

IN THE MATTER The Resource Management Act 1991 ("the Act")

AND

IN THE MATTER of two applications for a land use consent under section 88 by **IPG CORPORATION LTD** to **WELLINGTON CITY COUNCIL** pertaining to 114 Adelaide Road, Mt Cook

STATEMENT OF EVIDENCE OF IAN THOMAS LEARY

1. Qualifications and experience

- 1.1 I have a degree in Land Surveying from the University of New South Wales and a Post Graduate Diploma in Resource and Environmental Planning from the University of Waikato. I am a full member of the New Zealand Institute of Planners (NZPI). I hold a current certificate from the Ministry of the Environment as a hearing Commissioner and have sat in that role for Wellington City Council.
- 1.2 I have well over 25 years of experience in land development, planning, resource management and surveying. I have been a director of Spencer Holmes Ltd, a multi-discipline company since 2009. I had been employed by the firm as planning manager for 10 years prior to becoming a director.
- 1.3 During that time I have undertaken a broad range of planning work within the Wellington, Kapiti Coast, Hutt Valley and Wairarapa regions. I have prepared resource consent applications for activities such as landfills, quarries, recreation facilities, subdivision developments, multi-storied office buildings, residential apartment buildings, childcare facilities, residential housing and signs.
- 1.4 My experience includes preparing the land use consent applications for heritage buildings. Recent examples include:
- The redevelopment of the Stewart Dawson's Building at 360 Lambton Quay
 - Strengthening and redevelopment of the Toomaths Building at 43 Ghuznee Street.
 - Partial demolition and construction of new buildings within a heritage area at 117-123 Riddiford St.

- Partial Demolition of a building in a heritage area at 191 Adelaide Road
- A subdivision around Premier House, 75 Woburn Road.
- I also prepared an application for the demolition of the Harcourts Building in Lambton Quay in 2012 including the Environment Court hearings.

2. **Involvement in project and background**

2.1 I was engaged by the applicant to provide planning advice in respect their building, in mid to late 2019.

2.2 The applicant had been already engaged in consultation with WCC, and had looked at options for development of the site. Attached to the evidence of Mr Parbhu is consultation responses provided by WCC officers in September 2019 and earlier. Figure 1 below is the heritage advice as to what would be an acceptable building at that time, in the view of the WCC officers.

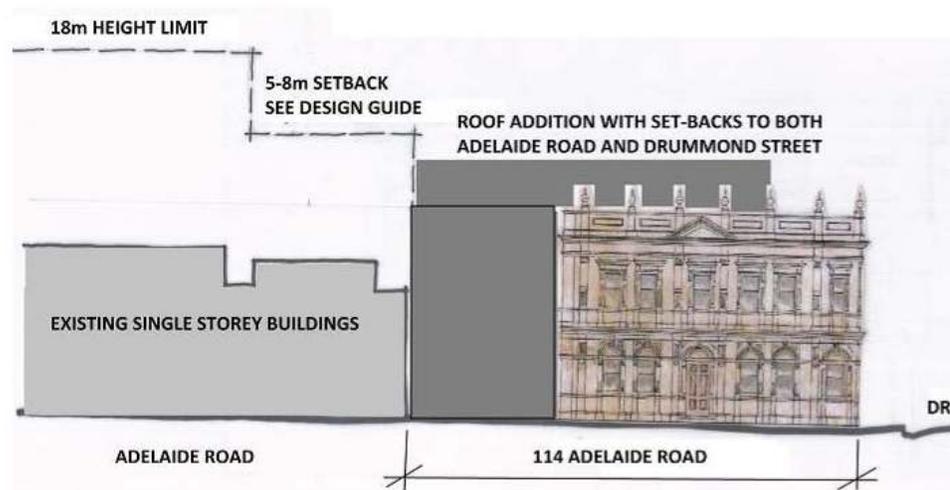


Figure 1: One of the options given to IPG Corporation by WCC

2.3 The applicant was in discussions with WCC Resilience Department and a solution was required to be found which would enable to application to address the earthquake prone status of the building. I had not been involved in those early discussions.

2.4 WCC was in the process of issuing notices under S133AS of the Building Act which would allow them the right to take possession of the building and carry out strengthening works or demolish the building. A charge would then be put on the land to enable WCC to recover the funds spent.

- 2.5 That notice was issued by WCC in December 2019. The current proceedings on this matter are still before the Court.
- 2.6 Despite many years of exploring options for this building, the applicant was forced to make some urgent decisions to address the WCC's actions in seeking the order to take possession of the building to carry out works.
- 2.7 My preliminary advice was that we needed to explore every viable option, given the extent of the works necessary to strengthen the building and its heritage listing under the District Plan.
- 2.8 It still remained uncertain as to whether any viable option could be found to strengthen the building whilst retaining large elements of the heritage fabric.
- 2.9 It was also clear that it would take some time to develop a new design for the building given the advice provided by WCC heritage officers to date.
- 2.10 Time was not something available to the applicant, given WCC's actions in issuing the S133AS notice.
- 2.11 At this point, the applicant expressed a 'reluctant' preference for demolition of the building rather than redevelopment. The reluctance was based on the difficulties and costs of strengthening and the uncertainty of finding a viable redevelopment option. He was particularly discouraged by the consultation with officers prior to my involvement.
- 2.12 The decision was made, given the lack of time available, to proceed with a two step approach. Firstly an application would be made to demolish the building followed by a second application for a new building in whatever form could be developed and which would be viable to construct.
- 2.13 A number of reports were commissioned and the application to demolish the building was lodged in May 2020.
- 2.14 We provided evidence in the application for demolition, that the strengthening of the building would be of the order of \$6.5 million¹.
- 2.15 We provided a valuation of the building, restored to its existing form, would be of the order of 2.5 million².

¹ See report by Malbys within the demolition application

² See Colliers Valuation within the demolition application

- 2.16 As had been outlined above, the applicant had been looking at options well before the demolition application was lodged. Once the application for demolition was prepared, resources were then put into a new building proposal.
- 2.17 Whilst I was aware of the earlier advice, I optimistically participated in pre-application consultation with the WCC officers to try and look at options that would be economically viable. I felt the evidence and analysis prepared in the demolition consent was emphatic in demonstrating that the “as-is” restoration of the building was not viable.
- 2.18 An alternative option required a considerable increase in the floor area to recoup the substantial costs of strengthening the building.
- 2.19 The second application was to be made for a new building which retained the heritage façade if possible.
- 2.20 The second round of consultation was little more successful than the first round undertaken by the Applicant in previous years. Figure 2 below shows the extent of what WCC officers thought was feasible for the site.

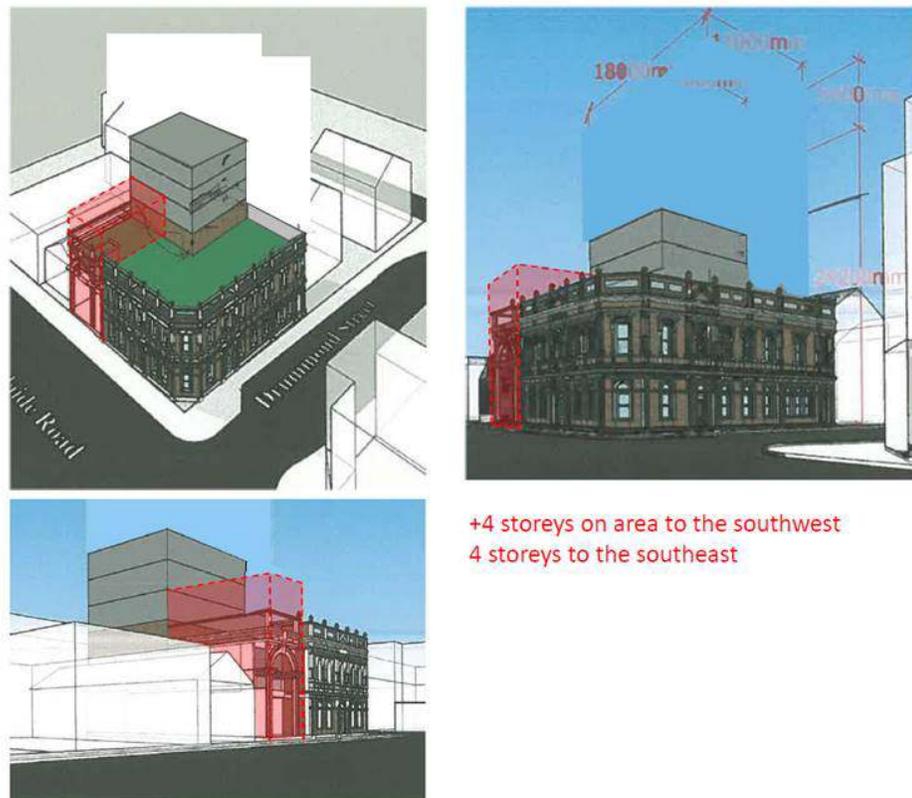


Figure 2: Extension to the floor area envisaged as potentially viable by WCC on the second round of consultation.

- 2.21 Whilst WCC officers were more encouraging than in the previous consultation, the extent of what was considered viable, still differed by some measure from the position of the applicant.
- 2.22 The applicant made the decision to look at what was feasible from their perspective and review the viability of this in the consent process.
- 2.23 That leads us to this point, where the commissioners have 3 options before them.
- To decline both applications and preserve the status quo.
 - To approve the demolition of the heritage building
 - To decline the demolition consent and approve the new building and partial demolition
- 2.24 This is a scenario where the applicant is not here by choice. They are here because they have to be here. There is no scenario where the applicant will walk away with a significant economic benefit.
- 2.25 The ultimate outcome here for the applicant is a moderate loss.
- 2.26 If the commissioners are to take the first option as recommended by the officer, where does that leave the building and the applicant?
- 2.27 No way to go forward and they cannot stay where they are?
- 2.28 Does that mean that Council will be obligated to continue with the orders to take possession of the building if these are granted by the Court? If so, how is Council in any way in a better position to be able to carry out the work. Council will only be carrying out the work lawfully to 34% New Building Standard (NBS).
- 2.29 What use is there for a 34% NBS building?
- 2.30 Furthermore, any change of use would have to mean that the building must be upgraded from that to as near as practical to a new building³, meaning if

³ Section 115(b) of the Act states:

in any other case, unless the territorial authority gives the owner written notice that the territorial authority is satisfied, on reasonable grounds, that the building, in its new use,—

(i) will comply, as nearly as is reasonably practicable, with every provision of the [building code](#) that relates to the following:

(A) means of escape from fire, protection of other property, sanitary facilities, **structural performance**, and fire-rating performance:

the owner were to find another use for the building, then they likely have to carry out additional strengthening work.

2.31 This is not a case where we can look at the objectives, policies and rules of the Plan, evaluate the effects whilst ignoring the practical realities and coming up with a decision. This is the process that the WCC's reporting officer Mr Daly has adopted.

2.32 This approach is nonsensical in this scenario.

2.33 We must look at the outcomes. What is the outcome that makes the most sense. We must look at and evaluate the practical realities. That is how I will approach my evidence and how I reach my conclusions on this matter.

2.34 In preparing this evidence, I have:-

- Carried out a site inspection
- Read the submissions,
- Read the WCC officer planning officers report including advisor attachments from WCC Urban Design Advisor (Sarah Duffell), WCC consultant heritage advisor (Chessa Stevens) Earthworks Engineer (John Davies), WCC traffic engineer advice (Anbuselvan Pungiah),
- Read the evidence for the applicant including Valuer Mike Horsley, wind engineer Neil Jamieson, architect Chinara Sharshenova, the developer Dennis Parbhu, structural engineer Ignatius Black and heritage architect Dave Pearson.

2.35 I therefore have a good understanding of the specific project and the planning issues relating to matter under consideration.

Code of Conduct

2.36 I confirm that I have read the Code of Conduct for expert witnesses contained in the 2014 Environment Court Practice Note and whilst this is a Council hearing, I agree to comply with it. I confirm I have considered all the material facts that I am aware of that might alter or detract from the opinions I express. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

Scope of Evidence

2.37 My evidence is structured as follows:

- (a) A description of the site
- (b) A description of the Proposal
- (c) The statutory background;
- (d) An assessment of the effects of the proposal;
- (e) The Officers report;
- (f) Part II analysis; and
- (g) My conclusions.

2.38 In preparing my evidence, I rely partly on the expertise of other parties, as well as my own relevant experience to reach my conclusions set out below.

3. THE SITE

3.1 The site is known as 114 Adelaide Road. It has a total area of 455m². It is located on the corner of Adelaide and Drummond Street, Mt Cook.

3.2 Adelaide Road runs from the Basin Reserve towards Island Bay and forms an important connection between the City, Mt Cook and Newtown.

3.3 The site is occupied by an unreinforced masonry building, known as the (former) Tramway Hotel. The building occupies the whole site. Figure 3 below is a photograph of the building looking south west from Adelaide Road.



Figure 3: Photograph of the Former Tramway Hotel

- 3.4 The building is currently vacant and is not in use. There has been no commercial use of building for approximately 10 years.
- 3.5 It is important to note, in respect to matters of relevance, that the building is modest. It provides only about 800m² of commercial floor area across the ground and 1st floor. This limits the buildings commercial return abilities unless significantly extended.
- 3.6 A more detailed description of the buildings architectural features is contained with the application's heritage report and discussed in the evidence of Dave Pearson. Chessa Stevens for Council also provides an extensive description of the building in paragraphs 14 to 22 of her evidence.
- 3.7 In respect to the wider area, I note that Figure 4 below shows the zoning that currently applies. The immediately adjoining properties are all zoned Centres under the Operative District Plan.

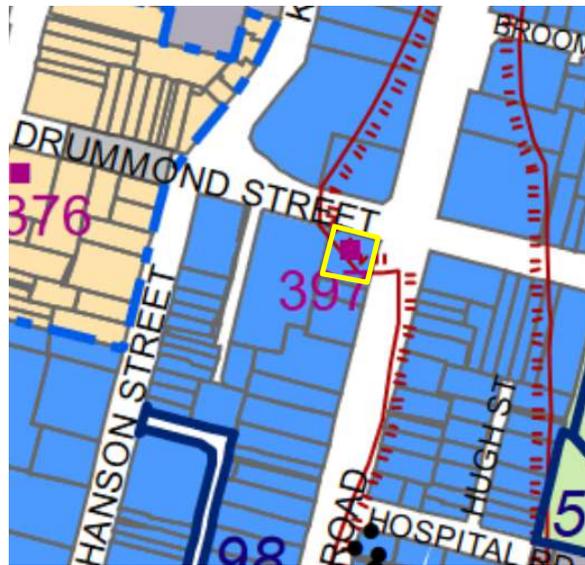


Figure 4 – Wider zoning of the area

- 3.8 The property to the immediate west is known as 19-23 Drummond St and is occupied by unit titled flats The flats buildings are shown in Figure 5 below.



Figure 5: Looking south west on Drummond Street from corner with Adelaide Road

- 3.9 It is noted that the flats building immediately adjacent to the subject site, is approximately the same height as the existing Tramway Building. It is also built within 1 to 2 metres from the boundary.
- 3.10 This is demonstrated by Figure 6. Therefore, an extension of height of the subject building will have a lessor impact on direct sunlight to front units as these properties as the shading effect is largely already established.



Figure 6: The separation between the subject building and 19 Drummond Street

3.11 It is noted however that there is likely to be an impact on the shading to the rear of the building at 19 Drummond Street where windows have a relatively unimpeded view and the subject building steps away from the boundary.

3.12 To the south of the subject site is a property known as 124 Adelaide Road. This site and the sites further to the south contain a series of industrial/commercial buildings. These properties are shown in Figure 7. These buildings are almost certain to be redeveloped in the next 5-10 years given the city demand for housing and commercial space and the Council's approach to encourage development along this section of road.



Figure 7: Looking South from Drummond Street intersection

3.13 The wider area of Adelaide Road, heading south from the Basin Reserve, has long been identified by Wellington City Planners as a location for development intensification.

3.14 That has just begun to be realised, with a number of developments being approved or under construction now along Adelaide Road.

3.15 Adelaide is identified as a Principal Road under the District Plan road hierarchy.

3.16 At paragraph 171 of the S42A report the officer states:

The building is included in the HNZPT Register of Historic Places, Historic Areas, Wahi Tapu and Wahi Tapu Areas.

3.17 I note Chessa Stevens, the Heritage expert for WCC states at paragraph 24 of her evidence statement that:

Neither the existing building, nor the site, is listed with Heritage New Zealand Pouhere Taonga (NZHPT).

- 3.18 I have checked the Heritage New Zealand list and did not find the site listed.
- 3.19 I note that Ms Stevens has stated at paragraph 25 of her evidence that there is a recorded archaeological site on the property, which would be the case if there was evidence of occupation prior to 1900.
- 3.20 The applicant has been advised of their requirements to obtain an archaeological permit, prior to carrying out any works under the relevant legislation (Heritage New Zealand Pouhere Taonga Act 2014) and will do so.

4. **THE PROPOSAL**

- 4.1 The proposal includes two options for the commissioners to consider. This is an unusual situation brought about by unusual circumstances.
- 4.2 It involves:
- The total demolition of the building – known as SR 464277 ; or
 - The partial demolition of the building and construction of a new building on the site known as SR 490717.

4.3 The applicant has chosen this seemingly complicated pathway, because of the background legal situation and requirement to address the earthquake prone status of the building.

4.4 As described above and in the evidence of Dennis Parbhu and Chinara Sharsenova, there has been little or no support from Council officers to proposals which enable the economic viability of the strengthening of the building to be achieved.

4.5 The process followed, allows the commissioners to consider the evidence and decide between two options.

Full Demolition - SR 464277

- 4.6 This proposal is for the full demolition and clearance of the building from the site.
- 4.7 As part of the proposal, the applicant will undertake prior to the demolition of the building, a full photographic record of the building which will be provided to WCC.
- 4.8 Another option for demolition that can be considered should the commissioners be of a mind to approve the demolition proposal, is that a full

3D scan of the building be undertaken and this provided to WCC for long term storage.

- 4.9 The applicant intends to clear the building from the site and grass the surface until a new building/activity is approved.
- 4.10 If the certainty of a consent for demolition is obtained, then a new building would be proposed in the short to mid-term.

Partial Demolition and New building -SR 490717

- 4.11 The proposal is the partial demolition of elements of the existing building and the construction of a hotel building behind the existing main façade of the existing building as shown in IPG plans numbered A-000, 010 to 014, 100 to 107, 150 to 154, 200 to 205, 250 and 251 all Revision 2.
- 4.12 The proposal will involve retaining the main façade of the building (ground and level 1).
- 4.13 The existing garage on the eastern façade will be demolished. The roof and interior of the building will be demolished in accordance with the engineers recommendations.
- 4.14 The heritage additions/alterations to the main façade are outlined in the evidence of Dave Pearson.
- 4.15 The proposed new building is being developed for hotel purposes.
- 4.16 The basement will be excavated below the building and will contain a dedicated car park using a car stacker.
- 4.17 The ground floor will have the vehicle access entrance, loading, rubbish and hotel main reception and bar/restaurant.
- 4.18 Level 1 to 7 will be occupied by hotel rooms.
- 4.19 The applicant proposed to place a Digital Static Billboard on the building.
- 4.20 The billboard is not intended to be used for 3rd party advertising, but to advertise activity on site such as the hotel, bar and restaurant.
- 4.21 The billboard will be 4 x 10 metres (40m²).
- 4.22 There are specific conditions relating to the billboard which are largely standard and which are set out in the Appendix 1 of my evidence

5. **Statutory Background**

5.1 The s42A reporting officer, provides the background statutory description in paragraphs 33 to 40.

5.2 I generally agree with the officers conclusions in respect to the statutory matters.

5.3 In particular, I agree that the application to demolish the building is a discretionary restricted activity to be assessed against 104C.

5.4 I agree that the partial demolition and construction of a new building as described above, will be a non complying activity to be assessed pursuant to 104 B and D of the Act.

5.5 In respect to s104 of the Act, I assess the effects of the proposal below.

5.6 I note that section 104(1)(ab) states:

any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity;

5.7 In this case, I note that the existing building is classed as being earthquake prone and is in poor repair. The existing façade has a number of elements which are not original.

5.8 The proposal to construct the new building, will:

- Secure the façade so that it is no longer earthquake prone
- Carry out some restoration of the features of the original heritage facade

5.9 In my view, this would constitute a measure for the purpose of compensating for some of the adverse effects of the proposal and can be considered under s104(1)(ab).

5.10 I acknowledge that the demolition option would not have any positive or compensation elements to assess.

National Environment Standards

5.11 There is no relevant National Environmental Standard or regulation to consider.

National Policy Statement Urban Development

5.12 The National Policy Statement on Urban Development (NPSUD) is particularly relevant to the proposal.

- 5.13 The NPSUD is in force and Wellington City Council is listed as a Tier 1 area.
- 5.14 The NPSUD is an extraordinary planning document. In my view, the Government has intended that the document be a 'circuit breaker' which proposes to make significant changes to the urban makeup of New Zealand cities and the planning process.
- 5.15 It is not possible to look at the planning process in the same way, given the stated objectives and policies of this high level planning document.
- 5.16 The relevant provisions of the NPDUD are as follows:

Objective 1: New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, **economic**, and **cultural wellbeing**, and for their **health and safety**, now and into the future.

Objective 3: Regional policy statements and district plans enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which one or more of the following apply:

- (a) the area is in or near a centre zone or other area with many employment opportunities
- (b) the area is well-served by existing or planned public transport
- (c) there is high demand for housing or for business land in the area, relative to other areas within the urban environment.

Objective 4: New Zealand's urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities, and future generations.

Policy 3: In relation to tier 1 urban environments, regional policy statements and district plans enable:

- (a) in city centre zones, building heights and density of urban form to realise as much development capacity as possible, to maximise benefits of intensification; and
- (b) in metropolitan centre zones, building heights and density of urban form to reflect demand for housing and business use in those locations, and in all cases building heights of at least 6 storeys; and
- (c) building heights of least 6 storeys within at least a walkable catchment of the following:
 - (i) existing and planned rapid transit stops
 - (ii) the edge of city centre zones
 - (iii) the edge of metropolitan centre zones; and
- (d) in all other locations in the tier 1 urban environment, building heights and density of urban form commensurate with the greater of:

- (i) the level of accessibility by existing or planned active or public transport to a range of commercial activities and community services; or
- (ii) relative demand for housing and business use in that location.

5.17 The NPSUD then goes on to state at Policy 6:

When making planning decisions that affect urban environments, decision-makers have particular regard to the following matters:

- (a) the planned urban built form anticipated by those RMA planning documents that have given effect to this National Policy Statement
- (b) that the planned urban built form in those RMA planning documents may involve significant changes to an area, and **those changes**:
 - (i) **may detract from amenity values appreciated by some people** but improve amenity values appreciated by other people, communities, and future generations, including by providing increased and varied housing densities and types; and
 - (ii) **are not, of themselves, an adverse effect**
- (c) the benefits of urban development that are consistent with well-functioning urban environments (as described in Policy 1) [my emphasis]

5.18 I point out firstly that Objective 1 of the NPSUD includes a requirement to consider both cultural wellbeing (heritage) and health and safety.

5.19 The health and safety of the community is a relevant matter for this resource consent to consider, alongside the heritage matters.

5.20 The District Plan has not yet been amended to take into account the NPSUD. Therefore in my view it is necessary to consider the objectives and policies directly and apply them to the proposal.

5.21 Wellington City Council has not formally notified its response to the NPSUD but they have released a draft District Plan for consultation. The draft District Plan is not yet a statutory document, but it is useful to understand how the Council planners understand the requirements of the NPSUD and how that document would manifest itself in a new plan.

5.22 Figure 8 below is an extract of the District Plan maps showing what is anticipated for the subject site.



Figure 8: Draft District Plan for the site and wider area

- 5.23 Figure 8 shows that the Adelaide Road area is to now be included in the Central Area Zone and for it to be increased to a height of 42.5 metres.
- 5.24 The NPSUD would certainly provide support for the proposed provisions of the draft District Plan, if not a directive.
- 5.25 The NPSUD would provide policy support to both of the applicants proposals.
- 5.26 The demolition of the building would provide for the health and safety of the community.
- 5.27 The partial demolition of the heritage building and construction of the new building would be entirely consistent with Objectives 1, 3 and Policy 3 in that it creates development efficiency in the city while providing for the health and safety of the community.
- 5.28 At paragraphs 69 to 74 the report officer makes his assessment of the NPSUD for the full demolition option.
- 5.29 At paragraph 72, Mr Daly considers the demolition proposal is “neutral” in terms of alignment with the NPSUD as far as providing additional capacity. Mr Daly acknowledges that the building will create additional opportunities to develop, but “because no new building is proposed as part of the application and therefore it is difficult to reach any conclusions as to what this could be

when it may occur, and what contribution it might make to the capacity of the Wellington urban development supply.”

- 5.30 This conclusion truly troubles me. The applicant has been at pains to explain that the works required to strengthen this building are extremely expensive and uneconomic.
- 5.31 Objective 1 includes reference to economic wellbeing, largely reflecting section 5 of the Act.
- 5.32 The applicant has provided:
- An engineering report showing what works would be required
 - A QS report setting out the cost of that strengthening scheme
 - A valuation of the building if restored to its current form.
- 5.33 At no point in his section 42A report does Mr Daly discuss the extent of works required, what they entail and how much they will cost. At no time does he consider the economic viability of the works.
- 5.34 The retention of the existing building is an economic ‘handbrake’ for the development of this site. The information is clearly there for Mr Daly to reach a conclusion on how the demolition would enable the site to be re-developed.
- 5.35 In terms of estimating what could go on the site, he has a concurrent application showing a 6-7 storey building. Surely that gives him a clue?
- 5.36 Mr Daly states at paragraph 73 states
- In addition to this, I note that Objective 1 places importance on the social, economic and cultural wellbeing of people and communities, and for their social wellbeing, both in the present and in the future. In this regard, I note that whilst removing an earthquake prone building might provide for people and communities wellbeing, this would be at the detriment of people and communities social and cultural wellbeing through the loss of a building of heritage significance. The application would therefore be contrary to this objective.
- 5.37 Mr Daly acknowledges consistency with the health and safety aspect of the policy, but inconsistency with the social and cultural wellbeing aspects of the policy, and then concludes that:
- Overall, the proposal is considered to be unacceptable in relation to the outcomes sought by the NPS-UD.
- 5.38 I restate objective 1 of the NPSUD here to stress a major point.

New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, **economic**, and **cultural wellbeing**, and for their **health and safety**, now and into the future.

- 5.39 Mr Daly has failed to discuss or consider the economic wellbeing in his assessment. The information is contained in the application and fully ignored by him.
- 5.40 Mr Daly fails to explain why the cultural wellbeing is more significant than the economic wellbeing, health and safety aspects of the proposal.
- 5.41 Therefore Mr Daly's assessment of the proposal against Objective 1 of the NPSUD for the demolition option is flawed and incomplete.
- 5.42 Clearly, there is a reduction in cultural wellbeing by the demolition of a heritage building. However, a derelict heritage building provides a severely reduced social and cultural contribution to the city.
- 5.43 The complete lack of any economic wellbeing to any party and the unlikely event that the building will be fully strengthened (unless extended as proposed) and means that demolition is not inconsistent with this objective. I reach this conclusion on the proviso that the commissioners were to find that it was inappropriate to allow a more economically viable addition to the building to be approved (as proposed in the new build option).
- 5.44 There has to be an action taken to address the health and safety aspects of this proposal.
- 5.45 In his S42A report, Mr Daly does not appear to consider the NPSUD for the extended building option.
- 5.46 The officer assesses the National Policy Statement for Urban Development Capacity (NPSUDC) at paragraphs 164 to 166 and states at paragraph 166 of his S42A report that the proposal is consistent with the NPSUDC. However the NPSUDC was replaced by the NPSUD discussed above and that document is now irrelevant.
- 5.47 In my view, the retention of parts of the heritage building as proposed maintains a balance between retaining social and cultural wellbeing, with economic, health and safety matters.
- 5.48 It also provides a substantial increase in the business capacity of the city.

5.49 Under the NPSUD, the retention of the façade and the new building would be the most appropriate outcome of all options, including declining both consents.

The New Zealand Coastal Policy Statement (NZCPS)

5.50 The NZCPS is not relevant to the proposal.

The Wellington Regional Policy Statement (WRPS)

5.51 The WRPS is relevant to the proposal.

5.52 I note that the S42A reporting officer states that the relevant policies of the WRPS to the proposal are:

- Policy 46: Managing effects on historic heritage values
- Policy 51: Minimising the risks and consequences of natural hazards
- Policy 54: Achieving the Regions urban design principles

5.53 With respect to the full demolition proposal, Mr Daly concludes at 78:

For these reasons, the proposal is not considered to accord with the relevant policies of the RPS.

5.54 Mr Daly, does not assess the façade retention and new building proposal against the WRPS.

5.55 Given that Mr Daly considers the demolition proposal inconsistent with the WRPS but makes no conclusions with respect to new building proposal, I find it necessary to give additional discussion to the WRPS. There are other objectives and policies of the WRPS which are relevant, further to those identified by Mr Daly.

5.56 I note that Objective 22 is relevant. It states:

Objective 22: A compact well designed and sustainable regional form that has an integrated, safe and responsive transport network

5.57 The objective includes a number of clauses of how this is achieved.

5.58 There are related policies to this objective. For example

Policy 31: Identifying and promoting higher density and mixed use development – district plans

Policy 54: Achieving the region’s urban design principles – consideration When considering an application for a notice of requirement, or a change, variation or review of a district or regional plan, for development, particular regard shall be given to achieving the region’s urban design principles in Appendix 2.

Policy 55: Maintaining a compact, well designed and sustainable regional form – consideration When considering an application for a resource consent, or a change, variation or review of a district plan for urban development beyond the region’s urban areas (as at March 2009), particular regard shall be given to whether:

- (a) the proposed development is the most appropriate option to achieve Objective 22; and
- (b) the proposed development is consistent with the Council’s growth and/or development framework or strategy that describes where and how future urban development should occur in that district; and/or
- (c) a structure plan has been prepared.

5.59 The objectives and policies of the WRPS are largely there to provide direction to the development of District Plan provisions.

5.60 I note that the WRPS was made operative in April 2013. Only parts of the current operative Wellington District Plan have been prepared in response to the current WRPS.

5.61 With respect to Policy 55, it is stated as specifically being required to be considered in resource consents and reference is made back to objective 22, rather than as a directive to District Plan preparation.

5.62 In my view, I note that building is located on an important transport route and therefore the full demolition option would be consistent with the requirement to have a safe transport route by significantly reducing the likelihood of collapse of the building onto the principal road.

5.63 The new building option will secure the façade and is therefore also consistent with this outcome.

5.64 The demolition of the heritage building allows for future, more intensive development. The new building option realises a development which promotes a compact urban form.

5.65 Mr Daly has concluded that the demolition proposal is inconsistent with Policy 54. Policy 54 specifically states that it is for a review of a NOR, District Plan Change but not a resource consent application. The policy provides direction to include urban design provisions in plans. WCC has urban design provisions, against which this proposal is assessed. The determination against the guide is a District Plan matter, not a WRPS issue.

5.66 Whilst I accept that there will be short term urban design effects with the demolition option, any new building will be subject to urban design review

under the District Plan. The site would not stay vacant for long and the urban design effects of the vacant site would only be temporary.

5.67 The new building and façade protection is in my view consistent with the WRPS in regard to the urban design principles, though the appropriate process, which is to consider it under the District Plan.

5.68 The relevant WRPS policies relating to heritage are as follows:

Policy 21: Identifying places, sites and areas with significant historic heritage values – district and regional plans

Policy 22: Protecting historic heritage values – district and regional plans District and regional plans shall include policies, rules and/or other methods that:

- (a) protect the significant historic heritage values associated with places, sites and areas identified in accordance with policy 21, from inappropriate subdivision, use, and development; and
- (b) avoid the destruction of unidentified archaeological sites and wāhi tapu with significant historic heritage values.

Policy 46: Managing effects on historic heritage values – consideration When considering an application for a resource consent, notice of requirement, or a change, variation or review of a district or regional plan, a determination shall be made as to whether an activity may affect a place, site or area with historic heritage value, and in determining whether an activity is inappropriate particular regard shall be given to:

- (a) the degree to which historic heritage values will be lost, damaged or destroyed;
- (b) the irreversibility of adverse effects on heritage values;
- (c) the opportunities to remedy or mitigate any previous damage to heritage values;
- (d) the degree to which previous changes that have heritage value in their own right are respected and retained;
- (e) the probability of damage to immediate or adjacent heritage values;
- (f) the magnitude or scale of any effect on heritage values;
- (g) the degree to which unique or special materials and/or craftsmanship are retained;
- (h) whether the activity will lead to cumulative adverse effects on historic heritage; and
- (i) whether the relationships between distinct elements of an historic place, site or area will be maintained.

Explanation

Policy 46 provides an interim assessment framework prior to the identification of places, areas and sites with significant historic heritage value in accordance with policy 21, and the adoption of plan provisions for protection of these sites and management of effects on unidentified sites in accordance with policy 22.

In determining whether an activity may affect places, sites and areas with historic heritage value the criteria in policy 21 should be used.

This policy shall cease to have effect once policies 21 and 22 are in place in the relevant district or regional plans [my emphasis]

5.69 Policy 21, 22 and 46 are about ensuring that District Plans include appropriate provisions for the identification of heritage and the inclusion of provisions in District Plans to ensure that consideration is given to heritage and its use and development.

5.70 I have included the explanation text for policy 46. It explicitly states that once policies 21 and 22 are in place, then policy 46 does not apply.

5.71 This is an acknowledgement that the District Plan is the appropriate planning document to consider the heritage effects.

5.72 The proposals for demolition and the new building are both consistent with the objectives and policies of the WRPS in terms of urban form and safe transportation. They are neutral in respect to heritage as this is a matter for the District Plan to consider.

The District Plan

5.73 The relevant District Plan is the Wellington City District Plan. In respect to the relevant objectives and policies of the Plan, it is my view that I must assess the objectives and policies of the demolition and new building proposals separately.

5.74 I will introduce the relevant objective/policy and firstly discuss the demolition option and then the new building proposal.

Objective 20.2.1 To recognise the City's historic heritage and protect it from inappropriate subdivision use and development.

Policy 20.2.1.2 To discourage demolition, partial demolition and relocation of listed buildings and objects while:

- Acknowledging that the demolition or relocation of some parts of buildings and objects may be appropriate to provide for modifications that will result in no more than an insignificant loss of heritage values; and
- Giving consideration to total demolition or relocation only where the Council is convinced that there is no reasonable alternative to total demolition or relocation.

Full Demolition Option

5.75 In respect to Policy 20.2.1.2, this policy starts with *discouraging demolition* of listed buildings. It is understood and accepted that the intent of the District Plan is to protect historic heritage from *inappropriate use and*

development. The policy does however recognise that consideration will only be given to total demolition when there is no reasonable alternative.

- 5.76 I have carefully considered the District Plan and its intent and what a *reasonable alternative* might be? In this case, the building must be strengthened. But the strengthening work is beyond the means of the owner to achieve without additions to the building to make it more economically viable.
- 5.77 Without extension, the costs of strengthening will be more than double the cost of the finished building.
- 5.78 As is discussed above at the time of application for demolition, the WCC officers were not supporting any meaningful additions to the building. Hence the application for demolition was lodged.
- 5.79 If the commissioners were to reject the option to make significant extension to the building, then the only reasonable option is demolition.
- 5.80 Objective 21.2.1 is met as the building is listed. That is not a resource consent issue.
- 5.81 The proposal for full demolition under Policy 20.2.1.2, can be considered if there is no reasonable alternative.
- 5.82 The reasonable alternative must imply at least an economic consideration. All buildings could be rebuilt, even if in very poor condition. If however the costs are unreasonable and there is no alternative, consent can be granted. In this case, there is no reasonable alternative, except the partial demolition and construction of a new building as proposed as the second option.
- New building and façade retention option**
- 5.83 The option of extending the building (to a sustainable level) in order to preserve the overall heritage values of the main façade of the building has not been supported as an option by WCC heritage officers. This application is being formally sought to test the option as to whether a consent can be obtained for an extension of the building.
- 5.84 The proposed level of development does not quite make it to being economically positive for the owner, so it is clear that a smaller building would be even less economically viable.
- 5.85 The current height limits of the District Plan have provided an upper limit to what is proposed by the applicant.

- 5.86 The introduction of the LED billboard to the southern façade is a further attempt to raise the value of the building/hotel business to a higher level to make it more financially viable.
- 5.87 The WCC has in itself, accepted that there are financial grounds for the demolition of historic heritage and has proposed the demolition of the Main Old Building⁴. The WCC are trying to argue that the Main Old Building is not a specific heritage building but it is in a heritage area.
- 5.88 WCC planning and heritage officers have advised me in a number of applications, that the same protections apply to a building in a heritage area, as apply to a specifically listed building.
- 5.89 If the economic rationale is acceptable to Council, why is it not acceptable to a private owner.
- 5.90 The consideration of both the demolition and building extension currently, is considered a way to make a determination of the *reasonable* options.
- 5.91 The preservation in part of the heritage façade, given the financial implications is consistent with the objective and related policy and in my view, is a better result than the total demolition.

Policy 20.2.1.3 Promote the conservation and sustainable use of listed buildings and objects while ensuring that any modification avoids, remedies or mitigates, effects on heritage values of the listed buildings or objects and where relevant:

- ensures that modifications to the main elevations are minimised, or if possible are unaltered;
- any modifications respect the scale of the building or object; and
- any modifications maintain the relationship of the building or object with its setting.

Full Demolition Option

- 5.92 The proposal is not going to avoid, remedy or mitigate the effects on historic heritage and can be considered inconsistent with this Policy.

New building and façade retention option

- 5.93 The proposal will involve preservation and restoration of the main façade. The reasons why the rest of the building cannot be retained is explained in the evidence of Ignatius Black for the applicant.

⁴ See <https://wellington.govt.nz/-/media/your-council/meetings/committees/strategy-and-policy-committee/2020/10-dec/2020-12-10-minutes-spc.pdf>

5.94 As the retention of the façade and extension of the building is the only reasonable option, in my view the proposal is consistent with this policy.

Policy 20.2.1.11 Avoid, remedy or mitigate the adverse effects of development on the archaeological values of any site.

Full Demolition Option

5.95 The applicant will apply for an Archaeological Permit prior to carrying out any works. This will meet the intent of this Policy.

New building and façade retention option

5.96 The applicant will apply for the permit as above. As discussed in the evidence of Mr Black, there will be substantial disturbance of the building interior and exterior walls, regardless of which option is chosen.

5.97 Overall, the intent of the District Plan is to maintain historic heritage. In this case however the owner is obligated to undertake strengthening works which are economically and practically not viable.

5.98 The applicant cannot avoid the strengthening works required by WCC's building resilience officers. They are aggressively seeking compliance and threatening to undertake the work and charge the applicant for the costs. But if those costs are not viable to the applicant, they are not going to be viable for Council to undertake. Council will not be able to recoup its costs through rating charges or possession of the building, as the value of the work will exceed the value of the building.

5.99 In my view, the retention of the façade and the construction of the new building is the preferred option as it preserves the most of the heritage values present.

Centres Objectives

Objective 6.2.1 To provide a network of accessible and appropriately serviced Centres throughout the City that are capable of providing goods, services and facilities to meet the day to day needs of local communities, residents and businesses, and of accommodating anticipated population growth and associated development whilst maintaining Wellington's compact urban form.

Policy 6.2.1.3 Maintain and enhance the viability and vibrancy of Regionally Significant Centres in the Wellington Region

Policy 6.2.1.4 Promote the intensification of activities and buildings in and around Centres.

Objective 6.2.2 To facilitate vibrant and viable Centres through enabling a wide range of appropriate activities to occur to meet the economic and social needs of the community, whilst avoiding, remedying or mitigating adverse effects.

- Policy 6.2.2.1 Enable and facilitate a wide mix of activities within Centres provided that character and amenity standards are maintained and adverse effects are satisfactorily avoided, remedied or mitigated.
- Objective 6.2.3 To ensure that activities and developments maintain and enhance the safety and amenity values of Centres and any adjoining or nearby Residential or Open Space Areas, and actively encourage characteristics, features and areas of Centres that contribute positively to the City's distinctive physical character and sense of place.
- Policy 6.2.3.1 Ensure that buildings, structures and spaces are designed to:
- acknowledge, respect and reinforce the form and scale of the surrounding environment in which they are located; and
 - respect the context, setting and streetscape values of adjacent listed heritage items and Heritage Areas; and
 - promote a strong sense of place and identity within Centres; and
 - establish positive visual effects; and
 - provide good quality living and working environments; and
 - integrate environmental sustainability principles; and
 - provide conditions of safety and accessibility, including for people with restricted mobility.
- Policy 6.2.3.3 Maintain or enhance the street edge along identified primary and secondary street frontages.
- Policy 6.2.3.4 Maintain or enhance the streetscape by controlling the appearance of and/or limiting the creation of vacant land, or open land and ground level parking areas on identified primary and secondary streets frontages.
- Objective 6.2.5 To maintain an efficient and sustainable transport network to enable the provision of convenient and safe access for people and goods to and within Centres.

Full Demolition Option

- 5.100 The overall intent of the Centres objectives and policies is to maintain and enhance the economic and visual vitality of the various centres in the city. The objectives, policies and rules can be considered to discourage the creation of vacant space at ground level. It is accepted that creating vacant space as proposed in this instance, is not consistent with the outcomes sought by the District Plan, though this is only a temporary outcome.
- 5.101 It is not the applicant's intent to create ground level open space for the medium to long term. There is no economic benefit in maintaining a vacant site.
- 5.102 The building has not provided any economic vitality to the city for some time (around 10 years). The valuers (Colliers International) have stated:
- The building is earthquake prone and in our opinion has reached the end of both its physical and economic life⁵.

⁵ Letter Colliers International – Market Valuation – As if complete – 114 Adelaide Road, Mount Cook, Wellington – Page 2 Paragraph 3.

- 5.103 The demolition of the building and replacement by another building will in the long run, contribute to the economic vibrancy of the local Centres area.
- 5.104 The visual quality of the heritage building will be lost with the proposal to demolish and cannot be remedied or mitigated. Nor in fact can the effects be avoided, unless WCC allow for a substantial increase in floor area for the site which will increase the potential economic return and enable the strengthening works to be carried out. At the current time, the WCC Heritage advisors have indicated that this level of additional development will not be supported.
- 5.105 The demolition of the building will be neutral in respect to the economic vitality of the centre in the short term and positive effects in the long term when a replacement building is constructed.
- 5.106 The building is located on an important transport route. As such, it is accepted that there are health and safety risks with respect to the building which is earthquake prone and therefore at risk of collapse. Demolition of the building will be consistent with Objective 6.5.
- 5.107 Overall the proposal will be inconsistent with the objectives and policies in the short term. The replacement of the heritage building will have positive effects on visual character and vitality in the long term.
- 5.108 **New building and façade retention option**
The proposal is for a hotel building which is intended to integrate the heritage façade of the existing building and this places some limitations on the outcome of the design of the building and requires additional height.
- 5.109 The hotel in this location will be consistent with the Centres concepts and the location on Adelaide Road is a positive for connections with the rest of the city.
- 5.110 The overall intent of the District Plan is to maintain and enhance the economic and visual vitality of the various centres in the city. The proposal will achieve the overall objectives for reasons set out above.
- 5.111 The earthworks objectives and policies are only relevant to the new building proposal. The relevant objectives and policies are:
- Objective 29.2.1 To provide for the use, development and protection of land and physical resources while avoiding, remedying or mitigating any adverse effects of earthworks and associated structures on the environment.
- Policy 29.2.1.2 Provide for minor earthworks to allow the use and development of land where the risk of instability is minimal.

- Policy 29.2.1.3 Ensure that earthworks are designed to minimise the risk of instability.
- Policy 29.2.1.4 Require earthworks to be designed and managed to minimise erosion, and the movement of dust and sediment beyond the area of the work, particularly to streams, wetlands and coastal waters.
- Policy 29.2.1.7 Ensure that earthworks and associated structures are designed and landscaped (where appropriate) to reflect natural landforms and to reduce and soften their visual impact having regard to the character and visual amenity of the local area.
- Policy 29.2.1.10 Ensure the design of structures used to retain or stabilise landslips, reflect the character and visual amenity of the local area.
- Policy 29.2.1.11 Ensure the transport of earth or construction fill material, to and from a site, is undertaken in a way that is safe and minimises adverse effects on surrounding amenity and the roading network.
- Policy 29.2.1.12 Protect koiwi (human remains), taonga, Maori and Non-Maori material and archaeological sites dated from before 1900, by advising applicants of their obligations under legislation and using enforcement powers where necessary.

5.112 The proposal will be consistent with the earthworks objectives and policies. The effects can be controlled by conditions of consent. All cuts will be retained by specific design under an appropriate engineer.

Other Matters – S104(1)(c)

5.113 The reporting officer considers the following to be other matters under S104(1)(c):-

- Wellington City Council Spatial Plan and Draft District Plan
- Heritage New Zealand Pouhere Taonga Act
- The Earthquake Prone Building Notice

5.114 I agree these matters should be considered. I would also include the Building Act as a relevant other matter to the proposal.

5.115 The Draft District Plan provides a valuable insight into the direction that WCC are heading to implement the NPSUD.

5.116 The Heritage New Zealand legislation is peripherally relevant as the site would require a permit due to occupation prior to 1900. The site is not subject to a Heritage New Zealand Historic Place listing.

5.117 The Building Act and the notices issued to the owner must be considered as important matters to be considered.

6. THE POTENTIAL ADVERSE EFFECTS

6.1 I now return to the assessment of effects, which is required to be considered under S104(1)(a) of the Act.

6.2 This assessment of environmental effects on neighbouring properties and the wider community has been prepared in such detail as corresponds with the scale and significance of the effects that the proposal may have on the environment.

6.3 Firstly, I agree with the officer that there is no permitted baseline available. Even restoring the building “as-is” (in its current form) given the extent of works required on the exterior facades/roof to achieve a complying earthquake rating would not meet the permitted standards.

6.4 I will adopt a similar approach to that of the officer in that I will firstly consider the effects of the demolition and then the new building proposal.

Full Demolition Option

6.5 The proposal is a discretionary restricted activity. Pursuant to S94D(c), when a consent authority is considering the effects of the proposal it is required to:

in the case of a restricted discretionary activity, must disregard an adverse effect of the activity that does not relate to a matter for which a rule or national environmental standard restricts discretion;

6.6 In respect to the substantive decision under s104C of the Act it states:

- (1) When considering an application for a resource consent for a restricted discretionary activity, a consent authority must consider only those matters over which—
 - (b) it has restricted the exercise of its discretion in its plan or proposed plan.

6.7 Therefore in respect to the relevant matters to consider and the effects arising out of this application that we consider would potentially impact on the amenity of neighbours and the wider community, including physical effects are listed below:

- Historic Heritage;
- Effects on the Vitality of the local Centre
- Effects on visual quality of the streetscape.

Heritage Effects

6.8 The Wellington City Heritage rules are different from many of the other provisions of the District Plan as they contain assessment criteria which are required to be considered when assessing the heritage effects. The relevant criteria are listed under Rule 21A.2.1.

6.9 The plan states:

In determining whether to grant consent and what conditions, if any, to impose, Council will have regard to but will not be restricted to the following criteria:

6.10 I note that Mr Daley has not considered the criteria in his assessment. But I will assess each of the criterion.

21A.2.1.3 The extent to which the work significantly detracts from the values for which the building or object was listed.

6.11 The proposal to demolish will remove the heritage values of the building. The criterion would not be met.

21A.2.1.4 The extent to which proposals meet the provisions of any relevant Design Guide addressing additions or alterations to buildings of heritage significance.

6.12 The design guides would not technically be relevant to a demolition proposal.

21A.2.1.5 The nature, form and extent of the proposed work and the extent to which the work:

- retains the main determinants of the style and character of the building or object and in respect of buildings, particularly the street elevation. The Council seeks to ensure that modifications to street elevations are kept to a minimum, and if possible not altered at all. If necessary, preference shall be given to altering rear or secondary elevations.
- respects the scale of the original building or object. The Council seeks to ensure new work is not visually dominant, particularly where rooftop additions are proposed.
- is sympathetic in form, proportions, materials, colours and the patina of materials of the existing building or object.
- avoids the loss of historic fabric and the destruction of significant materials and craftsmanship.
- maintains the relationship of the building or object with its setting.
- respects the historic or other values for which the building was listed.

6.13 The proposed demolition would not be consistent with this criterion

21A.2.1.6 Whether the restoration of former architectural design elements maintains a high level of authenticity. The Council will require evidence of the design of missing elements.

6.14 The criterion is not relevant to a demolition proposal.

21A.2.1.7 Whether the removal of existing unsympathetic additions to a building or object can be achieved without altering the significance of the building or object.

6.15 The criterion is not relevant to the proposal.

21A2.1.8 The extent to which the work is necessary to ensure structural stability, accessibility, and means of escape from fire and the extent of the impact of the work on the heritage values of the building. The Council will seek to ensure that in any case every reasonable alternative solution has been considered to minimise the effect on heritage values.

6.16 In this case, the building has been identified as being earthquake prone and is subject to a notice under Section 128 of the Building Act. The notice period has expired and WCC has now issued a further notice of its intention to seek

orders to undertake the strengthening work itself, under Section 133AS of the Building Act. The applicant/owner is opposing these orders on various grounds.

- 6.17 However with regard to the criterion above, action is required to be taken to comply with the Building Act and either strengthen or demolish the building and therefore *work is necessary to ensure structural stability*. The applicant does not have a “do nothing” option.
- 6.18 The decision to demolish the building is largely driven by fact that Council are taking action to take possession of the building and carry out strengthening work, which ultimately will be uneconomic for both the owner and Council itself. In the view of the applicant, the Council option to carry out strengthening work will undermine the heritage values of the building in the long run for the following reasons:
- The work will likely only strengthen the building to 34% of New Building Standard (NBS). In order for the building to have a practical long term use, it will need to be strengthened to a minimum of 70% of NBS.
 - Strengthening to 34% of the current code is unlikely to protect the heritage values of the building for the long term. Council’s main concern in carrying out this action is compliance with the Building Act and not protection of heritage values.
 - The strengthening work will impose a significant cost on the applicant without facilitating a viable economic use for the building.
 - The WCC will still be required to make substantial interventions on the heritage fabric of the building to facilitate strengthening.
- 6.19 The Applicant has considered a number of options in how to preserve the building. These included:
- Strengthening in its current form. The preliminary strengthening concept was developed by Silvester Clark⁶ and was costed at \$6,138,000⁷. The value of the strengthened building based on 70% of NBS is \$2,550,000 + GST (if any)⁸. The financial option of strengthening the building is therefore grossly uneconomic.
 - Silvester Clark also confirmed that they had looked at a number of alternative strengthening options⁹. None of the alternative options are considered practicable or viable.
 - I have been advised by the applicant that they have made enquiries to funding organisations regarding loans to undertake the strengthening work. No funding organisation has considered loaning on a proposal of this nature given the difference between cost and final value.
 - The applicant is concurrently seeking consent for making additions and alterations to the building to increase its floor area and therefore value, to make the strengthening works financially viable.

⁶ See Seismic Capacity and Strengthening Review For Tramway Hotel At 114 Adelaide Road, Wellington – Report by Silvester Clark - dated April 2020 – Section 4, Pages 6, 7 and 8.

⁷ See 114 Adelaide Road, Concept Strengthening Estimate for IPG Corporation Ltd – Dated 4 March 2020 – By Maltbys – See Executive summary Page 4. – Note This is for a scheme of minimum of NBS 70%.

⁸ See Letter Colliers International – Market Valuation – As if complete – 114 Adelaide Road, Mount Cook, Wellington – Page 2 Paragraph 7.

⁹ See Seismic Capacity and Strengthening Review For Tramway Hotel At 114 Adelaide Road, Wellington – Report by Silvester Clark - dated April 2020 – Section 5, Pages 9 and 10

- The applicant/owner has considered selling the building for land value. No purchasers have been found to date. Potential purchasers to date have wanted to redevelop the site. The option to find a buyer of the site, is unlikely as all purchasers will have the same issue as the current owner/applicant.
- The applicant has considered seeking funds for heritage preservation, such as the WCC Built Heritage Fund. The avenues for funding for private owners are limited. I have reviewed WCC's Built Heritage Fund and note the highest payment in recent years does not exceed \$50,000. This option would not provide any benefit to a strengthening project of this nature. A copy of recent payments is attached.

6.20 It must be accepted that the owner must take= action to address the structural issues with the building. Given that there must be something done in a short period of time, the applicant has considered all reasonable options including providing additional floor area.

6.21 If the commissioners do not approve the proposal to the extension to the building, then it would be appropriate to issue consent for the demolition as all reasonable options have then been explored.

21A2.1.10 The extent to which the work is necessary to enable the continued use of the building.

6.22 The work is required to enable a future use of the site. As it stands with the earthquake prone status of the building, no practical or economic use of the site is available without strengthening the building.

21A2.1.11 Whether professional heritage or conservation advice has been obtained from the NZHPT or any other professionally recognised expert in heritage conservation.

6.23 Expert heritage advice was obtained when considering development options but not demolition.

21A.2.1.12 Whether work is in accordance with a conservation plan prepared for the building or object and peer reviewed by the Council.

6.24 There is no conservation plan.

21A.2.1.13 Whether the site has or is likely to have significant archaeological values, and whether the effects on those values by the proposal can be adequately avoided, remedied or mitigated.

6.25 The heritage report indicates that the building was constructed prior to 1900. Therefore under the Heritage New Zealand Pouhere Taonga Act 2014, an archaeological permit will be required for the demolition. This will be sought prior to undertaking the demolition works.

21A.2.1.14 Whether there is any change in circumstances that has resulted in a reduction of the building's heritage significance since the building was identified in the plan

6.26 There are no changes to the circumstances which would have reduced its heritage significance. There have however been huge changes to the environment and viability of heritage buildings following the Canterbury and Kaikoura Earthquakes which have intensified the public's reticence to occupy heritage buildings. Further to this, WCC has been more stringent on enforcement the requirements for strengthening buildings which are earthquake prone. In this case, this is evidenced by the issue of the notice under S133AS of the Building Act.

21A.2.1.15 The extent to which the building or object has been damaged by fire or other human generated disaster or any natural disaster.

6.27 The building has been subject to some internal vandalism, but otherwise the criterion is not relevant.

21A.2.1.16 Whether it is necessary to save the building or object from damage or destruction arising from ground subsidence, landslip, flooding or other natural disaster.

6.28 The criterion is not relevant.

21A.2.1.17 Where relocation is proposed to enhance the development potential of land, whether this should override the heritage value of retaining the building or object in its original location.

6.29 The criterion is not relevant.

21A.2.1.18 Whether the relocated building or object will remain in the immediate vicinity or neighbourhood.

6.30 The criterion is not relevant.

21A.2.1.19 Whether the proposed site for the relocated building or object is appropriate and will assist in mitigating the loss of heritage values arising from the relocation.

6.31 The criterion is not relevant.

21A.2.1.20 Whether a heritage building or object is to be relocated to its original location or site and the appropriateness of the original location or site to accommodate the building or object.

6.32 The criterion is not relevant.

21A2.1.21 Whether adaptive reuse of a listed building or object will enable the owners, occupiers or users of it to make reasonable and economic use of it.

- 6.33 As discussed above, the owner/applicant is obligated by other legislation (the Building Act) to strengthen the building or demolish it. The analysis of the costs of strengthening the building clearly demonstrate that it is uneconomic to strengthen the building without undertaking significant additions to the floor area of the building to attain an economic return.
- 6.34 If the commissioners are unwilling to approve the new building, then it is not possible to *make reasonable and economic use* of the building. As the building is not economic to strengthen and it is not possible to make reasonable use of the building, demolition can be considered consistent with the criterion.
- 21A.2.1.22 The public interest in enhancing the heritage qualities of the City and in promoting a high quality, safe urban environment.
- 6.35 This criterion has two arms to consider. The first is the public interest in enhancing the heritage qualities of the city. The second is the public interest in promoting a high quality, safe urban environment.
- 6.36 In this case there are potentially mutually exclusive interests at play. Given the economic issues with strengthening the building, it is not possible for the applicant/owner to carry out the strengthening works to preserve the heritage qualities of the building and therefore promoting a safe urban environment.
- 6.37 If the consent to demolish is approved, then there will be heritage qualities lost to the city. If the consent is declined, the risk to public safety is continued.
- 6.38 The proposal to demolish the building cannot be consistent with both arms of this criterion, but given the lack of options available to the applicant due to Council's own action, the effects are unavoidable.
- 6.39 The assessment criteria and the heritage rules, are "setup" to place the emphasis on the preservation of heritage buildings. Therefore, with a proposal for demolition, it is not surprising that it would be assessed against the relevant criteria and found to be inconsistent with those criteria which seek the preservation or enhancement of the heritage qualities.
- 6.40 However other criteria such as 21A2.1.8 and 21A.2.1.22, raise the issues of structural stability and public safety. Criterion 21A2.1.21 discusses the reasonable and economic use.

6.41 The applicant has the dilemma of having to meet the structural and safety requirements while not being able to have a reasonable and economic use for the subject building. The overall intent of the criteria, as well as the Rules relating to heritage, is that there is a very high threshold to reaching the point where a consent for demolition can be granted.

6.42 The demolition of the building can only be approved if all reasonable efforts have been made to consider alternatives. I will discuss this further in the assessment of the new building.

Effects on the Vitality of the local Centre

6.43 The proposal is to demolish the existing building and to leave the site vacant in the short term. It is anticipated that if and when consent is granted to demolish the building, that would be carried out in a short period of time.

6.44 In the medium term, the applicant will want to make use of the site to provide for an economic return.

6.45 The existing situation is one where the existing building is vacant and therefore it provides no contribution to the vitality of the local area in terms of economic return, the generation of foot and vehicular traffic and provision of services.

6.46 Without being able to undertake strengthening work, which is uneconomic, there remains no change of the existing building and it's contribution to the vitality of the area.

6.47 The contribution made to economic vitality of the centre by the existing building is therefore zero. By being able to demolish the building, it will allow for a new building to be constructed which would then make a positive effect on the vitality of the local centre.

6.48 Therefore, the short term effects on vitality of the local centre are neutral.

6.49 The medium to long term effects on the vitality of the centre will be positive, by allowing for the construction of a new building which would release the potential of the site.

Effects on visual quality of the streetscape.

6.50 The existing heritage building does make a positive contribution to the quality of the local streetscape. Its removal will have an adverse effect on the overall quality of the streetscape, given its relatively prominent location on the corner of Drummond Street and Adelaide Road.

- 6.51 The existing buildings contribution to streetscape is however diminished by its derelict condition to such an extent that it could be deemed a negative. This is a matter raised in submissions. The building is on a prominent street connecting the southern suburbs to the CBD.
- 6.52 The short term effects will be more than minor as it will remove a heritage building from the site. The site will however be grassed so as to minimise the effects of a bare site. Its appearance would be akin to a street corner park.
- 6.53 The applicant will construct a new building on the site in the medium term. That building will be required to meet the standards of the District Plan and Centres Design Guide.
- 6.54 The medium to long term effects of the demolition of the building and creation of vacant space will be less than minor.
- 6.55 **Summary of the Effects of the Full Demolition Option**
The District Plan clearly establishes the requirement to only allow demolition if all reasonable alternative options have been explored.
- 6.56 The demolition of the building will have adverse effects on historic heritage.
- 6.57 Health and safety are factors to be considered within the discretion available to the commissioners as set out in the assessment criteria.
- 6.58 I do not agree with the reporting officers that the urban design and vitality effects of the demolition. It is obvious that the demolition will have only short term effects and ultimately the effects will be positive.
- 6.59 Mr Parbhu has explained the issues of viability of strengthening the building. There is an immediate requirement to address the strengthening and Mr Parbhu has explained the finance issues for this project. Mr Horsely has provided the valuation evidence of the worth of the building if strengthened "as-is". There is unchallenged evidence to date, that the strengthening is uneconomic.
- 6.60 I do accept that the approval to demolish the building can only be granted if the commissioners are of the view that the new building option, can't be approved.

The New Building and Façade Protection Option

6.61 As is discussed above, the proposal is a non complying activity. As a non complying activity, there are no matters excluded from consideration in the application.

6.62 Whilst there is no limitation on matters than can be considered the relevant effects to consider are as follows:

- Historic Heritage;
- Hazards and Safety:
- Urban Design Effects.
- Effects on traffic safety
- Shading and Amenity effects on neighbours
- Wind Effects
- Effects from earthworks
- Construction Effects
- Positive Effects

6.63 I consider each of these effects below.

Heritage Effects

6.64 I again consider the relevant criteria under Rule 21A.2.1 below. Whilst the application is Non Complying Activity, the criteria can be relevant but the discretion is not limited to these matters.

6.65 Above I discussed all the criteria in the analysis of the demolition option. When considering the new building option I will only discuss relevant criteria.

21A.2.1.3 The extent to which the work significantly detracts from the values for which the building or object was listed.

6.66 This option will enable the façade the be retained and therefore preserve some of the original building. There will be some adverse effects on historic heritage in that a majority of the original building will be lost however the main part of the building fronting the street will be retained.

21A.2.1.4 The extent to which proposals meet the provisions of any relevant Design Guide addressing additions or alterations to buildings of heritage significance.

6.67 A separate design guide assessment has been undertaken below. The proposal is consistent with the design guide requirement.

21A.2.1.5 The nature, form and extent of the proposed work and the extent to which the work:

- retains the main determinants of the style and character of the building or object and in respect of buildings, particularly the street elevation. The Council seeks to ensure that modifications to street elevations are kept to a minimum, and if possible not altered at all. If necessary, preference shall be given to altering rear or secondary elevations.

- respects the scale of the original building or object. The Council seeks to ensure new work is not visually dominant, particularly where rooftop additions are proposed.
- is sympathetic in form, proportions, materials, colours and the patina of materials of the existing building or object.
- avoids the loss of historic fabric and the destruction of significant materials and craftsmanship.
- maintains the relationship of the building or object with its setting.
- respects the historic or other values for which the building was listed.

6.68 Extending the building and undertaking the additions is proposed to make the retention of elements of the Tramway Building economically feasible. The Council itself has recognised that strengthening buildings in heritage areas, has to be economically viable¹⁰. Whilst there will be a loss of heritage elements of the building, the retention of the façade is a better outcome than the full demolition option.

21A.2.1.6 Whether the restoration of former architectural design elements maintains a high level of authenticity. The Council will require evidence of the design of missing elements.

6.69 As outlined in the DPA report outlines work that would enhanced and replace elements of the main façade. Elements of the main building will be lost. The proposal is partially consistent with the criterion in respect to the main façade.

21A2.1.8 The extent to which the work is necessary to ensure structural stability, accessibility, and means of escape from fire and the extent of the impact of the work on the heritage values of the building. The Council will seek to ensure that in any case every reasonable alternative solution has been considered to minimise the effect on heritage values.

6.70 In this case, action must be taken due to the strengthening notices and WCC's Court action. The applicant/owner is opposing these orders on various grounds, but it continues to be before the Courts.

6.71 However, with regard to the criterion above, action is required to be taken to comply with the Building Act and either strengthen or demolish the building and therefore *work is necessary to ensure structural stability*. The applicant does not have a "do nothing" option.

6.72 I note that the report officer has considered the options and summarises these at paragraphs 117 and 118 and states:

117. Whilst Ms Stevens concludes that the adverse are significant, she is firmly of the view that there is potential for a vertical addition to the rear of the building to be successful from a heritage perspective. Further details of this have been assessed in her report, but in short, include the following:

¹⁰ See <https://www.stuff.co.nz/dominion-post/wellington/123659109/wellingtons-municipal-office-building-on-the-chopping-block>

- a. Reduce the overall height of the building to closer to the 18m height limit, or if this cannot be achieved, step the fifth & sixth floors back similar to that of the seventh.
- b. Increase the 3m setback of the tower from the façade or (subject to a heritage significance assessment), retain the historic fabric at ground and first floor levels to a minimum depth of one room of the original building.
- c. Reconstruct the parapet in its entirety.
- d. Align the vertical and horizontal divisions and fenestration patterns of the tower, with that of the original hotel building.
- e. Mitigate the impact of a blank concrete wall along the southern façade (facing south down Adelaide Road).

118. Ms Stevens is of the view that whilst the applicant has invested other alternatives, she is not convinced that all alternatives to the development have been considered. I accept this advice and note that whilst this proposal is not able to be supported due to a number of concerns, there are potentially alternatives options to additional building capacity to the site, which would be more compatible heritage values of the existing building, and would therefore be supportable.

- 6.73 The comments of Ms Stevens are addressed directly by Dave Pearson.
- 6.74 Mr Ignatius Black has also considered the recommendations of Ms Stevens impractical from an engineering perspective given the works required to secure the façade of the building and his recommendations to demolish the timber structure behind the façade and rebuild.
- 6.75 The methodology costed by Maltby's in the report, was the rebuild option and not the maintaining the existing fabric option would be more expensive (if feasible at all) to undertake.
- 6.76 I also note that the recommendations of Ms Stevens, would significantly reduce the floor area that could be realised by the extended building. The proposal is already very marginal and not a profit making scenario. The further reduction in realised floor area would have an impact on the viability of the proposal.
- 6.77 As I have described above, I participated in pre-application consultation with WCC officers to look at the proposal that is in front of Council. The application to demolish was with Council and we were looking at trying to find an option which would meet the applicant's outcome of at least some level of economic viability, whilst addressing the heritage outcomes required by officers.
- 6.78 The response we received from officers is a world away from the current position set out in the evidence of Ms Stevens. There was no practical assistance at all at the time. I was left with a personal feeling of absolute frustration at what appeared a highly ideological position from the heritage officers which entirely failed to address the real world issues faced by the building owner.
- 6.79 I also personally called the manager of the resilience team and asked for time to resolve the design. The WCC officer flatly refused to put the matter

into abeyance to allow us time to work through the designs. We were therefore forced to proceed from this point with urgency given the Court proceedings.

6.80 Mr Daly's comments in respect to exploring alternatives, needs to be considered in this context.

6.81 What I do take from this discussion is that officers are now accepting that an extended building is an accepted outcome and that really, it is only the design elements that are at question.

21A2.1.10 The extent to which the work is necessary to enable the continued use of the building.

6.82 The building can't be used until it is strengthened.

21A2.1.11 Whether professional heritage or conservation advice has been obtained from the NZHPT or any other professionally recognised expert in heritage conservation.

6.83 The design of the new building was undertaken with advice from heritage architect Dave Pearson.

21A2.1.21 Whether adaptive reuse of a listed building or object will enable the owners, occupiers or users of it to make reasonable and economic use of it.

6.84 As discussed above, the owner/applicant is obligated by other legislation (the Building Act) to strengthen the building. The analysis of the costs of strengthening the building clearly demonstrate that it is uneconomic to strengthen the building without undertaking significant additions to the floor area of the building to attain a return. Even the increase proposed does not make a positive return, but the applicant can consider it as an option. Reuse of the building will be consistent with this criterion.

21A.2.1.22 The public interest in enhancing the heritage qualities of the City and in promoting a high quality, safe urban environment.

6.85 This criterion has two arms to consider. The first is the public interest in enhancing the heritage qualities of the city. The second is the public interest in promoting a high quality, safe urban environment. Again there are potentially mutually exclusive interests at play.

6.86 This option sets out to achieve both of the arms of this criterion as best as can be achieved. It is not possible in the applicant's view, to preserve the whole building while achieving the safety of the city.

6.87 In summary, I agree that the better solution is to approve the new building option, which will still have effects on heritage values of the existing

building. But it would preserve more of the building and at least reference its past connections with the site.

- 6.88 To not allow the applicant to realise a reasonable amount of increased floor area (including height and floor plate area), would be as good as declining the application as it would make the proposal at least as uneconomical as the 'as-is' restoration. In which case, full demolition would need to be considered.

Hazards and Safety

- 6.89 The existing building is earthquake prone and subject to notices to bring it to compliance with the Building Code. The proposal will result in the façade and new building complying with the safety standards relating to building (100% NBS) or as near as can be achieved.
- 6.90 Mr Black has recommended the façade be strengthened to 100% or as near as can be achieved.
- 6.91 This will have significant positive effects on the local and wider community.

Urban Design Effects

- 6.92 As discussed above, the design of this building has been driven by Mr Pearson both from the urban design and heritage aspects.
- 6.93 The proposed building will be tall for the existing area, but it has been a long term objective of WCC to vitalise the Adelaide Road area and create opportunities for intensification of buildings. This vision is only now, just being achieved with a number of new developments being planned along this section of the city.
- 6.94 The proposal will see commercial activity return to the ground floor and the hotel use will greatly enhance the vitality of what has been largely a vacant site for many years.
- 6.95 The building's height presents a significant change to the existing street. It is not significantly higher than what is anticipated by the District Plan (18 metres + 33% = 24 metres).
- 6.96 The long term plan for this area is unquestionably going to see larger, higher buildings. The form of this building will be consistent with the likely long term outcome.

- 6.97 The extra height is required to make the retention of the main heritage façade viable and therefore when seen in that context, results in an overall positive outcome on the streetscape, heritage environment and vitality of the wider area.
- 6.98 The footpath interface with the building is largely driven by the existing heritage façade and therefore there are limited opportunities but focus is made of the existing splayed corner entrance.
- 6.99 The vehicular access is provided at the southern end, beyond the heritage façade.
- 6.100 I note that the WCC Urban design has concerns around the car parking/loading entrance and has made the statement that this is unsafe. However the safety of this entrance is not supported by WCC's traffic engineer.
- 6.101 The option to not provide car parking is discussed. This is not the model proposed by the applicant at this time, given the location on the outer edges of the CBD where a certain number of guests are still likely to have cars. We are still only talking around 20 vehicles.
- 6.102 The wall to the south of the development, whilst visible now, is likely only to be temporary. Once development occurs on the land to the south, then it will be screened in future. The applicant would expect that the final conditions would require plans to be permitted showing some relief to this wall, which is intended to be partially broken by an LED sign (discussed below) and a light well.
- 6.103 The same would be said for the western façade facing the residential units. This wall will be required to be subject to some visual relief for example expressed joints, painted patterns or textures.
- 6.104 I note that WCC's Urban design has stated in her report:
- 6.4 However, as currently presented the outcomes do not fully agree with the relevant design guidance and show marked divergence from optimal outcomes in some critical areas. The conclusion must be that the proposal is not able to be given Urban Design support in its current form.
- 6.5 However, a combination of additional assessment and adjustments to the design may be able to address the negative outcomes identified to an extent that a good quality urban design condition could be achieved, and the application could be supported. Particularly at ground floor level internal design revisions are requested to optimise the potential of the original building and connect it more effectively and more attractively with the surroundings.,

- 6.105 Some of the main concerns of Ms Duffell have been addressed by Mr Pearson.
- 6.106 But I agree there are other elements of the building which could be improved through the submission of detailed design plans. I would accept that a condition be imposed which required detailed plans to address some of the matters of concern raised by WCC's urban design, where improvements can be achieved and these can be accommodated without affecting the viability and function of the building.
- 6.107 These matters should be explored through the hearing process.
- 6.108 Subject to appropriate mitigation measures, the urban design outcomes achieved are likely to be positive.
- 6.109 An LED sign has been proposed to be placed on the largely blank southern façade of the building. The sign is intended to advertise the hotel and its facilities, rather than third party advertisements.
- 6.110 The sign is located on a largely blank wall, the sign will assist in providing some mitigation and interest to the façade, whilst promoting the hotel activity on site.
- 6.111 The sign is appropriately proportioned in respect the building façade, adequately setback from edges. It provides clear visibility and as such, is largely ideal for this wall and location.

Traffic Safety

- 6.112 WCC's traffic engineer has assessed the proposal and found the overall effects to be acceptable, including the potential effects from the sign.
- 6.113 WCC's traffic engineer has provided recommended conditions which are reasonable and would be accepted by the applicant.

Shading Effects on Neighbouring Properties

- 6.114 The Centres Area provides a relatively limited protection of sunlight to adjoining buildings. If a building fully complied with the permitted standards of the Plan, then the shading effects of a building would be excluded from consideration by the discretionary restricted rules. So whilst this building is non complying (due to height) there is still appropriate to consider the effects of a complying building as an expectation of reasonable effects on the environment.

- 6.115 A permitted baseline is not available in the case and is not argued. The presence of the heritage building and the Centres area rules make it clear that any additional height requires a consent. The discussion here is around reasonable expectations of access to sunlight/shading effects.
- 6.116 The shading assessments provided by the architect (within the Design Statement Report), demonstrates that the proposal will have on the existing environment.
- 6.117 To the south of the property, the existing uses are industrial/commercial. The buildings cover largely 100% of the site and the additional shading caused by the building effects the rooves of the buildings, having little or no effect on amenity of these buildings.
- 6.118 The subject building can potentially affect properties to the east of the subject site. The effects are limited to the early morning periods.
- 6.119 The building at 19 Drummond St is built very close to the boundary with 114 Adelaide Road. It covers virtually all the site and is two stories high. The existing building will already shade part of that building. Some early morning additional shading will occur. But this is not inappropriate in the centres context.
- 6.120 Similarly with the building further to the east, the existing buildings will shade these structures during the time when the shading from the proposed building would potentially affect these properties.
- 6.121 The effects of shading from the building on the amenity of these properties can be considered to be minor.

Wind Effects

- 6.122 In assessing the wind effects of the proposal, I rely on the report and evidence from Neil Jamieson.
- 6.123 The actual proposal has not been put through a wind tunnel and therefore the effects are estimated by Mr Jamieson based on his previous experience with the area.
- 6.124 At the 'end of the day', this consent process is about the heritage preservation, not the wind effects.
- 6.125 The potential wind effects are not so dire as to over-ride the requirement to preserve the heritage aspects of this proposal.

6.126 Mr Jamieson has confirmed that the likely effects can be mitigated by a verandah at street level. This option is limited by the heritage experts.

6.127 The applicant would accept this as a condition and has indicated that a light glass version may be appropriate, but that would be a matter for the heritage experts to agree.

Earthworks Effects

6.128 Councils earthworks engineer has assessed the proposal and has confirmed that the potential effects can be mitigated by conditions.

6.129 I have read the proposed conditions in the earthworks assessment and consider they would be acceptable.

Construction Effects

6.130 The proposal will be a very complicated and potentially lengthy construction process. The main façade of the building will need to be secured by temporary propping structures located on Adelaide Road. Once the façade is secured, the building behind is demolished and work will begin on unpinning the main façade. Excavations for unpinning the main façade will encroach into Adelaide Road and soldier piles drilled adjacent the façade.

6.131 The result will be a disruption of the footpath for a reasonable period of time (potentially 6-12 months) whilst this work is undertaken.

6.132 The applicant expects that a full construction management plan (CMP) is a condition of consent. It is not possible to provide this yet, as the actual detail of the design and the methodology is subject to future engineering design work.

6.133 Once the façade is secured and underpinned, the construction of the modern building behind, will be relatively simple and standard construction and included a crane. This will likely be located on Adelaide Road frontage.

6.134 The CMP will ensure that the inevitable construction effects being mitigated to an acceptable level.

6.135 The construction effects will be experienced for a relatively long period (12-18 months) but will be temporary.

6.136 The imposition of construction noise standards are expected to be included in the recommended conditions of consent and included in the CMP.

The Positive Effects

6.137 The adverse effects on historic heritage will be offset by the permanent protection of large elements of the heritage building. The overall protection of the existing building is not economically and practically achievable.

6.138 The costs of the façade retention will still be significant and to make that economically viable, the increase in floor area of the building is required to make it feasible.

6.139 The strengthening achieved will exceed the minimum requirement (34% of NBS) and therefore preserve the façade from greater magnitude seismic events.

6.140 The applicant is also proposing to do some reinstatement of heritage elements of the main façade.

6.141 The higher building will have some adverse minor effects such as wind and shading effects, but these are offset by the positive effects on historic heritage protection of the remaining elements of the building.

6.142 The higher building also has significant positive effects in terms of vitality of the Adelaide Road area and the realisation of Council strategic urban design outcomes.

6.143 In terms of economic benefits, the proposal will still result in a loss to the owner, but is at a level that the developer can sustain. There will however be benefits which accrue to the wider community through construction and hotel jobs. Then there are benefits to future visitors to Wellington with the accommodation provided in a good location for the city.

6.144 It is my view, that the overall positive effects of the proposal are significant.

7. NOTIFICATION AND SUBMISSIONS

7.1 The S42A reporting officer has described the notification process at paragraphs 22 and 27 of the S42A report.

7.2 Mr Daly has also listed the submissions and matters raised in paragraphs 23, 24, 25, 28, 29 of his report.

7.3 I can confirm that the applicant agreed to the acceptance of the late submissions.

7.4 Mr Daly's summary of submissions is accepted.

7.5 In respect to the matters raised in submissions, I am of the view that all relevant matters have been addressed in my evidence above.

8. **Comments on Officers S42A Report**

8.1 I have commented on the officers report throughout my evidence.

8.2 Obviously, my conclusions differ from that of Mr Daly. The majority of the reasons for my difference of opinion are set out above.

8.3 I have been able to review conditions recommended by the Urban Designer, the traffic and earthworks engineer.

8.4 The officer has not actually provided his recommended conditions. Whilst I accept the officer has recommended decline for both proposals, it is my view that the officer should be asked to provide a set of draft conditions should the commissioners elect not to accept the officers recommendation. The draft conditions should be provided before the hearing to allow appropriate and timely responses.

9. **Part II Assessment**

9.1 Firstly I note that the requirement to assess the application under Part II needs to be discussed in light of the King Salmond [Environmental Defence Society Inc v New Zealand King Salmon Company Limited] case, which is the authority on such matters.

9.2 As I have discussed in my evidence, there have been major changes to the Statutory background which applies to future District Plans and resource consents.

9.3 The current District Plan has not responded to the current operative WRPS nor the very recent NPSUD.

9.4 A new District Plan is being prepared under NPSUD direction, as well as the new Planning Standards.

9.5 The current Wellington District Plan therefore, is clearly out of date.

9.6 Therefore it is appropriate to apply a Part II analysis and not rely on the District Plan to confirm the consistency of the proposal with Part II.

- 9.7 It is noted that there will be minor adverse effects on the environment which are as follows:
- Effects on historic heritage (change to existing)
 - Urban design
 - Shading effects
 - Wind effects
 - Temporary construction effects
- 9.8 The heritage effects of the new building proposal can be considered minor on balance, in my view, because the existing status quo is not sustainable and reinstatement and preservation of the heritage values of the building in its current form, is simply unachievable.
- 9.9 Some change to the heritage values of the building is an evitable result from the Building Act requirements.
- 9.10 It may be that a heritage advisor's view is that the changes from the existing situation, are more than minor or significantly adverse. But the starting point in reality, can't be the status quo. The starting point must be a heritage outcome which is actually feasible and achievable in the circumstance.
- 9.11 There must be a realistic focus on the actual, likely outcome here.
- 9.12 The statutory process cannot achieve something which is not viable to achieve. Declining this consent, will not achieve the outcome of preserving this building. It will simply create further uncertainty as to what the solution might be and delay the ultimate outcome.
- 9.13 We must focus on the best outcome here. Not the process, nor the outdated planning documents. The compliance or otherwise of this proposal with the current District Plan is not going to change the reality.
- 9.14 There will be positive effects from both the full demolition and the new building option.
- 9.15 Clearly in my view, there are more positives and less negatives that result from the new building option.
- 9.16 With respect to Part II, we are all aware that section 5 promotes the sustainable management of resources while enabling communities to provide for their social, economic and cultural wellbeing and their health and safety.
- 9.17 The application, requires us to address and consider all these elements under Part II, i.e. social, economic, cultural wellbeing, health and safety.

- 9.18 I am also aware that the protection of historic heritage from inappropriate use is a matter of national importance under S6(f).
- 9.19 There are obvious tensions between the elements of cultural wellbeing and the economic wellbeing of the building owner and the health and safety of the wider community.
- 9.20 It is my opinion, that whilst WCC's resilience unit are threatening to take possession of the building and carry out strengthening, they are highly unlikely to actually do so when they are properly informed of the works required and the costs. The costs of what they think they want to do, will never be recouped by ratepayers. They will take on the heavy burden of the current building owner but they will have the 'hands partially tied behind the backs'.
- 9.21 The law would only allow strengthening to 34% (no longer earthquake prone) and this really just 'kicks the heritage can down the road' without resolving anything for the building and makes it harder to sustain the heritage values of the building in future.
- 9.22 Furthermore, Council will also still have to traverse a consent process.
- 9.23 Council's heritage experts have expressed the view that the applicant has not explored every *reasonable* option. The *reasonable* options put forward by WCC heritage officers, fall way short of providing for the economic wellbeing of the building owner. Are those unexplored options actually *reasonable* if they are incapable of being realised because they are not economically viable? Not in my view.
- 9.24 Again, I ask the commissioners to consider what is the outcome required by the community?
- 9.25 In my view, the optimum outcome required is the approval of the new building option.
- 9.26 This is not a perfect outcome, but it is the 'on balance' best outcome.
- 9.27 If this is not supported, then the commissioners must accept that the sustainable management of resources, is the approval of the demolition of the building on grounds of health and safety and the requirements of the Building Act.

10. **Conclusion**

- 10.1 The proposal to demolish the building entirely is a discretionary restricted activity. It is my view that the matters of discretion include elements of health and safety as these are included in the assessment criteria which are matters to be considered in deciding whether to grant consent or impose conditions.
- 10.2 The provisions of the District Plan, allow for the demolition of the building on the basis that every reasonable option has been explored.
- 10.3 In order to jump the 'every reasonable option hurdle' the applicant has sought to gain approval for a new building which preserves the main parts of the existing heritage building.
- 10.4 That proposal is a non complying activity. In order for this to be approved, it needs to pass through the gateway test under S104D of the Act.
- 10.5 As set out above, the proposal can be considered to be generally consistent on a practical and reasonable basis with the objectives and policies of the District Plan.
- 10.6 The net, on balance overall adverse effects of the proposal can be considered to be minor.
- 10.7 The proposal for the new building can therefore be considered to pass through both arms of the gateway test.
- 10.8 The new building option is the better outcome when considering Part II matters, the NPSUD and the objectives and policies of the Plan.
- 10.9 It is therefore my recommendation that approval to the new building option be granted and the demolition option be declined.
- 10.10 If however the commissioners do not accept the new building should be granted consent, then the full demolition consent should be granted.


Ian Leary
11 November 2021

Appendix 1

Conditions for the LED Billboard

1. The digital billboards must have a maximum LED brightness of 5,000cd/m² (Nits);
2. The digital billboard must not have any brightness exceeding 5,000cd/m² between sunrise and sunset (ie: day);
3. The digital billboard must not have any brightness exceeding 150cd/m² between sunset and sunrise (ie: night);
4. The digital billboard must use LED technology that does not have the filament visible to motorists;
5. The LED digital billboard must have an automatic dimming system based on an ambient light level sensor so that the night time maximum luminance is 250cd/m² and the daytime maximum luminance is 5,000cd/m². Without exceeding the maximum luminance set by this condition, sign brightness must be equal to or less than the brightness of a standard vinyl-skinned billboard under the same lighting conditions between sunrise and sunset.

Note: A three to five minute lag in adjustment of brightness to changes in ambient levels is acceptable;

6. Within 30 days of the LED digital billboard being put into service the Consent Holder shall submit a report from a suitably qualified and experienced lighting practitioner, to the satisfaction of the CMO, confirming the following:
 - The automatic dimming system provides the functionality defined in condition (7) above
7. Any recommendations of the lighting report required by condition (7) above must be implemented and modified as directed by the CMO to deal with any deficiencies in operations. Any changes to the luminance of the signage recommended by the Lighting report or required by the CMO must be made within five working days of direction by the CMO.

Dwell time

8. The digital billboard must operate with a minimum dwell time of 8 seconds;
9. The digital billboard must have a transition time of 0.5 seconds between image displays. The images must fade in and out rather than there being an abrupt change.

Image Content

10. Image content must be static, and must not incorporate flashes, movement or animation;
11. The image content must not imitate traffic signs or any traffic control device, or give instructions to motorists that conflict with any traffic sign or traffic control device;
12. The consent holder must ensure that any lettering and/or symbols will be clearly legible, and the message must contrast with the background. The sign message must be designed to best practice guidelines to ensure the message is readily understood by an approaching driver;
13. Images on billboards must not be linked to "tell a story" across two or more sequential images (ie: where the meaning of an image is dependent upon or encourages viewing of the immediately following image:

Shut down ability

14. The digital billboard must be programmed to automatically go dark in the event of a billboard malfunction. The consent holder must provide an emergency (24/7) contact number and an intervention process to enable the consent holder to disable the digital billboard by manual intervention, both remote and on-site, should the automatic intervention fail. These details must be provided to the satisfaction of Council's CMO prior to operation of the electronic billboards commencing;