

**Before the New Plymouth District Council
Independent Hearings Commissioner**

In the Matter of the Resource Management Act 1991

And

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

Legal submissions in reply on behalf of Regina Properties Limited

Date: 8 October 2021



Level 4, 20 Customhouse Quay, Wellington 6011
PO Box 2791, Wellington 6140
DX SP20002, Wellington
Tel +64 4 472 6289
Fax +64 4 472 7429

Solicitor on the record
Contact solicitor

Stephen Quinn
Emma Manohar

stephen.quinn@dlapiper.com
emma.manohar@dlapiper.com

Tel +64 4 474 3217
Tel +64 4 918 3016

MAY IT PLEASE THE COMMISSIONER:

- 1 These legal submissions in reply respond to questions asked, and matters raised, during the hearing on 23 and 24 September 2021. They also address some matters in the written legal submissions presented on behalf of a group of submitters at the hearing by Ms Ongley.

- 2 These submissions cover both legal and evidential matters. In addition, to confirm the engagement between planners, at **Appendix 1** is an amended set of conditions as proposed by the applicant in response to matters raised. These conditions are submitted by the applicant to form part of this application for consent.

Response to legal submissions

- 3 Many of the issues raised by Ms Ongley have already been addressed by the applicant through opening submissions and evidence. That reflects one of the benefits of the prior exchange of submissions. This includes the relevant matters of discretion, the relevance of Part 2, precedent effects and the permitted baseline. I do not consider it necessary to repeat the position on these topics unless any additional matters have been raised.

Amenity values

- 4 One key issue with Ms Ongley's submissions is the focus on *amenity* effects and values. The relevant matter of discretion, as set out by Ms Ongley above her paragraph 6, is limited to character and *visual* amenity. The importance of the use of the word 'visual' cannot be overlooked. Contrary to Ms Ongley's submission at paragraph [24], the assessment criteria are not being read down by the applicant. The criteria are being applied as presented in the district plan. This is required by operation of the law. Section 104C is supported by section 87A of the RMA in that regard.

- 5 It is common sense that visual amenity must be interpreted as narrower than amenity. Otherwise the use of the word *visual* in the criteria would

be redundant. Further, the lack of express inclusion in the matters of discretion to matters such as privacy and sunlight envelopes is of significance. The limitation of the restricted discretion to visual amenity and character effects arising from the over height component, and bulk and dominance to the effects on the Residential Environment Areas, cannot be ignored.

6 These limits to the discretion are deliberate drafting choices in the Plan. Other rules, for example, Res8, Res10, Res11, Res12, Res 13, Res 14, Res 15, Res 16, list both the character and visual amenity of the area, **and** the privacy and outlook of adjoining sites as assessment criteria. This is also the case for other rules that apply in business zones. For example, Bus15 (maximum site coverage in Business D) refers to visual amenity and character as well as privacy and outlook, and rules Bus16 and Bus 17 (which relate to setbacks) only refer to privacy and outlook not visual amenity and character. If visual amenity and character was intended to include impacts on privacy and outlook, the inclusion of both matters would be unnecessary. The focus must accordingly be on the words actually used in the discretion relevant to the zoning applicable to this application, and to interpret the Plan in a manner that is internally consistent. In essence, the submitters are inviting the Commissioner to interpret the Plan in a wider manner than what it is expressed, in a way that has been expressly written in other parts of the Plan but not applicable to this site. This review of how the Plan is structured must lead to a conclusion that the actual words used in each restricted discretionary list are deliberate and can and must be consistently interpreted.

7 The interpretation of the limits to discretion that have been outlined to you on behalf of the applicant is also consistent with the management strategy section of the Plan, where 'visual amenity' is clearly explained as the visual components without reference to privacy. Ie, at reason 6.3:

Visual amenity is made up of a number of components including the bulk and HEIGHT of BUILDINGS, the density of development, access to outdoor living space and daylight, the amount of landscaping and the impact of 'non-residential' objects such as ADVERTISING SIGNS and large VEHICLE parking areas.

8 In addition, when read closely, the differences in objectives and policies across the business and residential zones support this interpretation. They do not undermine it, as suggested by Ms Ongley. The matters listed by Ms Ongley at paragraph [16] go well beyond what can be lawfully considered in this case. Privacy, overlooking, dominance and health effects are not relevant by virtue of the express provisions of the Plan.

9 It is acknowledged that section 104C does not override section 104 or Part 2 of the RMA. However, the case law is clear, section 104C limits the considerations otherwise available under section 104 and Part 2 to those considerations as far as they relate to matters over which discretion is restricted.¹

Permitted baseline

10 In respect of the permitted baseline, the applicant has put forward a credible and non-fanciful permitted development for comparison. This has been accepted by the Council officers. The permitted baseline presented focused on the structure itself, rather than the use of that structure. At the hearing, the use as an apartment building was discussed in a permitted baseline context. For comparative purposes, that is an appropriate permitted baseline to use.

11 The submitters have challenged the level of information provided by the applicant on the permitted baseline. It is important to note that the applicant is not seeking resource consent for its permitted baseline proposal. The level of information therefore presented in support is logically significantly less than would be required if the permitted baseline was a proposal that required consent and was assessed through an assessment of environmental effects.

¹ *Wellington Fish & Game Council v Manawatu-Wanganui Regional Council* [2017] NZEnvC 37at [11].

12 The effects of the proposed permitted baseline can be sufficiently ascertained.² Acknowledging that this case relates to the position prior to the 2009 amendments to the RMA that imported the caselaw concept of the permitted baseline in a limited way into the RMA, the High Court in *Keystone Ridge Limited v Auckland City Council* stated:³

As Salmon J pointed out in *Smith Chilcott*, it is not a matter of what is likely to occur, but a matter of eliminating anything which is, to use Chisholm J's words, "purely hypothetical possibilities which are out of touch with the reality of the situation". This is not a test of likelihood, nor a test which requires evidence as to what will occur or be likely to occur in the absence of the development under consideration.

Rather, it is an issue of judgment for the Court...

13 Factually, Ms Martin has undertaken an additional assessment of the proposed permitted baseline against the provisions of the District Plan. This occurred following comments raised during the hearing. That assessment has confirmed that the example used is credible and non-fanciful. That assessment is attached as **Appendix 2** to these submissions.

14 In respect of carparking, the permitted activity requirements (Bus87) can be complied with through a range of options. Noting that due to the National Policy Statement for Urban Development, after February 2022 the Plan can no longer control for carparking in this way.

15 In respect of landscaping and trees along the frontage, the relevant rule is Bus19. The Dawson Street frontage is a total (combining three RTs) of 49.5 m long, however the front boundaries of the sites separately (Records of Title) are 2.75m, 32.48m and 14.27m long from north to

² *Opiki Water Action Group Inc v Manawatu Wanganui Regional Council* Environment Court, Wellington, 12 August 2004, at [12].

³ High Court, Auckland, 3 April 2001, AP24/01 at [52]-[58].

south. Insets in the side of the building for two trees on 3 Dawson Street meet the landscaping requirements.

16 The applicant's architects have also confirmed that fire rating in respect of building up to the boundary can easily be addressed through the use of materials. For example, this can be appropriately treated glass, and does not require a solid block wall as suggested by submitters during the hearing.

17 Overall the main bulk and effects of the permitted baseline building would be the same as that illustrated in the application. Correct application of the permitted baseline is a key to the assessment of effects of this application. Many submissions presented are asserting effects that are generated by the permitted baseline, rather than simply focusing on any alleged effects in excess of the permitted baseline.

Consultation

18 Contrary to adverse commentary in the submissions as to a failure by the applicant to consult, there is no obligation on an applicant to undertake consultation in respect of an application.⁴ Regardless, in this case, and as set out in the evidence and primary legal submissions, the applicant has adopted design changes to mitigate the effects of this application on the surrounding neighbours. This has also included an offer to attend the Boon Architects offices to discuss the proposal and shading effects assessments.

Mitigation

19 At paragraphs [21], [45], [46] Ms Ongley appears to be submitting at the matter of discretion that requires consideration of mitigation, and suggests that this means that mitigation must occur following design of the proposal. This is illogical. The design of the proposal should include the mitigation proposed. This is what occurred in this case, and

⁴ RMA, section 36A.

as previously set out in paragraph [25] of my opening submissions, extreme care has been taken to ensure the development is responsive to the surrounding environment.

20 Further amendments to the design were made throughout the notification and submission process in response to matters raised by opponents. It is important to record that when considering the design, including mitigation measures, and any subsequent migration proposed in response to concerns raised by neighbours and submitters, the applicant has not limited the type of mitigation that could be imposed based on its reading of the relevant assessment criteria. The mitigation that forms part of the proposal has addressed effects, including privacy, shading, which go well beyond mitigating the effects which can be considered by the Commissioner.

21 Appropriate mitigation has occurred and, contrary to Ms Ongley's submission at [46], there is no fatal flaw in that regard.

Part 2

22 In my opening submissions I addressed you on the relevance of Part 2 to decision making for a restricted discretionary activity. Contrary to the submission made by Ms Ongley at [53], Part 2 can only be considered to the extent it is relevant to the matters of discretion. Which, as set out above, in respect of amenity, are limited in this case to a subset of amenity and do not more broadly extend to the quality of the environment.

Weight of evidence

23 It is acknowledged that the evidence of the submitters should not simply be rejected by the Commissioner. All evidence should be carefully considered within the context of the statutory and Plan constraints that this decision is limited to.

24 Contrary to statements in Mr Jackson's supplementary evidence, the issues with Mr Jackson's independence remain to be determined by the

Commissioner and become a question of weight. Those matters have already been addressed. As previously acknowledged, Mr Comber has relevant experience but is not independent in this case. While the applicant's experts have provided an objective assessment as required by the Environment Court's Code of Conduct and their ethical duties, the evidence from the submitters cannot be anything other than subjective in this case.

25 The ability for submitters to be influenced by personal feelings or opinions, including the strength of their attachment to the area, and the resulting subjectivity of evidence, in respect of amenity values is confirmed in the *Blueskin Energy Ltd v Dunedin City Council* case referred to, and quoted, by Ms Ongley in her footnote 6. The subjective nature of this evidence must be weighed against the objectivity of the applicant's witnesses.

26 In respect of the architectural evidence, Mr Bain has provided an objective assessment of the proposed design. This is in contrast to Mr Jackson's statements as to how he would have designed the building differently, or how he would have undertaken the assessment differently. Mr Jackson's approach is of limited assistance to the Commissioner given the scope of discretion the Commissioner has in respect of this application. This was confirmed in response to a question from the Commissioner as to what he could do with that evidence of design critique. The evidence of Mr Bain should be preferred over that of Mr Jackson.

NPS- UD

27 In respect of the National Policy Statement for Urban Development, the submitters have raised that as the proposal is for a single household unit, there is no support from the NPS for it. No specific provision or reference to the NPS-UD was provided in support of that proposition. The NPS-UD does not have a provision of that nature.

28 Regardless, consistent with the case law outlined above on restricted discretionary activities, while the NPS-UD remains relevant to this

application under section 104, it is only relevant to the extent it is relevant to the matters over which the Plan has restricted discretion.

Conditions

29 Following the hearing, Ms Martin and Mr Balchin have conferenced. As a result, an updated set of conditions is included as Appendix 1. In summary, in addition to grammatical and formatting changes, those changes (from the version included with Ms Martin's evidence) include:

29.1 Amendment to condition 2i to include the low glare requirement, amend the LRV from being between 30 and 100% to being between 30 and 80%, and an amendment to the listed colours from light *sandy* to light *brown*.

29.2 The addition of reference to approved building consent plans at the end of condition 5.

29.3 Amendments to the structure of the fencing and landscaping plan conditions 6 and 7.

29.4 Movement of condition 13 (monitoring) to the end of the condition set.

29.5 Deletion of the stormwater condition (previous condition 15).

29.6 Replacement of the noise condition with a new noise condition.

30 The conditions are entirely agreed by Ms Martin and Mr Balchin, including the deletion of the conditions relating to the glazed façade VLT requirement (previous condition 2i) and earthworks, construction and construction traffic management plan conditions (previously conditions 11 and 12) as sought through Ms Martin's evidence. The condition set is presented as part of this application, and no conditions are in dispute.

Evidence

- 31 In response to matters of evidence raised in Ms Ongley's submissions/during the hearing, the following matters are briefly addressed in relation to shading and mitigation.
- 32 At paragraph [34] of Ms Ongley's submissions, concerns regarding shading effects on the Stewarts were raised. The shading diagrams prepared by the applicant illustrate that shading occurs on the Stewarts' property for both a permitted baseline development and the proposed development. That is evident on drawings SK5.01 and SK5.03. There is no technical evidence disputing these shading assessments. Where shading is due to the proposed increase in height of the current building (refer to SK5.02), it is limited to:
- 32.1 Relatively small patches and slivers in terms of area, a noticeable proportion of which are on the roof and the western side of the building rather than the northern side which has the main living areas;
- 32.2 With most shade on any location disappearing from one hour to the next, such as from 4pm – 5pm in June.
- 33 Where the drawings SK5.01 to SK5.04 have additional shading annotated, 'additional shading' refers to shading that is additional to that existing. It does not subtract permitted baseline shading which is instead illustrated with 'Infringing Shadow' colour.
- 34 Related to this issue, the Commissioner heard lots of evidence about shading impacts on submitters. As discussed during the hearing, the only relevant shading effects are the shading differences between the permitted baseline and the effects of this proposal. The annotated shading diagrams provided during the hearing will assist the Commissioner in assessing that difference. Specifically, the notations show where shading will occur (ie on walls, windows or on a roof) as not all shading has the same effect and the context of any difference is important.

35 In response to the concerns raised at paragraph [45] regarding mitigation, the building colour and planting as recommended by Ms Griffiths have both been addressed through conditions of consent (refer conditions 2(i) and 6-10).

Conclusion

36 For the reasons set out above, through the applicant's evidence and presentation to the Commissioner, the applicant submits that the resource consent sought should be granted on the conditions attached as Appendix 1.

Date: 8 October 2021



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S F Quinn
Counsel for the applicant

Appendix 1 - Proposed conditions of consent

Subject to the following conditions imposed under Section 108 of the Resource Management Act 1991:

1. The use and development of the site shall be as described within the application made to council and titled Resource Consent Application and Assessment of Environmental Effects, Apartment Addition – 1-3 Dawson Street – Rev 1 – Date 12/02/2021; Including all subsequent information submitted by the applicant, and shall be substantially in accordance with the plans by BOON team-architects detailed below, and all referenced by the Council as consent number LUC20/47890;

Drawing Number	Date	Drawing Name
SK0.01	09.07.2021	Proposed Site Plan
SK2.01	09.07.2021	Parking Plan
SK2.02	09.07.2021	3 Dawson Proposed Ground Floor
SK2.03	09.07.2021	3 Dawson Proposed Level 1
SK2.04	09.07.2021	3 Dawson Proposed Level 2
SK3.01.1	09.07.2021	West Elevation - Proposed Only
SK3.02.1	09.07.2021	North Elevation - Proposed Only
SK3.03.1	09.07.2021	East Elevation - Proposed Only
SK3.04.1	09.07.2021	South Elevation - Proposed Only

Façade Composition, External Building Form and Design Features

2. Final detailed design plans of the building shall be submitted to Council’s Planning Lead, or nominee, for certification prior to the application for a building consent being lodged. The final detailed design plans shall confirm the following building design elements are achieved:

i. The finish treatment, materials and colours of the external cladding shall be low glare and have a light reflectance value of between 30 and 80% LRV and be a colour that is a neutral palette restricted to light brown, grey, cream or blue tones.

3. The final detailed design plans shall be consistent with the drawings referred to under Condition 1 above and the consent holder shall provide a report confirming consistency prepared by a suitably qualified and experienced architect to Council’s Planning Lead, or nominee, for certification prior to the building consent being lodged. The report shall specifically address Condition 2. All works shall then be carried out in accordance with the details certified by the Council, and thereafter retained and maintained, to the satisfaction of the Council’s Planning Lead or nominee.

4. The maximum building height, including any ancillary components, shall not exceed the maximum heights demonstrated on plans listed in the table under Condition 1. All maximum heights shall be measured from a recognised Taranaki Datum height within the site.

5. A survey certificate provided by a Licensed Cadastral Surveyor shall be supplied to the Council at foundation pour for the concrete slab to confirm slab height is as per the approved building consent plans. Then a further survey certificate shall be supplied within one calendar month following practical completion of the building to confirm that the overall height of the building does not exceed the heights specified as per condition 4 and the approved building consent plans.

Fencing and Landscaping Plan

6. A final detailed Fencing and Landscaping Plan demonstrating all measures being applied to enhance visual amenity along Dawson Street and along the sites eastern elevation, achieving the matters outlined in Condition 7 a) to c) below, shall be submitted for certification by Council’s Planning Lead, or nominee, prior to the building consent being lodged.

7. The final Fencing and Landscaping Plan shall demonstrate provisions for either a specimen tree or trees (s) between the proposed building and 122/122A St Aubyn Street and/or any other mitigation including the following:

a) Detailed layout of all hardscape materials including:

- type, surface and location; and
- type, style, and location of all fencing proposed

b) Detailed layout of all landscape plantings including:

- botanical and common names of all plant species
- quantities and size of all plant species
- all specimen trees being a minimum height of 2m high at time of planting (height taken from top of soil level in ground) and being a minimum planter bag size of PB95 or equivalent volume.
- schedule of quantities of all planting included on the Fencing and Landscaping Plan

c) Detailed Planting Specification that demonstrates:

- all soil media, plant, stake and mulching materials to be used
- existing soil preparation including preparation of topsoils and subsoils.
- installation of all new soils where applicable
- programme of Maintenance and Defects per calendar month for 24 months

8. Fencing and landscaping in accordance with the certified Fencing and Landscaping Plan shall be implemented within the first planting season after the completion of construction of the building.

9. On completion of the fencing and landscaping, the consent holder shall provide certification from a landscape architect that these works have been completed in accordance with the certified Fencing and Landscaping Plan to the Council's Planning Lead no less than 30 days following the completion of the fencing and landscaping.

10. For the duration of this consent, the consent holder shall maintain all fencing and planting in good condition. Any fencing or planting not in good condition shall be replaced as soon as reasonably possible.

Water Connections

11. Prior to occupation, the building extension shall be connected to a water supply system which complies with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008.

Utilities

12. Prior to the commencement of any site works associated with the project, the consent holder shall accurately identify the location of existing underground network utilities (www.beforeudig.co.nz). Construction plans must identify the locations of the existing network utilities and appropriate physical indicators must be placed on the ground showing specific surveyed locations. All construction personnel, including contractors, are to be made aware of the presence and location of the various existing network utilities which traverse, or are in close proximity to the project area, and the restrictions in place in relation to those existing network utilities.

Roading

13. A residential vehicle crossing for access to the dwelling within Lot 1 DP 10510 shall be constructed to the Standard specified in the Council's Land Development & Subdivision Infrastructure Standard (Cl.3.3.17.1).

Advice Note

a) An application with the appropriate fee shall be made to the Council for a new Vehicle Crossing, and upon approval the vehicle crossing is to be installed by a Council approved contractor at the applicant's cost

Noise

14. The building shall be designed and constructed in accord with an acoustic design certificate from an acoustic engineer so that the level of noise received within any noise sensitive room, excluding noise from construction work, does not exceed 40 dBA L10 between 10pm and 7am on any day. The acoustic design certificate shall be provided to Council's Planning Lead, or nominee, for certification at the time of the building consent application.

Monitoring

15. The consent holder must pay the council's actual and reasonable costs incurred to ensure compliance with the conditions attached to this consent.

Appendix 2 - Permitted baseline assessment

Our Reference : 190983

28th September 2021

BEFORE THE INDEPENDENT HEARING COMMISSIONER WASLEY APPOINTED BY NEW PLYMOUTH DISTRICT COUNCIL

UNDER the Resource Management Act 1991

IN THE MATTER OF an application (Reference: **LUC21/47890**) under Section 88 of the Act by Regina Properties Limited to the New Plymouth District Council for land use consent for a residential apartment addition (one additional storey) to the top of an existing commercial building in the Business B Environment Area at 1-3 Dawson Street, New Plymouth.

Explanation of Permitted Baseline Example – List of permitted activity requirements for the site and explanation of how all are met.

Rule	Permitted Standard	Explanation of compliance
<p>Bus13 - maximum HEIGHT in the BUSINESS B ENVIRONMENT AREA</p>	<p>10m</p> <p>In addition, a single roof tower may exceed the permitted HEIGHT of a BUILDING by up to 5m provided that the roof tower is not greater than 0.6m in horizontal dimension nor higher above GROUND LEVEL than the horizontal distance between the tower and the nearest dwelling in a RESIDENTIAL, OPEN SPACE or RURAL ENVIRONMENT AREA.</p> <p>And, in addition, any attachment to a BUILDING or roof tower may exceed the permitted HEIGHT provided that the sum of the attachment's three dimensions does not exceed 5.5m (HEIGHT plus width, plus depth).</p>	<p>The building is a maximum of 10 m high.</p>

Rule	Permitted Standard	Explanation of compliance
<p>Bus19 - landscaping of ROAD BOUNDARIES for SITES within BUSINESS B ENVIRONMENT AREAS (excluding TEMPORARY BUILDINGS)</p>	<p>1) One TREE per six full metres of ROAD BOUNDARY shall be planted and maintained.</p> <p>2) The TREE(S) shall be located on the SITE anywhere within 5m of the ROAD BOUNDARY.</p> <p>3) The TREE(S) shall be a minimum of 1.5m in HEIGHT at installation.</p> <p>Where existing TREES located within this area are to be retained, these may be used as part of the required landscaping provided they meet the above conditions.</p>	<p>The existing building and its landscaping along the Regina Place and Dawson Street road boundaries are maintained under the current land use consent for 1 Dawson Street. The rule is therefore not applicable to these road boundaries.</p> <p>The Dawson Street frontage is a total (combining three RTs) of 49.5 m long however the front boundaries of the SITES separately (Records of Title) are 2.75 m (NPDC landscape strip), 32.48 m (1 Dawson Street) and 14.27 m (3 Dawson Street) long from north to south. The NPDC-owned landscape strip does not have a sufficiently long boundary to require a tree, 1 Dawson Street has existing consented development as explained earlier and 3 Dawson Street requires two trees, with regard to the respective lengths of road boundaries.</p> <p>Insets in the side of the building for two trees on 3 Dawson Street meets the landscaping requirements, noting that only height of trees (not width) is specified in the ODP (1.5 m at installation, to 4 m high as per the definition), so insets could be narrow to facilitate the likes of pencil pines or lancewoods.</p>
<p>Bus21 - requirement for financial contributions for DWELLING HOUSES</p>	<p>meets the requirements specified in Appendix 5</p> <p>The requirements of Appendix 5 are not repeated here for brevity.</p>	<p>Should the permitted baseline example contain additional dwelling houses, financial contributions for infrastructure and community facilities can be provided to meet the permitted requirements. The examples comply.</p>

Rule	Permitted Standard	Explanation of compliance
<p>Bus22 - requirement for sound attenuation of any BUILDING (excluding TEMPORARY BUILDINGS)</p>	<p>shall be designed and constructed in accord with an acoustic design certificate from an acoustic engineer so that the level of noise received within a NOISE SENSITIVE ROOM, excluding noise from CONSTRUCTION WORK, does not exceed 40 dBA L₁₀ between 10pm and 7am on any day</p>	<p>Should the permitted baseline example contain additional dwellings, noise sensitive rooms can be constructed to the standard specified. The examples comply.</p>

Rule	Permitted Standard	Explanation of compliance
<p>Earthworks – restrictions based on slope of land: Bus53 all other EXCAVATION and FILLING on a slope</p>	<p>on an AVERAGE SLOPE of up to 22 degrees or on an AVERAGE SLOPE greater than 22 degrees where:</p> <ol style="list-style-type: none"> 1) the HEIGHT of FILL or depth of EXCAVATION is no greater than 1.5m in the vertical; or 2) the HEIGHT of the slope on which EXCAVATION or FILLING is being undertaken is no greater than 3m in the vertical; or 3) the slope created by the EXCAVATION or FILLING is no greater than: <ol style="list-style-type: none"> (a) 3m in HEIGHT in the vertical; or (b) 22 degrees. <p>Where a slope is benched, no bench shall be greater than 3m in HEIGHT and the benching shall not result in an AVERAGE SLOPE that is steeper than existed prior to the EXCAVATION or FILLING.</p>	<p>The average slope of the sites is less than 22 degrees and no benching is required to support development.</p>
<p>Bus58 - maximum quantity, measured in non-compacted form</p>	<p>20m³ per 100m² of SITE area in any 12 month period</p>	<p>1 Dawson Street has a SITE area of 932 m² with an associated 186.4 m³ permitted volume of earthworks.</p> <p>3 Dawson Street has a SITE area of 546 m² with an associated 109.2 m³ permitted volume of earthworks.</p> <p>In consultation with the project architects it has been confirmed that the sites can be developed to the permitted baseline examples within the permitted quantities.</p>

Rule	Permitted Standard	Explanation of compliance
Bus59 - reinstatement of earthworks for any EXCAVATION or FILLING of greater than 150m ³ per SITE in any 12 month period	<p>all bare earth shall, as soon as is practicable, but not later than six months from the date of disturbance, be:</p> <ol style="list-style-type: none">1) stabilised so that no earth moves off-SITE or presents a danger to life or property; and2) vegetated, SEALED, paved, metalled or built over	Should greater than 150 m ³ of excavation or filling occur on 1 Dawson Street, it would be stabilised on-site, and would be sealed and built over within six months of initial disturbance.

Bus82 - noise generated by CONSTRUCTION WORK, measured in accordance with NZS 6803P:1984 The Measurement and Assessment of Noise from Construction, Maintenance and Demolition Work

meets the conditions for a permitted activity as specified in Table 12.1 in Appendix 12

Table 12.1 conditions:

Maximum noise levels, measured at any point within the boundary of any RECEIVING SITE located within the RESIDENTIAL ENVIRONMENT AREA:

1.1:

Monday to Friday: 7am-7pm
Saturday: 10am-6pm
excluding public holidays on any day

L₁₀ 65dBA

1.2:

at all other times (including all public holidays)

meets the underlying standards for the RESIDENTIAL ENVIRONMENT AREA as specified in standards 7.1 and 7.2 of this table

(standards not repeated here for brevity)

Maximum noise levels, measured at any point within the boundary of any RECEIVING SITE located within the BUSINESS, INDUSTRIAL or OPEN SPACE ENVIRONMENT AREAS, or at the NOTIONAL BOUNDARY of any RECEIVING SITE located within the RURAL ENVIRONMENT AREA

Construction activities can be controlled such that they will comply with the standard when measured at any receiving site, including those in the Residential Environment Area along Hine Street.

Rule	Permitted Standard	Explanation of compliance
	<p>1.3:</p> <p>on any day: 7am-7pm</p> <p>L₁₀ 70dBA</p> <p>1.4:</p> <p>at all other times</p> <p>meets the underlying standards for the relevant ENVIRONMENT AREA as specified in standards 7.3 to 7.12 of this table</p> <p>(standards not repeated here for brevity)</p>	

Rule	Permitted Standard	Explanation of compliance								
<p>Bus85 - noise generated by any other activity (excluding TEMPORARY EVENTS), measured in accordance with NZS 6801:1991 Measurement of Sound and NZS 6802:1991 Assessment of Environmental Sound</p>	<p>meets the conditions for a permitted activity as specified in Table 12.1 in Appendix 12</p> <p>Standards 7.3 and 7.4 for the Business B Environment Area:</p> <table border="1" data-bbox="539 560 1016 879"> <tbody> <tr> <td data-bbox="539 560 880 636">on any day: 7am-10pm</td> <td data-bbox="880 560 1016 636">L₁₀ 50dBA L_{max} n/a</td> </tr> <tr> <td data-bbox="539 636 880 713">10pm-7am</td> <td data-bbox="880 636 1016 713">L₁₀ 40dBA L_{max} 70dBA</td> </tr> <tr> <td data-bbox="539 713 880 790">on any day: 7am-10pm</td> <td data-bbox="880 713 1016 790">L₁₀ 60dBA L_{max} n/a</td> </tr> <tr> <td data-bbox="539 790 880 879">10pm-7am</td> <td data-bbox="880 790 1016 879">L₁₀ 60dBA L_{max} 75dBA</td> </tr> </tbody> </table>	on any day: 7am-10pm	L ₁₀ 50dBA L _{max} n/a	10pm-7am	L ₁₀ 40dBA L _{max} 70dBA	on any day: 7am-10pm	L ₁₀ 60dBA L _{max} n/a	10pm-7am	L ₁₀ 60dBA L _{max} 75dBA	<p>The land use activities in the permitted baseline examples would comply with the standards, noting the office, residential and carparking activities do not typically generate significant noise, and that walls of the building will further reduce noise.</p>
on any day: 7am-10pm	L ₁₀ 50dBA L _{max} n/a									
10pm-7am	L ₁₀ 40dBA L _{max} 70dBA									
on any day: 7am-10pm	L ₁₀ 60dBA L _{max} n/a									
10pm-7am	L ₁₀ 60dBA L _{max} 75dBA									
<p>Bus86 - VEHICLE ACCESS POINT</p>	<p>meets the conditions for a permitted activity as specified in Part A in Appendix 23</p>	<p>The existing vehicle access points would be utilised for the permitted baseline examples. As per Part A in Appendix 23: 23.1(d), Table 23.5 and Diagram 23.6 require sight distances of 40 m and intersection separation distance of 30 m.</p> <p>Sight distances of some 50 m along Hine Street and 50-60 m along Dawson Street are achieved and the southernmost vehicle access point is 38 m from the St Aubyn / Dawson Street intersection.</p> <p>The maximum permitted combined width of vehicle access points on any site is 50% of the road boundary (i.e., for 1 Dawson Street, $32.48 / 2 = 16.24$ m, the vehicle access point is some 6.4 m wide which complies. 3 Dawson Street $14.27 / 2 = 7.14$ m, the vehicle access point width is 6 m which complies.</p> <p>Both existing vehicle access points comply for use in the permitted baseline examples.</p>								

<p>Bus87 – parking</p> <p>And</p> <p>Bus90 - on-SITE MANOEUVRING SPACE</p> <p>And</p> <p>Bus91 - on-SITE QUEUING SPACE</p>	<div data-bbox="539 121 902 363" style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p>meets the conditions for a permitted activity as specified in Part B in Appendix 23</p> </div> <p>and</p> <div data-bbox="539 429 916 576" style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p>meets the conditions for a permitted activity as specified in Part E in Appendix 23</p> </div> <p>and</p> <div data-bbox="539 641 913 836" style="border: 1px solid black; padding: 5px;"> <p>meets the conditions for a permitted activity as specified in Part F in Appendix 23</p> </div>	<p>The conditions of Parts B, E and F of Appendix 23 are not repeated here for brevity but to summarise, activities are required to provide vehicle and bicycle parks for use by occupants, staff and visitors in accordance with Table 23.8, Table 23.9 and the Building Act. Parks are required to suit vehicles with dimensions less than a medium service vehicle (e.g., private cars). Activities are required to provide on-site manoeuvring space such that vehicles can enter and exit the site in a forward motion, and queuing space of 6 m between the road boundary and the first carpark is required.</p> <p><u>Example 1: Residential Development:</u></p> <p>A 10 m high building typically equates to approximately 3 storeys.</p> <p>The ODP has a requirement (Table 23.9) for 2 parks per dwelling with four or less bedrooms, and 3 parks for 5 or more bedrooms.</p> <p>1 Dawson Street has the current land use consent for the building, which has associated parks, and does not have a loading, standing or queuing space. The existing carparks become a basement carpark, remaining for the office uses of the existing building.</p> <p>Two, four-bedroom apartments are constructed above on levels one and two.</p> <p>On 3 Dawson Street, the current carparks (17) become a basement carpark.</p> <p>Two, five-bedroom apartments are located above on levels one and two.</p> <p>The total parking requirement for the apartments is 10 parks. All of these are provided on 3 Dawson Street, which is of dimensions (38.22 m long by 14.27 m wide) suitable to accommodate a 6 m queuing space, and thereafter at least 11 x 90-degree nose-in (right turn) parks conservatively large at 2.8 m wide and 4.9 m long, with a conservatively large aisle width of 8.4 m. As the parks and aisle widths comply with the standards which have been designed for light service vehicles and 90 percentile cars, manoeuvring is therefore able to comply with the tracking curve of diagram 23.21.</p> <p>No additional loading or standing spaces are required as dwellings generate no loading requirements, and the existing consented activity is unchanged.</p> <p>The four- and five-bedroom apartments are considered a non-fanciful example, based on the approximate footprint of the proposed building within 3 Dawson Street but noting that a fourth storey is very unlikely to be accommodated within 10 m, the bottom floor is committed completely to parking, and the area remaining for development on 1 Dawson Street is less than that on 3 Dawson Street (some 380 m² versus 546 m²). Should four, bedroom apartments be considered more feasible, 12 slightly smaller carparks could be accommodated on 3 Dawson Street and remain compliant with the permitted dimension standards.</p> <p><u>Example 2: Carpark Building Development</u></p> <p>The whole three storey building is committed to covered carparking, as per the NPDC carparking building at 20 Powderham Street. The existing building with land use consent maintains its existing carparks on the basement level and does not have a loading or standing space, and the remainder of the car parks are available for use by workers who commute to the area. This is considered to be a reasonable example due to high demand for inner city parking and the close proximity of the site to the central city, a walk of some 400 m to Devon Street. Parking</p>
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Rule	Permitted Standard	Explanation of compliance
		supply has also decreased recently due to the NPDC parking building mentioned being closed due to requiring earthquake strengthening. The covered carparking has no associated loading and standing requirements. Park, aisle and manoeuvring dimensions and queueing space are able to be configured on the sites such that they comply.
<p>Bus92 - requirement to provided landscaping where a SITE located within the BUSINESS B or C ENVIRONMENT AREAS contains eight or more formed car parking spaces or an equivalent sized parking area, visible from an adjoining ROAD</p>	<ol style="list-style-type: none"> 1) One TREE per eight spaces shall be planted and maintained. 2) The TREE(S) shall be located anywhere within the parking area or between the parking area and the ROAD 3) The TREE(S) shall be a minimum of 1.5m in HEIGHT at installation. 4) Where VEHICLE parking or manoeuvring is located within the DRIPLINE AREA of any of these TREES barriers shall be installed to ensure that VEHICLES do not damage these TREES. 5) Where existing TREES located within this area are to be retained, these may be used as part of the required landscaping provided they meet the above conditions. 	<p>This rule is not considered to be relevant as in both examples above all parking spaces are concealed in buildings and are not visible from the adjoining road.</p>

Rule	Permitted Standard	Explanation of compliance
<p>OL63 - maximum HEIGHT within the viewshaft: Cameron Street</p>	<p>Sec 1: 5.5m Sec 2: 14m Sec 3: 10m or the maximum HEIGHT for the underlying ENVIRONMENT AREA, whichever is the lesser</p>	<p>The site is in Section 3 of the Cameron Street viewshaft, with an associated permitted height of 10 m. The permitted baseline examples are no greater than 10 m in height. The examples comply.</p>
<p>OL71 maximum HEIGHT within the viewshaft: - Marsland Hill</p>	<p>Sec 1: 5.5m Sec 1A: 7.5m Sec 2: 10m Sec 3: 14m or the maximum HEIGHT for the underlying ENVIRONMENT AREA, whichever is the lesser</p>	<p>The site is in Section 3 of the Marsland Hill viewshaft, and the 10 m underlying Business B maximum height of 10 m applies. The permitted baseline examples are no greater than 10 m in height. The examples comply.</p>