

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of an Application to **INVERCARGILL CITY COUNCIL BY BLUFF OYSTER AND FOOD FESTIVAL CHARITABLE TRUST**

Council Reference: **RMA/2023/72**

**DECISION OF COMMISSIONER PAULA COSTELLO APPOINTED BY INVERCARGILL CITY COUNCIL
PURSUANT TO SECTION 34A OF THE RMA ACT 1991**

THE HEARING AND APPEARANCES

Hearing:

Wednesday 15 November 2023, in Invercargill

Appearances for the Applicant:

Simon Peirce (Counsel)

John Edminstin (Applicant)

Meg Back (Landscape Architect)

Luke McSoriley (Planner)

Appearances for the Council:

Katrina Ellis (Consultant Planner),

Shannon Baxter (Heritage & Urban Design Planner),

Morgan Smith (Team Leader - Planning)

Chloe Paulin (Planning Officer/Hearing Administration)

INTRODUCTION

1. This decision is made on behalf of the Invercargill City Council (**Council**) by Independent Hearings Commissioner Paula Costello acting under section 34A of the Resource Management Act 1991 (**RMA**) to hear and determine the application by the Bluff Oyster And Food Festival Charitable Trust (**Applicant**).
2. As Commissioner, I declare that I am not subject to any conflicts of interest and that I am able to objectively and fairly reach a finding on the merits of the application and to treat all parties fairly and evenly.
3. No objections were received relating to my involvement in the hearing on behalf of either the Council, the Applicant or any of the submitters.
4. The Hearing raised no procedural or administrative issues.

THE PROPOSAL

5. The application presented at the hearing has been described in detail within the Hearing Agenda papers which are also published and available on the Council website. For the purposes of a summary, a description of the proposal is set out in Section 4.0 of the Assessment of Environment Effects (**AEE**) prepared by Mr Luke McSoriley. For convenience, I have reproduced the following summary:

Demolition

This application proposes the demolition of the Club Hotel building.

The Club Hotel is a Category II heritage building under Heritage New Zealand Pouhere Taonga's (NZHPT) list. The site is also recorded as a site of heritage value in Appendix II – Heritage Record, of the Invercargill City District Plan.

Resource consent for removal of a veranda attached to the Club Hotel has already been obtained (RMA/2019/212).

Earthworks

Earthworks will be undertaken on the site as part of demolition activity and post demolition to enable levelling of the site for landscape enhancement and festival use. The total volume of earthworks is estimated at 850m³.

Expanded Festival Site

This application proposes the inclusion of the land area currently occupied by the Club Hotel Building into the Bluff Oyster and Food Festival site, post demolition of the building.

Landscape Enhancement

...The applicant proposes landscape treatment to incorporate the cleared area into the wider Festival site. This will allow for formation (of) an expanded and/or enhanced festival site and new site frontage to Gore Street, Bluff. Some demolition materials will be reused on site as part of the landscape enhancement work.

6. Prior to the hearing, the applicant confirmed that the application had been amended to the extent that a number of conditions (and a series of Advice Notes) were promoted as forming part of the application. These conditions had resulted from liaison with Waka Kotahi New Zealand Transport Agency (**NZTA**) and Heritage New Zealand Pouhere Taonga (**HNZ**), with the conditions summarised as follows:

NZTA

- a) A traffic management plan (TMP) submitted to NZTA prior to demolition works on the site commencing

HNZ

- b) A Demolition Management Plan submitted to Council prior to demolition works and with the opportunity for HNZ to provide comment
- c) Approach for significant historical or archaeological features and historic materials identified for salvage
- d) Copies of original building plans to be scanned and provided to Council, HNZ and publicly available
- e) Consultation with mana whenua and HNZ for input on any revisions to the Landscape Plan prior submission to Council, and subsequent implementation of that Landscape Plan.
- f) Archaeological authority to be obtained from HNZ prior to works on site
- g) Detailed building recording to be undertaken, noting the constraints present in recording the interior of the building, and provision of this recording to the Council and HNZ and publicly available
- h) Oral history recordings to be undertaken by a suitably qualified and experienced practitioner, submitted to a collection and publicly available.
7. With regard to 6(g) above the applicant confirmed at the hearing that the promoted conditions included that the detailed building recording was to be completed to Level II standard, as agreed with HNZ. An initial Demolition Management Plan was also produced.

SITE

8. As with the description of the proposal, a comprehensive site description is contained in the AEE lodged with the Application, covering the wider context of Bluff *Motupohue*, legal parcels, the Bluff Oyster and Food Festival operations, zoning and heritage listing. In summary:

The site relates to five properties at Gore (SH1), Lee and Barrow Streets, Bluff ... The properties the application relates to are all owned by Bluff Oyster and Food Festival Charitable Trust aside from 71 Barrow Street which is owned by Invercargill City Council... The Club Hotel building is located on the properties at 100/108 Gore Street and 114/116 Gore Street, Bluff. The building is positioned on the northern Gore Street boundary of these two properties with the southern parts of each property formed of hardstand areas. The hardstand areas of these two properties south of the building are unutilised as part of the Bluff Oyster and Food Festival site.

NOTIFICATION AND SUBMISSIONS

9. The application was publicly notified on 22 July 2023, with submissions closing on 18 August 2023. The Council received 24 submissions, none of which opposed the proposal.
10. Submissions from Environment Southland, HNZ and NZTA were noted as neutral and sought appropriate consideration of plan provisions and various recommended conditions of consent and advice notes.
11. The remaining 21 submissions were made by various parties with an interest in the application, including the Bluff Community Board and Te Ao Marama and individuals, the majority identifying as Bluff residents.
12. These 21 submissions expressed a common theme of support for the proposal, identifying that the existing nature of the Club Hotel presents a public hazard. Submissions identified the current condition of the building as an eyesore and a restriction to parking and that its demolition would avoid public safety concerns and enable positive benefit to Bluff including the operation of the Bluff Oyster And Food Festival.
13. One submission was identified as being received late.¹ For reasons set out within the s42A report in consideration of section 37(A)(1), the relevant timeframe is waived under s37 of the Act and the submission accepted.

MATTERS CONSIDERED

14. In reaching this decision I have considered:
 - a. The application, its AEE and all its supporting specialist assessments and documents;
 - b. The public submissions made on the application; and subsequent correspondence confirming the position of submitters;
 - c. The hearing report (**s42A report**), with supporting specialist assessments;
 - d. The pre-circulated evidence from the Applicant;
 - e. The information presented at the Hearing including the legal submissions, summaries of evidence, and responses given to questions;
 - f. The Council's response to the evidence presented at the hearing;
 - g. The Applicant's right of reply;
 - h. My observations from the visit to the site and its surrounds on 9 November 2023;
 - i. The relevant provisions of the Invercargill City District Plan, Southland Regional Policy Statement and the relevant NES;
 - j. The relevant provisions of the RMA, most notably Part 2, and sections 104, 104B, 104D, 108 and 108AA.

¹ Submission of Gareth Clarke

CONSENTS REQUIRED

15. There was no contention that the proposed activity requires consents under the Invercargill City District Plan (**the Plan**) as follows:
 - a. A non-complying activity pursuant to Rule HH-R9 with respect to the demolition of a building listed in Appendix 3.2 – Sites registered by Heritage New Zealand Pouhere Taonga.
 - b. A discretionary activity pursuant to Rule SOIL-R7 with respect to earthworks associated with the demolition and the post demolition landscape enhancement works (850m³) exceeding 250m³.

NES-CS

16. The AEE outlined that no consents were required under the National Environmental Standard for Contaminants in Soil (**NES-CS**). The s42A report prepared by Ms Ellis raised the potential that consent could be required under the NES-CS and this matter was traversed at the hearing.
17. In evidence and in answers to questions Mr McSoriley maintained that no consent was required under the NES-CS, noting that no removal of soil is proposed, the demolition process intends that the building foundations will be retained in-situ, and the earthworks that will be undertaken fundamentally comprise deposition of fill on the site. Ms Ellis advised that she considered further information would be required to determine if consent was required under the NES-CS or not.
18. Mr Peirce provided legal submissions that in this case the circumstances are such that all that could be imposed on the consent is an advice note that appropriate process (under the NES-CS) be followed. I record that this is the relief sought by the submission of Environment Southland also.
19. I accept the evidence of Mr McSoriley being that in the event that the site is a HAIL site by virtue of the use of lead based paint on the building (yet to be determined, but more likely than not), then consent is not required under the NES-CS for the activity as sought. This is given that soil disturbance is not proposed, and if it did occur, would be a permitted activity under Clause 8(3), and further, that the activity is not changing the use of land as it is defined under Clause 5(6).
20. Overall, the proposal is considered as a non-complying activity under the Invercargill City District Plan.

HEARING REPORT

21. The s42A report was pre-circulated prior to the hearing. The report recommended that the application be declined on the basis of heritage effects being significant, noting that:

I think there is the opportunity for the demolition to be granted, if the applicant were to modify their proposal to provide a better design outcome and greater use of the site to the extent that there is greater community benefit to compensate for the significant loss of heritage values. Subject to the extent of change, I consider then that the effects could be acceptable, and the proposal will achieve sustainable management.

SUMMARY OF EVIDENCE HEARD

22. Pre-circulated expert evidence was received from Mr Edminstin, Ms Back & Mr McSoriley before the hearing.
23. The summary below of evidence presented is a summary only and I refer to the Council's website where full records of all materials presented is publicly available.²
24. Mr Simon Peirce presented legal submissions at the hearing. The submissions introduced the proposal, and identified the key issues in contention. Mr Peirce outlined the Dangerous Building Notice which applies to the building under the Building Act 2004 and its impact, in particular outlining the potential alternative outcome for the site should consent not be granted. Mr Peirce discussed the proposed mitigation for the loss of heritage values associated with the demolition of the building, termed the Landscape Enhancement Area (**LEA**) as being appropriate, and described the intended process for volunteered consultation as to the design of the LEA (with HNZ and mana whenua). Mr Peirce outlined the public access purpose of the LEA and submitted that a variation would be required to change this, that no legal easement was offered, but that the Applicant undertakes to maintain this area for public benefit. Mr Peirce submitted that a visual change is not necessarily an adverse effect and that the s42A report had not given appropriate significance to effects on health and safety when considering positive effects of the proposal. Finally Mr Peirce submitted that no adverse precedent would be created and no adverse cumulative effect would arise, concluding that the application should be granted.

For the Applicant

25. Mr. John Edminstin gave evidence as the Chairperson of the Bluff Oyster And Food Festival Charitable Trust (**the Trust**). This evidence summarised of the history of the Trust purpose, ownership of the site, and efforts to date to develop a solution for the Club Hotel. Mr Edminstin also outlined the range of events and activities that the Trust makes the site available to the community for annually, outside of the Festival. Mr Edminstin provided assurance that the Trust intended to maintain the LEA for the public benefit, and explained the ideas for salvage where possible, and other resources that could be made available, such as wharf timbers, for the LEA area.
26. Landscape evidence was presented by Ms Meg Back who is an experienced and qualified landscape architect. This evidence summarised the process that has led to the design of the LEA, including local workshop and heritage review. Her evidence outlined that adaptive re-use is central to the landscape concept (including the use of salvaged materials where possible), and interpretation/representation of the Club Hotel was a key component of the design. Ms Back further responded to the matters of concern raised by Council officers in terms of the design of the LEA. Ms Back outlined that further iterations of the design were both welcomed and possible but that the design as proposed would provide a positive space for users, including specifically visitors to Bluff, that was appropriate.
27. Mr Luke McSoriley is an experienced and qualified planner and he presented planning evidence that focussed on the planning and policy framework, including the NES-CS as discussed, the permitted baseline, a response to the s42A report including health & safety effects and positive effects and addressed precedent and cumulative impacts. Mr McSoriley

² See ICC website: <https://icc.govt.nz/planning-resource-management/public-notices-resource-consents/>

provided comment on the conditions of consent recommended by the s42A report at the hearing, and produced an updated set of promoted conditions. His evidence concluded that while there will be adverse impact on historic heritage values the proposal will have positive social and economic effects, addressing an existing adverse effect on the environment in the form of health & safety risk. Mr McSoriley provided evidence that the proposal is not contrary to the provisions of the Plan or the Regional Policy Statement 2017 and addressed section 6(f) of the RMA, concluding that the proposal would be consistent with the sustainable management purpose of the RMA, and can be granted consent, subject to appropriate conditions.

Submitters

28. Two submitters, Ms Paula Brown & Mr David Swann were present at the hearing and spoke to their submissions.
29. Ms Brown outlined her background as a long term resident of Bluff and generally expressed unreserved support for the proposal to demolish the Club Hotel. Ms Brown did not consider that the history of the Club Hotel was of such importance to warrant it hamstringing progress and described the building as an eyesore, being dangerous and neglected. Ms Brown acknowledged the ongoing effort and contribution of the Bluff Oyster And Food Charitable Trust members towards positive benefit to the town and sought that the consent was granted in order to enable the viability of the Trust going forward. In answers to questions Ms Brown did not have a strong view on the treatment of the LEA, considering that any version of the design promoted could go onto the site, but the most important factor was to enable the timely demolition of the building.
30. Mr Swann as a resident of Bluff expressed in strong terms his concern that the building in its current state represents a health and safety risk, and that heritage considerations could not sit above health and safety, noting liability is pertinent. Mr Swann advised in this respect that he did not agree with the s42A report position in regard to health and safety, as in his view this is a paramount consideration above RMA concerns, and that as the Trust was working to have the building taken down, the Council should not stand in the way of this. Mr Swann was of the view that Bluff residents do not value the building and given the benefits of demolition that common sense should prevail. Mr Swann also was not particularly concerned as to what design of the proposed LEA would replace the building at this stage.

On behalf of the Council

31. In response to the matters raised and discussed at the Hearing, responses were given by Ms Shannon Baxter (Heritage and Urban Design), and Ms Katrina Ellis (Planning).

Ms Baxter

32. Ms Baxter generally identified that she originally posed a series of questions around the approach to the design of the LEA (as per the s42A report), and was of the view that the design promoted remains relatively conceptual, acknowledging that more detail around materiality and interpretive signage may come by way of the consultation promoted with HNZ and mana whenua. Ms Baxter expressed the view that visual softening by way of plants, grasses or tree species would establish a more comfortable people space and considered that the fence proposed at the rear of the LEA was a barrier where level of transparency could be explored.

33. In response to questions Ms Baxter advised that there was no Council guideline or policy in respect to materials to be used within streetscapes and that the materials proposed to be used within the LEA, including reuse of salvaged materials where possible were considered appropriate.

Ms Ellis

34. Ms Ellis advised that the differences between the applicant and Council position were considered to be minor, with acceptance that the demolition of the Club Hotel was necessary, however terms of mitigation Ms Ellis considered that an appropriate streetscape response had yet to be presented, and that greater certainty as to the public use of the wider site and an easement securing public access to the LEA were required.
35. Ms Ellis advised that the Dangerous Building Notice has been considered in assessment of the application and recorded that she considered that the Council is not dismissive of health and safety nor unnecessarily delaying the demolition, but following required process. In response to questions with respect to consideration of health and safety under Part 2 of the RMA Ms Ellis noted that in regard to Part 2 that section 6(f) requires the protection of historic heritage from inappropriate development, but acknowledged that this is subservient to the Section 5 purpose of the RMA.
36. Ms Ellis made recommendations with respect to appropriate conditions of consent, including promotion of a bond to secure the performance of some of the proposed conditions, and suggested a process was available for the re-submission of an amended LEA plan.

Applicant's right of reply

37. Mr Peirce presented the applicant's right of reply orally at the hearing addressing the following:
- (a) That an objective based condition discussed during the hearing for future resubmission and approval of the LEA design was unnecessary given that the existing Landscape Plan Set details (in writing) design objectives.
 - (b) That the LEA design submitted is that promoted by the applicant and the process volunteered for consultation with mana whenua and HNZ is not anticipated to result in significant changes. As such a condition process for re-submission of the LEA is unnecessary.
 - (c) That the Council officers had not provided any clear guidance as to design elements that should be provided within the LEA, with the exception of planting and shade, which have both been addressed in the evidence provided by the applicant.
 - (d) A bond with respect to completion of conditions would only be appropriate if there was doubt that the conditions would be achieved, and in this case there is no reason for doubt, as such standard monitoring and compliance measures are appropriate to govern conditions.
 - (e) An easement as promoted by Ms Ellis is not required where the purpose of the LEA is to provide for an open and accessible space and the Trust undertakes to maintain this, and where an easement of this nature would impact the site and streetscape in the future.

- (f) That in terms of the RMA provisions with respect to emergency works, it is considered that should that scenario eventuate, responsibility for retrospective consent would fall to Council.
- (g) The proposal represents a proactive approach to reducing an existing risk to health and safety, and that this is an effect appropriately considered under the RMA.

38. These matters are discussed below in findings on the matters in contention.

PLANNING FRAMEWORK

39. The relevant planning framework was outlined by both planners and comprises the Invercargill City District Plan (Business 2, Historic Heritage and Earthworks Chapters), and the Southland Regional Policy Statement 2017. No NPS or NES with the exception of the NES-CS (discussed above) were identified as applicable.

40. Other matters relevant

41. I note that the issue of adverse precedent was raised by the Council and this is relevant to s.104(1)(c).

42. Both Mr McSoriley and Ms Ellis agreed that the Dangerous Building Notice issued by the Council under the Building Act 2004 is a relevant other matter under s104(1)(c).

Relevant Statutory Matters

43. As a non-complying activity, the application is subject to a s.104D RMA “gateway” assessment before a s.104 assessment or s.104B determination can be made. Section 104D requires that adverse effects on the environment must be no more than minor or that the proposal will not be contrary to the objectives and policies of the relevant plan.

44. Section 5 of the RMA details the purpose of the act, and Section 6(f) *the protection of historic heritage from inappropriate subdivision, use and development*, being a matter of national importance is also engaged in this case.

45. Finally, sections 108, 108A and 108AA of the RMA provide for the ability to impose conditions on land use consents if granted.

PRINCIPAL ISSUES IN CONTENTION

46. I record firstly that the central issue in this case, being the demolition of the Club Hotel as sought by the application was not fundamentally in contention. The application included expert heritage assessment as to the Club Hotel and its current (unsafe) condition, which was not challenged by any other expert evidence. Notably, HNZ submitted that they did not oppose the demolition of the building (provided sufficient mitigation measures were conditioned for). The submissions received from Bluff residents were without exception in support of the demolition of the former Club Hotel building.

47. While this matter is not in contention I record that the Dangerous Building Notice applying to the building is a relevant ‘other matter’ that weighs towards the consent sought for demolition of the building being granted, and that the ‘permitted baseline’ or do nothing scenario outlined by Mr Peirce for the applicant is persuasive, in that providing for demolition

of the building by consent allows for positive outcomes, that may not be achieved should consent not be granted and the building lost by natural or emergency means. Further, I acknowledge the real concerns expressed by the submitters that the residents of Bluff are currently subject to living with a health and safety risk, with negative impact on their use and appreciation of this area of Gore Street, and that demolition of the building is therefore also important to the residents, to achieve as soon as possible.

48. Primarily, the matters in contention relate to the approach to the site post demolition, and what measures, if any, the applicant should be required to complete in order to sufficiently mitigate the demolition of the building. The s42A report had concluded that a better design outcome (for the LEA) and greater use of the site for community benefit were required to be secured in order for the proposal to achieve sustainable management, while the applicant evidence concluded the application as sought including promoted conditions was sufficient to mitigate the loss of heritage values.
49. At the close of the hearing the following matters in were in contention:
- a) Design of the LEA
 - b) Public use of the site
 - c) Bond for conditions of consent
 - d) Detail of consent conditions including with respect to timing

Design of the LEA

50. Ms Baxter for the Council considered that the design of the LEA would benefit from the addition of planting and elements that provide shade, along with consideration of permeable elements to the fence which is proposed to separate the LEA from the remainder of the site. Ms Back's evidence was that planting would require the importation of soil and increased maintenance requirements which are not practical (or historically referenced) on the site, and that generally the space has been designed to complement the other elements of the wider street environment, which do include elements of shelter and vegetation. With regard to CPTED and permeability of the fence, Ms Back was open to this as a potential change to the design of the fence but continued to support the design of the (solid) fence as proposed, given that the CPTED focus was on creation of the LEA as a well maintained attractive space with no opportunity for concealment or entrapment, which she advised had been achieved.

Finding

51. I accept the evidence of Ms Back that the proposed design for the LEA is appropriate in providing for an area on the street frontage of the site available to the public which is of a suitable design and character. The space will provide basic affordances such as a place to take a seat in the sun, along with multiple historic and context references both direct (such as interpretation panels) and indirect in terms of the use materials and their layout. I note that the adoption of this space for this 'landscape enhancement' purpose is potentially short term (in the scale of evolving urban form) and in this regard I accept that the introduction of vegetation such as trees is unwarranted.
52. I had initial queries as to the design of the LEA being overly complex or ambitious and in the hearing traversed with the experts the possibility of a condition arrangement which allowed

for an amended (e.g simplified) design of the LEA to be submitted to Council for certification on the basis of a set of objectives to be achieved. However, Ms Back advised that she considered the space to be low maintenance and the evidence of Mr Edminstin provided confidence that the different types of materials, such as wharf timbers or oyster shells could be easily procured by the Trust, that the Trust supported the salvage and reuse concept of demolition materials where possible and were committed generally to providing a high amenity space for the community which would be the frontage of the Bluff Oyster and Food Festival site.

53. Mr Peirce in the right of reply for the applicant further outlined the process that was intended for the input of mana whenua and HNZ into the design of the LEA, but emphasised that fundamentally the design of the LEA was as proposed in the application documents and its objectives were already clearly set out and will not change. As such, I find that the design of the LEA and the process promoted for final certification by Council is suitable and will be positive in providing a street frontage space in this location post demolition of the building.

Public use of the site

54. Ms Ellis proposed that public use of the site should be further secured in terms of mitigation for the loss of the heritage values associated with the Club Hotel building. The recommendations in this respect were twofold, firstly that a public access easement should be established over the LEA, and secondly that greater public benefit/use of the wider site should be demonstrated. The evidence of Mr McSoriley was that an easement was not necessary or justified, and that public access will be available over the LEA as it is being created for this purpose, and an easement would create a significant barrier to potential future redevelopment. Mr Peirce confirmed that a variation would be required to change the public access nature of this area (for example if the land was redeveloped for a different purpose). With regard to general use of the wider site, the evidence of Mr Edminstin outlined the range of different community uses that the Trust enables on the site in addition to running the Festival.

Finding

55. I find that an easement over the LEA is not warranted for the reasons set out in Mr McSoriley's evidence, noting that the area, by design and location will clearly be available for public use, and acknowledging that a change to this intent would be able to be assessed by Council via any variation. Importantly, I find that an easement of this nature would have a negative consequence on the Gore Street streetscape in this location by permanently preventing the ability for any future built form to front the street.
56. On the basis of the evidence submitted, the applicant currently, in addition to use of the site for the purposes of the annual Bluff Oyster And Food Festival, makes the wider site available for use for a range of community uses, and intends to continue to do so. I find that there is no ability or necessity to direct by condition of consent either the operation of the festival or a certain range or type of uses, including community activities to be undertaken on the site. I accept the evidence of Mr McSoriley that the proposal to demolish will increase the ability for any use, including the Bluff Oyster and Food Festival to be undertaken on the site, and will enable future activity that aligns with the the Buisness 2 zoning.

Bond for conditions of consent

57. The s42A report recommended that conditions relating to detailed building recording of the Club Hotel building and oral history recordings be specified as being required to be undertaken prior to demolition, or that a bond should be provided in relation to these conditions. Mr McSorileys evidence was that a bond was unnecessary in respect of these conditions and Mr Peirce submitted that a bond is only warranted if there is any doubt that mitigation would not be advanced, and the standard compliance powers of the Council are sufficient in this case.

Finding

Considering the nature of the works required to be undertaken by the conditions in question, and the specific circumstances of the Dangerous Building Notice, I find that there is no significant benefit in requiring these works to be undertaken prior to demolition (as there is no access to the building in any case). The conditions have been agreed with HNZ including timeframes and the correspondence of HNZ makes it clear that these conditions have been endorsed acknowledging the inaccessibility of the interior of the building. The conditions in question are primarily in regard to information gathering and recording and I agree with the submission of Mr Peirce that if for any reason the conditions were not met the Council has the ability to initiate compliance action. I also again record that the evidence of Mr Edminstin was compelling that the Trust is committed to undertake the activity (demolition and subsequent mitigation) in the manner proposed and with best practice for the benefit of the Trust and the Bluff community.

Details of consent conditions

58. I have been assisted by both Ms Ellis and Mr McSoriley providing recommended versions of conditions to consider as part of the grant of resource consent, and by Environment Southland, NZTA and HNZ providing written confirmation of the conditions and advice notes they seek. At the conclusion of the hearing there was only minor differences between the conditions recommended by each planner, primarily around timing.

Finding

59. I find that it is important that the agreed consultation process for the final design of the LEA is undertaken in a timely manner, or does not lose momentum, but agree with Mr McSoriley's evidence that this need not be prior to demolition (taking into account the evidence and submissions as to the health and safety risk of the building). The condition timing as agreed with HNZ and promoted by the applicant, being within 3 months of issue of consent I consider is still reasonably tight. I also find that 12 months is appropriate for implementation of the LEA post demolition, taking into account the intent to undertake a salvage process. Generally, I find it appropriate to apply the condition wording as promoted by NZTA and HNZ.
60. I find that Condition 13 recommended by Ms Ellis in regard to stormwater can be incorporated into the submission of the LEA to Council for certification. In regard to signage, I find it would be practical for the conditions to enable flexibility in regard to the content of signage (including interpretation boards) within the District Plan framework and NZTA requirements. For example the evidence of Ms Back outlined that the interpretation boards on the site could contain information gleaned from the oral histories of the site, however such information is unlikely to be prepared within the timeframe for LEA design submission (oral histories being

undertaken within 2 years). I find that it is appropriate for the condition in respect of signage to enable new signage or signage content to be established on site by way of a certification process via Council.

SECTION 104D FINDINGS

61. In terms of the relevant objectives and policies (s.104D(1)(b)), both planners advised that the proposal was not considered to be contrary to these. This is accepted and I am satisfied that the proposal passes the s.104D gateway test.

SECTION 104 FINDINGS

Section 104(1)(a) & (ab)

62. For the reasons discussed above as well as the reasons set out in the expert planning evidence of Mr McSoriley and Ms Ellis, I find that the proposal will:
- (a) Result in a significant adverse effect in terms of the loss of historic heritage that is unable to be avoided or remedied, with some mitigation provided by way of the approach to the LEA.
 - (b) Result in positive effects in removing a current health and safety risk, a barrier to use of this area of Gore Street, and in enabling the use of the wider site for the Bluff Food And Oyster Festival and other potential landuses and providing as a direct result of the consent application a high quality landscaped enhancement space.

Section 104(1)(b)

63. For the reasons above as well as the reasons set out in the expert planning evidence of Mr McSoriley, I find that the proposal is consistent with the relevant Plan, and the Southland Regional Policy Statement. The NES-CS has been considered as detailed above.

Section 104(1)(c)

64. Based on the expert advice, I find that the Dangerous Building Notice issued under the Building Act is a relevant and reasonably necessary other matter to be considered to determine this application, and that this is a matter which influences the context in which effects and the overall assessment this application is made.
65. I also find that the proposal is distinusghable, such that it will not set a precedent for the reasons as set out in the expert planning evidence of Mr McSoriley.

PART 2 FINDINGS

66. Overall I find that that the purpose of the Act is best served by granting consent to this proposal subject to the conditions promoted. In particular I recognise the section 6(f) matter of the protection of historic heritage from inappropriate use and development however in this case I consider that the proposal including the estabslihment of the LEA represents an appropriate use of the site given the overall purpose of the Act as set out in section 5(2) which includes management of physical resources in a way which enables people and communities to provide for their social, economic, and cultural well being and for their health and safety.

67. It is this purpose of enabling communities to provide for their wellbeing and health and safety which became evident from the hearing is central to the determination of this application. The evidence was unchallenged in terms of the support for demolition of the building, with no objection from HNZ, and the submissions from Bluff residents made it clear that they sought this outcome in order to enable their wellbeing and avoidance of health and safety risk. In this context, and appreciating the submission of Mr Peirce on behalf of the applicant in respect of the alternative scenarios, the volunteered LEA is appropriate mitigation (s5(2)(c)) and contributes to section 7 matters of stewardship, and amenity values.

DECISION

68. The consents sought for Demolition and Earthworks are granted subject to the conditions of consent attached as **Appendix 1**.

A handwritten signature in black ink, appearing to be 'Paula Costello', written in a cursive style.

Paula Costello

Independent Hearings Commissioner

1 December 2023

APPENDIX 1 - Conditions of Consent

1. The proposed activity is to be generally undertaken in accordance with the application RMA/2023/72 received by the Council on 3rd July 2023 and WSP Landscape Enhancement Plan Revision 3 dated 27 June 2023 except where modified by conditions of consent.

Demolition Conditions

2. The site is to be left clear and tidy with all demolition material removed once demolition / removal activity is completed.
3. Demolition material is to be disposed of at a facility authorised to receive material of that kind.
4. All existing water and drainage (sewer and stormwater) connections must be sealed off at the mains by an approved contractor. The contractor is to complete the “Drainage Information Sheet” form (attached) and return a copy of it to the Building and Planning Services Department of the Invercargill City Council. Note: This document can be emailed to RMAMonitoring@icc.govt.nz.
5. No work within the road reserve footpath area is to commence until written approval is obtained from the Engineering Services Department of the Council. The consent holder, or their contractor, is to submit details of how they will protect Council assets.
6. Footpaths, vehicle crossings, and road frontages are to be inspected by the Council’s Manager Engineering Services prior to commencement and after completion of the demolition/removal.
7. Footpaths, vehicle crossings and road frontages must be protected from damage by covering with heavy timbers or similar. All sites must be safe for pedestrians and people with disabilities.
8. Damaged footpaths, vehicle crossings and road frontages must be immediately reported to the Council’s Engineering Services Department and then reinstated as soon as practicable within twelve (12) months of the date of this resource consent being issued. The consent holder is liable and responsible for the contractors undertaking the work, including any damage caused to the footpath, road frontage or vehicle crossing. Any damage is to be repaired by an approved contractor to the satisfaction of the Council’s Manager Engineering Services.
9. The site is to be secured and public access prevented while demolition activity is undertaken.
10. Prior to commencing work, the Consent Holder is to:
 - a) Notify the Council no later than 24 hours in advance of the commencement of the work, and on completion of the work (RMAMonitoring@icc.govt.nz);

- b) Separate the site from the public during the demolition work as per condition 9;
- c) Ensure contractors are made aware of the conditions of this resource consent and how to achieve compliance with these conditions.

11. The consent holder is to maintain a record of any material removed from the site and include the following:

- a) The date of removal;
- b) The name of the contractor;
- c) Description and quantity of the material removed;
- d) Location of site receiving the material and disposal receipts; and
- e) Detail of results from any testing of the material prior to disposal.

This record is to be supplied to the Council within 3 months of the completion of work (RMAMonitoring@icc.govt.nz).

12. Demolition equipment, trucks, and machinery to be cleaned prior to removal from the site. Any soil or site material that falls on the road, footpath, berm or neighbouring property must immediately be cleaned up by the consent holder. The material must not be swept into street channels or stormwater inlets, or deposited on the side of roadways.

13. Any sumps on site that may receive runoff during the activity are to be protected with filter cloth or geotextile mat to prevent the ingress of sediment. These are to be inspected and replaced as necessary. A log of the inspections is to be maintained by the Consent Holder and made available to Council on request.

Historic Heritage Conditions

14. A Demolition Management Plan (DMP) shall be submitted to Invercargill City Council and approved by the Planning Manager prior to any demolition works being undertaken on the site. A copy of the DMP will be provided to Heritage New Zealand Pouhere Taonga, who shall be given 15 working days to make comments prior to the Plan's approval. This plan must include a schedule of significant historical or archaeological features and historic building materials, identified by a suitably qualified heritage practitioner, that are able to be salvaged for reuse on the site or made available to the wider community.

It is acknowledged that no internal access can be obtained to the building given it is subject to a Dangerous Building Notice and this limits the range of features and materials that can be salvaged.

15. Significant historical or archaeological features and historic building materials identified or salvage under the above condition, are to be carefully removed and securely stored in a manner that will not cause damage to the materials for potential reuse on the subject site. Any salvaged features or materials not reused on the site

will be made available to the wider community. For clarity, reuse does not include use as fill.

It is acknowledged that no internal access can be obtained to the building given it is subject to a Dangerous Building Notice and this limits the range of features and materials that can be salvaged.

16. Copies of the original building plans, where obtainable, will be digitally scanned. The scanned building plans will be:
- i. provided to the Invercargill City Council and to Heritage New Zealand Pouhere Taonga within six months of the demolition being completed;
 - ii. and made publicly available by the Applicant for a period of one year from the date of the recording to any interested party at no cost.
17. Within 3 months of the issue of this resource consent the consent holder will:
- i. Consult with mana whenua and provide an opportunity for input on revisions to the Landscape Plan [WSP NZ Ltd Club Hotel Concept 6-VQ424.27 Rev C] which may reflect the historic significance, including Māori cultural values, of the site and wider area. If no feedback is provided by mana whenua within 15 working days after provision of the landscape plan the consent holder may assume that no feedback will be provided and obligation under this clause is satisfied.
 - ii. Provide a copy of any revised Landscape Plans to Heritage New Zealand Pouhere Taonga for review and comment. If no feedback is provided by Heritage New Zealand Pouhere Taonga within 15 working days after provision of the landscape plan the consent holder may assume no feedback will be provided and the obligation under this clause is satisfied.
 - iii. Any revisions to the Landscape Plan, including detail on provisions for stormwater management for the area of the Club Hotel building footprint, shall be submitted to Invercargill City Council and approved by the Planning Manager prior to landscape treatment works being undertaken on the site.
18. The site shall be landscaped in accordance with the Landscape Plan approved in accordance with the condition above not more than 12 months following the issue of this consent.
- Changes to the design, location and content of signage installed as part of the Landscape Plan may be undertaken by submission of proposed signage plans to Council for certification.
- See also Advice Note ii.*
19. An Archaeological Authority is to be obtained from Heritage New Zealand Pouhere Taonga prior to any earthworks or demolition activity commencing on the site.
20. Detailed building recording of Club Hotel building shall be completed by a suitably qualified heritage practitioner. The recording of the exterior of the building must be undertaken as far as practicable in accordance with the Level II standards set out in

Section 5.3 of the Heritage New Zealand Pouhere Taonga 'Investigation and Recording of Buildings and Standing Structures' (2018) document. Recording of the interior of the building shall be provided utilizing information previously gathered due to the lack of available access pursuant to a Dangerous Building Notice. The records of the interior of the building will be provided as far as practicable in accordance with the Level II standards set out in Section 5.3 of the Heritage New Zealand Pouhere Taonga 'Investigation and Recording of Buildings and Standing Structures' (2018) document, The recording must be:

- i. provided to the Invercargill City Council and to Heritage New Zealand Pouhere Taonga within six months of the demolition being completed; and
- ii. made publicly available by the Applicant for a period of one year from the date of the recording to any interested party at no cost.

21. Oral history recordings are to be undertaken to capture the stories of both former staff and guests of the Club Hotel. The interviews shall be undertaken by a suitably qualified and experienced practitioner, compliant with the ethics and technical practice of the National Oral History Association of New Zealand. Any oral history recording undertaken shall be submitted to a suitable collection institution and be made publicly available. The oral history recordings will be completed within 2 years of the issue of this consent.

State Highway Condition

22. A Traffic Management Plan (TMP) must be submitted to NZ Transport Agency as the road controlling authority of State Highway 1 for approval at least 1 month prior to the demolition works on the site commencing. The TMP should include a demolition plan, which must show the stages of demolition, the risks to road users and the temporary mitigation measures to be implemented to manage the risks to road users, including any proposed detours. The TMP must also include details of traffic management measures to be implemented during any work required to clean the road and/or repair any damage to the road arising from the building demolition activity. Repairs shall be completed, prior to the removal of the traffic management.

Advice Notes

- i. Any repairs to the State highway 1 road or kerb and channel will require a corridor access request (CAR) to be obtained from NZ Transport Agency prior to any repair works commencing. Please submit your CAR to the New Zealand Transport Agency CAR Manager via www.submitica.com a minimum of fourteen working days prior to the commencement of any works on the state highway; longer is advised for complex works. The repair works will need to be done by an approved contractor.
- ii. The proposed signage, that will be visible from State highway 1, shall be designed to comply with the guidance in the NZ Transport Agency 'Planning Policy Manual' chapter titled 'Third Party signs on and visible from the state highway corridor' and the associated Traffic Control Devices Manual 'Part 3 Advertising Signs' to ensure that the sign doesn't cause a distraction or safety risk to highway motorists.

- iii. At the time that a gate is installed in the boundary fence fronting State highway 1, the Traffic Management Plan (TMP) submitted to NZ Transport Agency for the annual Bluff Oyster and Food Festival must be updated to include specific measures to manage the safety risks to road users arising from the use of that gate as a point of Festival patron ingress and egress.
- iv. Surface water at the back of the footpath should be captured within the applicant's property or managed so as not to cause a nuisance to the road corridor. If a sump outlet is required for the proposed retaining wall, this should be within the applicant's property then piped to kerb and channel.
- v. The consent holders should ensure that the loose aggregate used in the landscaped area adjacent to State highway 1 does not migrate onto the footpath causing a slip hazard or into the street kerb and channel and mud tanks, causing a cleaning/blockage issue.
- vi. The consent holder is advised to obtain advice from Environment Southland with respect to Regional Air Plan requirements in respect to demolition and dust.
- vii. The consent holder is advised to review the requirements for any consents under the NES-CS during demolition/earthworks.