

BEFORE THE CHRISTCHURCH CITY COUNCIL
Independent Hearing Commissioner

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF a Resource Consent Application RMA/2018/111 a Resource Consent Application by the Invercargill Licencing Trust, to demolish buildings, including a Class 2 heritage building, and construct and operate a new, eight level hotel incorporating 80 hotel suites, a restaurant, café, bars, function spaces, car parking and other guest facilities at the corner of Dee and Don Street.

**OUTLINE OF OPENING LEGAL SUBMISSIONS ON BEHALF OF THE
INVERCARGILL LICENCING TRUST**

Dated: 27 November 2018

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INTRODUCTION

- 1 These legal submissions are given on behalf of the Invercargill Licencing Trust (*the Applicant*). The Applicant is seeking resource consent from the Invercargill City Council (*The Council*) for the demolition of existing buildings including a Class II heritage building, together with the construction of a new hotel, restaurant, café, bars, function room and other guest facilities (*the Proposal*) on a property located on the corner of Don and Dee Streets in Invercargill (*the Property*).
- 2 It is the Applicant's position that this Proposal represents an exciting opportunity to enact the vision set out in the Southland Regional Development Strategy 2015 – 2025. Aimed at providing focus and confidence for the Invercargill inner city to thrive and to stem population growth in the region, the provision of a new hotel to service higher end tourism and national events is one of five transformational projects identified in that strategy. This proposal meets that brief.
- 3 In advancing this proposal, the Applicant accepts that there is a loss of heritage values, but as demonstrated by the evidence, considers that the replacement of the significant but dilapidated heritage building with an architecturally designed contemporary landmark hotel for Invercargill is both consistent with the relevant objectives and policies of the proposed Invercargill District Plan and is an appropriate development under the provisions of the Resource Management Act 1991.

Evidence to be presented

- 4 To that end, the Applicant will call six witnesses:
 - (a) Mr **Chris Ramsey**, Chief Executive of Invercargill Licencing Trust.
 - (b) Dr **Hayden Cawte**, a heritage expert and managing director of New Zealand Heritage Properties Limited.
 - (c) Mr **Ian Anderson**, Principle Architect at Warren and Mahoney Architects New Zealand Limited.

- (d) Dr **Jeremy Trevathan**, an acoustic expert and Director of Acoustic Engineering Services Limited.
- (e) Mr **Andrew Leckie**, Project Transportation Engineer at Stantec New Zealand.
- (f) Mr **Maurice Dale**, Consultant Senior Planner and Associate Principle at Boffa Miskell Limited.

OVERVIEW OF PROPOSAL

- 5 A comprehensive description of the Proposal is set out in the Assessment of Environmental Effects (*AEE*), the Council Officer's s42A Report (*Officer's Report*) and in the pre-circulated evidence of the applicant.
- 6 In summary, the proposal involves the following:
 - (a) Demolition of all of the existing buildings on the Property, including the existing building at 73- 81 Dee Street which is a Class II heritage building in the proposed Invercargill District Plan (*proposed plan*).
 - (b) Construction and operation of an 8 level, four and a half star hotel incorporating 80 guest suites, a restaurant, café, bars, function rooms, car parking, and other guest facilities.
- 7 The physical context of the Proposal is set out in detail in the AEE and the evidence for the Applicant. In brief:
 - (a) The site is located on the corner of Dee and Don Streets, is approximately 3029m² in size and incorporates several existing buildings, including: 73-81 Dee Street; 57, 61, and 67 Dee Street; 5 and 7 Don Street; and 11 Don Street.
 - (b) The site is zoned Business 1 in the proposed plan and is subject to the overlays of the Entertainment Precinct, the Priority Redevelopment Precinct, the Pedestrian Friendly Precinct and the Centre City Heritage Precinct.

- (c) The area surrounding the site consists of commercial activities, with residential apartments located on the northern side of Don Street and at 55 Dee Street.

8 Consistent with the process of detailed design and as a result of consultation with the Council and the community, a number of minor changes have been made to the Proposal since public notification. These changes are set out in full the evidence of Mr Adamson¹ and Mr Dale², but are replicated below for convenience:

- (a) The kerb build out to the bus loading bay is no longer proposed with the Dee Street heritage cobblestone channel and footpath kerb stones, as identified in Appendix II.4 of the Proposed District Plan, to be retained in their current location either side of the existing street lamp plinth³.
- (b) The car park numbers have been reduced from 34 to 32 due to a required modification to the layout to the gas bottle enclosure and rubbish collection areas⁴.
- (c) A fire escape stair has been added adjoining the gas bottle store providing alternative safe means of egress from the building to the car park area and beyond to Dee Street.⁵
- (d) The stair previously located in the Laneway has been removed from an after hours security perspective. The removal of the stair has allowed retractable awnings to be added off the cafe providing a greater level of weather protection⁶.
- (e) The window openings to the west addressing Dee Street between levels 2 and 6 have been modified in their configuration due to internal planning.⁷
- (a) The level 7 roof deck adjacent to the lift lobby has been reduced in area due to the incorporation of a plant deck located behind a louvred screen.⁸

¹ Paragraph 5.1 of the Evidence of Ian Adamson

² Paragraph 6.2 of the Evidence of Maurice Dale

³ Refer amended Warren and Mahoney drawing A00.004 & SK.025

⁴ Refer amended Warren and Mahoney drawing A00.004

⁵ Refer amended Warren and Mahoney drawing A00.004 & SK.030

⁶ Refer amended Warren and Mahoney drawing A01.500 & A01.501.

⁷ Refer amended Warren and Mahoney drawing A01.500 & A01.501.

- (b) The window opening to the level 7 Event space south wall has been reduced in scale, mitigating any perceived concerns of overlooking 55 Dee Street⁹.
- (c) The plant screen wall within the car park has increased in height from the application by 900mm to mitigate noise from the plant housed within the plant enclosure¹⁰.
- (d) The level 00 (ground floor) wall addressing Dee Street between grids C and E has been changed from precast concrete to a new grey brick cladding¹¹.

9 Mr Dale has assessed these changes against the relevant rules and standards of the proposed plan and has concluded that the changes do not result in any increase in the level of non-compliance as compared with the original notified proposal, nor do they result in any new non-compliances¹².

10 As set out in the application, the Proposal requires resource consent for the following:

- (a) demolition of the heritage building and relocation of heritage features within the street on a discretionary basis;
 - (b) the form and design of the new building, including its height, setback from the street, veranda and ground floor window provision on a discretionary basis;
 - (c) undertaking of earthworks in excess of those permitted on a discretionary basis;
 - (d) the exceeding of construction noise limits on a discretionary basis;
 - (e) the creation of a new vehicle access on a discretionary basis;
- and

⁸ Refer amended Warren and Mahoney drawings A01.507 & A02.002 – A02.003.

⁹ Refer amended Warren and Mahoney drawing A02.003

¹⁰ Refer amended Warren and Mahoney drawing A02.003.

¹¹ Refer amended Warren and Mahoney drawing A02.002.

¹² Paragraph 6.3 of the Evidence of Maurice Dale

- (f) storage and use of hazardous substances in a quantity that exceeds the specified limits on a discretionary basis.
- 11 Resource consent is also required under the NES for Assessing and Managing Contaminants in Soil to Protect Human Health (*NESCS*) on a discretionary basis.
- 12 Overall the Proposed Activity falls to be assessed as a **Discretionary Activity**. As such, regard must be had to the matters listed in Section 104 and 104B of the Resource Management Act 1991 (*the Act*), namely:
- (a) any actual and potential effects on the environment of allowing the activity; and
 - (b) 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; and
 - (c) any relevant provisions of a regional policy statement or proposed regional policy statement or a plan or proposed plan; and
 - (d) any other matters the consent authority considers relevant and reasonably necessary to determine the application.
- 13 While a non-complying activity status for an activity is perceived as indicating a presumption against an activity due to its more restrictive gateway under s104D of the RMA, a discretionary status tends to suggest a more neutral stance¹³, as the Court indicated in *NZ Mineral Industry Associated v Thames Coromandel District Council*:

Where an activity is specifically given non-complying status, as opposed to acquiring it by default because it does not meet specified standards, that tends to indicate a presumption against the activity.... A discretionary status, on the other hand, tends to indicate a more neutral stance towards the activity,

¹³ *New Zealand Mineral Industry Association v Thames-Coromandel District Council* (2005) 11 ELRNZ 105 at [30]

while still reserving the option of refusing consent if its adverse effects cannot be avoided, remedied or mitigated sufficiently to allow its positive effects to outweigh them.

- 14 In this instance, it is submitted that the adverse effects of demolition and redevelopment can be sufficiently mitigated such that the positive effects outweigh them. This is reflected in the finding of Mr Joll in his Officer's Report¹⁴:

... the demolition of the heritage building is not considered to be 'inappropriate' given the local (rather than nationally significant) listing, the current building condition, the substantial loss of fabric inherent with seismic strengthening, and the substantial costs of such works that in combination make the long-term retention and restoration of the building economically implausible. The loss of heritage values also need to be balanced against the heritage-related mitigation offered by the applicant and other positive effects arising from the proposal, including city centre regeneration. I agree with the positive effects identified by the Applicant, and also consider that overall, the adverse effects, with the exception of loss of heritage, of the proposal are not significant and where necessary can be appropriately addressed through conditions of consent.

Submissions

- 15 The Proposal was publicly notified at the Applicant's request in accordance with section 95A of the RMA. A total of 18 submissions were received, 10 of which were in support with five opposed and two neutral but seeking conditions.
- 16 Since the submissions were received, the applicant has undertaken consultation with a number of submitters and as a result has come to agreements with NZTA, Invercargill Airport Limited and the Southland Broadcasters Charitable Trust, with these agreements being reflected in the proposed conditions of consent and confirmed by correspondence provided by the submitter to Council.

¹⁴ Paragraph 8.63 of the Council Officer's Report

SECTION 104(1)(a) – EFFECTS ASSESSMENT

- 17 Section 104 requires an assessment of the actual and potential effects of the Proposal.
- 18 The AEE and the evidence for the Applicant confirm that any effects associated with the Proposal have been appropriately addressed and, subject to the imposition of conditions in respect of some aspects of the Proposal, the actual and potential effects of the Proposal are acceptable from a resource management perspective.
- 19 This finding is supported by a comprehensive and balanced analysis undertaken by Mr Joll and set out in the Officers Report. That assessment and analysis is commended to you and with the exception of the one or two matters outlined in these submissions is consistent with the Applicant's position.

Heritage values

- 20 The effect on heritage values are not in contention, with the applicant accepting that the heritage values of the existing building are important and acknowledging that the adverse effects as a result of its demolition are significant. Notwithstanding this, and as set out in the evidence and accepted in the Officer's Report, it is submitted that the adverse effects of the loss of heritage will be offset by the provision of on-site and off-site mitigation along with the positive effects generated through the provision of a new architecturally designed hotel.
- 21 The existing building at 73-81 Dee Street is classified as a Class II heritage building in Appendix II.3 of the proposed plan, but not included in the New Zealand Heritage List and therefore the effects of its removal need to be considered on a local scale, rather than a national one.
- 22 Pursuant to section 6(f) of the RMA, historic heritage must be protected from inappropriate subdivision, use and development. As set out by Mr Joll the assessment of heritage effects therefore rests

on a determination as to whether the proposed demolition and replacement building are 'inappropriate'.¹⁵

- 23 In assessing whether demolition of a heritage building is 'inappropriate', Collins J in *Lambton Quay Properties Nominee v Wellington City Council* found that "this requires the consent authority to ensure its consideration of an application to demolish a heritage building is founded upon an assessment of whether or not demolition is a balanced response that ensures all competing considerations are weighted, and the outcome is a fair, appropriate and reasonable outcome." The Court went on to note that a consent authority is not "required to 'exhaustively and convincingly exclude' alternatives to demolition before granting resource consent to demolish a heritage building."¹⁶
- 24 Similarly, the Environment Court in *Hamilton East Community Trust v Hamilton City Council* found that "what is inappropriate is a matter of judgment in each case"¹⁷ and may involve consideration of "time, condition, and financial issues..."¹⁸
- 25 As an independent heritage expert, Dr Cawte finds that the building has "moderate to high local heritage value"¹⁹ and that the scale of the loss is considered "large"²⁰. In considering that evidence Mr Joll finds that there will be significant adverse heritage effects at a local level arising from demolition²¹. However, the effects of the loss of those heritage values must be considered in the context of the realities of the application, the mitigation offered and the positive effects of the Proposal.
- 26 As set out in the application, the Applicant commissioned a number of detailed reports on the existing heritage building, including structural condition reports and financial analyses to determine the feasibility of strengthening, retaining and re-tenanting of the entire building or in the alternative retaining of the façade as part of the hotel design.

¹⁵ Paragraph 8.4 of the Council Officer's Report

¹⁶ *Lambton Quay Properties Nominee v Wellington City Council* [2014] NZHC 878, (2014) 18 ELRNZ 295 at [73][74]

¹⁷ *Hamilton East Community Trust v Hamilton City Council* [2014] NZEnvC 220, at [108]

¹⁸ *Hamilton East Community Trust v Hamilton City Council* [2014] NZEnvC 220, at [108]

¹⁹ Paragraph 4.5 of the Evidence of Dr Hayden Cawte

²⁰ Paragraph 4.6 of the Evidence of Dr Hayden Cawte

²¹ Paragraph 8.10 of the Council Officer's Report

- 27 Among other things, those reports confirm that the building is not currently habitable, is below 20% of the National Building Standard²² and that the cost of reinstatement and reuse would result in returns below what is considered acceptable²³. Mr Joll has considered these reports and finds they provide sufficient explanation as to the current state of the building and the options around reuse such that these can be balanced against the loss of the building's heritage value²⁴.
- 28 Dr Cawte has also considered the feasibility studies against the effect of the loss of the heritage building and concludes that the adaptive reuse of the building is not feasible in the context of a hotel²⁵ and that the retention of the façade results in less than desirable outcomes for heritage, comes at a high cost and would render the façade relatively non functional²⁶. As Dr Cawte summarised in his evidence²⁷:

In assessing the impact in relation to values, my report (Cawte (2018) identifies that *proposed solutions to ensure both retention of values, as well as hotel development are not likely to meet the needs of either party* and therefore, recommended that mitigation measures be considered *that are commensurate with the impacts to heritage, in the removal of all of the built structure including façade, at 73-81 Dee Street.*

- 29 To mitigate and offset the effects of the loss of the heritage building, Dr Cawte recommends a number of mitigation measures at paragraph 4.17 of his evidence. The applicant has accepted these mitigation measures and these have been reflected as proposed conditions of consent.
- 30 The evidence of Mr Cain²⁸ and the submission of Ms Edgley²⁹ suggest that a financial contribution greater than the \$50,000 recommended by Dr Cawte and considered appropriate by the Council Officer should be required. Dr Cawte has considered this and notes in his evidence that \$50,000 is an appropriate figure in line with funds of similar

²² BECA Structural Assessment at Appendix 7 to the application

²³ Harcourts Commercial Feasibility Assessment at Appendix 11 to the application

²⁴ Paragraph 8.9 of the Council Officer's Report

²⁵ Paragraph 4.11 of the Evidence of Dr Hayden Cawte

²⁶ Paragraph 4.12 of the Evidence of Dr Hayden Cawte

²⁷ Paragraph 4.13 of the Evidence of Dr Hayden Cawte

²⁸ Paragraph 7.4 of the Evidence of Cain Duncan

²⁹ Paragraph 4 of the submission of Christine Edgley

sized territorial authorities. He also considers that the establishment of a heritage fund itself where one does not currently exist has significant benefits to heritage in the city particularly when coupled with the commitment by the applicant to refurbish and upgrade its existing three heritage buildings³⁰.

- 31 Taking into account the mitigation proposed and secured by conditions, Mr Joll concludes at 8.21³¹:

"Having considered the heritage matters and mitigation proposed, including the measures proposed by the applicant for the purpose of ensuring positive effects, on balance while the loss of the building will indisputably result in the loss of heritage values, I agree with the Applicant's view that demolition of the building is not an inappropriate activity in this context taking into account the above factors."

- 32 Dr Cawte agrees with this conclusion³². Moreover, in reaching your decision on this matter, it is submitted that the realities of the current context, as succinctly articulated by Mr Joll, are relevant. As Mr Joll states³³ *"this is not a choice of demolition and replacement versus repair and reuse, but rather demolition and replacement versus ongoing vacancy and dilapidation"*.
- 33 The Applicant does not shy away from the loss of heritage but simply says that based on the evidence before you, that loss is offset by the mitigation proposed, coupled with the opportunity to progress an important new development for Invercargill.

Urban design and character

- 34 As noted in the AEE and the Officer's Report, the hotel proposal has a small number of built form non-compliances in relation to building height, glazing and building setback, veranda coverage and building materials. These non-compliances have been assessed by Mr Adamson and Joll as acceptable or no more than minor with the Council Officer concluding³⁴:

³⁰ Paragraphs 7.5, 7.6 and 7.7

³¹ Paragraph 8.20 of the Council Officer's Report

³² Paragraph 8.8 of the Evidence of Dr Hayden Cawte

³³ Paragraph 8.10 of the Council Officer's Report

³⁴ Paragraph 8.33 of the Council Officer's Report

"I agree with the Applicant that the proposed development will provide high quality visitor accommodation, and associated activities, including hospitality spaces, which will enhance the amenity and vitality of the inner city. Overall, I consider that the proposed built form appropriately addresses the site and this prominent corner position and will overall achieve good urban design outcomes, albeit that the extent of weather protection provided for pedestrians is suboptimal."

- 35 With respect to the practicality of the proposed veranda coverage, Mr Adamson concludes that the size and design of the canopies will provide sufficient weather protection for pedestrians given their design in relation to the prevailing wind and the fact that large tables will not be placed underneath them³⁵.
- 36 In his evidence, Mr Duncan raises concerns about the finishing materials proposed for the hotel, in particular the terracotta tiles proposed within levels 1-3 of the building façade. He suggests a condition of consent be imposed requiring Council approval of finishing materials prior to construction.
- 37 The rationale for the materials chosen is set out in detail in the Design Statement of Warren and Mahoney attached at appendix 4 to the application³⁶. As Mr Adamson outlines, the terracotta façade panel system will provide pattern through panel size, arrangement and finish³⁷ with the materials chosen specifically for this location, context and sea environment, both to ensure durability and longevity and to ensure an attractive, articulated finish³⁸.
- 38 It is submitted that given the evidence of Mr Adamson and Mr Joll, a further condition is not warranted.

Amenity effects on neighbouring residents

- 39 As set out in the Officer's Report, the residents of 55 Dee Street (the neighbouring building to the south of the site) have raised a number of concerns in relation to the Proposal, specifically with respect to overshadowing and a perceived loss of privacy.

³⁵ paragraph 6.3 of the Evidence of Ian Adamson

³⁶ Page 22 of the Design Statement at Appendix 4 of the Resource Consent Application

³⁷ Paragraph 7.20 of the Evidence of Ian Adamson

³⁸ Paragraph 7.21 of the Evidence of Ian Adamson

- 40 Mr Adamson addresses this concern³⁹ finding that:
- (a) the south facing window treatments of sheer curtains will provide screening to protect guests and the privacy of adjacent neighbours;
 - (b) the sight line between the suites and 55 Dee Street is a diagonal sight line, which combined with the physical distance will make viewing of the rooftop outdoor living space difficult to achieve;
 - (c) there is no direct line of sight possible from the south facing level 7 event space window;
 - (d) the windows to the south wall of the lift lobby are some distance from the lift door and are not on the primary circulation route and are not expected to generate significant overlooking of the Dee Street property; and
 - (e) the Proposal is built up to the shared western boundary and east overlooking Dee Street, so any shadowing will have little effect.
- 41 Mr Joll also considers the effects of these matters to be less than minor⁴⁰.
- 42 Concern is also further expressed in the submission regarding operational noise of the hotel and the noise from the electrical transformer. Dr Trevathan addresses these concerns⁴¹ and concludes that the Proposal, as designed, can be expected to comply with both the daytime and night time noise limits as required in proposed resource consent condition 13 attached at Appendix 1 to the evidence of Mr Dale.
- 43 On this basis it is submitted that effects on the residents of 55 Dee Street as mitigated by the conditions will be less than minor.

³⁹ Paragraph 7.4 – 7.10 of the Evidence of Ian Adamson

⁴⁰ Paragraph 8.34 and 8.35 of the Council Officer's Report

⁴¹ Paragraph 5.7 to 5.11 of the Evidence of Dr Jeremy Trevathan

Traffic and parking

- 44 The Proposal complies with the transportation requirements of the proposed plan, other than consent being needed for the construction and use of a new vehicle access. This access is to be in the form of a porte cochere, as shown in Warren and Mahoney drawing A00.004 and SK.025 and attached to the evidence of Mr Adamson.
- 45 Two submissions were received in respect to the porte cochere, one from NZTA and the other from Mrs C Edgley. NZTA has since written to the Council (8 November 2018) withdrawing its request to be heard on the basis that it is satisfied with the proposed wording of condition 15 and the additions to conditions 6 and 8⁴².
- 46 It is submitted that the concerns of Mrs C Edgley have been adequately addressed in the evidence of Mr Leckie, who concludes that the Dee Street access designs will result in convenient and safe access for visitors to the hotel while having a negligible effect on pedestrians on the footpath and traffic on Dee Street⁴³.
- 47 Mr Duncan raises concerns in his evidence regarding the location and design of the porte cochere and criticises reliance on pedestrian numbers from the October 2018 survey⁴⁴. Mr Leckie addresses these concerns in his evidence and confirms that the design of the porte cochere has been optimised to ensure that the priority of pedestrians is maintained.
- 48 Finally in relation to transport matters, as set out in the evidence of Mr Adamson⁴⁵ and Mr Dale⁴⁶, there has been an amendment to the design of the kerb layout by the bus park at the front of the porte cochere to ensure that the historic kerbstones are more appropriately integrated into the Proposal. Mr Leckie has determined that from a transport perspective, the original design (where the kerb extends out to the bus), is preferred⁴⁷ but the alternative can be appropriately managed. Both Dr Cawte and Mr Adamson are in favour of the amended design which they consider better addresses

⁴² Set out at Appendix 1 to the evidence of Maurice Dale

⁴³ Paragraph 4.27 of the Evidence of Andrew Leckie

⁴⁴ Section 5 of the Evidence of Duncan Cain

⁴⁵ Paragraph 4.1a. of the Evidence of Ian Adamson

⁴⁶ Paragraph 6.2 of the Evidence of Maurice Dale

⁴⁷ Paragraph 4.31 of the Evidence of Andrew Leckie

the heritage values of the kerbstones. Mr Dale has assessed the two competing design proposals and concludes⁴⁸:

"Given the relative importance of heritage preservation as expressed in the District and Regional planning documents, I consider that retention of the kerbstones in their current location would overall better achieve the intentions sought by those documents."

- 49 On this basis the Applicant requests that should consent be granted, the layout of the kerbstones as shown in the Warren and Mahoney drawings attached to the evidence of Mr Adamson is approved.

Hazardous substances

- 50 As a result of more detailed design work the location of the LPG storage has been amended and the quantity of LPG to be stored increased from 720Kg to 990Kg. As set out in the evidence of Mr Dale, a letter has been received from LPG Safety South confirming that the new location is both safer and more practical and that the design of the enclosure and increased storage will meet all regulatory requirements⁴⁹.
- 51 Against that background, it is submitted that inclusion of proposed condition 5 volunteered by the applicant, together with the amended design of the LPG gas enclosure, ensures that any adverse effects are appropriately avoided, remedied and mitigated.

Demolition and construction effects

- 52 Submissions were received from the residents of 55 Dee Street and the Southland Community Broadcasters Charitable Trust regarding concerns with construction and demolition effects. These effects are temporary in nature and predominantly relate to the effects of noise.
- 53 Dr Trevathan has assessed these matters and makes a number of recommendations which are reflected in conditions 6 and 8 attached as Appendix 1 to the evidence of Mr Dale.

⁴⁸ Paragraph 8.8 of the Evidence of Maurice Dale

⁴⁹ Paragraph 8.6 of the Evidence of Maurice Dale

- 54 The Southland Community Broadcasters Charitable Trust has indicated that its concerns have been met by the conditions and it not longer wishes to be heard.
- 55 With respect to the remaining concerns, Dr Trevathan, Mr Dale and Mr Joll all conclude that the measures proposed and secured by conditions are sufficient to ensure the effects of demolition and construction are avoided or mitigated as far as possible⁵⁰ and that the noise effects of the Proposal are acceptable⁵¹.

Positive effects

- 56 Section 6.1 of the AEE sets out the positive effects of the Proposal in detail, which include meeting future accommodation demand, providing employment opportunities and enhancing the inner city to support its viability and vibrancy. Further, the Council Officer considers that:

"the design of the replacement building would make a positive contribution towards the localised streetscape while the provision of high-quality guest accommodation and associated hospitality activities would provide an important addition to the attractiveness and vibrancy of the town centre and may act as a catalyst for further economic stimulus through increased tourism and further regeneration, urban renewal and development within the CBD".⁵²

Conclusion

- 57 Based on the evidence of the technical experts, the mitigation measures proposed and the findings as to the positive effects of the Proposal, Mr Dale concludes that the environmental effects of the Proposal are acceptable⁵³. This is confirmed by Mr Joll, who agrees that overall, the adverse effects, with the exception of the loss of heritage, of the proposal are not significant and where necessary can be appropriately addressed through conditions of consent.⁵⁴

⁵⁰ Paragraph 11.10 of the Evidence of Maurice Dale

⁵¹ Paragraph 7.3 of the Evidence of Jeremy Trevathan

⁵² Paragraph 8.60 of the Council Officer's Report

⁵³ Paragraph 8.9 of the Evidence of Maurice Dale

⁵⁴ Paragraph 8.63 of the Council Officer's Report

SECTION 104(1)(b) – PLANNING CONTEXT

58 As set out in section 7 of the AEE, the statutory documents relevant to the assessment of the Proposal, are the Southland Regional Policy Statement and the proposed Invercargill District Plan.

Southland Regional Policy Statement

59 A full assessment of the relevant objectives and policies of the SRPS has been carried out by Mr Joll⁵⁵ and Mr Dale⁵⁶ and both are in agreement that the Proposal is consistent with the relevant objectives and policies in respect to those relating to urban development, contaminated land, hazardous substances and transport.

60 In considering the relevant objectives and policies in relation to heritage, both find that the provisions do not contemplate the preservation of heritage buildings at all costs⁵⁷, instead allowing other factors to be taken into account in determining the appropriateness of demolition⁵⁸.

61 Mr Dale concludes that⁵⁹:

"While inconsistent with the protective elements of the heritage objectives and policies of the SRPS (objective HH.1 and 2 and related policies) I consider that when you take into account the unfeasibility of alternatives to demolition, the design of the replacement building, and the heritage mitigation and offsetting proposed, that the proposed development will not be contrary to these SRPS provisions."

Proposed Invercargill District Plan

62 As with the SRPS, a full assessment of the relevant objectives and policies of the proposed plan has been undertaken by Mr Joll⁶⁰ and Mr Dale⁶¹ both of whom are in agreement that the Proposal is

⁵⁵ Section 9 of the Council Officer Report

⁵⁶ Section 7 of the AEE and paragraph 9.7 to 9.9 of the Evidence of Maurice Dale

⁵⁷ Paragraph 9.6 of the Council Officer's Report

⁵⁸ Paragraph 9.7 of the Evidence of Maurice Dale

⁵⁹ Paragraph 9.8 of the Evidence of Maurice Dale

⁶⁰ Section 10 of the Council Officer's Report

⁶¹ Section 7 of the AEE and paragraph 9.1 to 9.6 of the Evidence of Maurice Dale

consistent with the relevant objectives and policies of the proposed plan.

- 63 The relevant heritage objectives and policies of the proposed plan reflect those contained in the SRPS and are consistent with section 6(f) of the RMA, in that historic heritage should be protected from inappropriate subdivision use and development. As with the provisions of the SRPS, Mr Dale does not consider that the requirement for protection in the associated policies is absolute particularly where all reasonable means of reuse have been considered, and the effects of heritage values are at a minimum mitigated⁶². As a result he concludes⁶³:

"Taking into account that the alternatives to demolition are unfeasible, the qualities of the design of the replacement building, and heritage mitigation and offsetting proposed, I consider the proposal is not contrary to the heritage objectives and policies. Mr Joll at paragraph's 10.3 and 10.10 of the s42A report similarly concludes that while there is a degree of inconsistency with some of the heritage provisions, the proposal is not contrary to them."

Conclusion

- 64 Based on the analysis undertaken by both Mr Joll and Mr Dale, it is submitted that the Proposal overall is not contrary to, and generally consistent with, the objectives and policies of the SRPS and the proposed plan.

SECTION 104(1)(c) – OTHER RELEVANT MATTERS

- 65 Other relevant matters to be considered under this proposal are canvassed in depth in the AEE and the Council Officer's report. Mr Dale sets out the key conclusions of the Council Officer in respect to such other matters in his evidence⁶⁴ and states⁶⁵:

"I agree with Mr Joll's assessment of these 'other matters'. I consider that the loss of a locally significant building on one of

⁶² Paragraph 9.4 of the Evidence of Maurice Dale

⁶³ Paragraph 9.5 of the Evidence of Maurice Dale

⁶⁴ Paragraph 10.2 of the Evidence of Maurice Dale

⁶⁵ Paragraph 10.3 of the Evidence of Maurice Dale

the 'crown jewel' streets in the central city, in the context of the statutory documents of the Proposed District Plan and SRPS, is appropriate given the mitigation and offsetting measures proposed, the quality of the design of the replacement building, and the concurrent desire expressed in other documents and plans for a reinvigorated CBD and new hotel".

PART 2 OF THE RESOURCE MANAGEMENT ACT 1991

- 66 The Court of Appeal has recently confirmed that the RMA plainly contemplates direct consideration of Part 2 matters in the assessment of resource consents.⁶⁶ In overturning the decision of the High Court, the Court of Appeal determined that consent authorities may have recourse to Part 2 "when it is appropriate to do so"⁶⁷.
- 67 In this instance, it is submitted that while recourse to Part 2 would confirm the appropriateness of granting consent, it is not necessary to do so. The proposed plan has recently been prepared. It articulates a clear and consistent policy framework in which the provisions relevant to this Proposal are newly operative and pursue the purpose of Part 2.
- 68 Despite that (and perhaps best described as a "belts and braces" approach) Mr Dale has given consideration to the proposal in light of Part 2 and finds in paragraph 13.2.d of his evidence, that the Proposal will achieve the purpose and principles of Part 2 of the RMA.

PROPOSED CONDITIONS

- 69 The Officer's Report proposes a set of conditions to accompany the resource consent. The Applicant generally accepts these conditions as proposed, with some minor refinements, which have been discussed with Mr Joll.
- 70 Those proposed refinements are included in the set of conditions appended to the evidence of Mr Dale as Appendix 1 with the changes shown in track.

⁶⁶ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316.

⁶⁷ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 at [47]

71 Mr Dale has set out in section 12 of his evidence, the reasons for the proposed changes and these are briefly summarised below:

- (a) Condition 2. It is submitted that this condition be deleted. The condition seeks to restrict the demolition of the heritage building at 73-81 Dee Street until building consent, finance and construction contracts are in place for the replacement buildings. As set out in the evidence of Mr Ramsey, this condition will likely have the consequential and perverse effect of delaying the delivery of the project by upward of 6 months⁶⁸.

It is submitted that the requirement on the applicant to establish a heritage fund, make the necessary financial payment and prepare a strategy detailing retention and upgrading of its existing heritage buildings should provide sufficient certainty to the Council and the community that the site will not remain vacant following demolition⁶⁹. Moreover, as a publically accountable entity the Applicant is in the somewhat unique position of being accountable to the community of Invercargill in a particularly transparent manner should that unlikely outcome transpire.

- (b) Condition 4. As currently worded, condition 4 (shown as condition 3 in the tracked version in Appendix 1 to the evidence of Mr Dale) does not provide any guidance or certainty as to what the Council might consider to be an appropriate retention and upgrade strategy. Dr Cawte has propose amended wording to provide clarity as to what is required in the strategy⁷⁰. The Applicant accepts this wording and submits that condition 4 be amended as set out in Appendix 1 to the evidence of Mr Dale. It is understood Mr Joll is supportive of this amendment.
- (c) Condition 5. While accepting the condition (shown as condition 4 in the tracked version in Appendix 1 to the evidence of Mr Dale) is as proposed by the Applicant in the AEE, Dr Cawte considers that the proposed Invercargill Heritage Fund would more accurately align with other council managed heritage funds nationally if it was available to all heritage buildings, not

⁶⁸ Paragraph 5.3 of the Evidence of Chris Ramsay

⁶⁹ Paragraph 5.5 of the Evidence of Chris Ramsay

⁷⁰ Paragraph 7.14 of the Evidence of Dr Hayden Cawte

just publically owned ones. On this basis it is submitted that the wording of condition 5 be amended as set out in Appendix A to the evidence of Mr Dale to remove the qualifier regarding public ownership. Again we understand Mr Joll is in agreement with this suggested change.

CONCLUSION

- 72 It is recognised that there will be a loss of heritage values as a result of granting this application. However, it is the expert evidence of Dr Cawte, Mr Joll and Mr Dale that this loss does not amount to inappropriate use or development.
- 73 Moreover, it is the evidence of the Applicant, confirmed by the analysis of Mr Joll, that the effects of the Proposal overall are no more than minor and that the Proposal is generally consistent with, and certainly not contrary to, the relevant objectives and policies of the SRPS and the proposed plan.
- 74 As such, it is the position of the Applicant that consent can and should be granted for this application. The Proposal provides for the development of a much needed hotel complex to reinvigorate the Invercargill Central City and to support the community's expressed desire to revitalise this important area.

DATED this 27th day of November 2018



L J Semple

Counsel for Invercargill Licencing Trust Limited