BEFORE THE WHANGAREI DISTRICT COUNCIL

IN THE MATTER OF	The Resource Management Act 1991
AND	
IN THE MATTER OF	A resource consent application by Mr Jeff Joy for the construction and operation of an Oral Health Centre located at 63 and 65 Maunu Road, Whangarei

STATEMENT OF PLANNING EVIDENCE OF ALISTER JOHN HARTSTONE

22 November 2017

1. Introduction

1.1 My name is Alister John Hartstone. I am a director of Set Consulting Limited, a company established in early 2016 that provides planning consultancy services to both local government and private clients. I have practised as a planner across a wide range of roles since 1996, including responsibilities as Resource Consents Manager at Whangarei District Council from 2005 to 2016. I hold a Bachelor of Regional and Environmental Planning with Honours from Massey University. I am a Full Member of the New Zealand Planning Institute.

1.2 I confirm that I have viewed all the relevant information, including the Council Section 42A report and submissions received during the public notification period. I confirm that the evidence on planning matters that I present is within my areas of expertise and I am not aware of any material facts which might alter or detract from the opinions I express. I have read and agree to comply with the Code of Conduct for expert witnesses as set out in the Environment Court Consolidated Practice Note 2014. The opinions expressed in this evidence are based on my qualifications and experience and are within my area of expertise. If I rely on the evidence or opinions of another, my evidence will acknowledge that.

2. Summary of Evidence

2.1 This evidence is provided in support of the resource consent application made by Mr Jeff Joy for the construction and operation of an Oral Health Clinic located on a site at 63 and 65 Maunu Road, Whangarei. This evidence, as well as that prepared by Mr Dean Scanlen, Engineering Outcomes Limited, and Ms Holly Nichol, Landscape Architect, has been pre-circulated prior to this hearing.

2.2 My evidence is in response to the Whangarei District Council Section 42A report, which recommends declining the application. For the purpose of brevity, I do not intend to repeat matters where there is agreement in planning evidence. Similarly, I will refer to the contents of the resource consent application as lodged with the Council where appropriate (contained in Appendix 1 of the Agenda).

2.3 My evidence therefore focuses on the key issues where there is a divergence of views on planning matters. The structure of my evidence is therefore as follows:

a) Summary of Application and Status
b) Application of Permitted Baseline
c) Character and Amenity Effects
d) Positive Effects
e) Effects Assessment Summary
f) Comment on Submissions Received
g) Assessment of Objectives and Policies
h) Part 2 of the Resource Management Act 1991
i) Conclusion

2.4 Where necessary, I will refer to the technical evidence of Mr Scanlen and Ms Nichol and a statement to be provided by Mr Jeff Joy at the hearing.

3. Summary of Application and Status

3.1 I can confirm that the proposed activity description and status as a discretionary activity is as described in the Section 42A report.

3.2 A minor change has been made to the nature of the landscaping along the road frontage as detailed in the evidence of Ms Nichol. In response to a Section 92 request, a landscaping plan and statement was provided from Mr James McLean, Landscape Architect. Ms Nichol has reviewed that plan and statement, and subsequent information provided by Ms Donaghy relating to urban design matters on behalf of the Council. As a result, the landscape planting plan has been revised. The amendments to the planting are outlined in the 'Mitigation' Section of Ms Nichols evidence with a planting plan attached.

3.3 A building consent application was lodged for the proposal in late July 2017. That application is currently being processed by the Council. A full set of plans as lodged with the building consent application are provided as part of this evidence. Those plans note a minor change to the proposed height of the building. At the time of lodgement, the plans showed a maximum height above ground level of 8.078m above ground level (pg 62 of the Agenda) The plans now attached show a slightly reduced building height of 7.995m above ground level. The permitted building height in the Living 1 Environment is 8 metres.

3.4 No other changes are made to the application as originally lodged with the Council.

4. Application of Permitted Baseline

4.1 In paragraphs 5.1.5 – 5.1.10 of the application as lodged, a permitted baseline that may be used to assess the extent of adverse effects under Sections 95D(b) and 104(2) was set out. It is apparent in reading the Section 42A report that the reporting planner does not accept that a permitted baseline is applicable. Paragraph 6.2.4 recommends that *'….any consideration of the permitted baseline be set aside in this instance.'*

4.2 Reasons are provided as to why the permitted baseline should not be applied. I do not agree with the reasons stated or the resulting recommendation made not to adopt a permitted baseline. I accept that a decision maker has discretion to apply the permitted baseline for the purpose of assessing the extent of effects under Section 104(2). In my opinion, I consider it is appropriate for the Hearing Commissioner to exercise discretion in this case and apply a permitted baseline in considering the effects, and I set out the reasons why below.

4.3 The permitted baseline allows a decision maker to compare the effects of a proposed activity with the effects of an activity that could be carried out on the subject site as a permitted activity. Any proposed activity that may form part of a permitted baseline must be realistic and non-fanciful – it must be an activity that could be readily and reasonably foreseen taking place on the subject site. In my opinion, the construction of one or possibly two residential units on the subject site, as replacement for the two existing dwellings, located in the Living 1 Environment, is a foreseeable and realistic activity that may take place on the site. As a corollary point, if it stands that construction of one or more residential units as a permitted activity on residentially zoned land may not be considered as a relevant permitted baseline, then in my opinion it may be difficult to apply a permitted baseline in any circumstance.

4.4 The Section 42A report makes comment in paragraph 6.2.3 that, technically, the proposal will not comply with setbacks or daylight angles with the internal boundary until such time as the lots are amalgamated. The response to this is two-fold. Firstly, amalgamation of the two lots can be carried out as a permitted activity. No consent is required from the Council to amalgamate two separate lots contained in separate certificates of title. In short, I believe the issue of amalgamation of titles is not relevant in determining whether to apply a permitted baseline assessment. Secondly, I believe it appropriate to consider two permitted baseline scenarios that the effects of the proposal can be assessed against. The first scenario is the amalgamation of lots and then construction of a single building complying with bulk and location requirements as proposed. The second scenario is retention of each lot as a separate title, and a single residential unit being built on each. It is noted that this baseline would account for a maximum of 30 vehicle movements per day for each of the two lots. I consider that both of these scenarios are realistic and non-fanciful outcomes as a permitted activity on the subject site.

4.5 Both in the assessment of the permitted baseline, and as a theme throughout the Section 42A report, concern is expressed regarding the visual amenity and design, size, and form of the proposed building. I have assumed that, in the round, the concern is that the building is of a scale and form that is considered to 'look like' or 'feel like' something other than a residential unit. The resulting opinion is that the building is not consistent and is incompatible with the existing receiving environment.

4.6 There are no rules in the Plan that address the design, size, and form of any building beyond the bulk and location rules listed in the Plan. Therefore, it is reasonable to assume that, as a permitted activity, a building of the design, size, and form proposed could be constructed on the site. While it may not 'look like' the other residential units in the vicinity, it is a permitted activity. In my opinion, there is no scope to argue that the design, size, and form of the building is such that the permitted baseline should not apply.

4.7 The permitted baseline has been adopted (correctly in my view) in considering and granting past resource consent applications similar to the one proposed. Paragraph 2.3.3 of the Section 42A report highlights some resource consent applications that have been considered in similar circumstances and have all been granted. In response to the Section 92 request, I drew attention to two particular decisions that I consider are particularly relevant in considering the current application. I attach them to this evidence for the Commissioners information and consideration. They are as follows:

- Decision issued by Mr Greg Hill, Hearing Commissioner, dated 19th January 2013 for the expansion of the existing Tui Medical Centre located on State Highway 14, Maunu
- Decision of the Environment Court for Beejay Limited and Johnston O'Shea Limited, consisting of a decision dated 28th October 2008, and final decision dated 29th January 2009 granting consent with conditions

4.8 I accept that these two decisions are not binding or precedent-setting in considering a substantive decision on the current application, as each case must be considered on its merits. However, as a matter of principle, these two decisions adopt a permitted baseline in considering effects of the proposal, particularly when addressing submittor concerns.

4.9 In the case of the Environment Court decision dated 28th October 2008, I draw the Hearing Commissioners attention to paragraphs 30-37 and 47-50. In doing so, I note that the relevant provisions for the Living 1 Environment have not changed significantly between the time of the Environment Court decision and the current application. While Chapter 6 Built Form and Development has been introduced into the Plan subsequent to this decision, the relevant rules have not changed the extent of what I consider to be a realistic and non-fanciful permitted baseline.

4.10 I note that some form of permitted baseline is referred to in the Section 42A report, as part of paragraph 6.7.4 relating to traffic movements, and paragraph 6.3.12 as it relates to effects on Mr and Mrs Olsen and Mr and Mrs McKay. More particularly, Paragraph 6.3.12 appears to suggest that as the proposed building complies with the relevant daylight, building setback, and building coverage rules, the effects are assessed as *'….directly provided for within the District Plan.'* I agree with those statements in the Section 42A report, but those statements need to be reconciled with the balance of the Section 42A report. Either these effects can be accounted for under the permitted baseline, or they can't. In my view, they can and should. If that is accepted, then I believe there is no basis to exclude the balance of the proposed activity from being assessed against a permitted baseline.

4.11 In conclusion, with regard to the application of a permitted baseline under Section 104(2), I consider a realistic and non-fanciful permitted baseline exists and can be applied in this instance. That permitted baseline, as outlined in the application as lodged, can account for any adverse effects arising from the bulk and location of the proposed building on the site. It can be used to assess the effects of traffic movements on both Maunu Road and North Street. In applying the permitted baseline, I consider that any effects associated with the design, size, and form of the proposed building can be disregarded.

4.12 Given that I consider the permitted baseline is relevant and should inform the assessment of effects, I do not agree with Section 6.3 Character and Amenity Effects or Section 6.7 Effects Assessment Summary contained in the Section 42A report.

5. Character and Amenity Effects

5.1 In my opinion, given that a permitted baseline can be applied to the development on the site, adverse effects relating to character and amenity are limited to the undertaking of a commercial activity on the site. It is not appropriate nor necessary to assess the design, form, and scale of the building as part of this assessment. I therefore agree with the statement in paragraph 6.3.12 of the Section 42A report as it relates to the concerns of Mr and Mrs McKay and Mr and Mrs Olsen.

5.2 The details regarding the commercial activity are contained in the application as lodged. All activity will take place inside the building, apart from access and parking. External noise is limited to the operation of air conditioning units and vehicles in the carpark, which will operate in accordance with the District Plan noise limits (and noting ambient noise generated by Maunu Road and State Highway 1). The maximum number of traffic movements have been assessed as 110 vehicles per day or 55 one-way movements. Mr Scanlens evidence is considered to adequately address those effects, specific matters raised in submissions, and has been accepted by the Council. Landscape planting is proposed in conjunction with the activity and evidence on the details of this planting and associated effects is provided in evidence from Ms Nichol.

5.3 It is accepted that North Street has a strong residential character. In my view, that character will not be adversely affected in any way that could be considered unacceptable by the granting of consent to the proposal. In terms of Maunu Road, it is agreed that it is not a pristine or intact residential environment. However, in my view, the Living 1 Environment is not intended to present as a pristine or intact residential environment. It does not 'fix' the current character or amenity to the present day, development in the Living 1 Environment is not limited to single-level villa-style residential units, and it does not specify that any buildings should 'look like' residential units.

5.4 The issue largely rests with compatibility and appropriateness of effects, which are terms repeated in the relevant objectives and policies in several places throughout the Plan. In my opinion, both the proposed building and associated activity are acceptable in terms of compatibility with the character and amenity of the receiving environment.

6. Positive Effects

6.1 It is recognised that Section 6.6 of the Section 42A report highlights potential positive social effects. No specific information was provided at the time of lodging the application regarding the extent of the positive effects. However, the applicant Mr Jeff Joy will provide more detailed information regarding both the local and wider benefits associated with the provision of the proposed centre at the hearing.

6.2 In my opinion, the positive effects associated with the proposed centre will be significant for both the District and wider Northland region. This is a relevant consideration in balancing the extent of both positive and adverse effects in making a decision under Section 104(1)(a).

6.3 I note that significant weight was given to the positive effects associated with the Tui Medical Centre consent attached to this evidence, to the extent that the positive effects were considered to outweigh any adverse effects.

7. Effects Assessment Summary

7.1 Given my opinion on the application of the permitted baseline, I disagree with the statement in the Section 42A report that *'The scale and commercial design of the proposed two-level building, over two land parcels is considered to be a departure from such existing development, creating a more dominant commercial feel, particularly on North Street residents….'*

7.2 The District Plan rules for the Living 1 Environment anticipate and provide for two-level buildings where they do not exceed 8 metres in height. A two-level building does not imply a *'commercial design'* or *'a commercial feel',* nor are they adverse effects of themselves. Any adverse effects will either fall within the permitted baseline or are adequately addressed by evidence of Mr Scanlen and Ms Nichol.

7.3 In my opinion, the adverse effects of the granting of consent are minor at worst, and are outweighed by the positive effects associated with the provision of a community-based oral health centre in Whangarei.

8. Comment on Submissions Received

8.1 I have received and reviewed the submissions received during the notification period. I understand that Council staff will address the submission lodged by Kirsty Chubb and Joseph O'Malley-Ostermeyer in support of the proposal that was received during the notification period but not recorded as such. The applicant does not object to this submission being presented.

8.2 I agree with the statement in paragraph 6.3.12 of the Section 42A report addressing the concerns of Mr and Mrs McKay and Mr and Mrs Olsen. I confirm that the applicant had met with these owners prior to lodgement of the application. While discussions were amicable, no agreement was reached on the proposal.

8.3 Mr Scanlens evidence addresses the concerns raised regarding traffic flows and pedestrian safety, and confirms his view that any effects on North Street residents will be non-noticeable and negligible, and therefore acceptable.

9. Assessment of Objectives and Policies

9.1 I concur with the identification of the relevant objectives and policies in the Section 42A report as they relate to this proposal. However, my conclusion as stated in the application as lodged is that the proposal is neither inconsistent nor contrary with the objectives and policies contained in Chapters 5, 6, and 22 of the Plan.

9.2 As a matter of hierarchy in preparing planning documents, objectives define policies, which then define rules. The Living 1 Environment sets out a number of objectives and policies, particularly in Chapter 5 Amenity, that focus on maintenance of existing character and amenity, and compatibility of activities. The resulting Living 1 Environment rules are intended to achieve those objectives and policies. If a building and/or activity generally complies and/or is consistent with the rules, then it stands that the objectives and policies will be met.

9.3 Therefore, in my view, given the building largely complies with the bulk and location requirements for building in the Living 1 Environment, it cannot be concluded that the scale, form, and any commercial design elements of the building is incompatible and therefore will not be consistent with some of the objectives and policies. More particularly, I do not agree with the statement in paragraph 7.2.5 of the Section 42A report that *'….the activity itself can be accommodated without significant effects but it comes down to a design that does not signify challenge or threaten the residential character of the locale'*. That statement might be considered valid for a proposed building that breaches various bulk and location rules, or possibly a high traffic-generating retail activity, but that is not the case here.

9.4 I consider that the objectives and policies need to be assessed in light of the activity, being a passive commercial activity carried out inside the proposed building, operating between the hours of 8am – 6pm Monday to Friday, with associated construction and operation of a carpark, and traffic movements. All evidence suggests that the activity will be quiet, adequate on-site parking can be provided, and that the effects of traffic are minor and acceptable. I therefore stand by my conclusion under paragraph 5.2.7 of the application as lodged.

9.5 The provision of landscape planting as detailed in Ms Nichols' evidence will assist in integrating the frontage of the site into the streetscape. In my view, this is a considerable improvement from the existing street frontage, and provides some additional benefit by opening up visibility along the frontage of both Maunu Road and North Street.

9.6 In summary, the difference in conclusions regarding consistency with the objectives and policies of the District Plan is linked directly to consideration of the permitted baseline. In my view, the permitted baseline is a relevant consideration and informs the extent of effects on the environment. As a result, the proposed building will form an acceptable part of the environment as envisaged by the objectives, policies, and rules in the Plan. The associated commercial activity and operation of the carpark have been assessed as having minor or less than minor effects, and those effects are considered acceptable in the receiving environment.

10. Part 2 of the Resource Management Act

10.1 The assessment of Part 2 matters in the application as lodged is presented on the basis of the High Court decision for R J Davidson Family Trust v Marlborough District Council [2017] NZHC 52. My understanding is that this decision is binding on the Environment Court and decision-makers at this time[1]. That decision records that decision-makers on any resource consent application can only have recourse to Part 2 of the Act if the relevant statutory planning documents (in this case the Whangarei District Plan) are invalid, incomplete, or uncertain. There is no evidence that the District Plan has any deficiencies that might require consideration of Part 2 matters in considering this application.

10.2 In the event that this approach is not valid at the time of the Commissioner making a decision on the application, then I am of the view that the proposal will satisfy the matters in Part 2 of the Act. I agree with the Section 42A report that the identified Section 7 matters are relevant. However, I do not agree with the statement that those relevant matters under Section 7 are not entirely achieved. Section 7 directs that decision-makers *'….shall have particular regard to….'* the matters listed as (a)-(j). There is no direction that any or all matters must be achieved by any proposal.

10.3 Regardless, in my view the granting of consent, taking into account both the permitted baseline and positive effects of the proposal, will serve to better achieve the purpose of the Act as stated in Section 5, than would be achieved by declining the proposal.

11. Conclusion

11.1 The disparity in opinions in planning evidence between the Section 42A report and the application as lodged and this statement of evidence reflect different views on the applicability of the permitted baseline. In short, I believe adopting the permitted baseline in assessing the effects is appropriate. I have provided reasons as to why it is appropriate, and those reasons are supported by past decisions issued by Council staff, Hearing Commissioners, and the Environment Court. In my view, the Commissioner should not adopt the recommended position in the Section 42A report that the permitted baseline be set aside.

[1] It is understood that leave has been granted to appeal this decision to the Court of Appeal

11.2 Evidence will be presented regarding the positive effects associated with the operation of the proposed centre, which extends beyond the local area. Those positive effects are significant and, in my view, would outweigh any localised adverse effects that extend beyond the permitted baseline arising from the granting of consent to the proposal.

11.3 Should the Commissioner adopt a permitted baseline approach, it follows that in my opinion, the effects of the proposal are acceptable and achieves the intent of the District Plan provisions and Part 2 of the Act. Consent can therefore be granted in accordance with Section 104 and 104B with conditions.

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Director, Set Consulting Limited

12. Attachments

- Revised Building Plans as lodged with Building Consent
- Hearing Commissioner decision for Bjornholdt and Johnston O'Shea (Tui Medical Centre)
- Environment Court Decision and Final Decision with consent and conditions for Beejay Limited and Johnston O'Shea Limited