

BEFORE THE INVERCARGILL CITY COUNCIL HEARINGS COMMISSIONER

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

AND

IN THE MATTER OF RMA/2018/148, being an application for resource consent to undertaken the comprehensive redevelopment of most of the City Centre block bounded by Dee, Esk, Kelvin, and Tay Streets to establish a mixed use commercial centre

BETWEEN **HWCP Management Ltd**
Applicant

AND **Invercargill City Council**
Local Authority

A REPORT PREPARED UNDER

SECTION 42A OF THE RESOURCE MANAGEMENT ACT 1991

BY

JONATHAN CLEAVE, CONSULTANT PLANNER

DATED

4 MARCH 2019

1.0 INTRODUCTION

PREAMBLE

- 1.1 This report reviews the application for resource consent and addresses the relevant information and issues raised. It sets out to provide an independent and objective assessment of the application in accordance with the Invercargill City Council's statutory responsibilities to consider and determine the application. It should be emphasised that any conclusions reached, or recommendations made in this report are not binding on the Commissioners. It should not be assumed that the Commissioners will reach the same conclusion or decision having considered all the evidence to be brought before them by the applicant and submitters.
- 1.2 The applicant is a company called HWCP Ltd that was established in 2017 as a joint venture between HWR Property Limited and Invercargill City Property Ltd. HWR is part of HW Richardson Group Ltd, a privately owned national transport and investment company, and Invercargill City Property Limited is part of Hodco, an investment enterprise owned by the Invercargill City Council. The Council is therefore 'wearing two hats' as both the consenting authority and as a partner in the applicant company. For this reason the application is being processed by myself as an independent planning consultant, with the Commissioners hearing the application likewise having been appointed and given the delegated authority to make the decision independent from Council.

QUALIFICATIONS AND EXPERIENCE OF THE REPORTING OFFICER

- 1.3 My full name is Jonathan Guy Clease. I am employed by a planning and resource management consulting firm Planz Consultants Limited. I have some twenty years' experience working as a planner and am also a qualified urban designer. This work has included policy development, providing section 42a evidence on plan changes, the development of plan changes and the preparation of section 32 assessments, and the preparation and processing of resource consent applications. I have worked in both the private and public sectors, in both the United Kingdom and New Zealand. I have a BSc. in geography, a Master of Regional and Resource Planning, a Master of Urban Design, and am a full member of the New Zealand Planning Institute.
- 1.4 In preparing this evidence I have read and had regard to the following:
- (a) The application and associated appendices;
 - (b) The applicant's response to a Request for Further information received on 11th February 2019 and associated amendments to the proposed plans;
 - (c) The submissions received;
 - (d) The relevant provisions of the Proposed Invercargill District Plan (District Plan); the Southland Regional Policy Statement (SRPS); the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES Contamination);

- (e) Relevant non-statutory reports including the Southland Regional Development Strategy 2015 ('SoRDS'); Invercargill City Centre Retail Strategy 2017; Invercargill City: Central City Area – Heritage Building Reassessment 2016; ICOMOS NZ Charter

1.5 INVERCARGILL CITY: CENTRAL CITY AREA – HERITAGE BUILDING RE-ASSESSMENT 2016

I visited the site and surrounding area on 5th September 2018.

- 1.6 While this is a Council Hearing, I have read the Environment Court's Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note (updated 1st December 2014) and I agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this statement of evidence are within my area of expertise.
- 1.7 The data, information, facts and assumptions I have considered in forming my opinions are set out in the report. I have not omitted to consider material facts known to me that might alter or detract from the opinions I have expressed.
- 1.8 In drafting this report I have considered whether additional expert reports are necessary to inform my recommendation and to assist the Commissioners. The key issue raised in the application and in submissions is in relation to heritage. The applicant has provided a comprehensive heritage report by an experienced and qualified heritage expert. This report has identified that the buildings in question do have heritage value. Heritage New Zealand Pouhere Taonga are likewise a submitter to the application and have the opportunity to lodge evidence in the event that they disagree with the applicant's heritage significance assessment. The assessment of the application therefore turns principally on whether the loss of recognised heritage values is sufficiently balanced by the positive regeneration effects of the proposal, guided by the direction set out in the District Plan's objectives and policies and ultimately the sustainable management purpose and principles of Part 2 of the Resource Management Act i.e. a planning assessment. In terms of transport matters the application has included a detailed report by Abley consultants who are experienced transport engineers. The proposal is largely compliant with the District Plan transport provisions with the only traffic-related rule breach in relation to the formation of new access points onto the State Highway network. The New Zealand Transport Agency, as road controlling authority, have lodged a submission addressing this matter. As set out above, as well as being a qualified planner I also hold an urban design qualification and therefore am able to undertake an assessment of the urban design qualities of the proposed replacement project.

2.0 THE APPLICATION

- 2.1 HWCP Management Ltd ('HWCP') is seeking resource consent to undertake the comprehensive redevelopment of the majority of the city centre block bounded by Esk, Kelvin, Tay, and Dee Streets. The only sites in the block excluded from the application site are the Reading Cinema

(29 Dee St) and the Kelvin Hotel (20 Kelvin St). The application shows the extent of the application site in Figure 1, and contained a table¹ that provides a comprehensive list of the legal descriptions of the multiple lots that make up the application site. Copies of the Certificates of Title were included in Appendix M of the application.

Figure 1. Application site (shown in blue)



2.2 The application site contains thirty buildings, twenty of which are listed in Appendix II.2 and II.3 of the District Plan as heritage buildings. These twenty buildings include four that are registered by New Zealand Heritage Pouhere Taonga ('NZHPT'), comprised of:

- Category I – the former Bank of New South Wales Building ('BNSW') on the corner of Dee and Tay Streets;
- Category II - Newburgh Building (33 Dee St);
- Category II - Lewis & Co Building (29 Esk St);
- Category II - Southland Times Building (67 Esk Street).

2.3 The remaining 16 heritage buildings are recorded as Class II in the District Plan. The kerb cobblestones that sit immediately outside the site are also identified in Appendix II.4 as items of Street Furniture requiring some form of protection, as are a number of cast iron veranda posts.

¹ Page 5, Bonisch AEE

- 2.4 The proposal seeks to retain the BNSW building, retain the Esk St facades of the Southland Times Building (67 Esk Street), Coxhead's Building (31-35 Esk St), and the Cambridge Arcade Building (59-61 Esk St). The balance of the Cambridge Arcade, including its Tay St façade, are to be removed. The proposal therefore involves the retention of one heritage building, the retention of a further three facades, and the complete demolition of sixteen heritage buildings. All other non-heritage buildings within the application site are also to be removed.
- 2.5 It is noted that there have been several changes to the proposal since it was originally lodged in regard to heritage facades. The original application proposed the demolition of the Cambridge Arcade façade and the retention of the street-facing façades of the Thompson Building (18 Kelvin St) and the Fairweather Building (58 Tay St). The latter two façades are now no longer to be retained, with retention of the Esk Street Cambridge Arcade façade now proposed instead. These changes are discussed in more detail below.
- 2.6 The proposed replacement development is shown in the amended plan set prepared by Buchan Architects and provided as part of the applicant's response to a Request for Further Information ('RFI') received on 11th February 2019. The RFI included the following table setting out the proposed floor areas, arranged by both activity type and floor level.

Table 1. Proposed floor areas

DESCRIPTION - PROPOSED AREAS (GFA)	GROUND FLOOR	LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4	LEVEL 5	LEVEL 6	TOTAL
Parking (incl. Ramp)	437	6081	5912	5986	5988	6036		30440
Piazza		453						453
External / Back of House Circulation	1218							1218
Amenities	801	38	26	26	26	26		943
Internal Circulation / Public Spaces	3374	942	125	125	125	125	51	4867
Food & Beverage	888	767						1655
F&B Seating	634	499						1133
Major & Anchor Tenants	3136	3206						6342
Civic	896	777	525	525	367			3090
Medical	798	760	959	959	923			4399
Office		478	599	599	599	599		2874
Retail	4535							4535
Residential							487	487
Bike Store	66	33						99
Cinema	142							142
Commercial Activity	1102	1787	907	907	907	907	848	7365
Childcare			575					575
Sundry	77	31	15	15	15	15	15	183
TOTAL	18104	15852	9643	9142	8950	7708	1401	70800

- 2.7 The proposal comprises of a number of separate multi-storey buildings that include structured carparking, office, retail, food and beverage, medical, civic, and preschool activities, along with internal laneways and ancillary loading facilities. In summary, the key elements of the proposed replacement buildings are:
- A seven storey building on the corner of Dee and Esk streets that has retail at ground level, carparking at first floor, offices on levels 2-5, and residential apartments on level 6;
 - Two storey buildings along the balance of the Esk St frontage with retail and food and

beverage activities at ground floor and a mix of food and beverage and offices at first floor;

- A large anchor retail tenant with the main entrance to this building through the retained Southland Times façade on Esk St, retailing on ground and first floor levels, and a childcare facility on the third floor behind the top level of the Southland Times façade;
- A seven storey commercial building fronting onto Kelvin Street, with a two storey element wrapping around the corner to Tay Street. The activity within this building is labelled on the plans as 'commercial' which has been assumed to be offices, with the potential for retail or commercial services at ground level;
- A six storey parking building with frontage and vehicle access to Tay Street and occupying the centre of the site. At ground level this building is to be used for a mix of retail and food and beverage activities, with the upper levels used for parking. The building will provide 859 spaces. The Tay St façade is proposed to be illuminated with a 'southern lights' display as a visual focal point for the development;
- A five storey medical centre with frontage to Tay St;
- Activation of the BNSW building for 'civic' activities, with a linked adjacent five storey civic building fronting Dee Street;
- Provision of covered pedestrian laneways, retail, and food and beverage activities through the centre of the site at ground level.

3.0 DESCRIPTION OF SITE & SURROUNDING ENVIRONMENT

SITE LOCATION & DESCRIPTION

- 3.1 The applicant's Assessment of Environmental Effects (AEE) includes a description of the application site and its immediate surroundings in Section 2 (pages 4-7). The Buchan plans attached as Appendix A to the application likewise include a description of the site context. I consider that this description is accurate, and it should be read in conjunction with this report.
- 3.2 In summary, the site comprises most of a block in the centre of Invercargill's CBD. The site is bounded to the west and south by Dee and Tay Streets respectively. These two streets are wide dual carriageways that are also State Highways (SH6 and SH1 respectively). These two streets create a significant physical separation such that the blocks do not form a particularly pleasant pedestrian environment. This environment can be contrasted with Esk Street to the north of the site which is formed as a slow speed one-way street with street furniture and landscaping. Esk Street has a more traditional 'mainstreet' feel and function and is arguably the premier retail street in the CBD. To the east the site is bounded by Kelvin Street which is a two lane road. On the eastern side of Kelvin Street is H&J Smiths, a large department store that appears to be an important anchor activity for city centre retailing.

- 3.3 The block itself is comprised of multiple buildings that are generally in a poor state of repair and visually display a somewhat rundown appearance. The block currently has a high level of vacancy, which in part may be due to leases being ended as part of the proposed site redevelopment process. It is nonetheless understood from the application that many of the upper levels of the existing buildings have been vacant for several decades.
- 3.4 The application includes a detailed assessment of heritage values prepared by Heritage Properties Ltd. This assessment examines the heritage value of all of the listed buildings in the block and also includes general descriptions of their current condition.

4.0 THE PLANNING FRAMEWORK

THE PROPOSED INVERCARGILL CITY DISTRICT PLAN

- 4.1 The proposed development is subject to the provisions of the Proposed Invercargill District Plan (Appeals Version) 2017. All appeals on the Proposed District Plan have now been resolved, although the District Plan is yet to be made formally operative. I agree with the applicant's AEE that all relevant rules of the District Plan are beyond challenge, and therefore are to be treated as operative under section 87F of the Resource Management Act 1991.
- 4.2 The entire site is located within the Business 1 (Central Business District) Zone. The District Plan states that *"the Zone seeks to maintain and reinforce the viability and vibrancy of Invercargill's City Centre by enabling a wide range of activities, by encouraging and maintaining a high level of amenity, and by encouraging good urban design"*.
- 4.3 The site is also located within the following District Plan precincts, as shown as overlays on Planning Map 9:
- Priority Redevelopment Precinct;
 - City Centre Heritage Precinct²;
 - Entertainment Precinct; and
 - Pedestrian Friendly Frontages Precinct (PFFP).
- 4.4 The Proposed District Plan notes:

*"Within the **Priority Redevelopment Precinct** the Council seeks a partnership with the business sector in that it has accepted responsibility for the provision of car parking. This is intended as a significant bonus for redevelopment, enabling utilisation of a greater proportion of the site for building"*.

*"The Business 1 Zone makes specific provision within the **Entertainment Precinct** for entertainment premises, with extended hours of operation and more permissive noise limits than other parts of the City District"*.

² It is noted that there are no policies or rules relating to the Heritage Precinct overlay

*"The third precinct within the Business 1 Zone is the **Pedestrian-Friendly Frontages Precinct**, intended to maintain and enhance the attractiveness and convenience of the City Centre for pedestrians".*

- 4.5 Section 5.2 of the Applicant's AEE identifies those provisions of the District Plan that the proposal does not comply with and considers that overall the proposal requires resource consent as a **non-complying activity**. This section of the AEE should be referred to for a comprehensive list and compliance check of all of the relevant provisions. A table setting out the rules breached is attached in **Appendix 1**. The provision that triggers a non-complying activity status is rule 3.8.8 in the heritage chapter, due to the proposed demolition of buildings registered by Heritage New Zealand Pouhere Taonga. I agree with the assessment contained in the application regarding the identification of the relevant provisions and associated non-compliances.
- 4.6 In summary the topic areas and associated provisions that trigger the need for consent are:
- Demolition (controlled activity – rule 3.4.2);
 - Construction Noise (discretionary activity – rule 3.13.18);
 - Earthworks (discretionary activity – rule 3.17.7)
 - Transport (discretionary activity – rules 3.20.4 and 3.20.11);
 - Heritage (restricted discretionary, discretionary, and non-complying – rules 3.8.4, 3.8.6, 3.8.7, 3.8.8, 3.8.9);
 - Residential activity within an Entertainment Precinct (discretionary – rule 3.23.2);
 - Veranda design (restricted discretionary – rule 3.23.10);
 - Building height (restricted discretionary – rule 3.23.12);
 - Pedestrian friendly frontages (buildings more than two stories)– (discretionary activity – rule 3.23.17);
 - Corner building heights (discretionary – rule 3.23.20);
- 4.7 Given that the project is conceived as a single comprehensive redevelopment of a city block, and that the demolition of heritage buildings forms an intrinsic element in enabling the subsequent redevelopment, I consider that it would be artificial to assess these rule breaches (and their attendant activity status) in isolation. Whilst the four HNZPT buildings could be retained (and therefore the activity status reduced to being Discretionary), such changes would necessitate a fundamental redesign of the anchor retail store, parking building, and internal pedestrian laneways. In short the non-complying aspects of the proposal cannot be readily separated off. I therefore agree with the applicant's conclusion that the application is to be considered overall as a **non-complying activity**.

NATIONAL ENVIRONMENTAL STANDARD FOR ASSESSING AND MANAGING CONTAMINANTS IN SOIL TO PROTECT HUMAN HEALTH

- 4.8 The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NESCS) came into force on 10 October 2011. The NESCS manages activities which involve the disturbance of land which may be contaminated. This is determined by whether activities have or are likely to have occurred on the site, which are listed in the Hazardous Activities and Industries List ('HAIL').
- 4.9 Section 6 of the AEE provides an assessment of the proposal against the provisions of the NESCS. The AEE notes that a Preliminary Site Investigation has identified that the site has been subject to activities described on the HAIL list, and therefore the proposal cannot meet the standards for a permitted activity. It further notes that a Detailed Site Investigation ('DSI') report has not been completed, as such will not be possible until the existing buildings have been demolished.
- 4.10 I agree with the Applicant's assessment of the relevance of the NESCS and that in the absence of a completed DSI, earthworks are a **discretionary activity** under clause 11(2) of the NESCS.

5.0 NOTIFICATION

- 5.1 The applicant requested that the application be publicly notified under s95A(3)(a). The application was publicly notified on 18 October 2018, which included the service of notice of the application on the following parties:
- Te Ao Marama Inc
 - New Zealand Transport Agency
 - Heritage New Zealand Pouhere Taonga
 - Environment Southland

SUBMISSIONS RECEIVED

- 5.2 The submission period closed on 16th November 2018, with a total of 41 submissions being received by this date a further three received after this date. A number of submissions did not clearly specify whether they were in support or opposition, or were in general support subject to concerns regarding construction-phase effects being appropriately managed. As such it is challenging to provide a definitive breakdown of the numbers in support or opposition. That being said, as a guide some 24 submissions appear to be in general support (of which 9 raised concerns regarding construction effects), 9 are neutral, and 10 are opposed to the application. The Commissioners have been provided with a full copy of all submissions. A summary of the key planning elements raised in the submissions is contained in **Appendix 2** of this report.

The relevant planning matters raised in the submissions are addressed in the assessment of effects commencing in Section 8 of this report.

- 5.3 Three submissions were received late³, with the Commissioners needing to determine whether these submissions be accepted pursuant to s37 RMA. S.37A(1) states:

A consent authority or local authority must not extend a time limit or waive compliance with a time limit, a method of service, or the service of a document in accordance with section 37 unless it has taken into account-

- (a) The interest of any person who, in its opinion, may be directly affected by the extension or waiver: and*
- (b) The interests of the community in achieving adequate assessment of the effects of any proposal, policy statement or plan, and*
- (c) Its duty under section 21 to avoid unreasonable delay.*

- 5.4 Section s37A(2) enables the consent authority to extend the time frame up to twice the maximum period specified in the Act. Section 37A(4)(b) notes that a time period may only be extended under section 37 if specific criteria are met, including whether there are special circumstances that apply, or the applicant agree to the extension.

- 5.5 I do not believe that any party was directly affected by the late service of these submissions, and their late service has not created any delay to the overall process. Accepting the late submissions is consistent with the public participatory approach of the Act, and ensures the Commissioners are able to consider the views of the community in assessing the application. I therefore recommend that the three late submissions be accepted pursuant to s37A(2), and note that the applicant has confirmed in writing that they agree to the extension of time pursuant to s37A(b)(ii) of the Act.

6.0 STATUTORY CONSIDERATION

RESOURCE MANAGEMENT ACT 1991

SECTION 104, 104B, 104D

- 6.1 Subject to Part 2 of the Act, Section 104(1) sets out those matters to be considered by the consent authority when considering a resource consent application. Considerations of relevance to this application are:

(a) any actual and potential effects on the environment of allowing the activity; and

³ Invercargill Airport Ltd; Joy Brown; HNZPT who lodged a submission on 16th Nov and then withdrew it and re-lodged a replacement submission on 23rd November

(ab) 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

(b) any relevant provisions of:

(i) a national policy statement...

(iii) a regional policy statement or proposed regional policy statement

(iv) a plan or proposed plan; and

(c) any other matters the consent authority considers relevant and reasonably necessary to determine the application.

- 6.2 When forming an opinion for the purposes of actual and potential effects on the environment of allowing the activity, Subsection 104(2) of the Act states that a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the Plan permits an activity with that effect. I discuss the 'permitted baseline' in more detail below.
- 6.3 Subsection 104(3) of the Act states that a consent authority must not when considering an application have regard to trade competition or the effects of trade competition, or any effect on a person who has given written approval to the application.
- 6.4 No written approvals have been obtained. In terms of trade competition, I note that a number of submissions have been received from the owners and/or operators of nearby retail businesses. The matters raised by such submitters primarily relate to concerns regarding environmental effects arising from the demolition and construction phases, parking and transport matters, and the role of the development in the future vitality of the CBD. Whilst some submitters are CBD retailers or building owners, the concerns raised address legitimate resource management matters that require careful consideration and do not in my opinion cross into the realm of misusing the consent process to progress trade competition grounds. It is nonetheless important to emphasise that trade competition effects are matters that the Commissioners are expressly prevented from considering.
- 6.5 Subsection 104(3) of the Act also provides that a consent authority must not grant a resource consent:
- To do something that will or is likely to, have a significant adverse effect on a recognised customary activity, less written approval is given to conduct the activity from the holder of the customer rights order.
 - If the application should have been notified and was not.

- 6.6 As far as I am aware, the proposal does not affect any customary activity, and no submitters have raised concerns regarding customary rights. As set out above, the application was publicly notified at the applicant's request.
- 6.7 The application is classified as a non-complying activity therefore the provisions of s.104(D) of the RMA are applicable. Section 104D sets out particular restrictions for non-complying activities, and a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—
- (a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*
- (b) the application is for an activity that will not be contrary to the objectives and policies of—*
- (i) the relevant plan, if there is a plan but no proposed plan in respect of the activity...*
- 6.8 In the event that either limb of the 'threshold test' is met, being that the adverse effects on the environment will be less than minor and/ or that it is not contrary to the objectives and policies of the City Plan, then the application is eligible for approval under s.104 (set out above) and s.104B. Under Section 104B the Council may grant or refuse an application for a non-complying activity, and if it grants the application, may impose appropriate conditions in accordance with section 108.

PART 2 OF THE RMA

- 6.9 The application of Part 2 in the context of considering resource consent applications has been impacted by case law arising from the *R J Davidson Family Trust v Marlborough District Council* case. The Court of Appeal has recently released its decision on Davidson⁴. It found that the High Court erred when it determined the Environment Court was "not able or required to consider Part 2 of the Resource Management Act 1991" when undertaking its decision-making role in accordance with section 104 of the RMA. The decision means that when considering resource consent applications, decision-makers "must have regard to the provision of Part 2 when it is appropriate to do so": [47]. That said, the decision also notes that where District Plan objectives and policies appropriately address and give effect to Part 2 matters, then further reference to Part 2 may not be of any additional assistance to decision makers. I assess the proposal against the District Plan objectives and policies in section 10 below. Given that the proposal is for the comprehensive redevelopment of an entire City block, and the associated loss of all or most of 19 heritage buildings, the scale of the project is greater than that typically experienced in Invercargill and different from the typical site-by-site redevelopment that was perhaps contemplated when the District Plan provisions were prepared. As such this may well be an instance where reference to Part 2 is appropriate and

⁴ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316

helpful for the Commissioners and as such I have considered Part 2 matters in more detail in section 11 below.

- 6.10 Part 2 of the RMA sets out the purpose and principles of the Act. Section 5 sets out the purpose of the RMA, being “to promote the sustainable management of natural and physical resources” which is defined to mean:

“managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety while –

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
- (c) Avoiding, remedying or mitigating any adverse effects of activities on the environment.”*

- 6.11 Section 6 of the Act identifies what I consider to be the relevant matters of national importance to be recognised and provided for:

(f) The protection of historic heritage from inappropriate subdivision, use and development.

- 6.12 Section 7 of the Act identifies what I consider to be the relevant matters that are to be had particular regard to:

- (b) the efficient use and development of natural and physical resources;*
- (c) the maintenance and enhancement of amenity values;*
- (f) maintenance and enhancement of the quality of the environment.*

- 6.13 Section 8 requires the principles of the Treaty of Waitangi to be taken into account. No cultural matters arise in the consideration of this proposal and local Iwi have not lodged a submission on the application.

7.0 ASSESSMENT OF EFFECTS

S104(6) ADEQUACY OF INFORMATION & CHANGES TO THE APPLICATION

- 7.1 A number of submissions raised concerns about various aspects of the proposal that were not addressed in sufficient detail in the application as lodged. A Request for Further Information ('RFI') under s92(1) was subsequently issued to the applicant on 28th November 2018. A response was received from the applicant on 11th February 2019. I am satisfied that the RFI response addressed the questions raised in the RFI. The merit of the response and the degree to which effects can be managed through conditions is considered in the below assessment.
- 7.2 In response to matters raised by submitters, and as a result of further design development, the applicant in their RFI response proposed a number of changes to the plans relative to the plans as lodged (and as publicly notified). These changes are set out in detail in the revised plan set prepared by Buchan Architects submitted on 11th February. The key changes are summarised by Bonisch Consultants in the RFI response as follows:
- Removal of the heritage facades on 58 Tay Street (Fairweather Building) and 18 Kelvin Street (Thompson Building);
 - Retention of the Cambridge Arcade façade on 59-61 Esk Street (and demolition of the balance of the building);
 - Reorganisation of the carpark building mass with reduced area over the site but an additional floor added (with spaces reduced from 950 to 859);
 - Increased height and area for the medical centre wrapping around the BNSW building on the corner of Dee and Tay Streets;
 - Alterations to the proposed Tay Street façade treatment with the removal of heritage images and the inclusion of 'southern lights' screens on the carpark building.
- 7.3 The RFI response included a detailed discussion prepared by Holland Beckett Law regarding the degree to which these changes remained within the scope of the application as lodged (and subsequently notified). This legal opinion concluded that fundamentally the application continues to seek the comprehensive redevelopment of a city block with a range of dining, retail, office, residential, and other opportunities, as well as carparking. The key changes relate to heritage, urban design, and transport matters. Updated reports were prepared by the applicant's experts on these topic areas, with all three experts concluding that the scale and intensity of the activity was not changing and/or that the changes resulted in a neutral change in effects. Holland Beckett Law therefore considered that the changes fell within the scope of the application.
- 7.4 In considering scope matters, I note that no submitters explicitly referred to the Fairweather and Thompson facades, whilst conversely several submitters (Rachel Egerton, Downtown

Invercargill Group, Neighbouring Retailers Group) referred to the importance of Esk Street as a high amenity retail area. The change to the retention of different facades is therefore to a certain extent one that responds to concerns raised in submissions. Overall I consider the proposed changes are modest relative to the very large scale of the overall project, and the effects of the changes are within the envelope of effects and matters generated by the application as lodged. I have therefore based the below assessment on the plans and information as submitted in the 11th February RFI response.

- 7.5 Ultimately questions of scope are a matter for the Commissioners to determine. If there are found to be scope issues then the hearing (and decision) can still proceed based on the plans as originally lodged, with the changes sought through the RFI progressed by the applicant at a later date through a subsequent application.

S104(2) PERMITTED BASELINE

- 7.6 Prior to undertaking an assessment of the effects of this proposal it is useful to consider the discretion available under Section 104(2) of the Act whereby a consent authority may disregard an adverse effect of an activity on the environment if the Plan or national environmental standard permits an activity with that effect (referred to as the “permitted baseline”).
- 7.7 I consider that the permitted baseline is of very limited relevance to this application. Demolition of heritage buildings requires a resource consent (as a non-complying activity for HNZPT registered buildings identified in Appendix II.2 and as a discretionary activity for buildings identified in Appendix II.3 of the District Plan). Demolition of non-listed buildings likewise requires consent as a controlled activity. The proposal involves the whole or partial demolition of 19 heritage buildings, and the removal of all non-listed buildings. The proposed replacement plans are predicated on the removal of the existing building stock. There is therefore relatively little development that could occur as of right as a permitted activity whilst concurrently retaining the existing building stock.
- 7.8 Whilst there is limited scope for undertaking a wholly permitted development, there are a number of scenarios that could occur as a readily consentable development. Demolition of non-listed buildings is a controlled activity (with removal of buildings smaller than 120m² permitted), which means consent cannot be declined (although conditions can be imposed). As such a plausible redevelopment scenario could include the removal of all non-listed buildings and their replacement with new buildings of two stories in height (three stories on corner sites) and built to the road boundary. The strengthening, repair, and reuse of existing listed heritage buildings could likewise occur, noting that alterations to such buildings would require resource consent as a restricted discretionary activity but would have a high likelihood of being granted consent if undertaken in a sensitive manner. The use of the site for a mix of retail, office, civic/ community, and hospitality activities is likewise permitted. No car parking is required to be provided in this part of the Business 1 zone and therefore such sites could be redeveloped with reliance only on on-street spaces.

- 7.9 It is readily acknowledged that such scenarios do not form a permitted baseline under s104(2), however they do give a feel for the type of development that could be progressed with relatively few rule breaches and under a controlled or at worst restricted discretionary activity status.

S104(3) WRITTEN APPROVALS

- 7.10 s104(3) provides that a consent authority may not have regard to any effect on a person who has given written approval to the application. No written approvals have been submitted with the application.

S104(1)(A) & S.104D – ANY ACTUAL OR POTENTIAL EFFECTS ON THE ENVIRONMENT OF ALLOWING THE ACTIVITY

- 7.11 As a non-complying activity the Council's assessment is unrestricted and all actual and potential effects of this proposal must be considered. I have considered the relevant issues and the matters raised by submitters. In my view they fall broadly into the following categories:

- (a) Heritage values;
- (b) Urban design, character, and height of the replacement buildings;
- (c) Amenity effects on future residents;
- (d) Traffic & parking;
- (e) Demolition & construction effects;
- (f) Contaminated land management;
- (g) Airport Approach Slopes;
- (h) Infrastructure servicing; and
- (i) Positive effects

HERITAGE VALUES

- 7.12 Heritage effects are among the most significant matters raised by the application and in submissions opposing the application. The applicant has provided a detailed assessment of the potential heritage related effects through a heritage assessment and subsequent addendum undertaken by Heritage Properties Ltd. The addendum (lodged as part of the RFI response) reflects the post-lodgement amendments to the application (the retention of the Cambridge Arcade facade in exchange for the loss of the Fairweather and Thomson's Building facades). The addendum in effect replaces the assessment of effects on heritage values undertaken in the original report submitted with the application.

- 7.13 As set out above, the application site contains twenty heritage buildings, of which the BNSW Building is a Category I building on HNZPT's register; three are Category II buildings on HNZPT's register; and sixteen are locally listed buildings in Appendix II.3 of the District Plan. The site also contains or is immediately adjacent to kerb stones and veranda posts in the road reserve that are listed heritage items in Appendix II.4 of the District Plan.
- 7.14 As noted in both the heritage assessment and the submission by HNZPT, the entire block has evidence of human occupation prior to 1900 and is therefore considered to be an archaeological site under the Heritage New Zealand Pouhere Taonga Act 2014. Pre-1900 buildings are likewise considered to be archaeological sites under the HNZPT Act. An Archaeological Authority will therefore be required from HNZPT prior to works to these buildings and earthworks commencing, with HNZPT able to require monitoring of demolition and excavation by an archaeological expert and the recording of buildings under the provisions of the HNZPT Act. An advice note is proposed to remind the Consent Holder of their obligations under this separate piece of legislation.
- 7.15 The addendum heritage assessment (pg. 12-13) contains a helpful table and associated plan that identifies each building in the application site and provides a summary of each building's heritage significance and the degree of adverse effect generated by the proposal on a building-by-building basis.
- 7.16 The application proposes to retain the Category I BNSW Building; retain the façade of the Category II Southland Times Building (with alterations to the façade); retain two other facades (31-35 Esk St and 59-61 Esk St); and demolish all other heritage buildings. Heritage kerbstones listed in Appendix II.4 of the District Plan are proposed to be retained in situ, and heritage veranda posts listed in Appendix II.4 are proposed to be removed.
- 7.17 Section 6(f) RMA requires that historic heritage be protected from inappropriate subdivision, use, and development. This requirement is reflected in a number of the District Plan objectives and policies and in the Southland Regional Policy Statement (discussed in more detail below). The assessment of heritage effects therefore rests on a determination as to whether the proposed demolition and replacement of a significant number of heritage buildings is 'inappropriate'. Such a determination involves consideration of:
- The heritage values of the buildings;
 - The current condition of the buildings;
 - The extent of works necessary to bring the buildings up to an appropriate standard;
 - The costs of such works and the effects of them on heritage fabric and values;
 - The availability of grants or alternative funding sources;
 - The rate of return/ economic viability of the required investment;

- Alternatives such as retention of just the façades;
- The effectiveness of mitigation measures;
- The urban regeneration and economic and social benefits to the community of the proposed replacement buildings

HNZPT Registered Buildings – Appendix II.2

7.18 The site contains four heritage buildings registered by NZHPT. These buildings are identified in the heritage assessment as having some of the highest values in the block, and therefore have been subject to a more fulsome assessment.

Bank New South Wales Building

7.19 The BNSW Building is the only Category I registered building in the block. This categorisation is reflected in the findings of the heritage assessment which identified it as having high heritage value. Whilst the building is currently unoccupied, such vacancy has been a relatively recent occurrence and the building therefore appears to be in reasonable condition. The application proposes to retain the building, which is an outcome that is strongly supported by the heritage assessment. The building is already subject to a heritage covenant and therefore also receives protection through that alternative mechanism.

7.20 The heritage assessment recommends that the BNSW Building needs to be adequately protected during demolition and construction phases as mitigation. Conditions are recommended to this effect (Conditions 8(j) and 15(d)), including a requirement for specific consideration to be given in both the demolition and construction management plans to methods for protecting the building whilst works on adjacent land are undertaken.

7.21 The retention of the BNSW Building and its incorporation into the wider site development is an outcome that is also supported in a submission by the Troopers Memorial Corner Charitable Trust who it is understood are the current owners of this building. It is understood from the submission that the Trust was formed for the express purpose of restoring the BNSW Building, with such works having been undertaken. Despite these works the building has in recent times proven to be challenging to tenant. The incorporation of the building within the wider development, and consequent increased potential for it to be tenanted and put to ongoing use, therefore forms the basis of the Trust's submission in support.

7.22 The proposed plans, as amended by the RFI response, now propose a five storey medical and civic building wrapping around the BNSW Building. The upper floor of the proposed new building has been set back from the Tay Street frontage to provide a compatible mass along the street front. The proposed adjacent building will nonetheless be taller than the BNSW building, especially when viewed from the western side of Dee Street and the southern side of Tay Street. These new taller elements to the side and rear will reduce the visual prominence of the BNSW Building as the block will reduce in height towards the corner rather than

increase. Whilst the ordering of the façade mass declines towards the corner, and potentially visually diminishes the BNSW Building, the proposed works conversely do not obscure any views of the building and do provide a clean, simple backdrop to the building. The BNSW Building and its associated heritage values will therefore remain clearly legible and will read visually as a stand-alone building on a prominent corner.

- 7.23 On balance, the retention of the BNSW Building and its integration to the wider site is considered to be a positive element of the proposal. The development should also help to facilitate the long-term occupation of the building which is vital to the building providing an economic return to assist with its maintenance and the long-term retention of heritage values.

Newburgh and Lewis & Co Buildings

- 7.24 These adjacent buildings comprise two of the three Category II registered buildings in the block. They are located on the corner of Esk and Dee Streets. Whilst separate buildings, they are sometimes referred to collectively as the 'Government Life Building', reflecting an earlier tenant that occupied both sites and operated between the two buildings in an integrated manner. The heritage assessment identifies that the Lewis & Co Building has high heritage values and the Newburgh Building medium heritage values.

- 7.25 The heritage assessment identifies that only the ground floor of these buildings is occupied, with the upper levels having been vacant for at least the last two decades. The upper levels are understood to be in a poor state of repair with water damage and pigeon infestation. A detailed seismic assessment has been undertaken of both buildings by BMC engineers, with the findings set out in Appendix D of the original application. This assessment identified that the Newburgh Building has a seismic capacity of only 10-15% of New Building Standard ('NBS'). Of particular significance, the concrete structural system was found to have low strength with spalling identified throughout the building. Spalling is a process whereby moisture (and sometimes salt) pushes outwards from within the concrete structure which causes the concrete to crumble and ultimately fail. The concrete structural system is understood to be beyond physical repair i.e. there is no plausible engineering solution to retain and fix heritage fabric in situ. The only viable repair strategy (from an engineering perspective) is the effective removal and replacement of the internal structure of the building. The heritage assessment identifies that because the existing fabric is so deteriorated, repair works would necessitate the replacement of the majority of the existing fabric. The heritage fabric (and consequent heritage values) would therefore effectively be lost regardless of whether the building was intrusively repaired, or alternatively demolished.

- 7.26 The Newburgh and Lewis & Co Buildings share a party wall. If it is accepted that the Newburgh building needs to be demolished, then the fact that they share a party wall has implications for the retention of the Lewis & Co building. This second building has itself been assessed by BMC as having a seismic capacity of 10-20% NBS, which could be increased to 50% NBS through the insertion of new diaphragm strengthening elements. Given the low NBS rating of the Lewis & Co building, combined with the poor overall condition of the building fabric and the

difficulties in retaining this building whilst demolishing the adjacent Newburgh Building, the applicant proposes to demolish both buildings and replace them with a new multi-storey building to reflect the traditional building mass of a tall building on this prominent street corner.

- 7.27 The heritage addendum (pg. 16) reaches the following conclusion: *"The poor condition of the Newburgh Building means that strengthening and adaptive re-use is not feasible without the loss of heritage fabric, and without this fabric, the connection to its heritage values are all but lost. The demolition of the Newburgh building also necessitates the loss of the adjacent Lewis & Co Building, where adaptive re-use may have been better-suited. On the balance of this evidence, the significant loss of heritage can be mitigated with measures outlined in section 4 including the recording of each building to a Level III standard, prior to demolition"*.
- 7.28 A submission was received from HNZPT on 16th November, with a 'replacement submission' subsequently received on 23rd November. HNZPT raised concerns with the loss of heritage generally and considered that such effects are significant and that consent should therefore be declined. The HNZPT submission made no specific reference to the Newburgh or Lewis & Co buildings and did not seek any particular relief regarding their proposed demolition.
- 7.29 I am cautious that recording the buildings prior to demolition is sufficient mitigation in itself to outweigh the significant loss of heritage values. I likewise accept HNZPT's general findings, (and also the applicant's heritage addendum's specific findings), that the loss of these two buildings will have moderate to large adverse effects on heritage values, particularly in the case of the Lewis & Co Building. The generation of the significant loss of heritage values does not however in itself mean that such loss is necessarily inappropriate. Based on the findings of the BMC engineering report, I agree with the applicant that where heritage fabric is so degraded that the only effective repair option available is to replace the fabric, then in essence you are left with a replica building and the heritage values that made the building significant in the first place are lost. Where the loss of heritage values is inevitable due to the existing degraded state of the building fabric, then their demolition is not considered to be 'inappropriate'. I discuss the wider benefits arising from the proposal in more detail below.

Southland Times Building

- 7.30 The Southland Times building is the third building in the block to be registered as a Category II building with HNZPT. The applicant proposes to retain the façade (with modification) and to demolish all of the remainder of the building. The heritage addendum (pg.20) identifies that the "well-preserved façade is an excellent example of early twentieth century Revival architecture". The addendum goes on to note that there is almost no original heritage fabric visible within the building due to numerous extensive internal alterations which have occurred over time. HNZPT have sought in their submission that in the event that consent is granted, that the 1908 portion of the Southland Times Building should be retained in addition to the front façade. The rationale behind not retaining a greater portion of this building formed a substantial part of the applicant's RFI response.

- 7.31 A supplementary engineering report has been prepared by BMC that examines in more detail the 1908 portion of the building. This report identifies that the building has a current seismic capacity of 20% NBS and assesses the works necessary to bring it up to both 66% and 100% NBS. The report demonstrates that retention of the building and its repair and strengthening is possible from an engineering perspective. The report also demonstrates that there is little material difference between the degree of works necessary for achieving 66% or 100% NBS. Such works could be undertaken in a manner that preserves original structural heritage fabric (primarily walls and floors), but that would require the replacement of internal linings and partitions.
- 7.32 A quantity surveying report has been prepared by WT Partnership. This report assesses the cost of the works identified in the engineering report. As there is little difference between the 66% and 100% works, there is correspondingly little difference between the costs of achieving 66% or 100% NBS. The report concludes that the repair and strengthening works to the 1908 portion of the building will cost in the order of \$7.55m - \$8.75m.
- 7.33 A valuation report has been prepared by Telfer Young Valuation. This report assesses the value of the building under the scenario of the strengthening and repair works having been undertaken. It determines that a strengthened and refurbished building would have a value of \$2.15m. In determining the value of a repaired building, the report utilises two alternative methodologies. The first approach is to consider the prices achieved from the sale of comparable buildings in Invercargill's CBD. The second methodology assesses the rental income that could be generated from a repaired and fully tenanted building, with this rental return then deriving an overall capital value at a given rate of return on investment.
- 7.34 The valuation report is complemented by a commentary prepared by the applicant and Trevor Thayer (Professionals Real Estate commercial division) on the current commercial market in Invercargill and the viability (or not) of the returns generated under a repair strategy. Whilst not expert evidence given the applicant's involvement in drafting the commentary, this commentary does nonetheless set the scene for the investment decisions and rationale underpinning the design choices made by the applicant.
- 7.35 These reports in combination demonstrate that retention of a larger portion of the building and its repair and strengthening is achievable from an engineering perspective. The costs of such works are however substantial, and more importantly are significantly greater than the repaired building will be worth. This significant gap in cost versus finished value means that from an investment perspective the works are extremely unlikely to be progressed.
- 7.36 The heritage addendum (pg. 20) addresses the potential for adaptive re-use of the building as follows:

"Adaptive re-use of the building has been considered in the proposed redevelopment, but has been assessed as impractical. Firstly, much of the heritage fabric has already been lost from the interior of the building; as such, the benefit of retaining this space must be weighed

against the costs of retention and strengthening and the benefits of redevelopment. The raised floor level of the Southland Times in comparison with the remainder of the new build has also been identified as an issue in maintaining accessibility across the redevelopment, and its current height of three steps above grade has contributed to its vacancy. The costs of undertaking the work necessary for adaptive re-use of the 1908 building have also been considered and are prohibitive".

- 7.37 The comprehensive nature of the proposal means that retention of all or part of the Southland Times Building should not be considered in isolation. The Buchan Architects report sets out the spatial planning challenges that retention of the Southland Times building presents, given that it is a relatively narrow and deep building that extends well into the site. Retention of the 1908 portion of the building precludes locating the large format anchor retail tenancy beneath the parking building, and also makes locating the parking building mass in the centre of the site challenging to achieve. This is not to say that the site could not be re-planned to retain both the Southland Times Building and provide for an anchor store and parking building, however it would require the complete redesign of the entire proposal. In short, retention of a greater proportion of the Southland Times Building has consequent design implications that ripple throughout the development.
- 7.38 In the event that retention of a greater portion of the Southland Times Building is desired, it is not therefore a matter of simply retaining this building and approving the balance of the project, as the balance of the project cannot be implemented without major site re-planning.
- 7.39 Such a major redesign may nonetheless be justified if the Southland Times Building had significant heritage values, the loss of which would be inappropriate. The building is a Category II building and therefore whilst of significance, it does not sit at the highest end of the heritage spectrum. The heritage addendum (pg.21) identifies that the building has medium values, and that the loss of the balance of the building and retention of its façade would have moderate adverse effects on these values. The heritage assessment concludes that such loss is acceptable from a heritage perspective given the mitigation on offer. This mitigation includes the design of the proposed new buildings on either side of the retained façade to mirror the mass of the Southland Times building and to align with the heights of the ground and upper floors. The mitigation also includes the retention of the façade itself and its incorporation into a new building, and the design of the new building being carefully resolved to create internal habitable spaces at each level such that window openings in the façade do not give views to either the sky (i.e. a false front façade with no building behind), or where window openings are covered over due to no logical connection or function to the internal space behind.
- 7.40 As noted in the heritage assessment (pg.18), facadism is an approach that is not generally supported from a heritage perspective due to the significant loss of heritage value that generally results. The retention of facades can however be better than the complete loss of a building, especially in mid-block contexts where views to the balance of the building have never been readily available and where the replacement building in behind relates logically to

the retained façade. This is the case here where the front facade is clearly the preeminent elevation, with the side and rear walls simple unadorned brick walls with relatively small window openings. That said, the loss of the balance of the building undisputedly has an adverse effect on heritage values, with such loss needing to be balanced against the wider regeneration benefits of the project overall.

7.41 The applicant's heritage expert has recommended a number of measures that need to be put in place to ensure the retention of the façade (and indeed for the other two Esk St facades) is completed successfully. The necessary mitigation recommended by the applicant's heritage expert has been converted into conditions as offered by the applicant in their AEE. I have taken these offered conditions and structured them in the form of a Façade Management Plan to guide building works to these facades:

- A full structural survey of the building is to be undertaken including details relating to the stability of the façade.
- Monitoring pins are established as appropriate;
- Design and detailing of temporary works to provide stability to the façade as a standalone element. The design can allow propping to the exterior or interior sides of the façade.
- Design and detailing of temporary works to provide stability to the façade as a standalone element. The design can allow propping to the exterior or interior sides of the façade.
- Design and detailing of any strengthening to the façade itself and/or foundation remedial works (noting that a Building Consent will be needed prior to the partial demolition being undertaken).
- Design and documentation for a detailed demolition/ temporary works management and construction plan for each façade retention scheme.
- Confirmation that the demolition and temporary works construction will be undertaken under the supervision of a suitably qualified engineer.

7.42 In addition to retaining the façade, the applicant proposes to undertake a number of alterations to the façade itself. These alterations include the creation of a new pedestrian entrance in the middle of the facade to provide a grand entrance into the proposed large format anchor retail tenancy. This proposed entrance reinstates an entrance in a similar position that was removed in 1948. The double sash windows on the east side of the building will be altered to create a door and the west doorway and associated fanlight will be replaced. The existing solid veranda cover over the existing doorway will likewise be replaced with a full width glass and steel replacement that is set in line with the capitals of the columns flanking the doors and windows. At the upper levels existing decorative plasterwork is proposed to be removed and the existing visible brickwork painted over.

7.43 No clear rationale has been provided for loss of the existing decorative plasterwork (or why

casts could not be taken and replacement ornamentation re-established following the completion of the main structural works). Such loss does not appear to have been addressed in the heritage addendum and appears to conflict with the guidelines developed by HNZPT that successful façade retention should retain original elements and detailing. The painting of the façade is a matter of concern raised in the submission of Rachael Egerton. The application Likewise provides no clear rationale as to why the existing original unpainted brickwork is to be painted beyond a desire to 'highlight the façade' (addendum pg. 20). The addendum report identifies that painting the current unpainted brickwork will reduce the heritage values of the building. Whilst such painting is in theory reversible, there does not appear to be any clear design or heritage justification for reducing these heritage values in the first place.

- 7.44 I support the creation of a new pedestrian entranceway in the middle of the façade as a visual and physical means of giving pre-eminence to the facade as one of the key entranceways into the development. In the absence of clear justification for the loss of the decorative plasterwork and need to paint the façade these aspects are not supported and I have recommended a condition requiring the retention of these elements as part of achieving the wider outcomes of securing the façade in a manner that retains as much heritage value as possible and minimises the visual changes in this significant facade.
- 7.45 Overall I accept the applicant's conclusions that the building is earthquake prone, that whilst strengthening works are feasible from an engineering perspective the costs of such works are uneconomic and therefore the works will not plausibly be undertaken, that the retention of the building has significant design ramifications for the balance of the site, and that the retention of the façade is preferable to the alternative of its complete loss (or retention of an earthquake prone, vacant building). The alterations to the façade are likewise supported, apart from the apparent removal of the existing decorative plasterwork and the proposed painting of the current exposed brick surfaces. I have recommended condition 3(g) requiring these decorative elements and unpainted brickwork to be retained, however obviously should the Commissioners be satisfied with the facade treatment proposed by the applicant then that condition will not be required. I have recommended a series of measures under condition 3 to address the façade retention process in general for all three of the facades that are to be retained.

KERB STONES AND VERANDA POSTS

- 7.46 The veranda support posts and kerbstones immediately outside the site are identified in Appendix II.4 of the District Plan as items of Street Furniture requiring protection. The applicant's RFI response has clarified that the kerbstones are to be retained in situ, and I recommend two conditions (8(e) and 15(g)) requiring measures to be taken as part of the demolition and construction management plans to ensure their protection.
- 7.47 The proposed development seeks to remove all of the existing veranda posts, with that loss assessed in the heritage addendum as having a moderate adverse effect on heritage values. I accept that retention of historic veranda posts are unlikely to align in either design or physical

terms with the facades and ground floor stud heights of new buildings. The proposed replacement buildings are all to have verandas, however these are to be cantilevered above the footpath without posts to improve accessibility and to provide a less visually cluttered façade line. The heritage addendum recommends that the veranda posts be salvaged and reused where possible within the development, or retained for reuse elsewhere in the City. Condition 4(a) provides for such salvage and re-use, as recommended as mitigation in the heritage assessment. The addendum likewise recommends that the clear veranda that replaces the existing Fariweather's Building (58 Tay St) veranda be etched to reflect the pressed metal decoration that is currently present on the underside of that veranda. I have recommended a condition 4(b) to this effect.

Local Heritage Buildings – Appendix II.3 and overall consideration of heritage values

- 7.48 In addition to the four buildings registered with HNZPT, the site contains a further 16 buildings that are locally listed in Appendix II.3 of the District Plan. As set out in the heritage assessment, whilst these buildings do have some heritage value, such values are at the lower end of the spectrum.
- 7.49 The application proposes to retain the facades of two of these buildings on Esk Street, and to otherwise demolish both the balance of these two buildings and all of the other 14 buildings. The proposed loss of these buildings is not something to be undertaken lightly, and their removal must inevitably result in a loss of heritage values.
- 7.50 In considering whether the removal of the heritage item constitutes 'inappropriate use' the following approach has been undertaken:
- a. The heritage values of the buildings is recognised and acknowledged through the District Plan listings and confirmed in the heritage assessment. Whilst such values are at the lower end of the significance spectrum, they still undisputedly contain heritage value.
 - b. The applicant's engineers have undertaken a condition assessment of all of the heritage buildings in the block and have estimated the percentage of New Building Standard that each building is achieving. The seismic ratings are shown graphically on the below plan (**Figure 2** below) of the site (taken from pg. 7 of the heritage assessment addendum report). The ratings show that the majority of buildings in the site are below 33% NBS (yellow and red buildings) and therefore are deemed to be earthquake prone.
 - c. The level of physical works necessary to strengthen and repair these buildings is summarised in both the BMC report and the heritage addendum. Such works are extensive and will necessarily involve the loss of heritage fabric. In some case such loss of original fabric is substantial such that the repair works necessary to retain the building essentially result in that building being largely a replica with the attendant loss of heritage value.

Figure 2. Seismic rating of the Application Site Buildings



- d. The cost of such works is generally more than the restored building will be worth, based on the documentation lodged with the original application and the more detailed assessment undertaken for the Southland Times Building as a representative example of restoring a three storey unreinforced masonry structure in reasonably sound existing condition and that has a higher NBS rating than many of the buildings in the block with NBS of less than 20%.
- e. The availability of grants was explored by the applicant to ascertain whether funding was available from third parties to bridge the financial gap. Unlike some of the larger urban territorial authorities, the Invercargill City Council does not have any substantial heritage grant funding available. HNZPT likewise only has funding available for Category I buildings which in this case only applies to the BNSW Building. Lottery funding is not available to private commercially owned buildings. The Ministry for Culture and Heritage has recently established a new heritage fund ('Heritage Equip') as part of a package of Government responses to changes to the Building Act relating to earthquake-prone buildings. This fund appears to be one of the few grant avenues open to the applicant. It is unclear to what extent the applicant has investigated whether funding would be available through this

route, especially given recent changes to fund eligibility and may be a matter that the applicant can clarify at the hearing.

- f. The design and layout implications of retaining additional buildings was explored by Buchan Architects. They have concluded that the retention of a substantial number of buildings prevents the comprehensive redevelopment of the block and the provision of large format anchor tenants and structured carparking, both of which are critical to attracting the foot traffic necessary to support specialty retail and hospitality tenancies.
- g. The findings of the above reports was then considered by the heritage assessment. The addendum concluded (pg. 38) that:

"An evaluation of the heritage values of these buildings has shown that 13 have low and one has medium heritage value. Based on this values assessment and the magnitude of the impact, the overall significance of effects is considered slight to moderate for all buildings apart from Fairweather's Building, where the redevelopment will have moderate effect. The buildings of local significance within Block II that are scheduled for demolition currently show a low rate of occupancy and are suffering from neglect (particularly the first floors). Some buildings have areas that have been sealed off for several decades, indicating that they have been unfit for purpose for a prolonged period. The condition of the buildings indicates that each would require seismic strengthening to bring it up to acceptable building code. The heritage assessment survey identified that some heritage fabric remains in the first floors; although, the ground floors were nearly devoid of any original fabric. On the basis of all the evidence, the loss of heritage in this category can be mitigated".

- 7.51 Section 6 requires decision makers to protect historic heritage from "..... inappropriate subdivision, use and development", not development per se. The assessment therefore turns on what is 'inappropriate', with reference to the objectives and policies of the District Plan (discussed in more detail below), and the wider sustainable management outcomes sought in section 5 of the RMA.
- 7.52 It is acknowledged that demolition of heritage buildings should only be considered in circumstances where practical alternatives have been fully explored and retention is either not financially possible or where the works necessary to ensure retention are so intrusive as to significantly diminish heritage values. Buildings must be kept safe for the public and neighbouring landowners and put to economically viable uses for owners. An ongoing, financially plausible use is fundamental to ensuring the long-term protection and retention of heritage buildings, for the benefits this brings to both the individual building owner and to the wider community. This is particularly the case with this proposal where the site is located in the centre of Invercargill's CBD with frontage to the town's prime commercial main street and visually prominent intersections. The poor physical condition of the majority of the buildings in the block, and their ongoing vacancy (especially at first floor level), currently results in a significant negative effect on Invercargill's town centre vitality and attractiveness. The need for regeneration in the CBD has been well-recognised through the SoRDS and Invercargill Retail

Strategies and is recognised in the District Plan through the block being identified as a Priority Redevelopment Precinct.

7.53 I consider that the removal of the existing buildings and their replacement with a modern, high quality building complex is 'appropriate' for the following reasons:

- a. The buildings have heritage values, but these cannot be described as outstanding or nationally significant, as recognised by only one building having a Category I registration and three buildings a Category II classification by the HNZPT. The heritage assessment confirms that the majority of the buildings on the application site are at the lower end of heritage significance, with the majority of buildings being assessed as having low heritage value. Only the BNSW Building and the Lewis & Co building are assessed as containing high heritage values, with Newburgh, Coxhead, Cambridge Arcade, Southland Times, and Fairweather Buildings are assessed as having medium heritage value;
- b. The buildings generally display high levels of vacancy, especially of the upper levels which have commonly been unoccupied for over a decade. Whilst current levels of ground level occupancy are likely to be at least in part a response to this development proposal and leases being terminated or only offered on a short-term basis, it is understood from the application that the Block as a whole has struggled to maintain high levels of occupancy and quality tenants for a considerable period of time.
- c. The high levels of vacancy have led to a considerable number of the buildings currently being in a dilapidated state. The majority of the buildings have been assessed as being at less than 33% NBS and therefore are categorised as being earthquake prone. As such they cannot be occupied without significant repair and strengthening works;
- d. These works will generally require an intrusive degree of alteration and loss of the original building fabric, which combined with the need to re-plan internal partitions to enable functional use, means that the retained original fabric will generally be reduced to little more than the façade and external walls and floorplates;
- e. The costs of retaining either a high number of façades, or the façade, floorplates, and roof forms, are commercially prohibitive;
- f. There are no heritage grant funds available from either Invercargill City Council or HNZPT that are sufficient to enable a meaningful bridging of the significant financial gap;

- g. A degree of mitigation is proposed by the applicant, and I recommend a series of conditions to ensure that such mitigation is undertaken:
- The retention and reuse of the BNSW Building as the most significant heritage building in the block;
 - Protection of this building during demolition and construction on adjacent sites;
 - Retention of three facades on Esk Street of buildings that all have moderate heritage significance. The Southland Times façade has been considered above and the Coxhead and Cambridge Arcade buildings are considered in detail on pages 21-25 of the heritage addendum. I accept the conclusions in this section of the addendum and the merit of focussing heritage façade retention on Esk Street as the primary pedestrian and retail street. I note that the submission by Rachel Egerton also sought greater retention of the Esk Street facades given the collective heritage values and character of this street. Adjacent buildings have been designed to reflect the mass and inter-floor heights of the retained facades;
 - Salvage and reuse of heritage fabric. As an important source of mitigation it is recommended that the identification of the materials to be salvaged are undertaken under the supervision of a heritage expert and peer reviewed by another heritage expert to ensure a considered approach is taken to the amount of material to be retrieved; and
 - Interpretation panels and displays on the history of the site are included in the replacement development.
 - I would also note that the proposed redevelopment of the site as a new focal point of Invercargill's CBD with a mix of office, retail, civic, and hospitality activities continues the functional role of this block as the heart of the City's civic and economic life.
- h. Whilst the heritage significance of most of the buildings is individually low, cumulatively they do create a reasonably intact heritage streetscape, whereby the sum is potentially greater than the parts. This is reflected in the addendum conclusion (pg.38) that whilst most of the buildings are of low value, the value as a group is considered to be moderate to high. The collective worth of the block's heritage resource is also a matter raised by several submitters, with the submission by Rachel Egerton perhaps best articulating the need to consider the collective rather than the individual values. The retention of the BNSW Building on a prominent corner, together with concentrating the retained facades on Esk Street (and retaining the facades of a collection of buildings that all have medium heritage value), assist in mitigating this streetscape scale loss to a certain extent. The proposal will nonetheless result in a significant change to the block streetscapes. The heritage assessment identifies

that the collective loss of locally significant buildings as having a 'major adverse effect' (Pg. 17 addendum report), and the loss as being 'significant' (Pg. 38 *ibid*).

- i. I am cautious that the reasonably limited heritage-related mitigation is in itself sufficient to outweigh the heritage-related adverse effects of the proposal. This conclusion appears to align with the conclusion in the heritage addendum (pg.38) that "*in considering the overall values and significance of the effect, against the merits of the project and quality of the design, NZHP recommends that the project should proceed*", that is an overall broad judgement is required in weighing up the benefits of the proposal against the adverse effects that it will have on heritage.
- j. There is no method that I am aware of that can guarantee that the proposed replacement development will occur. As such there is a residual risk that the heritage buildings may be demolished and then the site sits vacant, or smaller and less well-designed buildings are subsequently proposed. In such a scenario the significant positive effects that have been relied on to compensate for the loss of heritage values will not be delivered. Assessment of resource consents for the removal and replacement of heritage buildings are challenging in this regard. In my view there is no effective tool available that can force the applicant to ultimately build what they are proposing. This is in no way a criticism of the applicant, rather it is simply a reflection of the limitations of New Zealand's planning framework. Ultimately granting the consent and enabling demolition of heritage buildings relies on a degree of trust that the subsequent benefits will be delivered. It also reflects the reality that 'doing nothing' or 'business as usual' – approaches that have been in place for the last few decades – have seen the ongoing degradation and decline of the block. I have recommended a condition that demolition of listed heritage buildings does not occur until Building Consent has been lodged for the replacement buildings. Such a condition does not guarantee that the replacement buildings will be built, however it does provide a degree of certainty that detailed design has been undertaken and that the consent holder is sufficiently invested in the project to develop documentation to the Building Consent stage. It also assists in minimising the potential length of time that the site sits vacant between demolition occurring and construction commencing.
- k. The assessment that the extensive loss of heritage buildings will result in adverse effects on heritage values that are at least 'moderate' means that the proposal cannot pass the first leg of the s.104D test i.e. consent cannot be granted if the adverse effects are more than minor. S.104D simply examines the extent of adverse effect and does not provide for any balancing or overall broad judgement as to whether the effects (both positive and negative) are acceptable – such broad judgement can only occur under s104(1) in the event that the application is able to pass the second s.104D test of not being contrary to the Plan's objectives and policies. This second test is discussed in detail in section 10 below.
- l. The simple reality is that where buildings cannot be safely occupied or used, and where the works necessary to enable reoccupation are both so extensive as to significantly reduce heritage fabric and values, and so expensive as to not be financially plausible, that ongoing

retention of those buildings serves little value or benefit to the community. Similar circumstances arose recently with an application to demolish a heritage building on the corner of Don and Dee Streets (RMA2018/111) and its replacement with a modern hotel. In that case, and repeated here, the future environment scenario is not a choice of demolition and replacement vs. repair and reuse, but rather demolition and replacement vs. ongoing vacancy and dilapidation.

- m. Simply opposing demolition in the hope that another owner will at some point in the future be able to 'make the finances work' does not to my mind achieve the sustainable management purpose of the Act. Leaving heritage buildings in their current vacant and dilapidated state with no prospect of repair and long-term reoccupation is considered to be more of an 'inappropriate use' than removing the buildings and enabling their replacement with a new landmark building complex as the catalyst for the regeneration of Invercargill's town centre. It is through the rejuvenation of the CBD that the real mitigation arises. It is therefore important that the replacement buildings achieve a good level of design and sit comfortably within the wider streetscapes and fabric of Invercargill.

URBAN DESIGN & CHARACTER

- 7.54 Unlike some District Plans, the Invercargill Plan does not have a 'catch-all' urban design rule for new development in the CBD. The overall non-complying activity status does however give the Council the scope to consider urban design matters. The proposed replacement buildings likewise generate a number of rule breaches including in particular the heights of the buildings and the extent and height of veranda coverage. The Applicant's architects have provided a Design Statement and assessment of the site context, which includes a detailed rationale of the design outcomes the project is seeking to deliver.

HEIGHT OF THE PROPOSED BUILDINGS

- 7.55 The District Plan sets a permitted maximum height limit of 10m (rule 3.23.11). This maximum height rule is however caveated by two other rules seeking specific design outcomes. The first caveat is that all new buildings located within the Pedestrian-Friendly Frontages Precinct are required to be a minimum of two storeys high along the street frontage (rule 3.23.14). The second caveat is that all new buildings within the Priority Redevelopment Precinct on the corner of two formed roads are to be a minimum of three storeys over at least 50% of the footprint, with the higher part of the building facing public streets.
- 7.56 The package of rules regarding building height appear to be designed to strike a balance between at times competing urban design outcomes. The general 10m height limit is the equivalent of 2-3 storey buildings, depending on specific design and inter-floor heights. A low height limit will enable daylight penetration to the pedestrian footpath environment, and is also in keeping with the general existing built form of Invercargill which is predominantly 2-3 stories. The two caveats are likewise consistent with good urban design principles, namely that the street environment has a sense of proportion and enclosure through two storey rather

than single storey buildings, and that secondly corners are visually emphasised through the presence of taller buildings.

- 7.57 The proposed plans generally reflect these design principles. The development provides a consistent street frontage of buildings that are at least two stories in height. Taller buildings are located on the street corners, or in the case of the parking building (23.4m) are located largely within the middle of the block on the Tay Street frontage where the mass can be both visually and physically accommodated without detracting from the pedestrian environment around the block's perimeter.
- 7.58 The development does contain several buildings that are noticeably taller than three stories. These new buildings to a certain extent reference the block's existing built form which has a five storey building on the corner of Esk and Dee Streets and the Kelvin Hotel on the corner of Esk and Kelvin Streets. This pattern of emphasising the corners is continued with seven storey buildings proposed on the corner of Esk and Dee (31m), and the corner of Kelvin and Tay (33m), with a five storey building wrapping around the sides of the BNSW building on the corner of Dee and Tay (19m stepping up to 23m). The block will ultimately therefore have a built form of four visually strong corners. The principle of taller buildings located on corner sites is likewise consistent with the wider built environment in Invercargill's CBD where there are a number of tall buildings located on prominent corners, along with the proposed new hotel on the corner of Dee and Don Streets which has recently been granted consent. Examples of nearby taller buildings include the City Council building on Esk Street which is six stories and the State Insurance building which is ten stories.
- 7.59 The proposal involves the comprehensive redevelopment of an entire city block and therefore the shading, overlooking, and compatibility issues of tall building insertions into existing blocks are largely able to be avoided. There are only two immediate neighbours within the block, namely the Reading cinema and the Kelvin Hotel. The cinema activity is insensitive to the effects generated by the proposed office building to the north, and the hotel is likewise insensitive to the effects of the proposed commercial building located to the south of the hotel.
- 7.60 The site benefits from being located on the northern side of Tay Street which is a wide dual carriageway with planted centre median strip and angle parking on both sides of the street. This street width provides considerable separation from the businesses on the far southern side of Tay Street. The properties on the southern side of Tay Street are all commercial in nature and therefore are less sensitive to shading effects than residential dwellings. In this regard it is noted that the District Plan only requires compliance with recession plane controls where sites have a direct boundary with a Residential Zone. The applicant's architects have produced a shading study to examine the effects of the shading generated by the additional height proposed. This study shows that the shading generated by the proposal largely falls within the application site itself or over road reserves and only extends over road corridors when the sun is low in the sky towards the start and end of the day when CBD environments are generally quieter with fewer pedestrians.

- 7.61 Overall, the proposed heights are considered to be generally consistent with the built form outcomes sought in the District Plan insofar as the design provides a continuous frontage along all four road boundaries that is at least two stories in height, the taller elements are located on the block corners or within the centre of the site, the comprehensive nature of the development means that there are no compatibility issues with immediate neighbours, and the taller building elements are separated from other sites through road corridors, which in the case of Tay Street to the south is particularly wide.

VERANDA COVERAGE

- 7.62 The District Plan includes a requirement that continuous veranda coverage be provided to deliver weather protection to pedestrians as part of the wider goals of providing an environment that is attractive to pedestrians through being dry and sheltered. The proposed plans do provide continuous veranda cover around the block perimeter, however not all elements of the verandas meet the required dimensions for permitted activities. The proposed plans seek to strike a balance between providing reasonable weather protection on the one hand and an attractive streetscape where verandas are visually integrated within the wider façade design on the other. I support the integration of the veranda design into the wider façade architecture as an important element in achieving the end outcome of an attractive development. The proposed verandas will still provide a degree of weather protection around the site perimeter, albeit not as much as a compliant scheme, especially on the Tay and Dee Street frontages which are most exposed to southerly wind-driven rain. When considered in the local context, while I do not consider this to be an optimum design outcome for the weather protection of pedestrians, I consider any adverse effects from this non-compliance would be no more than minor. I further note that if the Commissioners have reservations about this design element, a condition of consent could be imposed requiring further details of the weather protection that would be provided for pedestrians along Tay and Dee Streets to be provided to the Council for certification.
- 7.63 Whilst weather protection around the site perimeter is less than optimal, the proposed plans nonetheless have a strong emphasis of delivering an attractive pedestrian environment. A key design aspect of the scheme is the formation of a network of internal pedestrian laneways running through the centre of the block. These laneways to a certain extent reference the strong historic mid-block link provided by the Cambridge Arcade, and develop this through a wider network of laneways and internal courtyard spaces. The internal pedestrian spaces are fully enclosed to provide a high amenity, weather-protected environment in a manner that is consistent with the District Plan goals of delivering an attractive pedestrian experience in the CBD. The uncovered service lane that is proposed to run behind the Kelvin Hotel between Tay and Esk Streets has the potential to create a wind tunnel that could create an unpleasant environment for pedestrian's crossing the Esk Street footpath at the end of the laneway. The applicant may wish to explore whether the installation of a solid inward-opening gate would resolve this issue and also provide improved site security, or alternatively this detailed design

matter could be reviewed under the recommended monitoring and review condition in the event that a problem is created. A number of submitters⁵ have likewise highlighted a desire for the proposed replacement development to provide universal access for members of the community with disabilities. The Building Act provides minimum requirements in this regard, however the applicant may wish to provide more detail at the hearing in terms of whether they intend to go beyond Building Act requirements on this matter.

- 7.64 Overall the scheme has sought to balance pedestrian weather protection around the block perimeter with achieving a more visually attractive façade treatment. Pedestrians are still provided for, with the internalised laneway and courtyard network in particular providing an alternative covered means of navigating through the block.

URBAN DESIGN MATTERS

- 7.65 As noted above, whilst there is no catch-all urban design rule, the non-complying status of the application means that Council can consider all relevant matters. Overall the proposed plans for the replacement buildings are considered to deliver good urban design outcomes. The new buildings are to create a continuous block perimeter, reflective of the long-established built form for Invercargill's CBD environment. All ground floor spaces contain retail or hospitality activities with good levels of pedestrian-level glazing and door fronts to provide an attractive pedestrian environment that avoids large areas of blank walls. Whilst conceived as a linked, comprehensive development, the design avoids a monolithic 'shopping mall' appearance through including distinctive changes in façade treatment and building mass. The separation of the development into discrete buildings assists in development staging (discussed in more detail later) and also assists in the development integrating sympathetically into the more fine-grained CBD context of multiple, compatible buildings that are individually distinctive and that collate into a coherent and attractive streetscape.
- 7.66 The carpark building is located within the centre of the site and is set well back from Esk Street which is a high amenity retail street. The prioritisation of the Esk Street frontage in terms of lower building mass is supported, with Tay Street having a different character due to the wide multi-lane arterial nature of the road environment. The parking building retains retail activity at ground floor to avoid what could otherwise have been a long length of blank wall at street level and enables a large quantum of parking to be provided without parking visually dominating the street environment. The 'southern lights' design concept for the upper levels provides a distinctive façade treatment that provides clear reference to Southland.

URBAN DESIGN CONCLUSIONS

- 7.67 I agree with the Applicant that the proposed development will provide for a high quality town centre experience with a mix of retail, hospitality, office, and civic/ community activities in a manner that will enhance the amenity and vitality of the inner city. Overall, I consider that the

⁵ CCs Disability Action, Joy Pirrie, T Kahukura, Hari-Priya Day

proposed built form appropriately addresses the site edges through creating a consistent perimeter with high levels of glazing and activation at ground level, with taller elements providing an appropriate visual emphasis to the block corners. The arrangement of the replacement buildings to visually present as a series of separate buildings with individual façades means that the development sits comfortably within the existing town centre context of separate, yet compatible buildings that cumulatively result in attractive streetscapes.

AMENITY EFFECTS ON FUTURE RESIDENTS

- 7.68 The proposal includes provision of five residential apartments on the top floor of the new multi-storey office building proposed on the corner of Dee and Esk Streets. New residential units (and other noise sensitive activities) are required to achieve a satisfactory internal design sound level, as specified in rule 3.13.9. Clause (B) of the rule requires that *"prior to the operation of any noise sensitive activities on the site, an acoustic design certificate from a suitably qualified acoustic engineer is to be provided to the Council demonstrating that the above internal sound levels will be achieved"*.
- 7.69 The underlying rationale behind the rule is to facilitate night time entertainment and hospitality businesses and associated higher levels of noise emissions within the Entertainment Precinct and to avoid potential reverse sensitivity issues that might arise through residents complaining about noise emissions and placing pressure on entertainment venues to limit their operations.
- 7.70 The application includes an acoustic report and supplementary letter prepared by Marshall Day Acoustics ('MDA'). At this stage of the project, the design of the apartments is at a level of documentation appropriate for resource consent. The detailed design of the apartments with levels of insulation, glazing, and cladding mass have yet to be determined in sufficient detail to enable MDA to demonstrate conclusively that the rule can be complied with. As an alternative methodology, MDA have provided examples of the sorts of building treatment necessary to achieve the required internal noise levels. These examples demonstrate that compliance with the rule is both practicable and plausible, noting that if windows are open to provide ventilation then intrusive noise levels will likely exceed the 30dB L_{aeq} criterion for bedrooms. MDA therefore recommend that mechanical ventilation be provided so that compliance with Rule 3.13.9 can be achieved concurrently with any Building Code ventilation requirements.
- 7.71 In order to give comfort to the Council that an acceptable level of insulation will be achieved (and reverse sensitivity threats to entertainment businesses avoided), MDA consider that the consent should be subject to a condition that requires an acoustic design certificate be submitted with building consent documentation. In essence Clause (B) of the rule set out above becomes a condition of the consent. MDA have provided suggested text for such a condition, which I have adopted in drafting the proposed conditions (see condition 25).
- 7.72 Whilst the rule's purpose is primarily directed towards managing the interface between

residential activity and hospitality businesses, NZTA have likewise identified that reverse sensitivity is an issue that can arise with residential activity in close proximity to the State Highway network. NZTA state in their submission that the design requirements set out in Rule 3.13.9 will ensure that a satisfactory level of internal noise will be achieved. NZTA therefore support the inclusion of the condition recommended by MDA.

- 7.73 Subject to the recommended condition and based on the assessment provided by MDA, I am satisfied that the proposed apartment units can be constructed to provide an acceptable level of amenity for future occupants and thereby reduce the potential for reverse sensitivity issues to arise with any hospitality businesses located within the Entertainment Precinct.
- 7.74 Concerns raised by the submitters regarding noise issue associated with the demolition and construction phases of the proposed development are discussed under a separate heading below.

TRAFFIC & PARKING

- 7.75 I agree with the statement in the Applicant's AEE that the proposed development complies with all of the transportation-related rules in the Proposed District Plan, with the exception that resource consent is required for the construction and use of two new vehicle access and egress points from State Highway 6/ Dee Street and State Highway 1/ Tay Street (Rule 3.20.11). In terms of compliance with the District Plan's transport rules it is noted that there are no rules that control or are triggered by high traffic generation.
- 7.76 The traffic and parking arrangements proposed as part of the application have been assessed in an Integrated Transport Assessment (ITA) prepared by Abley Ltd. The ITA accompanied the application as originally lodged, and has then been reissued as part of the applicant's RFI response, with the update reflecting the proposed changes in floor area allocation between different activities and the changes in layout to the parking building. As such the ITA received in the RFI response effectively supersedes the ITA that accompanied the original application.

PARKING PROVISION

- 7.77 The District Plan includes an exemption from the need to provide any parking for sites located within the City Centre Priority Redevelopment Precinct in the Business 1 zone. This exemption is included in the District Plan as an incentive to facilitate and enable regeneration proposals in the City Centre. Whilst the District Plan does not require any spaces, the non-complying activity status does enable the adequacy of parking to be considered through this resource consent process. The ITA therefore quite appropriately provides a detailed assessment of parking demand.
- 7.78 The proposal, as amended in the RFI plans, includes a multi-storey parking building with 859 spaces. The ITA identifies that the proposed parking equates to a rate of 2.73 spaces/ 100m² Gross Floor Area ('GFA'). Based on Abley's experience with other large multi-use activities and with reference to various parking demand databases, the anticipated demand is expected to

be for 880 spaces, without consideration of the sharing of spaces. Abley identifies that the site has a wide range of activities that have differing parking demand peaks, for example office, civic, and medical centre use is typically between 8:30am - 5:30pm, whereas hospitality, entertainment, and cinema activities experience higher demand in the evenings. Once the ability of differing activities to have their demand peaks at different times is taken into account, the proposed parking supply is considered to be more than adequate for meeting typical demands.

- 7.79 It is noted that the Abley assessment of adequacy of parking supply is focussed on the parking proposed in the main parking building. The site's location in the middle of Invercargill's CBD means that the site is also located in close proximity to existing Council car parks and on-road metered or time limited parking. I likewise note that the proposed replacement multi-storey building on the corner of Dee and Esk Streets contains carparking on level 1 that includes a further 15 spaces which presumably will be allocated to the five apartments and the office tenancies in this building, and which do not appear to have been included in the Abley assessment.
- 7.80 The existing site in its current state includes relatively few car parks. There is a relatively small council-operated uncovered surface carpark located towards the middle of the site and accessed via Tay Street. There are also a handful of private service and loading spaces accessed via various service lanes. The proposal therefore results in a significant increase in CBD parking provision that is an order of magnitude greater than the current quantum of parking provided on the application site. Of course the proposal will also result in a significant increase in demand relative to the existing environment. Relying on the assessment by Abley, I am satisfied that the proposed parking supply will be adequate for meeting normal demand, with the District Plan clearly anticipating a degree of reliance on off-site parking in a CBD context and as a tool for encouraging CBD regeneration.

SITE ACCESS

- 7.81 The only transport rule non-compliance is in relation to the provision of three new vehicle access points onto the State Highway network. The provision of such access points is permitted where the adjacent road network has a posted 50 kph speed limit (which is the case in central Invercargill), except where activities separately trigger the need for discretionary or non-complying consents. The breach of non-transport rules therefore in turn triggers the breach of the access rule.
- 7.82 The proposal overall results in four vehicle access points onto the State Highway network as follows (and as shown in **Figure 3** below):
- A new access is proposed onto Dee Street to provide the ramp up to the first floor parking area in the multi-storey building on the corner of Dee and Esk.

- Retention of an existing service lane access to an existing service area to the rear of the BNSW building, located just east of the pedestrian crossing on Tay Street;
- Closure of an existing Tay St access to the mid-block Council carpark, and its replacement with a new access to provide the main entry point to the proposed parking building;
- A new access to provide through-block service access to the rear of the Kelvin Hotel, with this service lane running in a north-south direction just to the west of the Tay/ Kelvin intersection. This service lane also provides an access to Esk Street, which is the only vehicle access to Esk Street. No vehicle access points are proposed to Kelvin Street.

Figure 3. Vehicle access points onto the State Highway network



7.83 NZTA provided a submission which was neutral on the proposal, provided various transport-related matters were addressed. The key access-related matter was in relation to the provision of an adequate visibility splay (5m x 2.5m) to the eastern (exit) lane of the main parking building access such that clear sight lines are provided to minimise potential conflict between cars exiting the site and pedestrians using the adjacent footpath. Abley have confirmed in their RFI response that the building to the east of the Tay Street car park access will be modified such that a 5m x 2.5m visibility splay is able to be achieved. Given the high volumes of traffic that will use this access point and the importance of providing a safe pedestrian environment, it is recommended that the provision of a visibility splay is a condition of consent (condition 26).

- 7.84 NZTA have raised concerns regarding the proximity of the proposed eastern service lane to the Tay St/ Kelvin St intersection and the ability of an 11.5m rigid vehicle to manoeuvre into the service lane. In their RFI response, Abley have provided updated tracking paths to demonstrate that an 11.5m rigid vehicle can safely and conveniently manoeuvre into the service lane. Abley also note that given the low frequency of use of this lane, an audio warning device is adequate for managing the interface between service vehicles and pedestrians. The provision of an audio warning device prior to the service lane becoming operational is recommended as a condition of consent (condition 27).
- 7.85 NZTA concerns relating to demolition and construction phases are discussed in more detail in the following section.
- 7.86 Queenstown Land Holdings Ltd ('QLHL') are the owners of the Reading Cinema site located on Dee Street and one of the few remaining properties located in the block that do not form part of the application site. QLHL have submitted in support of the application, whilst identifying a number of practical detailed design matters that require resolution. In terms of access/ transport matters, these concerns include the retention of existing emergency exits from the rear of the cinema to the east, and retention of access to an existing service lane that exits onto Tay Street. It is understood that the applicant is exploring solutions to these access (and other detailed design) matters and as such they may have been resolved prior to the hearing. In the absence of such resolution being confirmed, it is recommended that the provision of such access forms a condition of consent in order to ensure that the safe functioning of an important and long-established CBD anchor activity is able to be maintained (condition 28).

DEMOLITION, CONSTRUCTION, AND EARTHWORKS EFFECTS

- 7.87 A significant number of submitters have raised concerns regarding the demolition and construction phases. Many of these submitters are generally supportive of the end outcomes, provided the potential effects relating to construction noise, dust, vibration, loss of parking and road access (particularly to Esk Street), and loss of amenity for retail customers and town centre visitors are able to be appropriately managed. Submitters have noted that unlike typical CBD construction projects that relate only to one building, this project involves an entire city block and will be undertaken in a staged manner such that construction-phase effects will potentially extend over a number of years. Submissions from the Southland Chamber of Commerce, Neighbouring Retailers Group, Downtown Invercargill Group, and H&J Smith Holdings Ltd collectively provide a good overview of the concerns held by inner city retailers regarding construction phase effects and highlight in particular the need to manage such effects on Esk Street in order to maintain this street's current role as one of the primary retail environments in the CBD.
- 7.88 A detailed Demolition Management Plan has not been prepared in advance given the early stage of the project and the reality that such plans are best prepared with input from the contractors engaged to undertake the work. The applicant's RFI response has instead provided

an example of the sorts of matters that could be addressed through a Demolition Management Plan.

- 7.89 I accept that the finalisation of a Demolition Management Plan will not be possible until detailed design has been completed and contractor engagement confirmed. The size of the site and the length of time over which such works will occur does nonetheless mean that management of demolition and subsequent construction effects is important to resolve.
- 7.90 I am based in Christchurch, with my workplace having been located in Christchurch's CBD over the last ten years. As such I have experienced on a day-to-day basis the practical realities and amenity effects that can arise from drawn out demolition and construction projects. Demolition of relatively small unreinforced masonry buildings that are 2-3 stories in height can be undertaken within a couple of days, especially where demolition access is created to the rear of the building, thereby enabling the front portion to be retained in situ as a screen and then collapsed inwards into the site towards the end of the works. Such buildings are likewise able to be demolished with minimal footpath closure being required. Demolition of the Newburgh Building is likely to be more complex and is likely to require the partial closure of the adjacent road network, with the applicant's RFI response confirming that such closure will be determined through the detailed design process but is unlikely to be longer than two weeks. The retained facades on Esk Street are likely to require the temporary loss of on-street carparks to enable the footpath to be re-routed clear of the façade support structures.
- 7.91 Construction of 2-3 storey buildings can likewise readily occur without the need for extensive footpath closure. Construction of larger buildings such as the proposed parking and office buildings are likely to necessitate the temporary closure of the adjacent footpaths, although often pedestrian access is still able to be maintained through the use of B class Hoardings with cantilevered roofs or open ended shipping containers to maintain a safe pedestrian through-route. Any temporary works or partial road closures require the agreement of the road controlling authority through processes separate from this consent. I have recommended an advice note on this matter and note that the Council is the road controlling authority for Esk and Kelvin Streets and NZTA is the road controlling authority for Dee and Tay Streets.
- 7.92 Given the size of the site, it is likely that demolition and construction will be undertaken in stages. There is the potential for there to be a lag between demolition and construction occurring such that parts of the site may sit vacant for a considerable length of time. In order to reduce the prospect of large portions of the site remaining vacant I have recommended Condition 7 that demolition not occur until the Building Consent has been lodged for the replacement building. Whilst no guarantee that the replacement building will be built, completion of detailed design demonstrates a reasonable level of commitment to proceed. Given that Building Consents typically take several months to process, with tenders to be let and contractors engaged, such a condition should not unduly delay redevelopment, whilst at the same time avoiding large parts of the site from being cleared with a long lag before redevelopment begins. I note that the recent consent for a new hotel on the corner of Dee and Don Streets included a condition requiring that construction begin within twelve months of

demolition being completed. I am however cautious as to the enforceability of such a condition in the event that the applicant was unwilling or unable to begin construction and note also the different scales of these two projects and the likely staging of this application which was not an issue with the hotel project. I have also recommended a set of conditions requiring the preparation of a vacant site management plan in the event that portions of the site are to remain vacant for longer than six months (Conditions 13 and 14). This management plan is to set out how the site will be maintained in a secure and tidy manner, how stormwater and dust will be managed, and options for temporary activation of vacant space such as the temporary use of the site for parking or short-term commercial activities. I note that the provision of interim commercial activities on the south side of Esk Street was a matter raised by a number of submitters as a means of maintaining both the amenity and the retail role of Esk Street whilst the wider site works are being undertaken.

7.93 The block has a long history of mid-block pedestrian access to facilitate movement between Tay and Esk Streets. Such access has primarily been via Cambridge Arcade, although a number of less formal pedestrian routes are also available via service lanes. If parts of the site are to remain vacant for a considerable length of time, where practicable mid-block pedestrian access should be maintained. It is fully accepted that this should only be where such access can be provided in a safe manner and may not be possible if the site is under active demolition and construction activity. As such, it only forms part of the vacant site management plan as a matter to be considered in the event that there is a considerable time gap between demolition and construction occurring.

7.94 In the absence of detailed demolition or construction management plans I have recommended a comprehensive set of conditions (Conditions 7-19) relating to the matters that these plans need to address, and taking into account the concerns raised by submitters. Such plans are to be certified by Council (who are likely to use an Independent Commissioner), with Council to have 20 working days to consider the plans for smaller stages and 30 working days for larger stages. In summary, these plans need to detail how the following matters are to be addressed:

- Staging and measures to minimise disruption to footpaths and adjacent roads;
- Management of asbestos and soil contamination;
- Measures to enable the recovery of recyclable heritage fabric;
- Implementation of a communication plan with nearby land owners and occupiers;
- A traffic management plan to address how any partial road stopping and the movement of heavy vehicles and temporary site access will be managed. Where such works affect the State Highway network the input of NZTA is to be sought;
- How noise and vibration are to be managed;

- How retained heritage buildings (particularly the BNSW Building) are to be protected;
- How stormwater and dust are to be managed to avoid runoff and nuisance;
- How the site perimeter is to be maintained in a manner that provides an acceptable level of amenity and safety for pedestrians;
- The Noise Assessment prepared by MDA identifies that compliance with the long-term noise limits set out in NZS6803:1999 would be appropriate and would result in reasonable and acceptable noise effects. The Applicant has offered a condition to this effect.

7.95 Provided that the above demolition, vacant site, and construction management plans are developed and implemented, I am satisfied that the transitional effects arising from these phases of the project are able to be managed. I agree with the Applicant that the effects will be temporary (albeit potentially extending over several years), and through the implementation of demolition, vacant site, and construction management plans will be remedied or mitigated as far as practicable by the proposed management measures.

CONTAMINATED LAND MANAGEMENT

7.96 I agree with the Applicant's assessment of the relevance of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (the NESCS). Under the NESCS a resource consent for earthworks is required as a Detailed Site Investigation ('DSI') has not been able to be completed at this stage of the project (as access to soil sampling will not be possible until in situ buildings have been demolished), and therefore the proposed earthworks are a discretionary activity.

7.97 A Preliminary Site Investigation ('PSI') has been undertaken by E3 Scientific, with their report attached as Appendix G to the application. The PSI identified that there are several locations within the application site where hazardous activities have occurred in the past. These include the use of asbestos and lead-containing materials in construction, the storage of coal and fuels for heating, and the storage and potential mixing of chemicals associated with various industrial and health activities that have occurred in the past. Underground or above-ground fuel tanks are also identified as being likely to remain in situ at several locations within the application site.

7.98 The E3 Environmental report identifies that the volume of earthworks necessary to implement the proposed development will exceed the permitted activity thresholds for soil disturbance and offsite disposal of potentially contaminated soil.

7.99 The report concludes that *"notwithstanding the presence of several historical HAIL activities within the site boundaries, e3s considers it is highly unlikely that these have the potential to affect human health of future site occupants, maintenance and excavation workers, or site construction workers, provided suitable health and safety measures are implemented, including appropriate removal and disposal of asbestos-containing material and other*

contaminated building material prior to and during the demolition process". 'HAIL' activities is an acronym for Hazardous Activities and Industries List which is a list held by the Ministry for the Environment identifying activities with the potential to result in soil contamination that might pose a risk to human health. E3S goes on to recommend that a DSI be undertaken in conjunction with site demolition works and prior to construction commencing.

- 7.100 In summary, the site has historically contained activities that have the potential to create soil contamination issues. Detailed testing to confirm the extent and nature of such contamination is not possible as it requires the in situ buildings to be demolished first. The risk of potential effects on worker health is however able to be managed, provided suitable health and safety measures are implemented. To inform an appropriate Remediation Action Plan ('RAP')/ Site Management Plan ('SMP') a DSI should be undertaken, and a RAP/SMP developed and subsequently implemented. To ensure the DSI is undertaken and the works carried out in accordance with an approved RAP/ SMP, several conditions of consent are recommended.
- 7.101 An adaptive management approach is reasonably common for managing soil contamination health risks on large sites with a number of existing buildings that prevent sampling prior to demolition. Provided such testing is undertaken, a RAP/ SMP prepared by a Suitably Qualified and Experienced Practitioner, and earthworks managed in accordance with such plans, then adverse environmental effects associated with contaminated land will be able to be appropriately managed.

AIRPORT APPROACH SLOPES

- 7.102 Invercargill Airport Limited ('IAL') lodged a submission seeking confirmation that the airport aircraft approach slopes will not be penetrated by buildings or plant, both during construction and as part of the completed development.
- 7.013 IAL are the requiring authority for Designation 74 (Appendix IV) in the District Plan. The Airport Approach and Land Use Controls designation defines height controls based on a series of geometric surfaces which project upwards from the edge of the strips that surround the runways at Invercargill Airport. The intention of these surfaces and the associated designations is to prevent object and structures (such as buildings or trees) from penetrating these surfaces and thereby posing a hazard to approaching aircraft.
- 7.104 The applicant in their RFI response confirmed that both the final building heights will not extend into the horizontal surface (set at 46m), and that at no time will equipment used during the construction process extend into this surface.
- 7.105 Compliance with the requirements of the designation appears to be readily achievable. The proposed new buildings all sit comfortably below the horizontal surface (maximum 33m) and therefore the only residual risk is construction plant (particularly cranes) intruding into the horizontal surface during the demolition and construction phases. Given the importance of maintaining aircraft safety, I have recommended conditions 8(m) and 15(i) to ensure that

such an outcome is achieved as part of the proposed Demolition and Construction Management Plan processes.

INFRASTRUCTURE AND SERVICING

- 7.106 The application does not include any detailed assessment of infrastructure servicing requirements. Unlike most districts, Invercargill District does not have a Development Contributions Policy developed under the Local Government Act. As such no financial contributions are obtained from developers as a contribution towards the growth-related costs of upgrading of network infrastructure.
- 7.107 The staging of the development, and the attendant requirements for infrastructure services or modifications of the road reserve therefore needs to be discussed with Council engineering officers at regular points through the build-out process. Such staging will enable possible service upgrades and any associated cost implications to be considered through the regular Annual and Long Term Plan processes. I have recommended conditions 29 and 30 to this effect.

POSITIVE EFFECTS

- 7.108 The consideration of positive effects is relevant under s104 and ultimately also forms part of the assessment of the proposal against Part 2 of the Act. The non-complying status of the application also means that all effects, including positive ones, are able to be considered. The Applicant provides an assessment of the positive effects of the proposal in Section 8.1 of the AEE. In addition, I note that many of the submissions in support of the application refer to the benefits of the proposal in terms of improved amenity, employment opportunities, and increased vibrancy and vitality for the CBD.
- 7.109 The block has a long history of vacancy at first floor level and above, with vacancies also becoming more common at ground level over the past decade. As set out above, many of the buildings in the block are in poor condition and are earthquake prone. The proposed activity will replace these existing vacant premises with a much more intensive site development which provides high quality offices, retail, hospitality, carparking, medical, and childcare activities, along with several new residential apartments. This mix of activities will increase foot traffic in the area and reinforce the commercial viability of the wider Town Centre. The proposal will provide a collection of new landmark buildings of substantial presence, and re-establish and continue the traditional activities undertaken on the site in the heyday of Invercargill's CBD. Overall, the positive effects of the proposed development are summarised as follows:
- a. Provides high quality office and retail accommodation in the heart of the Town Centre. Invercargill does not currently contain office or retail accommodation of the size or standard of that proposed in a town centre location and as such the proposal fills an important space in Invercargill's commercial accommodation offering;

- b. Maintains the site's historic association as Invercargill's premier commercial and retail area.
- c. Ties these activities together through the creation of a new publicly accessible laneway and courtyard network to create a sheltered and attractive pedestrian-oriented destination. The through-block pedestrian links traditionally provided by Cambridge Arcade are likewise maintained between Tay and Esk Streets.
- d. Replaces a currently derelict, unsafe, and largely unoccupied buildings with modern, well-designed facilities providing a significantly superior urban design outcome compared with the existing environment;
- e. Retains the heritage facades of some of the most significant heritage buildings in the block, and incorporates the retention of the BNSW Building with improved prospects of finding a viable long-term tenant for this significant heritage building.
- f. Provides economic stimulus and employment to Invercargill through both construction and developed phases. Whilst these benefits have not been quantified by an economist, the anticipated built cost of some \$150m is significant in the context of Invercargill's economy.
- g. As identified in the SoRD strategy, making the Invercargill CBD more attractive as a destination for residents will have flow-on benefits for the wider Southland Region in providing an impetus for population growth and the ability to attract and retain skilled workers to the community.

7.110 Overall the proposal has the potential to deliver significant benefits to the community through the revitalisation of Invercargill's CBD and the provision of a greater range of retail and hospitality offerings and experiences.

SUMMARY OF EFFECTS

7.111 From reviewing both the application and the wide range of submissions received, there appears to be general agreement that revitalisation of the CBD is both necessary and long-overdue, with the need for such revitalisation clearly articulated in recent non-statutory strategies including SoRDS and the Invercargill Retail Strategy. The proposal and the concerns raised by submitters provide two contrasting views of how best to advance the prospects of Invercargill's CBD and realise its revitalisation. The first view is as set out in the application whereby there is a need for wholesale change to the application site, the removal of the majority of the existing building stock, and its replacement with a new, contemporary complex of buildings. Numerous submissions were received in support of this vision, provided demolition and construction phase effects on the surrounding retail environment (especially Esk Street) could be appropriately mitigated.

- 7.112 The alternative vision put forward by submitters seeking a much greater retention of the existing heritage building stock is one of more organic and less radical change whereby the existing buildings are seen as a valuable resource that provides a clear sense of place and point of difference for Invercargill and where these buildings should be strengthened and repurposed, with sensitively designed new buildings inserted around them where non-heritage buildings are replaced. This alternative approach would also minimise construction-phase effects (or at least they would occur on more discrete portions of the site) and would reduce the project risks seen by some submitters in the scale of the current proposal meaning that the site could be cleared and then the replacement development not proceed or prove to be financially unviable.
- 7.113 I recognise the genuinely held alternative views of submitters. The demolition of the heritage listed buildings will undisputedly have irreversible adverse heritage effects that are more than minor and therefore the application does not pass the first leg of the s104D test. As identified in the foregoing assessment, I do not however consider the demolition of these heritage buildings to be 'inappropriate' given their local (rather than nationally significant) listings, the current condition of the buildings most of which have an earthquake-prone NBS rating, the substantial loss of fabric inherent with the extensive seismic strengthening works required to bring them up to an acceptable standard, and the substantial costs of such works that in combination make the long-term retention and restoration of the buildings economically implausible. In this regard I am particularly mindful that the buildings across this block have been held by numerous different owners over the past several decades. Relying on the building condition reports prepared by BMC and in the heritage assessment it is clear that few if any of these owners have been willing or able to undertake the necessary strengthening and refurbishment works required for these buildings to meet modern retail or office tenant needs. In short, the opportunity to implement a more organic revitalisation of this block has been available for a number of decades and simply has not been taken. Given the extent of engineering works required to restore these buildings, and the costs of such works relative to the buildings' end value, I have little confidence that a continuation of the status quo will result in the step-change in vibrancy and vitality needed if Invercargill's CBD is to continue to meet the needs of the wider community as the City's commercial and social heart.
- 7.114 The loss of heritage values that will result from this project need to be balanced against the heritage-related mitigation offered by the applicant and more significantly the substantial positive effects arising from the proposal of city centre regeneration. These adverse effects, with the exception of loss of heritage, are not significant and can be appropriately addressed through conditions of consent (particularly those arising from the demolition and construction phases). The overall balancing of effects is set out in section 12 at the end of this report as part of my overall conclusion.

8.0 RELEVANT OBJECTIVES, POLICIES, RULES AND OTHER PROVISIONS OF A REGIONAL POLICY STATEMENT [SECTION 104(1)(B)(V)]

SOUTHLAND REGIONAL POLICY STATEMENT

8.1 Under section 104(1)(b)(v) of the RMA, the consent authority shall have regard to the relevant provisions of a regional policy statement. The Southland Regional Policy Statement (RPS) provides an overview of the resource management challenges for Southland. It outlines objectives, policies and methods, which guide the management of Southland's natural resources. These methods include directions for provisions in district and regional plans. The RPS became operative on 9 October 2017.

8.2 Chapter 14: Historic Heritage of the RPS, provides for the management of historic heritage in Southland, including built heritage, sites of significance to tangata whenua, archaeological sites and the surroundings associated with these features.

8.3 The following three objectives HH1, HH2, and HH3 and supporting policies are relevant to this application:

Objective HH.1 –*Historic heritage values are identified and protected from inappropriate subdivision, use and development.*

Objective HH.2 – *The built heritage of Southland is appropriately recognised and where possible utilised in a sustainable manner.*

Objective HH.3 - *Historic heritage values are appropriately managed to avoid or mitigate the potential adverse effects of natural processes and climate change.*

Policy HH.1 – *Promote public awareness and appreciation of Southland's historic heritage.*

Policy HH.2 - *Avoid, mitigate and, where appropriate, remedy adverse effects on historic heritage values from inappropriate subdivision, use and development. On a case-by-case basis take into account factors such as the significance of heritage values, financial cost and technical feasibility when making decisions relating to the protection of historic heritage.*

Policy HH.3 *Encourage the integration of historic heritage with new subdivision, use and development in both rural and urban areas.*

Policy HH.4- *Encourage and make provisions for the use of appropriate techniques to manage historic heritage at risk of the adverse effects of natural processes and climate change.*

Policy HH.6 – *Encourage the adaptive reuse and maintenance of built historic heritage.*

- 8.4 The language of the first two objectives and policy HH.2 reference s.6(f) of the Act regarding the need to protect historic heritage from inappropriate subdivision, use and development. I consider that the heritage provisions of the RPS do not contemplate preservation of existing buildings at all costs as evidenced in the wording of Policy HH.2. This policy makes particular reference to the need to take into account the significance of heritage values, and financial and technical feasibility when making decisions as to the management of the heritage resource. The application demonstrates that the buildings in question are generally at the lower end of the significance scale, that in the case of the Newburgh Building repair is not technically feasible, that with many of the other buildings whilst repair is technically feasible such works are likely to be extensive with attendant loss of heritage fabric, and that the costs of undertaking such works exceed by a margin the value of the resultant buildings, thereby making such work unfeasible.
- 8.5 Objective HH.3 and associated Policy HH.4 seek to ensure historic heritage values are appropriately managed to avoid or mitigate the potential adverse effects of natural processes and climate change. The explanation refers to the potential risks to historic heritage posed by natural hazards, including earthquakes. Many of the heritage buildings on the site are earthquake prone and are therefore at risk of sustaining significant damage (and risk to human life) in the event of a major earthquake. Given that the cost of undertaking the necessary strengthening works are economically unfeasible, the risk is instead managed through the removal of these earthquake prone buildings.
- 8.6 Policy HH.1 seeks to promote awareness and appreciation of Southland's heritage. The loss of buildings clearly negates the ability to appreciate their heritage values. The proposal does nonetheless retain the BNSW Building and three of the more significant heritage facades along Esk Street, with their incorporation into the wider development enabling their value to continue to be appreciated. I have recommended conditions to reflect the recommendations in the heritage addendum that interpretation panels and means of displaying or incorporating heritage fabric into the proposed replacement development should be undertaken, with these measures assisting in promoting awareness of heritage matters.
- 8.7 Policies HH.3 and HH.6 seek to encourage first the integration of heritage within new development, and secondly to encourage the adaptive reuse and maintenance of heritage buildings. The proposal integrates the BNSW Building and the Esk Street facades into the new development so is consistent with Policy HH.3 at least insofar as it relates to these buildings. Their ongoing adaption and reuse is likewise achieved, albeit in a reduced manner through the retention of just the facades for the three Esk St buildings. Clearly other heritage buildings on the site are to be removed and not integrated or reused. The policies seek to encourage rather than require, with the proposal consistent with such encouragement for four buildings, and inconsistent with it for the balance of the buildings that are to be lost.

- 8.8 Chapter 17 of the RPS seeks to promote sustainable development of Southland's urban area.

Objective URB.1 seeks to ensure urban development occurs in an integrated, sustainable and well-planned manner which provides for positive environmental, social, economic and cultural outcomes.

- 8.9 The associated Policy URB.1 states that the adverse effects of urban development on the environment should be avoided, remedied or mitigated. Policy URB.2 seeks to manage urban growth and development in a way that amongst other things: supports existing urban areas; promotes the redevelopment of existing urban areas over greenfield development, particularly within areas that have existing infrastructure capacity; and promotes a compact urban form. Policy URB.3 encourages opportunities for urban intensification and redevelopment within Southland's existing urban areas, while Policy URB.4 encourages high quality urban design. Policy URB.5 makes provision for a range of land use activities within urban areas and recognises a variety of developments are required to support community wellbeing and economic growth and development.
- 8.10 I consider that the proposed development is consistent with these provisions. The proposal seeks to provide high-quality office, retail, and civic/ community accommodation in an existing urban area, identified for these types of activities and that is suitable for urban intensification. Furthermore, the proposal will increase the vibrancy and vitality of the Central City and enable future demand for office and retail activity to be met within the existing urban area rather than a City-fringe greenfield location.
- 8.11 The loss of a significant number of heritage buildings will always sit uncomfortably against a policy framework that is supportive of the retention of heritage values. The RPS does not however require the absolute protection of heritage buildings at all costs, and as such overall I consider the proposal to be consistent with the RPS heritage-related provisions insofar as they require protection of heritage values only from inappropriate use. As set out above, the proposed activity is not considered to be 'inappropriate' given the significance and condition of the existing building stock. The proposal does provide a degree of heritage-related mitigation, and readily achieves the wider urban growth provisions of the RPS through the regeneration and intensification of an existing urban block in the centre of Invercargill.

10.0 PROPOSED DISTRICT PLAN OBJECTIVES AND POLICIES (SECTION 104(1)(B)(VI)) & S104D

- 10.1 Under s104D, the second leg of the 'threshold test' is that the activity 'will not be contrary to the objectives and policies' of the District Plan. Given that the effects of the activity on heritage values are at least more than 'minor' the proposal needs to pass this second test in order for Council to progress to considering the application more broadly under the provisions of s104(1).

- 10.2 The provisions of the District Plan have been developed with reference to the RPS provisions. In essence, the RPS is a region-wide tool for achieving the Part 2 purpose of the Act, and the District Plan policy framework is in turn the local expression of how the RPS outcomes are to be achieved at a District-level. There is therefore not surprisingly a strong correlation between the provisions of the District Plan and the RPS.

HERITAGE

- 10.3 The Heritage section of the District Plan (Section 2.8) has three heritage objectives and a number of policies as follows:

Objective 1: *Heritage values are identified and protected from inappropriate subdivision, use and development.*

Objective 2: *The built heritage of Invercargill is appropriately recognised and utilised.*

Objective 3: *Heritage values are appropriately managed to avoid or mitigate the potential adverse effects of natural processes and climate change.*

Policy 1 Promotion: *To promote public awareness and appreciation of Invercargill's heritage.*

Policy 2 Identification: *To identify and prioritise sites, structures, places and areas of heritage value.*

Policy 3 Effects on heritage: *To avoid, remedy or mitigate the potential adverse effects of subdivision, use and development on heritage.*

Policy 4 Integration: *To encourage the integration of new subdivision, use and development with heritage.*

Policy 5 Active management: *To promote the active management, in particular the adaptive reuse, of heritage buildings to:*

(A) Avoid serious risk to human safety.

(B) Investigate and evaluate all reasonable means of restoration, adaption, reuse and relocation as alternatives to demolition.

Policy 6 Conservation and adaptive re-use: *To promote the conservation and adaptive re-use of heritage buildings, groups of heritage buildings, heritage facades and heritage street furniture in the Central Business District of Invercargill.*

Policy 7 Cultural sites: *To protect cultural sites from the adverse effects of land disturbance and/or modification.*

Policy 8 Collaboration: *To collaborate with key stakeholders in the management of heritage.*

Policy 9 Natural processes: *To manage the adverse effects of natural processes and climate change on heritage values.*

- 10.4 As with the heritage provisions in the RPS, similar themes and directions are expressed in the District Plan's heritage provisions. Objective 1 and Policy 3 refer to the protection of historic heritage from inappropriate subdivision, use and development, which in turn echoes the wording of s6(f) of the RMA. I have discussed these outcomes above, and also in more detail in the discussion on Part 2 below.
- 10.5 Objective 3 and Policy 9 refer to the need to manage the potential effects of natural processes such as earthquakes. I have discussed this matter above against the RPS provisions that sought similar outcomes.
- 10.6 Objective 2 and Policies 2, 5, 5, and 6 seek to first identify heritage values, which is achieved primarily through the listing of buildings in the various District Plan appendices, and secondly through further research that is undertaken as part of the resource consent process into specific proposals. Having identified these values, the retention and adaptive reuse of heritage is encouraged and promoted (but not required). Policy 5 in particular promotes active management to avoid serious risk to human safety (as is present with the existing earthquake-prone building stock in the application site). Policy 5 likewise promotes active management as a tool for investigating and evaluating all reasonable means of restoration, adaption, and reuse as alternatives to demolition. Such evaluation is to be of 'reasonable' options. In my opinion the applicant has investigated reasonable options, and has tested the engineering work required, the intrusiveness and effects on heritage values deriving from such works, the cost of such work, the resultant value of the buildings in the event that the works are undertaken, and has reached the conclusion that for the building stock in this block, and with reference to their values that are generally at the lower end of the significance spectrum, that restoration and reuse are not reasonable.
- 10.7 As discussed above, the application does retain and integrate the BNSW Building and three of the higher significance facades along Esk Street and to this end does achieve a modest degree of retention, adaption, and integration of heritage items into the wider redevelopment of the site.
- 10.8 The proposal will result in the loss of heritage values and I consider that as such there is a degree of inconsistency with some of the heritage provisions, such as Objective 2 and Policy 3. I do not however consider the proposal to be contrary overall with the heritage provisions in Section 2.8.

NATURAL FEATURES, LANDSCAPES AND TOWNSCAPES

- 10.9 Section 2.10 sets out the natural features, landscapes, and townscapes of value to Invercargill. Whilst much of this section is focussed on the management of natural landscapes such as the Otatara Peninsula or Oreti Beach, it does contain a number of provisions that have more of an urban, townscape focus that are applicable to the proposal.

Objective 1: *Invercargill's outstanding natural features and landscapes are identified and protected from inappropriate subdivision, use and development.*

Policy 5: *Identification of Invercargill's townscapes of value: To identify and promote the following as townscapes of value to the City District:*

(A) The rich variety of built heritage in the Central Business District (CBD).

Policy 6 *Protection for locally distinctive and valued landscapes and townscapes and culturally significant landscapes and townscapes:*

(A) To recognise the visual importance of the CBD, the established neighbourhoods and the parks in defining the character of Invercargill, and

(B) To encourage new development to complement and build on existing character and heritage.

- 10.10 As with the above objectives relating to heritage, this objective again references s.6 RMA in seeking to first identify outstanding landscapes, and then secondly to protect them from *inappropriate* subdivision, use, and development. The objective on its face has more of a natural environment focus and does not explicitly reference townscapes, however given that the policies to implement the objective include urban-focussed directions it is assumed that 'landscapes' referred to in the objective can extend to both natural landscapes and more urban environments.
- 10.11 The objective is implemented for urban areas through Policies 5 and 6. Policy 5 seeks to identify and promote townscapes, including the variety of built heritage in the CBD. The District Plan achieves this through identifying such heritage through the District Plan appendices and a rule framework that enables the testing of proposals to alter these buildings through the resources consent process on a case-by-case basis. Policy 6 seeks the protection of locally distinctive townscapes, however such protection is to the *townscape* itself, rather than to individual heritage buildings. Policy 6 is informed by clauses (A) and (B), with clause (A) seeking to recognise the visual importance of the CBD and clause (B) seeking to encourage new development to complement and build on existing character and heritage. In short, Policy 6 is about protecting the high visual qualities of the CBD environment. One method of achieving this outcome would be the retention of the heritage buildings which contribute to this character, however it could likewise be achieved through ensuring new

buildings are compatible with the scale, form and design qualities of the centre and make a positive contribution towards the overall visual quality of the CBD.

- 10.12 As discussed above in the assessment of the proposal's urban design attributes, I am satisfied that the scale and massing of the replacement buildings, the retention of key facades on Esk Street, the modulation of built form, the development of the site up to the road edge to retain the strong block perimeter form, the inclusion of mid-block laneways, and the design decision to create a series of connected buildings with their own distinctive facades rather than a single monolithic development all help the proposal to sit comfortably within the fabric and streetscapes of the CBD. I therefore consider the proposal to be consistent with the section 2.10 provisions.

BUSINESS 1 (CENTRAL BUSINESS DISTRICT) ZONE

- 10.13 The relevant objectives and policies relating to the Business 1 Zone are set out in Section 2.22 of the Proposed District Plan. In addition to the site being located within the Business 1 (Central Business District) Zone, this section of the District Plan also describes three 'precincts' which also apply to the application site. These precincts and associated objectives seek the following outcomes:

*Within the **Priority Redevelopment Precinct** the Council seeks a partnership with the business sector in that it has accepted responsibility for the provision of car parking. This is intended as a significant bonus for redevelopment, enabling utilisation of a greater proportion of the site for building.*

*The Business 1 Zone makes specific provision within the **Entertainment Precinct** for entertainment premises, with extended hours of operation and more permissive noise limits than other parts of the City District.*

*The third precinct within the Business 1 Zone is the **Pedestrian-Friendly Frontages Precinct**, intended to maintain and enhance the attractiveness and convenience of the City Centre for pedestrians.*

Issues: 2.22.1 - The significant resource management issues for the Business 1 (Central Business District) Zone:

- 1. The primacy of the City Centre as the City's primary commercial and retail area is under threat, from the slow pace of development within the City, from new development locating outside the City Centre, from national and international changes in retailing, and from deferred maintenance and structural issues associated with old buildings.*
- 2. The quality of the street environment and the standard of design and amenity can encourage the ongoing economic and social viability of the City Centre.*

Objective 1: Maintenance and enhancement of the primacy of the Invercargill Central Business District as the primary centre for retailing, business, culture, entertainment, education and social services for Invercargill City and the wider Southland region.

Objective 2: Inner city living is part of the land use mix within the Invercargill Central Business District other than in the Entertainment Precinct.

Objective 3: Identification, maintenance and enhancement of the amenity values of the Business 1 Zone.

Objective 4: Protection of the heritage values of the Central Business District.

Objective 5: An holistic approach to economic, social and geographical issues in the Central Business District is complemented through the District Plan.

- 10.14 These objectives are to be implemented through a series of policies and rules (including specific rules and exemptions applying to the various precincts). These provisions can be grouped around several themes. The first theme is the need, as expressed in Objective 1 and Policy 1, to enhance the primacy of the CBD, and to retain existing and to encourage new commercial/ retail activities in the CBD. Provided construction phase effects on nearby retailers can be appropriately managed via conditions, the proposal is clearly consistent with this outcome in that it is seeking to transform a rundown and largely vacant block into a high quality office, retail and hospitality hub that will reinvigorate Invercargill's town centre.
- 10.15 The second theme, as expressed through Objective 3 and Policies 3, 4, 16, 19, and 20 is that any replacement development is to achieve a high standard of urban design and is to deliver a safe and attractive pedestrian environment. As set out in the urban design assessment above, I am satisfied that the replacement design achieves these outcomes and is therefore consistent with this policy direction.
- 10.16 The third theme is concerned with managing environmental nuisance through controls on matters such as noise, glare, odour, signage, and hazardous substances (objective 2 and policies 5-9, 11, 13). These tend to be more operational matters that future tenants of the redeveloped site will need to comply with, or subsequent resource consents sought. Objective 2 references the role of the Entertainment Precinct which is of relevance to this proposal both because the site is located in an area where restaurants and hospitality activities are anticipated (and proposed by the applications), and where residential activities are subject to acoustic insulation, with the necessary standards to be achieved via a recommended condition. Policy 14 seeks that buildings in the CBD be in sound condition, well maintained, and tidy in appearance, and Policy 15 provides guidance on building demotion and removal. This later policy seeks in the first instance to encourage owners to consider restoration and adaptive re-use in preference to demolition, however where demolition is to occur, clause (b) seeks to manage the amenity-related effects of demolition, and clause (c) seeks to encourage the active utilisation of sites post-demolition by encouraging prompt redevelopment and

interim use of sites. As discussed above, the applicant has considered adaptive reuse of buildings and has concluded that such is not feasible. I have recommended a series of conditions regarding demolition, vacant site management, and construction management to ensure that amenity effects on the surrounding area are appropriately managed and mitigated as far as practicable.

- 10.16 The fourth theme concerns the management of heritage values. Objective 4 is the most directive objective in the District Plan regarding heritage, in that it simply seeks its protection. The loss of a significant number of heritage buildings is clearly inconsistent with this objective. The associated Policy 22 which implements the objective seeks to promote the retention of the character and scale of heritage structures, buildings, and places in the CBD. The policy provides a more nuanced direction with its focus on the key matter to be retained being the *character and scale* of heritage buildings rather than the buildings per se. This approach is reinforced by the explanation to the policy which references a non-statutory design guide that draws attention to how heritage features can be respected when new design is undertaken. This approach is also consistent with the streetscape-related provisions discussed above where the key focus is on the maintenance of a high level of amenity and compatibility with the existing *streetscape* qualities, with these qualities informed by the existing heritage buildings. Taken in the context of the wider outcomes sought for the Business 1 zone, the site's location within a priority redevelopment precinct, the key issues for the CBD that include the threat to CBD primacy caused in part through deferred maintenance and structural issues with the existing building stock, I am satisfied that whilst inconsistent with Objective 4, the proposal is generally consistent with the overall outcomes sought in this part of the CBD through the Business 1 zone objectives and policies when taken as a holistic package. In reaching his conclusion I am particularly mindful of the direction provided in Objective 5 requiring a holistic approach be undertaken to the economic, social and geographical issues in the CBD,

TRANSPORT

- 10.17 Section 2.17 of the Proposed District Plan contains the relevant transportation objectives and policies, which includes:

Objective 1: *Development of transport infrastructure and land use takes place in an integrated and planned manner which:*

(A) Integrates transport planning with land use.

(B) Protects the function, safety, efficiency and effectiveness of the transport network.

(C) Minimises potential for reverse sensitivity effects to arise from changing land uses.

(D) Provides for positive, social, recreational, cultural and economic outcomes.

(E) Minimises where practical the adverse public health and environmental effects.

Policy 1 Infrastructure: *To provide for the safe and efficient operation, improvement and protection of transport infrastructure.*

Policy 3 Roading hierarchy: *To have regard to the Council's Roading Hierarchy when considering subdivision, use and development of land.*

Policy 4 Standards: *To set development standards for vehicle access, loading, parking and manoeuvring facilities.*

Policy 5 Adverse effects: *To manage subdivision, use and development adjacent to transport infrastructure in such a way as to avoid, remedy or mitigate potential effects, including reverse sensitivity effects on transportation infrastructure.*

Policy 6 State highways: *To have regard to any New Zealand Transport Agency standards regarding the location of new accesses on to, and egresses from, State Highways where the speed limit exceeds 50 kph.*

Policy 8 Public health: *To manage transport activities and surrounding land use activities to protect public health and environmental values.*

Policy 9 Integration: *To integrate the planning of land use with existing transport infrastructure and provide for future transportation requirements.*

Policy 10 Public transport, walking and cycling: *To promote the use of public transport, and walking and cycling networks.*

Policy 11 Significant transportation networks: *To recognise that the Invercargill Airport, Seaport, Railway, State Highway, and the arterial roads which link this infrastructure are regionally significant transportation networks and are essential to the ongoing viability and functioning of the District.*

- 10.18 This objective is implemented through Policies 1-11 which seek the safe and efficient functioning of the road network. As set out above the proposal is largely compliant with the District Plan's rules relating to transport matters. The proposal's transport-related effects have been assessed by Abley consultants on behalf of the applicant and the concerns raised by NZTA are able to be addressed either through the additional information provided by the applicant in their RFI response or secured via conditions. I therefore consider that the proposal is consistent with the District Plan's transport-related provisions.

CONTAMINATED LAND

- 10.19 The relevant objectives and policies of the Proposed District Plan that address the issue of contaminated land are set out in Section 2.5 and include:

Objective1: *Land that is affected by soil contamination is identified, monitored and managed.*

Objective2: *The adverse effects of contamination on subdivision, use and development of contaminated land are remedied or mitigated.*

Policy 3 National Environmental Standard: *To implement and require compliance with the provisions and requirements of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011.*

Policy 5 Human health: *To manage the subdivision, land use and development of land that is potentially, or known to be, contaminated land so as to protect human health.*

Policy 6 Management: *To determine appropriate management action for contaminated land...*

- 10.20 The contaminated land assessment undertaken by E3s on behalf of the applicant identified that further investigations pertaining to the use of HAIL activities on the site need to be undertaken prior to the development occurring, and that testing of excavated material occurs and that off-site disposal of soils is also required as part of the demolition process. The need for further testing and any subsequent management of the handling and disposal of contaminated material to protect human health is a matter that can be addressed via conditions. I therefore consider that the proposed development is consistent with these objectives and related policies.

DISTRICT PLAN OBJECTIVES AND POLICIES CONCLUSION

- 10.21 The proposal will result in the loss of heritage value and as such there is an inevitable degree of inconsistency with some of the heritage-related objectives and policies. I do not however consider that this extends to the point of becoming contrary to the nuanced direction provided in the heritage provisions as I do not consider the proposed treatment of heritage buildings to be 'inappropriate'.
- 10.22 I further consider that the proposal is broadly consistent with the other relevant objectives and policies in the District Plan relating to Townscapes, the Business 1 Zone, Transport, and Contamination, and readily achieves those provisions seeking the revitalisation and ongoing primacy of the CBD.
- 10.23 I am therefore satisfied that the proposal meets the second leg of the s104D 'threshold test' in that it is not contrary to the District Plan's objectives and policies, especially when those provisions are taken as a package. The proposal can therefore be assessed under s104(1).

11.0 SECTION 104(1)(C) – RELEVANT OTHER MATTERS

PRECEDENT AND PLAN INTEGRITY

- 11.1 Given the scale of the project and its non-complying activity status, it is appropriate to consider the potential precedent of approving this application could have. The size of the project is unique in Invercargill and is very unlikely to be repeated elsewhere in the CBD. As such the application, and subsequent decision, can be readily differentiated from other applications and should not result in pressure to treat 'like with like'. Whilst other proposals may come forward seeking the demolition of heritage buildings, each application will need to be considered on its merits and will turn on the significance of the heritage values (which were generally at the lower end in this case), the condition of the buildings, the degree of works required to strengthen and repair, the costs of these works and associated effects on heritage values, and the extent of both heritage-related mitigation and wider social and economic benefits arising from the project.

SOUTHLAND REGIONAL DEVELOPMENT STRATEGY: 2015-2025 ('S₀RDS')

- 11.2 The strategy defines five transformational projects to help Invercargill City thrive by delivering new relevance for locals and visitors. These five projects are an arts centre, motorcycle museum, new hotel, and a new boutique retail precinct located between Tay and Esk Streets including a covered mall area. The Strategy further notes that these large-scale projects are likely catalysts for wider renewal and investment. It is anticipated more CBD property owners will improve buildings and new businesses would look favourably at locating in Invercargill based on the City's enhanced destination value and appeal. The proposal is considered to be entirely consistent with this document, as it seeks to deliver one of the five transformational projects for the CBD to thrive.

INVERCARGILL CITY CENTRE RETAIL STRATEGY - 2017

- 11.3 This document references the Regional Development Strategy and provides a comprehensive overview of the challenges and opportunities faced by Invercargill's CBD as a retail destination. This strategy identifies the application site block as a potential heritage precinct, and concurrently also identifies the redevelopment of Cambridge Arcade area as a major catalyst that will better link Tay and Esk streets and provide modern retail, hospitality, and office space. This development is identified (pg. 19) as being "*transformational for the City in delivering modern shopping and dining environments – necessary to engage both consumers and retailers with Invercargill's CBD. Priority should be given to accelerating progress on this project*".

- 11.4 The proposal readily achieves and is consistent with many of the CBD rejuvenation goals of the Retail Strategy, whilst the degree of heritage loss in delivering these regeneration benefits sits uncomfortably with the concept of the application site as a heritage precinct. The detailed assessments undertaken as part of this application have examined whether greater retention of heritage is economically feasible i.e. whether both goals can be achieved concurrently, and has concluded that such outcomes are in large part mutually exclusive. The design of the proposed building is in keeping with the Urban Design Principles outlined in Section 5.5 and the desire to define city gateways that develop a sense of arrival.

INVERCARGILL CITY: CENTRAL CITY AREA – HERITAGE BUILDING RE-ASSESSMENT 2016

- 11.5 The executive summary notes:

"The re-assessment of the Invercargill CCA Heritage Buildings Review identified that Tay Street, Dee Street and Esk Street are the 'crown jewels' of the Invercargill CCA and should be considered from a perspective of the value they bring to the CCA and not from the perspective that they are a constraint to future development. It also identified that there is a need to place greater emphasis on the requirement for high quality, good, new design that is sympathetic and conscious of the heritage character of the CCA, in terms of frontages, storey heights and massing."

- 11.6 The proposed development would result in the loss of a number of locally significant heritage buildings across several of the 'crown jewels' streets in the Central City. The wider streetscape implications of the project on heritage values have been assessed in the heritage report and discussed above. The heritage assessment undertaken as part of the application provides a more focussed and in-depth assessment of the building stock in the application site than was undertaken as part of the 2016 review, and is therefore preferred insofar as it is informed by a deeper understanding of the current building conditions, seismic strength, and the extent of works necessary to upgrade them. There is no doubt that the project will result in a loss of heritage values, with such loss only partially mitigated through the retention of the three proposed facades on Esk Street and the BNSW Building. The replacement building complex is considered to be compatible with the heights, massing, and frontage treatment of the existing streetscape.

ICOMOS NEW ZEALAND CHARTER 2010

- 11.7 The International Council of Monuments and Sites (ICOMOS) NZ Charter is a set of guidelines on cultural heritage conservation, produced by ICOMOS New Zealand. The NZ Charter is widely used in the New Zealand heritage sector and forms a recognised benchmark for conservation standards and practice.

- 11.8 It is used by central government ministries and departments, by local bodies in district plans and heritage management, and by practitioners as guiding principles. The Proposed District Plan requires that Council shall have regard to the principles of the ICOMOS NZ Charter in considering proposals for the adaptive reuse of heritage buildings or structures - Heritage Policy 5. the ICOMOS Charter is also referred to in the heritage assessment.
- 11.9 As a conservation document the Charter does not address the demolition of heritage items as this is contrary to the principle of conservation. I note that façade retention in isolation is also not a preferred option (although not directly referred to), but from a conservation perspective would be preferable in lieu of total demolition.

12.0 PART 2 ASSESSMENT AND OVERALL CONCLUSION UNDER S104(1)

- 12.1 Decisions under s104 are subject to the overall purpose and principles of the Act as set out in Part 2. The objectives and policies of the District Plan have been developed as a local expression of how to give effect to Part 2 for the Invercargill Community. Given the scale of this project and the fact that the complete redevelopment of a CBD block is unique, there is a risk that such may not have been contemplated when the District Plan policy framework was developed. For completeness I have therefore also considered the proposal against Part 2

SECTION 7 'OTHER MATTERS'

- 12.2 Of relevance to this proposal, and in achieving the purpose of the Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—
- (a) *The ethic of stewardship;*
 - (b) *The efficient use and development of natural and physical resources;*
 - (c) *The maintenance and enhancement of amenity values;*
 - (f) *Maintenance and enhancement of the quality of the environment;*
 - (g) *Any finite characteristics of natural and physical resources.*

- 12.3 With regard to Section 7(a), the ethic of stewardship, as exercised by the Council, extends to the identification of heritage items in the Plan, and the encouragement of their retention through the District Plan's policy and rule framework, balanced against wider responsibilities towards concurrently maintaining a vibrant town centre and reversing the current decline of this part of the City. In terms of a property owner, the principle of stewardship is not considered to impose an obligation to maintain heritage items for community benefit in any or all circumstances. The applicant's evidence demonstrates that efforts have been made to investigate whether the retention of the existing heritage buildings, and in particular the higher significance items registered with HNZPT, as part of a wider development is financially viable. The evidence has led to a conclusion that such restoration is not financially viable, as evidenced by the fact that these buildings have not generally been maintained or strengthened over the last thirty plus years under a number of owners.
- 12.4 Sections 7(b) and 7(g) matters are to a large extent intertwined as they relate to this proposal. Section 7(b) introduces the principle of efficient use. It is considered that this must involve aspects of economic enablement given the anticipated commercial environment provided by the District Plan for the site, both through the underlying Business 1 zoning and more importantly its inclusion in a Priority Redevelopment Precinct. That is not to say that the heritage values to the community, as represented by the existing collection of buildings, are not an efficient use of the site, however where these are degraded and the productive uses associated with these physical resources undermined through vacancy and low seismic strength, then the principle of Section 7(b) would be better met through redevelopment.
- 12.5 The efforts made by the applicant to investigate the strengthening and adaptive re-use for the various buildings have demonstrated that economic use of these buildings is not feasible. Retention is therefore likely to result in the continued degradation of a complex of run down and largely empty buildings, and the prevention of the comprehensive redevelopment of the wider site. If such a future is the inevitable outcome for these buildings, it is difficult to conclude that a drawn out decline is in any way less offensive to Section 7(b) than their more imminent demolition. Section 7(b) in this instance is considered to be better achieved through the reuse of the site for the enablement of a large scale mixed use commercial development that has the potential to meet the social and economic needs of the community whilst concurrently retaining the site's historical association and role as the commercial and retail focal point of Invercargill's CBD.
- 12.6 In terms of Sections 7(c) and 7(f), the character of the immediate area will change markedly from its current appearance. As noted above the site does not currently display high amenity values comprising as it does vacant and rundown buildings. The replacement of the current buildings and the redevelopment of the wider site for the provision of a high quality office, retail, hospitality and civic/ community complex is considered to enhance amenity values and the quality of the environment than continuation of the status quo.

SECTION 6 'MATTERS OF NATIONAL IMPORTANCE'

12.7 Section 6 requires all persons exercising functions and powers under the Act, to recognise and provide for the following matters of national importance...

"(f) the protection of historic heritage from inappropriate subdivision, use, and development."

12.8 Demolition is generally considered to be an 'inappropriate use' of heritage buildings as it necessarily results in the complete loss of heritage values. The District Plan, in setting the framework for giving effect to Part 2, makes demolition a discretionary activity for locally listed buildings in Append II.3 and non-complying for HNZPT listed buildings in Appendix II.2. The activity status (of discretionary for the locally listed buildings) and the District Plan policy framework therefore contemplate an assessment of demolition on a case-by-case basis. So the question then becomes one of in which circumstances might demolition be contemplated. In my view demolition becomes appropriate when the current condition of the majority of the buildings is that of being earthquake-prone, where the necessary strengthening works are so intrusive as to result in the loss of much of the remaining heritage fabric and associated heritage values, and where the cost of those works are so high as to make them financially unfeasible to undertake. In essence the ongoing retention and reuse of the buildings then becomes implausible and as such the loss of the buildings is not inappropriate, especially when heritage-related mitigation is provided and where there are considerable benefits derived from the proposed replacement scheme.

12.9 It is acknowledged that despite the engineering and financial viability evidence, whilst the buildings still stand there remains the chance of a future owner or community organisation with different profit drivers (or access to significant heritage grants) being able to undertake restoration in a context where the works making a significant financial loss is acceptable (and assuming the current owner is willing to sell). It can therefore be tempting to seek retention in the hope that a solution might be found at some point in the future. In essence the proposition then becomes one of the community accepting the short-term costs of ongoing vacancy and low amenity in return for the hope of long-term retention, and disregarding the opportunity cost of the benefits of the comprehensive redevelopment of the site as currently proposed.

12.10 The question which it is then appropriate to ask is how long is it reasonable for a property owner (and the community) to endure those "short term costs" in the hope of a solution being found that retains a much greater extent of heritage fabric. The block has generally been declining in building and maintenance standards for a number of decades, with the need for redevelopment recognised in the District Plan and through the non-statutory SoRD and Retail Strategies. The buildings in the block have likewise been held by a range of owners over the past few decades, with none of these owners presumably able or willing to make the financial commitment necessary to undertake the required strengthening. As such it is considered that the short-term costs have already been borne by the community for a considerable period of time, that no solutions or philanthropic funding have been forthcoming over the past decades, and that the evidence is that such solutions are not particularly plausible in the future given the significant financial viability challenges that have been identified. As such the loss of the heritage buildings is able to be contemplated under s6f, and subject to the broad assessment required under s5.

SECTION 5

12.11 That the heritage buildings contained within the application site have heritage values is undisputed, albeit that such values have been identified as being generally towards the lower end of the spectrum. Against these values is the lack of any financially plausible reuse of the buildings, and the extensive and intrusive strengthening works required. Retention also produces an economic opportunity cost through the inability to develop the site in the manner proposed and as anticipated by the zoning and associated priority redevelopment precinct within the District Plan.

12.12 If the continued retention of the existing buildings inevitably leads to their continued degradation and vacancy, it is considered that the sustainable management in the sense of providing for the cultural, social, and economic well-being of the community would not be provided for. A judgment therefore has to be made as to whether the purpose of the Act would be better achieved by the retention of the buildings in their current and deteriorating condition or their demolition and replacement with a comprehensive commercial development over the wider site.

12.13 For the reasons set out above, it is considered that in balancing the effects associated with demolition and the loss of heritage values, with those associated with full redevelopment of the site that the purpose of the Act would be better served by the proposed comprehensive redevelopment. In the circumstances of this case, redeveloping the site is not considered to be "inappropriate" and would enhance the amenity values and the quality of the environment, as well as making a more efficient use of the land resource available on the development site as a whole. The proposed redevelopment will provide a range of activities which will make a significant contribution to the revitalisation of Invercargill's CBD. It is therefore concluded that allowing demolition and thereby enabling the site to be redeveloped for commercial purposes better achieves the purpose of the Act than retaining the buildings.

13.0 RECOMMENDATION

- 13.1 Having considered all the matters relevant to this application, I recommend that this application be granted pursuant to Sections 104, 104B and 108 of the Resource Management Act 1991 subject to the following conditions:

GENERAL

- 1 The development shall proceed in general accordance with the information and plans submitted with the application and as amended by the evidence and plans produced at the hearing. The approved consent documentation has been entered into Council records as number RMA/2018/148.

HERITAGE

- 2 Recording of all heritage buildings on the site listed in District Plan Appendix II.2 and II.3 shall be undertaken prior to demolition or building alteration works to those buildings commencing. The level of recording is to be commensurate with the significance assessment contained in the application, is to follow HNZPT standards for building recording, and is to be undertaken under the supervision of a qualified heritage expert. The recording of each building in its pre-demolition state shall be lodged with the Council and with Heritage New Zealand Pouhere Taonga for their records prior to demolition commencing, with recording of the demolition or building alteration works lodged within six months of the works being completed.
- 3 Prior to works commencing on the facades of Coxhead's Building (31-35 Esk St), the Cambridge Arcade Building (59-61 Esk St), and the Southland Times Building (67 Esk St), a Façade Retention Plan ('FRP') shall be provided to the Council for certification that it provides suitable measures for the protection of heritage fabric and values, including but not limited to the following matters:
- a. A full structural survey of the building is to be undertaken including details relating to the stability of the façade.
 - b. Monitoring pins are established as appropriate;
 - c. Design and detailing of temporary works to provide stability to the façade as a standalone element. The design can allow propping to the exterior or interior sides of the façade.

Note: Such design is to provide flexibility for reducing the disruption to the public in the event the façade retention is erected for an extended period of time awaiting its connection to a new building structure.

- d. Design and detailing of any strengthening to the façade itself and/or foundation remedial works.

Note: *such design detailing may be required to stabilize or deal with any issues and/or alterations to the façade openings as part of the integration with the new development. Building Consent will be required prior to partial demolition being undertaken.*

- e. Design and documentation for a detailed demolition/ temporary works management and construction plan for each façade retention scheme.
- f. Confirmation that the demolition and temporary works construction will be undertaken under the supervision of a suitably qualified engineer.
- g. Methods for retaining or reinstating the decorative plasterwork on the Southland Times Building façade and for repointing and maintaining the existing unpainted brickwork in an unpainted state.

Note: *The Council will either certify, or refuse to certify, the FRP within 20 working days of receipt. Should the Council refuse to certify the FRP, then they shall provide a letter outlining why certification is refused based on the parameters contained in this condition.*

- 4
 - a. Heritage veranda posts listed in District Plan Appendix II.4 are to be removed under the supervision of a qualified heritage expert and stored by Council for reuse in either the replacement buildings on the site or streetworks surrounding the site.
 - b. The veranda that replaces the existing Fairweather's Building (58 Tay Street) is to be etched or have similar physical reference made to the pressed metal decoration of the existing veranda.
- 5 Prior to demolition commencing, each heritage building is to be surveyed by a heritage expert to identify heritage fabric to be salvaged. The identification of suitable fabric is to be peer reviewed by an independent heritage expert. The majority of the salvaged material is to be reused in the replacement buildings and opportunities for such use are to form part of the Construction Management Plan. Where onsite reuse is not practicable, salvaged material is to be securely stored and made available for purchase and reuse on other building projects in Invercargill.
- 6 Information gathered during the historical research, archaeological investigations, and which is collected during the recording of the post-1900 buildings is to be disseminated to the public upon the completion of each stage of construction. Such dissemination may include, but is not limited to, the installation of interpretive panels and the display of archaeological material in publicly accessible areas such as the food court, laneways, or courtyards.

DEMOLITION MANAGEMENT

- 7 No demolition is to occur prior to a Building Consent for the replacement building(s) on the same or similar footprint having been lodged with the Council.
- 8 Prior to the demolition of any of the existing buildings commencing, the Consent Holder shall provide to Council a Demolition Management Plan (DMP) for certification which provides suitable measures to avoid or mitigate the effects of demolition activities on neighbouring sites and the adjacent streets. The DMP shall include, but not be limited to, the following matters:
 - a. Details of how demolition will be staged and measures to minimise disruption to pedestrian access to the adjacent footpaths.
 - b. Measures to investigate the presence of asbestos containing material (ACM). If ACM is confirmed the preparation of an asbestos removal plan which provides for the removal of asbestos in accordance with approved methods, and its disposal at a facility authorised to accept the material to ensure effects on human health are avoided.
 - c. Measures to facilitate a Detailed Site Investigation being undertaken as part of the demolition process and measures to avoid undertaking earthworks that would pose a risk to human health until Conditions 20 and 21 have been fulfilled.
 - d. Measures to facilitate the recovery of heritage materials for reuse, in accordance with Conditions 4 and 5.
 - e. Measures to provide adequate protection of heritage kerbstones listed in Appendix II.4 of the District Plan.
 - f. Measures to avoid the collapse of weakened structures and the management of hazards to health and safety.
 - g. A Communication Plan with affected parties, including adjoining land owners and occupiers and those on the opposite side of the street to the proposed works. The communication plan shall include procedures to ensure consultation prior to high noise generating activities occurring, and the receipt, recording, and resolution of complaints.
 - h. A Traffic Management Plan (TMP) which includes measures for the control of vehicle and pedestrian movements, including full or partial road closures, to ensure the safety of the public, and the continued safe and effective operation of the road network. The TMP is to also demonstrate how demolition activity will be staged across the site to minimise the need for road and footpath closures. Where the TMP includes measures relating to State Highway 1 and State Highway 6, input from the New Zealand Transport Agency is required.

- i. A Demolition Noise and Vibration Management Plan (DNVMP) outlining how noise and vibration nuisance will be mitigated during demolition activities. The plan shall specify any restrictions on work hours, physical noise mitigation to be employed, and limitations on the timing of specific activities including high noise generating activities. The DNVMP must address the relevant measures in Annex E of NZS 6803:1999 "Acoustics – Construction Noise" and Appendix B of DIN 4150-3:1999 "Structural vibration – Part 3 Effects of vibration on structures" or equivalent standard. The DNVMP is to be consistent with Conditions 11 and 12.
- j. The DMP and DNVMP shall include a specific section prepared with the input of a heritage expert, specifying how demolition and vibration effects on the former Bank of New South Wales Building (corner of Dee and Tay Streets) are to be managed to minimise adverse effects on heritage fabric.
- k. Measures for erosion and sediment control, including the prevention of sediment being carted onto roads, or entering the public stormwater system during demolition activity and prior to construction starting.
- l. Measures for the suppression of dust to be employed during demolition activity and prior to construction starting. Such measures are to ensure dust emissions beyond the site boundary are not offensive or objectionable to pedestrians on the adjacent street network or business occupiers.
- m. Details of the steps to be taken to ensure that demolition plant (particularly cranes) does not extend into Invercargill Airport Limited's "Horizontal Surface" as specified in Designation 74 in the District Plan.
- n. Details of how the site boundary perimeter fencing will be managed to provide an acceptable level of amenity and safety for pedestrians. These details are to include the use of B class hoardings where necessary. All hoardings are to be customised to share with the public the story of the redevelopment and the history of key buildings or art in conjunction with Arts Murihiku or other similar community groups.

Note: *The Council will either certify or refuse to certify the DMP within 20 working days of receipt for demolition stages of less than 5,000m² gross floor area and 30 working days of receipt for demolition stages of more than 5,000m² gross floor area. Council may seek that the DMP be peer reviewed at the Consent Holder's cost. Should the Council refuse to certify the DMP, then they shall provide a letter outlining why certification is refused based on the parameters contained in this condition.*

- 9 The Consent Holder shall not commence demolition of the buildings authorised by this consent until the Council's Director of Environmental and Planning Services has certified in writing that the DMP fulfils the requirements of Condition 8. The DMP may be reviewed and amended as required to achieve the outcomes of this consent, with any amended plan to be submitted to and certified by, the Council's Director of Environmental and Planning Services.

- 10 The DMP certified by the Council under Condition 9 shall be implemented for the duration of the demolition activity occurring on the site and a copy must be maintained on site.
- 11 Demolition activities which exceed the noise limits for the zone shall occur only between the hours of 7.30am – 6.00pm Monday to Saturday, and truck movements shall only occur between 7.30am – 5.00pm Monday to Saturday. No activities shall occur on Sundays and public holidays except in cases of operational necessity.
- 12 Demolition activities shall comply with the long-term limits set out in Table 2 of NZS6803:1999 “Acoustics – Construction noise” as far as is practical. The DNVMP required under Condition 8(i) shall include measures for higher noise generating activities that cannot practically comply with NZS6803:1999.

VACANT SITE MANAGEMENT

- 13 Where portions of the site are to remain vacant for a period of more than six months, the Consent Holder shall provide to Council’s Director of Environmental and Planning Services a Vacant Site Management Plan (VSMP) for certification which provides suitable measures to avoid or mitigate the amenity effects of such vacancy on neighbouring sites and the adjacent streets. The VSMP shall include, but not be limited to, the following matters:
 - a. Details of how that area will be maintained in a clean and tidy manner.
 - b. Details of how the site boundary perimeter fencing will be managed to provide an acceptable level of amenity and safety for pedestrians. These details are to include the use of B class hoardings where necessary. All hoardings are to be customised to share with the public the story of the redevelopment and the history of key buildings or art in conjunction with Arts Murihiku or other similar community groups.
 - c. Details of any short-term interim use of the site for commercial, civic, or carparking activities.
 - d. Provision of a mid-block pedestrian route between Tay Street and Esk Street where such provision can be made in a safe and practicable manner.
 - e. Measures for erosion and sediment control and prevention of sediment being carted onto roads, or entering the public stormwater system.
 - f. Measures for the suppression of dust to be employed whilst the site is vacant to ensure dust emissions beyond the site boundary are not offensive or objectionable to pedestrians on the adjacent street network or business occupier.
 - g. **Note:** *The Council will either certify, or refuse to certify, the VSMP within 20 working days of receipt. Should the Council refuse to certify the VSMP, then they shall provide a letter outlining why certification is refused based on the parameters contained in this condition.*

- 14 The certified VSMP under Condition 13, shall be implemented for the duration of the site remaining vacant.

CONSTRUCTION MANAGEMENT

- 15 Prior to construction of each new stage of the development commencing, the consent holder shall provide to Council a Construction Management Plan (CMP) for certification that it provides suitable measures to avoid or mitigate the effects of construction activity on neighbouring sites and the adjacent streets. The CMP shall include, but not be limited to, the following matters:
- a. A Communication Plan with affected parties, including adjoining land owners and occupiers and those on the opposite side of the street to the proposed works. The communication plan shall include procedures to ensure consultation prior to high noise generating activities occurring, and the receipt, recording, and resolution of complaints.
 - b. A Traffic Management Plan (TMP) which includes measures for the control of vehicle and pedestrian movements, including road closures, to ensure the safety of the public, and the continued safe and effective operation of the road network. The TMP is to also demonstrate how construction activity will be staged across the site to minimise the need for long periods of road and footpath closures. Where the TMP includes measures relating to State Highway 1 and State Highway 6, input from the New Zealand Transport Agency is required.
 - c. A Construction Noise and Vibration Management Plan (CNVMP) outlining how noise and vibration nuisance will be mitigated during construction activities. The plan shall specify any restrictions on work hours, physical noise mitigation to be employed, and limitations on the timing of specific activities including high noise generating activities. The CNVMP must address the relevant measures in Annex E of NZS 6803:1999 "Acoustics – Construction Noise" and Appendix B of DIN 4150-3:1999 "Structural vibration – Part 3 Effects of vibration on structures" or equivalent standard. The CNVMP is to be consistent with Conditions 18 and 19.
 - d. The CMP and CNVMP shall include a specific section prepared with the input of a heritage expert, specifying how construction and vibration effects on the former Bank of New South Wales Building (corner of Dee and Tay Streets) are to be managed to minimise adverse effects on heritage fabric.
 - e. Measures for erosion and sediment control and prevention of sediment being carted onto roads, or entering the public stormwater system.
 - f. Measures for the suppression of dust to be employed during construction activity to ensure dust emissions beyond the site boundary are not offensive or objectionable to pedestrians on the adjacent street network or business occupiers.

- g. Measures to provide adequate protection of kerbstones listed in Appendix II.4 of the District Plan.
- h. Details of how the site boundary perimeter fencing will be managed to provide an acceptable level of amenity and safety for pedestrians. These details are to include the use of B class hoardings where necessary. All hoardings are to be that are customised to share with the public the story of the redevelopment and the history of key buildings and identities or art in conjunction with Arts Murihiku or other similar community groups.
- i. Details of the steps to be taken to ensure that construction plant (particularly cranes) does not extend into Invercargill Airport Limited's "Horizontal Surface" as specified in Designation 74 in the District Plan.

Note: *The Council will either certify, or refuse to certify, the CMP within 20 working days of receipt for construction stages of less than 5,000m² gross floor area and 30 working days of receipt for construction stages of more than 5,000m² gross floor area. Council may seek that the CMP be peer reviewed at the Consent Holder's cost. Should the Council refuse to certify the CMP, then they shall provide a letter outlining why certification is refused based on the parameters contained in this condition.*

- 16 The Consent Holder shall not commence construction of the buildings authorised by this consent until the Council has certified in writing that the CMP fulfils the requirements of Condition 15. The CMP may be reviewed and amended as required to achieve the outcomes of this consent, with any amended plan to be submitted to and certified by Council.
- 17 The CMP certified by the Council under Condition 16 shall be implemented for the duration of the construction activity occurring on the site and a copy shall be maintained on site.
- 18 Construction activities which exceed the noise limits for the zone shall occur only between the hours of 7.30am – 6.00pm Monday to Saturday, and truck movements shall only occur between 7.30am – 5.00pm Monday to Saturday. No activities shall occur on Sundays and public holidays except in cases of operational necessity.
- 19 Construction activities shall comply with the long-term limits set out in Table 2 of NZS6803:1999 "Acoustics – Construction noise" as far as is practical. The CNVMP required under Condition 15(c) shall include measures for higher noise generating activities that cannot practically comply with NZS6803:1999.

SOIL CONTAMINATION MANAGEMENT

- 20 Prior to earthworks being undertaken, a Detailed Site Investigation shall be undertaken under the direction of a Suitably Qualified and Experienced Practitioner ('SQEP') as defined in the NES for Assessing and Managing Contaminants in Soil to Protect Human Health ('NESCS').

- 21 In the event that the DSI identifies contamination above guideline values specified in the NESCS, a Remediation Action Plan ('RAP')/ Site Management Plan ('SMP') shall be prepared by a SQEP prior to earthworks commencing. A copy of the test results and recommendations from a SQEP shall be provided to the Council's Director of Environmental and Planning Services prior to excavated material being removed from the site.
- 22 All earthworks shall be managed in accordance with the Remediation Action Plan/ Site Management Plan and recommendations from a SQEP.
- 23 All contaminated soil removed from the site must be disposed of at a facility whose waste acceptance criteria permit the disposal.
- 24 If contaminated material is to be retained on site and capped, a Long Term Site Management Plan shall be prepared by a SQEP, with the plan to clearly identify the location on the site of contaminated material. The applicant shall supply to Council's Director of Environmental and Planning Services a copy of the plan within two months of the completion of earthworks.

NOISE MANAGEMENT

- 25 Prior to the issue of Building Consent for any residential apartments, an acoustic design certificate from a suitably qualified acoustic engineer is to be provided to the Council demonstrating that internal sound levels will be achieved when assessed in accordance with the requirements of Rule 3.13.9(A). An alternative means of ventilation (other than opening windows) shall be provided so that compliance with Rule 3.13.9 can be achieved concurrently with any Building Code ventilation requirements.

SAFETY & EFFICIENCY OF ROAD NETWORK AND ACCESS POINTS

- 26 A visibility splay of a minimum of 5m x 2.5m shall be provided on the eastern side of the exit lane to the carpark building access onto Tay Street.
- 27 Prior to the eastern service lane located behind the Kelvin Hotel becoming operational, an audio warning device to alert pedestrians to exiting vehicle movements is to be installed adjacent to both the Tay Street and Esk Street access points.
- 28 Existing emergency egress access routes and service lane access to Tay Street are to be maintained from the rear of the existing cinema complex at 29 Dee Street. Any variation to this is to meet the egress provisions of the New Zealand Building Code and is to be approved by Fire Emergency New Zealand and Council before being adopted.

SERVICING AND INFRASTRUCTURE

- 29 The Consent Holder shall notify the Council by 1 December annually of the civic infrastructure requirements that the development will require to be delivered during the following twelve months starting 1 July.

- 30 The Consent Holder shall notify Council by 1 March 2020 of the infrastructure needs of the development in years 1, 3, 5, and 10 of the Council's 2021 Long Term Plan.

MONITORING

- 31 Every six months from the date that this consent is granted, the Consent Holder shall provide the Council's Director of Environmental and Planning Services with a report setting out progress towards implementing the consent, consultation undertaken with nearby landowners, the steps taken to comply with the conditions of consent, and details of any complaints received and how they were addressed.
- 32 In accordance with s.128 of the Resource Management Act 1991 the Council may serve notice on the Consent Holder on 1 March or 1 October of its intention to review, in whole or in part, the conditions of this consent to deal with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage.

ADVICE NOTES

- i. In the conditions where a document is to be certified by Council, this shall be done on the recommendation of an Independent Commissioner.
- ii. For clarification an Independent Commissioner shall be a person who holds the Making Good Decisions certification awarded by the Ministry for the Environment
- iii. No works shall be undertaken within State Highway 1 or State Highway 6 without the prior approval of the New Zealand Transport Agency pursuant to Section 51 of the Government Roothing Powers Act 1989. Such works may include but are not exclusive to the design and formation of the access and associated slip lanes to the Tay Street parking building.
- iv. Any works undertaken on Council land, including temporary road stopping, works to Council-controlled infrastructure, alterations to on-street carparking, alterations to the existing streetlights, landscaping, and street furniture etc and any right to occupy are subject to separate approval processes.
- v. The granting of this consent does not imply pre-approval of Council investment or provision of network infrastructure to the site.
- vi. An Archaeological Authority is required under Section 44 of the Heritage New Zealand Pouhere Taonga Act (2014). The applicant is advised to discuss these requirements with HNZPT prior to undertaking any modification of the site or pre-1900 buildings.

- vii. Any subsequent amendments to the approved plans will be assessed either as a new resource consent (in the event that changes are not otherwise permitted), or assessed under s.127 RMA as a change to conditions, depending on the nature and scope of the changes proposed. Such applications may involve Council engaging external planning, heritage, transport, and urban design experts to assist with processing the application and will be determined by an Independent Commissioner.



Jonathan Clease

Consultant Planner

4 March 2019

APPENDIX 1:

PROPOSED INVERCARILL DISTRICT PLAN ASSESSMENT

Rule	Assessment	Activity Status
Section 3 District Wide Rules		
3.3 Contaminated Land 3.3.1 All activities, including removing or replacing a fuel tank, soil sampling, soil disturbance, subdivision or change in land use, undertaken on a "piece of land", are required under the RMA to comply with the requirements of Clause 8 of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 contained in Appendix XII.	<p>An assessment of the proposal against the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations (NES Contamination) in Section 6 of the AEE notes that completion of a DSI is not possible due to existing extant buildings and therefore earthworks are a discretionary activity under clause 11(2) of the NES Contamination.</p>	<p>For information under the District Plan</p> <p>Discretionary under the NES contamination</p>
3.4 Demolition or Removal Activities 3.4.1 Unless Section 3.8 Heritage applies, it is a permitted activity to demolish or remove buildings and structures in the Business 1 zone with an area of less than 120m ² .	<p>The non-heritage buildings to be demolished will exceed 120m².</p>	<p>Controlled under 3.4.2</p>
3.8 Heritage 3.8.3 Any alteration to any building listed in Appendix II.3 that does not affect the façade is permitted. 3.8.6 The relocation or demolition of any building listed in Appendix II:3 Sites of Local Significance other than listed in Rule 3.8.3 and 3.8.4 above, is a discretionary activity. 3.8.7 Any alteration, addition, removal and/or demolition of, and/or the attaching of any signage to, any item listed in Appendix II.4 Street Furniture and/or Appendix II.5 War Memorials/Relics is a discretionary activity. 3.8.8 Any alteration to a building listed in Appendix II.2 of sites registered by HNZPT is a discretionary activity. 3.8.9 The relocation or demolition of any building listed in Appendix II.2 of sites registered by HNZPT is a non-complying activity.	<p>Facades of all but two of the buildings listed in Appendix II.3 will be demolished.</p> <p>All of the buildings listed in Appendix II.3 will be demolished apart from two facades.</p> <p>The veranda posts will be removed or relocated are listed in Appendix II: 4</p> <p>The Southland Times building is listed in Appendix II.2 and its front façade is to be altered.</p> <p>All of the Southland Times Building (apart from the front façade) and all of the Newburgh and Lewis & Co Buildings are to be demolished, with these three buildings all listed in Appendix II.2.</p>	<p>Restricted Discretionary under 3.8.4</p> <p>Discretionary</p> <p>Discretionary</p> <p>Discretionary</p> <p>Non-complying</p>

3.13 Noise 3.13.4 Construction noise is to comply with the following noise limits: 70dB LAeq and 85dB LAmax between the hours of 0730 – 1800 Monday to Saturday, and 45dB Leq and 75dB LAmax at all other times.	Construction noise is anticipated to exceed these limits at times.	Discretionary under 3.13.18
3.17 Earthworks 3.17.2 The maximum permitted earthworks are limited to 50m ³ per 1,000m ² .	The proposed earthworks volumes are likely to exceed 50m ³ per 1,000m ² .	Discretionary under 3.17.7
3.20 Transport 3.20.11(B) Access to, and Egresses from, Roads: It is a discretionary activity to construct and use new vehicle accesses from, and egresses on to, State Highways for any discretionary or non-complying activity where the speed limit is 50 kph or less.	The proposal includes new access points onto both Dee and Tay Streets (SH6 and SH1 respectively) and the proposal is a non-complying activity.	Discretionary
Zone Rules 3.23 Business 1 (Central Business District) Zone		
3.23.1 Permitted activities Within the B1 zone car parking, early childhood education, healthcare, retail, hospitality, office, and community services are all permitted.	Residential activity within the Entertainment Precinct are not permitted and are less than 5,000m ² floor area.	Restricted Discretionary under 3.23.2
3.23.8 Weather Protection Within the Pedestrian-Friendly Frontages Precinct all buildings are to be provided with verandahs across the public footpath for the full width of the site frontages. In accordance with Rule 3.23.9 Any verandah is to be designed and constructed to: (A) Have a maximum height of 3.5m and a minimum height of 3m above the footpath; (B) Be set back 0.6m from the kerb line. (C) Be so related to verandahs on adjacent buildings as to provide continuous weather protection for pedestrians. Where these provisions are not met	Continuous verandah cover is generally proposed however there are some short sections where this is not available. All verandahs provided will exceed the maximum height of 3.5m. They will be set back more than 0.6m from the kerb line.	Restricted Discretionary under 3.23.10

the activity is a discretionary activity.		
3.23.11 Height of Structure The maximum height of any building or structure is 10m. Any activity that does not comply with this Rule is a restricted discretionary activity.	The proposed buildings will generally exceed 10 metres (maximum proposed height of 33m).	Restricted Discretionary under 3.23.12
3.23.14 & 3.23.15 Street Frontage & Building Height – Pedestrian Friendly Frontages Precinct Except as otherwise provided for in Rule 3.23.14-3.23.20) all buildings within the Pedestrian Friendly Frontages Precinct are to be two storeys high along the street frontage. In accordance with Rule 3.23.15 the actual height of the two storeys is to be sufficient to match the first two storeys of the buildings on either side where the buildings are directly adjoining each other. Where these provisions are not met the activity is a discretionary activity	All buildings will be at least two stories in height with some buildings greater than two stories. The block is to be largely cleared with the retained adjacent buildings taller than two stories in height.	Discretionary under 3.23.17 Complies
3.23.19 Corner sites and building height – Priority Redevelopment Precinct New buildings within the Priority Redevelopment Precinct which are on the corner of two formed roads are to be three storeys over at least 50% of the footprint of the building and the higher part of the building shall face the public streets.	The proposed buildings on the Dee/ Esk and Tay/ Kelvin corners are taller than 3 stories.	Discretionary under 3.23.20

For clarity, I note that in accordance with Rules 3.20.1 (A) and 3.20.6(B), there are no minimum off-street car parking or on-site loading requirements within the City Centre Priority Redevelopment Precinct in the Business 1 Zone.

A detailed lighting plan has not yet been prepared nor have details of proposed signage or operational noise levels of future tenants been confirmed. The Applicant has advised that the proposal will either comply with the permitted lighting, signage, and operational noise standards or will be subject to a separate application(s).

APPENDIX 2:

SUMMARY OF SUBMISSIONS

Note: Not all submitters clearly indicated whether they were in support, opposition, or neutral. A number of submitters were in general support whilst raising concerns about specific aspects of the proposal (for example construction phase effects) and therefore could arguably fall into any of the above three categories. The below table is therefore intended as a general guide only to the matters raised by submitters. Given the large number of submissions, it is very much a summary only of the matters raised. The Commissioners have been provided with a full copy of all submissions.

The hearing is a public process and submitters are able to present to the Commissioners to address any of the matters raised in their submission.

Number	Submitter Name	Submission Summary	Wish to be Heard
01	David & Yvonne Service	Support – General support for improved CBD.	No
02	Sean Woodward/ 28 Don Ltd	Support – General improvement to CBD will attract more people which will add vibrancy and increase rents to help pay for strengthening.	No
03	Nathan Shearing	Support – Will Provide a destination (especially a covered pedestrian venue) and offer confidence for other owners to invest. Will remove earthquake prone buildings and associated risk; loss of heritage off-set by gains in amenity and encouragement for other buildings to be strengthened;	No
04	Carolyn Hopgood/ Merric Apparell	Neutral – Concerns re Esk St access during demolition/ construction phases and economic effects on businesses;	Not stated
05	Michael McCall	Support – City needs a strong heart; transitional provision should be made for retailers having to temporarily relocate e.g. container mall would be good (but not a condition of support).	No
06	Sungjin Park	Neutral –Concerns re Esk St access during demolition/ construction phases and economic effects on businesses.	No
07	Carla Forbes/ Market Place South	Support - Status quo CBD is degrading - needs a heart; will increase foot traffic which will encourage further investment.	Yes

08	Karl McDonald/	Support – Will recreate heart & associated social and	No
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	Sportsmed Physio	economic benefits.	
09	Bruce & Denise Halligan	Support – Vibrant CBD important to attract and retain people in Southland; heritage appears to be beyond economic repair and the applicant is retaining where possible. Approve subject to conditions to manage demolition and construction effects.	No
10	Erin McCall	Support –Will draw people to the CBD; reason to stay or return to Southland; trigger increased investment in surrounding blocks; create employment and lift business confidence.	No
11	Robert Todd	Support – Existing heritage obsolete and a Health & Safety issue. New plans will enhance CBD, stimulate inner city living and attract visitors. Construction phase will provide employment.	No
12	Lisa Tou-McNaughton/ Arts Murihiku	Neutral - public art should be incorporated, including interim displays on construction site hoardings.	Yes
13	Bernie Brown/ McKnight & Brown	Support – Will provide benefits to retail and wider community. Construction phase concerns regarding retail continuity, Est St environment, the need to provide temporary food and retail opportunities, provision of vehicle and foot access, car parking, noise, dust. Seeks better communication with retailers and also the wider community including promotions during construction.	Yes
14	Troopers Memorial Corner Charitable Trust	Support – Trust formed to restore the BNSW building. Have had trouble tenanting it – the proposal will be a permanent and much needed boost to the CBD and includes the retention of the building.	No
15	T Kahukura	Neutral – Important to providing accessible design for members of the community who are disabled.	Not stated
16	Queenstown Land Holdings Ltd (owners of Reading cinema)	Support –Will add to CBD vibrancy. There are a number of detailed design matters that need resolving relating to the integration of the development with the existing cinema building's levels, fire egress, and rear loading bay access.	Yes
17	Southland Chamber of	Support – key priority in SoRDS action plan, delivers	Yes

	Commerce	essential urban amenities, construction phase employment, and transformational economic benefits. Need to minimise construction phase disruption, especially to businesses on the north side of Esk St. Heritage buildings are old and unsafe and pros of their replacement outweigh the cons, noting a small minority of members oppose the loss of heritage.	
18	Hari-Priya Day	Neutral – Needs to be fully accessible for people with disabilities.	Not stated
19	Peter Shand	Support – Congratulations on massive project that should have happened decades ago. Would like building structures to be built with sufficient strength that additional stories could be added in the future should demand increase.	Not stated
20	New Zealand Transport Agency	Neutral – Demolition and construction phase concerns re traffic management on SH1 and SH6; need to include NZTA input into these plans, noting separate approval required for works within the road reserve itself. Prefers visibility splays to be included in Tay St access; further information needed on the safe functioning of the proposed goods access near the Tay/ Kelvin St intersection.	Yes
21	Neighbouring Retailers Group C/- WPS Opus	Support – General support for the end outcome but raise significant concerns regarding demolition and construction phase effects on nearby retailers including noise, dust, traffic/ access disruption, loss of an intact retail environment with associated loss of customers, and the opportunity to accommodate displaced retailers in a container mall.	Yes
22	Peter Cruickshank/ Rosedale Trust	Oppose – The proposed regeneration does not extend to their site further along Dee St – ICC is subsidising some owners using the rates paid by other owners.	Not stated
23	Community Trust South	Support – Will achieve a key item in the SoRDs strategy with associated urban renewal and vibrancy benefits.	No
24	Vicky Henry	Oppose –loss of heritage and sense of place; needs less emphasis on retail and more on food, art, and new	Yes

		industry. Concerns regarding retail displacement/ creating vacancy elsewhere. Needs better connection to H&J Smith. Need for more renewable/ green building design.	
25	Derrick Hills	Support – CBD is currently run down and needs large scale redevelopment – great and last opportunity.	No
26	Neil & Denise Andrews	Support – General support for end outcomes but raise concerns regarding construction phase effects, disruption to vehicle and pedestrian access, dust, carparking, and the potential for an interim container mall.	Yes
27	Joy Pirrie	Support – Design needs to be accessible to all.	No
28	Duncan Mckenzie	Oppose - Loss of heritage and lack of quantified economic benefits. Needs to demonstrate costs, Return on Investment rates, necessary rentals to achieve RoI and feasibility.	Yes
29	H&J Smith Holdings Ltd	Oppose - General support of need to revitalise CBD, but has construction phase concerns regarding the need for clear traffic, dust, and vibration management plans. Concerns regarding retail displacement/ drop during construction and the need to provide adequate interim amenity/ retail offer especially for the south side of Esk St. Detailed design should provide for a better connection from the proposed parking building to Kelvin St and H&J Smith.	Yes
30	Bob Simpson	Neutral –Need for a comprehensive CBD plan; concerns regarding construction phase effects.	Yes
31	Rachael Egerton	Oppose –Loss of heritage and sense of place, more building should be retained especially on Esk St. The applicant should make a fund available for other heritage projects. Construction phase issues for BNSW building, especially with new buildings immediately adjacent. Funds needed for conserving archaeological material if discovered. Lack of financial viability evidence. Upper levels/ height breach will create additional capacity that will draw tenants from existing heritage buildings. Opposes painting the Southland Times façade and seeks confirmation that heritage kern stones will be retained in situ.	Yes

32	Heritage New Zealand Pouhere Taonga Note: original submission was withdrawn and subsequently replaced by this submission	Oppose – loss of heritage is significant. Seeks retention of the 1908 portion of the Southland Times Building.	Yes
33	Downtown Invercargill Group	Support - General support for the overall concept that will vibrancy and heart, a social hub, attract retailing, and is consistent with SoRDS and Invercargill Retail Strategies. Concerns raised regarding demolition and construction phase effects regarding noise, vibration, dust, disruption to vehicle and pedestrian access and parking, and amenity effects from potential partial non completion. Seeks the retention of Esk St street furniture, installation of a container mall/ food truck on south side of Esk St, and the need for clear and ongoing communication /liaison group established with adjacent retailers/ building owners.	Yes
34	Rob McMurdo	Oppose – Concerns regarding construction phase – noise, dust, disruption to vehicle and pedestrian access and parking.	Yes
35	CCS Disability Action	Support –Seeks the inclusion of universal access.	Yes
36	Ashley Harris/ Skelts Jewellers	Support – general support for the overall concept but raises concerns with construction phase effects including disruption to vehicle and pedestrian access, parking, noise and dust. Seeks that Esk St street furniture be retained, and better communication established with neighbours.	Yes
37	Christine Henderson	Oppose –heritage loss and associated loss of a sense of place/ point of difference. No details provided on dump location.	Yes
38	Barbara Maher	Support – Will rejuvenate the heart of the City	No
39	Bruce Maher	Support– Chairman Troopers Trust – Will rejuvenate and add a heart to the CBD along with necessary covered parking. Heritage buildings uneconomic to restore. Suggests the need for an Independent Commissioner.	Yes

40	Lisa Wang/ Hong Kong Restaurant	Support – General support but raises concerns regarding construction phase effects on foot traffic, parking, loss of retail on south side of Esk St.	Yes
41	Joy Brown Note this submission was dated stamped as having been received after the submission period closing.	Support – general support but raises concerns regarding construction phase effects on parking and access and retail disruption and seeks that development be staged so retailers can relocate and to minimise disruption to Esk St and the wider area, parking and access	Yes
42	Murray Beck	Oppose- Seeks greater protection of heritage.	Yes
43	Lewis Thompson	Oppose – Concerns regarding construction phase effects on Esk St retailers. Concerns regarding ICC commercial involvement and risk	Yes
44	Invercargill Airport Ltd Note this submission was received after the submission period closing.	Neutral – Seeks conditions to ensure IAL's Designation 74 is achieved regarding avoiding plant or buildings extending into the horizontal surfaces that are in place to protect the safe functioning of aircraft.	No