itself to be user-friendly and historic cities can move forward. He agreed there would be some accommodation providers who would suffer should the hotel be opened but the benefits would outweigh the negatives. Mr Barker believed that the hotel would provide a much higher yield for his business than the cruise ships currently did. Mr Barker considered that there was no better site for the hotel.

[107] **Ms Claire Ridout [249]**: Ms Ridout considered that the proposal was not compatible with the values of the District Plan. It was Dunedin's natural environment that had attracted her to the city, and it had architecture that is unique within New Zealand. Ms Ridout commented on vehicular access to the site, inadequate pedestrian access, and conflict with the railway operation. The building, she said, would be a visible landmark for the foreseeable future.

[108] **Port Otago Limited (POL) [62]**: **Mr Leonard Andersen** (Barrister) presented legal submissions on behalf of POL and **Chalmers Properties Limited [326]**. He was accompanied

by **Mr Lincoln Coe**, who is POL's General Manager Infrastructure. Mr Andersen advised us that Chalmers Properties had withdrawn its submission. Mr Andersen spoke of reverse sensitivity issues that could arise from the proximity of the development to the port, and recommended conditions of consent should we be of a mind to grant. Mr Andersen believed that any 'no complaints' covenant imposed should be in favour of the Dunedin City Council, and not between private parties.

[109] Mr Phillip Cole [357]: We note that Mr Cole has over 30 years experience in Civil and Transportation Engineering in the United Kingdom and has lived in Dunedin for 10 years. Mr Cole considered that the application was lacking in detail in regards to the visualisation documents and the hotel operation. He wished the application to be declined as the proposed development was out of context with the District Plan, the immediate area, and with Dunedin's natural beauty and environment. The Chair advised Mr Cole that any request for further information would be to make a quality decision, and should not be seen as a predetermination of the consent outcome. Interestingly, despite his background, Mr Cole made little mention of traffic and transportation in his submission. On being questioned about this he told us he did not think transport was much of an issue.

[110] Mr Ross McLennan [440]: Mr McLennan spoke of Dunedin's two main industries, the university and tourism, and noted that one principal factor that attracted visitors to Dunedin was its visual appearance. Mr McLennan saw no reason to damage that appearance, and to say that more visitors would be attracted by high quality accommodation was speculation only. He concluded that there were identifiable disadvantages to the proposal and no guarantees as to long term benefits.

[111] Leviathan Hotel Co Ltd. [504], Queens Parks Hotels Ltd. [505], Provident Trust Ltd. [506], and Peter Laing [507]: Mr Laing spoke on behalf of himself and the family's hotel interests. Mr Laing had no objection to a new hotel being built in Dunedin, but he opposed the proposal for reasons to do with zoning, siting, size and scale of activity, visual amenity in terms of Dunedin's heritage, wind, reflection, and shade effects. He questioned the costs given for the building of the proposed development. When questioned, Mr Laing noted that the proposed hotel would compete with his businesses but would not be serving the same market.

[112] Airways Corporation of New Zealand (Airways) [296]: The Airways submission was presented by **Mr Shane Roberts**, who has a Bachelor of Resource Studies and a Master of Resource Studies (Hons), both from Lincoln University, and is currently Team Leader for Resource Management and Strategic Planning at Opus International Consultants in Dunedin. Mr Roberts tabled his written submission on behalf of Airways. He noted that the height of the

proposed hotel would exceed the height threshold in Civil Aviation Rule 77.5(1). He said there are two existing heliports in the vicinity of the proposed site but Airways did not object in principle to the application provided any potential danger to aircraft was fully assessed and effectively managed. Mr Roberts recommended a condition for consent requiring consultation with the Civil Aviation Authority of New Zealand. He said Airways urged us to have regard to potential hazards in navigable airspace when assessing the application. Mr Roberts responded to questions regarding the relationship between the Act and Civil Aviation legislation.

[113] **Mr Russell Lund** on behalf of **Loan and Mercantile Trust [462]**: Mr Lund spoke in support of the proposal. He said he was in favour of encouraging development in the city at no cost to the ratepayer. Mr Lund believed the shape of the proposed building could not be improved as ‘form follows function’. He spoke at length on the nature of the site, Queenstown development, views, planning matters, aesthetics, and other people’s evidence and submissions. Mr Lund answered questions on construction techniques, particularly in regard to foundations and excavations, and construction costs. We understand that Loan and Mercantile Trust own the building on the corner of Wharf Street and Fryatt Street.

[114] **Mr Peter Attwooll [348]**: Mr Attwooll was not opposed to a five-star hotel *per se*, but was concerned about the size and design of the proposal. He believed Mr Lund, in arguing for the proposed building, had actually provided a perfect argument against 27 floors in that there was no comparable building in vicinity. Mr Attwooll was concerned about the motives behind the proposal, and questioned how a ‘gift’ to the city could be ‘non-negotiable’. Mr Attwooll said the proposed building was not sympathetic to Dunedin and he did not want Dunedin to be like other places.

[115] **Mr Albert Benson [72]**: Mr Benson supported the proposed hotel as it would provide ‘high end’ accommodation, convention facilities, improve the harbour basin area, create jobs, provide new ratepayers, and there would be a stunning new building in town. He said Dunedin already has strong links to Asia. Mr Benson gave comparisons of other unappreciated buildings in Dunedin that had been accepted by the public because of their usefulness. He believed the proposed building would add to Dunedin visually, culturally, economically and dynamically. In response to questions, Mr Benson said he considered the benefits would far outweigh the negatives. He said he had no concerns whatsoever about the proposal.

[116] **New Zealand Historic Places Trust (NZHPT) [349]** and **Southern Heritage Trust [307]**: **Ms Jane O’Dea**, who is the NZHPT Heritage Advisor (Planning) and **Mr Owen Graham**, who is the NZHPT Area Manager (Otago/ Southland) attended on behalf of NZHPT and **Ms Ann Barsby** represented the Southern Heritage Trust. Mr Graham asked if the

application was for the right proposal in the right location, and spoke of the legacy left by many key heritage buildings, character areas and precincts. NZHPT considered that any new development should not be to the detriment or the sustainability of existing values.

[117] Ms O’Dea responded to questions regarding the context of the site within the Harbourside historic area. Mr Graham noted that many of the larger buildings in the wider area had been built at a time when there was a different attitude to today; now new buildings should not impact negatively on each other. He said NZHPT was not concerned about the impact of the proposal on any one building, but on the wider area. Ms O’Dea said the proposal was contrary to historic values and would reduce people’s enjoyment through shading, loss of views and outlook, as well as the dominance of the proposed building.

[118] We noted that it was necessary to be clear what the effects were when applying s.6(f) of the Act. Mr Graham responded that we needed to think more deeply than just the obvious matters. He said there would be a ‘knock on’ effect where investment into the historic buildings of area would be compromised if the aesthetics of area were harmed. Ms O’Dea considered the proposal to be contrary to the objectives and policies of the District Plan. Ms Barsby concurred with all the points made by NZHPT. The context, she said, was the wider harbour basin, and it was a heritage and amenity matter. We note that we received an email from Mr Graham to clarify a few points, tabled at the hearing on 19 December 2012.

[119] **New Zealand Railways Corporation (KiwiRail) [301]: Mr Neil Campbell**, who is Acting Southern Regional Manager for KiwiRail presented the KiwiRail submission. He described KiwiRail’s operations and use of the railway land adjacent to the site of the proposed hotel. He noted that the railway corridor can create noise, vibration and fume effects. He said that KiwiRail was concerned about reverse sensitivity issues and did not want the continuation and expansion of KiwiRail operations to be compromised by the proposed development. He told us there are necessary standards for operation of the shunting yard and KiwiRail would not compromise lighting. The lighting towers are 38.1m above ground level. The engines weighed 107 tonnes, and will get bigger and heavier in future; idling engines caused vibration. He said KiwiRail had resisted the reopening of the Rattray Street crossing as it was situated too close to the rail yards. The shunting yards, he said, were tightly constrained by the site, and KiwiRail had tried, but were unable, to buy the proposed site for expansion. Mr Campbell advised that the developers would not be able to use the railway land or airspace above it during construction. He sought that the application be declined but said KiwiRail’s issues would be resolved if the applicant offers a condition requiring a reverse sensitivity ‘no complaints’ covenant on each Certificate of Title.

[120] **Mr Barry Timmings [328]** spoke to us on behalf of **Customhouse Restaurant Ltd.**, of which he is a director and operator of the Customhouse Restaurant, which is next to the harbour (Steamer Basin), more or less opposite the proposed site. Mr Timmings could not see the proposed development having any effects beyond 500 m from the site. He compared the area to Vancouver which had a mixture of high and low-level buildings. Mr Timmings preferred tall buildings over shorter and wider buildings, which would create a greater barrier to the waterfront. The proposed building was big, but it would maintain connections. Mr Timmings considered that good information on wind effects had been provided, but further modelling should be undertaken at the design stage and this should include investigation of the potential wind effects on the Customhouse building. Mr Timmings considered the lack of a link over the railway as one of the bigger challenges for his business; a bridge would be superb. There was parking pressure in the area during the day, but not at night. His observation was that the waterfront area was significantly underutilised despite being a magnificent place to be.

[121] **Mr Ted Daniels [235]**: Mr Daniels tabled his written submission and explained that he was neither for nor against the proposed development. He presented a collection of photographs of unique and recognisable buildings from around the world to emphasise his point that the proposed building design could be improved.

[122] A written submission was also tabled on behalf of **Mr Gerald Carter [204]** who could not be present at the hearing. In his submission, Mr Carter addressed the issue of property rights, noting that the applicant seeks to privatise a series of rights that are held in the public domain. He considered the applicant would benefit whereas the public would lose rights to views and sunlight, for example, with no benefits. He noted that there were several central city sites that could accommodate a large hotel that contributed to the historical and cultural fabric of the city. This development, in his view, was not such a proposal.

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[123] As is appropriate, we gave submitters an opportunity to respond to the additional information provided by the applicant in response to our request of 17 January 2013. In the event, quite a number did and we record below the essence of what those who elected to appear at the reconvened hearing had to say.

[124] The following submitters spoke at the resumed hearing:

- **Ms Islay Little [465]**
- **Ms Rosemary McQueen [84]**
- **Ms Elizabeth Angelo [5]**
- **Otago Regional Council [418]**

Mr Alastair Logan (Counsel);

Mr Gerald Collings (Manager Corporate Services);

Mr John Kyle (Consultant Planner);

- **Mr Robert Cunninghame** [486]
- **Capri Enterprises Ltd** [434]

Mr John Hardie (Counsel);

Mr Clinton Bird (Urban Designer and Architectural Design Consultant)

appeared via conference call.

[125] Ms Little commended us for our in-depth questioning of the applicant, but noted that we were being asked to make a leap of faith. She was less concerned about the techniques involved in constructing the building than the consequences. Ms Little believed that there would be the danger of further costs to ratepayers if consent were granted, and there would be general disruption to Wharf Street users for years during the construction phase. Ms Little told us of a personal experience of being blown over by a wind gust next to the Hocken (Richardson) Building at the University of Otago. She noted that she would welcome a five-star hotel, but not this building or at this site. The Chair noted that the applicant would be likely to be required to contribute to, or pay for, any infrastructural improvements arising from the proposed development, should consent be granted.

[126] Ms McQueen advised us she had not revised her stance, and she supported the views of Mr Bird, the expert witness for Capri Enterprises Ltd. In regards to Mr Page's views that the building was permitted, Ms McQueen suggested he build it and use it for a car park, but then noted that he would not be satisfied with that activity. She felt that granting consent would set a precedent. There could be a ring of tall buildings at the upper harbour basin and there would be no way of turning them down if this building were to be constructed. Ms McQueen discussed the possible wind mitigation measures and noted an inconsistency in the arguments presented by the applicant. She also noted that Mr Whitaker was the only person who thinks the building will be attractive because of the shining light reflected in its faces. She said, if the wind mitigation measures were to introduce reveals on the building façade, then the one and only accolade given for the building would be negated.

[127] Ms Angelo did not consider that the applicant had complied adequately with the further information request. She considered the new photographs were an insult to one's intelligence; the building had been shown in grey and camouflage. Ms Angelo's home is in Arthur Street and she would view the building between the towers of the Catholic Cathedral. She considered that the building would not relate to the city, harbour or hills. In her view, if built, it would be a monument to the failure of the decision-makers.

[128] Mr Logan (for ORC) in his further submission criticised the additional information provided by the applicant for its inadequacy. The Chair pointed out to Mr Logan that more information had been presented during the hearing by the applicant and that ORC had not been present to hear it. Mr Logan asked for the information to be summarised but the Chair advised that this was not the Committee's role.

[129] Mr Kyle (for ORC) presented his written submission and responded to questions regarding the nature of wind controls in Auckland. He considered that the information should be provided by the applicant upfront.

[130] Mr Cunninghame considered that the pictures provided by the applicant were deficient. He asked how it was that submitters were required to respond by March 8 to the information provided, but the applicant was still presenting information at the hearing. When the Chair explained that it was standard process, Mr Cunninghame commented that the letter circulated to submitters should have stated that further information might be presented at the hearing.

[131] Mr Hardie referred to Capri's case based on the look of the building and its place in the environment. He said the application and the proposal had deficiencies and he was critical of information provided as it was not evident as to how it had been produced. He advised that we were entitled to have the best evidence.

[132] Mr Bird (for Capri) spoke to us via a tele-conference call. A written statement was tabled on his behalf and included a discussion, on a picture-by-picture basis, of the additional visual presentations provided by the applicant in response to the further information request. He did not have confidence that the images had been created using best-practice techniques. Mr Bird disagreed strongly with the applicant's view that we had sufficient landscape assessment to make a decision. He said it was not unreasonable for a Committee to request expert evidence. Mr Bird noted that the Town Belt was a wonderful piece of urban infrastructure and that, currently, no building in town merged the harbour with the green belt. He said where ridgelines were not interrupted, they contained the city and gave it identity. The visual simulations presented by the applicant were examples only, and the visual impacts could not be truly determined until the structure was built. Mr Bird did not consider the crucial issue to be the architectural design of the building but the urban design; bulk and scale and location were critical whereas appearance was less important in this case.

[133] Mr Hardie, in closing for Capri, advised us that if other experts had other views, we needed to be make a decision. In the absence of other evidence, he said we had an expert (Mr Bird) stating the effects were more than minor.

4.4 Applicant's right of reply

[134] Mr Page said to us that the building needed to be as good as it could be and recommended that, if we are minded to grant consent, we could consider a condition requiring a design review panel. However, he said this lead to a problem of law; if we were to grant consent, we shouldn't delegate the 'hard stuff' to others. The applicant had therefore prepared a matrix to help us with our decision.

[135] Mr Whelan provided a PowerPoint presentation showing tall buildings in other locations and answered questions on timing, process, and the usual practice in designing large projects. He noted that, in New Zealand, it was usual to present all aspects of information although there was no guarantee that consent would be granted whereas elsewhere consent would be given to the concept before the design stage. The form of a building was set by financial realities, and it was very much the handling of the detail that gives a building its character. Mr Rodgers noted that it was not desirable to have a 'design by Committee', and that Mr Whelan was attempting to show us that façade treatments could be very instrumental in the appearance of a structure. We were told that a reduction in height would make no difference and the applicant was not prepared to negotiate on height.

[136] On 20 March 2013, Mr Page delivered the final right of reply on behalf of the applicant. He advised that we did not have the luxury of deciding on the basis of liking or not liking the proposal. We are required to come to a decision about the effects of the proposal, excluding effects that are irrelevant. He said the applicant has been clear on how the permitted baseline works and, although submitters may not like it, the argument was legally robust.

[137] Mr Page addressed a number of points made by selected submitters, pointing out inaccuracies or counter-arguments. He said opposing submitters seemed to ignore the fact that the site can be developed for unattractive industrial use without any limits on height or site coverage, and no comparative opinions have been offered. This omission, according to Mr Page, leaves us without proper foundation for giving weight to their submissions. Mr Page referred to Capri Enterprises Ltd as a 'trade competitor' who failed to qualify as a submitter under s.308B of the Act. He told us that Mr Bird's evidence is 'tainted' by this association and his evidence, in any event, is not supported by the District Plan. He also said we should ignore Mr Penny's evidence (for Capri) as it was nothing more than a desktop review of Mr Carr's evidence. On the other hand, he agreed with the evidence provided by Mr Munro (the Council's planning consultant).

[138] Mr Page claimed that the construction issues (lack of assessment and need for additional consents) had been dealt with, except for dust, stormwater and dewatering. He told

us that construction techniques can be used to avoid the need for additional consents and there are no evidential reasons for us to decide consent can't be granted because additional consents are required. He said, if we disagree with this, we can decline consent for the earthworks part of the proposal if we are minded to do so.

[139] Mr Page provided some draft conditions, should consent be granted, largely based on Ms Darby's recommendations in the s.42A Report. He advised us that it was not the applicant's role to determine whether or not the effects of the proposal were more than minor, but he noted that the applicant's case under s.104D relied strongly on the argument that the proposal was not contrary to the objectives and policies in the District Plan. Mr Page submitted that the Council planner misunderstood what was meant by 'contrary'. He concluded that if Dunedin was serious about tourism for its future, then the enabling elements of Part 2 of the Act would provide us with all the policy support needed to approve the project. In his words:

The one thing you can be certain about is that Dunedin needs this project for its economic wellbeing.

[140] Mr Page indicated that the applicant was willing to engage with a Design Review Panel. He noted that Auckland and Queenstown both had such panels but there was no equivalent body in Dunedin. For our information, Mr Page tabled a copy of the Terms of Reference for the Auckland Design Review Panel.

5 OFFICER'S REPORT

5.1 Dunedin City Council Section 42A Report

[141] The DCC Officer's Report was prepared by the Council's Processing Planner, Ms Darby. The report provided a description of the activity and adjudged the status of the proposal to be non-complying pursuant to the rules in the District Plan. Details of the notification process was also provided together with a summary of the main points raised by submitters. Both in opposition and in support.

[142] Ms Darby, in her report, also discussed the environmental effects of allowing the activity. She noted that the starting point is the application of what is commonly referred to as the 'permitted baseline' assessment. She said this requires the establishment of what can occur as of right (permitted activity), and overlays the existing lawfully established environment. Any effect from an activity that is equivalent to that generated by an activity permitted by the District Plan cannot be regarded as an environmental effect for the purposes of an assessment

under section 104(1)(a). Her view, expressed in the report was that, in this case, no residential or commercial activity is anticipated for this site (within the Industrial 1 zone) and, thus, there is no permitted baseline argument to apply to these activities. In respect of permitted activities she noted that there was no restriction placed on the bulk or location of a building in the Industrial 1 zone but, in terms of applying this lack of restriction to a permitted baseline argument, she said case law has established that comparison should not be given to a structure that is 'fanciful'. That is to say, it must be to a structure suitable for use by a permitted activity. In her view it was unlikely that any permitted activities for this site would require a building more than a few storeys high. In Ms Darby's opinion, the permitted baseline for this site is of limited value in the assessment of the proposed hotel and apartment complex.

[143] Where appropriate, we have referred to the views expressed in the s.42A Report with respect to the environmental effects of allowing the activity in our discussion of the issues and effects in Chapter 6 of this decision.

[144] The s.42A Report also included a helpful analysis of the objectives and policies in the District Plan, and the statutory matters that we have to consider under Part 2 of the Act and s.104D for non-complying activities. We canvass these matters later in this decision in Chapter 8.

[145] Ms Darby, in the s.42A Report, considered the proposal to be contrary to a number of objectives and policies in the Sustainability, Industry and Transportation sections of the District Plan. She was also of the view that the proposed development would result in a number of adverse effects that will be more than minor. As such, Ms Darby did not consider the proposal was able to pass either limb of the s.104D 'threshold test'. Ms Darby, thus, recommended that the application be declined. She also provided reasons for her recommendation and suggested a number of conditions should we be minded to grant consent.

6 PRINCIPAL ISSUES AND EFFECTS

6.1 Introduction

[146] This section considers the principal issues and effects relevant to this proposal. Because of the effects-based nature of the Act, we shall review the effects of the proposal on a range of relevant matters, largely as identified in the Fourth Schedule. This approach is consistent with s.104 of the Act.

[147] In carrying out our assessment, we have reviewed the submissions and evidence concerning each of the principal issues and the effects on the environment that were brought to our attention. While we have not repeated everything we heard, we have endeavoured to record here the more important aspects of the evidence presented to us on behalf of the applicants and submitters, and also from the DCC council officer and reviewers. At the conclusion of our discussion of each issue we provide our findings with respect to that issue. This, in due course, provides the basis for our decision and, in terms of our duties under the Act, this section is also consistent with s.113 of the Act.

[148] We are reminded here that the proposed site is zoned Industrial 1 and that certain activities, compatible with that zoning, can take place as of right. Importantly, the present zoning places no restriction on the bulk, height or location of a building constructed on the 41 Wharf Street site for the purpose of carrying out industrial activities. At various times during the hearing we heard evidence from counsel and planners as to how we should interpret the permitted baseline that may or may not be attached to the site by virtue of its Industrial 1 zoning. The applicant's opinion, to which we have previously referred [at Para 25 and elsewhere], was that the present Industrial zoning determined the permitted baseline and, thus, we had no need to be concerned about the bulk and height of the proposed hotel. We have listened to what other parties have had to say about this and prefer the more general view that, since the proposal is for an entirely different activity (i.e., not industrial), then we are required to consider all effects. That is to say, the permitted baseline argument does not allow us to put the bulk and height of the proposed hotel to one side and that is how we have considered the effects of the proposal in this Chapter.

6.2 Tangata whenua

[149] *The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga* are recognised in the Act as matters of national importance that we are required to recognise and provide for (the Act s.6(e)) as is the *protection of recognised customary activities* (s.6(g)). Furthermore, *kaitiakitanga* (s.7(a)) and the ethic of stewardship (s.7(aa)) are matters to which we are required to have particular regard, and we are also required to take into account the principles of the Treaty of Waitangi, *Te Tiriti o Waitangi* (s.8).

[150] Since no issues of concern to tangata whenua were brought to our attention, we have concluded that matters relating to Maori culture and traditions will not be adversely affected by this proposal. In the event that we are minded to grant consent, DCC has a standard condition of consent that requires a set protocols and practices to be followed should any *koiwi tangata*

(human skeletal remains) or Maori artefact material be discovered during the excavation for the proposed works. Accordingly, we consider that any effect on *tangata whenua* that may subsequently arise can be adequately safeguarded.

6.3 Natural character, landscape and visual amenity

[151] The need to recognise and provide for (as matters of national importance) the *preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development* is stated in s.6(a) of the Act. S.6(b) further provides for the *protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development*.

[152] It will be apparent to those who are familiar with the application and the District Plan that there are no outstanding natural features or landscapes that would be affected by the proposal. In this sense s.6(b) of the Act is not relevant to our decision. However, the visual aspects of the proposal and how it relates to the wider landscape, both urban and distant, was the matter of greatest concern to many submitters. We therefore consider it is important for us to examine in some detail what the various parties had to say about this. We have included visual amenity here together with natural character and landscape because they are frequently treated as parts of a common issue. The requirement to have regard to visual amenity is directed through s.7(c) relating to the *maintenance and enhancement of amenity values*, and we shall refer to this in a more general sense in Section 6.4 below.

Applicant's evidence

[153] **Mr Page**, in his opening legal submissions, argued that we should be concerned about the use of the building as a hotel rather than its bulk or height. He went on to discuss the relevance of the permitted baseline test in this case and we shall return to this later. Nevertheless, Mr Page called two architects as expert witnesses both of whom referred to landscape matters in their evidence.

[154] **Mr Jeremy Whelan**, through his practice (Ignite Architects), was engaged to assist the applicant through the resource consent process and act as “architect of record” for the project. He spoke to us about the relationship of the proposed building to the present wider context of the Dunedin landscape and how it would impact on its surroundings. In doing so he referred specifically to urban design, site location and context, height, and over-shadowing.

[155] Mr Whelan told us that [at Para 4.1]:

The hotel building has been planned and designed to integrate in a manner so as to mitigate negative impacts to its immediate environment and ensure an appropriate fit within its broader context.

and further [at Para 4.2]

... a broader understanding of how the hotel development will potentially relate to and impact on its surrounds is important, as well as ensuring that all measures to promote sensitive integration are maximised.

[156] He cited a number of points describing how he considered the design had responded to these requirements. To a large extent these related more to infrastructure and servicing of the hotel than they did to landscape issues. However, he did note that the majority of the buildings in the surrounding area are generally one or two storeys, and up to four storeys along the Thomas Burns Street frontage and in the port and warehouse district to the west and north. He also considered that the proposed hotel would become a catalyst in the development of the harbour basin and also in the provision of improved pedestrian connections to the broader Dunedin environment.

[157] Mr Whelan considered [at Para 4.6] that the hotel:

... is well sited for an International 5 Star Hotel given the proximity to the harbour edge and backing to the rail corridor. This allows the hotel to have controlled 360 degree views of Dunedin City and its harbour, visual connection to Dunedin's Heritage buildings and planning structure and good accessibility to the city centre. It minimises any impacts of this type of building on immediate character buildings by being separate.

[158] In considering the lower scale buildings in the district, Mr Whelan said that the podium section at the base of the proposed hotel had been designed to be in scale with the existing buildings nearby and that the setting back of the main hotel building would provide an appropriate transition to ensure that the hotel itself would not be out of context for the location.

[159] Mr Whelan went on to consider the site location and its prominence. He noted that the proposed hotel would be on a site that is highly visible, and it is important to ensure that the prominence of the site is appropriately acknowledged in design and locational terms. He did not consider that the proposed hotel could be successfully located within the Dunedin CBD because it would necessarily involve the demolition of heritage buildings and many more people would be affected. There are also strict height limits imposed on any new buildings within the CBD. A

“fringe” site had, thus, been chosen where there were opportunities for connection with the CBD.

[160] Mr Whelan opined that the proposed hotel would complement and enhance, rather than compromise, strategic views and important vistas in the city such as those involving the First Church of Dunedin and the nearby Railway Station. He said the site is well-separated from sensitive historic environments.

[161] In his discussion of landmark views and vistas Mr Whelan agreed that critical elements should be protected and that the photo montages supplied with the application recognised this. He told us [at Para 7.3] that the site of the proposed hotel is:

... separated from key historic and sensitive environments where any negative visual impact could occur.

and that:

By maximising spatial separation to cultural and heritage landscapes, developments can be sensitively integrated in a manner that preserves their setting, character and integrity.

[162] Mr Whelan disagreed with the many submitters, including the Southern Branch of the NZ Institute of Architects, who considered that the hotel tower would block views or be visually dominant. He said the selected view shafts shown on the photomontages, which had been agreed as part of the application process, demonstrate that the hotel building would not be visually dominant in all cases and it would be seen against the background of the existing hills. He went on to suggest that the harbour basin is such a powerful feature of the Dunedin landscape that the proposed hotel would not singularly dominate the city as had been suggested by some submitters.

[163] Mr Whelan also considered that the city had been allowed to become cut off from its waterfront by rail and road infrastructure and that the proposed hotel could act as the catalyst for a rethinking of the city-harbour connection and the creation of a desirable pedestrian environment that would attract locals and visitors to the harbour basin area. We shall have more to say later about pedestrian access.

[164] He also discussed the architectural form of the proposed hotel. We note that this matter was raised by several submitters and we shall refer to their views later in this section. At Para 8.13, Mr Whelan had this to say:

The Dunedin Hotel proposal is about design and building material quality to promote architectural excellence, technical innovation and long term sustainable performance and an economic return. The building does not intend to mimic or respond to the vernacular architecture of Dunedin but stands alone as a contemporary, purpose-designed international hotel building. The building's height, volumetric shape, plan form, core location and column spacing all combine to determine the most efficient and cost-effective structural solution.

[165] As we have already noted, the applicant provided a series of photomontages with the application. These were prepared by Truescape Limited, a company that specialises in preparing computer-based simulations that give a visual representation of how a proposal, in this case a 27-storey hotel, would be seen from a range of viewpoints. We understand that, in this case, the viewpoints were selected in consultation with DCC staff. At the hearing the photomontages were presented by **Ms Stanners** who was Truescape's project manager. She explained the methodology to us.

[166] **Mr Whitaker** is an experienced Dunedin architect who, as well as designing a wide range of buildings, has worked on a variety of urban design projects. He presented a design report to us and spoke very highly of the architectural merit of the hotel and noted that it would [at Para 2.5]:

... make a significant contribution to the character, spirit, vitality and perception of the city in many ways.

[167] Mr Whitaker described the various facets of the proposed hotel in some detail and then moved on [at Para 6.1 *et seq*] to discuss the architectural style and the design of the building. He noted that many submitters were concerned about the relationship of a tall contemporary building to the city and how it would relate to the Victorian heritage of Dunedin. In these respects he said [at Para 6.5]:

When new buildings are constructed near older structures, or within precincts which were shaped by heritage buildings, Contemporary or Contextual buildings, can be good or bad, depending on how well they have been executed, in respect to all the aspects of proximity and design.

And he referred to several examples.

[168] Mr Whitaker said [at Para 6.14] that it came as no surprise that many people in the community showed concern when a dramatic new structure, by virtue of its scale and design, is proposed in a city like Dunedin. He went on to say [at Para 6.15]:

The concept of a large glassy building, that directly interacts with the reflective qualities of the water body of the harbour it overlooks, combined with a clear dialogue that occurs between a contemporary design, and nearby heritage buildings, is however, very compelling.

[169] In discussing the height of the proposed hotel, Mr Whitaker suggested to us that the appropriate height can be determined by evaluating the proportions of the building in context with the surrounding physical features. The proposed site, he said, has two main settings: one as seen from the harbour basin and the other as seen from the city. At Para 7.3.4 he said:

Seen from the surrounding edges of the Harbour Basin, the size and scale of the Hotel is appropriate, and its height and proportions will shape the building form, that will be dramatic, memorable, and alluring to visitors from New Zealand and from Overseas.

[170] Mr Whitaker expressed opinions in a similar vein when referring to how the building would be seen from the city, from the northern and southern approaches, and from various points around the city. Overall, he considered that the height of the proposed hotel building is not inappropriate.

[171] Mr Whitaker then moved on to discuss the proposed hotel in the broader context of the city, its topography, and the surrounding geographical features. He described the Dunedin setting and its grid patterns, and some of its dominant features. In his view [at Para 8.3]:

The most striking intersection of the grids occurs at the Exchange, where High Street descends from Mornington, down steep sections and a series of flat shelves before surging across the rectangular grid pattern of Princes Street, Rattray Street, Crawford Street and Cumberland Street, to form the exact triangle of Queens Gardens.

and:

In essence, the space of Queens Garden informs the set out of the City and topography of Dunedin in a striking way.

[172] He considers that the Octagon and the Exchange are the two most important nodes of the city and that the railway station forms the third point in a triangle around which the city is located. Mr Whitaker went on describe the greater amount of commercial activity and larger buildings to the north of the Octagon towards and including Otago University. He told us that the recently constructed Forsyth Barr Stadium is a “large visual mass” that, in his view, “book-ends” the northern extent of the city, and that the siting of a tall hotel, similarly on the foreshore, at the southern end of the CBD [at Para 8.7]:

... creates a certain symmetry that will also 'book-end' the city at its Southern end.

and:

The spatial relationship and urban significance that would exist between the large tall structure of the Stadium and a tall Hotel cannot be dismissed especially when the pedestrian flow between the two facilities runs directly in a North/South axis along the movement network that connects them.

[173] Mr Whitaker continued in this vein and [at Para 8.8] told us:

The Stadium and Hotel sites, are both positioned on the Eastern edge of the City, and although they are just buildings set well apart, their significance and mass will not only balance and contain the city visually in its length, but spatially support, and in essence cradle the City back towards the hillside.

We were left in no doubt about Mr Whitaker's considerable enthusiasm for the proposal.

[174] Putting to one side the issues surrounding the non-complying use of the proposed site for hotel-based activities, we believe that how a building of the size of the proposed hotel would 'sit' within, and become a dominant part of, the wider Dunedin landscape, is a relevant matter for us to resolve. This is despite Mr Page's contention that our concern should focus on the intended use of the site rather than the bulk and height of the proposal. We have, thus, in the foregoing paragraphs paid particular attention to what the applicant had to say on this matter and we shall return to Mr Page's argument later.

[175] We note here that, having heard the applicant's case and the submissions, on 17 January 2013 we wrote to the applicant requesting, pursuant to s.41C(3) of the Act, further information. Among other matters we said in the letter:

The Committee considers that a fuller assessment is necessary with regard to the design of the proposal and how it relates to the broader landscape of the wider city, the harbour and the surrounding hills. The Committee believes that this is a contextual matter that goes beyond the evidence given by the applicant and might assist in resolving or understanding of submissions presented on urban design.

In the applicant's response (letter from Mr Page dated 15 February 2013) we were advised that a landscape assessment would not be provided because:

The appearance of the building has already been described by witnesses, and simulations and a physical model provided. There is adequate evidence from which the committee can form its own judgement as to the visual effects of the building.

and

A landscape assessment is contextual. The proposal lies within the Industrial 1 zone, not in a Rural zone. It seems to our client that the point of disagreement is not so much what the building will look like (although subjective responses will differ, and the Committee has had a full range of those), but rather what the point of comparison is that underlies any assessment framework. Identifying the baseline with which the proposed building is to be compared is a planning assessment rather than one that falls to landscape expertise.

[176] **Mr Donald Anderson**, who presented planning evidence on behalf of the applicant, also had something to say on matters relevant to our consideration of the issues surrounding the visual impacts of the proposal. In particular, he pointed out that Industrial 1 zoning places no restrictions either on the height of a building or on its bulk and appearance. He said this means that a 27-storey building can be built at the site of the proposed hotel in compliance with the District Plan and, thus, little weight can be given to the submissions concerning bulk, height or appearance of the proposed hotel.

[177] We turn now to what the submitters had to say.

Submitters

[178] As we have already said, submitters had a great deal to say about how a building of the size of the proposed hotel would fit into the Dunedin landscape. This aspect was of much greater concern to submitters than was its proposed use as a hotel.

[179] One submitter, **Capri Enterprises Limited [CEL]** provided us with expert evidence from **Mr Bird** who is a recognised urban design consultant from Auckland. We note here that we are aware that CEL and Scenic Circle Hotels (Dunedin) Limited, who operate two large hotels within the Dunedin CBD and might be considered trade competitors, have directors in common. Nevertheless, the submission from CEL, quite properly, did not raise issues of trade competition and we accept that Mr Bird is an experienced witness and able to assist the hearing.

[180] Mr Bird provided us with comprehensive evidence. Among other things, he told us [at Para 3.3], early in his evidence, that the critical issue:

... can be encapsulated in the question as to whether or not a building form of this height, bulk, orientation, visual dominance and use is appropriate to its greater Dunedin urban context and to this very important Dunedin waterfront site? In my opinion, and when considered from this perspective, the proposed development is not appropriate to its Dunedin context at any scale.

[181] Mr Bird described [at Para 4.1 *et seq*] what he considered were deficiencies in the applicant's urban design assessment. He noted that the AEE contained virtually no urban design assessment and that the response from the applicant's planning consultant, Anderson and Co (dated 28 August 2012), to DCC's s.92 request for further information on this aspect of the proposal was based on just three considerations, which we discuss below.

The New Zealand Urban Design Protocol (and the seven C's) [NZUDP]

[182] The seven C's in the NZUDP are Context, Character, Choice, Connections, Creativity, Custodianship and Collaboration. Mr Bird had this to say:

In my opinion, urban design assessments based upon the 'seven C's' are only of any value when there is an in-depth urban design analysis of the proposal and when such an assessment is accompanied by a wide range of other detailed building and context specific considerations, including but not limited to considerations of city structure, form, grain, legibility, permeability, connectivity, public space activation and building height, bulk, scale, floor plan footprint shape and orientation, sustainability, shading and wind effects.

The applicant's response, in his view, fell short of these requirements.

People + Places + Spaces: A design guide for urban New Zealand

[183] Mr Bird considered that the applicant's reference to this guide contained no analysis and dismissed it as being of little relevance to the statutory planning requirements of the current industrial zoning of the proposed site.

National Guidelines for Crime Prevention Through Environmental Design in New Zealand (CPTED)

[184] Mr Bird, in his evidence [at Para 4.11 and 4.12] said that consideration of crime prevention typically applies to all urban developments but is only one among many important aspects that form part of both local and city-wide design considerations.

[185] Mr Bird then went on to discuss the photomontages prepared by Truescape. While he had no issue with the accuracy of the images supplied, he questioned the relevance of some of the sites chosen and listed another 18 key public viewpoints that, in his opinion, should have been included. To assist us, he provided photos in his evidence that illustrated each of the 18 viewpoints showing the approximate centreline of the proposed hotel and an indication of its height.

[186] Of interest to us was what Mr Bird had to say about the site of the proposed hotel in relation to its Dunedin City context and the urban design implications. This latter point he discussed at some length. He reminded us that the site is effectively an island constrained by the railway to the west and the busy city centre by-pass road to the east between the site and the harbour. He said there are implications that arise from this — particularly the question of pedestrian access.

[187] Mr Bird listed a range of urban design matters that he believed should have been considered in thoroughly assessing the potential environmental effects of the proposal. We shall try to capture the essence of what he said in his evidence concerning these matters.

City structure

[188] Mr Bird referred to the existing cross-axial structure of the city consisting of the south-west/north-east aligned ‘land axis’ (created by Princes Street and George Street), and the ‘water axis’ (created by Stuart Street and Mason Street) both of which intersect at ninety degrees in the centre of the Octagon. He considered that the proposal:

... will have significant adverse effects on that urban structure by being by far the largest and most dominant building in Dunedin, on a site entirely disconnected from that structure. In my opinion, the proposed development will have the adverse effect of diluting the strength of the existing historic structure by creating an aberrant new structure, unrelated to that which has served the city so well for so long.

City form

[189] Mr Bird compared the topography of Dunedin with that of San Francisco and quoted an urban design principle from city plan²:

*‘The general pattern of buildings should emphasize the topographic form of the city and the importance of centres of activity. It should also help to define street areas and other public open spaces. Individual buildings and other structures should stand out prominently in the city pattern **only in exceptional circumstances**, where they signify the presence of important community facilities and occupy visual focal points that benefit from buildings and structures of such design.’ (emphasis added)*

He considered that the proposed hotel is contrary to this principle and that the development would have significant adverse effects on the unique city form of Dunedin. He told us:

² City of San Francisco; San Francisco General Plan: Principles for City Pattern, Pattern 2., p6

The proposed hotel will have significant adverse effects on the historic legibility of the sloping landform and create a 'stand alone' private object which will physically and symbolically upstage the iconic towers and spires of Dunedin's historic buildings of social, cultural and community significance.

City grain

[190] In his words:

... the proposed hotel development will have significant adverse effects on the existing city grain characterising the old industrial and Steamer Basin areas of Dunedin. The hotel will add an uncharacteristically large footprint to the area, without any corresponding or compensating reduction in the size of the city block in which it will be located.

City legibility

[191] This refers to, according to Mr Bird, how easily a city can be 'read' and 'understood' by its citizens and visitors. Here, among other things, he said [at Para 7.16]:

Such a tall building, with its metaphorical 'back' to the city, located near the central point of the elevated city landform focus upon the harbour, will reduce views of the harbour from the gradually sloping landform of the city behind. The proposed hotel will also obstruct views of the 'green belt' from the harbour's edge looking back towards the city.

City permeability

[192] This relates to the ease with which a person moving around a city (by car or on foot) can relatively easily access the areas they want to get to. In this regard, Mr Bird considers Dunedin to be 'highly permeable' except for the area around the site of the proposed hotel, which is constrained by the railway. He considered the proposal, rather than acting as a catalyst for improved pedestrian linkages and the like in the future, it is more likely to detract from the prospect of improved permeability in this area.

City connectivity

[193] This is about how different parts of a city are joined together so they can function as a whole. The loss of connectivity caused by the railway corridor is well known and Mr Bird considers that the proposed hotel will make this situation worse.

Public space activation

[194] Mr Bird considers [at Para 7.26] this to be:

One of the most important considerations in any urban design analysis and assessment of a proposed building development is the degree to which the development will provide an attractive and engaging level of activation of its adjoining public footpath/street edges, both visually and functionally.

[195] He was generally critical of the hotel layout and how it would have adverse effects on the character of the Harbourside and Steamer Basin, and would provide no opportunities for ground level activities. Mr Bird considered the proposal would have significant adverse effects, both on the edge of the Wharf Street footpath and on the potential of the site to link with and enhance the activation of public spaces on the edge of the harbour.

Building height

[196] Mr Bird, in his evidence, said there are two universally recognized urban design principles regarding appropriate heights for buildings located on or near to urban waterfronts in cities. These are:

to have relatively low buildings on or near the harbour's edge and gradually increase their permitted heights as they are situated further and further away from that edge;

and

to place tall buildings on hills and low buildings in valleys and on flat land so as to emphasize and maintain the underlying natural landform.

[197] Mr Bird referred to Auckland City where height controls have been imposed along the harbour edge (along Quay Street in particular where the height limit is 40 metres with a 45 degree recession plane behind). This, he said, is consistent with the first of these principles whereas constructing the proposed hotel would be contrary. He also referred to Auckland's new Wynyard Quarter, also on the waterfront, where even lower height limits have been imposed in order to:

'... achieve an appropriate scale in relation to the proposed street network while also providing a transition to the coast, and between Wynyard Quarter and the Core SMA.'

[198] He also referred again to the San Francisco General Plan, which contains similar statements. In particular³:

³ City of San Francisco; San Francisco General Plan: Major New Development: Human Needs, para 2, p 35

'Exceptional height can have either positive or negative effects upon the city pattern and the nearby environment. A building that is well designed in itself will help to reinforce the city's form if it is well placed, but the same building at the wrong location can be utterly disruptive.'

Mr Bird considers that the proposed hotel development will have significant adverse effects on its Dunedin city environment because it is not properly placed.

Building bulk

[199] While the term is largely self-explanatory, Mr Bird described it as the 'apparent massiveness of a building in relation to its surroundings' [Para 7.39]. He noted that the proposed building's eastern and western elevations present very large wall surfaces and that this would significantly interrupt views of the harbour from the city. Again, he quoted from the San Francisco General Plan, which supported Mr Bird's opinion.

Building Scale

[200] In view of the foregoing, it was not surprising that Mr Bird considers that the proposed hotel 'will be completely out of scale with, and have significant adverse effects upon, the size and texture of its wider Harbourside surroundings' [Para 7.47].

Building floor plan footprint shape and orientation

[201] Mr Bird compared the proposed hotel with the three 'Scene' apartment buildings on Beach Road, one block back from Quay Street in Auckland. He said these buildings were only 16 storeys high but were generally regarded 'as a huge and immensely regrettable urban design mistake' [Para 7.47] in terms of blocking views and loss of awareness of the harbour beyond.

Sustainability

[202] Mr Bird told us that that cities should be designed with sustainability in mind. There would be few who would disagree with that notion. At Para 7.51 he expanded on this:

Sustainable cities are ones that are generally dense, concentrated, make efficient use of land and are characterised by mixed patterns of compatible activities and land use. People should be able to enjoy walking around and find it easy and convenient to get from one place to another without having to use a car.

[203] He then focussed on his belief that the proposed hotel would not be 'pedestrian friendly'. We know that there are many facets that combine to make up a sustainable city of

which ease of moving from one place to another, preferably without having to use a vehicle, is but one.

[204] Finally, in the section of his evidence on urban design, Mr Bird went on to discuss shading effects and issues surrounding wind and its effects on pedestrians. These are separate matters that we consider further in our discussion of the effects of the proposal on amenity values in Section 6.4 below.

[205] Mr Bird also provided his views on various statements made in s.42A Planning Report and by DCC's consultant reviewers. Where relevant, we shall refer back to Mr Bird's comments when we come to discuss the content of the s.42A Report and the reviewers' reports below.

[206] In his conclusions, Mr Bird reiterated his earlier views expressed throughout his evidence. At Para 9.4 he said:

I am firmly of the opinion that the proposed hotel and residential apartment development at 41 Wharf Street will have significant adverse visual, height, bulk, scale, shading and wind effects effects on the structure, form, grain, legibility, permeability, connectivity and public space activation within Dunedin city as a whole and within the Harbourside warehouse/industrial area in particular.

And at Para 9.6, in reference to the prospect of a pedestrian bridge over the railway at some time in the future, he said:

... it is my firm opinion that it will not avoid, remedy or mitigate the significant adverse effects that I have identified in this evidence. The pedestrian over-bridge may provide one possible means by which the obstacle of the railway line might be overcome, but it will do nothing to remedy or mitigate the significant adverse effects of the excessive bulk, scale and height of the proposed development on both the wider Dunedin city context and on the small and intimate scale of the Harbourside buildings and public spaces in particular.

[207] We have already recorded that the hearing was reconvened on 18 March 2013. Following our s.41C(3) request for further information from the applicant, Mr Bird provided a supplementary statement of evidence in which he commented on the applicant's response.

[208] Mr Bird, in his supplementary evidence, considered that the additional visual simulations (photomontages) supplied by the applicant fell short of best practice procedures and he quoted a number of points from the accepted guidelines for undertaking such work. In

his opinion the images supplied cannot be relied upon to accurately predict the visual effects of the proposed hotel. He also felt that further additional images should have been provided, especially from Steamer Basin and the nearby Customhouse Quay. However, Mr Bird did indicate that, even if the additional images had been provided, they would only have confirmed the opinions expressed in his original evidence.

[209] The other matter relative to landscape issues in Mr Bird's supplementary evidence concerned the applicant's refusal to provide a landscape assessment as sought in our s.41C(3) request. At Para 5.4 he said:

While I agree with the applicant's statement that a landscape assessment is contextual, I do not agree that it should be limited to the Industrial 1 zone in which the proposed building will be so highly visible from many other (non-industrial) zones within Dunedin. In my opinion and experience, a thorough landscape assessment should be conducted across a wide spectrum of contexts, from 'city-wide' to 'very local'.

And, at Para 5.5:

I do not agree that identifying the baseline with which the proposed building should be compared is a "planning" matter rather than one that falls to landscape expertise.

[210] Mr Bird concluded by saying [at Para 6.2] that he considered the information provided by the applicant to be 'woefully inadequate' given the city-wide significance of the proposed hotel development.

[211] **Mr Logan**, counsel for **Otago Regional Council [ORC]**, presented legal submissions that referred, in the main, to the permitted baseline, the receiving environment, and the effects on nearby properties, some of which are owned by ORC. He reminded us [at Para 19] that the focus of the Act and the consent process is on the external effects of the proposal. He said [at Para 20] that the final design of the building is not known and until this had been resolved we could not grant consent. Furthermore, in his view, we are unable to delegate this function to either "the consent holder, design panel or Council officer". In his conclusions, Mr Logan said:

It is inescapable that this proposal is out of zone, out of scale and proportion, and out of the scope of anything contemplated by the District Plan.

[212] Although the ORC submission did not call specific landscape evidence, the matter was referred to in the evidence presented by ORC's consultant planner, **Mr Kyle**. We note that Mr Kyle is an experienced planner with some 25 years' experience. Since the applicant's view was

that issues relating to the height and bulk of the proposed hotel are largely a planning matter (rather than landscape) we were interested in what Mr Kyle had to say.

[213] Mr Kyle considered that the application is not sufficiently complete to enable a proper assessment of all the effects. This, he said [at Para 3.2], is particularly relevant since the proposal is of a scale beyond anything DCC has had to contemplate in the past. Among other things, he said further information should have been provided on the external appearance of the proposed building and how it would “fit” within the Dunedin “Cityscape”. He said it was important to understand the implications of the proposal within the wider context of the city.

[214] Mr Kyle said it was necessary for us to consider whether or not an industrial activity could conceivably be established within a 96 m high building on a footprint of around 4000 m² at this site. In his view, such a scenario is “fanciful”. In his evidence, Mr Kyle discussed the effects arising from shading, wind and traffic. He also discussed construction effects and statutory matters. We cover these later in this decision.

[215] Although not falling within the realm of expert evidence specifically relating to the bulk, height and appearance of the proposed hotel, knowledgeable submissions were made by several people. A submission from the Geography and Applied Science Departments at the University of Otago, led by **Ms Rosalind Day**, was of interest to us. Accompanying Ms Day were **Dr Mark McGuire** who is a senior lecturer in communication design and **Michael Findlay** who is Professional Practice Fellow within the Design for Technology in the Department of Applied Sciences. Also appearing with Ms Day was **Professor Richard Morgan** from the Geography Department who is an internationally recognised authority on impact assessment.

[216] Ms Day said she broadly supported the conclusions and recommendations in the s.42A Report, which we discuss below. Although she is not opposed to the development of a hotel and apartment block, the group she represented was concerned about the standard of the design and the quality of the impact assessment undertaken by the applicant. Ms Day then raised an interesting point. She said she was surprised that there had been no mention of the recently adopted Spatial Plan for Dunedin City within the s.42A Report. She noted that the Spatial Plan [on Page 9] states:

Prior to the adoption of the Second Generation District Plan, land owners may seek to establish activities that may not be supported by the provisions of the current District Plan. In these situations, the DCC may look to the Spatial Plan as a guide to determine whether such proposals are aligned with the strategic thinking for the city into the future.

Given that the Spatial Plan is primarily concerned with Dunedin's urban form and design [also on Page 9], we were also surprised that it had not been given greater attention in the evidence of those who spoke to us about landscape and visual effects.

[217] Dr McGuire and Mr Findlay did not object to the scale of the proposed hotel but were critical of the standard of the design. They considered that a better designed building would alleviate many current concerns and would be an asset to the city.

[218] Professor Morgan considered that the tone of the AEE was one of advocacy rather than being a reasoned examination of the potential impacts of the proposal on the environment. In his view the AEE falls far short of internationally recognised good practice principles for impact assessment. Professor Morgan agreed with the statement in the s.42A Report that one of the key issues is the visual impact of the proposed hotel yet no well-founded assessment of the visual impacts had been provided. He told us:

There are well-established visual impact assessment methods based on the concepts of scenic preference values, potential visual exposure, observer proximity, viewer perception, and visual absorption capacity, to assess visual impact in more complete and rigorous fashion, with due regard to community perspectives.

[219] We were also interested in the submission from the **Southern Branch of the NZ Institute of Architects [NZIA]**. This was led by **Tim Heath** and he was accompanied by **Simon Parker, Hannah Sharp** and **Richard Shackleton**. The NZIA (Southern Branch) listed a number of areas of concern and, with respect to the visual aspects of the proposal it considered that:

The scale and height of the proposed hotel is completely out of context with the city blocks and harbour side buildings.

and

The proposed hotel makes no attempt to fit into the existing urban grain.

[220] Mr Heath said that the harbour and the surrounding hills are the two most important landscape elements in Dunedin and that the proposed hotel would either block views of the harbour or be visually dominant. Mr Parker told us that the proposal ignores the context of Dunedin. The submission concluded, among other things that;

Good urban design interprets and builds upon the existing character, the existing landscape and the aspirations of the local community, to arrive at a vision of what a place might become. We see little evidence of this in the 41 Wharf Street hotel

proposal. In our opinion, the 41 Wharf Street Hotel proposal diminishes Dunedin as we know it and it therefore diminishes our identity.

[221] Another submission of interest to us was that of **Mr Peter Entwistle**, who is an art historian with a particular interest in the architectural heritage of Dunedin. Mr Entwistle told us that the proposed hotel was ‘emphatically modernist design’ and being centrally placed it would ‘disturb the impression of the central city’s principally revivalist architecture’. He referred to Dunedin as being the best built and preserved colonial city in New Zealand. He noted that First Church remained the tallest building in the CBD. Mr Entwistle said that what all the architectural and urban design evidence had over-looked was that:

... setting a modernist building of this scale on this site, in the very heart of the colonial city would tip the whole balance of the context

and, in his view, the city would be left with:

a lonely glass tower, of no originality, rising forlornly at its centre’.

[222] The dominant view of most submitters who opposed the application, with respect to the visual aspects of the hotel proposal, was that the height and bulk appearance of the 27-storey tower is not appropriate at the 41 Wharf Street site. This was reflected in the submissions of many of those who appeared before us and some of these submissions were quite detailed. Generally, these submitters mostly opposed the proposal because of their concern about the height and bulk of the hotel building, and the visual impact this would have on the city. While we have not repeated here all that was said to us we have in Section 4.3 outlined the content of the submissions presented at the hearing, and a full list of submitters is included in Appendix 10.3.

[223] We note that Mr John Christie, who spoke to the written submission from the Dunedin Chamber of Commerce, supported the proposal because it was consistent with the strategic goals of the city, including the Spatial Plan.

Section 42A Report

[224] **Ms Darby**, in the s.42A Report, provided a helpful analysis of the environmental effects of allowing the proposed activity and this included a lengthy discussion of matters concerning the bulk and height of the proposal. In referring [at Para 39] to the Industrial 1 zoning at the proposed site and the lack of any restrictions as to building height and bulk within that zone, she said that a range of activities were permitted but it is ‘unlikely’ that any of these

would require a building of more than a few storeys in height. In terms of the permitted baseline argument, she said that:

... case law has established that comparison should not be given to a structure that is 'fanciful'; it must be to a structure suitable for use by a permitted activity.

This, she said:

... effectively creates a height limit to that which is practical and credible for an Industrial 1-zone permitted activity. Likewise, all effects associated with a building's bulk and location, and which would form part of the permitted baseline for a permitted activity, must be viewed in terms of the use of the building. This includes shading and wind effects, for example. The District Plan defines minimal controls on the design and appearance of buildings for permitted activities in the Industrial 1 zone.

[225] In discussing [at Para 67 *et seq*] the visual aspects, Ms Darby in the s.42A Report noted that the city is built in a basin around the harbour edge and that the proposed hotel would be visible from many residential suburbs and also from the many places within the Dunedin CBD. Given the number of submitters who opposed the proposal on grounds of its visibility, we have no doubts about this. Ms Darby referred to the reports from the Council's urban planning, design and architectural consultants and we shall return to what they had to say on visual matters later.

[226] Ms Darby said [at Para 74] that the visual impacts of the proposed hotel would be most felt by those viewing it from the west side of the city as it would effectively split the sweeping harbour view. Some, located close to the building, would lose their view of the harbour completely. However, Ms Darby reminded us that the Act does not seek to protect views.

[227] Ms Darby, in the s.42A Report, recommended that consent be declined. Among the reasons given for making this recommendation, she said:

The proposed building is in a prominent position at the edge of the Central Business District and the waterfront, and has an exceptional height, particularly in the context of the surrounding land uses. This proposed height has been received unfavourably by approximately 60% of the submitters who are predominantly residents of Dunedin and will view this building frequently, and from many directions.

and:

Dunedin, the Otago Harbour, and surrounds, is not necessarily seen as being an outstanding landscape, but it is a cultural and natural landscape appreciated by

visitors and residents alike. I consider that the visual impact of the proposed hotel and apartment block will be mitigated in many cases by the distances involved, but its position at the waterfront will mean that it is often seen in context of the harbour. The water background will serve as a contrast to the building rather than a setting, and the building will break the sweep of the harbour view from many locations. It is my opinion that this will be an adverse visual effect on the landscape of Otago Harbour.

[228] We shall turn now to what the Council's consultants had to say about these matters.

[229] On issues relevant to this section of our decision, we heard from **Mr Ian Munro** who referred to his original urban design report and spoke to matters raised during the hearing. Mr Munro, we note, is an experienced urban planner and designer and, because of this, we were interested in his opinions relating to urban design. In his original urban design report⁴ he said [at Para 3.5]:

The hotel will in no uncertain terms be dominant in the environment and at odds with the urban character around it. It will redefine the Dunedin Skyline and act for the foreseeable future as Dunedin's most prominent landmark from many vantage points. It is inevitable that the development will lead to adverse urban design effects and many in the community will be of the opinion that its degree of difference or change is very offensive. While aesthetics is a problematically subjective issue, tall buildings and height generally is not inherently adverse. But the combination of building size, contextual incongruity, and inevitable visual prominence proposed mean that the adverse effects of the building can only be described as being more than minor if not significant. The building should for these reasons be expected to be an architectural icon of the highest quality, as an essential means of mitigating these adverse effects.

[230] In his discussion of the character and scale of the proposed hotel, Mr Munro said [at Para 6.3] that he felt a building or around 15 storeys would be more appropriate and would reduce the worst of the visual effects attributed to the proposal. However he qualified this by saying a building of the size proposed could be accommodated at the 41 Wharf Street site provided it is well designed. He went on to say [at Para 6.4] that, from most vantage points the building would be 'very far away' and that it would not dominate most views. In its context, located in an industrial area adjacent to the Dunedin CBD, he did not consider that such 'a large building is inherently inappropriate notwithstanding it will be a dominant element for the foreseeable future'. However, Mr Munro did go on to say [at Para 6.8]:

⁴ Urban Design Assessment of Ian Colin Munro: Dunedin Hotel 41 Wharf St, Dunedin City dated 9 November 2012.

Overall the proposal will not relate well to its context due to a scale incompatibility and does not take any identifiable cue from its environment. Consequently it is stark and appears plainly out of context. This does create a number of adverse effects related to character and visual consistency. These adverse effects are not sufficient to justify a redesign in a different architectural theme but can be mitigated through management of the detail design of the activity. I note that most of the activity's visual effects relate fundamentally to the size and scale of the building rather than the theme used. The site's location also helps mitigate the building as separation distance from other buildings helps to soften the impact created by its size and scale.

[231] Later [at Para 6.11] Mr Munro seemed to moderate his views somewhat when he said:

Overall and despite being much larger than adjacent buildings and even out of scale with its environment, the building has the potential to contribute positively to the townscape of Dunedin's Central City.

[232] Mr Munro concluded [at Para 9.2 in his original report] that consent could be granted subject to conditions concerning various urban design issues that mostly related to pedestrian access and matters concerning the final detailed design of the building.

[233] Having heard the applicant's case presented at the hearing and what submitters had to say, Mr Munro presented us with an update on his original report. He generally agreed with the view expressed by Mr Bird (Capri) and others who considered the proposed hotel would have more than minor adverse effects because of its height and mass and reiterated his conclusion that the proposal cannot pass the first arm of s.104D(1) gateway test. He was, however, somewhat critical of Mr Bird's San Francisco analogy.

[234] Mr Munro noted [at Para 11] that Dunedin provides some very beautiful scenic landscapes but:

... they are not in my view so special or so rare in urban design terms that the well-established New Zealand major city approach of dense and tall CBDs co-existing with beautiful and natural harbours is inherently incompatible here. Notably I refer to Auckland and Wellington. While those coastal CBD environments have been significantly modified including by way of extensive land reclamation (as has occurred in Dunedin) and numerous tall buildings that block views from behind them, I would not agree that they lack character, amenity, or quality. They are just different to an undeveloped, non-urban, non-CBD environment.

[235] Mr Munro also did not agree with Mr Bird's reference to building controls in Auckland that manage the relationship between building height and form along the coastal edge. At Para 12 he said:

It is precisely because the Dunedin District Plan does not make mention of or provide for such a need to preserve views and openness along its waterfront that I have concluded in this instance the application may, while being adverse, still be an appropriate outcome.

and further:

Dunedin's harbor and coastal character is intended to be significantly modified by many large and tall buildings....

[236] This latter statement from Mr Munro led to his concluding:

... I cannot agree that all arguments opposing the building based on its height and bulk effects, while I agree with many of them, can be ultimately supported given that the underlying zone and its context for significant waterfront change has already given those merits away. Context and character are important considerations to urban designers, but they cannot be relied upon if selectively applied only to the "best" parts of the existing environmental or visual context – identified plans for the future must also be accounted for as well as the entire environment, good or bad.

[237] An architectural review⁵ was prepared by **Richard McGowan** and **Jonathan Hewlett** of **Warren and Mahoney Limited [WML]** and this was largely confined to matters relating to the design of the building itself and its functionality, and the suitability of the site for a major hotel. The report did note the conflict between the hotel design and the existing architectural character of Dunedin and with the scale of the surrounding buildings. The report also commented that:

The building's potential to be a landmark structure, of high quality in both design and execution, is evident. Arguably a higher threshold for quality exists for this building as a result of its scale and location.

We note that this sentiment had been expressed by others.

⁵ Dunedin Hotel Proposal/Architectural Review, Warren and Mahoney, 13 November 2012.

Our evaluation

[238] It is fair to say that we were surprised at the applicant's refusal to respond to our request to provide a broad-scale landscape assessment by a landscape architect with recognised expertise. It should have been apparent to the applicant that the lack of expert evidence concerning just how a building of the size of the proposed hotel would 'sit' within the wider Dunedin context was, quite rightly, a matter of concern, not only to the majority of those who submitted in opposition to the proposal, but to us as well.

[239] Mr Page's argument (for the applicant), supported by Mr Anderson (planner for the applicant), that a building of the size of the proposed hotel can be built on the 41 Wharf Street site, because there are no restrictions under the rules applying to Industrial 1 zoning that would prevent it, is a legal interpretation that favours the applicant's case. The matter of whether or not it is correct is debatable and we note that this interpretation did not receive any support from other legal counsel who appeared before us. In these respects, we think Mr Hardie's (for Capri) view that the permitted baseline only allows an industrial building of any size on the proposed site – not another kind of building, carries some weight. Mr Logan (for ORC) seemed to echo similar sentiments in his discussion concerning discretionary use of the permitted baseline test.

[240] Putting legal arguments to one side, it is clear to us that this proposal, if it were to proceed, would make a significant change to the character and landscape of Dunedin and would, to all intents and purposes, be irreversible. For this reason alone we consider that the matter deserves the fullest attention. We, thus, do not accept the applicant's argument that the height and bulk of the proposed building and its visual effects on the surrounding landscape is not a matter for us to be concerned about.

[241] It was suggested to us (by Mr Munro and others) that the adverse effects of the height and dominance of the building could be mitigated by ensuring that the hotel achieved a high level of design excellence. During the hearing it became quite apparent that the design as presented to us fell somewhat short of this ideal. It was also apparent to us that a condition requiring review of the design by an independent panel would provide no surety that such a superior (or iconic) design would or could be achieved. Mr Logan (for ORC) went so far as to say that we are unable to delegate this function to either the consent holder, a design panel or a Council officer. We also note that the probable need to modify the design to mitigate wind effects adds another level of difficulty towards achieving this end.

[242] Throughout this section on landscape and visual amenity we have considered the evidence and submissions before us in some detail. Having done so we are of the view that the

visual effects that arise out of the height and bulk of the building are very important matters and are relevant to our decision. In the absence of any compelling evidence to the contrary, we have concluded that the adverse effects of the proposal on landscape and visual amenity will be more than minor and, probably, significant.

[243] With respect to Part 2 matters in the Act, we have already said that s.6(b) is not relevant to our decision as the proposal does not impact on any listed outstanding natural features or landscapes. S.6(a) is concerned with recognising and providing for the natural character of the coastal environment (among other things) and its protection from inappropriate subdivision, use and development. Here, we conclude that the coastal environment in the vicinity of the proposed site is already significantly modified and has little in the way of any remaining natural character. S.7(c) requires us to have regard to the maintenance and enhancement of amenity values and we have singled out visual amenity for special attention in this section of our report. We have concluded, in light of the evidence and submissions before us that the proposal is not consistent with s.7(c) as far as visual amenity is concerned.

6.4 Amenity values

[244] S.2 of the Act defines ‘amenity values’ as *those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes*. The need to have particular regard to those qualities is covered in several ways in the Act but, in particular, in s.7(c) where it refers to the need to have particular regard to *the maintenance and enhancement of amenity values*.

[245] Mr Page in his opening legal submission provided evidence in relation to the permitted baseline where he spoke of ‘the importance to recognise that the proposed building could be permitted because it drives our understanding (the applicant) of what the Industrial Zone is for and what amenity values are anticipated by the District Plan’. He went on to say ‘the Industrial 1 provisions make it clear that the zone is not designed to protect amenity’

[246] When considering amenity values we were mindful that the receiving environment includes a consented three-storied (height 13.5 metre) commercial building with one residential unit on the site. Mr Page made it clear that the District Plan policy framework gave priority to economic activities above effects on amenity values.

[247] Mr Anderson made reference to the introduction of Section 10 (Industry) of the District Plan being ‘the areas in which industrial activities are located generally, have lower amenity values than other areas of the city. Conflict can arise between industrial activities and those non-industrial activities which may seek high amenity’.

Shading

[248] Detailed shading evidence was presented by the applicant showing that shading effects were limited, particularly when the consented three storied 13.5 m high building was taken into consideration.

[249] On behalf of the Otago Regional Council, Mr David Smeaton, a qualified surveyor, provided shading evidence concluding that, within close proximity of the Hotel including Customhouse Cafe and the southern edge of the Steamer Basin, all properties would experience varying degrees of shading effect during the afternoon for up to 90 minutes during the seven-month period September to March.

[250] Submitter Mr Paul Douglas presented a detailed submission on shading effects. He also mentioned his concern regarding possible reflection effects, depending on the external finish of the hotel, that could cause an issue for motorists travelling along Wharf Street. Mr Douglas concluded that the evidence provided by the applicant on shading seemed to be accurate.

[251] Mr Owen Graham, Area Manager of the NZHPT, submitted that the overall effect of shading would be a significant reduction in the amenity of the public areas in and around the Harbourside and, accordingly, cause a reduction in the desirability of the area as a place for people to spend time. Mr Graham made it clear that NZHPT did not agree with the applicant's statement regarding the development to the effect that it would 'kickstart' the Council's objectives for the Harbourside and, in fact, he had a contrary view on the matter, saying the proposed building would have the reverse effect by way of reducing the amenity of the Harbourside area.

[252] Mr Paul Pope on behalf of the Dunedin Amenities Society had concerns regarding shading on the Harbour Basin Reserve impacting on the recreational use of the public space. He noted that the society opposes any reduction of amenity values in a functional public space.

[253] During our deliberations we not only considered shading effects on public and private land but we also considered shading effects on the water in relation to amenity values.

[254] Our overall judgement regarding shading effects, accepting that the consented three-storey building and its associated shading effects are permitted, was that shading did not seem to be a major issue. We concluded that the effects were transitory and no more than minor. However, we do note that most submitters who raised this matter did not appreciate the shading effects of the three-storey building.

Wind

[255] In evidence provided by the applicant, OPUS International Consultants Limited conducted an initial wind assessment confirming the prevailing winds are the north-easterly and the south-westerly. These winds would have the greatest impact being the direct wind onto the long face of the structure. The applicant suggested that design and mitigation measures can deal with the negative impact of wind. At this stage the work suggests an expected wind increase of 5-10 metres per second (m/s). We understand that wind speeds <10 m/s are considered 'generally acceptable for stationary long exposure activities'.

[256] The District Plan is silent on the provisions for consideration of the wind effects of buildings.

[257] The applicant acknowledged that wind effects require certainty and the best productive tool is wind tunnel testing, working to a set of performance criteria as an acceptable baseline. Auckland and Wellington have such provisions in their District Plans. The applicant submitted that wind tunnel testing could be undertaken once the final design had been completed. The offering of onsite and/or offsite mitigation, plus the potential for a review clause associated with wind effects were noted as possible conditions of consent.

[258] A number of submitters raised concerns over the impact of wind on the users of the dual cycleway/footpath bordering the site along Wharf Street. We are aware of the strategic importance of the cycleway/footpath and the regional road.

[259] ORC also spoke of concerns that wind would have a negative effect on the Customhouse Cafe and Harbour Basin Reserve.

[260] Generally there seemed to be uncertainty over wind effects and, overall, the evidence provided by the applicant was limited. We accept that the initial assessment work suggests a projected increase in wind speed; however the wind tunnel testing discussed at the hearing as the next step based on a set performance criteria used in other cities would have provided more certainty.

[261] In evaluating wind effects we believed there was sufficient doubt as to the effects of the building on this site so as to need avoidance or mitigation but the means of mitigation and effects on design, appearance, as well as the potential involvement of third parties, cause substantial uncertainty. Moreover the ability to deal with all the issues raised by the submitters by way of conditions was considered limited because of the lack of more detailed assessment on wind effects.

Noise (Construction)

[262] The applicant advised that construction noise can be managed within the standards set out in *NZS 6803:1999 Acoustics – Construction Noise*, based on advice from Marshall Day Acoustics and confirmed by Andrew Holmes of Hawkins Construction Limited who submitted that those standards can be achieved when taking into consideration the site and the proposal.

[263] ORC raised concerns relating to construction noise. Mr Kyle was concerned at the lack of detail, in particular construction methodology. Mr Kyle made his submission prior to the reconvening of the hearing on the 18th March where Mr Holmes addressed the Committee on issues around the management of construction in general. He told us it was common practice to have a Construction Management Plan (CMP) as a consent condition covering aspects such as noise, vehicle movements, hours of operation, and minimising issues associated with the roading network to name a few.

Vibration and Dust

[264] As with noise, vibration and dust mitigation associated with construction were presented and discussed by Mr Holmes. He confirmed that these issues could be managed on the proposed site by way of a CMP condition.

[265] We accept that an earthworks consent, any discharge consents, or any other regulatory requirement related to construction, since they have not been applied for are beyond this consent process.

6.5 Cultural and heritage values

[266] The protection of *historic heritage from inappropriate subdivision, use and development* is recognized in the Act, in s.6(f), as a matter of national importance that we are required to *recognise and provide for*. The two main issues here are the possible loss of heritage values (i.e. existing heritage buildings etc.) and the prospect of destroying heritage artefacts.

[267] The site is a vacant greenfields site that, other than railway use, has been undeveloped since it was reclaimed in the 1870s. Railway development was not part of the 1846 Kettle Plan for Dunedin and its effect has been to form a barrier between the City and the Harbourside. That was ameliorated by a level crossing near the CBD provided at Rattray St, but this was closed in the 1990s.

[268] The city has to a large extent remained loyal to the Kettle Plan with the exception of the railway development and this was spoken about by a number of submitters as providing very strong planning guidelines for the city.

[269] The applicants took a different approach and stated that this project was future focussed and provided for a new direction. They noted that being on a greenfields site saved destruction of heritage buildings, and the fact that it was isolated from heritage precincts and roads severed it from any other heritage or newer buildings.

[270] The applicants considered that the proposed building and its use fits into the long term goal of Dunedin to be a world class small city.

[271] Some submitters like Mr John Milburn and Mr Russell Lund, who work and own buildings in the vicinity, commented positively on the prospect of a modern building adding diversity to the area. Mr Lund gave examples of Portland as an area that has mingled heritage and modern well together. Mr Lund stated from his wide experience in the building industry that 'form follows function, and that it has to be economic'. Ms Jo Galer commented on the benefits of a new building in juxtaposition to the heritage, and the benefits of such a development on a greenfields site not costing the heritage building stock.

[272] Many other submitters disagreed though. Ms Janet Wylie commented that Dunedin is not (and never will be) another Auckland. Dunedin has its own heritage character and this hotel is totally out of keeping with that.' Similarly, Mr Dorney said 'Dunedin is different from any other NZ City. It is this difference that attracts tourists. They do not come to see hotels'

[273] Heritage character was variously described often with links to the Kettle Plan and its guiding principles. Height was a constant theme that has already been addressed. Other themes to be covered were townscape and heritage protection. Ms Liz Rowe reminded us of the District Plan by noting:

The townscape of Dunedin contributes significantly to the character of the City and is a major attraction to tourists. As a result, it is intended that this heritage be protected, and this will involve the retention of a number of buildings identified as being significant, as well as consideration of the design and appearance of new buildings within precincts identified for their heritage and townscape values⁶.

We note that this site is not in a heritage or townscape precinct, nor adjoins one, but by its nature it will be visible from the warehouse precinct area. In fact submitters were concerned

⁶ DCC District Plan Page 1:16

about its effect on many viewpoints and its imbalance with the existing spires and towers that add, in the submitters views, to the Dunedin character and are worthy of preservation.

[274] Mr Simon East submitted that :

... the proposal undermines attempts to “re-invigorate” the warehouse precinct and other heritage buildings in the city....

[275] This view was echoed and expanded upon by the Macknight family who own a number of buildings in the Warehouse precinct and have restored them and now lease them out. Mr Michael Macknight spoke of the demand by his highly skilled employees for an interesting and accessible workplace of the type being generated in the Warehouse precinct. Mr Stephen Macknight stated that Dunedin is succeeding by its character to attract a different type of industry and that we should not compromise that success. This view was summed up by Mr Timothy Pollock

If this proposal proceeds I think it will be to the detriment of Dunedin’s reputation and future vision as a centre for innovation and design”

[276] There was discussion from the applicant about the economies of building hotels within heritage buildings compared to allowing development on clear industrial land. The costs of retrofitting were considered to make reuse uneconomic. There were submissions that raised the contrary argument that, if we allowed development outside of the central city area, it made reuse less attractive and marginalised the economics of reuse.

[277] Mr Peter Entwistle went into some detail, on a broader scale, on the revivalist and modernist architecture differences, and provided some helpful examples such as the modern developments to the heritage Otago Boys High School tower block, and how additions or new structures can complement old.

[278] NZHPT and Ms Elizabeth Kerr both suggested that there was insufficient information supplied. They wondered why a Heritage Impact Assessment had not been required.

[279] Ms Darby, the Council’s Processing Planner, and the consultant planner both had misgivings on the design, which have also already been addressed. However, while they discussed the heritage amenity issues and agreed that there would be an impact caused by the bulk and height of the proposed hotel on some heritage precincts there was no protection offered in the District Plan for development outside the precincts. Furthermore, no protection was afforded in the Act in terms of s.6(f).

[280] Having heard the evidence and turned our minds to the District Plan and the Act, and the broader context, we consider that we are restricted in the weight that we are able to give to the submissions on heritage and cultural heritage matters. While the height, design and landscape issues have been addressed separately, we did not believe that there was any protection for precincts, for activities on land outside the boundaries of those precincts.

[281] On the matter of heritage artefacts we noted the report from Dr Middleton and believed that the practical process could be covered with appropriate conditions.

6.6 Traffic and transportation

[282] The proposed hotel would, effectively, be located on an 'island' constrained by the railway to the west and a busy four-lane city bypass traffic route to the east of the site, referred to as the harbour arterial. Potential issues concerning vehicles both entering and leaving the site have been raised. Furthermore, access for pedestrians, both to the Harbourside (across the roadway) and to the city (over the railway) would be poor and the proposal offers no mitigation in the application before us. These matters have the potential to impact adversely on traffic.

Applicant's evidence

[283] Evidence on the effects of the proposal on traffic was provided, on behalf of the applicant, by **Mr Andrew Carr** who is an experienced traffic consultant. He has provided traffic advice on a number of hotel projects and had a lead role in the preparation of the Transportation Assessment report provided in response to the Council's request for further information. In his evidence at the hearing Mr Carr discussed the efficiency and safety effects on the adjacent transport networks, parking requirements, site access and compliance with the requirements of the District Plan. Complicating the issues, as far as the harbour arterial route (Wharf Street) is concerned is the nearby Jetty Street overbridge to the south of the proposed hotel site and the intersection with Fryatt Street just to the north. There is a narrow (1.8 to 2.4 m wide) shared footpath/cycleway immediately adjacent to the proposed site. There is existing pedestrian access over the railway via the Jetty Street vehicle overbridge, and a pedestrian overbridge that links the railway station to Thomas Burns Street (the extension of Wharf Street), some 400 m to the north of the site.

[284] Mr Carr considered the existing transport demands on Wharf Street. He found that the morning and afternoon peak traffic volumes of 1300 vehicles per hour was higher than he had expected [Para 20]. Vehicles executing the more difficult turn to the right from Fryatt Street to join traffic travelling north on Wharf Street during these times typically experienced delays of around 50 seconds. Mr Carr did not consider a delay of this magnitude was uncommon. He also

considered the walking distance from the site to bus stops and noted that the route over the Jetty Street overbridge was 400 m long, which is within the walking distance for urban areas set out in the Otago Regional Land Transport Strategy (450 m). Via the railway footbridge the distance is 530 m.

[285] Mr Carr also considered NZTA road crash statistics. He told us the data suggests that there is an existing road safety issue at the Wharf Street/Fryatt Street intersection although the remainder of the network in the area operates satisfactorily. He noted that, in the long term, the DCC Transport Strategy, 2006, indicates that the Council has plans to eventually upgrade the arterial route and this includes improvements to the Wharf Street/Fryatt Street intersection and a new access link to the central city⁷.

[286] Although the original Transportation Assessment provided for 97 car parking spaces, the proposal has now been revised to allow for car stacking systems to be used and this would result in a total of some 247 parking spaces being provided on-site. Various changes have also been made to provide for the efficient movement of service vehicles and buses. All traffic will arrive at the hotel from the south and depart towards the north. Mr Carr did not consider that this would create any particular difficulties.

[287] Mr Carr then considered the effects on transport. Using accepted methods, as set out in the Austroads Guide to Traffic Management Part 3 (Traffic Studies and Analysis), he found that the additional traffic generated by the proposal would not cause the level of service on Wharf Street in the vicinity of the site to change. He also considered site egress on to Wharf Street from the hotel forecourt during morning rush hour and showed that the average delay per vehicle would be 16 seconds, and the expected queue would be less than 20 m. In his view, it was unlikely that there would be any adverse safety effects resulting from vehicles entering and leaving the site. He also noted that the site has an underlying industrial zoning that supports and accepts the likelihood of high traffic volumes and frequent movements by heavy vehicles.

[288] Mr Carr also considered the transportation rules in the District Plan. He considered the proposal is consistent with the majority of the District Plan requirements. He said there are three rules⁸ where the proposal does not comply with the wording of the rule but there are particular circumstances, which mean that the intent of the rule is still met. In his view, traffic from the proposal can be accommodated on the adjacent roading network without capacity,

⁷ DCC Transport Strategy, Figure 5.

⁸ DCC District Plan, Rules: 20.5.5(iii), 20.5.5(v)(d) and 20.5.7(iii)

efficiency or road safety issues arising. Mr Carr recommended a number of conditions, including a Traffic Management Plan, to ensure that this would be the case.

[289] Mr Carr also responded, in a supplementary technical report, to matters raised in the s.42A Report to which we refer below.

Submitters

[290] We turn first to the submission from **Capri Enterprises Limited**. Expert evidence was provided on behalf of Capri by **Mr Penny** (of Abley Transportation Consultants Ltd.) who has 35 years' experience in traffic engineering and transportation. Mr Penny took the view that the proposed development will adversely impact on existing transportation patterns as well as restricting options for future improvements to the harbour arterial and to facilities for pedestrians and cyclists in the area. He considered that the Transportation Assessment Report was deficient in terms of access to the development, and the effects on arterial traffic flows, road safety, pedestrians and cyclists.

[291] In discussing access, Mr Penny said many motorists, particularly those who were not familiar with the roading network, would find getting to and from the hotel to be indirect and confusing. He said, for some, this would 'effectively add 1.3 kilometres to their journey and many drivers would be more likely to use the alternative routes involving potentially dangerous U-turns on the Harbour Arterial' [Para 18]. He also discussed proposed changes to lane widths adjacent to the hotel site and noted that 'it would not be possible to provide a safe turning lane for the vehicles entering the driveway' [Para 19]. Because of this, in his opinion, difficulties associated with ingress represents a dangerous traffic environment. Potential conflict with cyclists and pedestrians crossing the driveways were also identified.

[292] Mr Penny also examined NZTA road crash records but over a longer section of the harbour arterial route than had been considered by Mr Carr. This, he said [at Para 43], was to take account of the 'vehicle travel routes required to get to or from the proposed hotel'. He found [at Para 49] that the 'pattern of existing accidents is of concern in relation to the hotel proposal with 8 of the 20 injury crashes occurring at the intersections either side of the proposed hotel and many being related to vehicles slowing down as would occur more extensively with the hotel'.

[293] Mr Penny considered that further assessment of the potential issues surrounding road safety, particularly for pedestrians and cyclists, and also concerning vehicle movements into and out of the hotel site, and the effects of this traffic on the harbour arterial route, is required.

[294] At Para 86, Mr Penny concluded that:

... from a transportation perspective the site at 41 Wharf Street is totally inappropriate for the proposed Dunedin Hotel. The proposal would generate a high level of inefficient vehicular movements because of the difficult access from the road network and the very poor connections for pedestrians, cyclists and users of public transport.

and, at Para 90:

In my opinion the TAR submitted with the application does not adequately address these effects on road safety and transportation efficiency. In particular it takes no account of the circuitous routes that many drivers would take to arrive at and depart from the site.

[295] We note Mr Penny's comments with respect to the Traffic Assessment Report and the evidence presented to us by Mr Carr, on behalf of the applicant. We also note that Mr Penny did not present any evidence to us to suggest that he had done any traffic modelling in coming to his conclusions.

[296] One submitter who appeared before us was **Mr Phillip Cole**, who told us he had over 30 years' experience in Civil and Transportation Engineering in the United Kingdom, Australia and New Zealand. While he discussed the hotel, including its appearance, structure and shading effects, he provided no help on transportation effects except to note, in response to questioning from the committee that he didn't think the effects would be much of an issue.

[297] Quite a number of submissions raised concerns about the effects of the proposal on traffic and the potential dangers for pedestrians and cyclists. These were among the range of matters discussed in the evidence we heard from the three traffic experts, including that from the Council's consultant, Mr Clark whose evidence we turn to next.

Section 42A Report

[298] Ms Darby, in the s.42A Report, discussed the issues concerning traffic and transportation arising out of the proposed development in some detail [at Paras 103 *et seq.*]. Here, she noted:

The proposed hotel and apartment block will introduce a large facility, and potentially a significant amount of people, into what is currently a vacant site. The effectiveness of the development's integration with the existing environment will be dependent on the workability of the site's access and egress, the provision of parking and other vehicle spaces, pedestrian linkages, road connectivity, and the continued acceptable operation of the existing transportation network.

[299] Ms Darby referred to the Integrated Transport Assessment (**ITA**) provided with the application and the comments provided by the Council's transport consultants, Flow Transportation Specialists Ltd., who reviewed the ITA. She also discussed the lack of suitable pedestrian linkages to the city and the Harbourside. Ms Darby concluded (at Para 208) that the proposal will not sustain the future use of the transportation network.

[300] Accompanying the s.42A Report was a letter from **Mr Ian Clark**, who is a director of Flow Transportation Specialists Ltd., and who has had some 25 years' experience in transport planning. In his letter, Mr Clark provided a review of the ITA report prepared by Abley Transportation Consultants Ltd., (Mr Carr) for the applicant. We have discussed Mr Carr's evidence above.

[301] Mr Clark was critical of several aspects of the ITA report. He said the walking distances quoted to bus services were misleading and there were road safety issues concerning the need for cars to do U-turns before entering or after leaving the site. He considered that further vehicle tracking is required to properly show that vehicles will be able to safely enter and exit the site. Mr Clark was also critical of the provisions for parking on site but we note that the applicant has revised parking arrangements and it is now understood that the use of car stackers will allow sufficient car parking to be provided.

[302] Mr Clark noted, in his review, that pedestrian connectivity had not been considered in the ITA. He discussed the shortcomings in the present access to the city via the railway overbridge to the north and safety issues that would arise from hotel guests and others trying to cross Wharf Street over the harbour arterial to access the waterfront.

[303] Because of the differing opinions among the three traffic experts we asked that they confer and prepare a joint statement to explain where they agree and where points of difference remain unresolved. In the event, Mr Penny did not take part and a statement, jointly prepared by Mr Carr and Mr Clark, dated 10 December 2012, was emailed to us on 11 December 2012.

[304] With respect to the intersection of Wharf Street and Birch Street, and concerns about the effects of the proposed development, Mr Clark and Mr Carr agree that the matter can be resolved through further modelling and the joint statement set out how this would be done.

[305] There were also disagreements regarding the operation of the exit from the proposed hotel on to Wharf Street (the harbour arterial). Mr Clark and Mr Carr agreed this matter can also be explored by further modelling.

[306] Later, on 18 March 2013, during the reconvened hearing, Mr Clark provided a reply on transportation and traffic matters raised during the hearing. He acknowledged that the joint statement has provided a response to the traffic-related issues. Mr Clark said that the issues he originally raised about the provision of on-site parking, U-turns at Birch Street, the operation of the exit on to Wharf Street, and the ability of coaches to manoeuvre in and out of the site, have been addressed. He said he remained concerned about vehicle safety as a result of unexpected U-turns north of the site, and pedestrian accessibility, primarily to the Harbourside but also to the central city.

Our evaluation

[307] The information before us with respect to the effects on traffic and transportation benefitted from the opinions of three traffic experts although we felt the evidence of Mr Penny was less helpful insofar as it was largely limited to a critique of the applicant's evidence. The assistance provided by Mr Carr and Mr Clark was welcomed.

[308] While we think that management of vehicles on the forecourt, and at the same time minimising risk to people in the area, is largely an operational matter for the hotel, we are not convinced that concerns about traffic entering and leaving the site, and how these movements might put pedestrians and cyclists at risk and cause problems for northbound traffic on Wharf Street, have been adequately considered. In this case we are left to rely on a Traffic Management Plan (TMP) to adequately address these matters. Here we note that the proposal before us is for a 5-star hotel, and matters of arrival and egress, forecourt convenience and ease of parking would be among a suite of matters that would need to be provided for at the highest level in the TMP.

[309] It seems to us that vehicles leaving the site during morning and afternoon peaks have the potential to interfere with traffic in the outer northbound lane on Wharf Street. Messrs Carr and Clark have calculated the likely increases in peak flows arising out of the addition of hotel traffic and the indications are that the flows on Wharf Street will be close to the maximum capacity of a single lane of traffic. We note that this doesn't allow for any future increases in traffic on Wharf Street and this may become a matter for city transportation planners to resolve at some time in the future.

[310] The matter of pedestrian access, particularly to the Harbourside also remains a concern. In the absence of proper access across Wharf Street, probably in the form of a bridge, we can only assume that people trying to walk across the four-lane arterial route, to and from the harbour, will place both themselves and traffic at risk. We discuss this aspect of the application further, in the next section.

[311] We conclude that there are potential adverse effects on traffic arising out of the proposal that have not been fully considered and provided for in the application.

6.7 Pedestrian access and connectivity

[312] Mr Rodgers, on behalf of the applicant, spoke of the potential to connect the proposed hotel with the city and over Wharf St to the Harbourside in the future. His evidence included a drawing of a potential bridge, and a lift design, which would also provide access to and from the hotel. He was adamant, however, that the bridges were not critical to the project. Mr Whelan went further in his evidence and stated that there was adequate pedestrian support and accessibility from the site to the city centre over the railway station bridge to the north. Mr Carr, for the applicant, noted that while that connection was 'less than ideal' or 'slightly good', it was shorter than the route visitors to the two five-star hotels in Queenstown have to face to access the Queenstown town centre.

[313] Mr Page made it clear that the application did not include the bridge and that the bridge could not be assessed as part of the hearing. He went on to explain that, as far as the bridge across the railway land to Rattray St was concerned, it could not be required as a condition of consent as third party agreements were required.

[314] Mr Rodgers did express the view that access to the harbour could be provided in the interim by way of signalisation of the Fryatt St crossing and that the applicant would consider contributing financially to such improvements.

[315] Mr Rodgers went further to say that the costs for a bridge were not the responsibility of the applicant as it would benefit more than just the hotel and had already been accepted by the Council in its long term plans as being necessary, even though it has now been deleted.

[316] A number of submitters commented on the need for access to Rattray St and to Wharf St if the Hotel were to operate from the site. Mr Bird (Capri) described the site as an island isolated from the city.

[317] Mr Bird went on to consider the permeability of the city, which he considered rated high in Dunedin generally, but at the proposed site it was low. Moreover, this was further constrained as the design of the proposed hotel provided for no activation at the lower levels, which further impacted on the sites connectivity.

[318] Mr Penny, for Capri, commented that he did not believe Jetty St was a viable access route between the proposed site and the city centre, and the railway bridge to the north, while being 450m away, also did not match the natural desire line that people would want to walk.

[319] Even supporters of the hotel, such as Mr Milburn, noted that connectivity via a bridge to Rattray Street would be important.

[320] Dunedin Amenities Society, through Mr Pope, Mr Hanan, and a few other submitters, expressed concerns as to the financial ramifications of the bridge on city finances. Many emphasised that the site just would not work without such access. Ms Bradbury commented that access for apartment dwellers working in Princes St would be inadequate while Mr Black noted the site is underutilized because of its lack of connectivity and that needs to be fixed in order for the site to be able to be used.

[321] The Southern Institute of NZIA and Ms McQueen both noted that, without a solution to the issue of connectivity, the site was disconnected from the city and, therefore, could not kickstart development.

[322] Mr Campbell (KiwiRail) expressed reservations about whether a bridge over the railway would be agreed to by KiwiRail.

[323] The Council's consultant planner, Mr Munro, considered connectivity and public access in two parts. Stage one being a bridge from Wharf St to Rattray St and Stage two being a connection across Wharf St to the Harbourside. Mr Munro stated that in his opinion a Stage one connection was required in order to mitigate the effects of the hotel. He stated in evidence:

... for the hotel to be appropriate there is a need for a pedestrian bridge to be in place. I am however relaxed about the mechanism by which it is provided – only that it is.

The issue of mechanisms will be addressed at a later paragraph.

[324] Mr Munro was less concerned about the connection across Wharf St. He told us:

Pedestrians wishing to access the harbour edge would exit the hotel at Wharf St and cross it in the vicinity of either Fryatt or Birch Street. This is in my view a low quality but appropriate outcome given that at present all people wishing to access the waterfront must do this whether a hotel occurs on the subject site or within the Central City proper.

[325] We agree that introducing a hotel onto the proposed site would increase the number of pedestrians in the area. It was apparent to us that the existing Jetty Street and Railway station

crossings are not sufficient to meet the demand or ambitions of the District Plan to connect people and visitors to the city centre, and the main tourism and retail sites of Dunedin. We are mindful of the need for connectivity as a requirement of good urban design as has already been referred to in Paragraphs 192 -195 above.

[326] The issue we need to resolve is whether the hotel can operate on this site with minimal effect or is the mitigation offered sufficient to overcome any concerns.

[327] We do not agree with the applicant's argument that the proposed hotel could operate with no more than minor effects without bridges or tunnels, or some form of connection to Rattray St or across or under Wharf St. Nor did we believe signalisation of any crossings in the vicinity would assist with connectivity in any useful way, or minimise the effects on the roading network.

[328] In regards to the connection with Rattray St we agree with Mr Page that we are unable to require, as a condition, the provision of access over the railway land and, therefore, we are not in a position to impose mitigation on the applicant in respect of this crossing.

[329] In respect of the Wharf St crossing we do not agree with Mr Munro. There is a signalised crossing on Thomas Burns St for those coming from the Railway Station and crossing to the Harbourside, while people from the Princes St end of the CBD can traverse Wharf St via the Jetty St overbridge. The four-lane nature of Wharf St, the volume of traffic at certain times, and its complex layout, raised significant concerns with us as to the effects on hotel guests and apartment residents wanting to cross Wharf St directly to the Harbourside. The effects related to both the efficient flow of traffic and the safety of pedestrians.

[330] There is no doubt in our minds that the lack of easy connectivity to both the city and the Harbourside is a troubling matter. A five-star hotel, in our view, demands appropriate pedestrian facilities for its guests. As Mr Bird pointed out to us, the proposed hotel would, effectively, be on an 'island'. In the event that we are minded to grant consent, we don't believe we have any ability to impose a condition or conditions requiring the consent holder to provide appropriate access bridges as there are other parties involved. It is also clear to us that connectivity, between the Harbourside and the city, is a very relevant matter for the Council to grapple with, particularly given the desire to develop the Harbourside and make it a more people-oriented place.

6.8 Recreation

[331] Very little mention was made by the applicant regarding recreational matters, apart from responding to submitters concerns.

[332] Mr Pope (Dunedin Amenities Society) commented that the proposed hotel would limit recreational use of the Harbour Basin Reserve for walking, fishing and passive recreation. He further submitted that public access points to the harbour were limited.

[333] ORC raised concern about a potential reduction in parking availability for recreational users of the harbour basin.

[334] The applicant felt the concerns raised by the Dunedin Amenities Society and the ORC in relation to recreation were overstated.

[335] We turned our mind to consider the positive and negative effects associated with recreation in and around the Harbour Basin and concluded that the proposal would have no significant effects on recreation.

6.9 Hazard risks

[336] The proposed hotel development is sited in an area with known potential natural hazards including earthquake activity and, possibly, flooding. Furthermore, the site is known to be on reclaimed land, which may introduce further hazards such as liquefaction. It is also recognised as a HAIL⁹ site. In this section we shall review the evidence and any other information that might assist us in understanding these issues. We note that the effects of climate change can also give rise to natural hazards but we have considered this below as a separate matter.

[337] The applicant's view was that these are issues that would be dealt with in the design of the hotel and no information concerning the hazard risk was provided with the application. Not unrelated to this is the fact that, despite the application being to construct and operate a hotel at the site, no construction details were provided, and neither were any consents for the necessary activities normally associated with construction sought with the application. The applicant during the hearing, in a letter from Mr Page to us dated 15 February 2013, subsequently suggested withdrawing the earthworks aspect of the application as a way forward.

⁹ The Hazardous Activities and Industries List (HAIL) is intended to identify situations in New Zealand where hazardous substances may have caused, land contamination.

[338] Nevertheless the ability of the site to provide a suitable platform for a 27-storey hotel is a matter of some concern as indeed, we assume, it should also be to the applicant. It is also not without some interest to the Council and, thus, to us as commissioners. The District Plan, we note, in Chapter 2.1 describes the information to be supplied with a land use consent application. At (viii), among the list of information ‘required to be submitted’, it quite clearly states:

Where any site subject to an application:

- (a) *is or may be subject to technological hazards, geological hazards such as fault lines, and areas susceptible to amplified ground shaking and liquefaction, falling debris, erosion, subsidence, slippage or inundation; and*
- (b) *is intended to accommodate buildings to be used as living or work places for people,*

the applicant shall provide a geotechnical report, prepared by a suitably qualified person, which satisfies the Council that the effects of such natural hazards from any source on the land, or any structure on the land or proposed to be built on the land; can be adequately avoided, remedied or mitigated.

The geotechnical report shall provide such information as will enable the Council to determine that any building platform is suitable for the proposed development.

We are not aware of any such report being provided at any stage during the consent process. We understand the applicant’s view is that a geotechnical report can be left until after consent has been granted and that any engineering difficulties that arise can be dealt with at the design stage.

[339] Given the fact that it is generally well known that the area around the proposed site is reclaimed land, it is perhaps of little surprise that over 100 submitters raised concerns about the potentially hazardous nature of the site.

[340] Ms Darby, in the s.42A Report included a discussion of hazards largely based on comments provided by the Council’s hazards consultant. MWH New Zealand Limited. Interestingly, at Para 137, she reported the consultant as saying:

As the construction of the building is a technical matter rather than a planning matter, it is not essential for the resource consent process to have this information to hand at the time of considering the consent. Council’s Building Compliance Officer, Development Services, has likewise not requested any technical construction

information in his assessment of the proposal, but notes that one or more building consents will be required prior to construction commencing on-site.

On the face of it, this statement seems to us to be misinformed and contrary to the information requirements contained in the District Plan. We think that, given the nature of this proposal, construction is very much a planning matter if for no other reason than the fact that the construction aspects will have effects that must be considered and will require a range of other consents. In these respects we tend to agree with Mr Kyle (for ORC) and others who told us that, on a proposal of this scope, it was necessary to understand all the effects and that all consents should be sought at the same time.

[341] The Council's consultant confirmed that the proposed site is in an area of reclaimed land comprising uncontrolled hydraulic fill and that during a severe earthquake, amplification, liquefaction and lateral spreading may occur. However, the s.42A Report noted that the consultant considered that these risks could be 'designed out' or minimised through the use of specific investigations and engineering design, and that there was 'no reason why consent for the proposed building should be declined on the basis of natural hazards affecting this site'.

[342] The Council's consultant may well be right but, in the absence of a geotechnical report, and any supporting design evidence concerning the suitability of the site, we are unable to share his confidence with any degree of certainty.

6.10 Climate change

[343] The need to have particular regard to *the effects of climate change* was introduced (s.7(i)) into the Act in the March 2004 energy and climate change amendments. We note that the courts¹⁰ have since established that s.7(i) is principally aimed at considering the effects of climate change on the proposal rather than the reverse.

[344] We understand that the underground parking level of the proposed development is at least partially below ground water level. The Council's hazard consultant has advised the Council that future sea level rise as a result of climate change may become an issue for the site. We agree but would expect this factor to be taken into account in the design of the basement.

[345] There were no other matters concerning the potential effects of climate change on the proposal brought to our attention and we conclude that it would be sufficient to make appropriate allowances for the effects of climate change during the design stage based on the state of knowledge at that time.

¹⁰ Upland Landscape Protection Soc Inc v Clutha DC Env Ct C085/08.

6.11 Reverse sensitivity and industrial activities

[346] As we have said earlier the site is zoned Industrial 1. Permitted activities in the Industrial 1 zone are industrial activities defined as

the use of land and buildings for the primary purpose of manufacturing, fabricating, processing, packing or associated storage of goods, and includes offices and staff facilities that are ancillary to the primary activity on the site.

or service activities:

which means the use of land and buildings for the primary purpose of the transport, storage, maintenance or repair of goods, the hire of commercial and industrial equipment and machinery, and includes offices and staff facilities that are accessory to the primary activity on the site.

and other specific activities, such as garden centres, which are not in the nature of the uses applied for.

[347] It is important to consider what activities are permitted in the Industrial 1 zone as the effects of reverse sensitivity may have a bearing on how neighbours can develop the land and similarly what reverse sensitivities might arise that the applicant needs to avoid, mitigate or remedy.

[348] The land adjoining the site is zoned Industrial 1 and occupied by KiwiRail land, Port 2 is located to the north and east, and to the southeast, Harbourside Zone.

[349] The applicant considered that the proposal would not have any negative effects on any neighbours as the design of the building would ensure that any adjoining use activities would not be limited. The applicant produced both evidence from both their architect, Mr Whelan, and from Marshall Day Acoustics with recommendations as to conditions that would provide the necessary protection to KiwiRail and Port Otago. Moreover, the applicant was happy to design the building, or offer compensatory designs to protect neighbours, that would protect them from issues such as wind effects, as the design was refined and any effects eventuated.

[350] The applicant was prepared to accept conditions to address all the neighbours' concerns as to reverse sensitivities and stated that there would be no persons adversely affected by granting the application.

[351] Chalmers Property Limited withdrew their submission during the hearing while Port Otago, through Counsel Mr Andersen, stated that ‘no complaints’ covenants were acceptable but that they should be in favour of the Council and not be by way of third party agreements.

[352] Submitters on the other hand were less sure that issues of vibration and noise could be managed. Ms Bruce believed the use was not compatible with the industrial area and that railway and heavy traffic noise and vibrations needed to be allowed to predominate now and in the future. Other industrial operators such as Mr Kaan could not see how residential use in this area could work efficiently. Ms Tankard raised the risk that allowing other activities, especially at this scale, would discourage other industrial activity starting up or expanding in the area.

[353] KiwiRail were very concerned that, even with a ‘no complaints’ covenant, the necessary protection might not be afforded to the railway infrastructure and the likely growth of rail movements at all hours and with bigger, potentially noisier, locomotives. Mr Campbell was concerned that the applicant was underestimating the sensitivity issues of noise, lights, vibration of the railways operation, and the need for stacking and movement of containers and wagons. Mr Campbell also noted that access to air space over KiwiRail land was unlikely to be forthcoming during the construction phase.

[354] The wider industrial issue is the loss of industrial land and the wider effects of allowing non-industrial use of the site.

[355] The applicant pointed out that the land had already been granted consent for a non-industrial use and, as such, this application was just for an extension of that consent. The existing consent provides for a three-storey building for commercial use with a residential unit attached.

[356] Submitters were concerned about the loss of industrial land. Mr Tordoff and Asmuss South Island Ltd., believed that land should remain available for industrial uses. However, Mr Lund on behalf of the Loan and Mercantile Trust noted that the proposed site had not had an industrial use for years. He said it was not suitable for industrial use and any such use would be out of keeping with the neighbours; being a reserve, commercial offices and restaurants and tourism businesses. He stated that ‘any industrial use would be completely at odds with the surrounding environment’.

[357] The later view was accepted by the Council’s Processing Planner, Ms Darby, in that she agreed that the land was not lost from industrial use as it was not presently used as such and did have an existing consent for an alternative use. She was not concerned with the effects on the neighbours *per se* but of the precedent that granting consent could have on other industrial

land. She was concerned that the hotel would indirectly, and over time, result in loss of industrial land.

[358] We considered that the use consented to already would have substantially different and less effects than the proposed activity. The site is a difficult site for any development because of its accessibility issues and its isolation. We also note that, even with the existing consent, it had not led to any new activity over the past four years before the hotel concept emerged.

[359] Our view, on balance, was neutral on this issue and we did not make a finding as other effects were more direct and more substantial, and because an alternative use had already been granted. Overall, we considered that industrial activities would not be affected by the proposal to any significant extent. We also accept that conditions requiring ‘no complaints’ covenants on property titles can avoid reverse sensitivity issues.

[360] The Committee is mindful of the precedent effects of this type of activity being allowed to develop on industrial land and are aware of the pressures in the past for university accommodation expansion that could lead to similar demands on other industrial land. There is a possible case to say that this land is different because of its underdeveloped state.

[361] Submitters raised the issue of precedence and the effect of allowing this industrial land to be used for large commercial residential developments or as a catalyst to retail development. This issue is one that case law requires to be dealt with under section 104(1)(c) under other matters; not as an environmental effect (see paragraph 449).

6.12 Tourism and the economy

[362] The enabling of *people and communities to provide for their social, economic, and cultural well-being and for their health and safety* is an s.5 matter and, insofar as it is part of the meaning of ‘sustainable management’ it is, therefore, part of the fundamental purpose of the Act. The *efficient use and development of natural and physical resources* is also a relevant consideration under s.7(b).

[363] The applicant emphasised the important potential that a five-star hotel could have on generating tourism and economic growth in Dunedin. Mr Page said at Para 34 ‘...the City is, and should be, serious about tourism as a key to our future. This is an opportunity that the City cannot afford to miss.’ He went on to refer to the Economic Development Strategy recently adopted by the Council where “A Compelling Destination” highlights the importance of tourism to Dunedin's future.

[364] Mr Rodgers addressed the benefits of a branded five-star hotel and the connections that the applicant company could bring to assisting to grow substantially tourism in Dunedin through the development of the proposed Hotel.

[365] Mr Hamilton gave evidence as to the short comings of the current accommodation in Dunedin and the markets that could be grown with a large 5 star hotel

[366] Mr Hamilton went on to describe the latent demand for 5 star accommodation in Dunedin and the market potential if such a hotel was developed. He went on to say understanding Betterways interests in tourism development that:

[367] Securing such a hotel investor is a major achievement for Dunedin, and provides a rare opportunity for Dunedin in the context of the track record of at least the past 30 years. It is also currently a unique situation in the overall competitive context of the New Zealand hotel and tourism industry.

[368] The Otago Chamber of Commerce and Mr Peter McIntyre were among submitters who were supportive of the hotel because of its potential tourism and economic benefits.

[369] In fact few submitters, as noted earlier, were against the development of a five-star hotel *per se*. Most supported such a development within the Dunedin context.

[370] There were a number of submitters though that said the effects of this proposal could also damage tourism as it is the unique visual and heritage precincts that are one of the two themes that Dunedin is promoted most for and this proposal is inconsistent with that image.

[371] Others noted that the look and feel of the city is important for developing smart jobs and again this proposal could compromise an alternative but important part of the economy of Dunedin.

[372] While the Applicants architect Mr Whelan gave a number of examples of the type of 5 star being developed in Australia often tall as this proposal to meet the economic demands of a five star hotel Mr Michael and Mrs Anne Coonan (41) referred in his submission to the Park Hyatt in Sydney a recently built 5 star hotel on the waterfront that is 4 storeys high.

[373] There were suggestions as to the economies and efficiencies of buildings, tall or not, but little data as to this proposal. Mr Laing suggested that the costs had been underestimated and the proposal would cost twice as much if it were to be built in New Zealand using the Rawlinson New Zealand Construction Handbook as a guide to estimate costs.

[374] Overall, we concluded that there were likely to be benefits to tourism and the economy arising from the proposal.

6.13 Positive effects

[375] Section 3 of the Act defines an ‘effect’ as including positive effects arising from an activity.

[376] We considered the following positive effects with this proposal: the use of an underutilised land resource in a prominent area; the enhancement of the site; and additional public presence in the Harbourside area, which has the potential to enhance both existing and future businesses and attractions. The proposal would also bring significant increases to both temporary and long term employment opportunities.

[377] The applicant described the proposal as:

...an investment of significant immediate and long term value to Dunedin. It compliments the existing accommodation that is required to service functions at the Forsyth Barr Stadium while also developing Dunedin as an international tourist hub. The capital investment will be so significant that, this Dunedin Hotel will bring to Dunedin an entirely new group of visitors.

[378] Despite the large numbers of opposing submissions, many submitters were not against the development of a hotel *per se*, and some recognised that there could be economic and social benefits as a result of this new facility. For example an opposing submitter Mr AT and Mrs J Gray said:

... we do not dispute the fact Dunedin needs more high quality accommodation, the City should grasp any opportunity to gain this.

[379] A submitter in support, Mr Peter McIntyre commented:

... this is a once in a lifetime opportunity to get inward investment into the city from new outside sources boosting tourism, conferencing and greater investment within the city, creating a snowball effect for development into an area which has lacked investment or willing investors for decades.

[380] The proposed hotel is seen by some submitters as being both a benefit and a disservice to Dunedin’s tourist industry.

[381] Supporting submitters included Elm Wildlife Tours, Larnach Castle Ltd, the Dunedin Chamber of Commerce and Tourism Dunedin, all of whom see the proposed hotel as providing much needed accommodation at a high standard and an economic boost for tourism.

[382] Elm Wildlife Tours noted that Dunedin has been unable to capitalise on domestic and international markets because of a lack of available high level accommodation. This view was shared by Larnach Castle Ltd. Tourism Dunedin anticipates that the proposed hotel would attract a new type of visitor market for which the City has previously been unable to cater.

[383] One submitter, Mr Neville Butcher, who has been actively involved in the tourism industry in Dunedin opposed the proposed hotel for more definitive reasons. He referred to Statistics NZ, which show the average occupancy of accommodation in Dunedin is currently at 51%. There are only a few events a year where accommodation demand exceeds supply. Mr Butcher does not believe a new type of tourist will come to Dunedin, but instead the development will compete for the existing market. He said 'Dunedin does not have a huge five-star market, and this was evident with the closure of Corstorphine House and the halt on large scale development at the St Clair Esplanade'.

[384] There are definite opportunities for Dunedin with the proposed development, and the fact that it's a private developer funding the project makes those opportunities even more significant, creating a significant positive effect.

[385] We feel that many submitters recognised that the proposed activity is not without its merits, but few see this particular proposed hotel and apartment block as being the best means of achieving any economic or tourism goals.

[386] As we considered all the evidence we were mindful of the economic benefit factor attached to such a significant investment in the City.

7 MAIN FINDINGS OF FACT

[387] Throughout the preceding Chapter 6 we have examined the effects of the proposal on a range of matters that were brought to our attention in evidence and the submissions. In the table that follows we have, for convenience, summarized our findings with respect to each of these issues.

Summary of main findings

Effect of proposal on	Our findings	RMA
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Tangata whenua	Maori culture and traditions will not be adversely affected by this proposal.	s.6(e), s.6(g), s.7(a), s.7(aa) s.8
Natural character, landscape and visual amenity	The adverse effects of the proposal on landscape and visual amenity will be more than minor and, probably, significant.	s.6(a), s.6(b), s.7(c), s.7(f)
Amenity values	Given that construction effects on amenity values (dust, vibration and noise) have not been assessed the effects must remain unknown at this stage. The main effects on amenity values arising from the hotel building are shade and wind related. We find that the effects of shading are minor but we retain some misgivings about the effects of wind as the evidence before us somewhat presumptive and potential mitigation measures are not specific.	s.7(c)
Cultural and heritage values	The site of the proposed hotel is not in a heritage precinct and, thus, no heritage buildings would be directly affected. Although people's appreciation of nearby heritage buildings might be affected by the prominence of and the shading from a large hotel, these are not particular qualities protected in either the Act or in the District Plan for activities outside the specific boundaries of heritage precincts	s.6(f)
Traffic and transportation	There are potential adverse effects on traffic arising out of the proposal that have not been fully considered and provided for in the application	
Pedestrian access and connectivity	The proposed would be poorly served by access for pedestrians and connectivity with the city and with the Harbourside.	s.6(d)
Recreation	The proposal would have no significant effects on recreation.	s.7(c)
Hazard risks	There are hazard risks that have not been fully considered during the consent process.	s.31(1)(b)(i)
Climate change	Appropriate allowances can be made for the potential effects of climate change at the design stage.	s.7(i)
Industrial activities	Industrial activities would not be affected by the proposal to any significant extent. Conditions requiring 'no complaints' covenants on property titles can avoid reverse sensitivity issues.	s.5(2)
Tourism and the economy	There would be benefits to tourism and the economy arising from the proposal.	s.5(2)
Positive effects	The proposal would bring significant positive benefits to the city.	s.5(2)

8 STATUTORY PROVISIONS

8.1 Overview

[388] In the evidence and submissions we heard helpful guidance as to the statutory criteria that we are required to apply, and the various parts of the particular plans and policy statements that are relevant to the application, were provided by the applicant and in the s.42A Report. Some submitters, including Capri and ORC, also provided evidence on planning and statutory matters.

[389] The statutory provisions relevant to this application under Part 6 of the Act are:

- s.104D, which sets out the requirements for granting consent for non-complying activities;
- Section 104, which provides a suite of matters that are to be considered before a decision is made on a resource consent application and places Part 2 of the Act as the primary matter for consideration. Everything in s.104 is subject to Part 2;
- Section 104B, which allows us, after considering an application for a discretionary activity or a non-complying activity, to grant or refuse consent and, if granted, to impose conditions under s.108.

[390] All parties accepted that the activities associated with the proposal are non-complying in terms of the Dunedin District Plan. This means that, before we can consider the application under s.104 and Part 2 of the RMA, we must determine whether or not the application is able to pass the so called ‘threshold test’ in s.104D(1). For completeness, s.104D(1) states:

(1) Despite any decision made for the purpose of section 93 in relation to minor effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either –

(a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(b) applies) will be minor; or

(b) the application is for an activity that will not be contrary to the objectives and policies of –

(i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or

(ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or

(iii) *both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*

[391] For the purposes of deciding whether or not the adverse effects of the proposal will be minor (s.104D(1)(a)) we are able to have regard to conditions and any proposed mitigation. We note that this does not extend to consideration of the positive effects of the proposal.

8.2 S.104D [the Act]

[392] In this section we consider the submissions and evidence we heard with respect to the two tests in s.104D. As part of our determination of this application we have, in Chapter 6, canvassed the effects of the proposal in some detail and our findings are relevant here.

[393] As Mr Page pointed out to us [at Para 84 in his closing submissions], how we evaluate whether or not the adverse effects will be ‘more than minor’ depends on how we view the applicant’s case that the permitted baseline allows us to disregard the visual and other effects attached to the height and bulk of the proposal. We have [at Para 239] already rejected this argument.

[394] In our examination of the issues and effects in Chapter 6 we have concluded, in light of the evidence and submissions before us, that there are effects that would be more than minor. These mostly relate to the bulk and height of the proposal in relation to both its immediate environment and the wider context of the city as a whole. In this latter respect, we consider that the applicant’s evidence was not sufficient to enable us to fully understand how the proposed hotel would ‘fit’ within the predominantly low-rise structure of Dunedin as it is today. Most submitters made it quite clear to us that it did not. Certainly, the photo simulations provided showed to us that the proposed building would dominate its immediate environment and be visible from afar. Although we tried to explore this matter further and sought more evidence on the broader landscape issues from the applicant, our request was refused.

[395] There are other potential adverse effects that would be more than minor associated with traffic and accessibility. There are also a range of effects associated with construction that we have not been able to determine as they have not been assessed. Had the necessary construction consents been included in the application, as we think they should, they could have been expected to be ‘bundled’ with the other consents and considered as non-comply activities. Whether or not the construction effects would be minor we simply do not know.

[396] There is little doubt in our minds that the proposal does not pass the first threshold in s.104D(1)(a). We now turn to the second test in s.104D(1)(b), which requires us to examine the proposal in terms of the objectives and policies in the Dunedin District Plan.

[397] We had helpful advice on this from several sources including the s.42A Report, the planners for Capri and ORC, and from the applicant. Generally, we have relied on the table in Section 6 of the s.42A Planning Report to identify the relevant objectives and policies.

[398] For convenience, we have summarised the various opinions we heard on how we should view the proposal against the objectives and policies in the District Plan, and also provided a summary of our own findings, in the table in Appendix 10.1 attached to this decision. It will be noted that we consider there are activities associated with the proposal that are contrary to a number of objectives and policies. We discuss below where we have found this to be the case but, before doing so, we note that we have taken guidance on how we should interpret the meaning of ‘contrary’ in s.104D(1)(b) from the High Court in *NZ Rail Limited v Marlborough District Council*¹¹:

The Tribunal correctly I think, with respect, accepted that that should not be restrictively defined and that it contemplated being opposed to in nature, different to or opposite. The Oxford English Dictionary in its definition of "contrary" refers also to repugnant and antagonistic. The consideration of this question starts from the point that the proposal is already a non-complying activity, but cannot, for that reason alone, be said to be contrary. "Contrary" therefore means something more than just non-complying.

[399] **Objective 4.2.1:** *Enhance the amenity values of Dunedin.* This, to us, is a key objective in this case. We think the explanation in the District Plan underlying this objective is relevant. It states:

The City was settled more than 150 years ago, and since that time it has developed a particular character and amenity in both its urban and rural form which is highly prized by its residents and visitors. This character includes heritage buildings, distinctive landscape and townscape and readily accessible recreational and natural areas. In that respect the City is fortunate as it has developed an identity, and it seeks to build on that in the future.

¹¹ [1994] NZRMA 70 at Page 80 (HC)

There was no evidence put before us to show that this proposal would enhance the amenity values of Dunedin; indeed the weight of evidence and submissions indicated that it would not. We agree with Ms Darby's assessment in the s.42A Report and find that the proposal is contrary to this objective.

[400] **Policy 4.3.1** supports Objective 4.2.1. and we consider, for the same reasons, that the proposal is contrary to this policy.

[401] **Objective 4.2.2:** *Ensure that the level of infrastructural services provided is appropriate to the potential density and intensity of development and amenity values of the area.* While as we have noted in the table in Appendix 10.3 that the proposal would inevitably place some pressure on existing infrastructure, and pedestrians, in particular, would be poorly catered for, we consider it would be going too far to say that the proposal is contrary to this objective. We do, however, agree with Ms Darby's assessment that proposal is not consistent with the objective.

[402] **Objective 10.3.2:** *Ensure non-industrial activities in industrial areas do not limit the operation of industrial activities.* While, again we agree with Ms Darby's assessment that the proposal is not consistent with this policy we do not consider it to be contrary.

[403] **Policy 10.3.2:** *Exclude activities not part of or associated with industrial activities from the Industrial 1 zone.* The proposal is, on the face of it, contrary to this policy.

[404] **Objective 20.2.2:** *Ensure that land use activities are undertaken in a manner which avoids, remedies or mitigates adverse effects on the transportation network.* Adverse effects on the transportation network have been identified. In particular, the failure of the proposal to adequately provide for the increase in pedestrian activity that would result from this proposal leads us to conclude that the proposal is contrary to this objective.

[405] **Policy 20.3.4:** *Ensure traffic generating activities do not adversely affect the safe, efficient and effective operation of the roading network.* This policy supports Objective 20.2.2 and for the same reasons we find that the proposal is contrary to this policy.

[406] **Objective 20.2.3:** *Achieve integrated management of the roading network, including pedestrian and cycle use, with rail air and sea networks.* Wharf Street is a busy four-lane arterial route that presently does not cater well for pedestrians and cyclists. The increase in pedestrian use, in particular, and also vehicular traffic, arising from the proposal may compromise safety and does not assist this objective. We find that the proposal is contrary to this objective.

[407] **Policy 20.3.8:** *Provide for the safe interaction of pedestrians and vehicles.* The lack of suitable pedestrian connectivity to the proposed hotel leads us to conclude that the proposal is contrary to this policy.

[408] **Objective 20.2.4:** *Maintain and enhance a safe, efficient and effective transportation network.* For similar reasons to those expressed above, we consider the proposal is contrary to this objective.

[409] Having examined the proposal against the objectives and policies in the District Plan, we now must decide whether or not the proposal passes the second threshold test in s.104D(1)(b). There are, of course, many objectives and policies in the District Plan to which the proposal is not contrary but we are aware that this is not a numbers game. The Environment Court provides helpful guidance¹² :

When assessing whether a non-complying activity is contrary to the objectives and policies of a plan, a broad judgement should be made. This requires more than just isolating out one or two policies with which the activity is contrary. Where policies are general and have wide-ranging topics, the question is whether the activity is, in principle, contrary to the objectives and policies. If, in principle, it is opposed to the objectives and policies, it will be “contrary” for the purposes of what is now s104D(1)(b).

[410] [1243] It is, thus, necessary to consider whether or not the proposal, in principle, is contrary to the objectives and policies in the District Plan having regard to its overall purpose. To assist us we went to Chapter 1 of the District Plan. In Section 1.5, the District Plan discusses significant matters in Part B. Here it states:

The Sustainability Section sets the framework for all the other sections of the Plan. The objectives and policies of the Sustainability Section must be taken into account in every resource consent application where Council has not restricted its discretion. The Sustainability Section deals with the unique character of Dunedin, its natural and physical resources (including its infrastructure), and how the people of Dunedin can provide for their wellbeing while managing any actual or potential adverse effects on the environment.

[411] We, thus, turned to see what the District Plan, in Chapter 4, had to say about sustainability. In the introduction, it states:

¹² Kuku mara Partnership (Forsyth Bay) v Marlborough Council DC Env Ct W025/02.

Dunedin today is the outcome of more than 150 years of development. While Dunedin is dynamic, the basic form and character of the City is already established. That results in a strong desire to maintain and enhance the existing natural and physical resources of the City, while at the same time not constraining growth. [Emphasis added]

We note that these sentiments are further emphasized in the explanation surrounding the issues that lead to Objective 4.2.1, referred to above [at Para 400].

[412] We also consider the following statement, also in the introduction to the section on sustainability, is relevant:

... particular care is required in managing the natural and physical resources of the City. In areas where growth is the norm, any mistakes in the management of resources can in some circumstances be 'corrected' by further development. Dunedin cannot do that, and any mistakes made must be 'lived with' for many years to come.

[413] The above sections, taken from the District Plan, demonstrate to us that a fundamental purpose of the plan is to maintain the existing fabric of the city, and that those seeking to impose new developments on it would need to demonstrate, beyond doubt, that their proposal would either not interfere with that fabric or that the reasons for doing so were compelling. In our minds, the present proposal fails to achieve this and we find that, in principle, it is contrary to the objectives and policies in the District Plan and, thus, fails to pass the second arm of the threshold test in s.104D(1)(b).

[414] We are, thus, unable to grant consent for the proposal before us.

[415] In coming to a decision with respect to s.104D, we realise that this is, to some extent, a subjective matter and there will be those who disagree with our findings. So, to assist those who consider that we are wrong, we intend to also consider the proposal under the wider matters in s.104 of the Act, subject to Part 2.

8.3 Part 2 [the Act]

[416] S.5 (Part 2) of the Act states:

- (1) *The purpose of the Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act "sustainable management" means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which*

enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while -

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

[417] S.5(1) contains the very essence of the Act. In arriving at a decision we are bound to determine whether or not the proposal, overall, is consistent with this single purpose of the Act. In doing so, we are able to make an overall judgement in weighing up both the positive and negative aspects of the proposal. Before we are able to do so, however, the sustainable management aspects of the proposal must be considered in light of s.5(2) in conjunction with a range of other matters in Part 2.

[418] S.6 of the Act is concerned with matters of national importance that this decision is required to recognize and provide for in relation to managing the use, development and protection of natural and physical resources.

[419] s.6(a) *The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:* In Section 6.3 of this decision we examined the effects of the proposal on natural character and concluded that the coastal environment in the vicinity of the proposed site is already significantly modified and has little in the way of any remaining natural character.

[420] s.6(b) *The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development:* No outstanding natural features or landscapes that would be affected by the proposal were brought to our attention.

[421] s.6(c) *The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:* Not relevant.

[422] s.6(d) *The maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers:* The proposal would be located across a busy four-lane arterial

roadway and would increase pedestrian activity in the area. Public access from the proposed hotel to the waterfront (Harbourside) would not be enhanced by the proposal.

[423] s.6(e) *The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga*: This has been considered in Section 6.2 where we concluded that the culture and traditions of *tangata whenua* would not be adversely affected by the proposal.

[424] s.6(f) *The protection of historic heritage from inappropriate subdivision, use and development*: No evidence was presented that would indicate that the subject site has any known intrinsic heritage value. We have concluded in Section 6.5 that any potential adverse effects on heritage artefacts can be adequately safeguarded by a standard condition in relation to accidental discovery protocol.

[425] s.6(g) *The protection of recognised customary activities*: No such activities were identified.

[426] Other matters that this decision is required to have particular regard to are provided in s.7 of the Act.

[427] s.7(a) *Kaitiakitanga*: Issues relating to *tangata whenua* were canvassed in Section 6.2 and no such issues were brought to our attention.

[428] s.7(aa) *The ethic of stewardship*: Aside from iwi stewardship (*kaitiakitanga*), which we have concluded would not be affected, a standard condition can be imposed requiring a set of protocols and practices to be followed should any *koiwi tangata* (human skeletal remains) or Maori artefact material be discovered during the proposed works would ensure that the ethic of stewardship is not compromised.

[429] s.7(b) *The efficient use and development of natural and physical resources*: The proposal does not raise any issues in relation to the efficient use and development of natural and physical resources.

[430] s.7(ba) *The efficiency of the end use of energy*: Not relevant.

[431] s.7(c) *The maintenance and enhancement of amenity values*: In Section 6.4 we have examined the effects of the proposal on amenity values and have concluded that there remain uncertainties concerning the effects of the proposal on wind, and as yet undetermined effects caused by vibration, noise and dust, and other potential effects on amenity values during construction.

[432] s.7(d) *Intrinsic value of ecosystems*: Not relevant

[433] s.7(e) Repealed.

[434] s.7(f) *Maintenance and enhancement of the quality of the environment*: We have had regard to the effects of the proposal on the quality of the environment throughout Section 6 of this decision and have concluded, in the absence of any evidence to the contrary, that the quality of the environment would not be enhanced by the proposal.

[435] s.7(g) *Any finite characteristics of natural and physical resources*: No finite characteristics of natural and physical resources were brought to our attention.

[436] s.7(h) *The protection of the habitat of trout and salmon*: Not applicable.

[437] s.7(i) *The effects of climate change*: We have had regard to the effects of climate change in Section 6.10 where we concluded that the potential effects of climate change can be allowed for at the design stage..

[438] s.7(j) *The benefits to be derived from the use and development of renewable energy*: Not applicable.

[439] S.8 *Principles of the Treaty of Waitangi (Te Tiriti o Waitangi)*: The effects of the proposal on tangata whenua has been examined in Section 6.2. We have concluded that Treaty of Waitangi principles would not be compromised by this proposal.

8.4 Section 104 [the Act]

[440] S.104 provides a suite of matters to be considered and these are listed in sub-sections (1) to (5).

[441] s.104(1) states:

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; and*

(b) *any relevant provisions of —*

(i) *a national environmental standard;*

(ii) *other regulations;*

(iii) *a national policy statement;*

- (iv) *a New Zealand coastal policy statement;*
 - (v) *a regional policy statement or proposed regional policy statement;*
 - (vi) *a plan or proposed plan; and*
- (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

[442] s.104(1)(a): *any actual and potential effects on the environment of allowing the activity;* The key issues concerning the actual and potential effects on the environment that would result from granting the application have been identified and examined in Chapter 6 of this decision. A summary of our findings is provided in Chapter 7.

[443] s.104(1)(b)(i): *any relevant provisions of a national environmental standard:* No provisions of a national environmental standard, to which we must have regard, were brought to our attention.

[444] s.104(1)(b)(ii): *any relevant provisions of other regulations:* No other relevant provisions of other regulations were brought to our attention.

[445] s.104(1)(b)(iii): *any relevant provisions of a national policy statement:* No national policy statements relevant to this application were brought to our attention.

[446] s.104(1)(b)(iv): *any relevant provisions of a New Zealand Coastal Policy Statement:* The s.42A Report concluded that the proposal is consistent with the relevant objectives and policies of the New Zealand Coastal Policy Statement and we accept that finding.

[447] s.104(1)(b)(v): *any relevant provisions of a regional policy statement or proposed regional policy statement:* The s.42A Report considered the provisions of the Regional Policy Statement for Otago and concluded that the proposal is consistent with the relevant objectives and policies, except for those concerned about preservation of landscapes. We accept that finding.

[448] s.104(1)(b)(vi): *any relevant provisions of a plan or proposed plan:* The proposal has been examined in light of the relevant objectives and policies in the Dunedin District Plan and a summary of our findings is included in Appendix 10.1 attached to this decision. We have also canvassed the provisions in the District Plan in our consideration of s.104D in Section 8.2.

[449] s.104(1)(c): *any other matter the consent authority considers relevant and reasonably necessary to determine the application:* We turned our minds to the precedent effect where other applicants could potentially justify out of zone activities on the basis of this application

being granted. Two issues were of concern, firstly the height and commercial residential nature of the activity and secondly the indirect generation of commercial service or retail activity attracted to such developments. We acknowledge that the precedent argument will always arise with non-complying applications however we are also aware that each case has to be taken on its own merits.

[450] Two submitters were critical of the fact that the Spatial Plan for Dunedin had not been considered. We have taken the opportunity to review the contents of the Spatial Plan and have found no issues that have not already been addressed in this decision.

9 DETERMINATION

9.1 Decision

[451] Having carefully considered all the relevant reports and documentation supplied with the application, submissions, the s.42A Report, and the evidence presented to us during the course of the hearing, we have determined that applicant has not made its case to allow the proposal to proceed.

[452] In terms of s.113(1)(a) of the Act we are required to give reasons for our decision.

[453] Since the proposal fell to be determined as a non-complying activity we were required to consider the particular restrictions imposed by s.104D, which requires the proposal to pass at least one of two so called 'Threshold Tests'. Having done so, we were not satisfied that the adverse effects on the environment would be minor (s.104D(1)(a)), and nor were we satisfied that the activities associated with the application would not be contrary to the objectives and policies of the District Plan (s.104D(1)(b)). Having made these determinations, in terms of s.104D, we are unable to grant consent.

[454] Throughout Chapter 6 of this decision we have gone to some trouble to examine the evidence and canvass all the relevant environmental effects that were brought to our attention. We have drawn our own conclusions as to how each of these issues impacts on our decision and our reasons are discussed further below.

[455] In exercising the powers delegated to us by Dunedin City Council we have, thus, resolved, in terms of s.104B of the Act, to refuse the application from Betterways Advisory Limited to construct and operate a licensed hotel with residential apartments at 41 Wharf Street, Dunedin.

9.2 Reasons

[456] We realise that there will be many, particularly among those who recognised the potential business opportunities that could arise out of a successful five-star hotel in Dunedin, who will be disappointed in this decision. Indeed, we had persuasive evidence from the applicant of the need for such a hotel and the economic benefits that would result and, to be fair, there were not many who opposed the development on the grounds that Dunedin had no need for a high-end hotel of the type proposed. However, it was clear to us that this proposal was so different and so out of character with its surroundings that, for us to be able to grant consent, we had to be very certain that the effects of imposing this structure on this site had been fully canvassed in the application and were able to be fully understood. Unfortunately, this was not the case. The application suffered, in our view, from a lack of proper information.

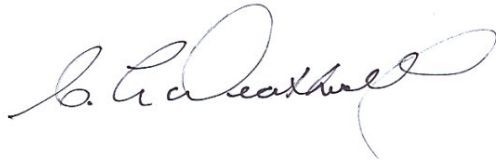
[457] The applicant's stance that the height and bulk of the proposed hotel were not matters for us to be concerned about was wrong in our view. At various times during this decision we have referred to what other counsel and planning experts have had to say about use of the 'permitted baseline'. We have concluded that this proposal is so far removed from any industrial use that might reasonably be contemplated for this site that the argument is not helpful in this case. In these respects we agree with Ms Darby's views on the matter and we took the view that all effects had to be considered.

[458] Although we have found that the application failed to pass either of the two "Threshold Tests" in s.104D and, thus, we could not grant consent, we decided to also consider the application in terms of s.104. This requires us to keep in mind Part 2 of the Act and, particularly, the single broad purpose as set out in s.5. It is in terms of this section that we are able to make an overall judgement and determine whether or not the proposal would promote the sustainable management of natural and physical resources. It is now well-established that the subsequent sections in Part 2 (s.6, s.7 and s.8) provide a range of factors to be considered in making this judgement but, on their own, they are not allowed to obscure the fundamental purpose of sustainable management.

[459] If the application had not failed the s.104D Test, we would have been left to decide whether or not to grant consent after consideration of the various matters in s.104. We decided to carry-out this analysis, guided by the requirements of Part 2 of the Act and s.5, in particular. In Chapter 6 of this decision we canvassed in detail all the effects of the proposal that were brought to our attention, and in Chapter 8 we presented our analysis of the ways in which the statutory provisions have been applied. Having examined all the relevant statutory matters in

Chapter 8, we consider that the proposal is not consistent with Part 2 of the Act and all the provisions that we are required to consider under s.104.

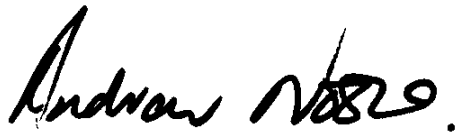
[460] Our final comment must reflect the fact that, in our opinion, the application as presented to us had a number of shortcomings. Foremost among these was the lack of any compelling landscape evidence that was able to demonstrate that the proposed hotel was an appropriate development at that site, and would not have very long-term adverse visual effects that would change the character of the city. Given the scale of the proposal, and particularly the fact that the land is reclaimed and subject to seismic activity, the lack of any consideration of construction effects was a also serious omission in our view. We also had significant misgivings about the notion of a five-star hotel located on a site that is effectively an 'island' constrained by an active railway yard and main trunk line on one side and a four-lane arterial roadway on the other. Notwithstanding potentially problematic access and egress for vehicles, and road transport issues, the lack of connectivity for pedestrians, both to the city and the Harbourside, was a major concern to us. It did not seem sufficient to claim, as the applicant did, that the proposed hotel would act as a catalyst to provide the necessary bridges.



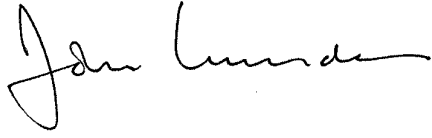
Colin Weatherall (Chair)



Kate Wilson



Andrew Noone

A handwritten signature in black ink, appearing to read "John Lumsden". The signature is fluid and cursive, with the first name "John" written in a larger, more prominent script than the last name "Lumsden".

John Lumsden

Dated this 4th Day of June 2013

10 APPENDICES

10.1 Assessment of the proposal in terms of the relevant objectives and policies in the Dunedin City District Plan

LUC-2012-212 Hotel at 41 Wharf Street

Assessment of the proposal in terms of the Objectives and Policies of the District Plan

NB: Objectives and policies listed are those cited in the S.42A Report and during evidence presented at the hearing

Objective /Policy	What it says	Applicant's assessment		S.42A Report assessment	Our findings
Sustainability					
Objective 4.2.1	Enhance the amenity values of Dunedin.	<p>Mr Page Section 4 district wide section of Plan. Sets agenda for Plan and explains purpose and reasons for zoning framework.</p> <p>Section 4 of little relevance to particular activities on particular sites. That is what zone objectives and policies are for.</p> <p>Mr Anderson Specifically addressed by Industrial 1 zoning provisions</p>	<p>Mr Kyle Indicates that he agrees with Mrs Darby's assessment except where otherwise stated</p> <p>No comment on this provision.</p> <p>Ms Justice Indicates that she agrees with Mrs Darby's Assessment of the objectives and policies cited in the Sec42A report.</p>	The proposed development will be a significant structure in a prominent position on the waterfront. Its lack of cohesion with the surrounding environment and its appearance generally are such that the proposed development is not considered to enhance the amenity values of Dunedin. The proposal is considered to be contrary with this objective and policy.	Contrary

		and/or the assessments presented by the applicant. Does not assist overall judgement as to whether consent should be granted.	Aware that proposal located in Industrial zone, therefore requirement to enhance amenity values less. However, scale of proposal such that amenity values affected beyond the zone. Public places such as Queens Gardens and surrounding streets will be affected as well as impacts on Dunedin's character and urban form.		
Policy 4.3.1	Maintain and enhance amenity values.	Mr Page As above	Mr Kyle As above Ms Justice As above	As above	Contrary
Objective 4.2.2	Ensure that the level of infrastructural services provided is appropriate to the potential density and intensity of development and amenity values of the area.	Mr Page As above Mr Anderson Specifically addressed by Industrial 1 zoning provisions and/or the assessments presented by the applicant. Does not assist overall judgement as to whether consent should be granted.	Mr Kyle As above Ms Justice As above	Water and Waste Services has advised that the existing wastewater and water supply infrastructure has capacity for the proposed development, and that new stormwater infrastructure will be required. No changes are proposed for the transportation network. In my opinion, the additional traffic and difficult roading layout do not combine to create a sustainable transportation system. The	Not contrary

				proposal is considered to be inconsistent with these objectives and policies.	
Objective 4.2.3	Sustainably manage infrastructure.	<p>Mr Page As above</p> <p>Mr Anderson Specifically addressed by Industrial 1 zoning provisions and/or the assessments presented by the applicant.</p> <p>Does not assist overall judgement as to whether consent should be granted.</p>	<p>Mr Kyle As above</p> <p>Ms Justice As above</p>	As above	Not contrary
Policy 4.3.2	Avoid developments which will result in the unsustainable expansion of infrastructure services.	<p>Mr Page As above</p>	<p>Mr Kyle As above</p> <p>Ms Justice As above</p>	As above	Not contrary
Policy 4.3.5	Require the provision of infrastructure services at an appropriate standard.	<p>Mr Page As above</p>	<p>Mr Kyle As above</p> <p>Ms Justice As above</p>	As above	Not contrary
Objective 4.2.4	Ensure that significant natural and physical	<p>Mr Page As above</p>	<p>Mr Kyle Otago Harbour one of most significant natural resources.</p>	The proposal will not protect the industrial land resource as it seeks to use industrial land	Not contrary

	resources are appropriately protected.	<p>Mr Anderson Specifically addressed by Industrial 1 zoning provisions and/or the assessments presented by the applicant.</p> <p>Does not assist overall judgement as to whether consent should be granted.</p>	<p>Harbour margin at Steamer Basin dedicated to public access and use. Proposed will have adverse effects of shading and diminishment of amenity. Proposal contravenes objective as does not properly provide for protection of resource.</p> <p>Ms Justice As above</p>	<p>for commercial residential and residential purposes. However, the land resource has been underutilised for many years, and the proposal will develop a vacant site. The building will maximise for in-house benefit the views of Otago Harbour while having adverse impact on the cityscape and harbour views generally. The proposal is inconsistent with this objective and policy.</p>	
Policy 4.3.4	Provide for the protection of the natural and physical resource of the City commensurate with their local, regional, and national significance	<p>Mr Page As above</p>	<p>Mr Kyle Otago Harbour one of most significant natural resources. Harbour margin at Steamer Basin dedicated to public access and use. Proposed will have adverse effects of shading and diminishment of amenity. Proposal contravenes policy as does not properly provide for protection of resource.</p> <p>Ms Justice As above</p>	As above	Not contrary
Policy 4.3.3	Promote the renovation and	<p>Mr Page As above</p>	<p>Mr Kyle Proposal likely to exceed</p>	The proposal will develop a vacant site in a waterfront	Not contrary

	redevelopment of those sites within existing urban areas where there is under-utilisation of urban service infrastructure.		capacity stormwater network. Unresolved issues in relation to traffic flow, car parking and access. Use of site inconsistent with policy. Ms Justice As above	location. The site has been underutilised since being alienated from the railway. The service infrastructure can manage the additional demands, provided appropriate facilities and upgrading of the network are undertaken for water and stormwater provisions. Stormwater infrastructural limitations may also be resolved by alternative means promoted by the applicant. The proposal is considered to be consistent with this policy.	
Policy 4.3.7	Use zoning to provide for uses and developments which are compatible within identified areas.	Mr Page As above	Mr Kyle Given the reverse sensitivity issues identified by various parties (such as KiwiRail and Port Otago) strong likelihood proposal contrary to policy. Ms Justice As above	The proposed hotel and apartment block will be commercial residential and residential activity within an industrial zone. The activities are normally incompatible, and there are some concerns with reserve sensitivity issues. These can be largely mitigated internally through appropriate insulation of the building from external noise and vibration, but it is uncertain if they can be entirely avoided. The proposal is considered to be	Not contrary

				inconsistent with these policies.	
Policy 4.3.8	Avoid the indiscriminate mixing of incompatible uses and developments.	Mr Page As above	Mr Kyle Given the reverse sensitivity issues identified by various parties (such as KiwiRail and Port Otago) strong likelihood proposal contrary to policy. Ms Justice As above	As above	Not contrary
Policy 4.3.9	Require consideration of those uses and developments which: (a) Could give rise to adverse effects. (b) Give rise to effects that cannot be identified or are not sufficiently understood at the time of preparing or changing the District Plan.	Mr Page As above	Mr Kyle As for objective 4.2.1 Ms Justice As above	This is a process policy and as such the proposal will not be consistent or contrary . The purpose is to provide a process for assessing proposals that could not be anticipated at the time of drafting the rules. The proposed development is entirely different to anything expected for the Industrial 1 zone, and is not in keeping with Harbourside rules either. When assessing the proposal consideration should be given to considering how it might be possible to mitigate adverse effects.	Not contrary
Objective	Provide a	Mr Page	Mr Kyle	No comment	Not contrary

4.2.5	comprehensive planning framework to manage the effects of use and development of resources.	As above Mr Anderson Specifically addressed by Industrial 1 zoning provisions and/or the assessments presented by the applicant. Does not assist overall judgement as to whether consent should be granted	No comment Ms Justice No comment	Accepted by Mrs Darby that objective more relevant to plan formulation rather than assessment of a specific consent application.	
Manawhenua					
Objective 5.2.1	Take into account the principles of the Treaty of Waitangi in the management of the City's natural and physical resources.	No comment	Mr Kyle Objective & Policy directive of process rather than evaluative instruments therefore proposal not able to be consistent or otherwise. Ms Justice As above	The proposal has been assessed using the protocol established between Kai Tahu ki Otago and the Dunedin City Council. A copy of the application was provided to Kai Tahu ki Otago and they have not indicated any concerns relating to this proposal. The proposal is considered to be consistent with this objective.	Not contrary
Policy 5.3.2	Advise Manawhenua of applications for notified resource consents, plan changes and designations.	No comment	Mr Kyle As Above Ms Justice As above	As above	Not contrary
Activity Zones					

Objective 9.2.1	Provide for business, recreational, social, cultural, religious and commercial activities in the Central Activity Zone and Local Activity Zones and enhance the amenity there to make them pleasant for people.	No comment	Ms Justice Scale of proposal has potential to result in reduction of activity in Central Activity Zone, which is inconsistent with objectives 9.2.1 and 9.2.5. No information provided to demonstrate proposal will not detract from vitality and vibrancy of central activity areas. Important consideration given nature and scale of proposal.	No comment	Not contrary
Policy 9.3.1	Provide for a compatible mix of business, social, cultural, religious and commercial activities in Activity Zones.	No comment	Ms Justice As above	No comment	Not contrary
Objective 9.2.5	Ensure that the Central Activity and Local Activity Zones continue to develop as 'people places'	No comment	Ms Justice As above	No comment	Not contrary
Industry					
Objective 10.2.1	Avoid, remedy or mitigate the adverse effects of industrial activities.	Mr Page Objectives largely allocative (2 out of 3).	Mr Kyle The effects on traffic circulation and parking demand are likely to be much	The proposal does not involve an industrial activity, and as such, this objective and policy has limited relevance . The	Not contrary

		<p>They seek to preserve industrial zone for compatible uses (within the zone) and exclude uses not compatible and may give rise to reverse sensitivity effects.</p> <p>Mr Anderson Objective 10.2.1 not relevant as proposal not an industrial activity.</p>	<p>more severe than anticipated from legitimate industrial activity. Proposal highly likely to give rise to adverse reverse sensitivity effects. Agrees with Mrs Darby's doubts re covenants in this circumstance and status of third party approvals. Proposal inconsistent with objective and policy.</p> <p>Ms Justice As above</p>	<p>adverse effects of the proposed commercial residential and residential activities in the industrial area will have very different effects to a permitted industrial or service activity. Several submitters seek to have a 'no complaints' agreement in place so that the hotel guests and management cannot complain about lawfully established industrial and port activities. However, it is doubtful whether such agreements with the applicant are workable as a consent condition in the circumstance of the proposal.</p>	
Policy 10.3.1	Manage the adverse effects of industrial activities in Industrial Zones.	No specific comment	<p>Mr Kyle As above</p> <p>Ms Justice As above</p>	As above	Not contrary
Objective 10.2.2	Manage in a sustainable manner the natural and physical resources of the Industrial Zone.	<p>Mr Page As Above</p> <p>Mr Anderson Physical resources (utilities) at 41 Wharf Street have</p>	<p>Mr Kyle While site unused feasible compatible industrial use can be located on site. Consent held for such use. Given range of effects from proposal</p>	The proposal does not sustain the industrial land resource as it will remove it from industrial use. Yet, there has been no industrial use of this land for many years. However,	Not contrary

		sufficient capacity to provide for proposal, save question about stormwater drainage. Land vacant for many years with no interest from industry. Consent granted for commercial offices and apartment (LUC-2007-775) on basis accepted loss of site from industrial land resource sustainable outcome.	application contrary to objective. Ms Justice As above	given the reverse sensitivity issues above, the proposal is considered to be inconsistent with this objective.	
Objective 10.2.3	Ensure non-industrial activities in industrial areas do not limit the operation of industrial activities.	Mr Page As Above Mr Anderson Proposal can protect itself from lower amenity within Industrial 1 zone, thus avoiding reverse sensitivity issues.	Mr Kyle Policy seeks to control risk of reverse sensitivity issues. For reasons stated above contrary to objective. Ms Justice Acknowledged District Plan provides effects based framework whereby out of zone activities may be considered appropriate where demonstrated effects managed, this has not been demonstrated for proposal.	The proposal is inconsistent with this objective and policy as it does not exclude a non-industrial activity from an industrial zone. It is proposed that there will be adequate insulation of the proposed building to mitigate the effects of the industrial activities, and in particular, the railway. No external mitigation will be possible.	Not contrary
Policy 10.3.2	Exclude activities not part of or associated with industrial activities from the Industrial 1 zone.	Mr Page Policy framework focussed on gatekeeping – managing land use incompatibility and access to industrial land.	Mr Kyle Proposal clearly not industrial activity or part of industrial activity, and therefore contrary to policy.	As above	Contrary

		<p>Already consent for non-industrial activity on site.</p> <p>Application presented on basis not incompatible with adjacent Industrial 1 activities.</p> <p>If satisfied reverse sensitivity effects can be managed through building design and performance specifications, then no conflict with objectives and policies.</p>	<p>Ms Justice As above</p>		
Hazards, Hazardous Substances and Earthworks					
Objective 17.2.1	Ensure the effects on the environment of natural and technological hazards are avoided, remedied or mitigated.	No comment	<p>Mr Kyle Effects of engineering solutions cannot be known until such solutions are devised. For example, if piling results in significant vibration and noise (exceeding NZ Standards) this is an environmental effect that must be taken into account at time resource consent considered. Proposal as it stands is inconsistent with</p>	The site is reclaimed land at risk to seismic activity. The Council's Consulting Engineer has also identified potential flooding risk. These can be addressed through building design and use of appropriate engineering solutions. The risks should not be fatal to the application. On the basis the proposed development will be constructed with full recognition of the physical	Not contrary

			objective and related policy 17.3.1 Ms Justice As above	constraints, the proposal is considered to be consistent with this objective and policy.	
Objective 17.2.3	Earthworks in Dunedin are undertaken in a manner that does not put the safety of people or property at risk and that minimises adverse effects on the environment.	Mr Anderson Objective achieved (in relation to basement construction) by standard contracting conditions.	Mr Kyle No comment Ms Justice No comment	No comment Mrs Darby's assessment of objectives and policies focusses on Hazards only, in the absence of any details concerning the proposed earthworks required for the development.	Not contrary
Policy 17.3.1	Gather and maintain accurate information about, and encourage research into, the location and causes of hazards and the risks associated with them, and the potential for adverse effects of hazards within the City.	No comment	Mr Kyle As above for objective 17.2.1. Ms Justice Agrees with Mrs Darby	As for Objective 17.2.1 above	Not contrary
Signs					
Objective 19.2.1	Avoid, remedy or mitigate the adverse effects of signs on	No comment	Mr Kyle As above for objective 4.2.1	The proposed signage will be large, but will be in scale with the building itself. The upper	Not contrary

	amenity values.		Ms Justice Agrees with Mrs Darby	sign will be visible from across the harbour only. If illumination of this site is off from 11pm to 6am, the proposal is considered to be generally consistent with this objective and policy.	
Policy 19.3.1	Ensure that signs do not detract from the amenity values of the area in which they are located and the amenity values of areas from where they are visible.	No comment	Mr Kyle As above for objective 4.2.1 Ms Justice Agrees with Mrs Darby	As above	Not contrary
Objective 19.2.2	Ensure that signs do not adversely affect the safe and efficient functioning of the road network.	No comment	Mr Kyle As above for objective 4.2.1 Ms Justice Agrees with Mrs Darby	The proposed signage is unlikely to adversely affect the safe functioning of the roading network. The signage is large but simple, and is to be attached to the building. The proposal is considered to be consistent with these objectives and this policy.	Not contrary
Policy 19.3.2	Control the design, location, size and number of signs erected at any given location to avoid, remedy or mitigate any adverse effects.	No comment	Mr Kyle As above for objective 4.2.1 Ms Justice Agrees with Mrs Darby	As above	Not contrary

Objective 19.2.5	Ensure that signs do not create a safety hazard for pedestrians.	No comment	Mr Kyle As above for objective 4.2.1 Ms Justice Agrees with Mrs Darby	As above	Not contrary
Policy 19.2.4	Promote the efficient use of signs by managing the adverse effects of visual clutter.	No comment	Mr Kyle As above for objective 4.2.1 Ms Justice Agrees with Mrs Darby	The proposed signage will be large but simple in its message. There will only be two signs on the east façade, at the upper and lower limits, The proposal is considered to be consistent with this objective and policy.	Not contrary
Policy 19.3.4	Promote simplicity and clarity in the form of the sign and the message the sign conveys.	No comment	Mr Kyle As above for objective 4.2.1 Ms Justice Agrees with Mrs Darby	As above	Not contrary
Policy 19.3.5	Prevent the erection of permanent hoarding signs, permanent structures to display hoarding signs, and the painting of buildings as signs.	No comment	Mr Kyle As above for objective 4.2.1 Ms Justice Agrees with Mrs Darby	The proposed building will not be painted as a sign. The signage will be related directly to the proposed activity, and will not be hoardings. The proposal is considered to be consistent with this policy.	Not contrary
Transportation					
Objective 20.2.1	Avoid, remedy, or mitigate adverse effects on the environment arising	Mr Page Objectives and policies effects based.	Mr Kyle It is apparent from the DCC's own traffic assessment and evidence of Mr Penny for	No changes to the existing transportation network are proposed, and the existing roading layout creates some	Not contrary

	from the establishment, maintenance, improvement and use of the transportation network.	If satisfied traffic effects manageable proposal cannot be contrary.	another submitter that the effects on the transportation network will be adverse. Have not seen any measures that will successfully mitigate effects, and therefore conclude proposal contrary to objective and related policies. Ms Justice Agrees with Mrs Darby	problems for the proposed development in regards to access, parking and linkages. Because of the difficulty in accessing the site, it is possible there will be safety issues as drivers and pedestrians undertake unexpected manoeuvres. The road is expected to have capacity otherwise for the proposed use. The proposal is considered to be inconsistent with this proposal.	
Policy 20.3.1	Avoid, remedy or mitigate the adverse effects on the environment of establishing, maintaining, improving or using transport infrastructure.	Mr Page As above	Mr Kyle As Above Ms Justice Agrees with Mrs Darby	As above	Not contrary
Policy 20.3.2	Provide for the maintenance, improvement and use of public roads.	Mr Page As above	Mr Kyle As Above Ms Justice Agrees with Mrs Darby	As above	Not contrary
Objective 20.2.2	Ensure that land use activities are undertaken in a	Mr Page As above	Mr Kyle Agree with Mrs Darby	The proposed access arrangements are the best possible in the circumstances	Contrary

	manner which avoids, remedies or mitigates adverse effects on the transportation network.		Ms Justice Agree with Mrs Darby	and should prove adequate for use, although sweep paths for larger vehicles still need to be confirmed. Pedestrians have very limited options for crossing roads or the railway, and there may be issues, particularly when pedestrians seek to reach the waterfront. The proposal is considered to be contrary with this objective and policy.	
Policy 20.3.4	Ensure traffic generating activities do not adversely affect the safe, efficient and effective operation of the roading network.	Mr Page As above	Mr Kyle Agree with Mrs Darby Ms Justice Agree with Mrs Darby	As above	Contrary
Objective 20.2.3	Achieve integrated management of the roading network, including pedestrian and cycle use, with rail air and sea networks.	Mr Page As above	Mr Kyle Agree with Mrs Darby Ms Justice Agree with Mrs Darby	The site is largely isolated from all other land use by the transportation network on all sides. The railway creates real limitations for linkages. No changes will be made to the railway crossings. It is considered that an additional pedestrian crossing will be beneficial but none is proposed. The proposal is	Contrary

				contrary with this objective and policy.	
Policy 20.3.7	Maintain and enhance the safety of users of the transportation network at railway level crossings.	Mr Page As above	Mr Kyle Agree with Mrs Darby Ms Justice Agree with Mrs Darby	As above	Not contrary
Objective 20.2.4	Maintain and enhance a safe, efficient and effective transportation network.	Mr Page As above	Mr Kyle Agree with Mrs Darby Ms Justice Agree with Mrs Darby	A full assessment of the vehicle access, sight distances, and sweep paths has not been undertaken. Pedestrians will not be adequately provided for when walking to the CBD or the waterfront. The proposal is considered to be contrary to this objective and these policies	Contrary
Policy 20.3.5	Ensure safe standards for vehicle access.	Mr Page As above	Mr Kyle Agree with Mrs Darby Ms Justice Agree with Mrs Darby	As above	Not contrary
Policy 20.3.8	Provide for the safe interaction of pedestrians and vehicles.	Mr Page As above	Mr Kyle Agree with Mrs Darby Ms Justice Agree with Mrs Darby	As above	Contrary
Environmental Issues					
Objective 21.2.2	Ensure that noise associated with the	Mr Page Objectives and policies	Mr Kyle Agree with Mrs Darby	The proposal is unlikely to create adverse noise on the	. Not contrary

	development of resources and the carrying out of activities does not affect public health and amenity values.	effects based. If satisfied noise effects manageable proposal cannot be contrary.	Ms Justice Agree with Mrs Darby	surrounding environment, particularly when considering the nature of the surrounding land uses. The design features of the building have yet to be finalised. Lights in the building at night will be seen from great distances. As long as the design of the buildings incorporates an appropriate type of glazing, glare issues need not be excessive. The proposal is considered to be generally consistent with these objectives and this policy.	
Objective 21.2.3	Ensure that the finishing of structures, the construction of signs and the shielding of light sources avoids, remedies or mitigates nuisance glare.	No comment	Mr Kyle Application as presented prior to hearing indicates cladding of building glass, and is likely to generate significant glare and reflection effects (as raised in DCC urban design report). Without significant change to cladding materials proposal contrary to objective. Ms Justice Agree with Mrs Darby	As above	Not contrary
Policy 21.3.3	Protect people and communities from	Mr Page Comment above in relation	Mr Kyle Agree with Mrs Darby	As above	Not contrary

	noise and glare which could impact upon health, safety and amenity.	to noise issue.	Ms Justice Agree with Mrs Darby		
Objective 21.2.4	Ensure the disposal of wastes is undertaken in a manner that avoids, remedies or mitigates adverse effects on the health and amenity of people and communities within the city and on their environment.	No comment	Mr Kyle Agree with Mrs Darby Ms Justice Agree with Mrs Darby	The proposed development will be adequately serviced. Water supply and stormwater infrastructure issues will need to be, and can be, resolved in order for the hotel and apartments to obtain building consent and be operated successfully. The proposal is considered to be consistent with this objective.	Not contrary
Harbourside					
Objective 26.2.2	The Dunedin Harbourside area is a vibrant and attractive place to visit, work and live, with public open spaces along the harbour edge creating a high quality waterfront environment.	While Page and Mr Anderson comment in submissions and evidence on the Harbourside Zone and effects of the proposal in relation to it, but there are comments on the specific policy provisions	Mr Kyle The effects of shading and visual dominance of the proposal on the public open spaces will reduce the ability of these areas to achieve the objective. Ms Justice Whilst the subject site is just outside the Harbourside zone, the scale of the building will tower over this zone and detract from amenity values	Mrs Darby assesses the effects of the proposal in relation to the Harbourside Area, but makes no comment on the specific policy provisions.	Not contrary

			sought within it. Shading of waterfront will present significant obstacle to development initiatives in the zone. Proposal inconsistent with zone policy provisions		
Objective 26.2.4	The built form of development creates a liveable environment that reflects and enhances the industrial, maritime and port heritage in the Dunedin Harbourside.	As above	Ms Justice As above	As above	Not contrary
Policy 26.3.2	Manage the nature, scale and design of development within the Dunedin Harbourside area by specifying amenity levels, public open space and built form values within Character Areas identified as follows: (i) Steamer Basin South (ii) Steamer	As above	Mr Kyle Whilst the proposal is not within the Harbourside zone, the scale of the proposed building will have a presence felt throughout the zone. Ms Justice As above	As Above	Not contrary

	Basin South East (iii) Mixed Use				
Policy 26.3.3	Identify the location of areas to be provided and maintained for public open space, pedestrian connections and view shafts to vistas of the water.	As above	<p>Mr Kyle The proposed structure will be inconsistent with this policy due to the lack of pedestrian links with the harbour and adverse effects on the public open space areas.</p> <p>Ms Justice As above</p>	As above	Not contrary
Policy 26.3.4	Quality development is encouraged in the Dunedin Harbourside area through good urban design that reflects the industrial architectural, maritime and port heritage values of the area.	As above	<p>Mr Kyle The proposed building design does not reflect any of the values mentioned in the policy, and is therefore inconsistent with the policy.</p> <p>Ms Justice As above</p>	As above	Not contrary

Overall Conclusions:Sec42A report (Ms Darby's Assessment)

Mrs Darby: In paragraph 239 of her report Mrs Darby states "the activity is contrary or inconsistent with many of the relevant objectives and policies of the District Plan.

Applicants' Case

Mr Page: In his reply for the applicant Mr Page concludes with paragraph 91 – "You can safely focus upon the objectives and policies of the Industrial 1 zone and conclude that this application is not contrary to them. "

Mr Anderson: Notes in paragraph 7 of his evidence that he concluded in the application AEE that the proposal is not contrary to any of the relevant objectives and policies.

Evidence for Submitters

Mr Kyle: In paragraph 7.2 of his evidence Mr Kyle states that "it is my assessment that based on an overall broad judgement, the proposal is contrary to the relevant objectives and policies from the District Plan."

Ms Justice: In paragraph 5.9 of her evidence Ms Justice states that "it is my view that, when viewed in an all-embracing and integrated way, the proposal is contrary to the relevant objectives and policies of the District Plan."

Committee View

Having canvassed evidence and submissions presented to us, we have concluded that, in the round, the proposal is contrary to the objectives and policies in the Dunedin District Plan.

10.2 Site Plan



SITE PLAN

LVL	FUNCTION	AREA (GFA)	NUMBERS
B1	CARPARKING	2496m ²	
0L	CARPARKING HOTEL LOBBY APARTMENT LOBBY	837m ² 876m ² 473m ²	
L1	RESTAURANT, EQT & OFFICE AREAS	2110m ²	
L2	RESTAURANT & POOL FACILITIES	2327m ²	
L3	LOUNGE/ MEETING ROOM APARTMENT	1365m ² 808m ²	
L4- L15	APARTMENT	17628m ²	
L16- L25	HOTEL	14554m ²	
L26	PRESIDENTIAL SUITE RESTAURANT	879m ² 860m ²	
	TOTAL APARTMENT GFA	16860m²	164 UNITS
	TOTAL HOTEL GFA	21841m²	215 UNITS
	TOTAL GFA	45584m²	
	TOTAL SITE AREA	3981m²	

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31 AUG 2012
BY: A-CA

SCALE : 0 10 50M

10.3 List of submitters and issues raised

	Tourism	Reverse sensitivity	Noise	Job creation	Damage to area	Zoning of land	Financial issues hotel	Plan integrity issues	Sustainability	Hazards	Industrial land	Applicant identity	Post Office Dvlpmt	Economic benefit	Warehouse precinct	Infrastructure capacity	Heritage Development of Harbourside	Harbour area	Visual impact	Wind effects	Shading	Pollution	Connectivity	Cycleways/Paths	Transport effects	Design/Appearance	Context	Correct site?	Height	Benefit to Dunedin?	Oppose	Oppose in Part	Neutral	Support in Part	Support		
1. Peter Boston															S													S	S					1			
2. Mark Taylor																		S																	2		
3. Susan Dovey																																			1		
4. Sean Ross																																					
5. Liz Angelo																																					
6. Charlotte Handley																																					
7. David Tordoff																																					
8. David Ciccoricco																																					
9. Andrew Metcalfe																																					
10. June Tordoff																																					
11. Elizabeth Ann Hanan																																					
12. John Murray Hanan																																					
13. Peter Bruce Southwick																																			3		
14. Crawford Chambers Ltd																																					
15. Florence Stone																																					
16. Ulla Reyman																																					
17. Michelle Kennard																																				4	
18. Pamela Joy Bardsley																																					
19. Ian L. Gibson																																					
20. Izumi Uchida																																					
21. C & D Thomson																																					
22. Ulf Uchida																																					
23. Suzanne Middleton																																					
24. Graeme Burborough																																					
25. David Ilian																																					
26. R Wayne Bowen																																					
27. Janet Wishart																																					
28. Michael Robin Thompson																																					
29. CP Dunedin Ltd																																					
30. Mark Robert Thompson																																				5	
31. George Euan Thomson																																					
32. Susan Rebecca Lloyd																																					
33. Pamela Constable																																					
34. Frank Malcolm Gould																																					
35. Philip & Glenis Hollard																																					
36. Christiane Funnell																																					
37. Joanne Galer																																					6
38. Patricia Gail Saunders																																					
39. Jack Austin																																					
40. Joan Elizabeth Parker																																					
41. Michael & Anne Cloonan																																					
42. Ralph-Peter Hendriks																																					
43. James Edwin Fyfe																																					
44. Paul A Cunningham																																					7
45. Robert J M Gardner																																					8
46. Lesley Sinclair																																					
47. Hilary Hutton																																					9
48. ADL Properties																																					
49. Rowan William Leck																																					
50. Atom Holdings Ltd																																					10
51. Ashleigh Dev Ltd																																					11
52. Rachel Ruckstuhl-Mann																																					
53. Dennis Dorney																																					
54. Prissilla Bates																																					
55. Carolyn McCurdie																																					
56. Ronald Ewen Boutcher																																					12
57. Christine M McConnell																																					
58. Graham Phipps Black																																					

