

In the Matter of the Resource Management Act 1991

And

In the Matter of the Proposed Invercargill City District Plan – Appeals Version January 2017

And

In the Matter of an application by Bluff Oyster and Food Festival Charitable Trust for resource consent to demolish the Club Hotel at 100 – 116 Gore Street, Bluff (RMA/2018/174)

DECISION OF HEARING COMMISSIONER

1. By application dated 16 November 2018 the Bluff Oyster and Food Festival Charitable Trust sought consent from the Invercargill City Council to enable the “demolition of building” situated at 100-116 Gore Street, Bluff. Following public notification of the application and the receipt of three submissions in opposition I was appointed as Hearing Commissioner to hear and decide the application. A hearing was held in Invercargill on 17 April 2019.
2. The outcome is that the application for resource consent is declined.

Introduction

3. The Invercargill City Council, acting under the authority of section 34A of the Resource Management Act 1991 (RMA or the Act), appointed me as Hearing Commissioner to hear, consider and decide the application by Bluff Oyster and Food Festival Charitable Trust (the Trust or the Applicant). That appointment is set out in a letter dated 8 April 2019. The letter also confirms that I have been delegated the full suite of powers to hear and decide the application.
4. The application for resource consent was received by Council on 16 November 2018. A decision to publicly notify the application under section 95 of the Act was made on 11 December 2018. Public notification occurred on 13 December 2018. When the period in which submissions on the application could be filed with the Council closed on 1 February 2019 a total of three submissions, all in opposition to the proposal, had been received.
5. A date for the hearing of the application and submissions on it was set by the Council, that date being 17 April 2019. Prior to that date, a report prepared under s42A of the Act was circulated to the Applicant and submitters. That Report contains a comprehensive description of the proposal, evaluation of its actual and potential effects on the environment, assessment of the ‘fit’ of the proposal with the objectives and policies of the district plan, and a recommendation. Except where I state otherwise, I adopt the descriptions, evaluation and assessment contained in that report and therefore I do not repeat any of that material in this decision.
6. On the afternoon before the hearing I visited the application site, the immediate neighbourhood and the wider locality. I was not accompanied by anyone connected with the application or its processing by the Council, and I did not enter any of the subject buildings, there being no need to

do so because of the comprehensiveness of the material provided in the HIA¹ regarding the interior condition of the buildings.

The Proposal

7. The Bluff Oyster and Food Festival Charitable Trust has applied for a land use consent to enable it to demolish a Category II building (the former Club Hotel) listed on the Heritage New Zealand Pouhere Taonga register and identified in Appendix II – Heritage Record in the Invercargill City Proposed District Plan.
8. The location of the proposed activity is 100 – 116 Gore Street, Bluff. The legal description of the application site is Sections 2 and 3 Block I Town of Campbelltown and is all the land held in RT SLA2/269.
9. The Application comprises the following documents:
 - Application form
 - Assessment of Environmental Effects – only partially completed – by Bonisch Consultants
 - A Heritage Impact Assessment by New Zealand Heritage Properties Limited
 - An Engineering Report by Coles Consulting Limited
 - A letter of Commentary, Inspection, Review by GM Designs Limited
 - A letter from the New Zealand Transport Agency dated 17 October 2018
 - Minutes of the Bluff Community Board Meeting of 20 November 2017
 - Additional written comments provided by the Applicant prior to the hearing

Hearing

10. The hearing of the application was held in Invercargill on 17 April 2019. At the hearing the following were present and presented evidence:
 - Kylie Fowler & John Edminstin, trustees of the Trust and representing the Applicant
 - Cherie Chapman, submitter, and Cilla McQueen
 - Stuart Niven, submitter who participated in the hearing by way of phone link
 - Gareth Clarke, appointed by Council to prepare and present a s42A Report

The Applicant

11. John Edminstin spoke on behalf of the Applicant. He advised that the Trust had originally purchased the buildings at 100-116 Gore Street for the land that sat behind them. The Trust's intention was to subdivide the sites leaving the buildings on one (or more) new sites and to incorporate the 'vacant' land into the Bluff Oyster and Food Festival site, which has been developed to the rear of the subject buildings.
12. It is clear from the evidence that the Trust had no intention of being the long-term owner of the subject buildings but that its intention in this regard had not been realised. The evidence is that the Trust had exhausted all options available to it for the disposal of the buildings and that there had been very little interest expressed by potential purchasers. From the Trust's perspective demolition is a last resort and is driven by public health and safety concerns (for both the public

¹ The Club Hotel, Bluff. A Heritage Impact and Archaeological Assessment, New Zealand Heritage Properties Ltd, August 2018

on the street adjacent to the buildings and attendees at the annual Bluff Oyster and Food Festival), an inability to finance either earthquake upgrading or restoration of the buildings, and its understanding of its Trust Deed² that prevents the Trust from doing anything to the buildings.

13. It is generally accepted that the application for resource consent is light on many of the details necessary to enable a proper evaluation of the proposal. Given this, I sought, through a series of questions of the representatives of the Applicant, to elucidate further detail on the proposal and the alternatives considered. The responses to my questions have filled in many of the gaps in the application documentation. In the bullet points that follow I set out the key points of that oral evidence:

- The demolition activity will occur over a 5 day period and will follow 2 days of preparatory work and will be followed by 2 further days of clean-up work.
- All salvageable material will be removed from the buildings prior to demolition. While this material is proposed to go into storage (and indeed there is already some such material in storage) it was not made clear what is to happen to it in the future.
- The demolition will result in the buildings being removed down to footpath level. The rubble will be used on the site as fill (to create an enlarged level site for the festival).
- The demolition will occur immediately following the 2019 Bluff Oyster and Food Festival.
- The terraced gardens shown in the application will be constructed immediately following completion of the demolition and the structural work will be completed within 6 weeks. The planting of the gardens and establishment of the story-boards will follow.
- As an alternative to the terraced garden, it was suggested that a timber retaining wall could be constructed across the site (parallel to the Gore Street frontage) in front of which (but still on the site) could be placed a series of modified shipping containers. The suggestion was that these would form a covered walkway and the back wall (parallel to the street) would be used to display material in the form of story-boards reflecting the history of the settlement of Bluff. It was intimated that this proposal could be completed within 12 months of demolition.
- The benefits of the proposal to Bluff and Southland would include an enhanced festival (a larger site able to accommodate an additional 1000 attendees) and the increased contribution of the festival to the local economy, although in neither instance was credible evidence produced regarding the likelihood of these outcomes occurring or the value to the local economy.

14. By the time the Applicant's evidence was complete there had been a reasonably substantial change in the proposal regarding the Gore Street frontage of the site. As I now understand it, the proposal is to place a series of shipping containers across the site frontage and for these to be modified so that they are semi-open to the street, open at either end (so that the public can walk through them) and they are to contain a series of story-boards and/or displays focused on the history of Bluff. I understand that the story-boards/displays are to be regularly changed but neither the frequency nor commitment to this was elaborated on or explained.

The Submitters

15. The first of the submitters I heard oral evidence from was Cherie Chapman, whose presentation followed the recital of a poem by Cilla McQueen written for the occasion. The poem spoke of the history of the Club Hotel building, its importance in the social and built history of Bluff and the collective importance of the history of Bluff to the Southland Region and New Zealand.

² Bluff Oyster and Food Festival Charitable Trust: Trust Deed dated 26th day of November 2008

16. Ms Chapman impressed upon me the importance of thinking ‘big picture’ and long term regarding these buildings and their contribution to the social and built history of Bluff. She gracefully acknowledged the difficulty that the Applicant finds itself in with regard to maintenance and upgrading/restoration of the buildings but impressed upon me that that is not a sufficient reason to demolish these buildings. It was her view that while interest in the proposal through the public notification process had been modest at best, the post demolition reaction from the community “would not be good – it is the Bluff way”. Finally, Ms Chapman gave evidence that Venture Southland wished to establish a heritage precinct at Bluff which would include buildings on the main street and the wharves. She saw this as one component of the future rejuvenation of Bluff and thought that any decision on the future of the Club Hotel buildings should await finalisation of the Venture Southland proposals.
17. In her submission Ms Chapman had referred to something called the Stafford Strategy. So that I might understand its relevance to the matter in hand I asked for some elaboration. Rather than respond herself, Ms Chapman sought assistance from Mr Niven. As I now understand it, the Stafford Strategy is a Venture Southland sponsored tourism strategy for Southland. Relevantly, the report, the final draft of which is with Venture Southland, identifies built heritage tourism as a substantial opportunity; identifies a tourism hub at Bluff as a real possibility; but records that a severe lack of accommodation throughout Southland is a very real constraint on the realisation of this vision. Potential future uses for the subject buildings is the clear inference to be drawn from this description of the Stafford Strategy.
18. Ms Chapman concluded her evidence by recording her dislike for the proposal to place modified shipping containers across the Gore Street frontage to the site. Her clear preference is for retention of at least the façade and one room depth behind it of the existing buildings. Finally, she expressed the hope that a collaborative outcome for the future of the Club Hotel building could be achieved.
19. Mr Niven began his evidence by acknowledging the Applicant’s difficulty with regard to the buildings but expressed the view that it was of its own making because the subject buildings were listed in the District Plan as being of heritage importance at the time the Applicant purchased them. He also suggested that the Applicant maybe has not received, or been in a position to receive, or maybe had not sought, strategic advice of the sort necessary in respect of projects such as this. In his view this is considerably bigger than a local project and a more ‘national’ approach is required when it comes to exploring options other than demolition for the buildings.
20. In his view demolition of the subject buildings would result in a gap in the streetscape the consequences of which would be wider than just the buildings themselves. Further, either proposal (the garden and story-boards on the wall behind or the modified shipping containers) would, in his view, only emphasise the gap. The issue with the gap is that, in his experience, people tend to avoid such gaps, and as a result any businesses in close proximity also suffer. Further, it was his view that because Bluff is a port town (where essentially the main street is occupied by buildings on one side only and facing the port) demolition of the scale proposed would have a powerful effect on the overall built integrity of the town centre and its relationship with the port.
21. Mr Niven acknowledged that the buildings are in very bad condition and that some demolition is probably inevitable. He tempered this, however, by suggesting that maybe 30 to 35 metres of the present façade could be retained with an empathetic structure of not less than one room depth of occupied space constructed or retained to support the façade.

Council s42A Report

22. As previously noted, I also had the benefit of a comprehensive evaluation and assessment report prepared by Mr Clarke on behalf of the Council. Having heard the evidence presented at the

hearing by both the Applicant and the submitters (and I do not forget the original written submission made by Lina Niha) I asked whether Mr Clarke had any comments he wished to make in addition to those already contained in his report and whether or not he wished to amend his recommendation. In respect of his recommendation, which was that resource consent should be declined, Mr Clarke confirmed his position. He also made a number of helpful comments in response to some of the evidence placed before me by the Applicant and submitters. Those comments can be summarised as follows:

- The problems arising from possible liquefaction are noted in the District Plan (the site is mapped as being subject to potential natural hazards) but nowhere in the application documentation is this issue satisfactorily addressed (including the Coles Consulting Ltd report). Also, in respect of potential natural hazards, Mr Clarke expressed concern over the lack of detailed consideration contained in the GM Designs Ltd reports.
 - While there is a potential health and safety risk issue with the buildings as they presently stand, the Invercargill City Council inspectors had not seen it necessary to list the buildings under the Building Act 2004 as a safety hazard and require upgrading.
 - In respect of Heritage policy 2.8.3 Policy 3, it was Mr Clarke's opinion that demolition would fail to avoid the potential adverse effects on heritage, and that a rebuild would not completely remedy or mitigate those effects.
 - Referring to Policy 5 in section 2.10.3 of the District Plan, which is concerned with the identification of Invercargill's townscapes of value, Mr Clarke noted that the policy specifically identifies the "rich variety of the Bluff built heritage of several styles" but that any implied protection is not at the level of s6 RMA protection. He also opined that the townscape referred to in the policy is confined to the area covered by the Business 2 (Suburban Shopping and Business) Zone and that the Club Hotel, in the context of Bluff, articulates the centre of that zone.
 - On the issue of threats to the viability of the Business 2 (Suburban Shopping and Business) Zone at Bluff Mr Clarke opined that at present there probably were none directly attributable to the proposal because the buildings are vacant, but the loss of the built space would result in less incentive or attraction for businesses to establish in the zone.
23. Finally, Mr Clarke opined that three key pieces of information were missing from the application, that these had not been provided during the course of the hearing and this confirmed his recommendation that resource consent should be declined. Those key information deficits are:
- A detailed structural assessment of the buildings
 - Details regarding options for partial retention of the buildings
 - Details of the benefits attributable to demolition.

Applicant's Reply

24. In reply to the evidence given by the submitters and Mr Clarke, the Applicant offered the following:
- The Applicant is concerned about health and safety issues arising from the condition of the buildings and any effects (actual or perceived) of these concerns on the festival which is its sole focus.
 - The Applicant does not wish to demolish the buildings but because they are such a large liability, and no one has come forward to provide assistance, this is the only course of action open to it. Linked to this is the fact that the cost of the reports necessary to support any alternative to demolition is prohibitive for the Trust.
 - Bluff has a declining population and the potential for growth in Bluff is overstated. Even if the Trust was able to restore the buildings there remains the question of who will occupy them.

- In the view of the Trust, there is no alternative to demolition that does not leave the Bluff Oyster and Food Festival at risk.

Evaluation

25. The proposal, as I now understand it and for which resource consent is sought by the Applicant, is to demolish four buildings at 100 - 116 Gore Street, Bluff, that together make up the Club Hotel, a Category II heritage building under Heritage New Zealand Pouhere Taonga's (HNZPT) list. The site is also recorded as a site of heritage value in Appendix II - Heritage Record, of the Proposed Invercargill City District Plan – Appeals Version January 2017 which has now reached the stage in its development where all appeals have been resolved and therefore is the relevant planning instrument.
26. Following the removal of the buildings the application proposes that the vacant land is to be incorporated into the site at the rear of the existing buildings, which is currently used as the venue for the annual Bluff Oyster and Food Festival. The land will be built up to match the ground level of the festival site using clean fill material from the demolition. The frontage of the site along Gore Street will be developed with modified shipping containers which will house a story-board display of the history of Bluff and the application site.
27. Resource consent is required for this proposal because Rule 3.8.9 classifies “The relocation or demolition of any building or structure listed in Appendix II.2 Sites Registered by Heritage New Zealand Pouhere Taonga” as a non-complying activity. The s42A Report also notes that resource consent may also be required for the earthworks activities associated with the demolition and subsequent filling of the site. The Applicant noted that resource consent may also be required for breaches in the relevant noise limits during the demolition. The application documentation is deficient in these regards but despite this, the overall classification of the proposal remains non-complying.
28. The s42A Report, in Sections 6 and 9, contains a full description of the planning context within which my evaluation must occur. I adopt that description for the purposes of this decision.
29. In essence, I am required to consider the proposal against the “gateway test” set out in s104D of the Resource Management Act 1991. If that ‘gateway’ is passed then I am to move on to consider the proposal in terms of s104(1) of the Act, make a decision on the application, and set out in my decision the reasons for that decision.
30. I note that s104(1) is “subject to Part II” of the Act. The current position regarding referring to Part II as I understand it is that I need only turn to Part II if there is uncertainty or a lack of clarity in the District Plan provisions that give effect to the purpose and principles stated in Part II or if there is a gap in the District Plan provisions. The proposed Invercargill City District Plan – Appeals Version January 2017 is a new instrument that, as far as I can ascertain, has been prepared in accordance with the requirements of the Act, and in particular when it is required to give effect to the provisions of a higher instrument. In other words, the District Plan gives effect to the Southland Regional Policy Statement; the regional policy statement gives effect to relevant national policy statements and the provisions of the Act. There is, therefore, no need for me to turn to Part II of the Act to assist with deciding this application. The District Plan covers all relevant matters and, as previously noted, is now beyond challenge and can be treated as the operative planning instrument.

31. This is not to suggest that the purpose of the Act is not relevant to my evaluation – it clearly is. I return to this matter shortly.

Section 104D

32. I have carefully noted the evaluation and conclusion set out in the s42A Report in respect of this “gateway” test. In essence, the conclusion is that the application fails both limbs of the “gateway” test – the effects on the environment will be greater than minor, and the proposal is contrary to the objectives and policies of the District Plan. With respect I do not agree with that conclusion.
33. Based upon my evaluation of the all the documentation that comprises the Application (including all written and oral material received up to the time when I closed the hearing) I agree with Mr Clarke that the effects of the proposal on the environment will be greater than minor. I do not, however, agree that the proposal is contrary to the objectives and policies of the District Plan.
34. Contrary is generally taken as meaning ‘opposed in nature’. While I am of the view that the proposal might frustrate the attainment of many of the outcomes sought by the objectives and policies of the District Plan, the language of those objectives and policies is such that I cannot conclude that the proposal is ‘contrary to’ them. For example, under Section 2.4 Coastal Environment, the most directly relevant objective (Objective 2.4.2.1) requires that “[t]he natural character of the coastal environment is preserved and protected from inappropriate subdivision, use, and development”. This objective is implemented through, relevantly, Policies 2.4.3.2 and 2.4.3.4. The applicable phrase in the latter policy is “Ensure that subdivision, use and development activities within the coastal environment: ... (C) Avoid, remedy or mitigate adverse effects on amenity, social, intrinsic, ecological, cultural and heritage values.” It is the options that the policy provides that make it difficult to conclude that this proposal is contrary to the policy.
35. Under the heading Heritage objectives 1 and 2 are particularly apposite:

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.

36. Objective 1 is implemented through policies 2.8.3.3, 2.8.3.5 and 2.8.3.8 and the district-wide heritage rules, while Objective 2 is implemented through Policy 2.8.3.2 and Appendix II. Again, the language employed in the most relevant policy (2.8.3.3) is less directive and more enabling than might be required if this proposal was to be declared ‘contrary to’ the outcome sought. That policy commences with the words “... avoid, remedy or mitigate the potential adverse effects ...”
37. For these reasons I have concluded that the proposal passes the objective and policy “gateway” in s104D of the RMA. I am not, therefore, required to decline the application and I can proceed with a more detailed assessment of the proposal before making a decision.

Actual and potential effects on the environment

38. An assessment of the effects on the environment of a proposal (in this case the demolition of four buildings) commences with an understanding of the current environment. That environment is described in the Heritage Impact Assessment and Assessment of Environmental Effects that form part of the application, the s42A Report and in the evidence presented at the hearing by the submitters. I accept those various descriptions as accurate and adopt them. For the purposes of this assessment the essential elements of the environment can be summarised as follows:
- Gore Street is the main street of Bluff (it is also State Highway 1). It is occupied by buildings over most of its length through the township on the south side only.

- The buildings which front Gore Street, within the Business 2 (Suburban Shopping and Business) Zone – in essence, the town centre - are of varying age and style but are constructed immediately adjacent (or within very close proximity) to the footpath. While there is no general uniformity of height, most are of two stories and extend across the entire site frontage.
 - The north side of Gore Street is unoccupied by buildings (with the occasional exception) and affords views to and across the port area.
 - In the immediate vicinity of the subject buildings there is a distinct uniformity of building height and, with one exception, architectural style which contributes significantly to a sense of place and aesthetic coherence.
39. The author of the s42A Report has identified, in Section 8 of that report, the key environmental effects that are relevant to a consideration of the proposal to demolish the four buildings. Those effects concern heritage values, streetscape and the character of the town centre, effects of the demolition itself, and positive effects arising from the demolition. That Report also sets out an assessment of these effects. I have read that assessment and I concur with and adopt both the identification of the relevant environmental effects and the assessment and conclusions in respect of each of those effects.
40. From this assessment it is possible to identify the issues in contention. The physical effects of demolishing the buildings and the consequent visual effect on the streetscape did not, on the evidence, appear to be matters of contention. Rather, the issue distilled down to one of whether or not sufficient thought and attention had been given to alternatives to demolition – the Applicant contending that it had exhausted all available options, that it was not able to afford to repair or restore the buildings and that it was not within the objects of the Trust as stated in the Trust Deed; the submitters maintaining that there is little evidence of a proper consideration (including engineering reports and costings) of the available alternatives, partly because the Applicant had not sought advice from suitably qualified experts. Even though this is the essence of the differences between the Applicant and the submitters, the resolution of this issue can be addressed through a consideration of the environmental effects identified above.
41. Before doing so, however, it is necessary to address the matter of the Trust Deed. As noted previously, it is the clear evidence of the Applicant that the Trust Deed does not allow anything to be done, presumably by the Trust, to the buildings. That is not how I see it. Before closing the hearing I requested, and received, a copy of the Trust Deed from the Applicant.
42. The object of the Trust is set out at Clause 3 of the Deed:
- The purposes of the trust are as follows:
To create, develop or increase amenities for the benefit of the general public of Bluff*
43. The powers of the Trust Board³, in order to carry out its charitable objects, include the acquisition “of any land ... the Board thinks necessary or expedient for the purpose of attaining the objects of the trust”, “to carry on any business”, “to borrow or raise money from time to time ...”, and “to do all things as may from time to time be necessary or desirable to enable the Board to give effect to and attain the charitable purposes of the trust”. This is somewhat at odds with the evidence of the Applicant given at the hearing.

³ Refer to Clause 7 of the Trust Deed.

44. I am unable to reconcile the terms of the Trust Deed with the evidence given at the hearing and therefore have concluded that I should place little weight on the evidence of the Applicant that it is prevented by its Trust Deed from repairing, restoring or adaptively reusing the buildings.
45. The effects on heritage values of the demolition, and the subsequent replacement of the buildings with modified shipping containers, will be significant and irreversible. The four buildings present a coherent façade to the street because of their bulk and location on the sites, because of their architectural similarities, because of their presence within and contribution to the wider streetscape and because of the history of human settlement and endeavour within Bluff (and nationally) that they represent. Removal of these buildings will erase those contributions and connections. Only in a small way will the erection or display of story-boards depicting that history compensate for this loss. Further, the application (including responses to direct questions on this topic) lacks detail regarding the material to be displayed, how it is to be maintained, and how it might compensate for the loss of the four buildings.
46. From a townscape perspective the gap that would be created by the demolition of these four two-storey buildings cannot be healed by the placement of modified shipping containers. The shipping containers lack the physical presence of the buildings and therefore may act to reinforce the gap. Further, they bear no resemblance to the architectural form of the buildings to be demolished or the buildings that would “bookend” them within the streetscape.
47. Once demolition has occurred all options for retention and repair and adaptive reuse of the four buildings dissipates. The consequence of this is that all of the social and heritage values of those buildings, other than by way of pictorial and written representation, is also lost.
48. Finally, the only technical evidence on this topic is contained within the HIA that forms part of the application for resource consent. That report is comprehensive and of assistance in this evaluation. The issue, however, is that it contains a significant contradiction which I was unable to reconcile because the author of the report was not available for questioning. That contradiction is captured in the following sentences that I quote from the report. The first three quotes speak clearly of the significance of the effects demolition will have on heritage values and the streetscape.⁴ The fourth quote clearly identifies that the only justification for demolishing the buildings – the outcome supported by the authors of the HIA - is the increased capacity of the festival site.

The importance of the Club Hotel has been recognised by HNZPT, and the research undertaken by NZHP has further strengthened this determination. The Club Hotel stands as a rare example of Renaissance Revival architecture in Bluff, with only one other similar building (the Post Office) remaining, and it is a testament to the vibrant port and town that Bluff once was. As is discussed in detail in Section 9, the overall heritage value of the Club Hotel is considered to be medium. The physical loss of the Club Hotel constitutes a major adverse effect and will remove all heritage value. Using the matrix in Table 11-1 below, the overall level of significance of effects on the heritage values is determined to be moderate to large.⁵

The demolition of the Club Hotel will see a significant loss not only to the heritage values of the site itself, but also to the broader Gore Street streetscape. Only one other building of this scale and period will remain on Gore Street: the adjacent former Post Office (completed in 1900) that currently operates as the Bluff Lodge. The proposed new fence and terraced gardens will go some way to mitigate the loss of this building and will span

⁴ Emphasis added

⁵ HIA at page 86

the entire length of the former building; however, it is recognised that the new build will be of a significantly different function and scale.⁶

The demolition of the Club Hotel will have a significant and irreversible impact on this prominent streetscape and will result in the loss of these tangible pieces of Bluff's past.⁷

While the redevelopment will see the physical loss of a significant heritage building, it will allow an increase in capacity for the festival and this will bring economic benefit to Bluff.⁸

49. Taking the report as a whole, and setting it alongside the oral evidence from the Applicant that retention of the buildings would be the preferred outcome if the financial and public safety liability issues could be satisfactorily addressed, I am drawn to the conclusion that the first three of these quotations best represents the findings of the author of the HIA and the position of the Applicant. They also happen to capture the sentiments of the submitters expressed in their original written submissions and in their evidence presented at the hearing. I therefore find that the effects of the proposed demolition of the four buildings that comprise the Club Hotel, Bluff on heritage and townscape values will be significant and are unable to be mitigated.
50. The effects of the demolition activity itself are only scantily explained in the application documents. The oral evidence presented at the hearing did provide some further detail but there does not appear to have been any serious consideration given to those effects and how they might be avoided or mitigated. From the application, the evidence, and the s42A Report those effects can be summarised as:
 - Noise and dust arising from the deconstruction of the masonry/brick structures, crushing and placement of the demolition material to raise the level of the sites, vehicle movements taking away any material to be disposed of elsewhere
 - Effects on the flow of traffic on Gore Street as a result of lane closures and diversions.
51. The evidence of the Applicant is that these effects will be temporary and will last no more than 9 days. There is no evidence to the contrary on this matter, but neither is there any form of demolition plan that can be referred to for confirmation of the demolition method or timeframe. Based on what evidence there is, inclusive of the assessment contained in the s42A Report, it is reasonable to conclude that the effects on the environment of the demolition activity itself will be no greater than minor. This conclusion is capable of achievement through any consent granted being subject to appropriate consent conditions. Further, this conclusion relies on the Applicant obtaining all necessary consents from the Southland Regional Council in respect of discharges of dust and construction stormwater, or upon compliance in full with any terms and conditions of permitted activities that allow such discharges.
52. Any assessment of effects on the environment must also consider any positive effects attributable to the proposal. The application and the evidence presented at the hearing identifies the following positive effects that will arise from the demolition of these four buildings:
 - Significantly reduced public safety and financial liability for the Applicant
 - The potential to increase the area of the Bluff Oyster and Food Festival site and thereby satisfy the demand for tickets to the annual event
 - The consequential benefits of more attendees to the local and regional economies.

⁶ HIA at page 87

⁷ HIA at page 87

⁸ HIA at page 92

53. It is clear from the evidence that ownership of these four buildings is a financial liability for the Trust. It did, however, purchase them in full knowledge of their condition and their listing as an historic heritage item in the Invercargill City District Plan.
54. It is the evidence of the submitters that retention of at least the front part of the four buildings (façade plus at least one room depth) would achieve the outcomes sought by the district plan in respect of the protection of heritage values. Given the objects of the Trust and the powers of the Trust Board, as stated in the Trust Deed, it would appear that the benefits to the Applicant from a reduction in liability following demolition are somewhat overstated.
55. While it is accepted that these are realistic benefits able to be attributed to the demolition of these four buildings, there is no evidence, other than anecdotal evidence, in either the application or presented at the hearing to support the claims or to quantify the benefits. It is, therefore, difficult to place more than a modicum of weight on these benefits when evaluating the environmental effects of the proposal.

Relevant provisions of a plan or proposed plan

56. The relevant plan is the proposed Invercargill City District Plan – Appeals Version January 2017. The general scheme of the District Plan is that following an introduction that contains general information relevant to an understanding of the context within which the plan has been developed there is a section that sets out district wide issues, objectives and policies and zone-specific issues, objectives and policies. Section Three of the District Plan contains the rules that implement the policies. This is followed by sections setting out the definition of terms used in the Plan, the appendices, and a series of infograms. Of particular relevance to an evaluation of this application for resource consent are the following:
 - The issues, objectives and policies related to heritage – Section 2.8
 - The issues, objectives and policies related to townscapes – Section 2.10
 - The issues, objectives and policies related to the Business 2 (Suburban Shopping and Business) Zone
 - The district wide rules related to heritage – Section 3.8
 - The District wide rules related to townscapes – Section 3.10
 - The Zone rules related to the Business 2 (Suburban Shopping and Business) Zone
 - Appendix II – Heritage Record.
57. The s42A Report, commencing at page 19 under the heading Proposed Invercargill City District Plan 2016, sets out what the author considers to be the relevant provisions of the District Plan and contains an assessment of the proposal against those provisions. I concur with the identification of the relevant provisions, the assessment made and the conclusions drawn with the single exception that I do not agree with the overall conclusion that “the application as it currently stands is considered to be in part contrary to the objectives and policies of the Proposed District Plan relating to heritage”⁹.
58. The outcomes that the District Plan provisions seek in respect of heritage values is that those values are identified and protected, that the built heritage is appropriately utilised, and that the heritage values are appropriately managed to avoid or mitigate the adverse effects of natural processes and climate change. These outcomes are to be achieved through avoiding remedying or mitigating the potential adverse effects of development (in this case, demolition) on heritage by promoting active management, exploring all reasonable means of restoration, adaptation and reuse as alternatives to demolition, through listing heritage buildings of significance in Appendix II, and,

⁹ S42A Report at page 20

relevantly, through classifying the demolition of any building or structure listed in Appendix II as a non-complying activity.

59. This suite of provisions is set against demolition of buildings of heritage value except as a last resort. Before demolition can be contemplated these provisions require a thorough and comprehensive assessment of all restoration, adaptation and reuse alternatives. Neither the application for resource consent nor the evidence presented at the hearing contains sufficient information to demonstrate that demolition of these four buildings is the only viable option. While it is accepted that the Applicant has attempted to sell the buildings¹⁰ (so that someone else might take on the task of restoration, adaptation or reuse) and that there is some evidence on the possible costs of earthquake strengthening and restoration, in neither instance is the evidence sufficient to satisfy the requirements of the clear policy direction or to support a conclusion that demolition is appropriate.
60. This conclusion is further supported by the fact that this proposal to demolish four buildings that make a significant contribution to the townscape, streetscape and aesthetic coherence of the central area of Bluff sits very uncomfortably with Policy 2.10.3.5 which identifies the rich variety of the Bluff built heritage as a townscape of value to the District.
61. The final particularly apposite policy, forming part of the package of provisions in the District Plan that promote retention of buildings of heritage value, is Policy 2.23.3.13. This policy is concerned with demolition or removal activities in the Business 2 (Suburban Shopping and Business) Zone and expresses a clear preference for restoration and adaptive reuse of buildings as opposed to demolition.
62. I have noted the other objectives and policies identified in the s42A Report as relevant to this evaluation. I accept that these objectives and policies are relevant and I accept the assessment of these provisions and the conclusions drawn from that assessment set out in that Report.
63. Given this clearly articulated policy framework, it is my conclusion that granting consent for the demolition of these four buildings based on the evidence presented in support of that proposal would severely frustrate, and almost certainly prevent, the attainment of the outcomes sought by the District Plan in respect of the built heritage of this particular locality.
64. Also under this heading it is appropriate to consider whether or not the permitted baseline should be applied. It is the evidence before me that the demolition of a listed heritage building is not provided for by the Proposed District Plan and therefore does not form part of the baseline.
65. The District Plan does, however, permit the demolition or removal of buildings and structures in the Business 2 (Suburban Shopping and Business) Zone provided the area of the building or structure is less than 120 square metres¹¹. This means that the two buildings on either side of the subject buildings could be demolished, provided they comply with the area threshold. There is no evidence before me to suggest that I should consider the effects of a permitted demolition in my evaluation of this proposal or that establishes how the permitted baseline might alter the adverse environmental effects of the proposal. I have, therefore, not taken any permitted baseline into account in this evaluation.

¹⁰ Refer page 87 of HIA

¹¹ Rule 3.4.1

Other planning instruments

66. Section 104(1)(b) of the RMA directs that I am to consider any relevant provisions of all higher order planning instruments in my evaluation of this proposal. Those that are particularly relevant are the New Zealand Coastal Policy Statement 2010 and the Southland Regional Policy Statement 2017. The s42A Report helpfully sets out an assessment of this proposal against those provisions that the Report's author considers to be of relevance. I was not presented with any evidence that challenged either the provisions that had been identified or the assessment undertaken. I am satisfied that there are no other provisions that are particularly apposite, and I adopt the assessment provided. I do not, however, accept that the proposal is contrary to the identified objectives and policies of the regional policy statement. Rather, I have formed the view that the proposal is at odds with the outcomes sought by those objectives and policies and indeed is likely to frustrate the attainment of the outcomes sought. It is not contrary to them because none, with the single exception of Objective HH.1 - Protection of historic heritage, is worded such that demolition cannot be contemplated.
67. I have also noted the comments made in the s42A Report regarding the applicability of all national environmental standards and national policy statements to this evaluation and I concur with the conclusion drawn that none is particularly apposite.
68. In this context it is also important to note that the Invercargill City District Plan has only very recently been developed. In the development of that planning instrument it has been necessary for that District Plan to give effect to the higher planning instruments, particularly the New Zealand Coastal Policy Statement and the Southland Regional Policy Statement¹². The District Plan has now reached the stage in its development where it is beyond the reach of submissions and appeals and those that were filed have now been resolved or decided. The text of the District Plan is, therefore, now final. That being the case, it is reasonable to conclude that it does indeed give effect to the higher planning instruments. It is therefore not necessary for me to undertake a detailed assessment of the proposal against the provisions of those instruments.

Any other matter considered relevant and reasonably necessary

69. There is only one other matter that I consider to be of relevance to this evaluation – the registration of the subject buildings by Heritage New Zealand Pouhere Taonga (HNZPT) and their classification as Category II under the Heritage New Zealand Pouhere Taonga Act 2014. No evidence has been produced regarding an application to HNZPT for the demolition of these buildings nor for any archaeological authority. Neither has there been any input into this process from HNZPT. I am, therefore, unable to take this matter any further.

Part 2 RMA

70. Section 104 of the Act directs that any consideration of an application for resource consent and any submissions made must occur subject to Part 2 of the Act. Part 2 contains the purpose and principles of the Act.
71. The development and preparation of a district plan must be in accordance with this purpose and these principles¹³. Recent caselaw has determined that unless there is incomplete coverage or uncertainty of meaning in the intervening statutory documents¹⁴ then it is not necessary to turn to Part 2 of the Act, when evaluating an application for resource consent, to guide some overall judgement of the merits of the proposal. Rather, that judgement should be founded on the relevant

¹² Section 73 RMA

¹³ Section 74 RMA

¹⁴ *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd*

provisions of the district plan which is, in effect, the local interpretation and implementation of that purpose and those principles.

72. Given the stage in its development that the District Plan has now reached my finding that it covers all the matters necessary for an evaluation of this proposal, I have not found it necessary to turn to Part 2 for additional assistance.
73. For completeness, however, I record that based upon my evaluation of the proposal I have concluded that the demolition of these four buildings would not promote the sustainable management of the physical resources of the district.

Outcome

74. Based on the application as it currently stands, at its most basic level this evaluation appears to come down to a choice between demolition and associated redevelopment with the placement of modified shipping containers along the Gore Street frontage to the sites and the status quo, being the retention of four buildings that are continuing to deteriorate and that will remain unoccupied. When put in those terms, and coupled with the unsubstantiated benefits claimed by the Applicant, it might not be unreasonable to conclude that demolition is the outcome that best achieves the purpose of the Act.
75. I am, however, very concerned that there is a significant lack of detail in the application to be able to definitively rule out the potential for alternative outcomes that might involve no, or only partial, demolition and/or community or public agency driven and funded restoration and retention, and/or adaptive reuse of the buildings. Those alternative outcomes would also achieve the purpose of the Resource Management Act 1991. I am also persuaded that the proposal will result in significant adverse effects on the environment and that it is not consistent with the outcomes sought by the relevant planning instruments.
76. For the reasons set out in the preceding paragraphs the outcome is that the application for resource consent is declined.

Dated at Dunedin this 7th day of May 2019



Peter Constantine

Hearing Commissioner