

Before the Invercargill City Council

In the matter of

A notified application for resource consent(s) under the Resource Management Act 1991

In the matter of

An application by HWCP Management Limited for resource consents to demolish, alter and redevelop land and buildings in the central business district in a block bounded by the east side of Dee Street, the south side of Esk Street, the west side of Kelvin Street and the north side of Tay Street, Invercargill.

DECISION OF RESOURCE MANAGEMENT COMMISSIONERS

Dated: 4 June 2019

Authorised Version for release and publication on the Invercargill City Council's website by the Panel comprising **John Maassen** (Chairperson), **Gina Sweetman** and **Jane Black** while reserving the power to make minor corrections and amendments if required under the Resource Management Act section 123. If that occurs the corrections will be published and circulated.

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1. Overview

1.1.1 In the telling of Invercargill's history in the materials we received, Christian Niven is never properly acknowledged as the first settler, alongside her husband John Kelly, of Invercargill in Murihiku. It is a small detail but we mention it because this decision is about Invercargill's Block II, as it is called, and about its true and important historical values. Block II's pattern of habitation in the early days must have been sustained by Christian's early efforts at place-making to create opportunities for her family. And even today, it is opportunities for the common good that the community still seek from Block II through place-making. It is a point we understood clearly after hearing from the submitters over four days in March in the Council Chamber.

1.1.2 This is a decision under the Resource Management Act 1991 (RMA) made under delegated authority for the Council. It addresses a proposal by HWCP Management Limited as Applicant to substantially replace most of the buildings in a block called by the heritage experts "Block II" in the centre of Invercargill's Central Business District (CBD). The block is bounded by Dee, Tay, Esk and Kelvin Streets. It involves the complete demolition of sixteen of the twenty heritage buildings listed below appearing as listed items in the Proposed District Plan.

To be retained, Façade to be retained, To be demolished

Building Name	Address	Description	HNZ List No. (category)	ICC District Plan No. (tier)
Bank of New South Wales	1 Dee Street	Edwardian Revival brick building built for bank in 1904	2443 (I)	14 (1)
Newburgh Building	33 Dee Street	Commercial style five-storey building completed 1929	2470 (II)	15 (1)
Lewis & Co. Building	29 Esk Street	Commercial style completed 1914	2519 (II)	33 (1)
Southland Times Building	67 Esk Street	Edwardian brick Italianate building built 1907-1908	2513 (II)	34 (1)
Barham's Building	7 Dee Street	Single storey Victorian shop with simplified façade	n/a	84 (removal)
Lumsden's Building	9 Dee Street	Two-storey Victorian shop with simplified façade	n/a	85 (removal)
Smith's Building	31 Dee Street	Two-storey brick Victorian building with modernised façade	n/a	88
Coxheads' Building	35 Esk Street	Two-storey brick Victorian shop	n/a	131 (2)
Martin, Maitland & Co's Building	37 Esk Street	Two-storey Victorian shop updated in Art Deco style	n/a	132 (removal)
Temple Chambers	49 Esk Street	Two-storey Victorian building, Art Deco update	n/a	136 (2)

Building Name	Address	Description	HNZ List No. (category)	ICC District Plan No. (tier)
NZ Insurance Company Building	53 Esk Street	Two-storey Victorian building, Art Deco update	n/a	137 (2)
Cambridge Arcade	59-61 Esk Street	Built in 1934, good example of Art Deco style	n/a	138 (2)
Nichol's Building	63 Esk Street	Two-storey Art Deco building built 1929	n/a	140 (2)
Hotel Cecil and Fairweather's Building	2-16 Kelvin, 58-64 Tay Street	Group of Victorian/Edwardian buildings	n/a	146 (2)
Thompson's Building	18 Kelvin Street	Two-storey Art Deco building	n/a	147 (2)
Annie Ibbotson's Building	30 Tay Street	Two-storey Art Deco building built 1933	n/a	163 (2)
Cambridge Buildings	40 Tay Street	Good example of Art Deco style	n/a	166 (2)
Herbert, Haynes & Co. Building	42 Tay Street	Late Victorian two-storey building updated in Art Deco style in 1935	n/a	167
H & J Smith Building (MacPac)	48 Tay Street	Two-store Edwardian building built 1910	n/a	170
H & J Smith Building (Zookeepers)	50 Tay Street	Two-storey Edwardian building built 1919	n/a	172

1.1.3 The new facility is to be called 'Invercargill Central', a name that will be proclaimed on the main entrance at Esk Street. The facility will provide for retail, food and beverage, hospitality and civic related components inter-connected by internal pathways and other spaces mostly under common cover with a total gross floor area of 73,601 m². As the name of the facility suggests, Block II lies at the geographical centre of Invercargill, at the heart of the story of Invercargill and its people and is the oldest continuously occupied area of Invercargill.

1.1.4 Block II is, therefore, an archaeological site with potential at the subsurface level to reveal more information concerning Invercargill's early development because 22 sites pre-date the 1900s.

1.1.5 In its most recent District Plan (the very mature Proposed District Plan) the community has expressed its aspirations for the CBD by this clear and concise statement at section 2.21:

"Central Business District: One of the main thrusts of the Plan is that the Council wishes to use it as one of several methods to support the ongoing viability and vibrancy of the City Centre, to reinforce its role as the City's primary centre for

retailing, business, cultural and entertainment activities, and to retain the best of its rich architectural character and heritage”.

- 1.1.6 The Applicant’s bold, proposed enterprise aims to respond to that goal and to rescue the CBD from its current trajectory of decline, so that the CBD's proper function as the retail and entertainment heart of Invercargill will be reinforced and credibly secured by viable commercial activities. The ‘price’ for that initiative under the proposal is about \$180-200 million in capital expenditure, according to recent estimates, and the loss of the heritage elements in the block, affecting sixteen buildings listed in the proposed District Plan, two of which are also listed by Heritage New Zealand Pouhere Taonga. Thirteen of these buildings are assessed as of low value, while the Fairweather’s Building and Newburgh are both assessed as having medium value and the Lewis & Co Building as having high value. The best architectural elements on Esk Street will be retained comprising the façades of the Coxheads’ Building, the Southland Times Building and the Cambridge Arcade, would be retained.
- 1.1.7 A proposal of this scale that would replace most of the commercial building stock and heritage elements in the core of a city that has accumulated over a century does not emerge unexpectedly or from left field. The proposal’s scope, incubated *raison d’ être* and potential impacts can only be comprehended by a sweeping but brief consideration of the history of Invercargill’s CBD, the condition of the CBD’s structures and the aspirations of people concerned for the CBD’s future.
- 1.1.8 In the early 1850s, Christian Niven, a Scottish widow with three children from the Taieri Plain, met and married John Kelly, an Irish whaler living on Ruapeke Island. The couple established a whare near what is called Bank Corner in Invercargill. The precise location is unknown but thought to be the area that is now a car park behind Reading Cinema and around the Coxheads’ Building in Block II. It was there that the first European, a boy, was born on the soil of present-day Invercargill in 1856. Unoriginally, the boy was also called John Kelly.
- 1.1.9 In the same year that John Kelly (Junior) was born another John, John Turnbull Thomson, came to Southland under direction from the Commissioner of Lands to mark out a new southern city on the banks of the Oreti and Makarawa Rivers. John Turnbull Thomson was New Zealand’s Chief Surveyor. The Scottish word “Inver” in the name Invercargill captures the idea that the city was to be located at the confluence of rivers.

1.1.10 Mr Turnbull Thomson identified the terrace on the north bank of the Oterewa (Otepuni) Stream as the best spot for a new centre. That was also a location recognised by Māori as the route into the interior. It was here that the blended Kelly family lived, surrounded by the Taurakitewaru Forest.

1.1.11 An authoritative text on the Southland story to 2006 (and upon which we relied for some of our appreciation of Invercargill central's early and recent history alongside the tome of Dr Cropper's *et al* Assessment of Environmental Effects concerning the heritage values of Block II) was given to us by a local architect, and book project committee member, Mr Simpson. It is the book called "*Murihiku – the Southland Story*"¹. It describes the arrangement of Mr Turnbull Thomson's survey plan in this way:

"The two key streets on Thomson's Plan, Tweed from the wharf and Tay along the Terrace would be linked by Clyde Street. On this basis, Thomson proceeded to lay out his plan for Invercargill, a mile square, with reserves just inside all four boundaries. A fifth reserve ran down the Otarewa Stream and just over the northern boundary deep into the heart of the Taurakitewaru Wood, he reserved 200 acres (80 hectares) for Queens Park (now the City Gardens and golf course). His Dee Street ran through the depths of the Taurakitewaru Wood, but this would be cleared later to give access to the north. He named these four principal streets of Invercargill after rivers in Scotland and, in these days of dense traffic, citizens appreciate his foresight in making them all two chains (40 metres) wide".

1.1.12 An early diagram of the subdivision of Invercargill into 100 blocks is in Appendix 2, Plate 3.

1.1.13 From these humble beginnings on the edge of the Waihopai estuary, Invercargill Central blossomed as the centre of the Southland Province.

1.1.14 Any city centre carries the most concentrated narrative and most evident fingerprints of the social, cultural and economic development of a region through its built form. Dr Cawte, a local heritage expert, described the block as a palimpsest, a literary metaphor pertaining to layered ancient texts that retain elements of

¹ "*Murihiku – the Southland Story*": published by the 'Southland to 2006' Book Project Committee, a subcommittee of the Divan Literary Foundation.

earlier versions. The block bounded by Dee, Esk, Kelvin and Tay Streets is therefore in heritage terms paradigmatic of Invercargill's heritage values.

- 1.1.15 Invercargill's rapid development and prosperity at the turn of the 20th Century is seen in the large collection of heritage buildings in the CBD. At the front door to the block is the former Bank of New South Wales designed by the architect C J Brodrick. An imposing bank building occupied each corner of that intersection with the Crescent. Only three remain and the loss of the fourth is palpable.
- 1.1.16 While the province's wealth was built on agriculture, Invercargill obtained the physical, cultural and architectural expression of improving prosperity in an interesting collection of buildings representing differences in architectural taste and vernacular that were used by the service industries such as banking, insurance, professionals and the fourth estate. The highest concentration of that service sector was in or adjacent to Block II. And this remained mostly true until the transformative 1980s, when New Zealand let go of what is called its "fortress mentality" pertaining to a particular interventionist style of economic management, with resulting and enduring adverse impacts on the function and vibrancy of the CBD. A summary of the many styles in Block II is in the table below.

Building Name	Original Style	Current Style
Smith's Building (31 Dee Street)	Victorian Revival	Functionalist
Newburgh Building (33 Dee Street)	Commercial	Commercial
Lewis & Co. Building (29 Esk Street)	Commercial	Commercial
Coxheads' Building (31-35 Esk Street)	Victorian Revival	Victorian Revival
Martin, Maitland & Co.'s Building (37 Esk Street)	Victorian Revival	Art Deco
MacDonald's Building (41 Esk Street)	Victorian Revival	Functionalist
Temple Chambers (49 Esk Street)	Victorian Revival	Art Deco
NZIC Building (51-53 Esk Street)	Victorian Revival	Art Deco
MLC Building (55 Esk Street)	Post-Modern	Post-Modern
Cambridge Arcade (59-61 Esk Street)	Victorian Revival	Art Deco
Nichol's Building (63 Esk Street)	Art Deco	Art Deco
Southland Times Building (67 Esk Street)	Victorian Revival	Victorian Revival

Building Name	Original Style	Current Style
Southland Times Press Hall (69 Esk Street)	Post-Modern	Post-Modern
Thompson's Building (18 Kelvin Street)	?	Art Deco
Hotel Cecil (1-16 Kelvin Street, 60-64 Tay Street)	Victorian Revival	Art Deco
Fairweather's Building (58 Tay Street)	Victorian Revival	Victorian Revival
Allot & Eunson's Building (54 Tay Street)	International	International
H & J Smith Building (Zookeepers Café) (50 Tay Street)	Victorian Revival	Functionalist
H & J Smith Building (MacPac) (48 Tay Street)	Victorian Revival	Art Deco
Cambridge Buildings (40 Tay Street)	?	Art Deco
Carter's Building (36 Tay Street)	International	International
Annie Ibbotson's Building (30 Tay Street)	Art Deco	Art Deco
Kingsland's Shop (26 Tay Street)	Victorian Revival	Functionalist
Peters' Building (22 Tay Street)	Victorian Revival	Art Deco
Hannahs (16 Tay Street)	Functionalist	Functionalist
Watson's Building (8-14 Tay Street)	Victorian Revival	Functionalist
ANZ Building (4 Tay Street)	International	International
Bank of New South Wales (1 Dee Street)	Victorian Revival	Victorian Revival
Ott's Building (5 Dee Street)	Victorian Revival	Functionalist
Barham's Building (7 Dee Street)	Victorian Revival	Functionalist
Lumsden's Building (9 Dee Street)	Victorian Revival	Functionalist

1.1.17 Many of the buildings in Block II are far from authentic when examined closely and with expert assistance. Most have experienced major internal reconfiguration as late as the 1980s to maintain their relevance in a changing commercial and service sector environment. Others have highly modified frontages at grade to accommodate new tenancies over the years. And some façades were simplified as architectural styles moved in that direction.

- 1.1.18 The most coherent and authentic streetscape is on the more pedestrian friendly Esk Street, with its more intimate proportions. It is Esk Street's pleasant arrangement of diminutive, human-scale and modified (but mostly Victorian) façades that made it the logical focus of significant public expenditure in artworks, paving, trees and café seating over the years. That initiative commenced under the leadership of Invercargill's first woman mayor, Eve Poole QSO. It was in response to the economic forces unleashed by the fourth Labour government, leading to significant restructuring and retrenchment of many service industries in the late 1980s onwards. This public expenditure was intended to create a sense of place and make a contribution to reinvigorating pedestrian traffic.
- 1.1.19 The inexorable decline, relative to previous eras, in the CBD's functional amenity matched by deteriorating building fabric has, nevertheless, continued for almost four decades. It was not staunched by the cosmetic changes the community implemented through the remodelling of public infrastructure. The causes for this decline are many and cannot be sensibly sheeted home to the market-focused policies of central government in that era that merely drew the veil to reveal the broader market imperatives that were inevitably going to etch their mark on the social, cultural and economic arrangements of any community and its infrastructure.
- 1.1.20 Natalie Hampson, an economist specialising in retail economics, was called as a witness by H & J Smith Holdings Limited (H & J Smiths), a large department store retailer in the adjoining block. Ms Hampson considered that a significant cause for the CBD's decline was changes in retail activity that lead to the development of big-box retail or large format retail locations around Leven Street on the edge of Invercargill's railway sidings. Ironically, she noted, some of this was facilitated by land sales by the Invercargill City Council that also, apparently, at the time did not have a strong centres-based District Plan. Perhaps that reflected the ethos of the time and the view that it was not the business of local government to control market forces, even when that may have significant distributional effects on the efficient and effective use of existing infrastructure that supports the social and cultural well-being of communities.
- 1.1.21 While the causes of this economic decline are many and the relative significance of them uncertain, the consequences are undeniable and can be objectively framed. At [5.22] of her evidence, Natalie Hampson summarised her four key findings on the economic data concerning the performance of the CBD Core as follows:

- (a) Total business across the CBD core decreased by 43 between 2000 and 2017 (-19%). In contrast, the rest of the CBD has increased by 218 businesses in that same period (+26%).
- (b) The total workforce of the CBD Core has decreased by 535 people (-22%) between 2000 and 2017 (and more if one considers change since the peak in 2005). See figure 4. In contrast, the workforce in the rest of the CBD has increased by 1025 (+28%) in that same period (2000-2017).
- (c) The count of retail businesses in the CBD has decreased by 27 between 2000 and 2017 (-30%). In contrast, the rest of the CBD has increased by 16 retail businesses in that same period (+13%).
- (d) Total retail employment in the CBD Core has decreased by 236 people (-29%) between 2000 and 2017. In contrast, retail employment for the rest of the CBD has increased by 824 (+61%) in that same period (2000 – 2017).

1.1.22 At [5.24] of her statement Ms Hampson rather graphically stated:

"My analysis tells a clear story of a CBD that is being 'turned inside out' with a CBD core hollowed-out in terms of economic activity. Furthermore, it shows that retail spending in other areas outside the CBD, such as the suburban centres is increasing, despite only slow population growth. This indicates the growth in shoppers and sales has not led so much as to increased household demand, rather shifts in shopping patterns – the shoppers increasingly choosing not to shop in the CBD (and especially not in the CBD core) to meet their retail needs".

1.1.23 At [5.26], Ms Hampson stated:

"Past planning framework and planning decisions played a key role (determining where development can occur), as has the physical condition of the building stock. What is evident is the role that LFR (large format retailing) in the CBD fringe has had on changing the viability of many small format comparison retailers in Invercargill and drawing customers and therefore vitality away from the CBD core".

1.1.24 Consistent with modern urban planning theory, Ms Hampson, in common with most other people we heard from, supported decision-making under the RMA that reinforced the vitality and health of the CBD Core and especially its cornerstone, Block II. Indeed, she gave evidence for the Council on policies supporting that

outcome in the proposed District Plan hearings. If that is not undertaken, Ms Hampson opined, then it will be counterproductive to many social, cultural and economic aspirations of Invercargill's population, including enhancing tourism opportunities, enhancing social and cultural institutions such as the Southland Institute of Technology (SIT) and revitalising the wider CBD.

1.1.25 The Invercargill City Council was not deaf to the longstanding concerns of the community regarding the decline of the CBD Core. It responded both in its capacity as a regulator and as a catalyst for economic development.

1.1.26 In the new District Plan (the proposed District Plan) the primary resource management issue identified for the Business 1 Zone that captures the CBD Core is:

"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 located outside the City Centre, from national and international changes in retailing and deferred maintenance and structural issues associated with old buildings".

1.1.27 In addressing this crucial issue, the proposed District Plan (that is for all relevant intents and purposes operative) recognises that some major redevelopment must occur in the CBD Core with significant changes to the existing built form, including the heritage elements. To further focus that redevelopment imperative, the District Plan introduces the spatial method of a precinct, and one of those precincts is called the "Priority Redevelopment Precinct". It encompasses the two major blocks in the CBD Core comprising Block II and the block bounded by Dee, Don, Kelvin and Esk Streets.

1.1.28 Also, while the District Plan was under development under the RMA Schedule 1, the Council was aggregating land in Block II through its property company called Invercargill Property Limited. That was perhaps because in the proposed District Plan the Council said in section 22.2 that for the Priority Redevelopment Precinct it had accepted responsibility for parking provision and to make good on its commitment to a so-called *partnership* with the business sector to allow more intensification on CBD land.

1.1.29 A company associated with the HW Richardson Group called HWR Property Ltd was also acquiring land.

- 1.1.30 We did not receive evidence on how the land ownership jigsaw applied at the cadastral scale within Block II.
- 1.1.31 The Council, in ‘partnership’ with the private land holding interests in HWR Property Ltd, established HWCP Management Ltd to provide a suitable land management and consenting vehicle for large-scale redevelopment and to achieve the common goal of revitalisation of the CBD Core.
- 1.1.32 It is that indirect interest of the Council in this application that lead to the appointment of us as independent commissioners to consider the Applicant's proposal.
- 1.1.33 The Council holds 49% of the HWCP Management Limited which is marginally shy of the 50% required for it to be a Council Controlled Organisation. At the Hearing, the human face of the commercial interests led by HWR Property Ltd was Mr Scott O’Donnell, the Managing Director of the HW Richardson Group. Another notable shareholding interest is associated with the entities that own the Distinction Hotels, and Mr Geoffrey Thomson represented those interests at the Hearing. The Council’s interest was not represented by any person at the Hearing although, as will be explained later in the decision, Ms Hadley, the Chief Executive, helpfully addressed us on several matters.
- 1.1.34 HWCP Management Limited is only a vehicle to obtain resource consents and coordinate development between shareholding landowners. HWCP Management Limited does not represent the ultimate intended landowner and underwriter of all the elements of the proposal. Instead, as Mr O’Donnell explained, HWCP Management Limited will sell land interests to shareholders with the approval of landowners as part of the long-term commercial arrangements leading to the implementation of the proposal if consent is granted. We make this point firmly because some submitters including Mr Gaire Thompson claimed that the Council should not be involved in commercial development with that risk profile. Such a consideration is not an RMA matter but, in any event, as we understand it, the Council has not underwritten any development and any component of the proposal. There is a potential risk that redevelopment, if not effectuated substantially and expeditiously, may have substantial adverse effects on the amenity of the CBD Core. This risk has been considered and addressed as part of this decision.
- 1.1.35 The scale of the redevelopment in the Applicant’s proposal is huge. The breadth and extent of change it will cause, if approved, will be outlined in more detail in this decision but the following summary is a vignette of what is involved:

- (a) The loss of all of the internal elements of the 19 existing heritage buildings identified in the District Plan, including the iconic Southland Times Building and the delightful but moribund Cambridge Arcade.
- (b) A completely new streetscape on the southern side of Esk Street except for the retention of the façade elements of the Coxheads' Building, Cambridge Arcade and the Southland Times Building.
- (c) A new bespoke office building for the HW Richardson Group (that we call the HW Richardson Tower) on the corner of Esk and Dee Streets, replacing the ornate Lewis & Co and Newburgh buildings at 29 Esk Street and 33 Dee Street respectively.
- (d) Complete redevelopment of the block, except for the Reading Cinema and the Kelvin Hotel, with the result that there is over half a kilometre (518.189 metres to be precise) of new or redesigned frontage as part of the development across its four main axes.
- (e) A new hotel adjacent to and of similar dimensions to the Kelvin Hotel.
- (f) A five-level car park comprising 29,839 m² GFA and a new multi-levelled interconnected structure, anchored by a major comparative retail tenant, with a floor plate of 6,086 m² GFA accessed internally and additionally by a reconfiguration of the Southland Times façade to create a central grand entrance.

1.1.36 Every proposal of this scale is an admixture of key themes translated into an integrated design. As we understand it the overarching principles informing the proposal's design were as follows:

- (a) The HW Richardson Tower will be a signature contemporary building providing modern office space to meet that businesses' growing needs, with the ground floor well connected to the retail core; and
- (b) To achieve a vibrant retail location the development needs the following elements:
 - (i) Adequate and convenient parking to compete with LFR in other places and provide destination shopping; and

- (ii) A diverse menu of food retailing to provide experiential and interactive opportunities as an adjunct to the retail offering not found in LFR creating market differentiation; and
 - (c) There must an anchored tenant appropriately catered for, having sufficient depth and appeal to operate as a locus for retail with enough gravitational pull to encourage smaller comparative retailers to orbit its sphere; and
 - (d) Good linkages internally and externally; and
 - (e) Differentiated and well-articulated architectural form, especially along Esk Street, that reflects the finer-grained elements of the existing streetscape, albeit with the introduction of considerably new architectural style, and leveraging off that, opportunities for external spaces, including overhangs across pedestrian ways, to enliven the location.
- 1.1.37 To achieve these principles, the Applicant says that it is necessary to demolish most of the heritage buildings on Block II and the principles that inform the design are appropriate to achieve the planning goals for the CBD Core so that it is reinstated as a magnet for social and cultural interaction.
- 1.1.38 Through the design and consenting process, the Applicant's technical team has debated the extent to which heritage can or should be retained while meeting these principles. Including to address the concerns of the District Plan regarding the appropriate use, management and protection of historical heritage. The technical team recommended changes in heritage outcomes to HWCP Management Limited. There was a consensus amongst the Applicant's team that the primary reason for retaining the existing buildings was because of their streetscape values and, in particular, the architectural significance of the façades. It was considered unnecessary to retain the interior building form to achieve much of the District Plan objectives. In any event, in many cases the interior was so substantially modified as to have limited heritage value. From a commercial point of view, retention of façades made little sense because of the fragility of those façades (in most cases) and the considerable engineering cost associated with their preservation, remediation and enhancement. Nevertheless, HWCP Management Limited was persuaded by its consultants to focus attention on the retention of the most valuable elements on Esk Street comprising the Coxheads' Building, the Cambridge Arcade and the Southland Times Building. The value and significance of these are addressed in more detail in our decision. The Category 1 former Bank of New South

Wales Building will not be changed as a result of this application and is, in any event, protected by a heritage covenant registered on the title of the land it sits upon.

- 1.1.39 Without doubt the proposal, if consented, will result in a loss of many heritage buildings, including the much-loved Lewis & Co and Newburgh twins (collectively the “Government Life Buildings”) that are also listed by Heritage New Zealand Pouhere Taonga (HNZ). Demolition will result in the permanent and irrecoverable loss of their heritage values. The Applicant contends that this loss is not as significant as it may seem. The Government Life Buildings, like many in the stable of Block II, are unsafe and present a clear and present danger to the public in a seismic event. This reality, it is said, has to be faced that these buildings with their internal configurations designed for another age have no meaningful future in the CBD Core.
- 1.1.40 The physical condition of buildings like the Government Life Buildings do indeed compel us to face and engage with economic reality. The awareness of the earthquakes hazard and the recent regulatory expansion aimed at upgrading New Zealand's building stock, in combination with broader economic forces, often establish an unbridgeable and unsustainable gap between upgrading and a sufficient financial return. The trajectory over the last 40 years of deferred maintenance in the CBD Core is testament enough that the costs and benefits of heritage upgrades are not sufficiently aligned to result in significant commercial investment in maintenance and upgrading. With many floors above ground not occupied for more 30 years, according to Dr Cawte, and legislation concerning earthquake-prone buildings starting to bite, the Invercargill CBD is facing a ‘perfect storm’.
- 1.1.41 Any redevelopment of this scale is going to change the location of businesses and the centre of gravity of retail and entertainment offered in the wider CBD. This is particularly the case in a low growth environment where a relatively fixed retail expenditure pie will place increased competition on the menu for all retailers. The impacts that that will generate on private businesses and other commercial landlords is an irrelevant consideration under the RMA. There is considerable debate in the 21st century about the efficacy of market forces to prevent inappropriate externalities on the natural environment. However, there remains a broad consensus that at the city scale concerning the allocation of land and physical resources in a business zone set up to provide a competitive and hence efficient commercial building market, it is not the job of resource management decision-makers to make allocation decisions that undermine or control market forces.

Parliament has decisively acted in that arena and introduced provisions designed to prevent trade competitors gaming the resource management system. We have had to, throughout this process, remain alive to this issue and eschew any consideration of trade competition effects.

- 1.1.42 A development involving the wholesale destruction of a significant number of old buildings will result in temporary effects that are nevertheless material and need to be managed if consent is granted. In this case up to 54 businesses will, according to Ms Hampson, decant from the CBD Core during construction, causing major but temporary effects on the functional amenity and vibrancy of an already vulnerable CBD Core. The Applicant argues the severity of this treatment is not disproportionate to the scale of the 'disease' it addresses.
- 1.1.43 The proposal's elements evolved after notification and during the Hearing. A final set of plans were presented in the Applicant's right of reply by James Burgess, the architect on the project. Mr Burgess is with Buchan, a master planning and architecture and interior design consultancy. The folio of plans is collectively called: "Invercargill Central/Resource Consent Amendment Design Statement 29 March 2019/REV.0.A". The folder contains 55 pages of mostly diagrams in plan and elevation view. There is also a revised staging plan.
- 1.1.44 Changes to the application that potentially gave rise to environmental externalities were first a change in the treatment of façades of the building book-ending the Southland Times Building at the first and second-floor level and secondly, the proposed use of the large structure (initially without detailed articulation and use description) on Kelvin Street adjacent to the Kelvin Hotel as a new hotel. Also, in respect of that building, the Applicant now proposes additional height. Thirdly, instead of retaining the façades of the Thompsons and Fairweather buildings (Kelvin Street) as initially proposed, the Applicant now proposes to demolish those buildings and keep the Cambridge Arcade Esk Street façade instead to achieve more heritage elements in Esk Street and because Cambridge Arcade's façade has higher heritage values.
- 1.1.45 The Newburgh and Lewis & Co buildings and the Southland Times Building are listed in the District Plan in Appendix II:2 because they are categorised by HNZ. Because the proposal involves the complete demolition of the Newburgh and Lewis & Co buildings and the partial destruction of the Southland Times Building, the proposal as a whole is to be assessed as a non-complying activity applying the bundling

principle because rule 3.8.9 of the District Plan classifies the relocation or any demolition of any building or structure in Appendix II:2 as a non-complying activity.

- 1.1.46 The significant issues that arise in this application can be put into two baskets. First, there are those issues that go to the boundaries of our power and authority. The second are those matters that go to our discretion and assessment.
- 1.1.47 Issues going to our authority and the boundaries of our powers are:
- (a) Does the Applicant propose changes within the scope of the application?
 - (b) Do we have authority to assess the proposal because one or both of the jurisdictional gateways in section 104D of the RMA applying to non-complying activities is met?
- 1.1.48 While logically matters relating to jurisdiction and boundaries of our powers would be dealt with first, that is not an efficient and effective way to approach things under the RMA. The reason is that these questions are intrinsically tied to the assessment of the objectives and policies of the relevant plans and the scale and extent of the effects of the proposal and any changes to it. These matters are addressed as matters of assessment under section 104(1). Almost 20 years ago Jackson ECJ in the decision *Baker Boys*² observed that the answer to the question whether or not either of the section 104D gateways is met could only often be answered after a section 104 assessment. We are mindful, however, in taking this approach, that we can only consider the adverse, and not positive, effects in evaluating the proposal under s104D(1)(a).
- 1.1.49 The second basket of issues go to our discretion and assessment. These can be further subdivided into those issues that are likely to have persuasive significance. By that, we mean that the outcome of the evaluation could swing the result of the application. The second class are those matters that have management significance. These are issues that are material and may need to be managed as part of the terms of the consent but are unlikely to be of sufficient weight after appropriate conditions are imposed to affect the exercise of the discretion.

² *Baker Boys Limited v. Christchurch City Council* [1998] NZRMA 433.

1.1.50 Should the proposal pass the s104D tests, the major persuasive issues in this matter are:

- (a) Whether or not the scale and extent of loss of heritage values when evaluated against the proposed upgrade and maintenance of some existing heritage values - in combination with the benefits the proposal will have in improving the functional amenity and vitality of the CBD Core - makes the development appropriate and one that will achieve the ethic of sustainable management while having regard to the provisions of the relevant planning instruments; and
- (b) Whether the proposal contains appropriate urban design elements that will deliver the desired outcomes of the District Plan for the relevant precincts in the Business 1 Zone.

1.1.51 The significant management issues are:

- (a) Managing the temporary impacts of demolition and construction; and
- (b) Managing the risk that heritage values will be lost by demolition but not replaced by some or all of the new elements in the proposal.

1.1.52 This decision addresses all of those issues as part of our assessment following the Panel's journey of reading the application, absorbing the exchanged evidence, hearing those who wanted to be heard and digesting that through a collaborative deliberative process.

2. The Proposal and the existing context

2.1 General description

2.1.1 The basic proposal is to create a centrepiece department store retailer over two floors and the single level retail and associated uses with a designated fashion precinct. Allied to that retail core is a food and beverage precinct, targeting mid-market and local operators.

2.1.2 A seven-storey office is to be located in the north-west as a signature development to house HW Richardson Group.

2.1.3 Other components include a large medical facility and a hotel, together with community and civic facilities. The proposed retail and food and beverage components will operate as a type of mall.

2.1.4 The table below shows the breakdown across uses and levels.

Description – Proposed Areas (GFA)	Ground Floor	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6	Total
Parking (incl. Ramp)	449	5481	5915	5984	5986	6024		29839
Piazza		416						416
External / Back of House Circulation	1835							1835
Amenities	917	35	34	34	34			1054
Internal Circulation/ Public Spaces	3674	1043	267	175	181	182	25	5547
Food & Beverage	688	612						1300
F&B Seating	634	499						1133
DS Anchor Tenant	2812	3274						6086
Civic	623	788	788	537	365			3101
Medical	732	711	855	921	888			4107
Office		1115	604	604	604			2927
Retail	4913							4913
Residential						514		514
Bike Store	66							66
Cinema	1526							1526
Commercial Activity	1214	1759	1315	938	938	938	938	8040
Childcare			1014					1014
Sundry	77	31	15	15	15	15	15	183
Total	20160	15764	1087	9208	9011	7673	978	73601

* Mall ground floor common areas including main circulation area and F&B seating zones total 3510m²

2.1.5 On Esk Street the total frontage is 214,813 lineal metres (lm). Of that the total frontage belonging to the Applicant is 188,697lm. The current active frontage is 112,978lm giving a percentage of activated frontage of 52.6%. The proposal elevates the activation to 83% across 178,653lm.

2.1.6 On Tay Street the current percentage of activation is 44% across 210,342lm, of which 191,397lm is owned by the Applicant. That activation is proposed to be increased 98% with a total active frontage length of 196,860lm.

2.1.7 On Dee Street the current activation is 8% across a total frontage of 101,056lm of which the Applicant owns 32,593lm. The increase in activation is 68%.

2.1.8 On Kelvin Street the current activation is 57% across 101,141lm. That is proposed to be increased to 70% activation.

2.2 Condition of buildings

2.2.1 BMC Consulting Engineers have a consulting engineering practice with offices in the lower South Island. BMC was engaged to undertake engineering assessments of the proposal including addressing the following:

- (a) The current seismic capacity of the listed heritage buildings scheduled for demolition.
- (b) The feasibility of retention of the façades and the likely costs.
- (c) The particular technical challenges associated with façade retention, where proposed. That issue is an acute one for the Coxheads' Building.

2.2.2 At the Hearing Mr McDougall, one of the principals of BMC, made an oral presentation concerning the engineering reports supplied in the Assessment of Environmental Effects. Mr McDougall is a chartered professional with New Zealand earthquake assessment experience. He was assisted by Mr Marriott, also a professional engineer, who has extensive experience with engineering issues relating to the protection and preservation of heritage. Mr Marriott is a member of ICOMOS.

2.2.3 Mr McDougall explained that a seismic capacity assessment is based on an ISOseismal map that produces Z-factors for various areas in New Zealand, based on likely sources of earthquake origination. Mr McDougall explained that Invercargill's Z-factor equals 0.17/0.3, which equals 60% of the Christchurch earthquake, as a standard for assessment based on a rupture of the Alpine fault. The seismic capacity methodology follows the ISA EPB methodology. All research and review of available drawings are carried out as part of the assessment, alongside a geotechnical desktop study. There are then internal and external inspection processes involving inspection teams (three per team) addressing wall thicknesses, structural system and something called a Magiplan capture. This work is then put into a specialist report that is reviewed by reviewers and approvers. The detailed analysis is based on the technical guidelines (July 2017) for seismic assessment of existing buildings.

2.2.4 Mr McDougall then addressed, as an example, the type of analysis undertaken in respect of the assessment for the Government Life buildings that are the most important heritage buildings scheduled for complete demolition. These buildings are beyond saving, according to Mr McDougall.

- 2.2.5 As part of the seismic rating summary, BMC prepared a layout of the buildings in Block II and graded them, using a five-colour system using percentages of NBS for each class (Grade A (80% – 100%), Grade B (67% – 79%), Grade C (33% – 66%) Grade D (20 %– 33%) Grade E (0% – 20%)). Most of the buildings within Block II are less than 33% NBS and therefore earthquake prone and either Grade D or E. That is illustrated by Plate 4 in Appendix L. In terms of GFA the spread is shown in the table below.

Gross Floor Area (GFA) in block by levels, and amount of GFA in seismic ratings

Description – Current Areas (GFA)	Ground	Level 1	Level 2	Levels 3 and 4	NBS% 10-20	NBS% 20-40	NBS 41+	Total Area
Major and Anchor tenants	4450	3020	250		7020	700		7720
Office	0	5810	1400	1000	8080		130	8210
Retail	9292				7575	974	743	9292
Commercial Activity	1155				615	540		1155
Sundry	600				600			600
Total	15497	8830	1560	1000	23890	2214	873	26977

- 2.2.6 The costings for retention of some of the façades were summarised by BMC in the table below.

BMC Order for Costs

Building Name	Heritage Value	Façade Area (lm)	Estimated Cost (Based on \$4000/m²)	Estimated Cost (Based on \$4600/m²)
Smith's Building (31 Dee Street)	Low	77	\$308,000	\$354,200
Martin, Maitland & Co.'s Building (37 Esk Street)	Low	92	\$368,000	\$423,200
Temple Chambers (49 Esk Street)	Low	217	\$868,000	\$998,200
NZIC Building (51-53 Esk Street)	Low	215	\$860,000	\$989,000
Cambridge Arcade (59-61 Esk Street)	High	239	\$956,000	\$1,099,400
Nichol's Building (63 Esk Street)	Low	201	\$804,000	\$924,600
Hotel Cecil (1-16 Kelvin Street, 60-64 Tay Street)	Low	274	\$1,096,000	\$1,260,400
H & J Smith Building (50 Tay Street)	Low	68	\$272,000	\$312,800
H & J Smith Building (48 Tay Street)	Low	134	\$536,000	\$616,400
Cambridge Buildings (40 Tay Street)	Low	133	\$532,000	\$611,800

Annie Ibbotson's Building (30 Tay Street)	Low	101	\$404,000	\$464,600
Barham's Building (7 Dee Street)	Low	35	\$140,000	\$161,000
Lumsden's Building (9 Dee Street)	Low	58	\$232,000	\$266,800
	Totals	2178	\$6,844,000	\$8,482,400

2.2.7 Mr Marriott explained to us how, with an appropriate construction methodology, the façades of the three buildings on Esk Street proposed to be retained could be preserved. He explained the special challenges associated with retention of the Coxheads' building façade, given that it will need to be protected during the process of demolition of the Government Life buildings.

2.3 Heritage and archaeological values

2.3.1 The site possesses many heritage and archaeological elements as outlined in the overview and addressed in more detail in the section concerning the proposal as it affects heritage and archaeological values.

2.4 CBD and urban function values

2.4.1 The Block is located within Invercargill's CBD. With the block to the north fronting Don Street, this part of the CBD accommodates what would have been traditionally the central retail and business hub for Invercargill city. This is reflected in the Pedestrian Friendly Frontages notation that applies along the road frontages of both blocks, as well as along Esk Street to the west where it fronts H & J Smiths.

2.4.2 This traditional function has been eroded over time with the spread of retail and business activities wider than within the CBD itself, as well as to nearby locations such as along Leven Street. However, the area still accommodates a number of national and international brand retailers.

2.5 Amenity values

2.5.1 The site lies at the heart of the CBD and is one of the two key retail and entertainment blocks. It is characterised by traditional main street shops and offices at ground level with largely unoccupied upper floors. In fact, two of the key heritage buildings have been unoccupied above ground level for the last 35 years. Only six buildings in the block have tenancies above ground floor, and this is limited to the second floor. At ground floor there are twelve vacant tenancies. This follows the pattern of many New Zealand towns and cities that have seen the growth of retail areas on the periphery of the central city drawing retail activity away from the heart. For Invercargill, this activity is found to the north west of the city on Leven

Street between Spey Street and Victoria Avenue on Business 1 zoned land – the same as the subject site.

- 2.5.2 Esk Street is the main shopping street, and the quality of retailing varies over the site with the large national chain stores mainly on Esk Street. There are other less known brands scattered between these and on Tay Street. Kelvin Street is dominated by the Kelvin Hotel on one side and H & J Smiths on the other, while Dee Street has vacant buildings and the Reading Cinema.
- 2.5.3 There is ample car parking to enable people to park close to where they want to go, which meets the general expectation of shoppers in towns and cities of this size in New Zealand.
- 2.5.4 The Council has invested funds in upgrading Esk Street with planters, seats, new paving and lighting. The carriageway has been narrowed to provide a large area for tables and chairs, a small performance space and lawn in the central area outside the Cambridge Arcade. This strengthens Esk Street's role as the main shopping street and provides some improved amenity for shoppers and the adjacent businesses.
- 2.5.5 Heritage buildings in main streets are a key element of city centre revitalisation programmes, such as the Mainstreet Programme, that has been popular over the last 30 years. Some towns and cities have chosen and been able to strengthen and upgrade heritage buildings to add to the amenity and special experience of shopping in these character areas; for example, Whanganui, and to a large extent Petone. The high number of heritage buildings on Esk Street has the potential to add to the amenity of the area. However, due to neglect, wear and tear and vacant shops and offices, the buildings do not contribute to a sense of prosperity and vitality that the area needs to attract people.
- 2.5.6 There is little to draw people to the area at nighttime, with only a few cafés and restaurants in isolated pockets, so there is little activity after the shops close, adding further to the lack of vitality.

3. **A More Detailed Description of the Proposal**

3.1 Major elements of the proposal

3.1.1 In summary, the proposal involves:

- (a) The demolition of all 30 buildings on the site, except for:

- (i) the former Bank of New South Wales (BNSW) Building on the corner of Dee and Tay Streets; and
 - (ii) the retention of the façades of the Southland Times Building (67 Esk Street), Coxheads' Building (31-35 Esk Street) and the Esk-Street end of the Cambridge Arcade Building (59-61 Esk Street).
- (b) Construction of a number of new buildings across the site, comprising:
- (i) A seven-storey building on the corner of Dee and Esk Streets, comprising retail, offices, parking and residential apartments.
 - (ii) A series of two-storey buildings along Esk Street, comprising retail and food and beverage at ground floor, and food and beverage and offices at second floor.
 - (iii) A new building behind the Southland Times façade containing a large anchor retail tenant over two floors, separate retail on ground floor along the Esk Street frontage, and a childcare centre on the third floor.
 - (iv) A seven-storey hotel building fronting on to Kelvin Street, with the potential for retail or commercial services at ground level³. A one-way service lane would run along the rear of the proposed hotel and the Kelvin Hotel, linking Tay Street to Esk Street.
 - (v) A six-storey parking building containing 859 parking spaces with frontage and vehicle access to Tay Street. There would be a mix of retail and food and beverage activities at ground floor. At ground floor, this would connect through the centre of the site to the retail and food and beverage activities on Esk Street. The southern wall of the car parking building would be illuminated with a 'southern lights' moving display.

³ As lodged and publicly notified, the proposal was for a new commercial building. The proposal was amended to be for a hotel during the course of the hearing.

- (vi) A five-storey medical centre, with frontage to Tay Street and a five-storey civic building, with frontage to Dee Street, which would be located either side of the BNSW Building.
- (vii) A new piazza to the north of the medical centre and east of the civic building, linked by an escalator/stairs to the retail and food and beverage activities between Esk and Tay Streets.
- (viii) A new entrance to the Reading Cinema, accessed internally from the of the development.

3.1.2 No works are proposed to the Bank of New South Wales Building.

3.1.3 Construction would occur on a staged basis over six-stages, as follows:

- (a) Stage 1 – the Southland Times, and anchor retail tenant.
- (b) Stage 2 – the parking building, with retail and food and beverage.
- (c) Stage 3 – Retail, food and beverage, and offices along Esk Street and linking through to Tay Street.
- (d) Stage 4 – the building at the corner of Esk and Dee Streets.
- (e) Stage 5 – the medical centre and civic building wrapping around the BNSW building.
- (f) Stage 6 – the hotel.

3.1.4 Demolition had originally been proposed over a two-year period, but was refined through the Hearing process, so that it would involve:

- (a) The Applicant providing confirmation that funding for Stages 1 to 3 has been obtained.
- (b) The buildings in Stages 1 to 4 and 6 being demolished.
- (c) Stage 4 being built concurrently with or subsequent to Stages 1 to 3.
- (d) The buildings in Stage 5 remaining in place until a lease agreement for the new building is secured.

3.2 Design philosophy

3.2.1 Mr James Burgess, the architect of the proposal, stated that the overarching aim of the proposal is that Invercargill Central is intended to create a place for people. The design responds to the urban grain of Invercargill city, engages with the public and contains a proposed mix of uses which will invite daily use of a wide cross section of the Invercargill public to create a true multi-threaded destination, much needed in Invercargill.

3.2.2 In his evidence Mr Burgess outlined the key design philosophies as:

- (a) Activating the street edge.
- (b) Providing a gateway entrance.
- (c) Strengthening of existing pedestrian routes.
- (d) Creating of a central weather protected piazza.
- (e) Clearly phasing strategy operation and delivery.
- (f) Respecting the existing urban grain and façade ordering.
- (g) Respecting existing heritage and build edge datum.
- (h) Respecting canopy heights and the street edge.

3.2.3 In his design statement Mr Burgess described the climate of Invercargill, saying that it was the cloudiest city in New Zealand and contained the second windiest, after Wellington. The east/west, north/south alignment of the street grid resulted in the wind being funnelled down streets with the predominant cold westerly wind being funnelled directly down Esk and Tay Streets.

3.2.4 This, and the requirements of the anchor tenant together with current retailing trends, has resulted in the location of a mall at the centre of the block. The approach has been to draw people into the mall through a main or gateway entrance, where the food and beverage precinct connects to a fashion and general retail part of the mall. There is also an external entrance to this from Esk Street. An anchor tenant (a department store) is part of this area.

3.2.5 The design layout reinforces the corners of the block by locating:

- (a) A seven-storey office building on the corner of Dee and Esk Streets.

- (b) A five-storey civic building and medical centre beside and above the Bank of New South building on the corner of Dee and Tay Streets; and
 - (c) A seven-storey hotel on the corner of Kelvin and Tay Streets.
- 3.2.6 The corner of Kelvin and Esk Streets is already anchored by the Kelvin Hotel.
- 3.2.7 The strategic location of a large car park in the centre of the block largely buries it within the development, with the only long wall visible on Tay Street.
- 3.2.8 The design recognises that the mall is potentially a very different built form from the fine-grained existing pattern of development where there is a range of building façade widths and openings. Currently there are approximately 67 openings on all elevations:
 - (a) Esk Street 25
 - (b) Kelvin Street 12
 - (c) Tay Street 23
 - (d) Dee Street 7
- 3.2.9 There are also an additional seven lanes or arcade openings.
- 3.2.10 In responding to the urban grain of this part of the city, the design has sleeved the mall with shops that open on to the street. This results in active frontages along all streets to a varying degree with most active frontages being on Esk and Tay Streets, reflecting the existing pattern. The Applicant provided plans showing the extent of these compared with the existing situation. These show that there is significant activation on all frontages.
- 3.2.11 The design aims to maintain the existing pattern of lanes and arcades that cross the site in north south directions. There are five primary pedestrian entrances to the mall across all four elevations - four on Esk Street and one on Tay Street. However, the design includes an additional 27 secondary entrances across the four streets:
 - (a) Esk Street 14
 - (b) Kelvin Street 1
 - (c) Tay Street 8

- 3.2.12 While less than half the number of openings as existing, the design does reflect the existing pattern of entrances.
- 3.2.13 The design approach to the retention of specific heritage buildings has been to focus on the Esk Street frontage at the expense of other less significant façades on other streets. The façades of the Southland Times, the Cambridge Arcade and Coxheads' Building are to be retained and these are located along the length of Esk Street. The Bank of New South Wales building is also retained in full.
- 3.2.14 In further response to providing weather protection and a comfortable shopping experience, the design has included a protected piazza on the first level. This connects to the Civic Building and the medical centre, providing a new sheltered public space.
- 3.2.15 A range of architectural styles is proposed to reflect the rich urban grain of the city centre buildings. Verandahs on shop fronts are designed to work in with the variety of architectural forms proposed, which results in a range of heights and materials. If the verandahs had followed the District Plan rules and adhered to the 3.5m maximum height, this would have led to a uniformity of heights which would not necessarily match the floor levels and architectural style of buildings.

3.3 Urban design

- 3.3.1 Mr Burgess spent considerable time explaining the urban design approach to the development and how it reflected the existing fine grained pattern of buildings and this has been outlined above. The design has sought to maintain a mainstreet character while providing an indoor mall environment within. The key concern from an urban design perspective is to what extent this is achieved.
- 3.3.2 Submitters raised few urban design concerns outside heritage issues with the exception of Gaire Thompson, Bob Simpson and Vicky Henry. At the Hearing, Mr Thompson said that one of his concerns was that it was a "hotch potch" of mixed styles that did not contribute positively to the streetscape. In his further submission received after the Hearing had been adjourned, he stated that:

"Although the most recent plans are a vast improvement to the appearance along Esk Street, this development is a major alteration to the inner city landscape with much loss of character including the Cambridge Arcade, an attractive connection between Esk and Tay Streets".

- 3.3.3 Mr Simpson submitted that a mall was not an appropriate model for an inner city block. He considered that a mall is best located on sites that are outside the city centre where there are large sites for car parking. He also stated in his submission that the provision of verandahs at a consistent height of around 3m was essential. He thought, as did Ms Henry, that the development should link to adjacent buildings by the provision of a bridge connecting the block to H & J Smiths building.
- 3.3.4 Mr Simpson was concerned that the increased building height would create additional shading on to streets, thereby making them unsafe in winter conditions.
- 3.3.5 Both Mr Simpson and Ms Henry submitted that there didn't appear to be a cohesive plan for the redevelopment of the CBD as a whole, and so it was unclear how this development fitted in and what it meant for the rest of the city centre.
- 3.3.6 They questioned the extent to which the development will revitalise the city centre, stating that rather it would revitalise the block it occupies while resulting in other vacant run down blocks.
- 3.3.7 Ms Henry added, in her later response, that the inclusion of a hotel had been introduced late in the Hearing and that she was concerned with the bulk of the building and the potential internal focus.
- 3.3.8 To summarise, the matters for consideration that are in contention are:
- (a) The degree to which the design of the development reflects the fine grain urban form of the city centre
 - (b) Design coherence
 - (c) Provision of mid-block connections
 - (d) Height
 - (e) Verandahs
 - (f) Shading

3.4 Retail elements

3.4.1 Precincts within the development are:

- (a) Eat Street – over two levels, with outdoor seating at ground and first floor levels, to activate street frontage. Key link to Reading Cinema, to provide a movie and dinner experience.
- (b) Food court near Tay Street.
- (c) Anchor tenant and pedestrian frontage retail along Esk Street, leading to an internal retail loop.
- (d) Larger scale retail tenancies along the Tay Street end, beneath the car parking building, including mini/major retail and a couple of smaller retail tenancies.

3.4.2 Mr Burgess explained how retail activities fit within the overall development philosophy. The new office accommodation at the corner of Esk and Dee Streets and the existing Reading Cinema on Dee Street would be supported by a large food and beverage precinct formed as a series of food offers. This “Eat Street” precinct would be over two floors and supported by a new dining deck overlooking Esk Street. The link to the cinema would enable a movie and dinner experience.

3.4.3 Beyond the food and beverage precinct would be a new fashion and general mall construct, running on a north-south axis and linking Esk and Tay Streets, not far to the west of the existing Cambridge Arcade. It would also provide a number of internal retail tenancies, with circulation around. At its southern end would be another food precinct, more aligned with a food court.

3.4.4 The retail tenancies would be built around a module of a typical 7 to 8 m width and 18 m depth. Tenancies on Esk Street would have access through to an internal circulation space, making them accessible both externally and internally.

3.4.5 The new fashion and general mall construct would link to a new large department store over two levels, located behind the Southland Times façade, and also accessed from Esk Street. A larger retail tenancy on the Tay Street frontage would have dual access, internally and from Tay Street.

3.5 Heritage impacts and adaptive re-use

3.5.1 The archaeological and heritage assessment of the proposal was undertaken by the Applicant through its consultant New Zealand Heritage Properties Limited (Heritage Properties Ltd). Heritage Properties Ltd is a consultancy with extensive experience concerning heritage and archaeological assessment. At the Hearing we received evidence from one of the heritage assessors, Dr Hayden Cawte, a specialist in heritage and co-author and reviewer of the reports by Heritage Properties Ltd.

3.5.2 The three detailed items of evidence on heritage we received were:

- (a) “Invercargill Central Redevelopment: A Heritage Impact Assessment of Block II, Town of Invercargill”, Cropper et al by New Zealand Heritage Properties Limited (September 2018).
- (b) “Invercargill Central Redevelopment: Addendum to Woods, Cropper, Mearns, Mitchell, McStay and Cawte 2018: A Heritage Impact Assessment of Block II, Town of Invercargill”, Woods, et al by New Zealand Heritage Properties Limited (January 2019).
- (c) A Statement of Evidence by Dr Cawte dated 11 March 2019.

3.5.3 Six submitters, including HNZ, submitted on heritage impacts. As the application passed through the notification process under Part 6 RMA the Applicant engaged further on heritage issues. As a result, by the time of the Hearing there had been changes to the application that were summarised at [4.14] of Dr Cawte’s evidence as follows:

- (a) Removal of heritage façade on Kelvin Street (Thomson’s Building, 18 Kelvin Street).
- (b) Removal of heritage façade on Tay Street (Fairweather’s Building, 58 Tay Street).
- (c) Removal of mitigation with the use of historic building facsimile on Tay Street.
- (d) Retention of Cambridge Arcade façade (59-61 Esk Street).
- (e) Inclusion of recycled heritage building fabric (bricks) in food precinct design.
- (f) Changes to mass of the buildings either side of Southland Times Building.

- (g) Increase in scale of buildings to either side of the Bank of New Zealand South Wales.

- 3.5.4 These changes were evaluated in the Heritage Properties Ltd Addendum report and formed the basis for the position adopted by HNZ in its statement to the Panel. Further refinements to the mitigation process were also included, addressing such matters as building recording, including: re-use of building material; public interpretation; strengthening of existing resources; and in situ preservation of archaeological materials.
- 3.5.5 The heritage assessment by Heritage Properties Ltd refers to the block affected as Block II, Invercargill. Within that block are the following identified archaeological sites: E46/45, E46/67, E46/68, E46/69, E46/70, E46/71, E46/72, E46/73, E46/74, E46/75, E46/76, E46/77, E46/78, E46/79, E46/80, E46/81, E46/82, E46/83 and E46/84.
- 3.5.6 Dr Cropper, the expert archaeologist, identified that redevelopment of the site, including earthworks, will have major adverse effects on archaeological resources. She said:

“The nineteenth century buildings that are proposed to be demolished were constructed from the 1870s onwards and represent a significant assemblage that can provide considerable information. Whilst these buildings have been heavily modified, demolition will remove the remaining connection with the original occupation of these sections and the early Invercargill townscape. The demolition of the pre-1900 buildings is balanced with the merits of the development, and the loss of these structures can be outweighed by the detailed recording of the remaining features. The investigation of pre-1900 buildings provides the opportunity to explore how New Zealanders constructed their buildings, what materials they used, how they organised their space (form and function), how they expressed themselves (style), and what changes were made over time. This dataset will be a foundation for understanding nineteenth century commercial architecture in Invercargill, and it will provide the opportunity to explore changes in construction methods and materials through time, identity of construction professionals and architects, and variation related to function.

The proposed redevelopment will require earthworks during the demolition phase and construction phase, which will affect every archaeological site in the project area apart from E46/66 and E46/32. These sites are currently beneath

the Reading Cinema, which will not be affected by the proposed work. The proposed work will see the broad scale loss of subsurface archaeology across the block. The demolition, site clearance, installation and/or updating of services and construction of the new buildings will involve extensive earthworks that will have a major adverse effect on the subsurface archaeology. Given the scale of some of the buildings, these earthworks will be of a magnitude that will result in the complete removal of archaeological features and deposits.

A range of archaeological features are expected to be encountered that represent a mixture of residential, commercial, and industrial occupations, as well as the former police reserve. Features that may be affected include structural features (e.g. foundations, posts, potholes, etc) surfaces (e.g. cobbled floors, paths, etc), pit features (e.g. rubbish pits, latrines, etc), and services (e.g. drainage features). As the block has been continuously evolving, there is potential that past construction activity has affected the archaeological deposits. A prime example is the excavation of the basement of the Lewis & Co Building, which would have destroyed archaeology. Similarly, there are historic accounts of archaeological materials being found during the construction of the Newburgh Building. All deposits and features encountered are required to be recorded to best practice by a qualified archaeologist.

Due to the large scope of the archaeological works, a management plan will be required as stipulated in section 3.4 of Guide A: Application for a General Archaeological Authority. A management plan is required for all complex projects that may involve subcontractors and for all projects that require the demolition of a pre-1900 building”.

3.5.7 Dr Cropper recommended conditions to remedy and mitigate those effects as follows:

- (a) The Applicant apply for an archaeological authority from HNZ to disturb the archaeological sites in the table below (apart from E46/39). In that regard it is noted that the sites E46/66 and E46/32 will not be affected by the redevelopment, and that impacts on the curb stones in Dee Street (E46/39) must be avoided.
- (b) The 14 pre-1900 buildings scheduled for demolition be recorded to a level III standard by a qualified archaeologist (pre-1900 portions only).

- (c) Demolition of the buildings be monitored by an archaeologist.
- (d) All earthworks that may affect an archaeological site must be monitored (stand over monitoring) and all features and deposits recorded by an archaeologist.
- (e) An archaeological management plan be developed for the redevelopment, subject to approval by New Zealand Historic Places Trust.
- (f) Consideration be given to long-term storage of artefact assemblage in a public facility.
- (g) A full report be provided on the results of archaeological monitoring, buildings recorded and artefact analysis.

3.5.8 Proposals to disturb historic places require consideration of mitigation measures. The following list of mitigation measures were identified by HNZ in consultation with Heritage Properties Ltd:

- (a) Consideration of alternative, less adverse options
- (b) Mitigation effects of demolition and rebuild
- (c) Building recording
- (d) Reuse of building material
- (e) Public interpretation
- (f) Strengthening of existing heritage resources
- (g) In situ preservation of archaeological materials

3.5.9 Every heritage assessment must follow a methodology, and when preparing the assessment Heritage Properties Ltd obtained guidance from *Sustainable Management of Historical Heritage Guidance Information Sheet: Preparing a heritage impact assessment* produced by the New Zealand Historical Places Trust (*Guidance on Heritage Impact Assessments Cultural World Heritage Properties*) (ACIMOS 2011) (Appendix B). To contextualise at the local scale, Heritage Properties Ltd considered documentary sources including land title records, historic newspapers, historic maps, and Invercargill City Council property files.

3.5.10 Other important heritage information used included the works commissioned by Invercargill City Council. The independent reports the Council has commissioned include:

- (a) Farminer, A., & Miller, R. (2016). *Invercargill City: Central City Area: Heritage Buildings Reassessment 2016*. Dunedin: Unpublished Report Prepared by Origin Consultants Ltd for Invercargill City Council.
- (b) Morton, A. (2004). *Invercargill City Centre Heritage Buildings: A History*. Invercargill: Unpublished Report to the Invercargill City Council.
- (c) Gray, J. (1997). *Invercargill City Central City Area: Heritage Buildings Review*. Invercargill: Unpublished report prepared for Invercargill City Council.

3.5.11 In order to standardise the classification of the buildings within Block II, Heritage Properties Ltd chose to follow the definitions of 19th century and 20th century architectural styles outlined in *Pennsylvania Architectural Field Guide* (Pennsylvania Historical Museum Commission, 2015) and Francis Ching's (2012) *A Visual Dictionary of Architecture (Second Edition)*. The summary of Victorian and Revivalist architectural features represented in Block II were summarised in table 3-1 in the following paragraph.

3.5.12 A summary of the commercial 20th century architectural styles represented in Block II are as follows:

Summary of Victorian/Edwardian Revivalist architectural features represented on Block II, Invercargill

Style	Characteristics
Revivalism	<ul style="list-style-type: none">• Portico with columns• Pediment over entry door and/or windows• Decorative door surrounds, columns or sidelights• Decorative cornice brackets or modillions• Overhanging eaves• Two or three stories in height• Curved (segmental) arches over windows or doors• Quoins• Dentil bands• Rustication at ground level• Columns and pilasters• Balustrade parapets

Summary of twentieth century architectural styles represented on Block II, Invercargill

Style	Characteristics
Commercial	<ul style="list-style-type: none"> • Emphasis on vertical lines • Flat roof • Masonry wall surfaces • Three-part windows or projecting bay windows • Decorative cornices • Steel and beam construction • Ground floor storefronts
Art Deco	<ul style="list-style-type: none"> • Smooth wall surfaces • Sharp-edge, linear appearance • Stylised decorative elements using geometrical forms • Low relief decorative panels • Stepped or set back façade • Strips of windows with decorative spandrels • Reeding and fluting around doors and windows
International	<ul style="list-style-type: none"> • Rectangular forms, often with round projections • Flat roof • Lack of ornamentation or decorative elements • Ribbon windows • Curtain walls of glass • Cantilevered projections • Smooth wall surfaces • Asymmetrical façade
Functionalism	<ul style="list-style-type: none"> • Form based on purpose rather than aesthetics • Lack or removal of ornamentation
Post-Modern	<ul style="list-style-type: none"> • Asymmetrical design • Juxtaposition of styles and materials • Wide range of materials and colours • Complex designs

3.5.13 Heritage Properties Ltd adopted the assessment criteria for assessing the value of the heritage resource of buildings following Bowman (2017).

3.5.14 Assessment criteria for physical, historic, and cultural values (adapted from the RMA and HNZ, 2007a) with rankings following Bowman (2017).

Archaeological Values	
Archaeological Information	<p>Does the place or area have the potential to contribute information about the human history of the region, or to current archaeological research questions, through investigation using archaeological methods?</p> <ul style="list-style-type: none"> • High – has the potential for national or regional archaeological values i.e. rare site types, sites from the first phase of settlement, particular intact physical remains. • Moderate – has the potential for local archaeological values i.e. relatively early, possibility of relatively intact physical remains, representative types. • Low – known to be pre-1900, or has the possibility of pre-1900 evidence, but unlikely to have high or moderate archaeological values.

Architecture	<p>Is the place significant because of its design, form, scale, materials, style, ornamentation, period, craftsmanship or other architectural element?</p> <ul style="list-style-type: none"> • High – highly original, early, ideal, landmark or innovative design, style, use of materials, or craftsmanship for the period. • Moderate – good design, style, use of materials, or craftsmanship for the period. • Low – typical design, style, use of materials, or craftsmanship for the period
Rarity	<p>Is the place or area, or are features within it, unique, unusual, uncommon or rare at a district, regional or national level or in relation to particular historical themes?</p> <ul style="list-style-type: none"> • High – first, only remaining or one of very few of the period, locally/regionally/nationally. • Moderate – one of few of the period, locally/regionally/nationally. • Low – common for the period, locally/regionally/nationally.
Representativeness	<p>Is the place or area a good example of its class, for example, in terms of design, type, features, use, technology or time period?</p> <ul style="list-style-type: none"> • High – has all the key characteristics of architecture or technology of the period. • Moderate – has many of the characteristics of the architecture or technology of the period. • Low – has few characteristics of the architecture or technology of the period.
Integrity	<p>Does the place have integrity, retaining significant features from its time of construction, or later period when important modifications or additions were carried out?</p> <ul style="list-style-type: none"> • High – unchanged or has had important modifications since construction retaining heritage values. • Moderate – unimportant changes since construction but essential character and most heritage values retained. • Low – character changed significantly with few heritage values remaining.
Vulnerability	<p>Is the place vulnerable to deterioration or destruction or is threatened by land use activities?</p> <ul style="list-style-type: none"> • Yes/no
Context or Group	<p>Is the place or area part of a group of heritage places, a landscape, a townscape or setting which when considered as a whole amplify the heritage values of the place and group/landscape or extend its significance?</p> <ul style="list-style-type: none"> • High – principal contributor to the dominant values of the group. • Moderate – compatible with the group but not a principal contributor to the dominant values of the group. • Low – of little importance to the group.
Cultural Values	
Identify	<p>Is the place or area a focus of community, regional or national identity or sense of place, and does it have social value and provide evidence of cultural or historical continuity?</p> <ul style="list-style-type: none"> • High – focus of national or regional community identity, sense of place or social value or has special age value such as construction within the first 30 years of settlement. • Moderate – focus of local community identity, sense of place or social value or has age value such as construction between 1870 and 1900. • Low – has minor community focus, sense of place or social value
Public esteem	<p>Is the place held in high public esteem for its heritage or aesthetic values or as a focus of spiritual, political, national or other cultural sentiment?</p> <ul style="list-style-type: none"> • High – focus of national or regional community identity, sense of place or social value, recommended for listing, discussed in national publications, or received an award at the national, or local level. • Moderate – focus of national or regional community identity, sense of place or social value, recommended for listing, discussed in national publications, or received an award at the national, or local level. • Low – focus of national or regional community identity, sense of place or social value, recommended for listing, discussed in national publications, or received an award at the national, or local level.

3.5.15 The significance typology is adapted from the Department for Transport (2008) publication and was based on the following table.

Level of Significance	Criteria
Very High	<ul style="list-style-type: none"> • World Heritage Sites • Assets of acknowledged international importance • Assets that can contribute significantly to acknowledge international research objectives

Level of Significance	Criteria
	<ul style="list-style-type: none"> Historical landscapes of international value (designated or not) and extremely well-preserved historic landscapes with exceptional coherence, time depth, or other critical factor(s)
High	<ul style="list-style-type: none"> Scheduled assets and undesignated assets of schedulable quality and importance Category 1 listed buildings and Category 2 listed buildings of special interest Other listed buildings that can be shown to have exceptional qualities in their fabric or associations not adequately reflected in their listing category Conservation areas containing very important buildings Undesignated structures of clear national importance Designated and undesignated historic landscapes of outstanding historic interest; undesignated landscapes exhibiting consideration coherence, time depth, or critical factor(s) Assets that can contribute significantly to acknowledged national research objectives
Medium	<ul style="list-style-type: none"> Designated or undesignated assets that contribute to regional research objectives Category 2 listed buildings Historic (unlisted) buildings that can be shown to have exceptional qualities in their fabric or historical association Conservation areas containing important buildings that contribute significantly to their historic character Historic townscapes or built-up areas with important historic integrity in their buildings, or built settings (e.g., street furniture or other structures) Designated landscapes of special historic interest (including Category 2 registered parks and gardens); undesignated landscapes that would justify such a designation; averagely well-preserved historic landscapes with reasonable coherence, time depth, or other critical factor(s); landscapes of regional value
Low	<ul style="list-style-type: none"> Designated or undesignated assets of local importance including those comprised by poor preservation and/or poor survival of contextual association Assets of limited value, but with potential to contribute to local research objectives Locally listed buildings and historic (unlisted) buildings of modest quality in the fabric or historical association Historic townscapes or built-up areas of limited historic integrity in their buildings or built settings (e.g., street furniture or other structures) Robust undesignated historic landscapes; historic landscapes with importance to local interest groups; and historic landscapes whose value is limited by poor preservation and/or poor survival of contextual associations
Negligible	<ul style="list-style-type: none"> Assets with very little surviving archaeological interest Buildings of little architectural or historical note Landscapes with little significant historical interest

3.5.16 The heritage assessment by Heritage Properties Ltd considers the magnitude of the proposed work on the heritage asset on a nine-point scale ranging from a major adverse effect to a major beneficial effect. The significance of these effects can be either adverse-beneficial on a scale ranging from neutral to very large. The magnitude of impacts is represented by table 3-5 in the Heritage Properties Ltd report.

3.5.17 Using the building grouping for each archaeological reference point, Heritage Properties Ltd evaluated the significance of the impacts on all the affected buildings in Block II.

3.5.18 In relation to the 16 scheduled buildings that are not proposed for demolition, all but one is determined by the Heritage Impact Assessment to have low heritage values. In addition, Farminer and Miller (2016) in their report to the Invercargill City

Council considered that a number of buildings currently scheduled on the District Plan do not meet the criteria for protection. Of the same sixteen buildings in the District Plan scheduled within the project area, seven were proposed by Farminer and Miller (2016) to be removed from the District Plan, leaving seven worthy of protection, albeit mostly with low values. The Council has not proposed any amendments to its District Plan in response to the Farminer and Miller report.

3.5.19 In the Heritage Properties Ltd assessment at 6.1.2 consideration is given to the architects represented in the styles of the buildings in Block II. This includes the following architects:

- (a) Frederick William Burwell
- (b) Charles H Roberts
- (c) Edmund R Wilson
- (d) Cuthbert John Brodrick
- (e) Edmund Anscombe
- (f) Henry McDowell Smith
- (g) Benjamin Ager
- (h) Alan C Ford
- (i) Lou F Simpson

3.5.20 The amendments to the proposal in late 2018 resulted in a proposal to retain the façade of the Southland Times Building and the façade of the Cambridge Arcade building, each on Esk Street. That proposal was assessed in the Heritage Properties Ltd Addendum and the basis for that assessment was the Buchan document “Invercargill Central/Resource Consent Amendment/Design Statement” 29 January 2019. The summary of changes is at pages 4 and 5 of that document, with more detailed drawing number amendments identified at page 6. Because the amendments resulted in retention of façades only (including the HNZ classified Southland Times Building), the Heritage Properties Ltd Addendum assesses specifically the merits of façade alterations and partial demolition at section 3.3 of the Addendum.

3.5.21 In relation to the merits of retention of façade the Addendum Report states:

“Retention of a building’s façade as a purely aesthetic feature that does not relate to the structure behind it, also known as facadism (Curl, 2006), is one way to reduce the loss of heritage value. Those with interests in heritage tend to view this approach negatively and as an option chosen by developers as an afterthought (Bargery, 2005); and HNZPT have previously stated that facadism is not consistent with best practice (NZHPT, 2007). In many cases, the rest of the building is not fit for purpose and the retention of the façade is the best possible outcome, and it is undoubtedly a more positive outcome than the total loss of a heritage building. The main argument against this approach is that the façade becomes separated from and unrelated to what is behind it, an issue which is amplified if the new structure is of a totally different scale to its predecessor. Some schools of architecture view this as a positive, arguing that it makes a statement that the place is connected to the past but not restricted by it (Schumacher, 2010). It is also often the case that the façades chosen for retention are those viewed as most aesthetically pleasing, while some that may be more representative of plainer vernacular architecture that better characterises an area are removed (the celebration of the ‘exceptional’ rather than the everyday), leaving an inaccurate depiction of the street or area’s past. This approach has been applied in Invercargill previously with mixed results, as identified by Farminer and Miller (2016) in their review of the city’s built heritage. At 33 Leven Street, the façade of a Victorian building (Macaulay’s Building) has been incorporated into the side of a large functionalist structure, currently occupied by Spotlight. The form of the newer building has not taken the façade into consideration other than its retention, and it appears marooned in a characterless sea of blank wall. The main entrance to the building have been moved to a different elevation, robbing the façade of its original purpose as the public focal point of the structure, and the windows and doors have been blocked. A more successful execution of this approach is represented by the buildings at 40-42 Esk Street, behind which are modern structures much better suited to their contemporary retail use than their predecessors, but that fit seamlessly with the retained façades, so much so that most passers-by are likely unaware they have been modernised at all”.

3.5.22 The Addendum then went on to record:

“The question that naturally follows is which buildings or façades deserve to be retained? As mentioned above, preference is generally given to those deemed

to have the highest aesthetic value, and this would seem to align well with the ICC District Plan as its heritage provisions are entirely based upon the aesthetic qualities of the buildings. There are strong arguments for this approach, chiefly that the retention of more 'ordinary' façades and building reduces the value of heritage façades, and instead that only those possessing high levels of architectural skill should be considered for protection (Bargery, 2005). Invercargill has an incredibly strong architectural history, with many local architects (F W Burwell, C J Brodrick, A C Ford and L F Simpson), as well as some that are nationally significant (Edmund Anscombe and Henry McDowell Smith), so there is a plethora of choices if the main driver of heritage value and retention is architectural merit and representativeness. Those buildings or façades chosen for retention will inform future generations' ideas about Invercargill's past, and as such should be those that are most valued by residents in the present, regardless of the reasoning behind this value. As discussed in the previous section, those buildings currently selected for façade retention do fulfil this brief, however careful consideration must be given to how the retained façades are treated and incorporated into the new development".

3.5.23 In relation to the proposal for retention of the Southland Times façade, Heritage Properties Ltd considered that the retention is in accordance with best practice for retention as applicated by Heritage Properties Ltd (2017) and follows the Invercargill City Council City Centre Design Guidelines (Gray 1998). The design team proposed retention of the Southland Times façade as a highlight in the Esk Street streetscape.

3.5.24 Concerning the Coxheads' Building the Heritage Properties Ltd authors wrote:

"The façade of the Coxheads' Building is an excellent representation of F W Burwell's architecture, and it is appropriate for it to be included in the redevelopment of the block. F W Burwell is a highly regarded Southland architect and had a great degree of influence on Invercargill's architecture and architects. The façade will sit beside the HWR Tower in much the same way that the building abuts that Lewis & Co Building, and the buildings to the east will sit at the same height, providing continuity of context as recommended by Gray (1998). At ground level, the shop front windows will be removed, and new windows will be setback from the façade. The layout of the new structure behind the façade will align with existing datums to ensure it integrates with the façade. Behind the façade, functioning space of at least one room depth

will be constructed on both levels to avoid 'views to the sky' and maintain the building's purpose. The existing suspended verandah will be removed and replaced with a glass and steel verandah that will sit beneath the ground floor architrave. The first-floor façade will only see minor alterations, and will be painted according to the City Centre Design Guidelines. The proposed colour scheme of white and grey is intended to highlight the façade and match the other retained built heritage features, drawing attention to the area's history. The use of paint is a reversible treatment and the proposed grey and white tones are similar to the current neutral palette, so will minimise the impacts to the heritage values".

- 3.5.25 In relation to the proposed retention of the Cambridge Façade the Heritage Properties Ltd report stated:

"The Cambridge Arcade façade is one of this block's best and most iconic examples of the Art Deco architecture that is so prevalent around Invercargill, and is the work of a well-known local architect A C Ford.

... incorporates elements of the previous Revivalist façade that was damaged in a fire. Similar treatment will be applied to the retained façade as with the Southland Times and Coxheads' Buildings in line with the ICC Design Guidelines. The buildings either side of the retained façade have been designed to reference the same height datums at the Arcade frontage, which reflects both the present and historic streetscapes. This means that the Cambridge Arcade façade will remain in a context which is familiar to the current population and reflective of the setting in which the 1930s building was designed. The ground floor of the Arcade façade will require alterations to make it suitable for modern retail tenants. The shop fronts either side of the Arcade entrance have been previously modified and as such retain minimal heritage fabric; however, the central entrance remains as built and consideration should be given to retaining as much of the original fabric as possible. This includes the distinctive shape of the entranceway, the floor tiles, metal gates and decorative moulding on the interior of the entranceway (particularly on the east side). These details should at least be referenced in the new design in order to retain as much of the Arcade's character and sense of history as possible".

- 3.5.26 Overall, having regard to the following contextual matters that inform appropriateness, Dr Hayden Cawte concluded that the proposal was appropriate protection, use and development of heritage considering the:

- (a) The values of the heritage
- (b) The significance of the heritage
- (c) The proposed measures for mitigation
- (d) The costs of remediation and protection and likely adaptive re-use
- (e) Levels of authenticity of heritage elements
- (f) Other functional requirements including achieving an appropriate functional amenity for the CBD Core

3.6 Demolition and redevelopment methodology

3.6.1 The demolition and construction methodology for the proposed development was explained to us by Mr Geoffrey Cotton in his statement of evidence. Mr Cotton is a fellow of the Australian Institute of Quantity Surveyors and has extensive experience in project management of large projects. In his view the demolition and construction project can occur in a way that minimises disturbance and disruption of surrounding businesses and the general public. To achieve that, detailed extensive planning and continuous consultation with interested parties is required. By setting out the skeleton of the methodology and approach to development, the important detail was, Mr Cotton proposed, to be addressed by management plans including a Demolition Management Plan and a Construction Management Plan. The various stages of the project were related by Mr Cotton to the Staging Plan included in the application.

3.6.2 The construction stages according to Mr Cotton will be:

- (a) Asbestos removal
- (b) Heritage reporting
- (c) Demolition
- (d) Archaeological investigation
- (e) DSI investigation
- (f) Piling
- (g) Stage 1 – Anchor Tenant Building

- (h) Stage 2 – Car Park Structure
 - (i) Stage 3 – Fashion Retail and Food Court Building including fitting out
 - (j) Stage 4 – Office Building corner of Dee and Esk
 - (k) Stage 5 – Civic and Medical Centre corner of Dee and Tay
 - (l) Stage 6 – Hotel/Commercial Building corner of Kelvin and Tay
- 3.6.3 The site will be secured by a 2.4m high perimeter timber class B hoarding on all external boundaries along street frontages and site boundaries, and will be accessed via inward opening gates that will be fitted with chains and locks.
- 3.6.4 A complete dilapidation survey and report will be carried out in accordance with usual demolition practice.
- 3.6.5 Importantly, adjacent building structures, including those to be retained on Esk Street and the Bank of New South Wales building on Dee Street, will be inspected and specialist investigation carried out to ensure that during demolition these structures are continuously monitored so that movement does not occur.
- 3.6.6 Because the project contains a substantial amount of demolition and heritage inspection/archaeological review, the period of occupation is expected to be 11-12 months.
- 3.6.7 During the initial stages of demolition access to the site will be from Esk Street, using the service lane between the Southland Times and the Kelvin Hotel.
- 3.6.8 Temporary food outlets will be established on Esk Street during this stage, serving coffee, tacos, burgers and the like, to ensure that the retail component on the south side of Esk Street remains. This facility will remain in place until completion of the project. Suitable canopies will be erected during inclement weather.
- 3.6.9 Stages 3 and 4 involve the complex demolition of the Government Life and Coxheads' Buildings, excluding the Coxheads' façade.
- 3.6.10 Concerning the management plans, Mr Cotton said at [61]:

“Comprehensive DMPs and CMPs will be prepared and issued when we have awarded contracts for the demolition and construction and these will, as a minimum, meet the requirements of the proposed conditions of consent. We

will ensure that when tendering construction packages the conditions of resource consent will form part of the contractual terms and this will provide certainty that concise and complete documents will be provided by these contractors, with the necessary assistance from the project manager”.

- 3.6.11 We asked BMC Consulting to review the draft Demolition Plan proposed by Mr Cotton and also to comment on its efficiency to ensure delivery of intended outcomes, including protection of the Coxheads’ façade. In a letter dated 2 April 2019 BMC stated:

“The proposed staging that is described sets out a logical sequencing of the total demolition works that is intended to be coordinated with heritage/archaeological inspection and proposed construction sequencing. Façade retention works are built into the staging proposal. It is acknowledged by Mr Cotton that the described demolition staging/process is a ‘strategy document’ and will require detailed planning for responsible execution by a suitably experienced contractor with appropriate engineering support. BMC sees this as a requirement”.

- 3.6.12 The letter goes on to say:

“It is also acknowledged the responsibility for the demolition, execution and delivery of specific management plans/method statements, are the responsibility of the appointed contractor(s). Mr Cotton suggested in discussions these plans may require peer review for some or all of the Stages (some Stages more challenging than others). In particular demolition of the old Government Life Building along with the attached Newburgh Building requires special attention. BMC see a review of all contractor Stage Demo Execution plans by an appropriate HWCP appointed person, as a requirement”.

- 3.6.13 A feature of Mr Cotton’s evidence was his emphasis on working with adjoining retailers during the demolition and construction phases. Consistent with that observation, HWCP Management Limited has actively consulted with a group of neighbouring retailers called the Neighbourhood Retailers Group (NRG).

3.7 Composition of building elements

- 3.7.1 The ordering of the built form has been developed with reference to the existing façade ordering. The reasons given for this by Mr Burgess in his design presentation are:

- (a) It was important that the new development retained a sense of place - a connection to its history.
 - (b) Façade order is not only about creating a sense of vertical scale which was appropriate but also in grain along the length of each façade.
 - (c) This simplified grid informed the structure of the proposed through (sic) façade, primarily by driving variation along the façade edges in a rhythm consistent with the existing.
- 3.7.2 This supports the location of the taller buildings to anchor the corner sites and lower scale buildings to a maximum of 10m in height as required by the District Plan. Along the street edges, this defines a fine grain of façade widths reflecting the existing pattern. The taller car parking building sits behind these lower buildings and while clearly visible as shown on the elevations, this won't be a view experienced from the street.
- 3.7.3 The District Plan seeks taller buildings at the corners and Mr Burgess stated in his evidence that the building massing and composition delivers this by:
 - (a) Locating a seven-storey office building to (sic) the key site of the Newburgh building
 - (b) Framing the Bank of New South Wales with equally sized development respecting past history and ordering upon the site
 - (c) Allowing for a six-storey building on the Tay and Kelvin Street corner framed by historic façades
 - (d) Recessing the potentially most visually dominant structure of the car parking building back from the Esk Street edge approximately 30m
- 3.7.4 The layout is also determined by maintaining the north/south pedestrian routes through the site, albeit that they are not necessarily in the same location. This maintains the historic pattern of movement through the block and increases the permeability of the mall and its connection with the adjacent shopping streets.
- 3.7.5 The façade treatment aims to reflect the range of materials, articulation and details found in the existing built form. The treatment reinforces the grain of the façade divisions by varying the materials and style along the street edge. However, the treatment of the façades adjacent to the Southland Times façade show blank walls

above ground level. This is driven not by reflecting the existing patterns but by the design drivers of the anchor tenant who requires internal wall storage rather than windows. During the Hearing we questioned the consistency of blank walls with the principle of respecting the existing grain and façade ordering. The architect responded that the anchor tenant would not redesign the store to enable any openings in these walls. He did, however, provide an alternative design that showed some textured treatment to the façades. While this provided some relief to otherwise blank walls, they still do not reflect the existing pattern or best urban design practice.

3.7.6 Treatment to other façades adjacent to heritage façades do not relate to the modulation of their neighbours, but propose a contrast. The architect argued that buildings adjacent to the Bank of New South Wales supported this building and reflected the pattern of development that used to sit alongside. Its earlier neighbours, however, were similar in the ratio of openings to solid, aligned floor levels and articulation. The proposed new buildings have little relationship to the Bank of New South Wales, with screens covering large expanses of glass and inadequate respect for the modulation of the façade.

3.7.7 Various façade designs were shown throughout the consenting stages, from those that accompanied the application, to the revised scheme, and finally to the Hearing. The Commissioners were told that the plans presented at the Hearing were final, but there remains some doubt that the design has been closed out and any changes will need to be subject to a variation to the consent.

4. Matters of law and other matters of importance to our analysis

4.1 The law relating to the assessment of effects on heritage

4.1.1 Because heritage effects is a persuasive issue we should set out the legal approach that informed our assessment.

4.1.2 By adding to RMA Part 2, a new section 6(f) in 2004, Parliament directed that local authorities recognise and provide for the protection of historic heritage from *inappropriate subdivision, use and development*. That general direction is intended to be given substance in the specific context of regions and districts by the development of planning instruments with objectives, policies and rules that undergo a rigorous scrutiny through a public process under the RMA, Schedule 1.

- 4.1.3 The word “appropriate” and “inappropriate” are commonly used in the RMA, in planning instruments and by the planning discipline generally. It is therefore not surprising that the meaning of those words was examined in the leading Supreme Court decision on resource management matters called *Environmental Defence Society Incorporated v. The New Zealand King Salmon Company Limited (King Salmon)*⁴. The Supreme Court did so classically, by considering the wider statutory context.
- 4.1.4 The first important thing to note is that the idea of heritage is a broad one that encompasses more than just built form. However, to the extent that it applies to built form the aim of section 6(f) is to require the community to recognise that there are values that repose in what is to a commercial lens merely fabric. If those values are preserved this can provide for the social, economic and cultural well-being of communities. Wonderful stories in the planning lexicon such as the rescue of the Rocks in Sydney from the clutches of developers add credence to the idea. Parliament’s direction therefore requires a careful discernment of these heritage values and a meticulous consideration of the wisdom of the use or development of these resources. Unlike natural resources there are no obvious bottom lines or limits otherwise discernible from the text of Part 2 concerning use and development of heritage other than the nebulous concept of community well-being.
- 4.1.5 The special insight of the *King Salmon* decision about ‘appropriateness’ is that ‘appropriateness’ is to be assessed against that which is sought to be protected. One may therefore expect to find in district plans clear statements of values in relation to particular heritage and identification of the elements sought to be protected. From that one has a community endorsed basis on which to make assessments. As we shall see, the Proposed District Plan does not follow that path and takes a more cautious approach. We do not criticise the Proposed District Plan for that because in the CBD there is such a need for redevelopment. Also issues relating to heritage and whether or not it should be protected are complex. It would be an enormous and detailed task to reach a convincing point (using a section 32 analysis) where protection should be strongly directed by a plan in respect of individual buildings. The alternative approach, and the one that we consider the Proposed District Plan applies, is more of a case-by-case analysis. At least in respect of building not also categorised by Heritage New Zealand. But that also carries risks

⁴ *Environmental Defence Society Incorporated v. The New Zealand King Salmon Company Limited* [2014] NZSC 38.

that heritage will be lost unsustainably by a ‘thousand cuts’ in the absence of clear planning direction.

- 4.1.6 Without clear statements of values that ought to be protected in the Proposed District Plan we have to rely on the evidence. The only expert evidence on heritage values was that given by the well-respected heritage expert, Dr Cawte, on behalf of the Applicant. His assessment of the heritage values of the subject block and the individual buildings listed in the Proposed District Plan was a work of considerable density, detail and insight that the Panel has closely examined. He noted that the listing criteria in the Proposed District Plan was based on a technical report that largely focused on architectural and streetscape values but his analysis was a far more detailed and integrated assessment of all heritage values within the individual buildings. Because many of the interiors of the buildings are substantially modified there was a low degree of authenticity in many buildings concerning the interior elements with the consequence that the heritage values primarily related to the façade. Notable exceptions were the Newburgh, Lewis & Co, Cambridge Arcade and Southland Times buildings.
- 4.1.7 In deciding therefore what ought to be preserved (in the absence of clear direction in the Plan) we heavily relied upon the heritage assessment of Dr Cawte as to what was valuable and worthy of protection and what could be appropriately demolished.
- 4.1.8 There is one aspect of Dr Cawte’s analysis that is of particular interest and worthy of consideration from a legal point of view. Dr Cawte was influenced in his assessment of the appropriateness of the outcome of the proposal on the condition of the buildings that were to be demolished. So, in his opinion, what ought to be preserved needs to have an eye to the existing condition of the building. The potential of the building to provide the benefits of heritage has to consider the existing reality of the building’s condition. That view is consistent with the law in relation to the assessment of effects on the environment. A concept in resource management parlance is the idea of the ‘receiving environment’ to assess effects. That environment is the environment not as it might be but as it is or could be modified as of right see *Queenstown Lakes District Council v. Hawthorne Estate Limited*⁵

⁵ *Queenstown Lakes District Council v. Hawthorne Estate Limited* [2006] NZRMA 424.

- 4.1.9 That is not to say that even buildings that are presently unusable do not possess heritage values. That is made plain by the decision of the Environment Court in *View West Limited v. Auckland Council*⁶. However, the extent to which those values carry weight and are worthy of protection must be affected by their long-term potential to remain available for the social and cultural well-being of communities. In assessing whether or not there is this latent potential that will be available that therefore should be protected it is necessary to make a realistic assessment of:
- (a) Requirements for compliance with other legislation.
 - (b) The costs of compliance with other legislation.
 - (c) Realistic opportunities for adaptive reuse.
 - (d) Whether an economic return is likely to be achieved from adaptive reuse.
- 4.1.10 Parliament's other requirements concerning building standards generally have moved strongly in the direction of increasing the costs of heritage protection. And that has been compounded by a wider national appreciation of earthquake risk and tenant requirements that reflect concern for their staff's safety.
- 4.1.11 Self-evidently, we think, it is not appropriate to protect heritage fabric where the fabric is in a highly compromised state and will in the event of a seismic event cause considerable damage to people and property where there is limited adaptive re-use opportunities available in the market and no potential for economic return on the significant cost associated with remediation.
- 4.1.12 Concerns about public health and safety are not idle matters in this case. In the case of the Lewis & Co and Newburgh buildings the concrete is already spalling from the fabric. Artificial and temporary measures are being used to hold the building together but it was evident from our investigation that the building was likely to collapse even in a moderate earthquake. That was graphically explained to us by the Applicant's engineer, Graham McDougall. The importance of public safety in our assessment on heritage matters comes from the very nature of the definition of sustainable management in RMA, s 5. As Collins J put it in *Lambton Quay Property v. Wellington City Council*⁷: "one of the purposes of the Resource Management Act

⁶ *View West Limited v. Auckland Council* [2018] NZEmpC 237.

⁷ *Lambton Quay Property v. Wellington City Council* [2014] NZHC 78.

is the management of physical resources in a way that enables people in communities to provide for their safety”.

4.1.13 In the *View West* decision, the Environment Court said at [50] - [51] the following:

“[50] Section 5 clearly identifies health and safety as being a primary element of sustainable management. That sustainable management also relates to not only natural but also physical resources including such things as buildings. In this case the failure of the Plan to address questions of public safety must enable the Court to have recourse to Part 2 to ‘fill the gap’. Mr Loutit and Mr Enright agreed that safety was an issue in relation to this application.

*[51] Put another way, we consider the application of the well-established legal maxim *salus populi suprema lex esto*, or ‘the highest purpose of the law is the safety of the people’”.*

4.1.14 The Building Act 2004 governs building use and development and its pre-eminent purpose is to ensure that *“people who use buildings can do so safely and without endangering their health⁸”*. In achieving that purpose buildings are required to meet the Building Code. In addition, under the Act buildings are required to have a certain seismic resilience and the regulatory responsibilities of the local authority include under Subpart 6A the role of the territorial authority as follows:

“133AF Role of territorial authority in identifying certain priority buildings

(1) *This section applies to a territorial authority whose district includes any area of medium or high seismic risk.*

(2) *The territorial authority,—*

(a) *for the purpose of section 133AE(1)(e) (prioritising parts of unreinforced masonry buildings), must use the special consultative procedure in section 83 of the Local Government Act 2002 to identify any part of a public road, footpath, or other thoroughfare in an area of medium or high seismic risk—*

⁸ Building Act 2004, s 3(a)(i).

- (i) *onto which parts of an unreinforced masonry building could fall in an earthquake; and*
 - (ii) *that has sufficient vehicle or pedestrian traffic to warrant prioritising the identification and remediation of those parts of unreinforced masonry buildings; and*
- (b) *for the purpose of section 133AE(1)(f) (prioritising buildings that could impede a strategic transport route),—*
 - (i) *may, in its discretion, initiate the special consultative procedure in section 83 of the Local Government Act 2002 to identify buildings for that purpose; but*
 - (iii) *must not identify buildings for that purpose other than in accordance with the special consultative procedure.*
- (3) *However, a territorial authority is not required to act under subsection (2)(a) if there is no reasonable prospect of any thoroughfare in its district satisfying the criteria set out in subsection (2)(a)(i) and (ii).*
- (4) *If a territorial authority is required by subsection (2)(a) or decides under subsection (2)(b) to use the special consultative procedure in section 83 of the Local Government Act 2002, it must use the procedure within a time frame that enables the territorial authority to meet the applicable time frame under section 133AG(4) for identifying potentially earthquake-prone priority buildings in its district”.*

4.1.15 Under the Building Act, s 133AL a local authority must issue an earthquake prone notice where the building is classified as earthquake prone. The owner must then complete the necessary seismic work within the specified deadline in accordance with the Building Act 2004, s133AM. Sub section 4 of s 133AM makes it plain that seismic work can include demolition of a building. Therefore, absent any requirement for a resource consent most land owners can respond to the earthquake prone problem by demolition if it makes no economic sense to remediate.

4.1.16 We consider that it would be inappropriate and bordering on an improper purpose (in the administrative law sense) to:

- (a) Use the resource consent process to close the door to demolition of a commercial building,
- (b) With the aim of forcing remediation for the benefit of a section of the public that appreciates the streetscape,
- (c) When buildings have limited adaptive use and the cost of remediation are completely uneconomic.

4.1.17 In some cases, the heritage buildings we were considering such as the Lewis & Co and Newburgh buildings were beyond saving even with remediation. Therefore, the BMC detailed seismic assessment report for those buildings concluded in section 1:

“In summary the Government Life building is earthquake prone and in terms of structural strength and condition is in our opinion not able to be repaired or strengthened without the loss of most of the heritage fabric and values of the building. The innate cornices and column treatments to the façade all appear to have been formed in reinforced concrete, plastered and painted. The building has not been occupied above ground floor for approximately 35 years and has significant structural and non-structural damage caused by lack of maintenance”.

4.1.18 In light of all the above matters we do address the appropriateness question, like Dr Cawte with a realistic eye to what is truly authentic in the fabric , and to the existing condition of buildings remembering the pre-eminent concern is to provide for people’s safety. Bluntly, the Proposed District Plan cannot sensibly and does not expect an active pedestrianised vibrant CBD environment full of unsafe and maladapted buildings that are uneconomic to save and will in time be empty.

4.1.19 Policy 14 in Section 2.22 of the Proposed District Plan says:

Policy 14 Dilapidated structures and ill-maintained lands: *To require that buildings in the Central Business District will be sound, well maintained and tidy in appearance.*

4.1.20 It is not clear how that policy can be achieved in a resource management plan but in respect of heritage buildings where maintenance is not economic that policy will not be achieved by insisting on their retention.

4.1.21 Further at 7.53 m of his s 42A report, Mr Cleese also, correctly in our view, observed:

In the city centre “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”.

- 4.1.22 We also note that Parliament introduced RMA section 6(h) that requires decision-makers exercising functions under the RMA to recognise and provide for the “*management of significant risks from natural hazards*”. Plainly, we must make resource decisions about the protection management or use of physical resources with an eye to the potential risks to community well-being and natural hazards. That reinforces the point we have made earlier that the word “inappropriate” under RMA section 6(f) must be considered in the context of seismic risks, the condition of the building and the risks posed to the well-being of community. Where the economics of retention of heritage do not stack up then buildings will continue to decline in condition and pose risks. The purpose that we ascertain behind section 6(h) is building hazard resilient communities and that can only be achieved in the city centre by having appropriately resilient buildings.

4.2 Assessment of changes to application and whether those changes are within scope

- 4.2.1 As already noted, there have been a number of changes to the application during the consent process under RMA Part 6. The question is whether or not those changes are within scope. Only two planners addressed that question in evidence. Mr Clease addressed the question in his section 42A report and in his summing up at the Hearing and Ms McMillan addressed most of the changes in her evidence dated 11 March 2019. Their evidence was that the changes were within scope.

- 4.2.2 To assist us on that question Ms Hamm, counsel for the Applicant, provided submissions and referred to the three tests applied in *Coull v. Christchurch City Council*⁹ to address whether the amendments are within jurisdiction. The tests are:

- (a) Does it increase the scale or intensity of the activity?
- (b) Does it exacerbate or mitigate the impacts of the activity, both in terms of adverse effects and in terms of the Plan and other superior documents?

⁹ *Coull v. Christchurch City Council* EnvC Christchurch see 77/06, 14 June 2006.

- (c) If parties who have not made submissions had done so if they were aware of the change.

4.2.3 In relation to the third element of that test, we are not certain whether that remains good law. It is our understanding that test has been criticised because it somewhat begs the question. The underlying concern is to ascertain whether or not natural justice may be imperilled by depriving people, who may be legitimately concerned with the proposal, of an opportunity to participate¹⁰. In the Supreme Court in *Waitakere City Council v. Estate Homes Limited*¹¹ Elias CJ at [35] said that scope “was a question of degree”.

4.2.4 In her Statement of Evidence dated 11 March 2019 Ms McMillan said that the changes to the proposal at that time were:

- (a) Removal of the heritage façades of Tay Street (Fairweather Building) and Kelvin Street (Thompson’s Building).
- (b) Retention of the Cambridge Arcade façade on Esk Street.
- (c) Reorganisation of car park building mass with reduced area of site and additional floor added.
- (d) Increased height and area on the Medical Centre – Tay and Dee Street elevations.
- (e) Removal of heritage items on Tay Street and inclusion of ‘Southern Lights’ screens on a car park building.

4.2.5 At [14] of her Statement of Evidence Ms McMillan said that the changes “*do not result in an increase in a level of non-compliance of the original notified proposals and do not result in any new compliances*”. She also made the point that the bulk and mass of the site remains similar. Finally, Ms McMillan noted that Dr Cawte had considered that the overall changes were beneficial from the heritage point of a view.

4.2.6 We consider these changes are within scope because:

¹⁰ *Estate Homes Limited v. Waitakere City Council* [2006] NZLR 619 (Court of Appeal) at 104 where the natural justice point is mentioned.

¹¹ *Waitakere City Council v. Estate Homes Limited* [2006] NZSC 112.

- (a) The scale and extent of the proposed modification of Block II by the proposal was very evident from the application and any person interested in the future of Block II would have been motivated to make a submission on the basis that fair notice was given that substantial changes would occur, including significant demolition of heritage elements. It is not a reasonable assumption to make that the proposal will not evolve to some degree.
- (b) There are no material additional non-compliances that arise.
- (c) Some of the changes to the heritage were intended to positively respond to issues raised by submitters and overall were crucial in making the application one that was consentable.
- (d) The overall scale and bulk of the site and the use of the site will remain similar to that originally proposed.

4.2.7 Further changes were made during the Hearing to the design of the built elements framing the modified Southland Times Building. These changes were modest and in response to issues arising during the course of the Hearing and do not go beyond scope.

4.2.8 Finally, during the course of the Hearing an additional floor was added to the proposed hotel on Kelvin Street and more detailing of the façade was provided. H & J Smiths took the point that the additional height compounded the problem with scale and the building being pedestrian-unfriendly. However, there was no evidence that one floor made any material difference to the shading cast by the proposed building or caused any other effects that would not have arisen based on the proposed building in the original drawings. We consider that this amendment is also within scope.

4.3 Strategic shift in heritage management from the Operative District Plan to the Proposed District Plan

4.3.1 The Operative District Plan is a dated planning instrument. In relation to heritage in the CDB, it relied for identification of heritage mainly on architectural values based on the technical report by J B Gray called *Invercargill City: Central City Area Heritage Building Review* [1997]. Buildings were identified in accordance with Policy 3.9.2(B) relying on that report and the basic aim was to protect all heritage elements. Objective 3.9.1 stated that its goal was to “*recognise and protect the heritage values of site structures, places and areas within the District*”.

- 4.3.2 In the CBD the Operative District Plan identified the City Centre Heritage Precinct and Policy 3.9.2(C) stated in respect of the precinct:

“To have particular regard to the heritage values of the City Centre Heritage Precinct and to promote their protection, maintenance and enhancement, at the same time as enabling the modern functioning city centre”.

- 4.3.3 In stating its reasons for the largely protection-based paradigm the Plan at 3.9.5.1 stated:

“The District contains a large number of sites, structures, places and areas, including wahi tapu and wahi taonga, that are of heritage value and contribute to the social, economic, cultural well-being of the Invercargill community. Council has a statutory obligation to protect heritage values and believes that the community supports the retention and protection of its heritage resources”.

- 4.3.4 The Plan proposed a number of regulatory and non-regulatory instruments, including economic instruments, to try to achieve the goal of protection. We do not know the nature and extent of these economic instruments.

- 4.3.5 History shows the aims of protection in the Plan (and any other non-regulatory tools employed) did not promote the functional amenity of the CBD.

- 4.3.6 In 2010 the Council decided that revitalisation of the inner city was the number one priority of the Council. It then commissioned a Master Planning Report that is known as the Pocock Report called *“Invercargill Inner City Revitalisation Master Plan Report”* (August 2013): Pocock et al.

- 4.3.7 The Pocock Report identified various precincts and areas appropriate for prioritising pedestrian, redevelopment, entertainment and other drivers of inner-city revitalisation. These precincts were the basis, presumably, for the precincts later established in the proposed District Plan. In relation to the issue of heritage the Pocock Report said at section 2.3:

“Heritage building strengthening

Owners of historical buildings are under pressure across New Zealand to either strengthen or remove their buildings due to the Christchurch earthquakes. In some cases the buildings have been in poor condition for decades and should be removed because they are beyond the point of strengthening and are at a

high risk to the public and occupants. For the buildings that can be strengthened, some of are still under pressure for demolition. This is due to a range of reasons such as; it is more economical to demolish and rebuild a new building than strengthen the existing building, the historical interior set out or building performance (insulation, lighting, heating, cooling) makes them unpopular for tenants or the building is unable to meet the required fire standards for the upper floors, making any floor above the ground floor untenable. (sic)

The other lesson Christchurch taught us is that if you knock down most of your historical buildings you lose your sense of place and identity, and the development economics might not be in favour of rebuilding the site. If the development economics do not stack up to rebuild you may end up with an empty 'main street' or CBD sites where the owners 'land bank' the site and wait for better economic times before rebuilding. This will have a detrimental impact on the surrounding buildings, the CBD environment as a whole and peoples confidences in the CBD, as a place to visit and invest. Resulting in business moving out of the CBD to new commercial subdivisions or the surrounding suburban neighbourhoods. (sic)

Invercargill historical buildings are under pressure from all of the above issues, but there is still a high degree of public perceived values to the historical buildings, especially those on Dee Street, which are considered as a 'gate way' for the CBD as you head south (refer to Figure 2-4). There is also a high degree of pride in Southland's heritage and the historical buildings are considered to be a part of that heritage on display, and should be retained where possible".

- 4.3.8 As a consequence of these issues the Proposed District Plan takes a different approach to management of heritage in the CBD and recognises that protection is not a goal that can be sensibly pursued for all buildings possessing heritage value.
- 4.3.9 The Panel deals with the elements of the proposed District Plan elsewhere in this decision. It is sufficient to note that the primary objective in section 2.8.1 aims for protection only from "*inappropriate subdivision, use and development*". Objective 2 aims to ensure built heritage is "*appropriately recognised and utilised*". Objective 3 aims to ensure that heritage values are "*appropriately managed to avoid or mitigate the potential adverse effects of natural processes and climate change*". The persistent use of the qualifier "appropriate" is then left, largely, to be addressed based on individual applications.

- 4.3.10 In relation to the Business 1 Zone, where redevelopment is prioritised, there is only one policy related to heritage (Policy 22). It says the aim is *“to promote the retention of the character and scale of the heritage structure, buildings, and places within the city centre”*. Given that policies should aim to assist decision-makers to make assessments, the direction in Policy 22 to promote an outcome is rather an odd verb for a decision-making tool. It is noted that it also refers back to section 3 of the Plan and its main objective is to ensure appropriate management use and protection of historic heritage.
- 4.3.11 In 2017 the Council prepared a City Centre Retail Strategy. That strategy relevantly identifies the need for rejuvenation of the CBD and is therefore consistent with the overarching aim of the Plan to allow for redevelopment in the city centre core¹².
- 4.3.12 Curiously, the Council undertook a further heritage assessment well after notification of the Proposed District Plan. That is known as Farminer & Miller 2016¹³. This reassessment recommended removing many of the buildings in Block II from the Plan’s heritage list as recommended by Gray (1997). That was on the basis that the buildings lacked sufficient merit. Farminer & Miller 2016 sought to prioritise areas for retention in the face of the need for significant redevelopment prompted by the Proposed District Plan. The report was intended to be a resource guide to decision-making under the Proposed Plan, even though it had not gone through a statutory process.
- 4.3.13 It can be seen, therefore, that in the face of continuing decline of the CBD’s functional amenity, there has been a perceptible and material shift in approach to the management of heritage in the community’s key planning instrument, with the aim of moving from protection to the aim of retaining the best elements of heritage and promoting redevelopment.
- 4.4 The evidence on macro (distributional) and micro-economic (functional amenity) effects
- 4.4.1 This application is inspired, in part, by the economic development it is hoped the project will secure for CBD revitalisation and to support other key growth initiatives including sustaining the attractiveness of educational institutions such as SIT and the growth of tourism, all of which indirectly benefit from an enlivened CBD. In

¹² Invercargill City Centre Retail Strategy 2017: Section 1 Strategy Overview.

¹³ *Invercargill: City Central City Area, Heritage Buildings Reassessment 2016*, Farminer et al November 2016.

assessing the economic benefits we had regard to two community-led economic development publications:

- (a) The Southland Regional Development Strategy (October 2015); and
- (b) The Southland Regional Development Strategy Action Plan (2015-2025).

4.4.2 We also received, as an attachment to the planning evidence of Ms McMillan for the Applicant, a 2019 NZIER report in support of a pitch for funding from the Provincial Growth Fund. This is a high level economic development analysis. We also, as noted already, received evidence from Ms Hampson who gave more focused and relevant information in regard to the economic effects, both distributional and temporary, arising from the proposal.

4.4.3 The Southland Regional Development Strategy (also known as SoRDS) identifies the sources of economic success in Southland, as well as the material risks to achieving continued success, particularly from an aging population and a declining share of the national population. Figure 3 in that report shows that between 2009 and 2014 Southland achieved the fourth highest level of economic growth of all New Zealand regions. But people are necessary to sustain economic achievement and the biggest threat in SoRDS is the risk of insufficient population growth. The central goal of the strategy is therefore more people. With New Zealand projected to have a population increase to 5 million by about 2025, based on current proportions Southland's population should rise to 115,000. However, based on current projections it will significantly fall below that number. A more realistic target for Southland now is 105,000 and 110,000 by 2030. To achieve that there will need to be an average increase from 2015 of 1,000 additional people to the region per annum.

4.4.4 SoRDS states that to obtain that population growth, it is necessary to create "great places" in urban Southland and at paragraph 21, the three final bullet points all concern revitalisation of the CBD. These items are:

- (a) Use of the Southland Times and Kelvin Hotel space as a Mall;
- (b) Creating parts of Esk Street as Mall area – art centre, retail, other; and
- (c) Creating the potential for cafes, bars and hospitality experiences for a young professional demographic.

- 4.4.5 To achieve SoRDS' goals this package of elements to revitalise Invercargill is to be achieved by 2025. The Southland Regional Development Strategy Action Plan (2015-2025) contains more detailed action steps to achieve the SoRDS' objectives. Of these one of the five transformational projects for Invercargill's rejuvenation is the "Cambridge Retail Precinct" which is simply identified as a retail precinct between Tay and Esk Streets covered by a "mall" area.
- 4.4.6 These documents therefore identify Southland's strengths and weaknesses in achieving its goal of increased migrant-led (domestic and foreign) household formation by families of working age to supplement natural population growth. Following from that, the community leadership has identified the urgent need for the Invercargill CBD Core to be revitalised through the development of a comprehensive retail precinct with substantial food and beverage offering. Such development also has ancillary benefits in supporting educational institutions and the other efforts to improve and develop tourism facilities in Southland. As a corollary the region's Mayors, Chamber of Commerce and SIT all wrote letters in support of the application.
- 4.4.7 We would describe the 2019 NZIER report from the Applicant concerning the proposal as a high level cheer-leading economic piece, short on specifics and clear assumptions and not supported by detailed data. It identifies that there are risks as to whether a development of the type proposed would succeed, although it suggests these risks have diminished since 2000 with growth in the regional economy. No baseline risk and degree of improvement is stated. The report does identify that the development has the capacity to act as catalyst to growth and other sectors such as education and tourism. The headline numbers for Southland's projected GDP growth are between \$29 million and \$48 million per year, or \$286 million and \$475 million until 2035. Temporary employment associated with construction is likely to be in the order of 500 workers and the report does not identify any projected growth in FTEs as a result of the development. The report anticipates an increase in population to Southland of between 3,000 and 10,000 permanently. Again, the rationale for this is not plain.
- 4.4.8 As stated the NZIER report was prepared as part of a pitch for money from the Provincial Growth Fund. In making a risk assessment at page 4 the report also identifies a number of points, including the uncertainty concerning *"whether ratepayers are prepared to take on the risk and uncertainty that a partly funded \$180 million CBD redevelopment requires"*. As we understand it, there is no commitment from the Provincial Growth Fund and there is no commitment by the

Invercargill City Council to fund any aspect of the proposal, and yet both of these sources of financial support appear to underpin the financial viability of the project. We address that matter when considering the risks of demolition and then incomplete redevelopment.

- 4.4.9 The thorough evidence of Ms Hampson was helpful in providing us with an economic picture of the relevant economic data and the implications of this proposal for the CBD over the short term and the long term.
- 4.4.10 At the outset Ms Hampson correlated the Statistics NZ meshblocks with the underlying District Plan Zone as far as possible to provide a spatial framework. This was similar to the spatial framework used by her company, Market Economics Limited, to inform the retail and centres-based provisions in the Proposed District Plan. Ms Hampson did that on behalf of Invercargill City Council.
- 4.4.11 At the macro level Ms Hampson noted only slow growth in the count of total businesses, with a rise from 4,007 in 2000 to 5,225 by 2017. This is a 30% increase or an average annual compounding growth rate of 1.6%. Conversely, the count of retail business has changed by only 4 in that time, rising from 549 in 2000 to 553. That change in growth rates has meant that retail business as a proportion of all businesses has fallen by 3% to 11%.
- 4.4.12 Trends in employment show a slightly different picture, with total growth of 20% over the same period. In part that is driven by larger business platforms including large format retail.
- 4.4.13 These trends translate into:
- (a) Little growth and demand for nett additional retail space but increasing demand for LFR; and
 - (b) Increasing demand for office space, but typically orientated towards small sized businesses.
- 4.4.14 Ms Hampson noted the total CBD business count experienced less growth than outside the CBD. She said:

“The CBD accounted for just 14% total Invercargill business growth and 26% of all employment growth. While the CBD once accounted for 27% total Invercargill business and 37% of total employment (2000), it currently accounts for 24% and 35% respectively”.

4.4.15 At paragraph 5.13 Ms Hampson said:

“The change between 2017 and that peak is more dramatic at 38 less retail business (-16%). In both 2009 and 2012, the CBD accounted for 43% of Invercargill’s retail businesses (the highest share in the period assessed), while in 2017 it accounts for just 36% - the lowest share experienced since 2000”.

4.4.16 Overall, Ms Hampson found that the CBD was facing more competition from retail activity than the rest of the district. Fewer retail businesses have nevertheless, not translated into fewer sales and transaction counts and these have increased modestly. This, however, seems to be concentrated in the food and hospitality and out of centre non-store retail, consistent with employment patterns. In comparison retail store groups have faced static or reduced shop accounts.

4.4.17 Ms Hampson then drilled down to the specific level of activity in the CBD Core. Ms Hampson acknowledged that there are more than just market forces at play, and a significant issue was the concentration of earthquake prone buildings in the area of the subject application. She described this and other forces as complex and many. The important statistics for the CBD Core were identified at [5.22] of Ms Hampson’s report and are quoted in the overview of this decision.

4.4.18 At [5.27] Ms Hampson said that the rationale for the HWCP proposal is sound in economic terms and she considered *“The need for action is urgent to reverse the trend of decline, particularly from the mid 2000s”.*

4.4.19 The wider examination by Ms Hampson of the health of the CBD Core also provides the context for her assessment of the effects in the short term of disruption associated with demolition and construction. The picture is one of a CBD Core already vulnerable to external competition and a declining small remaining workforce. Ms Hampson said: *“That many retail and shop-based service businesses in particular will not be resilient to further losses of pedestrian counts/shoppers. Only the strong will survive further decline”.*

4.4.20 From that platform Ms Hampson then assessed the short-term effects associated with the HWCP proposed development.

4.4.21 The current block provides functional amenity to the CBD Core by hosting a range of businesses. The key features described by Ms Hampson are listed below:

“(a) According to SNZ Business Frame, by 2017 there were 54 businesses in the block (down from 87 in 2000). Those 54 businesses account for 1%

of Invercargill businesses in that year and 29% of all businesses in the CBD Core.

(b) 28 of those businesses are non-retail activities (spread across information media/telecommunications, finance/insurance, professional services, real estate services, community services, personal and other household services and recreational and accommodation services). They account for 23% of all non-retail businesses in the CBD Core.

(c) 26 of the businesses are retail activities (spread across food/liquor, hospitality, furniture/fixtures, homewares, electrical, recreational goods, fashion, comparison other and out of centre/non-store retail). They account for 41% of all retail business in the CBD Core”.

- 4.4.22 The proposal involves the majority of the 54 businesses vacating the site. That would in effect be a 27% loss of businesses in the CBD Core.
- 4.4.23 The decanting of businesses has already occurred, and this is supported by surveys prepared by H & J Smiths. These existing losses are already irreversible, according to Ms Hampson.
- 4.4.24 If consent is granted, then further decanting will occur and this will be a further blow to the functional amenity of an already vulnerable CBD Core.
- 4.4.25 Ms Hampson said that this loss of functional amenity is temporary, has commenced and will continue until completion of the project.
- 4.4.26 That loss of functional amenity will also result in a loss of vibrancy and social amenity. That is associated with loss of workforce and shoppers and, like functional amenity, is likely to recover once the project is complete.
- 4.4.27 At the same time there is displacement of activity occurring, both as a result of the HWCP proposal and because of other market forces. An example is the construction of the K-mart on the CBD fringe. Because of the significant costs of moving, some of these distributional effects will be permanent.
- 4.4.28 Ms Hampson also did modelling in relation to the potential impact of the HWCP development on the H & J Smiths as a proxy for the type of impact that other businesses are likely to experience. In fact, other businesses may in fact experience worse outcomes because H & J Smiths is a large format retail destination somewhat

insulated from what is happening elsewhere in the CBD. Figure 11 of Ms Hampson's evidence shows a maximum decline in projected sales of up to 18% during the construction phase. That scenario is based on assumptions about the rate of decanting and the period of construction.

4.4.29 Looking at all these matters Ms Hampson concluded at [8.7]:

"My view is that the medium-long term economic benefits (which I have not addressed in my evidence as they are more adequately covered by the Applicant) would still outweigh the short term adverse effects described in this statement. On that basis, I support the recommendation to approve the consent. Invercargill cannot afford to 'do nothing'".

4.5 Addressing the risk of demolition occurring without redevelopment

4.5.1 The resource management idea behind a proposal of this type is that the benefits of the new outweighs loss of the heritage values in the old. However, in implementing this consent demolition is almost certain, but the timing and extent of new development is not. If consent is granted, then we must be satisfied that the new development will diligently follow demolition. That is crucially important in this case because demolition will not be incremental and will cover a large area in the CBD Core.

4.5.2 Mr O'Donnell identified that the economics of the development were marginal and that is probably why external sources of funding are sought. We have no doubt that the HW Richardson Group are committed to building the HW Richardson Tower to operate as their headquarters, although even that may be placed on the back burner if the wider retail precinct development does not occur. We have no detailed information on the business case for the retail precinct, although it was offered to us confidentially. We declined, as we do not have the expertise to analyse such information without expert help, and in any event we cannot receive information that is not available to submitters, even if a confidentiality direction is made.

4.5.3 The NZIER report identified the need for ratepayer funding and there was no evidence that the Council had made any commitment to provide ratepayer funding for the project. For that reason, we asked the Chief Executive, of the Invercargill City Council, Clare Hadley, to address us on the Council's part in this project. One pastoral concern we had was that if consent was granted to an entity associated with the Council and then demolition occurred but not redevelopment, then the

community might accuse the Council of being an agent in creating the unsatisfactory impacts that will ensue on the CBD Core. In that way, the Council may be forced to make a commitment of ratepayer funds to a project it has otherwise not committed to. Capital expenditure by local authorities needs to go through a public process under the Local Government Act 2002 and that should not be pre-empted.

- 4.5.4 Ms Hadley's statement was very helpful to us in understanding the Council's position. The first point that Ms Hadley made is that the Council has been somewhat of a passive participant in the formulation of the current application. In other words, the framing of this application has been co-ordinated and implemented by the other shareholders. That, in part, has been because the Council wanted to achieve an appropriate level of separation between the Council's regulatory functions and its other executive functions, in accordance with one of the underlying principles of local government administration. Ms Hadley confirmed that there had been no application to provide funding in respect of the application before the completion of the 2018 - 2028 Long-Term Plan. The Council noted in its decision to approve the Annual Plan 2019/2020 without further community consultation that various matters were being considered by the Council and *"as Council's investment in the City Block is a critical piece of work for Invercargill's future and it is matters like this that we want to ensure our community put their energy into. The resource and time saved through bypassing formal consultation for the 2019/2020 Annual Plan can be reallocated into planning for this future development"*.

- 4.5.5 In its 2018-2028 Long-Term Plan at page 263 the Council has identified its role in revitalisation, irrespective of its shareholding in HWCP Management Limited. The LTP states:

"Council has been working to strengthen Invercargill's city centre through the adoption and implementation of a Retail Strategy. The Retail Strategy incorporates past reports by Kobus Mentz, Craig Pocock, the CBD Renewal Project and recommendations from the Southland Regional Development Strategy (SoRDS). Council continues to work with other stakeholders in identifying the key location of key building infrastructure and the timing of street improvements. Rating is to fund loan servicing for this".

4.5.6 With the ILT Hotel under development and the HWCP proposal, the Council is alive to the fact that there will need to be expenditure in public infrastructure to enable the connections between other parts of the CBD and perhaps, as the District Plan noted, more car parking. Ms Hadley confirmed that the Council had confirmed its position that it will *expend the funds necessary to ensure that the development of the inner city ... is integrated into the surrounding blocks.*

4.5.7 From all that, we take the current state of play to be as follows:

- (a) This proposal was conceived by the Applicant with little input from the Council.
- (b) The Council has not committed any ratepayer funds to the project and that will require processes under the Local Government Act 2002. It is unlikely that the Council will fund elements of the proposal destined to be held in private hands, which is most of the retail precinct.
- (c) The Council recognises development of this type will require expenditure in public infrastructure, to ensure an appropriate outcome adjacent to the site and between other CBD blocks, to ensure the District Plan objectives for a highly pedestrianised and attractive CBD are achieved.
- (d) The Council has not committed to occupying space as identified in the proposal around the Bank of New South Wales, which is described in the Master Plan as the 'Civic' Quarter.

4.5.8 From this we conclude:

- (a) The Civic Quarter in the Master Plan is predicated on the occupation of the Council or Council related entities and there is no evidence this will occur. However, that is not material to our assessment because:
 - (i) The Civic Quarter is in stage 5 and in a location where no high value heritage will be lost.
 - (ii) The Bank of New South Wales will remain unaffected by Council's decisions concerning occupancy.
 - (iii) Even if demolition of buildings in stage 5 occur and there is an interregnum between demolition and redevelopment, that is

unlikely to have significant effects on functional amenity and the vitality of the CBD Core.

- 4.5.9 There is a need to manage the sequencing of development and ensure there is credible evidence that redevelopment will promptly follow demolition. That is a management issue to be addressed through the way the application is structured and by the conditions of consent.
- 4.5.10 We now turn to consider the management issue of ensuring appropriate sequencing of development and ensuring that redevelopment occurs promptly.
- 4.5.11 The first point we would make is that any consent is an integrated consent and any person relying on the consent must, together with the landowner, implement it as a whole, subject to any variation allowed under RMA, section 127. A consent holder is not able to pick and choose what parts of the consent package it wishes to implement. As we understand it, the landowner will be legally responsible for consent implementation under RMA's legal framework. That provides some security that the consent will be properly implemented. The Council should be aware of the implications of that before allowing implementation of the consent.
- 4.5.12 Secondly, crucial elements of the retail precinct are found within Stages 1, 2 and 3. The Staging Plan was refined in the Right of Reply and the Applicant proposed a condition (condition no. 11 in its draft) as follows:

"No demolition is to occur prior to the consent holder providing written confirmation from a registered trading bank that funding for Stages 1-4 and 6 of the development as identified in the Staging Plan approved in condition 1 has been obtained:

- (i) Upon providing such confirmation, the consent holder may demolish Stages 1-4 and 6 as identified in the Staging Plan approved in condition 1, provided that Stages 1-3 must be built in the stage; and*
- (ii) Stage 4 and 6 may be built concurrently with or subsequent to Stages 1-3; and*
- (iii) The buildings located within Stage 5 of the Staging Plan approved in condition 1, shall remain in place until such time as an agreement is entered into for a lease of the new building with Stage 5".*

- 4.5.13 This amended condition went a considerable distance to satisfying our concerns. Even though the buildings in Stage 6 (mainly the Hotel Cecil) will be demolished without a clear pathway to redevelopment, that is unlikely to cause any significant adverse effects of a functional amenity nature or vibrancy nature of the type that Ms Hampson identified.

5. Process Followed before the Hearing

5.1 Public notification

- 5.1.1 The Applicant requested that the application be publicly notified under section 95A(3)(a) of the Act. The application was publicly notified on 18 October 2018, with submissions closing on 16 November 2018. A total of 44 submissions were received, three of which were late. The Council's reporting officer summarises the submissions as follows:

- (a) Twenty-four are in general support; with nine of these raising construction concerns
- (b) Nine are neutral
- (c) Ten are opposed

5.2 Consultation

- 5.2.1 Section 19 of the AEE sets out a summary of the consultation undertaken by the Applicant pre-notification. Appendix I includes the results of community consultation.
- 5.2.2 The Applicant advised that they had undertaken detailed consultation with the HNZ from the outset of the design process. HNZ submitted in opposition to the application on the basis that the loss of heritage was significant. They sought retention of the 1908 portion of the Southland Times Building and the retention of the four façades included in the application.
- 5.2.3 The Applicant also advised that, while there are no known sites of significance to tangata whenua within the Block, they have engaged in ongoing consultation with Te Ao Marama Incorporated and representatives of the Waihopai rūnanga. Te Ao Marama Inc did not submit on the application.
- 5.2.4 The Applicant also engaged with the New Zealand Transport Agency and the Council's Roading department when preparing the application. The NZTA

subsequently submitted on the application and provided expert evidence in advance of the Hearing.

- 5.2.5 The AEE sets out the wider public consultation that occurred, which included press releases, a project specific website, engagement with tenants and then more comprehensive information being provided on the proposed design, which included the use of a pop-up booth in Esk Street. Carla Forbes, who had submitted in support of the application, advised that she had undertaken the communications and information consultation for the Applicant. The consultation included meetings with community groups and playing a video of the plans at the pop-up shop.

6. Hearing and Submitters

6.1 Section 42A report

- 6.1.1 A number of submissions raised concerns about the proposal. The Council's reporting planner, Mr Clease, determined that the Council required further information on the proposal. The Applicant responded to this request with further detail, as well as a number of changes to the plans from what was notified.
- 6.1.2 Mr Clease agreed with the Applicant that these changes fell within the scope of the application as notified, and the effects of the changes were within the envelope of effects and matters generated by the application as lodged.
- 6.1.3 The Council decided not to commission any expert reviews of the application material, relying on the submissions and engagement undertaken between the Applicant and HNZ and NZTA. Mr Clease has qualifications and experience in planning and urban design.
- 6.1.4 Mr Clease recommended approval of the application, subject to a number of conditions of consent. He was of the view that while the proposal would fail the s104D(1)(a) test in that the loss of heritage buildings would be more than minor, it passed the s104D(1)(b) test of not being contrary to the proposed District Plan's objectives and policies when read as a whole. In his view, the assessment of the application principally turned on whether the loss of recognised heritage values is sufficiently balanced by the positive regeneration effects of the proposal, as guided by the direction set in the proposed District Plan's objectives and policies, and ultimately the sustainable management purpose and principles of Part 2 of the RMA.

6.2 Site visits

6.2.1 The Panel undertook a number of unaccompanied site visits before and through the course of the Hearing so that it could gain a good level of understanding of the site and its surrounding context.

6.2.2 The Panel also undertook a more detailed site visit on the afternoon of the 26th March, accompanied by Dr Cawte, Mr McDougall and Mr Clease. This site visit included visiting the interiors of the following buildings:

- (a) The Southland Times
- (b) The Newburgh and Lewis & Co Buildings
- (c) The Cambridge Buildings and Arcade, through from Esk to Tay Street
- (d) The NZIC and Temple Chambers Buildings
- (e) The Bank of New South Wales Building
- (f) The Thompson's Building
- (g) The Coxheads' Building

6.3 Heritage New Zealand

6.3.1 HNZ did not attend the Hearing, but provided a statement to the Hearing dated 18 March 2019 by Ms Watson, the Director of the Southern Region. In that statement Ms Watson stated that the amended application, and in particular, those amendments related to the Southland Times Building would address the concerns of HNZ. Concerning the proposed new entrance, Ms Watson said:

"In particular the use of the Southland Times building façade as an entrance to the development means it is both functional and a significant recognisable element of the development. The building map as proposed by the three levels of the façade and also on either side of the building help to frame the heritage values of the Southland Times building façade".

6.3.2 In conclusion HNZ stated:

"Heritage New Zealand considers that, with regard to façade retention on Esk Street, its release sought would be satisfied by the additional retention of the Cambridge Arcade façade and entry".

6.4 H & J Smiths

6.4.1 H & J Smiths operates a department store, an outdoor adventure store and Paper Plus from Tay, Esk and Kelvin Street, in Invercargill. These stores make up the complex that is known as H & J Smiths in that block. Because H & J Smiths is a diverse and large format retailer, it operates in the same retail market as prospective retailers in the proposed Invercargill Central complex.

6.4.2 H & J Smiths has supported redevelopment in the inner city of Invercargill for many years, and in a letter dated 28 May 2018 produced at the Hearing described the present proposal as one developed over many years that is the *“outcome of broad business and community engagement in which H & J has played a part”*. It concluded that letter by saying:

“As a leading retailer and committed to Southland, we see this development as critical to the rejuvenation of the inner city and together with H & J Smith, this development will provide a vibrant and compelling retail offering for Southlanders and the increasing number of visitors to our region. This new precinct while creating a heart for Invercargill will also give retail businesses the confidence to invest providing a positive flow on effect for the city”.

6.4.3 That letter was written by Jason Smith, a director and descendant of the original founders of H & J Smiths.

6.4.4 Mr Smith also gave evidence in support of H & J Smiths’ submission. There were three areas of concern that H & J Smiths expressed.

6.4.5 The first concern of H & J Smiths was about the economic impacts on the CBD’s functional amenity of a project of this size over an extended period. Because of the uncertainty concerning the commencement or completion of the development and the potential impacts on functional amenity identified by Ms Hampson, Mr Smith considered that the impacts were significant on the core CBD.

6.4.6 The second matter concerns linkages to the remainder of the CBD. In relation to that matter at [25] Mr Smith said:

“However the proposed development as designed has effectively turned its back on the retail and other facilities and experiences located further down Esk Street, and the fashion precinct that is evolved in Kelvin Street. It provides no weatherproof linkages to the east along to the ‘book end’ that is our complex, so in this manner fails to make the most of the opportunity to enhance

shopping experience within the wider CBD core. The climate of the city demands enhanced sheltered linkages which provide the protection from the elements and that would in turn enhance the amenity of the core CBD, which should have been sought from this development as a minimum, in line with the District Planning Rules for verandahs as expected from other buildings such as our complex”.

- 6.4.7 Mr Smith also noted that the previous options for a skybridge to create a link between the proposed development and the H & J Smiths’ complex was abandoned and this was, in Mr Smith’s opinion, a retrograde step. Mr Smith noted that discussions were held later between the Council and the Applicant with a view to creating a linkage at street level, to create a more weatherproof solution. At [29] Mr Smith stated:

“As part of the resource consent conditions for this application, HJSL would seek a condition requiring a commitment on both HWCP and ICC to create a suitable plan for better weather protection from the entrance from the HWCP mall to the entrance of the complex along Esk Street as well as protection along Kelvin Street in both directions, with particular emphasis on the Esk Street/Kelvin Street pedestrian crossing. It is expected that this plan will cover most of these areas, with the crossing becoming a four-way or ‘Barn Dance’ full covered crossing to provide a weatherproof crossing point. The Applicant should be responsible for the development of this plan to the satisfaction of HJSL and funding arrangements for this plan would be remaining with HWCP and ICC to resolve between themselves”.

- 6.4.8 The final matter of concern to H & J Smiths is the planning and health and safety issues relating to the redevelopment process. Of particular importance was managing asbestos and ensuring appropriate communication between the developer and its neighbours.
- 6.4.9 As noted, Ms Hampson gave evidence for H & J Smiths on economic impacts, in which she expressed general support for the application. Ms Hampson’s concerns were in relation to functional amenity and the potential impacts of an extended construction programme on an already comprised CBD. In answer to questions from the Panel, Ms Hampson accepted that the policies of the Plan concerning sustaining and reinforcing the CBD’s function were not directed at temporary redevelopment effects. In this respect Ms Hampson has a special insight, having

been involved in providing supporting economic evidence to the Council to help establish the centres-based approach of the proposed District Plan.

6.4.10 Mr Vivian is a resource management planner based in Queenstown. His basic assessment was that:

- (a) There is a special need to address the health and safety aspects of redevelopment, including potential impact of asbestos escape, and that could be addressed by refined conditions.
- (b) The functional amenity effects identified by Ms Hampson meant that the development had potentially major impacts, because the developments commencement and completion were uncertain. For that reason, the development was not in accord with Objective URB.1 of the RPS. It was also not consistent with Policy 1 in the Proposed District Plan for Business 1 Zone that reads: *“to establish a Business 1 Zone to retain existing and encourage new commercial/retail activities in the Central Business District”*.
- (c) The proposed hotel on Kelvin Street infringes the height standard of ten metres by a large margin and is contrary to Policy 16 of the proposed District Plan. That is because the site is within the pedestrian-friendly precinct.

6.4.11 On the basis that two policies were not fully met (one in only a temporary way) Mr Vivian concluded that the second gateway test in section 104D could not be met. In relying on Policy 1 as a policy directed at functional amenity, Mr Vivian’s evidence was at odds with that of Ms Hampson.

6.4.12 Mr Todd gave legal submissions for H & J Smiths. At paragraph three of his submission he noted at the outset that H & J Smiths is *“very supportive of the concept of redevelopment proposed in the application and accepts that if a development is as successful as the Applicant predicts that such will have significant positive amenity effects on the CBD of Invercargill”*.

6.4.13 Mr Todd said that H & J Smiths’ concern, in a nutshell, is how *“long-term it might be before these positive impacts are experienced and what will be the damage to neighbouring retailers in the interim”*.

6.4.14 It is that uncertainty that gave rise to the submission that there are significant potential functional amenity effects. For that reason alone, and based on Mr Vivian’s evidence about protecting the function of the CBD, Mr Todd said that the

proposal offended at least one objective and policy of the proposed District Plan and that was sufficient, relying on *Queenstown Central Limited v. QLDC*¹⁴.

- 6.4.15 Mr Todd also floated the idea of a significant bond to secure redevelopment. He also noted that Council's role in the proposal meant that any decisions required under the consent should be undertaken by an independent commissioner.

6.5 Neighbourhood Retailers Group

- 6.5.1 NRG represents 22 store owners and three store managers in adjoining blocks. The submission of NRG sets out their concerns. Mr Fokkens, on behalf of this group, outlined the background to discussions with the Applicant. Others in the group addressed us as well. NRG said that, as a result of further consultation, it was satisfied that its concerns with the project were met and it was generally supportive of the proposal to secure revitalisation of the CBD. Importantly, a letter on behalf of the Applicant written by Bonisch Consultants dated 13 March 2019 addressed specific areas of concern that NRG held concerning:

- (a) Carparking
- (b) Duration of works
- (c) Street amenity
- (d) Retaining commercial use on the south side of Esk Street
- (e) Ongoing communication with Neighbouring Retailers Group; and
- (f) Signage

- 6.5.2 When asked, the NRG said that it hoped that any decision granting consent incorporated the elements contained in the letter dated 13 March 2019.

6.6 Mr Duncan McKenzie

- 6.6.1 Mr Duncan McKenzie is a resident of Invercargill, as well as a very experienced planning professional with particular expertise in heritage. He suggested we may want to suspend the application and seek modifications rather than proceeding to

¹⁴ *Queenstown Central Limited v. Queenstown Lakes District Council* [2013] NZHC 817 at [37] – [40].

decline. In his view, the proposal is contrary to many of the relevant policies of the District Plan and fails to meet s104D.

- 6.6.2 Mr McKenzie talked about the Plan's approach to identification of heritage buildings, being on the basis of public opinion and a limited assessment of architectural and aesthetic values. He agreed with the approach Dr Cawte had taken, however, to analyse the buildings concerned, as being currently accepted heritage assessment methodology. He also provided his lay opinion about economic matters. He was of the view that there were too many uncertainties as to whether the economic benefits that the Applicant relies on would be achieved, such as would the development be completed, partially occupied, or only occupied with incentives.

6.7 Mr Bob Simpson

- 6.7.1 Mr Bob Simpson supported the momentum created by SoRDS but thought that there was a lack of coherent picture of what the Council would like to happen in the inner city.
- 6.7.2 He did not think a mall was a good option to improve the inner city and in his opinion the proposal tries to squeeze too much activity on to this block. He said it does not feel pedestrian-friendly especially on Tay Street. He thought that there would be significant shading and wind tunnels created by the redevelopment.
- 6.7.3 Mr Simpson considered that the access for cars and for trucks to make deliveries and remove rubbish was inadequate. He was also of the view that the large multi-level car park would not be popular, as people are used to being able to park nearby to where they are going.

6.8 NZ Transport Agency

- 6.8.1 The New Zealand Transport Agency spoke to their written evidence. While their submission was neutral, the NZTA had concerns about the access points on to Tay Street. However, having heard Mr Baththana's oral evidence and viewed the changes made in response by the Applicant to their evidence, NZTA advised they were satisfied with the access, subject to conditions.

6.9 Mr Bruce Maher

- 6.9.1 Mr Bruce Maher, represented by Ms Joan Scarlet, supported high quality car parking as proposed by the Applicant, seeing it as fundamental to the project.

6.9.2 Mr Maher accepted that there would be upheaval and losses during the construction process. However, the enhancement of the CBD would outweigh the new disruptions and potential disorder.

6.10 Mr Gaire Thompson

6.10.1 Mr Gaire Thompson is a landowner with commercial buildings in Invercargill. He therefore has a good understanding of the economics of building redevelopment and likely rental returns.

6.10.2 Mr Thompson addressed us at the Hearing and also filed a Right of Reply. Mr Thompson's major concerns were that the development would be uneconomic and cause significant financial implications for ratepayers if the Council invested in it or took tenancies of the proposed civic and community areas. In addition, given the limited nature of the market, there would be a considerable impact from the facility in cannibalising other existing tenancies, causing a further decline in the CBD. Alongside other submitters, Mr Thompson was concerned that the development would be only partially completed after demolition, causing significant adverse effects on the CBD. Concerning conditions, Mr Thompson said that he would like the following conditions:

- (a) No demolition until all consents are granted, i.e. resource and building consents.
- (b) A differential rating to cover the development area to ensure other ratepayers are not subsidising the development.
- (c) Insistence on full verandas that provide protection for pedestrians.
- (d) Strict provisions requiring minimal disturbance to businesses in the surrounding area; and
- (e) The ICC give ratepayers the chance to submit for or against, after having been given full economic facts and the likely effects on their rates in the rest of the CBD.

6.10.3 As an observation, we have already noted that the economic viability of the project is not a resource management concern. It is a resource management concern to address the impacts of demolition and redevelopment on functional amenity, but not to second guess decisions regarding the economics of individual developments and the wisdom of decisions made by the Council as a potential participant in them.

6.10.4 We also do not have jurisdiction over rates or Council processes concerning decisions made under the Local Government Act.

6.11 Ms Vicky Henry

6.11.1 Ms Vicky Henry's submission was that the proposal lacked the context of an overall plan for the city centre and that the Council should prepare a cohesive plan for the CBD. Without this it was difficult to assess the consequences of the proposal.

6.11.2 She believed that there should be better connection between the redevelopment and the remainder of the CBD retail. Specifically, she considered that the anchor tenant should connect to Kelvin Street.

6.11.3 She also addressed the need for consideration of climate change and the responsibilities of local government. She cited an agreement signed by Local Government Leaders to commit to undertake actions in all their work to address this.

6.12 Mr Neil McAra for the Chamber of Commerce

6.12.1 Mr Neil McAra is the President of the Southland Chamber of Commerce. He explained that the redevelopment of the CBD by the Applicant is a project that is a key priority in the Southland Regional Development Strategy. Mr McAra said that the business community was fully in support of that strategy and the priority actions contained within it. Mr McAra encouraged us to consider these benefits in our assessment.

6.13 Ms Rachael Egerton

6.13.1 Ms Egerton informed the Commissioners that she has knowledge and experience in heritage management.

6.13.2 Her submission was that the mitigation proposed for the loss of heritage buildings is disproportionately low in relation to the amount of heritage that will be lost. She supported the inclusion of an additional façades in Esk Street, but considered that the development could include more façades, for example the NZIC Building and Temple Chambers. She said that Esk Street is the best place to create a heritage focus because it is "a narrow and more intimate street and it has the greater overall heritage character/ambience as a result of many heritage buildings on both sides of the street".

6.13.3 She was concerned that the heritage character of the Southland Times Building will be diminished by painting the brick work and undermine the retention of the façade as mitigation. She was also concerned with the impact of paint on the bricks. She said that the paint would effectively seal the surface when bricks are a porous material and moisture will be within the bricks when painted. In addition, moisture can enter the bricks through wicking up from the ground. This can cause structural damage to the building, as well as moisture inside the walls. She also argued that removal of paint is not as easy as claimed by the Applicant and the section 42A report. The bricks can be damaged through chemicals and the process of removal.

6.13.4 Concerning the BNSW Building, Ms Egerton was concerned that new buildings built up against the heritage building would prevent sun and air circulating that keep the building dry. She said that:

“Having a tilt slab wall adjacent, with a small gap will allow for water to access the wall of the historic building and for material to slowly build up at the base and over time this could prove devastating for this historic building. This would be as good as demolition in terms of sealing its long term fate”.

6.13.5 In her view, retention of heritage character should have been the starting point for the project. It could have been incorporated in a more meaningful way.

6.14 Ms Christine Henderson

6.14.1 Ms Henderson was concerned that the loss of heritage items would affect the coherence of the inner city streetscape and that a number of those elements could be incorporated within the present buildings. Ms Henderson considered that the loss of heritage would be a lost opportunity to promote Invercargill as ‘classic’. Following the theme associated with the Richardson Museum Motorcycle Mecca. Ms Henderson considered that retaining the heritage elements would create a perfect combination of retail and nostalgia that would open up more creative opportunities than the present proposal.

6.15 Ms Carla Forbes

6.15.1 Ms Carla Forbes supported the proposal. She is a local business owner and a board member of the Southland Chamber of Commerce. She also undertook some of the communications on the project.

6.15.2 She congratulated the Invercargill City Council for investing in the project and, in her view, the public-private partnership is vital to the success of the project. She

believes that the city is broken, and that this project will save the city centre. She thought that investing in pockets of heritage buildings was more effective than spreading money over many buildings and made sense.

- 6.15.3 She considered that this development will be a major economic boost for Southland and give the city a sense of place while becoming a catalyst for future development.

7. **Section 104(1)(a) Effects Assessment**

7.1 Retail and economic

- 7.1.1 At the macro-economic or distributional scale, the evidence points overwhelmingly to the proposal having positive economic consequences, including employment growth effects that will support the anticipated centre's function of the CBD as directed by the proposed District Plan.

- 7.1.2 Concerning temporary effects on the CBD, it would be wrong, in our opinion, to draw a strong causal linkage between granting consent and the displacement of existing businesses. Ms Hampson agreed with that when she was questioned on that point. Some of the present and anticipated decanting is as a result of an acceptance that change in some form is inevitable. In addition, there are factors such as uncertainty concerning the life of occupied buildings that have a limited future, especially where the economics of redevelopment do not support retention of existing fabric. In our assessment, continuing uncertainty may be a larger generator of adverse impacts because the decanting will continue without any viable pathway for the CBD to regenerate. Therefore, we consider these temporary effects more as a management issue. The more significant issue is the risk that redevelopment does not occur after demolition, thereby making the effects on functional amenity and vibrancy of the CBD so much more severe and long term than is anticipated by a reasonable construction cycle, having regard to the size of the project. That matter we address elsewhere.

- 7.1.3 From all the evidence we conclude:

- (a) The medium-long term economic impacts of the proposal are significantly positive; and
- (b) The medium to long term economic impacts demonstrate the revitalisation imperative behind the "Priority Redevelopment Precinct" and that the relevant objectives and policies will be met in Block II and areas immediately adjacent to it but not necessarily the whole of the Business 1 Zone; and

- (c) There will be short-medium term impacts from the development on the CBD Core's functional amenity and vibrancy. Those changes are not all (or even mostly) caused by granting the consent, and many are a manifestation of decline that has been occurring for a long period of time, mixed with uncertainty regarding the future of Block II.
- (d) Managing the effects of construction in the short-medium term is an important management issue, but is not determinative. We have addressed the risk by way of conditions.

7.2 Heritage

Because of the number of heritage buildings affected by the proposal, our assessment of effects should consider the impacts of all of the buildings individually as well as an overall and cumulative assessment. That is the only way to do justice to the importance of Block II and the heritage elements within it as an important heritage collection. We have therefore addressed each individual building below and given our assessment of the scale of effects.

Our overall assessment of the proposal is that it goes a considerable distance towards the goals of the Plan to preserve the best elements of the heritage which exist in Block II, as well as reinvigorating and revitalising the CBD. We would have liked to have seen consideration of the retention of more building façades in Esk Street. We also regret the loss of the Cambridge Arcade as a feature, but recognise that that is perhaps inevitable with any form of new development.

In many cases the buildings are so tired and beyond their economic life that the loss of values is somewhat theoretical rather than real, because of the trajectory of decline that has occurred and will likely continue to occur with the dearth of credible development opportunities from the marketplace. The Government Life Buildings are a good example of buildings that now have limited value but much historical and heritage importance, because they are very unsafe and have virtually no options for adaptive re-use that are sensible and economic.

We do not agree with a numerical assessment of the number of buildings lost relative to those that are partly preserved. That fails to recognise the individual values of the buildings and fails to recognise the condition of those buildings.

Overall we agree with Dr Cawte that the proposed development is an appropriate use and development of the existing heritage and that, conversely in the

circumstances, it would be inappropriate to close the door to this redevelopment proposal in order to preserve more heritage elements in the face of the economic realities that we have described and, in many cases, the low heritage values that would be preserved.

A Southland Times Building

- (a) The Southland Times Building was designed by Charles H Roberts, who was responsible for a number of other buildings in the area, including the Esk Street Arcade which was replaced with the current Cambridge Arcade in 1934. (Dr Cawte's report) Construction of the Southland Times Building on TS9 (comprising 67 Esk Street) was completed in 1909.

I Dr Cawte's report records that:

- (a) Gilmour and Sons were the proprietors of the Southland Times. The Southland Times had been established in Invercargill in 1862 and was originally known as the Invercargill Times until 1864.
- (b) Retention of the façade of the Southland Times Building is a key heritage feature of the redevelopment. It is a Category 2 building listed with HNZ and, according to Dr Cawte, has moderate heritage value with the partial demolition having a moderate adverse effect. The façade of the building has been well preserved and Dr Cawte records that it is *an excellent example of early twentieth century Revival architecture*.

II The interior of the building, however, has had extensive alterations over the years and there is virtually no original heritage fabric visible. Since the Southland Times relocated in 2015 the building has been vacant and now suffers from neglect.

III Batchelar McDougall Consulting (BMC) undertook a seismic assessment, and although the building had been strengthened in 1986, it is only assessed as having 20% of NBS. BMC identified that strengthening of the building could be undertaken without the loss of heritage fabric, but adaptive re-use of the building was not considered as part of the redevelopment. Dr Cawte summarises in his report that:

“This is partly due to two factors. 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 the 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”.

- IV Instead, the façade is to be retained, with the area behind being occupied by an anchor tenant. There will be alterations to the façade to facilitate its adaption to the tenant space behind. Dr Cawte describes the design in his report:

“The design will see the creation of a new central entryway at ground level, which references the original central doorway that was removed in 1948 and replaced by a window. Additionally, the double sash windows on the east side of the building will be altered to create a door, requiring the removal of the detail in the blind arch above window. The west doorway and the fanlight above will also be replaced. The design calls for the removal of the existing solid verandah over the doorway and the installation of a full width glass and steel replacement in line with the capitals of the columns flanking the doors and windows. The proposed design also sees the exposed brickwork redecorated in white and grey tones in order to highlight the façade, and new lighting will be installed to make it even more of a streetscape feature”.

- V Ms Racheal Egerton in her submission, opposed the painting of the exposed bricks, saying that it would diminish its heritage character. Dr Cawte also commented in his report that this will reduce the heritage value of the building as this is an original feature. In his view, however, he considered that paint was reversible treatment and could be reinstated at any time. He commented that HNZ also supported this. However, in a letter from Ms Watson, the Director Southern Region of HNZ, she stated that the issues the Applicant had identified with the existing brickwork and pointing could be better addressed by repointing the brickwork. We are of the view that the heritage value and completeness of the façade should be retained, albeit that there will be alterations to the openings at the ground floor. To this end the exposed brick and decoration should be retained.

- VI It is disappointing that adaptive re-use has not been a starting point for the redevelopment, but the Applicant has weighed up the costs of strengthening and the requirements of its tenants and concluded that it is not viable. There has also been a significant loss of heritage fabric within the building. Retention of the façade will be a positive feature of the redevelopment and we consider that this should include retention of the exposed brick and decorative features.
- VII The design of the adjacent buildings that will frame the Southland Times Building need to respect the modulation and datum of the building, and this is addressed in the urban design sections of this report.
- B Newburgh & Lewis Buildings
 - (i) The sites that the Lewis & Co and Newburgh Buildings are located on have a long history of commercial occupation dating back to 1864. The original buildings on these sites were demolished to make way for the two buildings that stand there today, identified as TS1 and TS 2, Site E46/47 by Dr Cawte.
 - (ii) The two buildings read as separate buildings on two sites when viewed from the street. However, internally the first to third floor interior spaces read as one building, and the Panel observed this during their site visit. Together, the buildings are colloquially known as the Government Life Building, reflecting that the two buildings were sold to Government Life Insurance in 1952. While both buildings contain ground floor tenancies, the upper floors have all been unoccupied since at least the 1990s. The Panel observed the deterioration that has occurred in both buildings, including the impacts of a pigeon infestation.
- C Lewis & Co Building
 - (i) The Lewis & Co Building is named after the company that commissioned it and was designed by Edmund Anscombe and Henry McDowell Smith. It was constructed between 1913 and 1914 and had several interior and exterior alterations between 1937 and 1993. William Lewis acquired the site in 1898.

- (ii) The building had originally been envisaged to extend to the Dee Street corner; however, it was reduced to half the size. That size, of four stories, still formed a sharp contrast to the surrounding buildings, as did its architectural style. Dr Cawte considers that it may have been the city's first building of this style, incorporating large bands of steel windows, a flat roof and reinforced concrete and steel beam construction with masonry walls. The style of architecture used was more synonymous with industrial buildings, only later filtering into commercial and residential architecture.
- (iii) The building was designed to open into the Smith's two-storey corner building at 33 Dee Street and an extension to the south to 31 Dee Street, which provided a large ground floor department store. The first floor was a large open plan show room. The second floor served as work rooms for the company, with the third floor occupied by a tearoom, which was open to the public, and small offices. Unlike many other buildings within the CBD, the building also includes a basement, which extends across the full length of the building and under the Esk Street footpath. Currently, it is divided into eight rooms and accessed from a stairwell off the foyer.
- (iv) The north façade faces Dee Street and retains a significant amount of heritage fabric above ground floor level. Above ground floor level it is divided into three bays by plain pilasters, topped with simple capitals. The steel windows are one of its most distinctive features and are decorated by a stylized laurel leaf garland. At ground floor level the façade has been extensively altered to accommodate different tenancies. The modern ground floor retail space is separated by the original suspended verandah.
- (v) The eastern elevation is obscured at a low level by the adjacent building. Above this, it generally presents a blank façade, suggested to be of reinforced concrete and masonry fill. The majority of the western façade is obscured by the Newburgh Building, apart from a small section comprising again of a blank façade except for some windows. The southern façade again is generally unadorned except for the parapet wall. The windows on this façade are unadorned and are much smaller than on the other façades.

D Newburgh Building

- (i) The Newburgh Building is also named after the person who commissioned it and was designed by Benjamin J Ager. It was constructed between 1928 and 1929 and alterations were made to its interior and exterior in 1962, 1966 and 1989. Thomas Newburgh purchased the corner section from Lewis & Co in 1928, with plans to erect a four-storey building as an extension to the Lewis & Co Building.
- (ii) Originally, the ground floor was divided into six narrow shops. A wide suspended verandah wrapped around the north and west façades. The plans demonstrate that the original intention was to link the first, second and third floors with the Lewis & Co Building. The first and second floor were divided into numerous offices. The third floor was open plan and, like the Lewis & Co Building, was used as a tearoom. This tearoom, after the building was subsequently purchased by the Invercargill Licensing Trust, made history as the first licensed restaurant in New Zealand.
- (iii) The north and west elevations both have three bays, divided by pilasters, which create a symmetry with the Lewis & Co Building. The ground floor was extensively altered in 2002, involving the installation of new shop front windows. None of the original façade remains. A suspended verandah wraps around the two façades; while a component of the original design, none of the original fabric is visible. The pilasters have a decorative band at their base and a band of dentil moulding above the capital. Large circular motifs ornament the top of the pilasters. A heavy cornice separates the third and fourth floors. The fourth-floor design departs from the lower floors, with the piers featuring a raised band with wide rectangular windows. The elevation is completed with a stepped parapet, a subtle Art Deco reference.
- (iv) The south elevation is obscured by the Smith's Building at 31 Dee Street. The upper portion is blank, except for two columns of windows on the second and third floors and one wide but short window on the fourth. The east elevation is obscured by the Lewis & Co Building.

VIII Alterations

- (a) Dr Cawte's Heritage Impact Assessment contains a detailed list of the alterations to both buildings between 1943 and 2012. This list demonstrates how the interiors of the buildings, in particular, have been significantly modified over the years.
- (b) The most significant of these was the construction of the fourth-floor penthouse in 1956. While the additions were primarily over the Newburgh Building, it also involved alterations to the roof of the Lewis & Co Building. Major re-fits have occurred over the years, as owners and occupants and the nature of tenancies changed.

IX Seismic ratings

- (a) The structural and civil engineers, BMC, assessed the two buildings jointly as the "Government Life Building", identifying that it does comprise two distinct structurally connected systems they describe as West and East. The West section, the Newburgh Building, is considered to be a Grade E building, having a capacity of 10 – 15% of the National Building Standard. The East section, the Lewis & Co Building, is also considered to be a Grade E building, having a capacity of 10 – 20% of the National Building Standard. Importantly there is no seismic gap between the Newburgh and Lewis & Co Buildings and the adjacent Coxheads' Building. The Engineers note that the governing elements of the structure are weak poorly detailed spandrels on the West building, and unreinforced masonry building (URM), and wall elements on the East Building, and that there is no connection between the walls and timber floor diaphragms on the East building. In summary, they identify the building as being earthquake prone and not being able to be repaired or strengthened without the loss of most of the heritage fabric and values of the building. They observed that the Newburgh Building has already exceeded its life expectancy and is likely to deteriorate.
- (b) The Engineers consider that the Newburgh Building should be demolished, as the most practical approach. There are actions that could be taken to strengthen the Lewis & Co Building; however the

constraints around demolishing the Newburgh Building would necessitate its demolition.

X The Proposal

- (a) Under the proposal both buildings will be demolished. In respect of that proposal Dr Cawte in his report said:

“Despite the significance of these two buildings, their condition is such that it warrants their demolition. The condition has negated further investigations for adaptive re-use of the building, and no alternative strategies have been explored to date”.

- (b) The architectural design has respected the significance and function of these two listed buildings, and the proposed new building (HWR Tower) will have a similar mass and impact on the streetscape, following the design guidelines. The ground floor is intended to be prime fashion retail, which is an important consideration and creates a historical link with Lewis & Co, which operated from this location from at least 1872. The upper levels will include office accommodation, with penthouse apartments on the top floor.
- (c) 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, as per the HNZ guidelines for the recording of built structures.
- (d) Mr Geoffrey Cotton, the appointed Project Director for the HWCP development, described the complexity of demolishing the two buildings while preserving the adjacent Coxheads’ Building. He described both buildings as being in poor shape and requiring a

specific method of demolition. Mr Cotton said that a structure will be needed to be erected to facilitate retention of the adjacent Coxheads' façade. In addition, the Lewis & Co Building will require a secondary structure erected within to stabilise the current weak building prior to any demolition being carried out; the method to be determined by a specialist demolition contractor. Overall, this is a complex engineering task and one of considerable expense and delicacy.

- (e) These two buildings are landmark buildings in Invercargill, given their size and history. Because of this, we accept Dr Cawte's opinion that their demolition will result in a significant loss of heritage within the city. However, we come to the same view as Dr Cawte, as informed by the engineers, that their current state of disrepair creates a significant threat to the health and safety of the city's residents and visitors, irrespective of an earthquake event. Therefore, we accept that their demolition in these circumstances is appropriate.

E Coxheads' Building

- (i) The Coxheads' Building was eponymously named after the former owners, Frank and Harry Coxhead, who acquired the property in the 1870s and acquired the lease of land identified by Dr Cawte as TS3 (comprising 31-41 Esk Street). They commissioned the famous Invercargill architect, Frederick Burwell, to design a two level brick building from which to run the Coxhead photography business. The façade was later altered in 1906 following a fire. It is thought that TS3 was the site where John Kelly and Christian Niven in 1856 erected their whare.
- (ii) The north elevation of the Coxheads' Building faces Esk Street and retains significant amounts of heritage fabric. The ground floor has undergone changes and holds two shop fronts with large open windows. The first floor has seven arched large sash windows, Corinthian pilasters and a parapet balustrade. The urns that sat on the parapet have gone but the central shell crest remains.
- (iii) The mezzanine of the Coxheads' Building contains linings and joinery that are modern and the mezzanine was, according to

Dr Cawte, retro-fitted. On the first floor there is a large open space dominating the north-east portion. There is an original staircase leading to this floor and the original traditional moulded cornices and beaded tongue and groove remain in situ.

- (iv) According to the seismic assessment by the structural and civil engineers, BMC, the Coxheads' Building is, on their classification, a Grade E building, being less than 20% of the National Building Standard. Importantly there is no seismic gap between the Coxheads' Building and the adjacent Newburgh and Lewis & Co Buildings. That means that in a seismic event buildings will pound each other, with likely catastrophic consequences.
- (v) Under the proposal the façade of the Coxheads' Building will be retained. In respect of that proposal Dr Cawte in his report said:

“The façade of Coxheads' Building is an excellent representation of Burwell's architecture, and it is appropriate for it to be included in the redevelopment of the block. Burwell is a highly regarded Southland architect and had a great degree of influence on Invercargill's architecture and architects. The façade will sit beside the HWR Tower in much the same way that the building abuts that Lewis & Co Building, and the buildings to the east will sit at the same height, providing continuity of context as recommended by Gray (1998). At ground level, the shop front windows will be removed, and new windows will be set back from the façade. The layout of the new structure behind the façade will align with existing datums to ensure it integrates with the façade. Behind the façade, functioning space of at least one room depth will be constructed on both levels, to avoid 'views to the sky' and maintain the building's purpose. The existing suspended verandah will be removed and replaced with a glass and steel verandah that will sit beneath the ground floor architrave. The first-floor façade will only see minor alterations, and will be painted according to the City Centre Design Guidelines. The proposed colour scheme of white and grey is intended to highlight the façade and match the other retained built heritage features, drawing attention to the area's history. The use of paint is a reversible treatment and the

proposed grey and white tones are similar to the current neutral palette, so will minimise the impacts to the heritage values”.

- (vi) Mr Cotton, the appointed Project Director for the HWCP development, described the complexity of demolishing the Government Life Building (Lewis & Co and Newburgh Buildings) while preserving the Coxheads’ Building. Mr Cotton said that a structure will be needed to be erected to facilitate retention of the Coxheads’ façade. In addition, the Government Life Building will require a secondary structure erected within to stabilize the current weak building prior to any demolition being carried out. Overall this is a complex engineering task and one of considerable expense and delicacy.
- (vii) Because of the high architectural values of the façade, including significant authenticity and high-quality representation of late Victorian classical design, it is considered that the effects of the proposed change in relation to the Coxheads’ Building are on the whole very positive. It is not significant that the unoriginal parts of the building fabric behind the façade are lost, having regard to their state of repair and lack of authenticity.
- (viii) The approach of retaining the façade to ensure the streetscape of the area is maintained is consistent with the Invercargill City Council City Centre Design Guidelines (1998) that advocate for the retention of as much of the original ornamentation as possible, replacement where it has been removed, and for the use of sympathetic materials that match the original fabric.

F Temple Chambers NZIC and Nichols Building

- (i) Temple Chambers (45-49 Esk Street) was built in 1881, designed by Angus Kerr and commissioned by Whitmore and Erskine. There have been a number of alterations to the building over time as it has been adapted for new requirements.
- (ii) Dr Cawte describes the northern façade of the building which is the main façade facing Esk Street as being a mixture of Victorian Revival, Art Deco and modern features. As with most of the heritage buildings, the ground floor of the Esk Street frontage has

been heavily modified over the years to meet modern retail requirements, with large fixed windows. The original ornamental window arches and decoration on the first floor are still in place, but Dr Cawte's report states that the top of the façade is not original and has been greatly simplified and extended up. In 1998 a bridge was constructed between the first floors of the Temple Chambers and the NZIC Building to the east.

- (iii) In the structural assessment carried out by BMC they assessed the building as being between 15-20% NBS and it is therefore potentially an earthquake prone building.
- (iv) The first floor has been unoccupied for some time and has suffered from neglect. The ground floor has three tenancies.
- (v) The New Zealand Insurance Company Building was built in 1883/1884, designed by Edmund R Wilson and commissioned by the New Zealand Insurance Company.
- (vi) It is a two-storey building and, as with Temple Chambers, the ground floor of the Esk Street façade has been heavily modified over the years. It does, however, retain clearly visible heritage fabric. Dr Cawte describes the building:

"The original location of the main entry to the upper floor is visible as an off-centre protrusion with an entablature engraved with 'NEW ZEALAND INSURANCE COMPANY LIMITED' between two medallions. This entrance has been blocked and now forms part of the western shop front. Both shop entrances feature large display windows and modern glass doors. A modern suspended glass verandah extends across the width of the building. The first-floor façade displays a combination of Art Deco and Victorian Italianate features. The clean lines and lettering of the parapet are the work of A C Ford's Art Deco makeover, while the decorative columns, keystones and moulded cornice beneath the windows are remnants of the original highly ornate front. Six arched sash windows also date to the construction of the building, while the clock that extends outwards from the centre of the façade was added in the 1950s. The two floors are separated by a cornice, but this does not

extend the full width of the building. The interior has been extensively modified on numerous occasions since the building was first constructed, and as a result there is minimal visible heritage fabric”.

- (vii) In the structural assessment carried out by BMC they assessed the building as being between 15-20% NBS and it is therefore potentially an earthquake prone building.
- (viii) The heritage significance of the buildings are assessed overall as being low; however it is of note that in terms of their contextual or group values they are assessed as high as they are significant features of the Esk Street streetscape. They also have moderate significance in terms of architecture, representativeness, integrity and public esteem, architectural values, and two out of the three historic values – people and patterns.
- (ix) While the buildings have not been assessed as having high or even moderate heritage values, they do significantly contribute to the streetscape of Esk Street. The Applicant and their expert advisors have said that it is not financially viable or feasible in terms of the overall design to retain the façades. We regret that this has been the conclusion, as inclusion of the façades would add to the character of the redevelopment and retain a sense of continuity for the people of Invercargill. Ms Egerton, in her submission and presentation at the Hearing, commented on the section 42A report when it said:

“The buildings have heritage values but these cannot be described as outstanding or nationally significant”.

- (x) Her response was:

“This statement diminishes the relevance of locally significant heritage and the importance of preserving it, and why it is included on District Plans. Often it is locally significant heritage which embodies local identity and character.

If we only save nationally significant heritage we will see a progressive homogenisation of our retained heritage, with a

loss of local flavour and distinctiveness in the streetscapes of our cities”.

- (xi) We agree with Ms Egerton that these are important façades in the Esk Street streetscape even though they do not possess national significance. We understand there may be constraints to retention of those façades, but consider that this should be considered. We address this in a later section – Persuasive Issues.

G Nichols Building - 63 Esk Street

- (i) The Nichols Building was built in 1929, designed by Allan C Ford and commissioned by Nichol Brothers, local merchants.
- (ii) Dr Cawte in his report said that the Esk Street façade is relatively original and retains numerous Art Deco features.

An understated triangular parapet crowns the façade, below which is a decorative moulded band, a plain frieze and an architrave with simple modillions. Five sets of casement windows are organised symmetrically on the first floor and each window has a leadlight quarter light. The central set of windows is framed by moulding and have moulded panels between them. Three metal fire escapes lead from first floor windows to the suspended verandah. The two floors are separated visually by a plain cornice that extends the full width of the building

- (iii) The building is currently vacant. As with all the heritage buildings the ground floor has been significantly altered to meet changing retail requirements and it has no visible heritage fabric.
- (iv) The first floor has also been altered and adapted but many heritage features have survived.

Original 1920s doors with reeded glass panels are present throughout the first floor, and the skirting and cornices are in keeping with the Art Deco style. The walls and ceiling are still lined with fibrous plasterboard and the ceilings have moulded battens in several rooms. The hallways and some offices have timber wainscoting and heavy dado rails, and picture rails are

still present in most rooms. The floors are lined with carpet, the age of which is not known but some could be original.

- (v) In the structural assessment carried out by BMC they assessed the building as being between 21-33% NBS.
- (vi) The heritage significance of the building is assessed overall as being low; however, it is of note that in terms of its architectural and contextual or group values it is assessed as high, as it is a significant feature of the Esk Street streetscape. It also has moderate significance in terms of representativeness, integrity and public esteem values and has a moderate people value because of its association with the architect A C Ford.
- (vii) The Esk Street façade is relatively intact and is a good example of a modest Art Deco building. It sits between two significant façades that are to be retained, but has less resonance with these neighbours and less sense of continuity. The Temple Chambers and the NZIC Building together form a long section of the Esk Street façade and have a greater impact on the streetscape than the Nichols Building.
- (viii) We accept Dr Cawte's assessment of heritage significance as low and degree of impact of demolition as moderate.

H Cambridge Buildings and Arcade

- (i) This site has been the location of commercial occupation since at least as early as 1863, when the two town sections were used as a coach house, stables and blacksmith by John Gethin Hughes. Shops were erected on the south end of the site in 1872 and components of this building survive today as part of the Cambridge Buildings at 40 Tay Street. The Cambridge Buildings, known as 40 Tay Street, predate the Arcade, having been constructed in 1872 for Joseph Stock and designed by an unknown architect. The buildings were substantially rebuilt and remodelled in 1934 following a fire in 1930. This was undertaken as part of the commissioning of the Arcade by Charles Nichols and Charles W Rattray and designed by well-known local architect A C Ford. The core structure and basic layout of the Buildings and Arcade have remained relatively

unchanged since 1934, except for numerous internal alterations, including the enclosure of many outdoor yards and repositioning of interior walls and partitions. The two sites are on TS7 and TS16, Site E46/72.

- (ii) Dr Cawte describes the Esk Street façade of the Cambridge Arcade as an excellent representation of Art Deco architecture, with Edwardian Revivalist elements that became incredibly popular for new buildings and updates to older structures in the CBD in the 1920s to 1940s. The Cambridge Buildings are described as very good examples of Art Deco architecture with Edwardian elements.
- (iii) Dr Cawte identifies the following in terms of the significance, magnitude and assessment of effects:

	Significance	Magnitude of Impact	Assessment of Effects
Cambridge Arcade	Medium	Moderate adverse	Moderate
Cambridge Buildings	Low	Major adverse	Moderate

- (iv) The first floors of the Cambridge Arcade buildings are vacant, as are many of the shops on the ground floor of the Arcade and Buildings.
- (v) The Tay Street façade is distinctively Art Deco. The four arched windows have leadlight fanlights and flank a central set of rectangular windows. Decorative moulded bands and panels are arranged symmetrically on the first-floor façade, which is topped by a simple parapet. The verandah has a moulded fibrous plaster ceiling, supported by iron posts. The ground floor shop front has large windows with stained glass panes along the top and is occupied by the Thai Thai Restaurant. A dental surgery occupies the first floor.
- (vi) The west and north elevations of 40 Tay Street are visible as they abut the neighbouring buildings. The east elevation of the ground floor of the original 40 Tay Street can be viewed from within the Arcade, however the first-floor east elevation is hidden by the neighbouring building as it extends further to the east. The ground floor east elevation was remodelled to match the rest of the Arcade

during the 1930s redevelopment and as such is heavily influenced by the Art Deco style. The stairs to the first floor are accessed directly from this elevation.

- (vii) The Esk Street façade of the Cambridge Arcade has a combination of Edwardian, Art Deco and modern elements. Ten arched windows with keystones have leadlight fanlights and flank a central set of rectangular windows. These windows were saved from the 1905 Arcade and remain in their original layout. Decorative moulded bands and panels are arranged symmetrically on the first-floor façade, which is topped by a simple parapet. The suspended verandah has a moulded fibrous plaster ceiling. The ground floor shop fronts are modern and have floor-to-ceiling glass windows.
- (viii) The east elevation of the Cambridge Arcade is not visible, and only parts of the west and south elevations are visible. Only a small portion of the south elevation can be seen, and it is limited to the first-floor of the Esk Street end. This elevation is also rendered and undecorated.
- (ix) The ground floor of the Cambridge Arcade is comprised of multiple small shop spaces arranged symmetrically on either side of a central covered walkway. The shops vary slightly in size and some have been extended to include more than one original shop space, but many original 1930s features have survived. Each original shop front has Art Deco inspired moulded decoration and some have the original timber and glass doors. Inside the shops, many still have the mezzanine floors installed in the 1930s and many have intact Art Deco cornicing and moulded batten ceilings.
- (x) The first floor of the Cambridge Arcade, which extends approximately 20 metres back from Esk Street, is set up as offices but has been unoccupied for some time. This level is accessed from the ground floor central walkway via a stairwell. There have been several changes in layout throughout the twentieth century, including the ceiling being lowered in many of the offices, new partition walls installed and many walls re-lined. However, a significant amount of heritage fabric survives. The Panel was

advised that it had also more recently been used as a residential flat, which was evident by the layout and furnishings.

- (xi) According to the seismic assessment by the structural and civil engineers, BMC, the Arcade and Buildings are, on their classification, Grade E buildings, being less than 20% of the National Building Standard. They are therefore considered to have a very high life-safety risk and strengthening would be required, if retained.
- (xii) Under the proposal the façade of the Cambridge Arcade on Esk Street will be retained, but the buildings behind it and the building on Tay Street will be demolished. In respect of that proposal Dr Cawte in his report said:

“The Cambridge Arcade façade is one of this block’s best and most iconic examples of the Art Deco architecture that is so prevalent around Invercargill, and is the work of well-known local architect A C Ford. The façade also incorporates elements of the previous Revivalist façade that was damaged in a fire. Similar treatment will be applied to the retained façade as with the Southland Times and Coxheads’ Buildings, in line with the ICC Design Guidelines. The buildings either side of the retained façade have been designed to reference the same height datums at the Arcade frontage, which reflects both the present and historic streetscapes. This means that the Cambridge Arcade façade will remain in a context which is familiar to the current population and reflective of the setting in which the 1930s building was designed. The ground floor of the Arcade façade will require alterations to make it suitable for modern retail tenants. The shop fronts either side of the Arcade entrance have been previously modified and as such retain minimal heritage fabric; however, the central entrance remains as built and consideration should be given to retaining as much of the original fabric as possible. This includes the distinctive shape of the entranceway, the floor tiles, metal gates and decorative moulding on the interior of the entranceway (particularly on the east side). These details should at least be

referenced in the new design in order to retain as much of the Arcade's character and sense of history as possible".

- (xiii) Mr Cotton, the appointed Project Director for the HWCP development, described that a façade retention system would be installed at the Cambridge Arcade façade, of a similar design to that proposed for the Southland Times façade.
- (xiv) We accept Dr Cawte's assessment of the values and extent of loss as a result of the demolition of the buildings and retention of the façade. Because of the high architectural values of the façade, including significant authenticity and high-quality representation of the Art Deco style, it is our view that the effects of the proposed change in relation to the Cambridge Arcade on Esk Street is, on the whole, very positive.
- (xv) The approach of retaining the façade to ensure the streetscape of the area is maintained is consistent with the Invercargill City Council City Centre Design Guidelines (1998) that advocate for the retention of much of the original ornamentation as possible, replacement where it has been removed, and for the use of sympathetic materials that match the original fabric.

I Cecil Hotel

The Cecil Hotel Buildings are on 60-64 Tay Street and 2-16 Kelvin Street

- (i) The Hotel was constructed in 1899 and commissioned by Jane Stroud. It was extended in 1913 and further alterations were designed by A C Ford in 1926. The land on which the Hotel Cecil Building is located was first occupied by John Kelly and Christian Niven's neighbour, Robert McKay. He was a carpenter who lived at that site from 1857. A hotel was developed on the site from 1862, when the Provincial Hotel was erected there by August Puettelkow. After various incarnations the hotel became known as Hotel Cecil in 1910 after prohibition was introduced in 1905. The extensions in 1913 resulted in the existing building.
- (ii) The east elevation, which is on the Kelvin Street side, possesses a façade that has been altered twice since its construction in 1899,

with the result that it has Edwardian, Art Deco and more modern features. The parapet and arched windows are heavily simplified. The ground floor has retained Edwardian fabric and features, including fibrous plaster verandah ceilings and iron posts. The south elevation is similar and the north and west elevations appear original. On the ground floor are eight shops. Other than tongue and groove flooring there is no obvious heritage fabric in the interior. On the first floor the property has been substantially renovated in the 1980s following conversion to a radio station.

- (iii) According to Dr Cawte the most significant heritage value of Hotel Cecil is the archaeological contextual value, which is described as high, and the following explanation is given to support that:

“When considered alongside the other sites on this block, E46/76 forms a site complex that provides a rare opportunity to investigate an urban block from settlement through to present. Archaeological features and material encountered here may also be able to be attributed to specific activities that occurred at the site including footwear manufacture and various hotel related activities. The hotel on this site, was also operating when prohibition came into effect in Invercargill and so may reveal information regarding that process”.

- (iv) Overall Dr Cawte assessed the significance of the Hotel Cecil as low and the degree of impact of demolition as moderate. We accept that assessment.

J Zookeepers Café and MacPac Building

- (i) The Zookeepers Building and MacPac Building share a site, identified as TS14 (comprising 48 and 50 Tay Street). The site has been occupied since 1857. Both buildings were built for H & J Smiths to replace their former premises in Dee Street, and well designed by well-known local architect Edmund R Wilson in or around 1917, with the frontage rebuilt circa 1952. The MacPac Building was constructed in 1910, with the Zookeeper Building following that in 1916 as an extension to the MacPac Building, both for the use of H & J Smiths until the 1920s.

- (ii) Dr Cawte identifies the following in terms of the significance, magnitude and assessment of effects:

	Significance	Magnitude of Impact	Assessment of Effects
Zookeepers	Low	Major adverse	Moderate
MacPac	Low	Major adverse	Moderate

Zookeepers Building

- (i) The Zookeepers Building is a partly two and partly one-storey structure, including a mezzanine to the two-storey element. At the time of the Hearing, the building was tenanted by the Zookeepers Café. Dr Cawte describes the original style as being Victorian Revival and a current style of Functionalist. Since its construction it has been used for retail and hospitality purposes. Zookeepers has continued to occupy the site since 1992.
- (i) The south elevation on Tay Street has no visible heritage features. It is a plain rendered façade with minimal detailing and a modern ground floor glass shop front. The verandah, which formed part of the rebuilding in 1952, is supported by cast iron posts and supports a corrugated iron elephant. The first floor is painted pink. None of the other elevations are visible due to surrounding buildings. The ground and mezzanine floors house Zookeepers Café, with the first floor being used for storage. No pre-1900 buildings remain on site. Dr Cawte assigns the Café building as having a low level of overall significance.

MacPac

- (i) The MacPac Building is a two-storey structure with a plain façade. Since its construction it has had a number of internal alterations. In 1992 the existing shop front was demolished, and the current glass front built. Since its construction it has been used for retail purposes. MacPacs has continued to occupy the site since 2011. The first floor is used for storage.
- (i) The south elevation on to Tay Street is described as having a plain rendered façade with no architectural value.

- (ii) Both buildings were constructed in the Victoria Revival Style, but due to the alterations that have occurred over the years are now described as being Functionalist.
- (iii) The buildings have also been recommended to be removed from the Council's Heritage Schedule, as part of a future plan change¹⁵.

Seismic Assessments

- (i) According to the seismic assessment by the structural and civil engineers, BMC, both buildings are, on their classification, Grade E building, being less than 20% of the National Building Standard. Their report identifies that there is out-of-plane capacity and a lack of ground floor façade bracing structure in respect of the Zookeepers Building. They observed structural damage to the Zookeepers Building during their limited site inspection and, in their view, continued occupancy of the building is appropriate for six to 12 months, subject to the conditions of the Building (Earthquake-prone Buildings) Amendment Act 2016.

Proposal

- (i) Under the proposal the building will be demolished. In respect of that proposal Dr Cawte does not singularly address the buildings, except for identifying that both buildings have excellent examples of pressed metal ceilings that warrant salvaging.
- (ii) In terms of their loss, his opinion is that:

On an individual basis, these buildings have been recognised previously as items of local significance, and this is supported by the findings in Woods et al (2018) with one exception [not this building].

The condition of the buildings has been evaluated by BMC (Figure 1-1), and both heritage buildings are classed either Grade E (<20%NBS) or Grade D (21-33%NBS) and are considered to have a high to very high life-safety risk. Based on the

¹⁵ Invercargill City: Central City Area Heritage Buildings Re-Assessment 2016.

evidence provided by BMC, any adaptive reuse of these buildings would necessitate strengthening measures. Consideration of adaptive reuse has not been undertaken, as even if the buildings were strengthened, they would not provide the appropriate space required by this type of redevelopment, leading to the application to demolish these buildings...

The scheduled buildings that will be demolished are distributed across the project area and will provide significant space for the construction of the various precincts. Buchan has carefully considered the loss of these heritage buildings and considers that their design respects the scale and mass of those buildings that will be lost to make way for the development, and references that of the buildings on the surrounding streets.

... on the basis of all evidence, the loss of heritage in this category can be mitigated. NZHP recommends that the demolition of these buildings be consented with mitigative measures such as those presented in section 4..."

K Peters, Otts, Watson and Barhams Buildings

- (i) The Peters Building was built in 1881, designed by Mackenzie, Ridley & Co and commissioned by Peter Peters.
- (ii) The Watsons Building was built in 1877 and designed by an unknown architect. It was commissioned by Abram Watson.
- (iii) The Otts Building was built in 1875, designed by Angus Kerr and commissioned by George Ott.
- (iv) The Barhams Building was built in 1872/73, designed by an unknown architect and commissioned by William Barham.
- (v) The structural assessment carried out by BMC assessed the buildings as being between < 20% of NBS and therefore potentially earthquake prone.
- (vi) There is little, if any, visible heritage fabric and the buildings have been significantly modified. Of most interest, according to Dr Cawte's report, is that the sites have moderate to high

archaeological values. Investigation of the sites would provide valuable insight into the history of European occupation and development of Invercargill. On one site occupied by the Peters and Watsons Building there could still be evidence of public baths that once occupied the site.

- (vii) Overall the buildings have low heritage significance and we accept Dr Cawte's assessment.

L Thompson's Building – 18 Kelvin Street

- (i) The Thompson's Building at 18 Kelvin Street was constructed some time between 1913 and 1929, the commissioner and designer of which are unknown. It adjoins the Kelvin Hotel to the north. There has been a building on this site since at least the 1880s, but it is unclear as to whether any of the original components were retained in the current structure. Due to the paucity of records about this building, its original style is unknown, but its current style is that of Art Deco.
- (ii) Throughout the twentieth century the building has been used as the Thompson's Dining Room (hence its name), a clothes shop, offices and most recently as a day spa. Its recent use as a day spa was evidenced from the Panel's visit, with the internal fit out remaining. Given the amount of interior renovations that have occurred, there is little visible heritage fabric.
- (iii) The Kelvin Street façade is in the Art Deco Style, with moulded decorations and leadlight quarter lights on the first-floor windows. There remains a rectangular panel on the parapet with "Thompson's" engraved on it. The north and south elevations are not visible due to adjacent buildings. The west elevation has no decoration and adjoins the Kelvin Hotel service lane.
- (iv) Dr Cawte describes the significance of the building as low, the magnitude of impact as moderate adverse, and the assessment of effects as slight.
- (v) The structural and civil engineers, BMC, assessed the building as a Grade E building, having a capacity of 15-20% of the National Building

Standard. There were items of structural damage observed during the site inspection, including pounding and cracking.

The Proposal

- (i) The proposal had initially been to retain the façade; however, the proposal now seeks to demolish the building. In respect of that proposal Dr Cawte in his report said:

“On an individual basis, these buildings have been recognised previously as items of local significance, and this is supported by the findings in Woods et al (2018) with one exception [not this building].

The condition of the buildings has been evaluated by BMC (Figure 1-1), and all heritage buildings are classed either Grade E (<20%NBS) or Grade D (21-33%NBS) and are considered to have a high to very high life-safety risk. Based on the evidence provided by BMC, any adaptive reuse of these buildings would necessitate strengthening measures. Consideration of adaptive reuse has not been undertaken, as even if the buildings were strengthened they would not provide the appropriate space required by this type of redevelopment, leading to the application to demolish these buildings...

The scheduled buildings that will be demolished are distributed across the project area and will provide significant space for the construction of the various precincts. Buchan has carefully considered the loss of these heritage buildings and considers that their design respects the scale and mass of those buildings that will be lost to make way for the development, and references that of the buildings on the surrounding streets.

... on the basis of all evidence, the loss of heritage in this category can be mitigated. NZHP recommends that the demolition of these buildings be consented with mitigative measures such as those presented in section 4 ...”

7.3 Urban design

- 7.3.1 The underlying starting point of the design is the creation of a place for people. The overall arrangement has at its heart a mall which generally follows a successful retail model comprising:
- (a) A key anchor tenant supported by core retail focused on fashion
 - (b) Two separate food courts aimed at different markets, budgets and times of the day
 - (c) a cinema
 - (d) a large six-storey car park.
- 7.3.2 The mall is surrounded by what is described by the architect as a 'working edge' on the western side, where there is a seven-storey office building and the Civic Precinct. Adjacent to this is a five-storey building to house a medical centre. A seven-storey commercial building, later described as a hotel, sits at the corner of Tay and Kelvin Streets. The car park is set back from Esk Street and fronts Tay Street.
- 7.3.3 In order to retain the built form and pattern of individual shops along the Esk Street frontage, the mall is 'sleeved' with retail outlets that open on to the street. There are four major entrances to the mall and 14 minor entrances to shops that either have a dual entrance with the mall or a single entrance from the street. This successfully reflects the existing pattern and provides an on-street experience in addition to the internally focused mall.
- 7.3.4 Tay Street is less of a pedestrian street but still has a pattern of individual tenancies that the design has responded to. The medical centre has entrances on to the street and there is a mall entrance which provides a direct link through to Esk Street. There are other entrances in to food and beverage outlets, retail and commercial. Of the nine entrances, three are directly into the mall. The car park is accessed from Tay Street, which by necessity interrupts the pattern of active ground floor openings. The design provides a variety of experiences along Tay Street that encourages pedestrian flow and engagement with the street, similar to the existing pattern of movement.
- 7.3.5 The layout of buildings on Kelvin Street and Dee Street is, again, less fine grained. The Kelvin Hotel takes up nearly half the frontage and a hotel will be built on the

corner of Kelvin and Tay Street. They currently do and will provide active frontages to the street, with entrances and windows into bars and reception areas.

- 7.3.6 Dee Street will house a civic building, the existing Reading Cinema and a new office building. These buildings all have accesses on to the street. The layout is less of a fine grain than existing, although currently there are a number of vacant buildings and the once active frontages are closed. The new development along this stretch will enliven the street edge by providing more activity and clearly publicly accessible buildings.
- 7.3.7 Overall, the design does provide a fine grain that reflects the existing pattern particularly on Esk Street which is and will be the prime retail street. The centre of the development is a mall with a large car parking building, but the design incorporates small retail outlets to front Esk Street and other larger buildings on Kelvin and Dee Streets that will interact with the street. Tay Street is somewhat of the back door, with an entrance to the car park, but there are still active frontages to balance this. This is not inappropriate, given that Tay Street is a large wide heavily trafficked road.
- 7.3.8 The façade ordering process that the architect has undertaken and explained to us has been largely successful in arriving at this design layout to show the relationship between the existing and proposed. The additional datasets and drawings supplied in the Applicant's right of reply were particularly helpful in this regard and we attach some of them as Appendix 3.

Design coherence

- 7.3.9 Mr Burgess explained that his approach to the architectural treatment of the façades of the buildings was to reflect the existing pattern of different built forms, ages and styles. Given that this development will be built over a number of years, varying the architectural treatment of façades to provide variation and interest is a challenge, but is important to achieve. The challenge is also to design a mall that basically doesn't look like a mall.
- 7.3.10 There were a number of iterations of the façade designs and we were not entirely convinced that this aspect had been fully and finally resolved. Evidence of this was in the different designs of the main entrance to the mall, different façade treatments of a number of buildings and the late revelation towards the end of the Hearing that there would be a hotel in the corner of Kelvin and Tay Streets. However, the Applicant advised that the plans referred to at the Hearing were the

full and final designs with the exception of the hotel which would be finalised at a later date.

- 7.3.11 The design of the Esk Street façades has to work around and respect the three heritage façades that will be retained – the Southland Times Building, the Cambridge Arcade and Coxheads’ Building. The large anchor tenant will be located behind the Southland Times Building. At ground floor there will be two retail outlets either side, but above this level there will be two storeys of blank walls. We questioned how these walls reflected existing patterns and the modulation and articulation of the Southland Times Building. We were told that the layout requirements of the anchor tenant were such that they could not have openings in this façade. This is as a result of the tenant’s requirements driving the design of the overall development, when a starting point could have been the successful incorporation of the façade and consideration given to the design of buildings adjacent to it to reflect this. This could have meant the relocation of, for example, the offices of the tenant locating at the street edge on upper levels with windows out on to the street, providing light to the building and visual interest on the street edge. The architect responded during the Hearing with a new design for the façades. We think more work should be considered to ensure that the façades of this building respect the design of the Southland Times Building.
- 7.3.12 Further along the street there is greater modulation, with narrower buildings and main entrances to the mall. Buildings adjacent to the Cambridge Arcade and the Coxheads’ Building, however, show little acknowledgement of their neighbours in the design. This was explained as contrasting old with new and providing variety in design and materiality. We consider that this could have been achieved while still respecting the scale, patterns of openings and modulation of the heritage buildings.
- 7.3.13 On Tay Street the Civic building and the medical centre wrap around the Bank of New South Wales building. There is little explanation of the design of these façades and there is no relationship between them and the significant heritage building on the corner. Large screens dominate the façade which are of a completely different scale to the former Bank of New South Wales Building and there is no acknowledgement of the parapet height in the design. The bank appears dwarfed by these buildings because of this.
- 7.3.14 The car park building dominates the Tay Street frontage, but at ground floor retail outlets will have glazed frontages. Above this the Applicant proposes LED advertising screens, and above that a screen to the car park that will be used for a

light display called 'Southern Lights'. Given that this is mainly a vehicle street, the large scale screen is an effective way to hide the car park while providing visual interest to the street.

- 7.3.15 Overall, the architect has attempted to provide different designs to break up what could be a monotonous mall façade to Esk Street. This has, to some extent, been achieved but there is little acknowledgement of the adjacent heritage buildings and their significant contribution to the streetscape.

Provision of mid-block connections

- 7.3.16 The design provides good ground floor mid-block connections, with a direct north south route from Esk to Tay Streets. There are two other entrances from Esk Street that flow through to this link through the mall that will provide good cross block connections. From Dee Street there will be entrances that connect with the central circulation route, principally the connection between the cinema and the food court areas.
- 7.3.17 There is also an uncovered service lane running from Tay to Esk Streets at the rear of the Kelvin Hotel and what is proposed to be another hotel. This provides good access through the site for service vehicles and could be enhanced to become a shared space with pedestrians who wish to cross the block without entering the mall.
- 7.3.18 Overall, the development has provided good cross block connections which in part compensate for the loss of the much loved Cambridge Arcade link.

Height

- 7.3.19 The height strategy follows the desired outcomes of the District Plan and this is summarised well in the section 42A report:

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.

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.

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.

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.

- 7.3.20 Overall, the heights of the buildings and the development as a whole are entirely appropriate from an urban design perspective and consistent with the outcomes sought in the District Plan.

Shading

- 7.3.21 There was some concern expressed by Mr Bob Simpson that development would shade streets and make them dangerous in winter conditions. H & J Smith raised the concern that the hotel building would adversely shade Kelvin Street and their adjacent building. The section 42 report more than adequately summarises the Commissioners' view on the effects on Tay Street7.3.2.4

- 7.3.22 and Kelvin Street:

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.

- 7.3.23 We concur and adopt this assessment.

Verandahs

- 7.3.24 The District Plan requires verandas to be a maximum of 3.5m in height. The design has incorporated verandahs, but by integrating them in the overall façade design this has resulted in the heights exceeding the District Plan requirements. They will still provide adequate weather protection while being integrated in the overall design.

- 7.3.25 We agree with Mr Clease's summary that:

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.

Summary

- 7.3.26 The design has to some extent successfully inserted a mall into the fine grain urban fabric of the CBD. The development is sleeved with retail and commercial tenancies that will open on to the streets – mainly Esk Street. Good mid-block connections are included in the design. We have some reservations about the architectural treatment of the façades of the new buildings and their relationship to the heritage buildings and consider that the development would benefit from further consideration of this before demolition occurs.
- 7.3.27 The height of the buildings is appropriate for the CBD, with lower heights in the middle and greater height at the corners consistent with the existing pattern of development. We are satisfied that the shading as demonstrated will not create unpleasant pedestrian environments and that verandah heights will provide reasonable protection from rain.

7.4 Traffic

- 7.4.1 Under the District Plan, the only matter requiring consent was accesses to and egresses from sites on to State Highways, where the speed limit is 50km/hr or less. As we have identified earlier, through the Hearing process the NZTA and the Applicant obtained agreement over the accesses to and egresses from sites on to the two State Highways, subject to conditions requiring more detailed design. We consider these appropriate.
- 7.4.2 Submitters also raised concerns regarding loss of on-street parking, the number of parking spaces being provided in the parking building, the need for the parking building itself, and ensuring the service lane providing access between Tay and Esk Streets was appropriate.

- 7.4.3 Concerning the loss of on-street parking, this would be adequately compensated by the parking provided in the new parking building as well as new angle parking available through the removal of an existing access way. From our observations and the expert information provided to us, on-street parking will remain adequate to serve the CBD.
- 7.4.4 The District Plan does not require that businesses are to provide car parks in the City Centre Priority Redevelopment Precinct. The new parking spaces will provide benefits to the local community through the provision of undercover parking, and are likely to be used at times of inclement weather. We can only assume that the Applicant has undertaken the necessary investigations to justify the number of parking spaces they intend to provide. The parking is likely to be used by customers of nearby businesses, providing a benefit to them.
- 7.4.5 The Applicant proposed conditions that would ensure the service lane functioned both efficiently and efficiently, while not compromising public accessibility and amenity. This included providing gates at either end to address any wind tunnelling effects. The south-north access through the service lane will adequately provide for both servicing needs, as well as public health and safety.
- 7.4.6 From all the evidence we conclude there are no adverse traffic effects that cannot be adequately addressed through conditions of consent

7.5 Construction

- 7.5.1 The timing and staging of construction was a matter that we spent some time on during the Hearing, given the potential implications to surrounding businesses during this period. H & J Smiths, in particular, were concerned about the impact that construction could have on their business, being particularly concerned about any impact on Kelvin Street during the construction of Stage 6, the hotel at the corner of Tay Street and Kelvin Street. Mr Cotton and Ms Hamm advised that Stage 6 would be constructed using an on-site crane. In the event works were required off-site, this would occur on Tay Street, which is a more accessible location. Any disruption to H & J Smiths through the demolition and construction periods will be limited in duration, given the staged approach being taken.
- 7.5.2 Ms Hampson also raised concerns regarding parking on Esk Street being traded off for food and beverage caravans and containers, which the Applicant is offering to compensate for the loss of on-site food and beverage options during the

construction period. Mr Cotton explained that these caravans and containers would be located so as to not remove any on-street parking spaces.

- 7.5.3 H & J Smiths also suggested that a bond be required to secure performance of the relevant construction steps. Mr Cotton was of the view this was unnecessary due to the type of construction contracts that would be put in place, which would include penalties.
- 7.5.4 While the Retailers Group appeared satisfied with what the Applicant had offered during the construction period, H & J Smiths also sought that retailers have a stronger role in the consideration of management plans and be party to their preparation. Mr Cotton considered this unnecessary, as all retailers would be kept informed through consultation and communication throughout the project, as reflected in the updated recommended conditions provided to us at the conclusion of the Hearing.
- 7.5.5 H & J Smiths were also concerned about the threat of asbestos drift as a result of buildings being demolished. The Applicant offered an amendment to the Demolition Management Plan to address their concerns. We also note that there is separate legislation which manages any works involving asbestos.
- 7.5.6 Batchelar McDougall Consulting Ltd, the engineers who assessed the heritage buildings, also considered the proposed staging approach to construction. They considered the staging to be a logical sequencing of the demolition works, which will be coordinated with heritage/archaeological inspection and construction sequencing. They considered it a requirement that the demolition and construction processes required detailed planning for responsible execution by a suitable experienced contractor. This planning, and the associated management plans, should be peer reviewed for some or all stages; but in particular for those where there are particular risks, such as the Old Government Life Buildings.
- 7.5.7 By the time we closed the Hearing we were satisfied that the Applicant had duly considered how the construction process would occur.
- 7.5.8 From all the evidence we conclude that:

- (a) The construction period will be disruptive, both on the site and to nearby businesses.
- (b) The Applicant has given due consideration of how these effects can be managed to reduce the impacts beyond the site, which includes taking a staged approach.
- (c) The staged approach with construction works and vehicles all being on-site, will reduce disruption beyond the site. The concerns that H & J Smiths have concerning any construction impact on Kelvin Street can be simply managed by a condition requiring that it not be used for such purpose.
- (d) Managing the effects of construction in the short-medium term is an important management issue, but is not determinative. We have addressed the risks by means of conditions.

8. **Assessment of Relevant Planning Instruments Under s104(1)(b)**

8.1 Regional Policy Statement (RPS)

8.1.1 Mr Clease and Ms McMillan both identified Chapters 14, Historic Heritage and 17, Urban, of the RPS as being relevant and they were consistent in the provisions they identified. All of the provisions identified directly relate to activities controlled by the Council.

8.1.2 Those which we consider are most pertinent to this application are set out below.

Objective HH.1 Historic heritage values are identified and protected from inappropriate use and development.

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

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.

Objective URB.1 seeks that Urban (including industrial) development occurs in an integrated, sustainable and well-planned manner which provides for positive environmental, social, economic and cultural outcomes.

- 8.1.3 Both of the planning experts concluded that the proposal is consistent with the objectives and policies of the RPS. Picking up on the key objectives and policies we have outlined above, Mr Cleese summarised his analysis as follows:

“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”.

- 8.1.4 We agree, for reasons outlined elsewhere in this decision, with their broad conclusions.

8.2 Proposed Invercargill District Plan Decisions Version 2017 (District Plan)

- 8.2.1 *King Salmon*¹⁶ recommends that decision-makers assess the disparate elements of the Plan and attempt a unified vision relevant to the case. The Panel draws on the recent decision of Commissioner Maassen¹⁷ that synthesised the Plan Strategy that applies to land in the Business 1 Zone, the Priority Redevelopment Precinct, the City Centre Heritage Precinct, the Entertainment Precinct and Pedestrian Friendly Frontages Precinct. That application also involved the demolition of a Scheduled Building under the District Plan.

The Central Business District has many heritage items of local significance that are all identified and listed in Appendix 2 to the Plan. Their individual values are not adumbrated but the items are known to have heritage values that should trigger the requirement for a consent before modification or demolition.

That will mean the merits of demolition or modification are closely scrutinised. The long-term retention of a large proportion of the heritage item’s values

¹⁶ *Environmental Defence Society Incorporated v. The New Zealand King Salmon Company Limited* [2014] NZSC 38.

¹⁷ The ILT application RMA2018/111.

individually and collectively is important for the social and cultural wellbeing of the Invercargill community. The Plan's identification process does not assess comparative significance to any great degree and there are no preservation priorities for heritage protection within the basket of heritage items beyond a simple classification system leaving open a case-by-case assessment in each case of the merits of the proposal rather than a strong strategic and directive approach.

Protection of heritage is not an absolute value or an end in itself in the Plan in the Central Business District. It is seen through the lens of its value to the community by contributing to a vibrant place for social relations with a distinctive identity. Adaptive use (which is not unqualified protection) is preferred where practicable. In all cases where a consent is sought a robust assessment must be undertaken and the proposal must be assessed against a range of specific assessment criteria including heritage assessment criteria that ensures a proper cost-benefit analysis is undertaken. There must be a thorough examination of the adaptive use option thereby achieving the direction in Part 2 s 6 (g) by examining the 'appropriateness' of the proposed authority in a holistic way.

The site is in multiple precincts where the Plan aims to enhance and increasingly facilitate pedestrian focused activities including entertainment, food and beverage and comparative retail. Redevelopment and replacement buildings are seen as pivotal to achieving the long-term sustainable management of the physical resources in that locality. The Plan anticipates that effects will include loss of identified heritage when projects anchor a redevelopment that produces significant potential positive effects including enhancing urban amenity, the better use of public infrastructure and catalysing opportunities for further redevelopment and improvement in existing heritage. In this respect the Plan also acknowledges the great importance of the efficient use of the existing Central City infrastructural resources as a finite resource and sees the maintenance and enhancement of amenity in the City core as important as does Part 2, RMA.

- 8.2.2 While this proposal involves multiple sites rather than the one referenced above, the Panel considers that this synthesis of the Plan provisions is correct and apt.

- 8.2.3 Mr Clease and Ms MacMillan’s section 42A report and evidence respectively provided a thorough identification of relevant District Plan provisions and assessments against those provisions.
- 8.2.4 The District Plan is at an advanced stage and both planners agreed that even though not fully operative, it provides the most contemporary guidance in relation to this proposal and the surrounding area. There are a number of key points that we make about this proposal.
- 8.2.5 The starting point for evaluation of the significance of effects on heritage from the proposal concerns how heritage relates to the Business 1 Zone where the site is located. As identified by both Mr Vivian and Mr McKenzie in their evidence, Objective 4 in section 2.22 provides what seems to be a unilateral direction of protecting historic heritage values within the CBD, given that it states:

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

- 8.2.6 In implementing that objective, Policy 22 states:

Policy 22: Heritage Value: To promote the retention of the character and scale of the heritage structures, the buildings and places within the City Centre.

- 8.2.7 We also consider it relevant to consider the Heritage provisions, the following of which are most relevant:

“Objective 1: Heritage values are identified and protected from inappropriate use and development.

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

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

- 8.2.8 On the face of it and when read in isolation, with the demolition of sixteen heritage buildings, the proposal flies in the face of this direction. However, it is important to look at the Plan and its provisions as a whole, as informed by higher level instruments.
- 8.2.9 Both the Business 1 and Heritage provisions use the concept of protection in the same way as Policy HH.2 of the RPS. Firstly, heritage of national and local

significance is identified, and then individual applications are assessed for their appropriateness on a case-by-case basis.

- 8.2.10 The Heritage provisions also strongly rely on “appropriateness’ as a management tool, requiring a case by case analysis of any proposal. Policy 3, below, does not set out a hierarchy of how effects on heritage are addressed:

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

- 8.2.11 Rather than identifying the values of each building within the Plan, Policy 2 and Method 4 of the Plan sets out a system whereby these are addressed on a consent by consent basis.

- 8.2.12 Given the scale of the proposal and the proposal to retain existing heritage items and build new development around and alongside it, we consider that Policy 4 is also very pertinent to our consideration.

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

- 8.2.13 This policy speaks to the Business 1 Objectives 1 and 5, demonstrating that in considering heritage, a holistic approach needs to be taken to the overall purpose of the Business 1 CBD and its primacy within the city and Region as well as the overall administration of the Plan:

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

- 8.2.14 Historic Heritage Policies 5 and 6 promote active management and re-use of the heritage resource and conservation and re-use of buildings and heritage material. Policy 5, in particular, recognises that there may be instances where change needs to happen because of risk to human life. However, in doing so, careful consideration is required of how heritage can be retained in the place of its demolition.

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 façades and heritage street furniture in the Central Business District of Invercargill.

8.2.15 The rules are contained in section 3.8. As set out earlier, the modification of buildings is dealt with as a restricted discretionary activity under Rule 3.8.4 with its own list of assessment criteria. Rule 3.8.6 makes demolition of a scheduled building a discretionary activity. Rule 3.8.7 makes any removal or demolition of any listed furniture a discretionary activity. Rule 3.8.9 makes demolition of an HNZ listed building a non-complying activity. Rule 3.8.10 sets out the relevant assessment criteria.

8.2.16 We have set out the assessment criteria below, as this provides guidance on how decision-makers should approach determining what is appropriate in the context of the Heritage objectives and policies.

“3.8.10 Applications under Rules 3.8.6-3.8.9 above shall address the following matters, which will be among those taken into account by the Council:

(A) The extent to which the heritage values including the design of any buildings and the context of Heritage are likely to be retained, protected and/or enhanced.

(B) Whether the activity is likely to have cumulative adverse effects on heritage values.

(C) In the case of relocation of a heritage building, measures that may be necessary to protect the fabric of the building during relocation.

(D) Potential for the re-use and/or recycling of any material or heritage features from the historic building.

(E) Consideration of any relevant Invercargill City Council heritage design guidelines.

(F) The extent and effect of any earthworks, tunnelling, digging, vibration or excavation that may destabilise the site, structure, place or area.

(G) The results of consultation undertaken including any written advice obtained as follows: (a) In the case of the site having identified tangata whenua values, comment from the relevant iwi.

(b) Any recommendations of Heritage New Zealand Pouhere Taonga, and the New Zealand Archaeological Association File Keeper.

(c) Where the site history indicates that there may be historical artefacts or other physical remains, any advice obtained from a suitably qualified and experienced archaeologist. Note: All advice obtained is to be provided to the Council with the resource consent application.

(H) The reasons for the proposed activity and reasons why alternative less adverse options for achieving the same or similar outcome have been discounted. For clarification, reasons for discounting alternative options can include amongst other matters financial cost, natural hazards, safety and technical feasibility.

(I) The creation and maintenance of a record of heritage features of the building on its original site (e.g. photos of existing vistas for public record of the history of the site).

(J) Any proposals to strengthen the structural integrity and heritage value of the building, including the benefits of alterations for the purpose of implementing Building Code upgrades for seismic, fire and access purposes.

(K) Any proposals to strengthen or replace high risk elements, such as parapets, façade decoration and chimneys, with high quality light weight material.

(L) The extent to which the proposed alterations, additions to or demolition of a listed heritage building have been informed by the advice of qualified professionals such as conservation architects, heritage consultants, engineers and quantity surveyors as appropriate. Such advice should include a thorough analysis of the alternative options available and the extent of professional

advice obtained and should be proportional to the scale and intensity of the effects of the works being undertaken”.

- 8.2.17 Policy 2 of the Business 1 Zone also sets out further guidance on what may be an appropriate outcome for the CBD, and these precincts in particular.

“Policy 2 Precincts: To identify within the Business 1 Zone:

(A) The Priority Redevelopment Precinct.

(B) The Entertainment Precinct.

(C) The Pedestrian-Friendly Frontages Precinct.

Explanation

(A) Within the City Centre, the Council has identified the area delineated as the Priority Redevelopment Precinct as the priority area to retain and augment retail and other business activity. It has commenced a programme of ongoing streetscape improvements, and will be encouraging owners and tenants of adjacent properties to upgrade and where necessary replace their buildings, many of which are showing signs of decay, deferred maintenance, and obsolescence.

(B) The Council wishes to see the Entertainment Precinct within the City Centre as the location of choice for entertainment establishments, including restaurants, bars and nightclubs. The District Plan provides for these activities by identifying a precinct in which the noise limits and hours of operation are more permissive than elsewhere in the City. To minimise reverse sensitivity effects, the Council will be encouraging any residential activities to install a higher level of sound attenuation within the Entertainment Precinct.

(C) If the City Centre is to be a vibrant and attractive place for business to locate and people to visit, it must offer an environment which is safe, comfortable and attractive for pedestrians. Frontages linking the CBD anchors have been identified in the Plan as the Pedestrian-Friendly Frontages Precinct. The ground floor frontages of new development in these areas will be required to enhance the pedestrian experience”.

- 8.2.18 This policy anticipates that new development will occur in these Precincts and that change to the existing fabric will be part of this. In achieving a CBD that incorporates

entertainment facilities, a vibrant pedestrian-friendly place and enhanced street infrastructure, we consider it signals that it is inevitable that new development including replacement buildings, will result in a loss of heritage.

- 8.2.19 The planning experts both identified the Transport and Natural Features, Landscapes and Townscapes which, while relevant to this application, are not matters on which this proposal and decision turn. In both instances, we agree with the planning experts' broad conclusions that the proposal is consistent with the relevant provisions in these chapters.

9. Assessment of requirements of section 104D of the Resource Management Act

- 9.1.1 Because a number of elements of the proposal obtain a non-complying activity status under Rule 3.8.8 in the Proposed District Plan, the planners giving evidence agreed that the entire activity should be assessed as non-complying, using the bundling principle. The reason non-complying activity status applies is because the proposed District Plan identifies the values of buildings registered by HNZ as more significant. The purpose of the non-complying activity status is to ensure the activity is screened by the jurisdictional gateways.

- 9.1.2 Section 104D of RMA states:

"Particular restrictions for non-complying activities

Despite any decision made for the purpose of notification in relation to adverse effects, 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; or*
 - (ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*

- (iii) *both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*

To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity”.

- 9.1.3 All planners agree that the effects of the proposal are more than minor so the first gateway of s 104D is not passed. The proposal therefore has to pass either the gateway of being not contrary to either the Operative District Plan’s objectives and policies or the Proposed District Plan’s objections and policies. The reason that a choice of planning instrument is available for the second gateway is that a Proposed District Plan may have a different planning direction from an Operative Plan. If that is so, then there is no reason to prevent consideration of an application that is not contrary to that new planning direction. We do consider that there is a new direction in relation to the management of heritage in the Proposed District Plan compared with Operative District Plan for the reasons already given. Given the status of the proposed District Plan, which is proposed and not operative due to technicalities and is beyond challenge, we have not considered the provisions in the Operative District Plan.
- 9.1.4 Mr Cleese, the planner providing a section 42A Report, and Ms McMillan for the Applicant, both considered that the proposal was consistent with the objectives and policies of the Proposed District Plan. On their evidence the proposal satisfied the second gateway test by a large margin because to be contrary to the proposed objectives and policies, inconsistency with objectives and policies is insufficient. The proposal must offend the objectives and policies to such an extent having regard to their language and the subject matter and significance of the resource management issue under consideration, as to be properly characterised as repugnant to the objectives and policies¹⁸.
- 9.1.5 Mr McKenzie is a planner and he was also a submitter on the application. He has extensive experience working in heritage related matters. His main argument was that the proposal did not pass the threshold of section 104D because the proposal was contrary to the objectives and policies of the Proposed District Plan. And as a concluding comment at section 5.1 Mr McKenzie said:

¹⁸ *Elderslie Park Limited v. Timaru District Council* [1955] NZRMA 433 and *Dye v. Auckland Regional Council* [2001] NZRMA 53.

“It is my opinion the application fails to meet the threshold tests of section 104D of the RMA that a non-complying activity must meet, and therefore should be declined. That is because the application is contrary to relevant objectives and policies, which seek the protection of the heritage values and retention, rehabilitation and re-use of identified historic heritage. While other policies seek the rejuvenation of the CBD area, it is clear that this is expected to be within the context to protection of heritage values”.

- 9.1.6 Mr McKenzie is incorrect to seize on the words “protect” within the objectives and policies without also considering the universal qualifier “inappropriate” used in most instances. The working assumption that Mr McKenzie made, that became evident during questioning, was that the listing of the buildings automatically represented an identification of values worthy of protection. However, contrary to that assessment, he acknowledged that there were no value statements at all in the Plan that would identify what values are worthy of protection in respect of specific buildings.
- 9.1.7 Under questioning Mr McKenzie accepted that an alternative and a reasonable interpretation of the Plan is that listing was a mechanism by which individual values could be assessed through a resource consent process. Listing in Schedule 11.2 was no more than a trigger for close assessment in respect of identified properties where architectural significance indicated that an assessment was required. In such a case, the values identified in that process informed an assessment alongside a range of other matters as to whether the proposed use was an appropriate use of heritage. Mr McKenzie accepted that that was a reasonable view.
- 9.1.8 Mr Vivian, on behalf of H & J Smiths, contended that the second gateway in section 104D was not met because two policies were offended. In doing that he relied on Mr Todd’s submission that if a proposal offended one policy, that was sufficient. One policy related to building height to create a pedestrian friendly environment. The other related to maintaining a vibrant CBD that Mr Vivian said was offended because of Ms Hampson’s assessment of effects on functional amenity.
- 9.1.9 Mr Vivian’s evidence then needs to be assessed against what is the correct law. The correct law as to whether or not a proposal does not meet the second gateway was correctly stated in the Right of Reply by Ms Hamm for the Applicant.

- 9.1.10 The leading authority is *Dye v. Auckland Regional Council*¹⁹. The Court held the view that a non-complying activity would not find the support in the objectives and policies. It nevertheless may be appropriate, and this has to be assessed reading the objectives and policies on a fair appraisal as a whole.
- 9.1.11 In *Queenstown Central Limited v. Queenstown Lakes District Council*²⁰ the High Court did rely on a key objective as the basis for finding that the section 104D gateway test is not met. That key objective, however, went to the very heart of the planning strategy so that it could be said that if it was repugnant to that objective it was contrary to the goals underpinning the Plan. That case cannot be characterised as support for the view that being contrary to any individual policy, whatever its significance in the overall assessment, is sufficient to preclude consideration. Subsequent decisions of the Environment Court have refused to take that narrow approach²¹.
- 9.1.12 A recent decision of the Court of Appeal used the same terminology as *Dye* which encourages a fair appraisal of the objectives and policies read as a whole, albeit in a different context²².
- 9.1.13 We accept the proposition that a proposal may be contrary to a few objectives and policies in a complete suite. If those objectives and policies are so fundamental to the planning strategy or in implementing Part 2 and higher order instruments, it could be erroneous to finesse that away with an overall assessment.
- 9.1.14 In this case, however, H & J Smiths is relying on a height issue for a building that will be adjacent to a tall building (Kelvin Hotel) because it will not be pedestrian-friendly because the Plan anticipates lower scale buildings to achieve a pedestrian-friendly environment. No effects on pedestrians were identified that made the building less pedestrian-friendly because it is taller.
- 9.1.15 In addition, H & J Smiths relies on the functional amenity effects. These are only temporary and are happening anyway. Ms Hampson acknowledged that temporary functional effects were not the underlying planning concern of the objectives and policies in the Plan, contrary to Mr Vivian's evidence.

¹⁹ *Dye v. Auckland Regional Council* [2001] NZRMA 513.

²⁰ *Queenstown Central Limited v. Queenstown Lakes District Council* [2013] NZHC 815.

²¹ An example is *Saddle Views Estate Limited v. Dunedin City Council* [2015] NZRMA 1.

²² *Davidson Family Trust v. Marlborough District Council* [2018] NZCA 316.

9.1.16 We therefore reject H & J Smiths' legal argument as erroneous and find it rested on an implausible planning assessment.

9.1.17 We consider that the proposal is broadly consistent with the objectives and policies of the District Plan and is certainly not contrary to the objectives and policies of the District Plan fairly assessed as a whole.

10. Further consideration of persuasive issues

10.1.1 As stated in the overview, the two persuasive issues concerned the appropriateness of heritage use and the quality of the urban design outcome. The heritage elements in Esk Street had high contextual values because of their contribution to the group value of heritage. The issue of appropriate use of heritage is intrinsically tied to the quality of the urban design outcome on Esk Street.

10.1.2 The Temple Chambers and NZIC building were assessed as having high contextual values and, if retained, would make an excellent contribution to the streetscape and add to people's appreciation, in our view, of the environment because it is those contextual and streetscape values that people appreciate. With the retention of the Temple Chambers and NZIC building, as well as the retention of the façades proposed, you would have an outcome where there was much more heritage coherence and continuity with the past in that important streetscape. We note that Dr Cawte is not a conservation architect. We also consider that Mr Burgess did not have as a starting point the development of a design that put heritage to the forefront.

10.1.3 We were therefore not convinced that retention of the Temple Chambers and NZIC building (or indeed the Nicholl building) could not have been preserved while achieving the overall concept of an integrated mall development. We were less concerned about the lack of preservation of the Cambridge Arcade (as opposed to the façade) itself. While the Arcade is delightful, it is an odd collection of elements made up of buildings past their usable life and we were persuaded that they could not be retained and achieve a vibrant retail precinct consistent with the District Plan's stated outcomes for this site.

10.1.4 The Panel debated the significance of our concerns regarding the lack of heritage retention along Esk Street. The Panel did, with regret, reach the conclusion that the outcome was not inconsistent with the objectives and policies of the Plan such that consent should be declined or that a condition be set to preserve those elements.

The Panel did express the hope that in the final implementation of the proposal, further consideration is given to the retention of some more façades on Esk Street.

- 10.1.5 The reasons we have reached our view is threefold.
- 10.1.6 First, we are not certain to what extent the retention of those façades would compromise other design elements so that the overall outcome is better. For example, the retention of the NZIC Building or Temple Chambers would require reconsideration of the location of the mid-block link and we are not certain of the implications of this and whether a less optimal solution would result. If mid-block linkages are lost, that would be a poorer outcome than retention of the façade. We are conscious that there are block elements in this development that are really non-negotiable, such as the provision of parking through a car park building and the provision of a floor plate sufficient for an anchor tenant. We respect the fact that the architect may well have interrogated these issues within the overall design and that our assessment that there are further opportunities is simplistic. The Panel also notes that the hospitality hub with the outdoor dining component may not integrate well with the retention of the façades of buildings other than those proposed to be retained.
- 10.1.7 The second element that is persuasive for the majority of the Panel is that the buildings have come to the end of their life and in virtually all cases there are no heritage elements behind the façade worthy of protection. In the absence of specific design treatment of façades, the quality of the overall outcome is uncertain.
- 10.1.8 In relation to the Southland Times building, we consider the architect could have explored a design configuration that located uses at the street edge above ground floor which required the placement of windows, while accommodating the requirements of the anchor tenant for spaces that would be consistent with that configuration. While we agree that it would be preferable to have windows at the first level on the façades adjacent to the building, we acknowledge that the redesign has gone some way to meeting our concerns about the quality of the overall outcome. The Panel are mindful that these elements in the composition would be permitted activities. Also, we cannot be certain as to what extent placing office or back-end retail components in that location is feasible.
- 10.1.9 Our third reason is that our job is not to design a perfect development, but to assess whether the development is appropriate, having regard to the relevant planning instruments, the assessed effects, and Part 2. We respect the fact that planning sets boundaries around permissible development, but within those boundaries

there must be an adequate space for individual design responses based on the applicant's superior knowledge and legitimate assessment of what would appeal to the marketplace. Resource management in commercial development like this must preserve some of the landowner's agency to design a workable and economic development. Where there is a design guide with statutory force the streetscape design can become a point of focus, assessed against clear directions for intended outcomes. In this case there was no such statutory documentation. The position is that the proposal is generally permitted, but for the impact on heritage elements, and therefore the District Plan has a permissive framework.

- 10.1.10 What does impress us in the design is the respect accorded to the composition of existing elements in the final design on Esk Street and the variety of articulation of the frontage that will make for a very interesting and pedestrian friendly environment. In this respect Mr Burgess' design is well thought out.
- 10.1.11 The other major area of concern is the impact that this mall-type proposal will inevitably have on the remainder of the Business 1 Zone. We consider that the gravitational pull of this development will be great, with the consequence that there will be a reduction in functional amenity in other parts of the Business 1 Zone. That may impact on the economic viability of retention of other heritage elements in other blocks. In the end we do not consider that this concern is a concern that warrants influence in our assessment for three reasons.
- 10.1.12 The first reason is that by establishing the redevelopment precinct with its focus on Block II and the adjacent block, the planning strategy plainly focusses on redevelopment in these locations as part of a centres-based strategy. Our obligation when applying the rule of law is that the strategies of the Plan should constrain our evaluative assessment.
- 10.1.13 The second reason is that the intensity of use is largely consistent with the expectations of the District Plan and most of the alternative uses are permitted. The height of the proposed hotel in Kelvin Street is not material to this issue, as the hotel building will increase patronage in the CBD and support functional amenity. Allied to that point, because the land is being used for its intended purpose the fact that there may be some impacts on functional amenity on similarly zoned land is properly characterised as a trade competition effect, that we must disregard. While trade competition is allowed, we still predict that other parts of the Business 1 Zone will be significantly impacted and that will detract from the vibrancy and vitality of those locations.

- 10.1.14 The third reason is that the situation will not arise as a result of this development, but as a result of the cumulative impact of multiple causes and past decision-making. For example, previous District Plans did not appear to have a strong centres-based strategy to support functional amenity that was also crucial to afford sufficient economic return that could have supported retention of heritage elements. Also, the sale of strategic land on the fringe to support big-box retail could be seen as a lost opportunity. Now, a significant problem has arisen and in terms of the District Plan strategy the proposal can be better categorised as part of a solution rather than a dominant cause of the wider problems. Without the development, there is greater risk of a continuation of the past outcomes than would arise by consenting the development.

11. Part 2 – Assessment

- 11.1.1 Mr O'Donnell, the director of HWR Property Limited and Chair of HWCP Management Limited gave a presentation at the Hearing, based on his knowledge of Invercargill, as to what the District Plan should aim to do in addressing heritage management in the CBD. HW Richardson Group has, of course, been actively involved in projects that have sustained heritage, such as the Classic Motorcycle Mecca located at 27 Tay Street. The renovated building houses 300 classic motorcycles and motorcycle related artwork and attracts 30,000 visitors annually. Mr O'Donnell thought that the District Plan should aim to preserve the best heritage features of the CBD, while enabling redevelopment to sustain the vitality and the vibrancy of the CBD. Mr O'Donnell's assumption, therefore, was that was not what the proposed District Plan presently requires. As we noted in the Overview, that is exactly what the Plan says its aim is in section 2.2.1.
- 11.1.2 We consider the policy direction of the Proposed District Plan is a sufficiently clear statement of what the community considers is required to achieve sustainable management. What it is not is a Plan that is highly directive in relation to heritage. There are reasons for that, as we have explained. The non-complying status applying to categorised buildings reveals that there is a higher expectation of adaptive re-use and preservation of the best elements of those buildings. The result is, the way in which this application has responded by identifying the best items, mostly located on Esk Street, and then concentrated heritage preservation efforts in that location, where long-standing efforts have been made to create an attractive pedestrianised environment.

11.1.3 We are able to see the linkages back to Part 2, of the RMA in a number of respects, in the objectives and policies. Plainly those policies concerning historic heritage find their statutory basis in RMA, section 6(f). While the policy framework does not advance this section, in some respects by repeating the qualifier “appropriate” or “inappropriate” in relation to heritage the District Plan does provide context as to what is appropriate by its neighbouring policies, as well as the distinction between those buildings that are categorised by HNZ and those that are not. The neighbouring policies speak to the need for a vibrant and vital CBD and also the need for redevelopment to achieve that goal. The policies also look to a safe and healthy environment and one that is attractive to pedestrians. We therefore agree with Mr Clease that the retention of heritage where those neighbouring goals are compromised would itself be inappropriate. The need to enhance the CBD’s functional amenity and amenity values in the policy framework plainly has its origin in sections 7(b), section 7(c) and section 7(f). Section 7(b) relates to the efficient use of physical resources. There is substantial community infrastructure associated with the CBD Core and its efficient use as a business centre is recognised as a crucial matter in the District Plan. Allied to that, the District Plan seeks to maintain and enhance the quality of the CBD environment and enhance its amenity values in accordance with ss 7(c) and (f).

11.1.4 We must then look to the single purpose of the RMA which is in RMA, section 5(2). Section 5(2) states:

“In this Act, sustainable management means 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 well-being 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”.

11.1.5 In relation to the dimension of sustainable management that is concerned with enabling people and communities to provide for their social, economic and cultural

well-being, we consider that community aspirations are expressed through the Plan and also through complementary non-statutory instruments such as the Southland Regional Development Strategy, the Invercargill City Council Inner City Action Plan and the Invercargill City Centre Retail Strategy (2017). We consider that this proposal is very well aligned with the community aspirations expressed in these community documents. In relation to the health and safety dimension we consider that, for a number of the buildings including the Government Life Building, the requirement for people's health and safety demands the demolition of these buildings and this a pre-eminent concern of the RMA and consequently should be important in any decision-making under that instrument.

11.1.6 In relation to the other elements of the definition of sustainable management, we note that the concern in section 5(2)(a) to sustain physical resources to meet "*the reasonably foreseeable needs of future generations*". The words "reasonably" is an important element of that provision. It is a somewhat poisoned inheritance to leave to future generations a CBD Core that cannot perform its function and to retain buildings where there is no realistic economic prospect of repair and maintenance. In addition, it is necessary to recognise the needs of the present generations are fairly balanced with potential reasonable future needs. We consider that the proposal goes a considerable distance to sustaining the reasonably foreseeable needs for future generations by providing a revitalised CBD while retaining the best elements of the façades in Block II.

11.1.7 In RMA, section 5(2)(c) consideration must also be given to avoiding, remedying or mitigating adverse effects. In this case the approach is one of mitigation, and in all the circumstances we consider that appropriate where there are significant benefits to be secured to achieve economic, social and cultural well-being of people.

11.1.8 We therefore see in the vertical arrangement of Part 2, the RPS, the District Plan and community non-statutory documents a clear expression of the overarching purpose of the RMA, Part 2. We accept the proposition that, as a matter of overall evaluation, this proposal is worthy of approval based on them, given the factual context and effects we have found.

12. **Conditions**

12.1.1 The Applicant proposed a set of conditions at the start of the Hearing and this set evolved by the usual iterative process. H & J Smiths asked for an opportunity for input on conditions. That opportunity was provided through Minute 3 that gave parties further opportunity to respond to changes to the application and to the

amended conditions proposed. The Applicant in turn had a further response. There was therefore a reasonably full process by which parties could have input in relation to the finalisation of conditions that would apply if consent was granted.

12.1.2 We have made amendments to those conditions for reasons that we explain in this part of the Decision.

12.1.3 We address conditions using the following sequence:

- (a) H & J Smiths' condition regarding further linkages between the development and H & J Smiths.
- (b) Conditions relating to demolition and management of vacant space.
- (c) Conditions relating to timing of redevelopment; and
- (d) Conditions relating to other matters.

12.1.4 Before addressing this sequence, it is appropriate to address the law. Parliament in 2017 amended the RMA to introduce limitations on condition making under section 108AA. Sub-section 1 reads:

“Requirements for Conditions of Resource Consents

- (1) *A consent authority must not include a condition in a resource consent for an activity unless—*
 - (a) *the Applicant for the resource consent agrees to the condition; or*
 - (b) *the condition is directly connected to 1 or both of the following:*
 - (i) *an adverse effect of the activity on the environment;*
 - (ii) *an applicable district or regional rule, or a national environmental standard; or*
 - (c) *the condition relates to administrative matters that are essential for the efficient implementation of the relevant resource consent”.*

Condition Relating to Linkages Requested by H & J Smiths

- 12.1.5 As noted in the section of this decision concerning H & J Smiths' submission, Mr Smith for H & J Smiths addressed the issue of linkages, including a sky-bridge. In reply, submissions for H & J Smiths [7] the following was stated:

"The belated confirmation of the proposed use of the building as a hotel does however provide an opportunity for the types of linkages as was mentioned in H&J's submission and evidence in support of the same so as to enable recognition for and compliance with the Objectives and Policies in the Council's Proposed District Plan in terms of connectivity. H&J looked to the Commissioners to impose conditions which encouraged such linkages to be incorporated into the Applicant's final development plans, via the sky-bridge linking with the H&J Building or at ground level".

- 12.1.6 The main policy referring to connectivity is Policy 20 that is set out below.

"Policy 20 Connectivity and circulation:

- (A) To promote connectivity and legibility of access to and within the Central Business District to enable people to find their way around easily and conveniently.*
- (B) To promote pedestrian friendly routes along the identified pedestrian-friendly frontages.*

Explanation: *Invercargill's grid street pattern already delivers a high standard of connectivity. People appreciate an environment with clear landmarks and signposts, which is very easy for them to find their way around. The dimensions of the City's street blocks mean that more mid-block north/south connections (like the Cambridge Place and SIT Arcades) would improve an already very high standard of connectivity.*

The main retail and business frontages need to be safe and attractive places for pedestrians".

- 12.1.7 There are two relevant points:

- (a) The Plan considers that the grid-like pattern already provides a high degree of legibility and convenience for pedestrians; and*

- (b) The Plan primarily promotes internal mid-block connections through a porous development.
- 12.1.8 It is not referring to sky-bridges or connections between buildings, hence the reference to Cambridge Place Arcade. In addition, we did not receive any evidence that the proposal was not pedestrian friendly. We accept that the car park access and car park building means that Tay Street is the least pedestrianised, but we consider that that is the preferable location for access, given the size of the street and its overall arrangement and position relative to other streets in the locality.
- 12.1.9 What H & J Smiths are asking for is that the Applicant pay for a structure over public land to enable customers of Invercargill Central to have direct access into the H & J Department Store. There are three major problems with this. In no particular order, they are:
- (a) Policy 20 does not require expenditure over public land to create the levels of connectivity that H & J Smiths desire.
- (b) We do not have authority to propose such a condition under section 108AA because we have no evidence that there was an additional adverse effect where there is a sufficient causal nexus that section 108AA requires.
- (c) Such a condition does not come close to being fair and reasonable, which is a necessary element of condition making²³.
- 12.1.10 The Applicant has raised the issue as to whether H & J Smiths was in fact motivated by trade competition. At the Hearing we didn't take that position in addressing their submission because H & J Smiths provided relevant and important information relating to direct functional amenity effects. However, the pursuit of the sky-bridge or other connection on public land to facilitate customer transfer does, in our opinion, head towards contravening Part 11A of the RMA. That part of the RMA was introduced in 2009 with the aim of ensuring that the RMA was not used as a means to advance trade competition interests. If a submitter who is a trade competitor seeks conditions to secure customer convenience for their store that we have no authority to make and which would not be fair and reasonable, then the submitter is seeking to ensure, unreasonably, that connections are made between trade competitors over public land. We make no particular finding in relation to

²³ *Waitakere City Council v. Estate Homes Limited* [2016] NZCS 112.

actual contravention of Part 11A of the Act because that jurisdiction lies with the Environment Court under RMA section 308G. We go no further than registering our concern on this aspect of H & J Smiths' case as part of the bundle of reasons why we reject the particular relief sought.

Conditions Relating to Demolition and Vacant Space

- 12.1.11 There are a number of effects associated with demolition identified in the evidence including impacts on functional amenity during the redevelopment phase.
- 12.1.12 Policy 15 of the Proposed District Plan provides guidance in respect of the type of conditions that are appropriate to address matters associated with demolition. Policy 15 reads:

“Policy 15 Demolition or removal activities:

- (A) To encourage owners to consider the restoration and adaptive re-use of buildings in preference to demolition.*
- (B) To manage the adverse effects of demolition or removal on amenity values by ensuring the clean-up, screening and maintenance of sites.*
- (C) To encourage active utilisation of sites post-demolition by encouraging their prompt redevelopment and in the meantime encouraging use of the site for such activities as car parking or public open space.*

Explanation: *It is good practice to consider the restoration and adaptive re-use of any building or structure as part of the redevelopment process, in order to identify opportunities to reduce waste entering the waste stream and to ensure best use of existing resources and infrastructure.*

Although normally temporary and localised, demolition activities can create a significant nuisance. There is an obligation to ensure that demolition materials are disposed of responsibly. There is also a need to ensure that the site is made safe, clean and tidy in a timely manner.

Vacant, derelict sites would be detrimental to the anticipated character, vibrancy, amenity and function of this Zone. Where a site is to be left empty

post-demolition adaptive ways to use the space and opportunities for active reutilisation of the sites in the interim are to be encouraged”.

- 12.1.13 A number of conditions were offered by the Applicant to address activation and city centre vibrancy during the period of reconstruction. The most important of these concerned an Activation Management Plan to sustain temporary retail activity on Esk Street during the construction period. We have made amendments to the conditions relating to the Activation Management Plan to ensure that the outcomes are framed for any person undertaking the certification task. The Applicant proposed a \$20,000 per year contribution to the Neighbourhood Retail Group. In its amended proposed conditions H & J Smiths suggested that the contribution apply until the completion of the project. The Applicant responded by saying that the payment would be paid until an Anchor Tenant is operational. For the purposes of that condition an “Anchor Tenant” means an entity which will occupy at least 5,000m² of the site. This is an *Augier* condition and we have no authority to impose it as a financial contribution otherwise. We therefore accept the wording proposed by the Applicant, with minor amendments for clarity. We have inserted a condition requiring a publicly-accessible website. This will ensure that relevant information regarding the implementation of this very important consent will be communicated in a publicly accessible form.
- 12.1.14 A Demolition Management Plan (DMP) is proposed, with clear outcomes and clear requirements as to information. To attend to the H & J Smiths’ concern regarding asbestos, a provision has been made requiring a DMP to address that matter.

Conditions Relating to Redevelopment

- 12.1.15 The crucial issue here in relation to redevelopment is to ensure it occurs and that it occurs in a reasonably diligent manner. Mr Cleese said in his oral presentation towards the end of the Hearing *“that confidence that the benefits will be delivered to mitigate the loss of heritage is definitely for me the crux of the application so I think it is quite appropriate there is a condition that is a little bit unusual in that regard”*.
- 12.1.16 The point he was making is that it is the benefits of the proposal in delivering vitality and vibrancy to the CBD that is crucial in the overall assessment of the appropriateness of the activity, and if that is not undertaken or not undertaken diligently, then that is an unacceptable outcome.

- 12.1.17 The Applicant proposed conditions of their own to satisfy us that demolition will not occur until there is a serious intent of redevelopment. It did not, however, propose conditions specifying completion of particular stages following demolition.
- 12.1.18 H & J Smiths proposed a lapse date for the various stages as a tool by which to incentivise diligent completion of the development. The times for lapse correlated to the various stages. One year from commencement is the lapse date proposed for Stages 1-3 and three years for Stages 4-6 for demolition and for construction three years and five years for each of those Stages respectively.
- 12.1.19 We consider that a lapse date is not an appropriate tool for the following reasons:
- (a) Whether or not a consent is given effect to is not always as easy to ascertain and simply invites uncertainty especially where the concept of lapse is tied to elements of the proposal. We are not even sure that is legal.
 - (b) No purpose is served if a lapse date is passed and there is insufficient progress because that will simply engender further delay while reconsenting is advanced.
- 12.1.20 Our preference is to set conditions that require reasonable steps to be taken to implement development in accordance with a certified Critical Path Plan for demolition and stage 1-3. This is a plan that will demonstrate, based on credible professional assessment, that the construction path will be able to meet the Applicant's stated timeframe with some additional latitude. We only require the Applicant to take reasonably practicable steps to achieve the Critical Path Plan because we recognise the vicissitudes of construction projects. Nevertheless it sets a discernible standard that is reasonable. We note an extended term was not sought by the Applicant and so how it manages implementation of the balance of the development during the life of the consent or any extension is a construction resourcing riddle it will need to solve. Some parts can occur simultaneously with stages 1-3 depending on choices made by the intended users of the various stages.

Conditions Relating to Other Matters

- 12.1.21 We have generally tidied up the conditions and made some further amendments.
- 12.1.22 We have introduced a condition to ensure that windows remain glazed and free of any obstruction or any obscuring so that activity can be seen behind it. Alongside that the condition requires that the space be occupied so that the activity occurs

behind that glazing with the aim that the façade is fully activated. In order to ensure that the Esk Street frontage continues to be activated and to ensure that there is not a preference for activation focussed internally we have included a condition that:

- requires pedestrian entrances on Esk Street to be retained and
- frontages to be maintained as full display windows

12.1.23 We consider that the heritage value of the Southland Times Building façade would be reduced if the brickwork was painted. This was commented on by Dr Cawte who agreed that this was an original feature. Ms Egerton also raised concerns about this and also that, should removal of the paint be sought at some time in the future, this process could damage the brickwork. HNZ also commented that the current state of the brickwork could be better addressed by repointing. We agree and consider the brick work is an essential element of the heritage values of the façade. We have therefore included a condition that the brickwork must be repointed and retained and maintained as unpainted.

12.1.24 We do not make any further provision requiring verandahs, as some submitters submitted we should. Verandahs are provided throughout the development but at different heights. This does not comply with the District Plan but the overall elements provide for full pedestrian cover and add interest. The overall aim of the Plan is achieved which is a pedestrian-friendly environment by providing appropriate cover.

12.1.25 We did provide in the advice notes that certifications will be based on the recommendations of an independent commissioner to achieve a degree of independence in the administration of the consent because of the Council's interest in HWCP Management Limited.

12.1.26 We were satisfied that we have sufficient information in the detail of the plans to provide a consent that is appropriately enforceable. There will however need to be a certification process that ensures that the final development generally achieves the design outcomes intended by the application and the most recent plans. The conditions are amended accordingly.

13. **Result**

13.1.1 The Panel reaches the unanimous view that the consent should be granted. For the reasons we have given, we consider that the Applicant has demonstrated that this

proposal will make a significant contribution to the advancement of the sustainable management of natural and physical resources in the Business 1 Zone of Invercargill city. We grant consent subject to the conditions in Appendix 1.

- 13.1.2 As this decision shows, the Panel considers that appropriate placemaking in Block II is essential to respect the role that that block plays in the city. The implementation of the proposal in conjunction with public infrastructure will provide many opportunities to further enliven and enhance the locality in ways that cannot be secured through the consent process. We have also identified other elements of the proposal that are worthy of reflection and re-consideration. We are sure the final outcome will meet the needs of Invercargill's people and the opportunities that will ensue will follow the legacy of Invercargill's earliest visionaries, Christian Niven and John Kelly.



John Maassen
Chairperson/Commissioner



Gina Sweetman
Commissioner



Jane Black
Commissioner

Appendix 1 – Consent Conditions

GENERAL

1. The development must 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 (Plan Ref: Buchan Resource Consent Amendment Rev 0A, 29 March 2019). The approved consent documentation has been entered into Council records as number RMA/2018/148.
2. Any management plans required by this consent must be certified by the Council before it is relied upon and when certified must be implemented except in the case of the Critical Path Plan, required under Condition 20. In the case of the Critical Path Plan, the redevelopment of stages 1-3 must be implemented in accordance with it other than as to dates of completion. For the dates of completion, the consent holder must take all reasonably practicable steps to achieve them. A management plan may only be varied by agreement with the Council.
3. During the period of the exercise of this consent until completion of Stages 1, 2, 3, 4, and 6 the consent holder must maintain a website with an independent domain name and separate url that must:
 - i. Display this consent;
 - ii. Inform the public of progress in demolition and redevelopment of the site;
 - iii. Display certified management plans;
 - iv. Identify consultation opportunities;
 - v. Display any other information reasonably required by the Council related to informing the public of information or decision in accordance with the consent conditions;
 - vi. Display the outcomes of any consultation under this consent and issues resolved;
 - vii. Provide details of contact persons, including persons responsible to address issues relating to site management and health and safety and consent compliance;

viii. A dialogue box for email communication to the consent holder by email of any issues. The consent holder must keep a record of these communications and their resolution must be kept; and

ix. Display monitoring reports demonstrating compliance with consent conditions.

ACTIVATION MANAGEMENT AND CITY CENTRE VIBRANCY

4. At least 30 working days prior to the commencement of any demolition activity, the consent holder must submit an Activation Management Plan (AMP) relating to the activation of Esk Street for certification by the Council. The purpose of the AMP is to set out the measures to be adopted to ensure ongoing activation of Esk Street.

5. The outcomes of the AMP are:

- i. Maintaining temporary retail activity at a reasonable scale to retain, as far as reasonably possible, functional amenity at the edges of the site facing Esk Street;
- ii. Ensuring reasonable measures are provided to off-set the loss of activation associated with construction hoardings.

6. The AMP must include but not be limited to the following:

- i. Purpose and relationship with other management plans;
- ii. The appointment of a representative to be the primary contact person in regard to the activation of Esk Street; and
- iii. Measures to activate Esk Street, including temporary retail and/or food and beverage offerings, illustrative hoardings and signage.

7. Prior to submitting the AMP to Council for certification, the consent holder must consult with the members of the NRG (submitter 21 to the application) regarding the measures to activate Esk Street, and must provide Council with a record of that consultation and the measures taken in the AMP to address issues raised during consultation.

Note: The Council will either certify, or refuse to certify, the AMP within 15 working days of receipt. Should the Council refuse to certify the AMP, then they shall provide a letter outlining why certification is refused based on the parameters contained in this condition.

8. Once certified the consent holder must comply with the AMP until such times as all demolition and construction activities fronting Esk Street are complete. Any proposed

amendments to the AMP must be submitted to the Council for certification at least 10 working days prior to those amendments being implemented. Any proposed amendments in regard to the measures to activate Esk Street must be subject to further consultation with the NRG as per above.

9. Prior to the commencement of any demolition, the consent holder must set up a fund to be managed by NRG, which can be utilised to undertake marketing or other measures NRG considers necessary to maintain vibrancy of the city centre. The fund must be in the amount of \$20,000 and \$20,000 on the anniversary of the first payment each succeeding year, until such time as the Anchor Tenant is operational. For the purposes of this condition "Anchor Tenant" means an entity that will occupy at least 5,000m² of the site.

HERITAGE

10. Prior to demolition commencing or any building alteration works to the heritage buildings on the site listed in District Plan Appendix 11.2 and 11.3, the consent holder must ensure that recording is undertaken of those buildings. The level of recording is to be commensurate with the significance assessment contained in the application, is to follow Heritage New Zealand Pouhere Taonga (HNZ) standards for building recording and is to be undertaken under the supervision of a qualified heritage expert, agreed with the Council. The consent holder must lodge a recording of each building in its pre-demolition state with the Council and with HNZ for their records prior to demolition commencing. The consent holder must lodge the recording of the demolition or building alteration works with the Council and HNZ within six months of the works being completed.
11. The consent holder must preserve and maintain the Bank of New South Wales Building as a heritage building in accordance with the covenant document registered on the Record of Title of 1 Dee Street (RT SL195/230).
12. The consent holder must ensure that the design of any new buildings adjoining or adjacent to the Bank of New South Wales Building is reviewed by a conservation architect agreed with the Council to ensure that the design protects the structure and heritage values of Bank of New South Wales Building. The consent holder must implement any recommendations of the review. The consent holder must submit the conservation architect's recommendations from their review to the Council as part of the application for any building consent relating to any new building adjoining or adjacent to the Bank of New South Wales Building.
13. At least 30 working days prior to works commencing on the façades of Coxheads' Building (31-35 Esk Street), the Cambridge Arcade Building (59-61 Esk Street), and the Southland

Times Building (67 Esk Street), (or adjacent to them including before commencement of the Government Life Buildings) the consent holder must submit a Façade Retention Plan (FRP) to the Council for certification. The FRP must be prepared by a suitably qualified engineer and a suitably qualified conservation architect, both agreed with the Council. The objective of the FRP is to ensure the protection of those buildings' heritage fabric and values. The FRP must include, but not be limited to, the following matters:

- a. Monitoring pins are established as appropriate;
- b. Design and detailing of temporary works to provide stability to the façade as a stand-alone 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.*

- c. Design and documentation for a detailed demolition/temporary works management and construction plan for each façade retention scheme;
- d. Confirmation that the demolition and temporary works construction will be undertaken under the supervision of a suitably qualified engineer;
- e. Methods for retaining or reinstating the decorative plasterwork on the Southland Times Building façade.

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.*

- 14. The consent holder must implement the FRP certified under Condition 13. The consent holder must submit any proposed amendments to the FRP to the Council for certification at least 10 working days prior to those amendments being implemented.
- 15. After the work on the Southland Time Building façade as required under condition 13(e), the consent holder must maintain the unpainted brickwork and at all times keep it in an unpainted state.
- 16. The consent holder must ensure that the heritage verandah posts listed in District Plan Appendix II.4 are removed under the supervision of a qualified heritage expert and are

made available to the Council for storage on their removal. The heritage verandah posts are to be re-used in either the replacement buildings in Stages 1-3 on the site or as part of streetworks surrounding the site for a minimum period of two years following completion of Stages 1 to 6. The verandah that replaces the existing Fairweather's Building (58 Tay Street) must be etched or have similar physical reference made to the pressed metal decoration of the existing verandah.

17. Prior to demolition commencing, and as part of the Demolition Management Plan required under condition 21, the consent holder must ensure that each heritage building is surveyed by a qualified heritage expert agreed with the Council, to identify heritage fabric to be salvaged. The consent holder must ensure that the majority of the salvaged material is re-used in the replacement buildings and opportunities for such use are to form part of the Construction Management Plan, required under Condition 28. Where onsite re-use is not practicable, salvaged material must be securely stored and made available for purchase and re-use on other building projects in Invercargill for a minimum period of two years following completion of Stages 1 to 6.
18. The consent holder must disseminate to the public all information gathered during the historical research, archaeological investigations, and which is collected during the recording of the post-1900 buildings 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

19. The consent holder must not undertake any demolition prior to providing the Council with written confirmation from a registered trading bank that funding for Stages 1 – 3 of the development as identified on the Staging Plan approved in Condition 1 has been obtained.
 - i. Upon providing such confirmation, the consent holder may demolish Stages 1 to 4 and 6, as identified on the Staging Plan approved in Condition 1, provided that Stages 1 to 3 must be built in one stage;
 - ii. Stages 4 and 6 may be built concurrently with or subsequent to Stages 1 – 3;
 - iii. The buildings located within Stage 5 of the Staging Plan approved in Condition 1, shall remain in place until such time as an agreement is entered into for the lease of a new building within Stage 5.

20. At least 20 working days prior to the demolition of any existing buildings commencing, the consent holder must provide to the Council for certification a Critical Path Plan prepared by an independent and suitably qualified construction expert showing the critical path for building work involving demolition and development for stages 1-3. The purpose of the Critical Path Plan is to demonstrate a reasonable construction programme that will achieve:
- i. Demolition completion within 18 months;
 - ii. Completion of Construction of Stages 1-3 within 4 1/2 years of the date of commencement of this consent under s116 of the RMA.
21. At least 40 working days prior to the demolition of any of the existing buildings commencing, the consent holder must provide a Demolition Management Plan (DMP) to the Council for certification. The purpose of the DMP is to provide measures to avoid or mitigate the effects of demolition activities on neighbouring sites, businesses and the adjacent streets and to demonstrate how the following particular objectives will be achieved:
- i. The effects of demolition activities on heritage and archaeological resources are managed;
 - ii. The effects of demolition activities on adjoining buildings are managed;
 - iii. Demolition activities are managed so that dust nuisance shall not arise beyond the boundaries of the site;
 - iv. Demolition activities are managed to control discharge of sediment from the site and from entering the stormwater network;
 - v. Demolition activities are managed to minimise noise and vibration as far as reasonably practicable;
 - vi. A secure site is provided from a health and safety perspective and maintain a safe pedestrian (including access to the adjoining footpath) and transport network is maintained on adjoining roading corridors.

The DMP must 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. Any asbestos discovered during the demolition of the buildings must be removed under the Health and Safety at Work (Asbestos) Regulations 2016;
- 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 32 and 53 have been fulfilled;
- d. Measures to facilitate the recovery of heritage materials for re-use, in accordance with Conditions 17 and 18;
- 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 Demolition Traffic Management Plan (DTMP) which must include 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 DTMP must 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, the consent holder shall obtain input from the New Zealand Transport Agency (NZTA);
- i. A Demolition Noise and Vibration Management Plan (DNVMP) outlining how noise and vibration nuisance will be mitigated during demolition activities. The plan must 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 must be consistent with Conditions 24 and 25;

- j. The DMP and DNVMP must include a specific section prepared with the input of a qualified heritage expert agreed with the Council, 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 on to 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.
- o. Details of the heritage fabric to be salvaged, its storage and re-use, as required under Condition 17.

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.

22. The consent holder shall not commence demolition of the buildings authorised by this consent until the Council has certified in writing that the DMP fulfils the requirements of Condition 21. The DMP (including Communication Plan, DNVMP and TDMP's) 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.
23. The consent holder must implement the DMP (including Communication Plan, DNVMP and TDMP's) certified under Condition 21 for the duration of the demolition activity occurring on the site. The consent holder must submit any proposed amendments to the DMP (including Communication Plan, DNVMP and TDMP's) to the Council for certification at least 10 working days prior to those amendments being implemented. A copy of the most recently certified document must be kept on site.
24. The consent holder must ensure that all demolition activities which exceed the noise limits for the zone and truck movements occur only between the hours of 7.30am – 9.00pm Monday to Saturday, and between 9.00am – 8.00pm Sundays. No activities must occur on public holidays except in cases of operational necessity, with prior agreement of the Council.
25. The consent holder must ensure that all demolition activities 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 21(i) must include measures for higher noise generating activities that cannot practically comply with NZS6803:1999.

VACANT SITE MANAGEMENT

26. Where portions of the site are to remain vacant for a period of more than six months, then at least 30 working days following the demolition of any buildings on that portion of the site, the consent holder shall provide a Vacant Site Management Plan (VSMP) to Council for certification. The purpose of the VSMP is to achieve the following objectives:
 - i. The amenity effects of such vacancy on neighbouring sites, businesses and the adjacent streets are reasonably managed;
 - ii. Temporary public use for activation of vacant portions of the site is reasonably provided.

The VSMP must 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 include viewing ports and 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 car parking 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. Provision of lighting;
- f. Measures for erosion and sediment control and prevention of sediment being carted on to roads or entering the public stormwater system.
- g. A separate VSMP is to be developed for stage 6. In addition to matters listed above, suitable weather protection and night lighting is to be provided along the Kelvin Street and Tay Street frontages
- h. 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;
- i. A Communications Plan with affected parties, including adjoining landowners and occupiers and those on the opposite side of the street to the vacant site. The Communications Plan must include procedures to ensure consultation on the vacant site management occurring, and the receipt, recording and resolution of complaints.

Prior to submitting the VSMP to Council for certification, the consent holder must consult with the NRG regarding the content of the VSMP and must provide Council with a record of that consultation and the measures taken in the VSMP to address issues raised during consultation.

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.

27. The consent holder must implement the VSMP certified under Condition 26 for the duration of the site remaining vacant. The consent holder must submit any proposed amendments to the VSMP to the Council for certification at least 10 working days prior to those amendments being implemented. Any proposed amendments to the VSMP must be subject to further consultation with the NRG as per above.

CONSTRUCTION MANAGEMENT

28. 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. The purpose of the CMP is to provide measures to avoid or mitigate the effects of construction activity on neighbouring sites and the adjacent streets and to demonstrate how the following particular objectives will be met:

- i. Construction activities shall be managed so that dust nuisance shall not arise beyond the boundaries of the site;
- ii. Construction activities shall be managed to control the discharge of sediment from the site and prevent it from entering the stormwater network;
- iii. Construction activities shall be managed to minimise noise and vibration as far as reasonably practicable;
- iv. To provide a secure site from a health and safety perspective and maintain a safe pedestrian and transport network on adjoining roading corridors.

The CMP must include, but not be limited to, the following matters:

- a. A Communication Plan with affected parties, including adjoining landowners 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 Construction Traffic Management Plan (CTMP) 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 CTMP 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 NZTA 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 31;
- d. The CMP and CNVMP must include a specific section prepared with the input of a qualified heritage expert agreed with the Council, specifying how construction and vibration effects on the 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 on to 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 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.

29. The consent holder must 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 28. The CMP may be reviewed and amended as required to achieve the outcomes of this consent, with any amended plan to be submitted to the Council for certification at least 10 working days prior to those amendments being implemented.
30. The consent holder must implement the CMP certified by the Council under Condition 28 for the duration of the construction activity occurring on the site, and a copy must be maintained on site.
31. The consent holder must ensure that construction activities which exceed the noise limits for the zone and truck movements shall occur only between the hours of 7.30am – 9.00pm Monday to Saturday, and between 9.00am – 8.00pm Sunday. No activities shall occur on public holidays except in cases of operational necessity, with prior agreement of the Council. The consent holder must ensure that all construction activities 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 28(c) must include measures for higher noise generating activities that cannot practically comply with NZS6803:1999.

SOIL CONTAMINATION MANAGEMENT

32. At least 10 working days prior to earthworks being undertaken, the consent holder must submit a Detailed Site Investigation (DSI) to the Council which has been prepared 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 (NЕСS). For the purposes of this condition, the term “earthworks” does not include works required as part of the archaeological survey.
33. In the event that the DSI identifies contamination above guideline values specified in the NESCS, at least 10 working days prior to any excavated material being removed from the site, the consent holder must submit a Site Management Plan (SMP) prepared by a SQEP to the Council. The consent holder must implement the SMP.

34. The consent holder must ensure that all earthworks are managed in accordance with any SMP required under Condition 34 and recommendations from a SQEP.
35. The consent holder must ensure that all contaminated soil removed from the site is disposed of at a facility whose waste acceptance criteria permit the disposal. The consent holder must provide the Council with the details of the facility, including its permit, prior to any contaminated soil being removed from the site.
36. If contaminated material is to be retained on site and capped, the consent holder must ensure a Long Term Site Management Plan is prepared by a SQEP, with the plan to clearly identify the location on the site of contaminated material. The applicant must supply to Council a copy of the plan within two months of the completion of earthworks.

NOISE MANAGEMENT

37. At the time of lodgement of a Building Consent for any residential apartments, the consent holder must submit an acoustic design certificate from a suitably qualified acoustic engineer 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) must 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

38. The consent holder must provide a visibility splay of a minimum of 5m x 2m on the eastern side of the exit lane to the car park building access on to Tay Street and on both sides of the western service lane access on Tay Street which services the Reading Cinema.
39. Prior to the eastern service lane located behind the Kelvin Hotel becoming operational, the consent holder must install an audio warning device to alert pedestrians to exiting vehicle movements adjacent to the Esk Street exit. All traffic utilising the eastern service lane shall do so in a north bound direction only.
40. The consent holder must ensure that existing emergency egress access routes and service lane access to Tay Street are 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 must be approved by Fire and Emergency New Zealand and Council before being adopted.

41. The consent holder must ensure that all contractors' vehicles (including any cranes) are to be parked on-site wherever reasonably practicable throughout the demolition and construction process.
42. At least 20 working days prior to service lanes becoming operational, the consent holder must submit a Traffic Management Plan (TMP) prepared by a suitably qualified traffic engineer to the Council for certification. The purpose of the TMP is to set out the measures to be adopted to provide for the safety and efficiency of the pedestrian environment in and around the service lanes. The TMP must include, but is not to be limited to:
- a. Details of access hours for service vehicles using the service lanes, to minimise deliveries between the hours of 9am to 5pm;
 - b. Details of gateways, including setbacks at the eastern service lane access and egress points;
 - c. Details of pedestrian warning systems, including signage and footpath treatments;
 - d. Measures to ensure that tenants and third parties are aware of the TMP.

Note: *The Council will either certify, or refuse to certify, the TMP with 10 workings days of receipt. Should the Council refuse to certify the TMP, then they shall provide a letter outlining why certification is refused based on the parameters contained in this condition.*

43. The consent holder must implement the TMP certified under Condition 43. The consent holder must submit any proposed amendments to the TMP to the Council for certification at least 10 working days prior to those amendments being implemented.
44. At least 20 working days prior to construction of any new accessways on to the State Highways, the consent holder must provide details of the access layout demonstrating how it has been designed to ensure pedestrian safety and visibility of vehicles entering and exiting the access to the Council for certification. The consent holder must provide NZTA with a copy of this design and a copy of any feedback NZTA provides must be forwarded to the Council with the request for certification.

Note: *the Council will either certify, or refuse to certify, the access design with 10 workings days of receipt. Should the Council refuse to certify the access design, then they shall*

provide a letter outlining why certification is refused based on the parameters contained in this condition.

45. The consent holder must implement the access design certified under Condition 45. The consent holder must submit any proposed amendments to the access design to the Council for certification at least 10 working days prior to those amendments being implemented.

SERVICING AND INFRASTRUCTURE

46. The consent holder must 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.
47. The consent holder must 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.

FAÇADE TREATMENT

48. The consent holder must, in respect of the façades of the Coxheads' Building, the Cambridge Arcade Building and the Southland Times Building, ensure that:
 - i. All windows remain glazed, free of any obstruction and are not obscured in any way so that the activity behind is visible; and
 - ii. The floor area behind the windows is occupied and not left vacant.

DESIGN AND PEDESTRIAN FRONTAGE

49. At least 15 working days prior to the commencement of construction of any stage of the development, the consent holder must provide the Council with a design statement prepared by a suitably qualified design expert certifying that the buildings and the stage comply with the approved plans and meet the design outcomes set out in the "Invercargill Central Design Statement" Rev 0A dated 29 March 2019 and prepared by Buchan.
50. The consent holder must ensure that all occupied ground floor tenancies in spaces adjacent to Esk or Tay Street have their principal pedestrian entrance from the street and the consent holder and any occupier must:

- i. retain the pedestrian entrance from the street frontage as a point of public access during business hours (whether or not there is internal access from the building); and
- ii. maintain the glazed street frontage as full display windows, excluding the pedestrian entrance.

MONITORING

- 51. Every six months from the date that this consent is granted, the consent holder must provide the Council 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, including the certified plans, and details of any complaints received and how they were addressed.
- 52. In accordance with RMA section 128 the Council may serve notice on the Consent Holder on 1 March or 1 October of its intention to review the conditions of this consent:
 - a. To deal with any adverse effects on the environment which may arise from the exercise of the consent and which is appropriate to deal with at a later stage; or
 - b. For the purpose of addressing adverse effects that the Council considers are not adequately addressed by approved management plans; or
 - c. To address effects not anticipated by this consent.
 - d. If the information made available to the consent authority by the applicant for the consent for the purposes of the application contained inaccuracies which materially influenced the decision made on the application and the effects of the exercise of the consent are such that it is necessary to apply more appropriate conditions.

ADVICE NOTES

- i. In the conditions where a document is to be certified by, or provided to Council, the consent holder shall provide the document to the Council's Director of Environmental and Planning Services. Certification shall be based on the recommendations 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 NZTA pursuant to section 51 of the Government Roading 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, the two service access lanes, as well as potential occupation or damage to the road associated with the demolition or construction activities.
- iv. Any works undertaken on Council land, including temporary road stopping, works to Council-controlled infrastructure, alterations to on-street car parking, 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 HNZ prior to undertaking any modification of the site or pre-1900 buildings.
- vii. The consent holder is responsible for paying any monitoring charges set under the Council's Fees and Charges Schedule.

Appendix 2 – Figures attached to the Panel’s decision

Plate 1

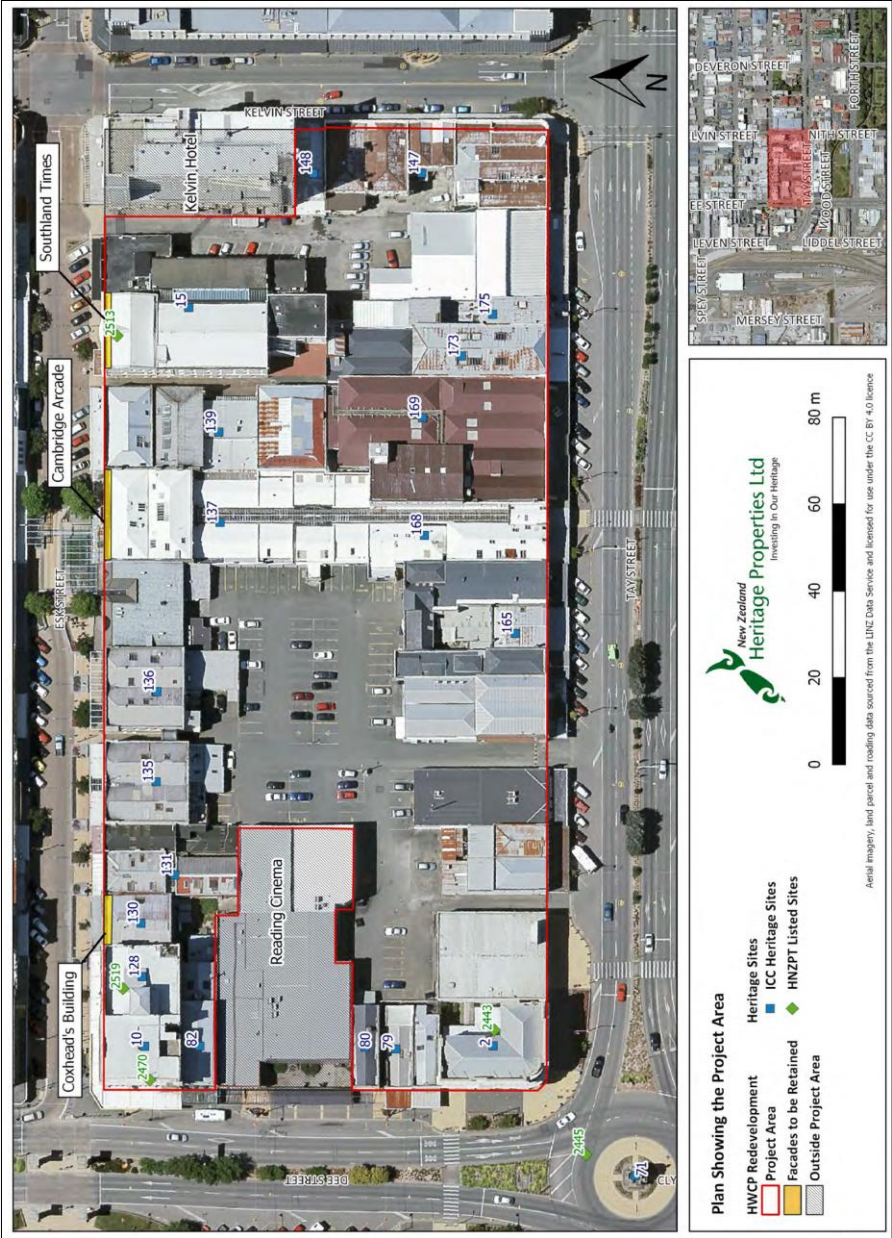
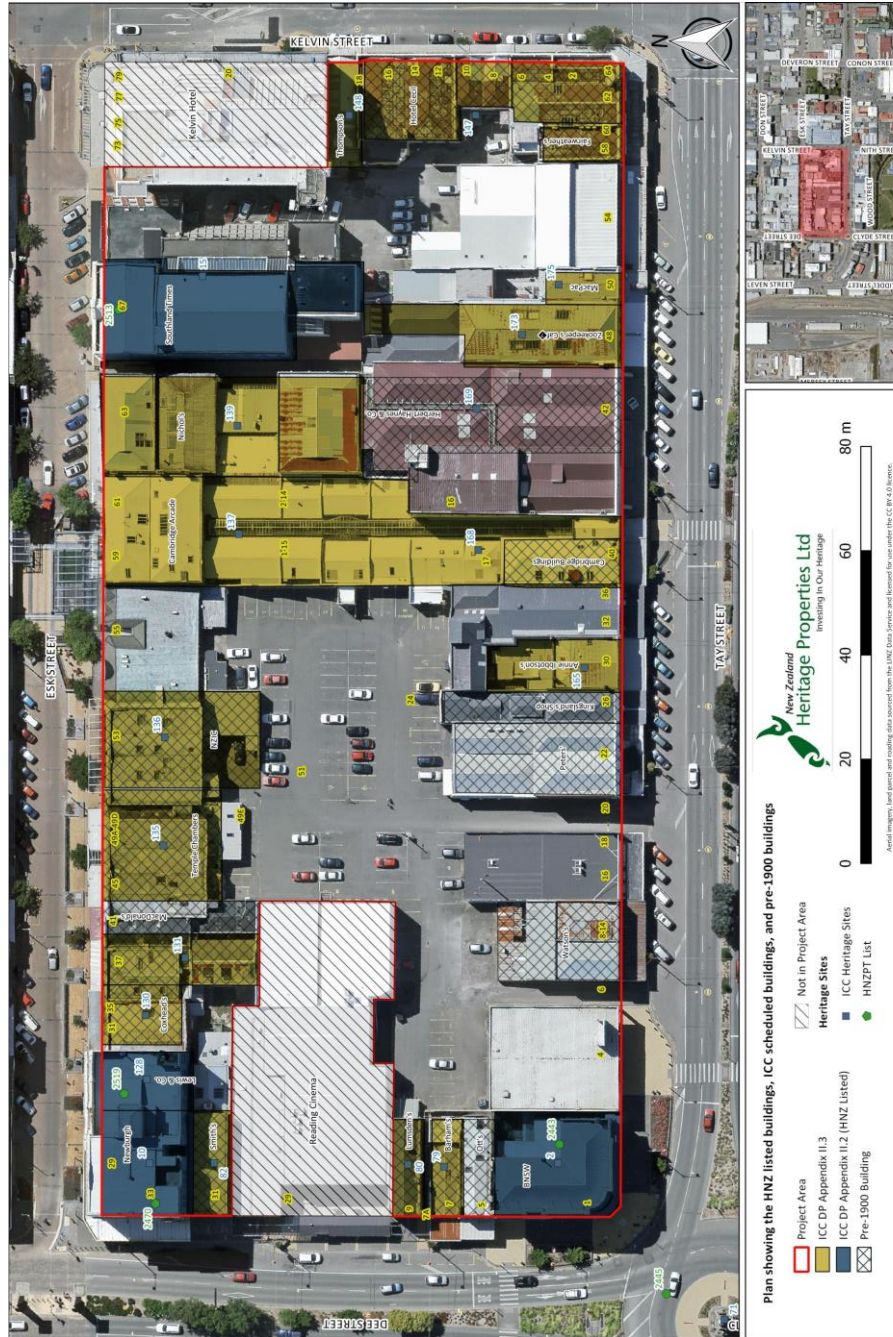


Figure 12. Location of project area with facades to be retained and heritage sites.



Plan showing listed, scheduled, and pre-1900 buildings.

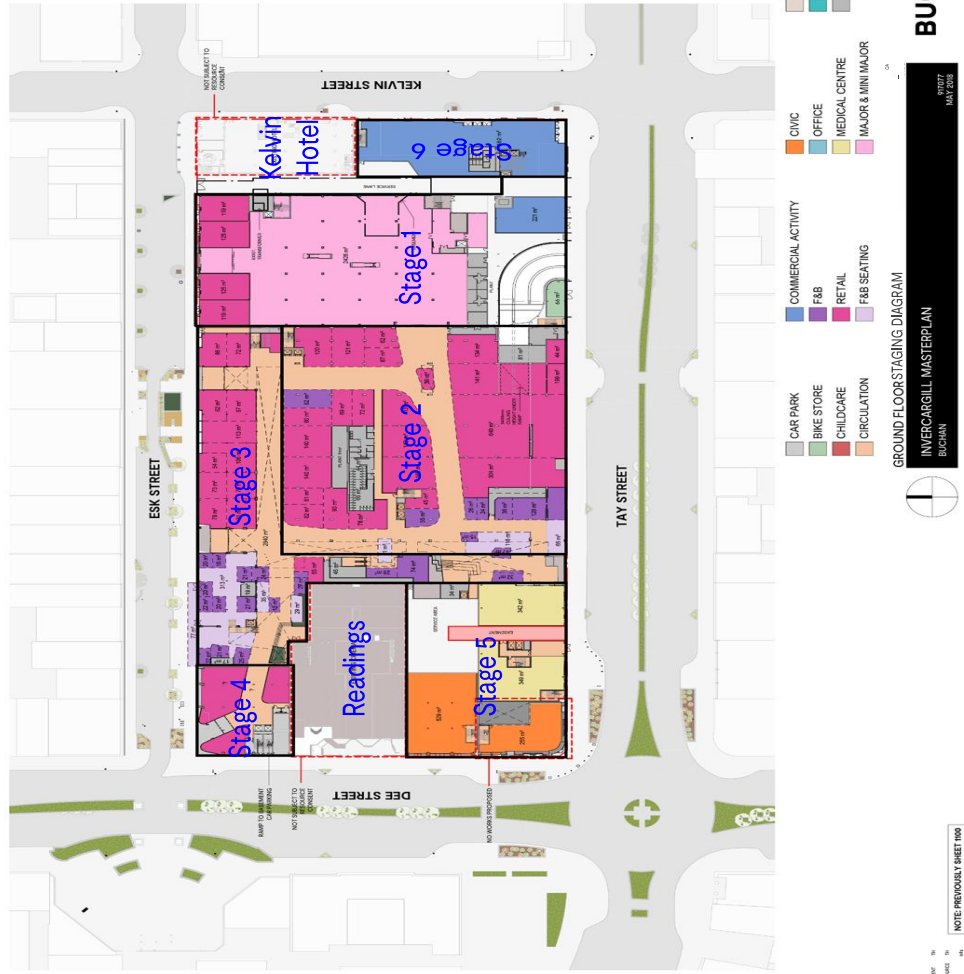


Figure 4-7. Early Survey Plan of Block I of the Invercargill Hundred, encompassing the town of Invercargill and the surrounding areas (Garvie, 1856b).

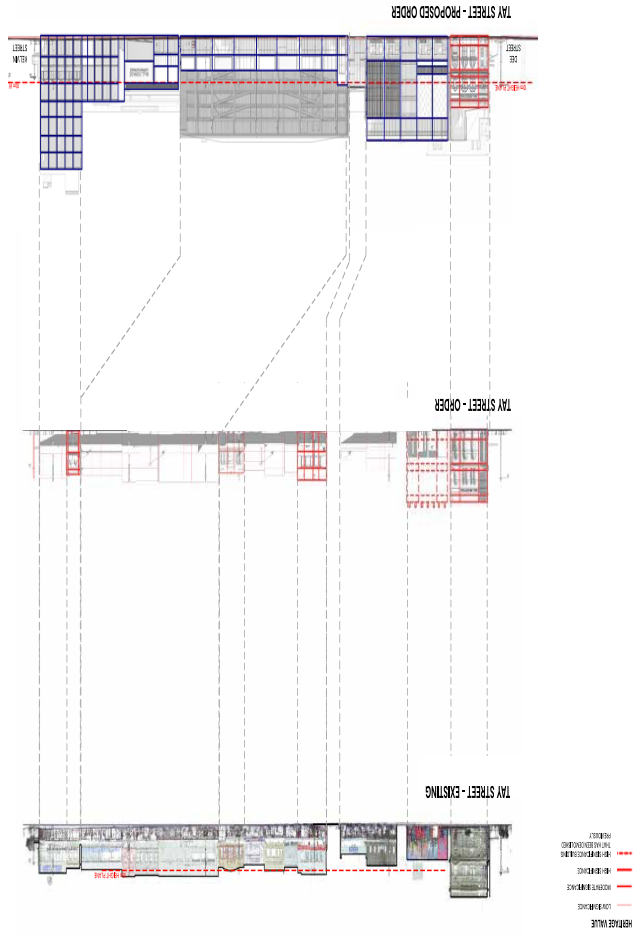


Figure 1-1. Seismic rating summary (BMC, 2018).

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Design Narrative /
FACADE ORDERING ANALYSIS
TAY STREET

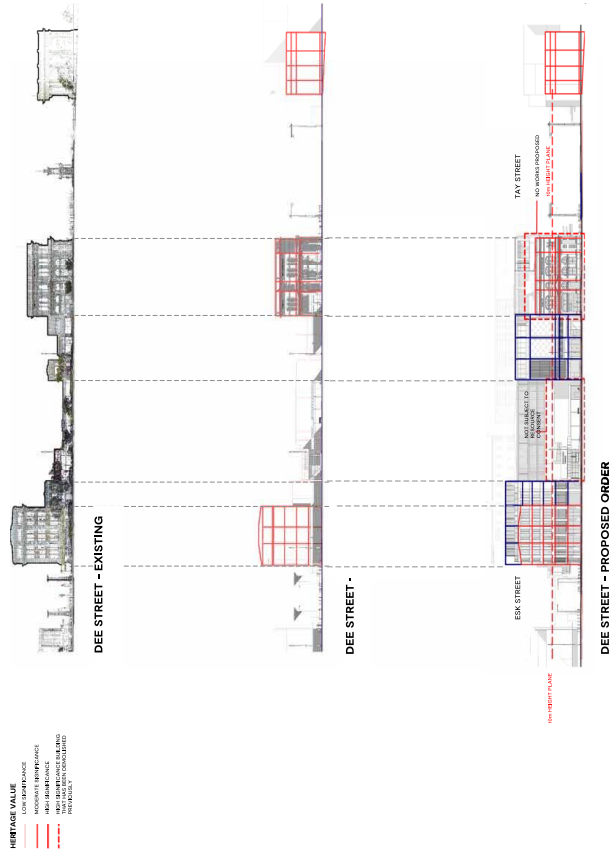
Invercargill Council
Design Presentation
Buchanan
March, 2019
Revision_A

Design Narrative /
FACADE ORDERING ANALYSIS
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Invercargill Central
Design Presentation

Buchan
March, 2019

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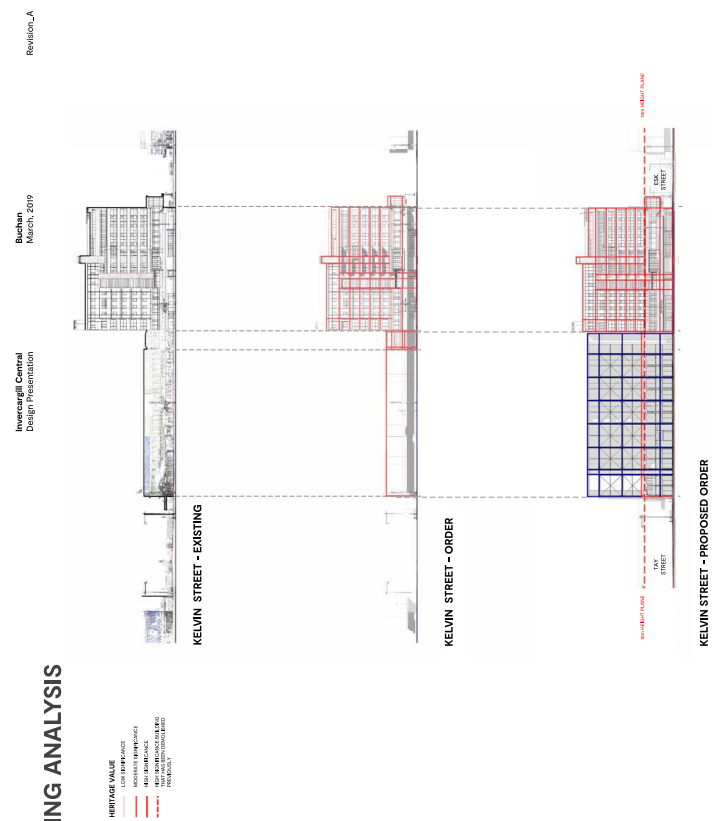


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FACADE ORDERING ANALYSIS
KELVIN STREET



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