
IN THE MATTER OF:

BAYHILL DEVELOPMENTS LTD

**RESOURCE CONSENT APPLICATION
NO. 102.2016.141.1**

TO TIMARU DISTRICT COUNCIL

**DECISION OF COMMISSIONER
21 April 2017**

**ALLAN CUBITT
Cubitt Consulting Limited
11 Bedford Street
St Clair
DUNEDIN 9012**

1. The Proposal

I was appointed as an independent Hearings Commissioner by the Timaru District Council to hear and determine Resource consent application 102.2016.141.1 lodged by Bayhill Developments Ltd. The resource consent application relates to the site located on the corner of The Bay Hill and Sefton Street East (State Highway 78), Timaru. It comprises the properties at 5 – 7 Sefton Street East and 10 and 16 – 26 The Bay Hill, which are legally described as:

- Lot 1 DP3530 (592m²)
- Part Lot 3 DP3530 (837m²)
- Part Lot 2 DP3530 (118m²)
- Part Lot 2 DP3530 (45m²)
- Part Lot 3 DP11427 (937m²)

These properties have a total site area of 2,529m².

The proposal is fully described in the application documentation at section 3 of the AEE and within the associated plans. Additional information was also provided by the Applicant on 7 October 2016. In summary, the application seeks consent to demolish the Hydro Grand Hotel building and to replace it with a mixed-use complex that will include retail, food and beverage, office, hotel and residential apartment components. The further information provided by the applicant confirmed the total floor area of each activity, as follows:

Activity	Quantity
General Retail	400m ² GFA
Food and Beverage	417m ² GFA
Office	2,298m ² GFA
Hotel	68 Rooms
Residential	32 Apartments

These activities will occur in three separate but linked buildings orientated around a northeast facing public courtyard. The proposed office building is located in the south-eastern corner of the site and comprises six storeys, and has an average height around 21.6 metres with a maximum height of 24.6 metres at the corner feature. The building will have a total gross floor area (GFA) of 2,608m², with the ground floor containing food and beverage tenancies and the upper floors containing offices.

The proposed residential building to be located at the centre of the site and will contain the residential apartments. This building has a maximum height of 23.5 metres, and contains 5,295m² GFA across seven floors. The building will be linked at the ground and mezzanine levels to the office building to accommodate a mix of retail, food and beverage activities. The food and beverage tenancies are to be located at the northern end of the building fronting The Bay Hill, while the retail tenancy will be on the south side of the ground floor, facing Sefton St East. The lobby and main entrance to both the apartments and hotel will be located in the centre of the building facing out towards the proposed courtyard. This area will also provide the connection to the proposed car park in the hotel building. The first-floor level will also contain a second retail or food and beverage tenancy facing The Bay Hill, and a second hotel lobby and meeting room area. The residential apartments are located within the upper 5 levels of the building, with each floor generally containing 7

apartments, providing a total of 32 apartments. The apartments have a mix of one, two or three bedrooms, and range in size from 48m² to 110m². Private balconies are provided with all apartments.

The hotel building is located at the western end of the site and only has frontage to Sefton Street East (State Highway 78) although a secondary pedestrian entrance is also located on the Sefton Street East frontage. This building generally has a height of around 20m although some elements extend up 22m. It contains 5,204m² of GFA across six floors. The hotel rooms are located on the upper four floors, with each containing 17 rooms, providing 68 rooms in total. Parking for the development is provided over three levels within this building being the basement, ground floor and first floor. A single lane circular ramp will link each parking level, with access to the ramp controlled by signals. A total of 90 parks were originally to be provided although amendments to the proposal during the hearing proposal saw this increase to 121 spaces by the inclusion of an existing car park 200m to the north on The Bay Hill in the application, discussed later in this decision.

I advise here that the consent has been **granted** subject to conditions imposed under Section 108 of the Act. The full text of the decision and the reasons for it commences at page 23 below. The conditions are shown in the attached decision certificate.

2. Activity Status

Both the application and the Section 42A Report prepared by Mr. Andrew Henderson, a consultant planner, provide a comprehensive statement of the relevant District Plan rule framework that affects the proposal. These reports confirm that the site is located within the Commercial 1A zone of the operative Timaru District Plan, which covers Timaru's main retail area. The Hydro Grand building is identified on Map 39 and the "Schedule of Heritage Buildings, Structures and Sites" as a Category B building. The building also has a Category II classification from Heritage New Zealand Pouhere Taonga (HNZ). The demolition of a Category II building is provided for in Rule 6.12.2.7 of the District Plan as discretionary activity.

Mr Henderson's report sets out the relevant rules and activity status that affect the entire proposal at page 6 of his report and this was not contested by any other parties. That is reproduced below.

Rule	Assessment	Activity Status
Part D 3 Commercial zones		
1.A.2 Controlled activities		
2.1 Restaurants and licensed premises	The proposal includes restaurant/bar tenancies.	Controlled
1.A.3 Discretionary activities		
3.2 The demolition of any building visible from a street frontage.	The proposal is to demolish an existing building visible from a street frontage, and erect three new buildings along a street frontage.	Discretionary
3.2 The erection of any new building along a street frontage.		
3.4 Car parking provided access is not from Stafford Street.	The proposal includes car parking where access is not from Stafford Street.	
3.5 Any activity listed as a	The proposed building fails	

permitted, controlled or discretionary activity which does not comply with the performance standards for this zone.	to comply with some of the performance standards for the zone	
1.A.5 Performance Standards		
5.1 Street frontage – buildings shall not be set back from The Bay Hill	The Office and Apartment buildings are partially set back from The Bay Hill	Discretionary
5.2 Maximum building height: 20m	All three buildings are over the 20m height limit as follows: <ul style="list-style-type: none"> • Office building = 21.6m; • Apartment building = 23m; • Hotel building = 21m 	Discretionary
Part D 6.7.2 Rules for vehicle access and loading		
(1)(a) Parking space dimensions	The proposed aisle width does not meet the required dimensions.	Discretionary
(2) Parking and loading spaces shall be located on the same site as the activity it relates to, shall be available at all times, and shall have adequate useable access.	The parking is located on the same site but will not be available at all times for visitors.	Discretionary
6.7.3 Performance standards for all zones		
(13) Sites fronting National, regional or district arterial roads and a secondary road shall have vehicle access from the secondary road	The proposed development has access from the State Highway and also has frontage to a local road.	Discretionary
6.7.5 Discretionary activities		
(2) Restaurants and retail activities with vehicle access from a state highway are a discretionary activity.	The proposed development includes retail and restaurant activities and has vehicle access from a State Highway	Discretionary
Part D 6.8 Parking		
6.8.3 Parking requirement: 154 parking spaces are required on the site.	90 parking spaces are proposed	Discretionary
Part D 6.12 Heritage		
Rule 6.12.2.7 Category B Buildings - Discretionary activities 3) Demolition or removal of the buildings from current sites.	The proposal is to demolish the existing Hydro Grand	Discretionary

Overall it is accepted that the proposal is a discretionary activity.

3. Notification and Submissions

The application was publicly notified on 11 August 2016 and received a total of 20 submissions, including one late submission from HNZ. Of these submissions, thirteen were opposed to the application, and six supported the proposed development. One was neutral and sought conditions. The key elements of the submissions were summarised in Mr. Henderson's report as follows:

Name	Submission Summary
V J Sleigh	Opposes consent to demolish the Hydro Grand; neutral as to redevelopment of remaining site.
Dr I Lochhead	Opposes consent given the heritage values of the building. Demolition on the grounds that greater economic benefit will flow from a new building is no justification, and restoration will provide benefits that exceed new construction.
Caroline Courts Ltd	Supports the development subject to conditions to regulate dust pollution during demolition.
C M Young	Supports demolition and redevelopment as the site is an eye sore and spoils the Piazza.
J W Boys	Supports the proposal to demolish the building and redevelop the site.
J W Elder	Opposes the application and considers that there should be a fresh application that either includes a refurbished Hydro Grand or has a design style that carries the style of the original Hydro Grand.
L R Simmons	Opposes the consent until such time as an alternative plan be provided which sufficiently references the exterior architectural and historic features of the Hydro Grand.
J & R Lambie Family Trust	Opposes the application for reasons related to: <ul style="list-style-type: none"> • Amenity, height and visual dominance, particularly on the adjacent property and Sea Breeze Motel that operates from it. • Noise and fire rating issues. • Car parking effects arising from the shortfall in parking. The parking provided is inadequate. • Heritage effects – proper consideration has not been given to the option to retain the Hydro Grand's façade, and demolition will have significant heritage effects. • Construction effects – no details have been provided in respect of staging or construction management. • The proposal is inconsistent with the provisions of the Timaru District Plan and Canterbury Regional Policy Statement.
R W Fagg	Supports the application but seeks that if construction does not start within 30 days of removing all material from the site then landscaping or a solid fence be constructed around the site.
S A Langton	Supports the application and considers that sufficient parking should be provided.
S D Nicholson	Opposes demolition. The Hydro Grand is a Timaru landmark with significant value.
South Canterbury Historical Society	Opposes demolition unless and until an acceptable replacement is finalised and its viability confirmed. While redevelopment is not necessarily opposed, there are concerns including the design relating to height, shading, and the loss of heritage character.
A Matson	Opposes the demolition on the basis that the heritage values of the building may be understated. The plans should accommodate the re-use of the Hydro Grand.

I Butcher	Opposes demolition of the heritage building, particularly given the absence of any development option presented for its retention with other new buildings.
K Whitehead	Considers the application should be re-notified due to errors in the transportation assessment, and the proposal scaled down to allow for more adequate parking, or further basement parking provided if the building size is to be maintained.
NZ Transport Agency	Opposes consent until vehicle related effects on the safe operation of the local roading network, including state highways, is appropriately addressed, including further consideration of the design and location of vehicular access and the management of parking demands.
South Canterbury Chamber of Commerce	Supports the proposal as it is a key anchor development for the district. Upgrading the site will improve the appearance of the Caroline bay and Bay Hill area.
Timaru Urban Renaissance Network (TURN)	Opposes the application for reasons including: <ul style="list-style-type: none"> • The proposal is contrary to the Council's commitment to the Urban Design Protocol • The proposal contains bad urban design elements • The courtyard space has no pedestrian permeability and is not welcoming • The proposal is not in keeping with down-town Timaru • The building is over scaled for Timaru and will have a negative impact on the CBD
Timaru Civic Trust	Opposes the application for reasons including: <ul style="list-style-type: none"> • Significant adverse effects on the surrounding environment, including heritage. The design response is inappropriate when regard is had to the heritage of this building and its visual prominence and setting. • The applicant has not established that there are no re-use alternatives. • No attempt has been made to compensate for the loss of the heritage features. • The proposal is inconsistent with the policy direction of the District Plan, including the heritage objectives and policies.
Heritage New Zealand Pouhere Taonga	HNZPT did not oppose the application but considered that more detailed information on the cultural, historical and physical values of the building should be required, as well as a detailed engineering assessment of all structural components.

I have addressed these matters, where they are relevant, in my consideration of the application below.

4. The Hearing and Appearances

I heard the application in Timaru over two sessions, the first being on the 8th and 9th December 2016, with the second session being on the 22nd of March 2017. I visited the site at the conclusion of the March hearing.

The following people attended the hearing on the 8th and 9th December 2016:

The Applicant

Bayhill Developments Limited were represented by the following people:

- Hanna Marks and Georgia Thomas (Legal Counsel)
- Allan Booth (the applicant)
- Jeremy Salmond (heritage architect)
- Philip Paterson (engineer)
- Ross Davidson (quantity surveyor)
- Darron Charity (project manager)
- James Burgess (architect)
- Chris Rossiter (transportation engineer)
- Jonathan Clease (planner and urban designer)

Council Staff

The Council was represented by the following people:

- Angela Lumsden (minute secretary)
- Andrew Henderson (consultant planner and s42A report author)
- Paul Durdin (consultant traffic engineer)
- Fraser Munroe (Council Assets team)
- John Heenan (consultant structural engineer)
- Ian Bowman (architect)

Submitters

The following submitters appeared:

- Timaru Civic Trust, who were represented by the following people:
 - Jen Crawford (Legal Counsel)
 - David McBride (Trust Chair)
 - Nigel Gilkison (Trust Board member)
 - Dr. Ian Lochhead (architectural historian)
 - Louis Robinson (engineer)
 - Dave Margetts (architect)
- Allan Matson
- South Canterbury Historical Society Inc, represented by Mr Wallace.
- South Canterbury Chamber of Commerce, who were represented by the following people:
 - Wendy Smith (chief executive officer)
 - John Cannell (President),
 - Peter McCaughley
- RM Lambie and TC Lambie as Trustees for the J&R Lambie Family Trust, who were represented by the following people:
 - Lucy de Latour (Legal Counsel)
 - Thomas Lambie (trustee),
 - Christopher Wilson (architect and urban designer)
- Valerie Jocelyn Sleigh

Evidence from Mr. Stewart Fletcher on behalf of the New Zealand Transport Authority was also tabled at the hearing.

No procedural matters were raised by any of the parties present at the first hearing. However, two late submissions were received which I dealt with prior to hearing the

evidence of the parties. The first late submission was received from Heritage New Zealand Pouhere Taonga. This submission was received one working day after the close of submissions. Mr Henderson advised as follows:

"I do not consider any party is directly affected by the late service of this submission, and its late service has not created any delay. Accepting the late submission is consistent with the public participatory approach in the Act, and ensures the Commissioner is able to consider the views of the community in assessing the application. I therefore recommend that the late submission of HNZPT be accepted pursuant to section 37A(2), subject to the Applicant confirming that they agree to the extension pursuant to 37A(4)(b)(ii) of the Act."

I agree with Mr Henderson on this point and the applicant confirmed that they were comfortable with the submission being accepted. I therefore accepted the submission accordingly.

A letter was also received from a group of Timaru residents on the 24 November 2016, several months after the close of submissions. The letter was not in the form of a formal submission and could not be considered under section 37A(2) of the Act and was not considered in the deliberations on this application.

The following people attended the hearing on the 22nd of March 2017:

The Applicant

Bayhill Developments Limited were represented by the following people:

- Hanna Marks and Georgia Thomas (Legal Counsel)
- Allan Booth (the applicant)
- James Burgess (architect)
- Chris Rossiter (transportation engineer)

Council Staff

The Council was represented by the following people:

- Angela Lumsden (minute secretary)
- Andrew Henderson (consultant planner and s42A report author)
- Ann-Marie Head (consultant traffic engineer), on behalf of Paul Durdin
- John Gray (architect)

Submitters

The following submitters appeared:

- Timaru Civic Trust, who were represented by the following people:
 - Jen Crawford (Legal Counsel)
 - David McBride (Trust Chair)
- Valerie Jocelyn Sleight

Both the South Canterbury Chamber of Commerce and the Mr. Wilson on behalf of the Lambie Family Trust provided written responses to the issues addressed at the second hearing.

5. Summary of Evidence Heard at 8th and 9th December 2016 Hearing

All evidence was pre-circulated within the statutory timeframes and is available from Council should anyone wish to read all of the evidence presented. Ms Lumsden also kept a minute which records the questions and answers of the witnesses at the hearing. This is also available if required by any parties to the proceeding. A brief summary of the evidence is presented below.

Council Staff

Mr Henderson prepared a comprehensive section 42A report that was taken as read at the hearing. He summarised his position at the hearing. His s42A report concluded that *“overall the proposal is appropriate for the following reasons*

- *Although the proposal will result in adverse effects with the loss of the heritage building from the site, the structural and other reports have identified that much of the building fabric has been altered or removed, and that the building is in a significant state of disrepair.*
- *The works necessary to bring the building up to an appropriate standard to accommodate a modern use are significant and will ultimately result in a loss of the fabric they are intended to preserve.*
- *The Urban Design Panel has found that the building, subject to some further design considerations, is not inappropriate for the site.*
- *With the exception of the car parking shortfall, the Abley Report has not identified any other significant transport effects; and notes that the approval of the NZ Transport Agency will be required for any changes to Sefton Street East to accommodate the proposed access.”*

Subject to the Applicant satisfactorily addressing some issues outlined in his report, Mr Henderson considered that *“the adverse effects of the proposal can be appropriately managed through conditions of consent, and on balance are not significant to the degree that the purpose of the Act would be best achieved by refusing consent.”* He advised at the hearing that the car park purchased to deal with the car parking shortfall should be tied to any consent granted by way of condition.

The Applicant

Ms Marks opened the applicant’s case by presenting legal submissions that addressed the evidence to be presented by the applicant’s experts, the relevant planning documents and Part 2 of the Act. In relation to the issue of heritage effects, Ms Marks advised that that while the applicant initially wished to retain the building it has proven to be unfeasible as a result of:

- The dilapidated state of the building;
- The earthquake prone state of the building;
- The unusable internal layout;
- The high cost of mandatory strengthening work;

- The high impact of mandatory strengthening works on heritage fabric; and limited revenue projections.

She went on to refer to the *Hamilton East Community Trust v Hamilton City Council* Environment Court decision which held that what is inappropriate is a matter of judgement in each case, and noted that the combination of time, condition and financial issues referred to in this decision are all issues at play here that make the demolition of the building not inappropriate.

With respect to the traffic issues, she submitted that there were no effects that would prevent the grant of the consent given the car park shortage is largely negated by the purchase of the existing offsite car park. She also submitted that the proposed development will result in significant urban design improvements. With respect to the height reverse sensitivity issue raised by the JR Lambie Trust, Ms Marks submitted that these concerns do not form part of the existing environment because any new building on the Trust property would require consent. She then outlined the positive effects that have been highlighted by Mr Clease.

Turning to the Timaru District Plan, Ms Marks submitted that the protection of heritage included in the plan is not absolute, and that protection is not to be achieved at the cost of all other objectives and policies. In her submission, the discretionary status of demolition and the inclusion of a policy prescribing assessment matters imply that there are circumstances where protection will not be the most appropriate option.

Ms Marks then addressed the case law around the relevant Part 2 matters, and concluded that the demolition of the building and proposed redevelopment of the site *“clearly accord with the outcomes sought by each section of the sections in Part 2 and with the sustainable management concept overall”*.

Mr Booth was the first witness called for the applicant and he briefly addressed his statement of evidence. He outlined his history with the site and the options considered for its development, which included restoration (which he stated the Civic Trust were involved in). When it became clear to him that this option was unlikely to be financially viable, he put a team of experts together to consider the options for the site. The vision he expressed was to create a development that encouraged people back into the CBD. Mr Booth also advised that the company purchased an additional car park site located approximately 200m from the site to address the parking shortfall. He confirmed that the title for this site was subject to an encumbrance that required the site to be used for car parking in perpetuity.

Mr Salmond was the next witness to appear. While noting that he did not consider his report to be either a full statement of heritage value or a heritage impact assessment, he considered the building a significant heritage building in the Timaru CBD landscape. While he considered the building adaptable to use as a contemporary hotel, he stated that he was advised that the cost to achieve this was not considered commercially sustainable. He noted that is a judgment for others, not him. Because any adaption of the building for a contemporary hotel would substantially reconstruct the whole of the interior, he concluded that any reuse would effectively result in “facadism” which could not be seen as an appropriate conservation option for the building. He stated that the replacement building is a competently designed building that will itself be a prominent feature of the Timaru CBD landscape.

Mr Paterson was the next witness called by the applicant. He advised that the building is only currently at 10% of the National Building Standard (NBS) for earthquake prone buildings and requires significant structural upgrade work to reach the 34% minimum and significantly more to reach 67% NBS or the desired 100% NBS. Mr Paterson advises that 10 different options involving the retention and strengthening of the existing building had been considered and outlined the legislation under which those options were explored. While all options were considered technically feasible, he advised that the required strengthening work will result in little of the original fabric of the building remaining. At the hearing, he addressed the issues raised by submitters.

Mr Davidson then addressed the hearing. He advised that his evidence provides a peer review of the cost estimates from members of his team at AECOM and set out in the AEE. He advised that AECOM was engaged to provide elemental cost estimates for the seismic strengthening and renovation work to bring the building up to 34%, 67% and 100% NBS. High level estimates were also requested in relation to a range of possible uses that included the uses proposed. Mr Davidson advised that he reviewed these costs estimates and is satisfied "*that the findings of each of these estimates have been accurately represented within the cost estimate, as can be reasonably determined*". His evidence set out the elemental estimates for 34%, 67% and 100% NBS and the high-level estimates for Options 1B, 2A, 2B, 2C, 3A, 3B and 3C. He then went on to list the exclusions and major cost risks.

Mr Charity then spoke to his evidence which reviews analyses from the structural engineers, architects and quantity surveyors and considers the financial feasibility of each option for repair that has been presented and costed. He then used a financial feasibility model to assess whether each option constitutes a viable option from an investment perspective for the Applicant.

Mr Charity concluded from this work that the financial viability of retaining the existing building in any form was not possible for this owner, as had been the case with previous owners. He advised that the Timaru market is very limited and tenant tenures are historically long. In his view, rents exceeding \$280 per square metre (which he said was the minimum commercial rents required to meet the business case projections) will be a challenge to achieve in rural New Zealand. It was also his opinion that the end product also had to achieve 100% of NBS to have any chance of attracting new tenancies at the highest end of the rental market rates in Timaru. This was considered a baseline position for any new development scheme. In this context, Mr Charity updated his table at paragraph 25 of his evidence which set out the key financial indicators for Option 1C (strengthening existing building to 100% NBS) compared to a new build for both the office and hotel use. This table indicated a realistic Cap rate for Timaru (year 4 revenue) being 7.5-8% for repair and 7-7.5 for new build. The new table indicated 4.5% for office use and 3.6% for hotel use under the repair scenario, and 7% for the office and 5.6% for the hotel use for a new build.

Mr Charity concluded that because a retro fit would cost significantly more than a new build, the wider development would not generate sufficient profits to subsidise the low returns of this as outlined in the new table. Instead he considered any commercially plausible development of the wider site is considered likely to consist of the development on the vacant land, with the Hydro Grand remaining unoccupied as its retention is not commercially possible.

Mr Burgess then spoke to his evidence which addressed the architectural and urban design principles, design process and assessment of effects of the proposed development on The Bay Hill. Mr Burgess also addressed the design inputs into the

feasibility studies in relation to retaining the building. In his opinion the *“current vacant condition of the building makes no contribution towards the vibrancy and levels of activity in Timaru’s town centre”*. In his view this *“lack of activation on the site creates a void or dead space”* and this *“severs the retail areas to the south from the hospitality area to the north and the Piazza and Caroline Bay to the east”*. While he acknowledged that the Hydro is prominent, he considers it is largely an introverted development that detracts, rather than contributes to, the immediate surrounds and the town centre in general.

Mr Burgess then worked through the re-use option and the eventual mixed use development selected, which he considered in the context of the site constraints and design response, detailing each of the components of the proposal. He advised that the design had been altered after considering the Urban Design Panel recommendations to provide greater emphasis on the corner of the site in a manner similar to the Hydro Grand hotel. Mr Burgess then assessed the urban design impact of the proposal, believing it will result in a significant increase in the level of activity and vibrancy in this area as well as creating a link to the adjoining retail and hospitality areas and the Piazza.

With respect to the height issue and the impact on the neighbouring Sea Breeze motel site, Mr Burgess advised that the additional height is a function of creating an interesting and varied roofline, the undulations of the underlying landform and the pitched roof form of the Hydro as opposed to the usual flat roofed commercial building approach. In terms of the shading impact, he noted that buildings of 20m in height are anticipated in this area and this proposal will generate little, if any, shading over and above a compliant development.

Mr Rossiter was the next witness to appear for the applicant. His evidence provided an overview of the transport environment and described the expected transport effects of the proposal. He noted the inclusion of the separate car park located about 200m walking distance from the development site. His analysis of expected traffic generation indicated that there will be no noticeable effect on the operation of the state highway network. While the on-site parking provisions would not be sufficient to meet the demands of the development, he was comfortable that the off-site car park would have sufficient capacity to meet the anticipated overflow demands to the point that the proposal will not generate any parking effects on the local road network. On that basis, he concluded that the application can be supported from a transport perspective.

Mr Rossiter also tabled correspondence from NZTA regarding a draft set of conditions prepared to address their concerns.

Mr Clease was the last witness to appear for the applicant. His evidence provided an overview of the proposal and then addressed the statutory planning framework. While noting that the Hydro Grand has heritage value, Mr Clease was of the view that the engineering, quantity surveying and economic feasibility evidence indicates that it is not financially plausible to reuse the building and that the extent of the work required to do this would result in the loss of much of the remaining heritage fabric. On this basis, he did not consider the proposal to be an inappropriate use of a heritage resource.

In his view, the replacement building proposed will create a positive urban design outcome for the town centre while the mixed-use nature of the proposal will provide a range of choices not currently available in Timaru. He noted that the replacement buildings are largely compliant with the bulk and location standards of the plan, with

the additional height due to the provision of an architecturally interesting roofline which does not result in shading materially different to 20m building.

In terms of the policy framework, while he acknowledged that replacing a heritage building will sit uncomfortably against policy direction for retention, such direction is not considered absolute. A case by case assessment is required to determine what is inappropriate, and he considered this proposal to be consistent with the broad outcomes sought by the CRPS, the District Plan, and Part 2 of the Act.

Council Staff

Prior to hearing from submitters, I took the evidence of Councils specialist reporting officers. **Mr Durdin** was the first to address the hearing. He advised that the purchase of the carpark goes a long way to addressing the car parking shortfall and he agreed that office lease is the most suitable for this site. He agreed with the shared parking approach for a multi-use development but advised that the issue here is lack of certainty. He believed the management plan should help with this but noted that there is very little long stay parking near the development and Council is concerned about bearing the brunt of any overspill in this regard. He considered there is sufficient capacity in the network to accommodate short stay parking.

Mr Durdin noted that a valet arrangement could utilise the shared component better than if they were separate operators and considered the current provision for valet parking to be good. He queried the use of the 15th percentile rates for peak parking and discussed the Sefton Street parking arrangement and the signal system on the ramp, which he considered a good initiative

Mr Heenan advised that he had undertaken a high-level review of the methodologies used by the applicant and has no reason to doubt that they have undertaken a suitable assessment. He advised that the performance of double skinned brick buildings in the Christchurch earthquake was very poor. The methodology used for seismic upgrade work used here fits within the normal guidelines. He advised that the most recent report on the building condition is that it is deteriorating quite rapidly and in that context, the internal floor and diaphragm will affect the longevity of the building. He considered that the level of intervention into the building fabric would be quite extensive, even at 34% NBS.

Mr Bowman noted that Mr Salmond had made it clear that he hasn't provided a heritage impact assessment and that without this, we don't know what would be lost. He advised that he had looked at the Heritage NZ listing and reviewed a number of national and international models when preparing heritage impact assessments. Regardless of the statutory listing, these models recommend doing a thorough assessment of heritage values.

The Submitters

Ms Crawford for the **Timaru Civic Trust** presented comprehensive legal submissions in which she outlined the Trusts background and addressed the various statutory requirements, referring to a number of Environment Court decisions in doing so. She advised that the Trust is an advocate for the preservation and improvement of the important buildings and spaces of Timaru. Ms Crawford submitted that the applicant's case is essentially predicated on narrow economic considerations, nothing more. The Trust consider the proposal is not an appropriate solution and that key technical aspects have been overlooked, particularly the need for a full heritage impact assessment. Ms Crawford submitted that the new proposal represents an over-development of the site and the loss of what is a significant landmark is compounded by adverse effects on the surrounding environment.

Ms Crawford submitted that the applicant has failed to properly consider alternatives and referred to the *Lambton Quay* Environment Court decision in that context. She also highlighted the *Te Puna Matauranga* decision which considered whether a building was significant enough that the disinclination of the owners for adaptive reuse makes its demolition an “*appropriate use and development*.” In this case, she submitted that the applicant should be encouraged to reuse the building for the cultural and economic wellbeing of Timaru and the wider community. The proposed demolition was considered inappropriate by Ms Crawford in the context of this case law.

Ms Crawford also noted the reporting officer’s comments with regard to the CRPS, believing that document should not be lightly disregarded, and submitted that the proposal is inconsistent with the overall policy direction of the District Plan. Ms Crawford submitted the proposal will not achieve the purpose of the Act.

Ms Crawford then called the Trust Chair, **Mr McBride** to present his evidence. Mr McBride evidence was lengthy and comprehensive. He began by outlining his and the Trusts background, before addressing the history of the area and the architects of the Hydro Grand. He then went on to address the architectural qualities of the building and its place in the townscape. Mr McBride then highlighted a number of documents that he said protected the building from insensitive alteration or demolition, including the Timaru Inner City Heritage Audit which included a statement of significance. Mr McBride then addressed the evidence of various witnesses before dealing with the future of the building, in particular the potential for a boutique hotel development. Mr McBride also attached to his evidence correspondence from Brian Le Fevre for Harrisons Quantity Surveyors who provided an estimate for the structural content of the Hadley & Robinson proposal. This estimate was \$980,090 (GST excluded).

Mr. Robinson then spoke to his evidence, which addressed the proposal that Mr. Le Fevre’s correspondence referred to. He advised that the work outlined in his 2013 preliminary report would achieve 100% NBS. In his view the cost estimate provided by Mr. Le Fevre is in line with what he would expect for strengthening work of this kind.

Dr. Lochhead, a retired Associate Professor of Art History who specializes in the history of New Zealand architecture and the history and theory of architectural heritage conservation, then spoke to his evidence. He addressed the significance of the architectural firm of Hall and Marchant, the importance of the Hydro Grand hotel in the context of Timaru’s architectural history, the significance of Timaru’s architectural heritage within the context of Canterbury’s architectural heritage as a whole, the value of heritage conservation and the ability of seismically strengthened heritage buildings to perform well in earthquakes. He advised that Herbert Hall was a regionally and nationally significant architect and that the Hydro Grand Hotel is a prominent Timaru landmark and a significant example of Edwardian hotel design, that is now rare due to the Canterbury earthquakes. In his opinion, “*the Hydro Grand makes an important contribution to Timaru’s identity as an early twentieth century resort town and its loss would undermine the wider promotion of the City as a heritage destination*”. Mr. Lochhead highlighted American research that he states demonstrates the economic, environmental, social and cultural benefits of heritage retention.

Mr. Margetts then spoke to his evidence which addressed the heritage values of the Hydro Grand building and the potential for its adaptive reuse. He supported the statements from HNZ and Mr. Salmond in regard to the heritage significance of the building. He also supported HNZ’s submission that a full heritage assessment should

include an assessment of cultural, historical and physical values in more detail. In his view the building could have considerable scope for alteration, change or adaptation without removing key heritage values or diminishing the overall significance of the place.

Mr. Gilkison was the last Trust witness to speak to his evidence. He advised that he is the Deputy Chair of Historic Places Mid Canterbury and is a current board member of the Timaru Civic Trust. His evidence addressed the architectural and urban design principles associated with the proposal and the feasibility studies carried out in relation to the decision as to whether the building could be retained or adaptively reused.

In Mr. Gilkison's opinion, the loss of the Hydro Grand will have a significant negative effect on the urban streetscape, character and identity of the Timaru CBD. He was also concerned that the arrangement of the proposed buildings on site present significant reverse sensitivity issues due to having single aspect units which are directly facing and in close proximity to a neighbouring property boundary. He was also of the opinion that not all the options for retention and reuse of the building have been adequately explored and that the comparative cost analysis of the refurbished Hydro Grand Hotel against the cost of a replacement office building is not an appropriate 'like-for-like' comparison. Mr. Gilkison also believes the proposal represents an over development of the site, as evidenced by the exceedance of the maximum permitted height and the inability to accommodate the required car parks on site. In his view *"there are alternate architectural design solutions available which would help to mitigate the potential loss of the heritage building, should further detailed investigation and analysis confirm that the existing building is beyond sensible economical reuse."*

Mr Matson was the next submitter to appear. He outlined his background and advised that he is a heritage architect. He went on to address the timing of the listing of the building and believes that its categorisation is out of date. In his view heritage values are understated in the District Plan. He considers heritage a finite resource and suggested there is no way of measuring public benefit, it accrues over time. He highlighted that HNZ only list buildings but the protection lies with Council and an assessment of the values of this building must be done now. He also highlighted the cumulative effects of the loss and the tourism potential of what he considered an iconic building.

Mr Wallace then presented on behalf of the **South Canterbury Historical Society Inc.** He stated that the Society does not necessarily oppose sympathetic redevelopment of the site and acknowledged the positive benefits of the proposed investment to the District. However, members would love to see the building adapted and reused. Mr Wallace referred to the policy framework and did not consider the proposal to be sympathetic as required by the policies. A major concern for the Society was that the building gets demolished but then the redevelopment does not take place for whatever reason. The next area of concern related to the design of the building in terms of shading effects, the over use of glass, compliance with District Plan provisions and the loss of heritage character. Mr Wallace referred to examples of what had been done around the country including buildings where cupolas had been retained. He also highlighted the Timaru Inner City Heritage Audit and the South Canterbury Historical Guide. In terms of s6 of the Act, he considered the new building inappropriate as it did not fit within the overall context of the site.

Three representatives of the **South Canterbury Chamber of Commerce** then appeared in support of the proposal. The CEO, **Wendy Smith**, outlined the function

of the Chamber while Chamber President **John Cannell** reiterated the Chamber is about better business and this development fits perfectly with this outcome and the Timaru Growth Strategy. Economically speaking, he believes the district needs this development and it will encourage further investment in the town. Mr Cannell believes that this building will also become iconic and will be around for another 200 years. **Peter McCaughley** supported what had already been said, believing the proposal will generate a lot of business opportunities in a CBD that is withering. He outlined his association with the Hydro, noting it was run down in the 80s. In his view this is a once in a lifetime opportunity to redevelop this site. He noted that others have tried and failed.

The next submitter to appear was the **J&R Lambie Family Trust** (the Trust) who own property adjacent to the application site at 28 The Bay Hill Road. **Ms de Latour** presented legal submissions in support of the Trust, with the two main concerns being the breach in the height limit and the potential for reverse sensitivity issues. With respect to the height issue, Ms de Latour took issue with the applicant appearing to rely on the 20m height limit as a permitted baseline. She highlighted the fact that the erection of a new building, even if it complies with the 20m height limit, still requires consent as a discretionary activity. She submitted that this is not a true baseline and a baseline assessment should not be applied as it would override the intention of the discretionary rules of the plan. Ms de Latour then addressed the effects of the breach which she believed was not minor when the evidence of Mr Wilson was considered. She went on to address the reverse sensitivity issues also in the context of Mr Wilson's evidence. Ms de Latour submitted that by not providing any meaningful setback from the Trusts property, the applicant has failed to internalise the effects of its development. While acknowledging that the future development of the Trust property is not part of the environment, she submitted effects on this should be considered and cited the *Strata Title Admin Body Corp* Environment Court case as an authority in that regard.

Mr Lambie then spoke to his written brief of evidence. He outlined the background of the Trust, why they had lodged a submission and their primary concerns with the development. He advised that they had owned the property since the early 2000's and a key factor in their purchase was the sites development potential including the 20m height limit. Mr Lambie highlighted that they had received consent for a redevelopment of the site in 2005 but did not proceed due to the economics. While they support and recognise the benefits of this proposal they do not want it to compromise their properties potential and consider the 20m height limit should be complied with. Mr Lambie was concerned that the design of the proposed development will impede future development on their site and will also have implications with respect to fire protection. He also commented on the loss of the Hydro Grand building from a heritage perspective.

Mr Wilson then spoke to his urban design evidence in which he assessed the amenity and visual effects of the proposal and in particular, the effects of the proposal on the Trust property. The drawings submitted with the proposal did not provide Mr Wilson with adequate information to fully understand the effects the proposal would have on the Trust property. He was concerned that the drawings indicate a significant level of non-compliance around the Trust property boundaries which would have a detrimental effect on the Trust property. In his opinion there is no need for the proposed development to break the 20m height limit and he was concerned that future development of the Trust property will have a significant effect on the apartment and hotel buildings.

Jocelyn Sleigh was the last submitter to appear at the first hearing. Mrs Sleigh spoke to her submission in opposition to the proposal and outlined some the buildings history in terms of its classification. She believes a building becomes more significant as it ages and was of the opinion that this building should have an “A” classification. Mrs Sleigh then discussed the future of Timaru particularly in respect to heritage tourism and what Timaru Edwardian architecture offers in this regard. She highlighted the benefit of such tourism to Napier.

Mr Fletcher’s tabled evidence on behalf of **NZTA**, who opposed the application, recognised that the proposal had been amended to address some of NZTA’s concerns, such as loading. However, he was of the view that further consideration needs to be given to the details of how activities will operate, how this will affect car parking and flow on effects to the State highway. His position was that the main public entrance to the development needs to be from The Bay Hill, with the car park entrance seen as secondary (and not open to the public). Given the car park building provides a more confined car parking arrangement, Mr Fletcher considers this necessitates a more carefully managed operation. Provided these issues are addressed (which he believed could include a management plan), the agencies concern would be addressed.

Staff Review

Mr Henderson was then given the opportunity to reconsider his recommendation. After hearing the evidence given throughout the day, Mr Henderson believed further information was necessary before a final position could be reached. He advised that section 6 matters are not a veto in themselves but upon reflection, he felt a more detailed heritage impact assessment was necessary to determine the significance of the building. He was also of the opinion that further detail was required around the height intrusions and car parking aspects of the proposal, along with some clarification around the costing divide between the parties. Mr Henderson also addressed the scope issue raised by the addition of the car park site, and while he did not see any issue with it, he considered it appropriate that it be addressed by the applicant.

6. Request for Further Information

Prior to the adjournment of the hearing, I indicated to the applicant that I tended to agree with Mr Henderson that further information was required in order to enable a proper assessment and balancing of the effects of the proposal. To that end, pursuant to section 41C(3) of the Act, the following information was requested:

1. *A heritage impact assessment, prepared by an appropriately qualified heritage or conservation architect. The Council will arrange this subject to agreement being reached upon an appropriate person.*
2. *Confirmation of the existing ground level, and plans showing the proposed elevations and heights of the new buildings with the existing ground level as a reference. The plans are necessary to determine the extent of the height intrusions, and by extrapolation the degree of adverse effect on adjoining properties arising from the true extent of the breach. This may require additional shade diagrams at an appropriate scale. As a part of this package, elevations are also required for the northern façade of the Building 3 (the Hotel building).*
3. *Additional details of the workings of the car parking arrangement, in particular how the valet system is proposed to work, and whether the*

allocation of four parks for the valet service will give rise to additional demand. Consideration of the parking arrangement should also identify how the additional car park is to be tied to the development, and how the parks will be best allocated amongst the tenancies. Consultation with the Council's transportation engineers would be beneficial as part of this process.

4. Please provide succinct summaries of the cost of strengthening the Hydro Grand Hotel without the costs of additional fit out work.

5. Please provide any submissions considered necessary to address any scope issues arising in particular from the addition of the car park to the application.

Mr John Gray, an independent architect who is very experienced in the preparation of reports on heritage buildings (having prepared over 70 such reports), was commissioned to provide the heritage impact report. This report was received by Council on the 21st of February 2017 while the additional information provided by the applicant was received on the 13th of February 2017.

The hearing was reconvened on the 22nd of March 2017 to consider the new information.

7. Summary of Evidence Heard at 22 March 2017 Hearing

All evidence was pre-circulated within the statutory timeframes and is available from Council should anyone wish to read all of the evidence presented. Ms Lumsden also kept a minute which records the questions and answers of the witnesses at the hearing. This is also available if required by any parties to the proceeding. A brief summary of the evidence is presented below.

Heritage Impact Report

Mr Gray presented a summary of his report. He outlined his brief and the format of his report, which he considered reasonably standard for reports of this type. His brief was to establish the heritage value of the building and the loss if the building is to be demolished. In summary, Mr Gray found the following in regard to the heritage significance of the building:

- The building has regional significance as a prominent heritage building form
- Several modifications have been made to the building over the years, many of which have been to the detriment of significance and legible form, including the removal of the three large gable forms across The Bay Hill façade.
- The overall lack of significance of the interior was disappointing
- The detailed schedule of significance indicates very few elements which have been classed as A or B indicating “exceptional” or “considerable” significance.
- While there is some notable local public esteem for the building, the lack of maintenance and dereliction over the past 13 years or so, has resulted in an extreme state of disrepair

His report then looks at potential mitigation measures and methods of implementation, should the application be granted. In his reports conclusion, he considers the circumstances under which demolition may be contemplated, whether that option is appropriate, and if so what mitigation measures should be recommended.

Mr Gray then commented on the criticism of his report by Mr Bowman in his peer review. He noted that it was decided with Council staff not to include new historical research as there was already considerable information which had been presented to the hearing and in the public domain regarding the history of the building and its architect. In response to a question, he advised that he had sought additional information on the building but was told that the summary listed on the register was all that was available. He then addressed each of Mr Bowman criticisms and concluded that he is confident that whilst his methods are different from Mr Bowman, the outcome shouldn't be that different. He finished by outlining his experience in this field including his role as an architect in relation to earthquake strengthening options and the costs involved in this.

In response to a question regarding his comments at section 4.4 f) of his report, he clarified that as the "majority of spaces or elevations are found to be rated as *some* or *no* significance", that overall the heritage values of the building are "less than exceptional or considerable", despite some elements having exceptional or considerable significance. Mr Gray also commented on the reference to salt water baths in a 1912 newspaper clipping. He advised that he looked for these features but could not find any evidence of their existence.

Mr Bowman did not attend the hearing but he provided a peer review of Mr Gray's report. He was surprised that no additional research was undertaken and considered that there was no description or analysis of the architecture or style. Mr Bowman acknowledged that the HNZ criteria for assessment used by Mr Gray was appropriate but considered that the assessment lacked depth and was inadequate. Because of this he believed the assessment of impacts could not be relied upon.

The Applicant

After hearing from Mr Gray, **Ms Marks** presented the further information that the applicant had been asked to provide. She first briefly addressed the scope issue in relation to the addition of the car park to the application. In her submission, this does not raise any jurisdictional or scope issues as it does not alter the nature of the activity, with the application remaining the same but for the mitigation proposed for vehicle parking. Importantly no consent is required for the car park and the title has an encumbrance on it requiring it to be used for car parking. Ms Marks outlined case law that supported her position.

Ms Marks then asked **Mr Burgess** to speak to the elevation plans asked for in the information request, including elevations of the internal boundary with the Lambie property. He advised that because the site slopes up, the building is mainly compliant on this boundary. However, in response to the Lambie submission, Mr Burgess noted that the windows on the northern façade of the hotel have been raised 1000mm above floor level in an effort to encourage people to look up and out rather than down. The depths of these windows have also been reduced. Mr Burgess also presented 3D diagrams showing the 20m height plane and highlighted the corner of the office building which now reaches 24.67m. He also noted that the new shade diagrams confirm the accuracy of the previous diagrams presented. Mr Burgess finished by addressing some of the issues raised by Mr Wilson.

Mr Rossiter then addressed the further traffic information. He started by dealing with the valet parking issue, which he considered in terms of both a new arrival and a familiar guest. He considered the NZTA 85th percentile rate a high estimate because it would indicate 80vph during this hotel peak hour. This would require 6 valet parks but he considered four to five valet parks more realistic and recommended five. He also addressed the use of the 85th and 15th percentile parking demand rates and parking

utilisation. Mr Rossiter also commented that it is normal practise to prepare a parking management plan once they have fully determined the needs of the tenants and the parking spaces required.

Mr Davidson was not able to attend the second hearing but a letter from AECOM, co-authored by Mr Davidson and Mr Frusher, advised that their Elemental Estimates related to strengthening to the various levels to allow reinstatement of the building as per the original drawings and did not include the additional fit out work required for tenants. He also advised that the High-Level Estimates did not contain tenant fit outs either.

Staff Review

Ms Head talked to **Mr Durdin's** response to the applicant's further information. She essentially stated that the further information does not give the Council any more certainty about how the parking arrangement will work. While she felt the valet arrangement will work, the issue was really the shortfall which she indicated as 20%. This shortfall in combination with the parking model would lead to an inadequate parking supply. Provision for coach parking was also seen as an issue while Ms Head was also uncertain as to how a review clause would work.

Submitters

The Timaru Civic Trust was the first submitter to appear. Ms Crawford made some preliminary comments before handing over to **Mr McBride** who read his further evidence in response to Mr Gray's report. He took issue with a number of comments in the report including aspects, or lack thereof, in relation to the location and the description of the building. In his view the building was part of the Arts and Crafts style which would explain the lack of elaborate decoration, which was a preference rather than a matter of restricted budget. In relation to the District Plan provisions, Mr McBride considered that retention of the building is viable and provided a cost analysis for a refurbished hotel using the floor plan proposed in earlier evidence. Mr McBride also went through the significance values and generally did not agree with Mr Gray on most of these assessment criteria. Of the 18 questions, he answered affirmative to 15 of them and considered that the building is of exceptional heritage significance. Mr McBride finished by commenting on AECOMs further information which he did not consider fulfilled the request for further information.

Ms Crawford then presented some brief oral submissions. She submitted that the key point of Mr Le Fevre's letter is that it confirms the Robinson scheme and it confirms a reasonable alternative to demolition. In her opinion, the applicant's case is no further advanced as the new information doesn't give any certainty on the key issue. She then dealt with section 6(f) in the context of the *Lambton Quay* decision, submitting that we must look at alternatives when considering what is appropriate development and noted in this case the building was iconic. In her submission, Mr Gray is not an architectural historian and that he has not provided a heritage assessment. She highlighted Mr Bowman's concern with Mr Gray's report and put it on record that HNZ have similar concerns.

Jocelyn Sleigh was the next submitter to appear and briefly commented on her written statement that she submitted prior to the hearing. She again referred to the Inner City Heritage Guide 1995 and was confident that the building could be given an 'A' classification. She also commented on the Caroline Bay precinct and the Edwardian architecture of Timaru. Mrs Sleigh also highlighted a reference in the Timaru Herald on 10 December 1912, which referred to the salt water baths, stating she doesn't "*see why they would have lied about it.*"

No other submitters appeared at the hearing but a number did table further evidence in response to the information requested. **The South Canterbury Chamber of Commerce** restated their original submission that *“this is a key anchor development for the district and will lead to further investment and value for the district as a whole.”* They referred to the conclusions of Mr Gray’s report and submitted that it provides confidence that demolishing the Hydro Grand building is the correct course of action. In their view, upgrading what they refer to as an ‘iconic site’ will *“vastly improve the visual appearance of the entire Caroline Bay and Bay Hill area and create a legacy for future generations.”*

Mr Wilson, for the **Lambie Family Trust**, advised in his written statement that his views in relation to the solar studies remain unchanged by the new information. He also stated that the elevations provided did not address his concerns regarding the non-compliance with the 20m height limit and noted that the carpark, being constructed underground, would need a waterproof membrane which normally requires a setback from the boundary but was unsure how this would be achieved. Mr Wilson also stated that the revised window plan does not address his concern with reverse sensitivity.

Review by Reporting Officer

Mr Henderson was then provided with the opportunity to review his recommendation. He advised that he was satisfied that the effect of the proposal on the Lambie property was similar to a compliant development. With respect to the concerns raised about the parking shortfall and management of it, he was of the view that a management plan and review condition could address the issues as it does in other areas.

Turning to the heritage issue, he noted that the policy framework is largely process orientated. When the policy framework is read as a whole, the Commercial zone policies must also be considered, which contemplate replacement buildings. He does not see a bar to demolition in the policies and notes the building is only Category 2, not a Category 1, which has a bearing on how you apply the policies. In his opinion, Mr Gray’s assessment confirmed the applicant’s opinion and he noted that Mr Bowman’s criticisms seem to relate more to process, which leads to a weighting of the evidence. In Mr Henderson’s view there is sufficient evidence to make a decision when balancing all matters. He considered the proposal to be an appropriate development of the site

He noted that should the consent be granted, there would need to be consultation with Council over appropriate species of trees located on the street.

Applicants Reply

Ms Marks presented written closing submissions addressing the key issues as she saw them. In coming to the decision that adaptive reuse is not feasible, Ms Marks reiterated that the applicant has had heritage values squarely in focus and that it was not a case of simply deciding that an alternative proposal would be easier. In her submission, a number of repair and reuse options were genuinely considered. In this context, she addressed the relevant case law on s6(f). She agreed that all of the competing considerations need to be weighed to ensure that the outcome is “fair, appropriate and reasonable” but she highlighted some factual differences between the cases referred to in the hearing by Ms Crawford. Notably, she submitted that the ‘reasonable alternative’ test in the *Lambton Quay* decision was derived from the heritage objectives and policies in the Wellington District Plan and that this should not be used as a blanket test for all cases involving the demolition of heritage buildings. In her submission, the appropriate test should be derived with reference to the

relevant district plan and the TDP was far less prescriptive than the WDP. Referring to the TDP policies, she submitted they require a case-by case assessment of each proposal, rather than an assurance all 'reasonable alternatives' have been ruled out. She also highlighted other factual difference in the *Lambton Quay* and *Te Puna Matauranga* cases.

Ms Marks submitted that Mr Gray's report was a detailed and extensive Heritage Impact Assessment (HIA) that concluded heritage values of the building, overall, are less than exceptional. She went on to submit "*Mr McBride and Mr Gilkison are members of the Timaru Civic Trust for whom they gave evidence and therefore cannot be considered to be impartial experts*". In her submission, significant weight should be given to Mr Gray's HIA, and to Mr Salmond's evidence. She noted that only Mr Gray and Mr Salmond have spent time in the Hydro Grand building in undertaking their assessments, and that Mr Gray's report was an independent report, undertaken at the request of the Commissioner.

In discussing what is inappropriate for the purposes of section 6(f) of the RMA, Ms Marks referred to the Courts direction that what is required is a weighing of competing interests in each individual matter. She highlighted the *Hamilton East Community Trust* case where the Environment Court said "*what is inappropriate is a matter of judgment in each case. In some situations, the combinations of time, condition and financial issues may mean that demolition is not inappropriate*". In that context, she submitted it is not denied that the Hydro Grand has heritage value but that for a number reasons (that she listed) demolition is the only option available for the Applicant in this instance.

Turning to the Lambie property and the potential impact on any potential future development on that site, Ms Marks submitted the existing environment does not include potential, fanciful future activities that may or may not take place. She also submitted that the effects of the proposal, as illustrated by Mr Burgess are less than a compliant development so she considered it highly unlikely that the current motel activity will be restrained in any way and as a consequence reverse sensitivity does not arise.

Ms Marks finished by highlighting the benefits of the proposal and submitted that "*the status quo (a building which cannot be used and will continue to degrade) does not constitute sustainable management and therefore will not achieve the purpose of the RMA.*" In her submission, the proposal accords with the outcomes sought by each of the sections in Part 2, and with the sustainable management purpose of the RMA overall.

8. Procedural Matter related to scope

One of the further information requests related to issue of scope arising from the addition of the car park to the application. As noted above, Ms Marks presented comprehensive legal submissions on this issue and addressed it in the context of the relevant case law. Ms Marks quoted a useful summary of the case law from the *Atkins v Napier CC* case as follows:

"I consider the test, as developed by the Environment Court and Court of Appeal through a series of cases, is whether the activity for which resource consent is sought, as ultimately proposed to the consent authority, is significantly different in its scope or ambit from that originally applied for and notified (if notification was required) in terms of:

- *The scale or intensity of the proposed activity, or*
- *The altered character or effects/impacts of the proposal.”*

The High Court also considered it helpful when applying this test to consider whether there may have been other submitters if the amended activity had been notified, although Ms Marks did not go as far as to say that this consideration forms part of the test.

Ms Marks submitted that the amended activity is not significantly different in scale or intensity as the additional car parking area is already used for that purpose and does not require resource consent to continue such a use. On this point, she highlighted the Court of Appeal case *Shell NZ Ltd v Porirua CC* which determined in that case that an amendment that did not require resource consent could not be considered outside the ambit of the application.

In relation to the second part of the test, Ms Marks submitted that the inclusion of the additional car parking area will not result in significantly different adverse effects given the site is already used for car parking and will in fact provide mitigation for any potential shortfall in car parking. With respect to the potential new submitter issues, she noted that the area is currently consented and used for carparking and highlighted the encumbrance on the site that it must continue to be used for carparking.

Mr Henderson was of the view that the addition of the car park did not cause a scope issue for the same reasons as outlined by Ms Marks. I agree and accept that the addition the car park will not alter the scope of the application. It has been included in the legal description of the application site accordingly.

9. Statutory Provisions

The relevant statutory provisions considered in this decision were recorded in the application, the Section 42A report of Mr Henderson and the evidence of Mr Cleese. Accordingly, I do not propose to list all those provisions here.

10. Decision

Pursuant to Sections 34A and 104B, and after having regard to matters set out in Part II and Sections 104 of the Resource Management Act 1991, I hereby **grant** resource consent application **102.2016.141.1** for the properties located at 5 – 7 Sefton Street East and 0, 10 and 16 – 26 The Bay Hill, which are legally described as Lot 1 DP3530, Part Lots 2 DP3530, Part Lot 3 DP3530 and Part Lot 3 DP11427 and Lot 1 DP302425, for the demolition of a listed heritage building (the Hydro Grand Hotel) and to replace it with a mixed-use complex that will include retail, food and beverage, office, hotel and residential apartment components, as a discretionary activity, subject to conditions imposed under sections 108 of the Act. The conditions are attached in a schedule to this decision.

11. Reasons for this Decision

The Act requires me to set down the reasons for my decision. It also requires that I record the principal issues in contention and the main findings of fact. These matters clearly form part of any assessment of a proposal and consequently inform the

outcome. They cannot be dealt with separately from the reasons for arriving at a particular outcome and are accordingly dealt with in that way in this decision.

These matters must be considered in the context of Section 104 of the Act which sets out what must be considered when deciding a resource consent application. Section 104B provides that once those matters have been considered, I can grant or refuse an application for a discretionary activity. If the application is granted, conditions may be imposed under Sections 108 of the Act. The matters contained in Section 104 have all been considered in arriving at this decision.

The following are seen as the main issues in contention:

- The heritage values of the building to be demolished and how significant a loss it would be if it was to be demolished.
- The potential and alternatives for refurbishment of the building.
- The cost, practicality and economic viability of options to refurbishment of the building.
- The urban design effects of the new proposal.
- The effects of the new proposal on the adjoining Lambie Family Trust property.
- The demand and management of parking for the new proposal.

These matters largely encapsulate the issues raised by the submitters.

Obviously, the key issue to determine is the heritage values of the building that the application seeks to demolish. As is evident from the further information requested at the end of the first hearing, I was not satisfied that I had an appropriate assessment of the buildings heritage values. To that end, Mr Gray was commissioned by the Timaru District Council, as an independent architect with significant experience in this area, to provide a heritage assessment report.

Both Mr Gray's qualifications in this area and his subsequent report drew criticism from Mr Bowman and opponents of the proposal. I put it on record at the hearing that I have no concerns regarding Mr Gray's qualifications and experience to undertake such an assessment. At the hearing, Mr Gray advised that as an architect, his speciality area is in the preparation of reports for the conservation and restoration of historic buildings and that he had produced well over 70 of these, including on buildings listed as Category 1 by HNZ. He also advised that he had carried out such reports for both the Department of Conservation and HNZ.

With the exception of Mr Gray and Mr Salmond, no other architects at the hearing, involved as either experts or advocates, had recently spent time in the building as far as I was aware. I found Mr Gray's report detailed and extensive but more importantly, objective. In my view, Mr Bowman's criticism was a little over the top and at times inaccurate, a fact that Mr Gray addressed at the hearing when he highlighted items in his report that Mr Bowman said were not included. Much of Mr Bowman's criticism seem to relate to process but I agree with Mr Gray that while his methods may have been different to what Mr Bowman may have done, the end result should be similar.

Ms Crawford also requested that I take note of a hearsay criticism from HNZ regarding Mr Gray's report not being adequate. I did not see that letter and nor was I advised, as far as I can recall, who made that criticism. What I do know is that HNZ did not attend the hearing and their submission seemed rather ambivalent, merely requesting that further information on heritage values and engineering matters be

obtained before an informed judgment is made. The HNZ List Entry Record for the building was attached to their submission, which included a 'summary' of values. However, Mr Gray advised that he sought out the 'full' entry but was advised that the 'summary' was all that was available. If a 'full' report was available, I assume that HNZ would have provided it in their submission. They did not. In any event, further information was presented by a number of parties at the hearing, and Mr Gray had full access to that. On that basis he decided, in consultation with TDC staff, that no further research was required.

I agree with Mr Gray that there was more than enough information available to determine the significance of the building. I note that Mr Henderson also agreed with this position.

Turning to the heritage significance of the building, I note that only Mr Gray, Mr Salmond (to a degree) and Mr McBride and Dr Lochhead for the Timaru Civic Trust actually assessed the heritage values of the building. As Ms Marks noted, Mr McBride (and Mr Gilkison, who addressed urban design issues, amongst others) is a member of the Timaru Civic Trust for whom he gave evidence. He cannot therefore be considered to be an impartial expert and his evidence carries less weight accordingly.

Dr. Lochhead considers the building to be *"an excellent example of Edwardian architecture and possesses many characteristic features of the period"* which is now rare because of the Christchurch earthquakes. Mr McBride also considers the building rare but went further to say it's an icon of national significance. He also considers the architecture significant and that it retains its integrity. Mr Salmond was of the view that the building is *"a significant heritage building in the Timaru CBD landscape"* and observed that *"although its original roof gables have been removed, it remains a distinctive building."*

Mr Gray agreed that the building has regional significance, acknowledging its rarity in Timaru and the wider Canterbury context following the earthquakes. However, Mr Gray has undertaken a comprehensive inspection of the building and does not share Dr. Lochhead's view that the building is an excellent example of Edwardian architecture or Mr McBride's view regarding its integrity. He summarises the heritage significance of the building at page 91 of his report as follows:

"Several modifications have been made to the building over the years, many of which have been to the detriment of significance and legible form, including the removal of the three large gable forms across the Bay Hill façade and two along Sefton Street, which has created disconnection between the form of the oriel windows and overall proportions of the main façade. This has in my opinion considerably diminished the rhythm and form of the building and thereby the overall integrity of the original design. I was disappointed by the overall lack of significance of the interior of the building. The detailed schedule of significance indicates very few elements which have been classed as A or B indicating "Exceptional" or "Considerable" significance."

Mr Gray confirmed his position to be that as the majority of spaces or elevations are found to be rated as *some* or *no* significance, overall the heritage values of the building are "less than exceptional or considerable", despite some elements having exceptional or considerable significance.

Having had regard to all the evidence presented on this issue, I accept that the building is of regional significance. However, I also accept Mr Gray's independent and objective view that the building cannot be considered an exceptional example or a building of considerable significance. His assessment tends to confirm that the

building is appropriately listed as a Category 2 building (of historical or cultural significance or value) by HNZ as opposed to a Category 1 building (of special or outstanding historical or cultural significance or value) as has been suggested by some submitters. In this context, I find it telling that Heritage New Zealand have not taken a more active part in this process.

I accept that any consent to demolish the Hydro Grand will result in the loss of heritage values. However overall those values do not appear to be at the significant end of the scale. Both Ms Marks and Ms Crawford set out the relevant test from the *Lambton Quay* High Court case which made it clear that in determining whether a heritage building should be demolished, all the competing considerations need to be weighed to ensure that the outcome is "*fair, appropriate and reasonable*". In this context Ms Marks outlined at paragraph 63 of her opening submissions, that case law confirmed these considerations to include "*the condition of the building, the cost of repair and the availability of finance, demand and commercial return if the building was refurbished, the cultural and heritage value and uniqueness of the building to the community, the impact of continued deterioration, and the private and financial interests of the owner*".

Ms Marks also submitted that the Environment Court rehearing of the *Lambton Quay* case based their decision on whether there was a reasonable alternative to demolition. In Ms Marks' submission, this is not a blanket test, the appropriate test should be derived with reference to the relevant District Plan. I agree with her position on that interpretation.

Issues relating to the condition of the building, the cost of repair and financial return under a number of alternative schemes, have all been advanced by the applicant as reasons for the demolition. With respect to the cost of repair and seismic strengthening, there appeared, on the face of it, to be a significant discrepancy between the applicants estimated cost for refurbishing the hotel building to 100% NBS and the Timaru Civic Trusts position, who relied on estimates from Mr Brian Le Fevre of Harrisons Quantity Surveyors. Although I note that Mr Le Fevre did not appear as a witness, he is a very experienced quantity surveyor as is Mr Davidson for the applicant.

Having analysed the cost estimates for retention of the existing Hydro Grand Building, strengthening to 100% of NBS and continued use as a hotel (no change of use) as presented by both parties, the costs are not dissimilar when the seismic strengthening work is left aside. Both QS's have used similar pricing, estimating methods and parameters in developing their estimates.

The applicant has undertaken very extensive and costly design studies and costings into options for retention and redevelopment of the existing building, as presented in the original application and their evidence to the hearing. It would appear to me that their scheme for retention of the building, strengthening to 100% NBS and operated as a hotel, is based on what they believe is a viable proposition for a hotel to be operated by an established mainstream hotel operator, and located within the existing structure. As such the rooms are generally larger and the internal partitioning has been reconfigured to allow for a better layout than that which presently exists. The applicant has shown layouts for the ground, upper two floors and rooms into the roof space, and has provided for a total of 43 rooms over three floors. It would seem that the cost of all 43 rooms (as opposed to the original 36) has been allowed for within the AECOM costings. A median level of fit out also appears to have been allowed for in their estimates.

Mr Le Fevre's estimate of cost is based on a single mid floor layout drawing prepared by Mr McBride, and a strengthening scheme designed by Mr Robinson. As Mr Le Fevre points out, the major differences (in cost) are in the structural solution and building carcass or envelope. Mr Le Fevre advised that he has identified the cost of "new equivalent structure alone" to be \$2,350,000, which he ascertained from "QV Cost Builder". He points out that the Hadley and Robinson scheme has a cost saving of \$1.35 million, compared to the above cost. The floor layout provided by Mr McBride was relatively similar to that produced by the applicant's consultants, and also shows a better layout than the original and has the same number of rooms on each of the first two floors. The two schemes for the two main accommodation floors were therefore quite similar.

Mr Le Fevre further states that through use of the QV Cost Builder, a new building of equivalent area would cost approximately \$11.25 million, whereas the scheme he has costed would be approximately \$8.8 million. It also appears that Mr Le Fevre has allowed for a median standard of fit-out within his extended costings.

I am therefore satisfied that both estimates have similar standards of fit-out allowance, with the exception that the applicant has allowed for specific basic restaurant and bar fit-out costs in their estimates of \$400,000. This cost does not appear to have been allowed for in the Civic Trust scheme estimates.

The following table has been prepared to explain the differences between both estimates, as I see them.

EXISTING BUILDING – 100% NBS – HOTEL USE	
APPLICANTS PROPOSAL	TIMARU CIVIC TRUST PROPOSAL
Gross Floor Area Allowed For: 2,491m ²	Gross Floor Area Allowed for: 2,231m ²
Number of Bedrooms Accommodated: 43 Estimated Cost: \$13,215,00 Subtract cost of 7 extra bedrooms developed into the roof – using the rate per bedroom from the Civic Trust costs of \$244,000 per bedroom (\$8,800,000 / 36 bedrooms) could be an additional \$1,700,000. Allowed contingency @ approx. 10%: \$1,183,000 Subtract difference in contingency allowances: \$721,421 Subtract Asbestos Removal: \$200,000 Subtract Structural saving: \$1,350,000 Subtract allowance for Restaurant & Bar fitout: \$400,000	Number of Bedrooms Accommodated: 36 Estimated Cost: \$8,800,000 Allowed contingency @ approx. 5%: \$461,579 Asbestos Removal: No allowance Saving of proposed structural system designed by Mr Robinson, over Harrison's stated New Equivalent structure (from QV Builder): \$1,350,000
Summary: Estimated Cost \$13,215,000 Extra Bedrooms -\$1,700,000 Contingency Difference -\$721,421 Asbestos Removal - \$200,000 Structural Savings -\$1,350,000 Restaurant/Bar Fitout -\$400,000 Total: \$8,843,579	Summary: Total: \$8,800,000

The AECOM estimate for a new structural frame within the building looked similar to Mr Le Fevre's New Equivalent structure cost (\$2.35m), hence the saving from the Robinson scheme was deducted from AECOM's cost to estimate parity.

When the deductions in costs from the applicant's scheme have been made, the estimates of both schemes are shown to be remarkably close in adjusted value and the major difference between the two is in the cost of the structural strengthening of the existing structure. This should not be surprising given they are cost estimates from two experienced QS's estimating on a similar basis.

I should note here that Ms Crawford submitted that Mr Le Fevre's report 'confirmed Mr Robinsons scheme'. With respect, it does no such thing. It is merely a cost estimate, Mr Le Fevre is not a structural engineer.

Turning to the seismic strengthening work needed, I have no reason to doubt either expert in this area. The difference here is in the approach adopted. Mr Gray provides a summary of the difference in approach at section 4.3 of his report. At the second paragraph on page 100 of that report, he says:

"The following are the main and basic differences between Mr Robinson's scheme and that of Powell Fenwick. Mr Robinson's scheme does not appear to propose any reinforced concrete shear walls or vertical or horizontal steelwork fixed to the interior faces of the existing original brick walls to resist potential transverse or longitudinal earthquake loads. Nor does his scheme mention reparative underpinning of the foundations under the existing masonry walls, again to assist these walls to resist earthquake loads; or additional strengthening and structure to the corner tower structure to tie the two main exterior walls together."

Mr Paterson, in his paragraphs 22 to 25 of his summary evidence presented at the first hearing, sets out the reason why his scheme differs from Mr Robinson. He outlined the issues that had arisen with many brick buildings that have been assessed after the Canterbury earthquakes. He then advised that his firm had previously used the method proposed by Mr Robinson for some buildings, prior to the Christchurch earthquakes, because it does preserve life and enable escape out of the building. However, he goes on to say that all the brick buildings that they carried out strengthening work similar to that proposed by Mr Robinson *"lost significant strength in the earthquakes, had local failures of walls, parapets, facades and were deemed uneconomic to repair."*

As summarised in the evidence section above, Mr Heenan stated at the hearing that he had no reason to doubt that the applicant has undertaken a suitable assessment. He also confirmed the very poor performance of double skinned brick buildings in the Christchurch earthquake. In his view, the methodology used for seismic upgrade work used by the applicants fits within the normal guidelines. His formal report advised that *"the proposed strengthening schemes presented appear to be appropriate for retention of the façade and / or strengthening of the building for future development"* and noted that *"the retention of and strengthening of the existing building and or façade does provide challenges both in respect of economics' of the strengthening and the functionality of the building for modern uses."* He confirmed this at the hearing where he said that the level of intervention into the building fabric would be quite extensive, even at 34% NBS.

The summary from his peer review report was as follows:

"We consider that the Powell Fenwick Consultants Limited structural assessment of the building earthquake capacity is appropriate albeit possibly slightly conservative. We consider that the Powell Fenwick Consultants Limited earthquake strengthening methodology to be a reasonable assessment, at concept stage, for increasing the buildings lateral earthquake capacity to 34%NBs and 67%-80% NBS."

Mr Gray concluded at the bottom of his page 100 that “*considering that Mr Robinson’s scheme does not propose the reinforced concrete shear walls, extensive underpinning corner tower reinforcement, and replacement of the floor diaphragms that is proposed in the Powell Fenwick scheme, or all the exclusions listed..., then one can understand why there is such a large disparity between the cost of the two schemes.*”

As a consequence of the foregoing, I accept the evidence of Mr Paterson, which is corroborated by Mr Heenan, that the Powell Fenwick structural design is the most appropriate in the circumstances and that it is an approach that an owner of such a building is entitled to take in the circumstances.

Adopting the proposed approach to the strengthening work appears to have at least two consequences that affect the viability of the proposal. The only evidence I heard on the economic viability of a hotel within the strengthened existing hotel building came from Mr Charity. In his view, rents exceeding \$280 per square metre (which he said was the minimum commercial rents required to meet the business case projections) will be a challenge to achieve in rural New Zealand. It was also his opinion that the end product also had to achieve 100% of NBS to have any chance of attracting new tenancies at the highest end of the rental market rates in Timaru. Mr Charity’s financial indicator table as presented in his original evidence did not include an assessment of a hotel use within the strengthened building (100%NBS) or new build of the same size. He addressed this at the hearing. His updated table indicated a realistic Cap rate for Timaru (year 4 revenue) being 7.5-8% for repair and 7-7.5% for new build. The new table indicated 3.6% for hotel use under the repair scenario, and 5.6% for the hotel use for a new build. Given the square meterage used was 2,500m², I assume this was for a 43-bedroom hotel as opposed to the original 36-bedroom hotel. Even with the additional rooms incorporated into the attic space, Mr Charity was of the view that the retention of the Hydro Grand was not commercially possible.

The other issue with the strengthening work proposed is the level of invasiveness it will have on the existing interior of the building. Mr Paterson discusses this at length in his evidence. At paragraph 12 of his executive summary he states:

*“Ten different options involving the retention and strengthening of the existing building have been considered. While all options are technically feasible, I note that the amount of strengthening work required to meet the requisite standards **will result in little of the original fabric of the building remaining.** The work is also extensive and therefore costly”.* [my highlight]

At paragraph 20(b) he states:

“Strengthening of the building would be difficult, expensive, and impose significant limitations on the form and utilisation of the building in a way which is not compatible with the ideal site utilisation or with an integrated hotel facility.”

His paragraphs 34 to 39 of his evidence in chief outline the work he refers to. As noted above, Mr Heenan concurs with his view on the invasiveness of this work.

Mr Salmond also advised, at paragraphs 27 and 28 of his evidence, that if the building were to be adapted for continued use, very little of the interior is likely to be salvaged and “*any reuse of the building in this way would effectively result in “façadism” (where only the external walls and roof of the building are retained), which could not be seen as an appropriate conservation option for the building*”.

The evidence is reasonably clear to me that the applicant has considered a wide range of alternatives, including retention of the building under a number of different uses. Under the retention scenarios, it is also reasonably clear to me that there will be a high level of invasiveness, which will impact on the heritage values of the building. And as we have already seen from Mr Gray's report, the heritage values of the building are "less than exceptional or considerable" in any event.

Of course, the corollary to any decision to allow the demolition of the building, is the need to consider the appropriateness of the replacement development on the site. The key issue in contention with the proposed development is that it is an over development of the site as the result of the parking and the height infringements, and the effects that this has on the surrounding environment, in particular the Lambie property.

Turning to the impact on the Lambie property first, I agree with Ms Mark's position on this. The existing environment does not include potential future development on a site, where that development requires resource consent. Any building development on the Lambie property is a discretionary activity. Hence any development of the Lambie property is not part of the environment I can consider.

By the same token, all buildings that front a street in this zone require resource consent so there is no permitted baseline as such. However, the plan clearly anticipates large buildings of 20m in height that are not set back from The Bay Hill Road (or any other boundary except a residential zone boundary) in this location. In this context, I accept the evidence of Mr Burgess that the effects of the proposal's bulk (including shading) are similar or less than a development that complies with the 20m height restriction.

I note that Mr Henderson also accepts this position. At his page 20 he makes the following comments:

"The shading diagrams indicate that there is very little difference in the shading that will arise from the proposed buildings as opposed to what could be expected from a building that complies with the maximum height for the zone. ... I consider that there will be no significant adverse shading effects arising from the proposed buildings.

With respect to the height of the buildings, I note that the Urban Design Panel did not make any comment from a design perspective on the proposed heights. The District Plan anticipates large buildings in this area by virtue of the 20m maximum provided for, with intrusions provided for as a discretionary activity. In my view, the height intrusions will not give rise to a significant degree of effect, as they are offset by the varied (ie non-uniform) roof design of the upper levels and the different orientation of buildings on the site that allow for sun access and visual relief. I do not consider the additional heights, which differ over parts of the site due in part to the slope of the properties, to give rise to significant adverse effects."

I agree with Mr Henderson and overall, I am satisfied that the height of the proposed development is acceptable in this location, both from an urban design perspective and in terms of the impact on neighbouring properties. The other issues raised by the Lambie Family Trust, which included building consent issues and the impact on the subject site from any development on their property, are not particularly relevant to this decision.

With respect to the other urban design issues raised, this was also addressed in Mr Henderson's report. He noted that the applicant responded to many of the concerns

raised by the Urban Design Panel and noted that *“the Panel’s overall comment that the proposal is a better-balanced proposal, and that overall it has not reached a view that the proposal is inappropriate”*. Mr Henderson did not consider the design of the buildings to be inappropriate, but did request the applicant to address the pedestrian experience and a design reference to the Hydro Grand, specifically the corner dome element, at the hearing.

The updated plans presented at the hearing addressed the issues raised by Mr. Henderson by showing:

- (a) An improvement of the pedestrian environment on Sefton Street;
- (b) Incorporation of an activated laneway between the Hotel entrance and the Office lobby;
- (c) The adjustment of the corner of the office building to better accent the corner “with a more pronounced gesture” as Mr. Burgess put it.

In urban design terms, the site is visually prominent in a key location. The current building, while a focal point in its day, obviously no longer contributes towards the vibrancy of the town centre and is unlikely to by today’s standards, even if refurbished given it is introverted building that does not easily connect with the public realm. By contrast, Mr. Burges was firmly of the view that the proposal will have a positive urban design impact on the surrounding area where he said at his paragraph 71:

“From an urban design perspective, the proposal takes a site that is currently comprised of a long vacant building and surface carpark and replaces it with a modern mixed use development set around an open courtyard. It will result in a significant increase in the level of pedestrian activity and vibrancy at the northern end of Timaru’s prime retail and commercial street and will create an activity link between the retail area, the Piazza, and the hospitality precinct to the north.”

Mr Cleese also noted at his paragraph 41:

“The proposed development has been purposefully designed to present an attractive and activated street edge with the site oriented towards the pedestrian-focused The Bay Hill and Caroline Bay Piazza. The design is heavily glazed at ground level facing towards The Bay Hill with ground floor tenancies opening out into a publicly accessible courtyard space.”

Overall I accept the applicant’s evidence that the proposed development will provide an improved urban design outcome for this area.

Before I move on from urban design matters, I must address the concern raised by the South Canterbury Historical Society Inc, that the building gets demolished but then the redevelopment does not take place for whatever reason. This is a valid point and has happened in other parts of the country (for example, the Century Theatre site in Dunedin). This generally happens for economic reasons but consent holders can also apply to change the conditions of the consent, or for a new consent for a less appealing building (for example, a large single storey big box retail). While there is full discretion to consider new buildings, the permissive nature of this zone coupled with the lack of design guidance in the District Plan can make it difficult to get a good design outcome.

Given the design proposed for replacement buildings are significant positive effects of the proposal overall, it is important that some certainty around the replacement building is retained. A bond condition is not considered appropriate because of the cost. However, I consider it is appropriate that the existing building not be demolished

until such time as building consent is issued for the replacement buildings, and the appropriate finance and construction contracts are in place for their construction. The reason for this approach is that a significant amount of design work is required to get the building to this stage and a consent holder is therefore less likely not to go ahead with the development once they have reached that stage.

The only other issue of contention left to deal with is the parking issue. As noted above, the applicant responded to the concerns of Council around a parking shortfall by purchasing an existing car park. This still did not satisfy Councils traffic consultants who consider a shortfall remains and remained concerned about how this aspect of the proposal will operate. This concern appeared to stem from the methodology Mr. Rossiter used to calculate future demand. Mr Durdin concluded that effects of this would be more than minor.

Mr. Rossiter, however, was comfortable that the overflow car parking demand he originally predicted would be met by the new car park purchased by the applicant. While Mr. Rossiter provided an indicative allocation of parking spaces, he advised that it is not possible to know this until the final tenants are confirmed and their individual parking requirements are determined and agreed. For similar reasons, he did not consider it appropriate to provide a parking management plan at this stage of the process.

In my experience, it is not uncommon for city centre developments of this nature to utilise off site car parking and for hotel to utilise valet arrangements to access these. It is also reasonably common for them to not always comply with the parking numbers stipulated in the relevant District Plan. However, it is always in their best interest, from an efficiency point of view, to provide for their parking needs. In this case, there are a number of variables, including whether the uptake of office space is new business or just a relocation of existing business, which will affect parking allocation and demand. The applicant has promoted the use of a management plan and a review clause to deal with these issues. Although Councils traffic department were not comfortable with this approach, Mr. Henderson agreed this was the appropriate way to deal with the matter and has experience of this approach working in other parts of the country where parking is more of an issue.

While I understand the nervousness of the Council in regard to the potential for a parking shortfall, I tend to agree from a practical point of view with the applicant and Mr. Henderson that the issue can be managed via the conditions proposed. The effect of concern to Council is a potential future effect that may not eventuate at all, which Mr. Rossiter is reasonably confident of. However, if it does, then the parking conditions can be reviewed to ensure adequate parking is provided by some mechanism or other. In this regard, I note that Policy 8(19) provides as follows:

To allow developers to provide a cash contribution in lieu of onsite parking where they are unable to comply with Policy (18) because of rules in the District Plan or other site constraints.

It is appropriate that reference to this mechanism is included in the review condition.

On this basis, I accept the applicants evidence that the parking provided, along with the conditions proposed, will ensure that any potential effects on the state highway and local roading network, will be acceptable.

Turning now to the policy assessment, I note that the original application, the section 42A report of Mr. Henderson and the evidence of Mr. Cleese have comprehensively

addressed the relevant policy framework of the Timaru District Plan and the Canterbury Regional Policy Statement. Regional Policy Statements are high level documents that are generally not overly helpful in the assessment of individual resource consent applications. However, I agree with Mr. Cleese's summary at paragraph 65 of his evidence where he says:

"In summary, the CRPS recognises the need to identify significant heritage buildings and reflects the s6(f) direction to protect such heritage from inappropriate use. The Hydro Grand has been identified as having heritage values, however these are not of the highest significance in either the District Plan or NZHPT listings. The emphasis in the CRPS is on 'inappropriate' use, which in turn hinges on whether demolition is reasonable given site-specific circumstances. The policy approach in the CRPS recognises the economic challenges of retention and reuse, provides for rebuilding (as opposed to reconstruction to the same design), and recognises the need to consider proposals on a case-by-case basis."

Essentially what Mr. Cleese points out is that the test in the CRPS is the same, or very similar, to the test discussed above in relation to the case law around the relevant RMA provisions. Satisfy those tests and you will satisfy the RPS.

With respect to the Timaru District Plan, Mr. Henderson generally agreed with the applicant's policy assessment and summarizes his position at page 26 and 27 of his report. He considers that the proposal is largely consistent with the relevant provisions of the District Plan. With respect to the heritage policy framework, he noted that this is largely process orientated. When these policies and the commercial zone policies are read as a whole, he saw no policy bar to the demolition of a heritage building and noted that the Commercial zone policies contemplate replacement buildings.

For the most part I agree with, and adopt, Mr. Henderson's position in relation to the policy framework. He notes some inconsistency with Objective 1 (identify and protect heritage of importance) and Policy 2 (protect higher heritage values through the District Plan) given they refer to 'protection' of heritage values. However, they are largely process policies that set out how Council intends to carry out its duty in respect to heritage resources the District plan rather than policies that create an absolute bar to the loss of heritage values. The discretionary activity status of demolition activity and the inclusion of Policy 7, which sets out the assessment criteria should a scheduled heritage item be affected, tend to confirm this position.

Mr. Cleese also felt the proposal was not consistent with heritage policy 2, which he suggested "*simply seeks protection without qualification*". However, Policy 2 does refer to buildings with higher heritage values while heritage policy 3 refers to heritage buildings of lesser significance. Under that Policy, careful assessment of the character of heritage buildings of lesser significance, and the effect of development proposals on those buildings, is required while heritage policy 7 requires a case-by-case approach to all applications. Policy 3.3.2.3 of the Commercial zone also refers to protection of the most important heritage resources in commercial areas.

While it is accepted that the building has heritage value, Mr. Gray's assessment indicates that these values are not overly significant and accordingly, this is potentially a heritage buildings of lesser significance in terms of the policy framework. Even though it retains a HNZ category 2 status, Mr. Gray was also concerned that its integrity and legible form had been seriously compromised over the years. In such circumstances, the Plan does not require absolute protection of a scheduled heritage building.

Heritage Objective 1 adds the element of protecting items of heritage importance that contribute to the character of District and this location is obviously very important in terms of the character of Timaru. However, as I have already determined, the current building no longer contributes positively towards the character and vibrancy of this location, and the town centre in general, and is unlikely to even if refurbished given its introverted nature.

With reference to heritage policy 7, I note that the key aspects of the assessment criteria have been assessed above. Having regard to that assessment and the policy framework outlined above, I have found that the demolition of the Hydro Grand is "fair, appropriate and reasonable." I also find that the proposed replacement development will achieve the amenity and urban design policy outcomes sought by the District plan for the commercial heart of Timaru.

Turning to Part 2 matters, I note that Mr. Henderson concluded that the proposal is consistent with the relevant matters and that overall, it will achieve the sustainable management purpose of the Act. Mr. Cleese provided a comprehensive review of Part 2 at paragraphs 66 to 84 of his evidence. I agree with his assessment and adopt it accordingly.

The demolition of the Hydro Grand is not considered inappropriate for the following reasons:

- a. The HIA did not find the building, overall, to retain significant heritage features. Limited features of 'exceptional' or 'considerable' heritage values were found while the integrity and legible form of the building was considered compromised by previous alterations;
- b. Several options for retention were considered but the cost of repair and strengthening proved uneconomic;
- c. If the building was to be refurbished, the impact on the heritage features of the repair works, is likely to be invasive and extensive in nature;
- d. The building is only listed as a Category 2 and Group 2 building and is not of national importance;
- e. The building is in a relatively dangerous and dilapidated condition;
- f. Given it is not economic to refurbish the building, it will likely degrade further, thereby increasing the potential danger to the public; and
- g. There will be wider benefit to the community, including from the revitalisation of this area.

The replacement development will have significant urban design and economic benefits as outlined by Mr. Cleese and a number of submitters. These include the following:

- a. An increase in the foot traffic in the area, reinforcing the commercial viability of the Town Centre and the links with Caroline Bay, the Piazza and the restaurants to the north;

- b. The provision of high quality accommodation in close proximity to the Town Centre;
- c. The provision of high quality office space of a grade that is not readily available in Timaru;
- d. The encouragement of a significant increase in the level of pedestrian activity and vibrancy at the northern end of Timaru's prime retail and commercial street by creating a link between the retail area, the Piazza and the hospitality precinct to the north;
- e. The replacement of a derelict, unsafe and under utilised site with modern well designed facilities will provide significantly superior urban design outcomes compared with the existing environment.

Overall, I accept that the demolition of the Hydro Grand and the redevelopment of the site as proposed better achieves the purpose of the Act than retaining the building.

6. Right of Appeal

In accordance with section 120 of the Resource Management Act 1991, the applicant and/or any submitter may appeal to the Environment Court against the whole or any part of this decision within 15 working days of the notice of this decision being received. The address of the Environment Court is:

The Registrar
Environment Court
PO Box 2069
CHRISTCHURCH

Any appeal must be served on the following persons and organisations:

- Timaru District Council;
- The Applicant;
- Every person who made a submission on the application.

Failure to follow the procedures prescribed in sections 120 and 121 of the Resource Management Act 1991 may invalidate any appeal.

DATED at Dunedin this 21st day of April 2017.



Allan Cubitt
Commissioner

