

IN THE MATTER OF	the Resource Management Act 1991
AND	an application made pursuant to Section 88 of the Act
TO	Wellington City Council: SR 263649
BY	Lambton Quay Properties Nominee Limited
IN RELATION TO	Land use consent for the demolition of a listed heritage building known as the "Harcourts Building" (aka the former "T & G Building")
SITE LOCATION	30 Grey Street / 203-213 Lambton Quay, Wellington Central

DECISION OF HEARING COMMISSIONERS

HEARING DATES	10, 11, 18 and 19 December 2012 and 9 January 2013
COMMISSIONERS	Alistair Aburn (Chair) Helen Atkins Rob Jury
DATE OF DECISION	25 February 2013

SUMMARY OF APPLICATION AND DECISION

- [1] The proposal is for the demolition of a listed heritage item, the Harcourts Building (aka former T & G Building) located at the corner of Grey Street and Lambton Quay in Wellington Central.
- [2] In addition to being a listed heritage item the building is also subject to an Earthquake-Prone Building Notice issued under s124(1)(c) of the Building Act 2004.
- [3] The Applicant seeks demolition of the building as it is earthquake prone and therefore poses a risk to public safety; and the cost of strengthening works would be economically very challenging.
- [4] The proposal does not involve the construction of a replacement building or the creation of vacant land/open space. A further resource consent application would need to be made for any replacement building, if the current application for demolition is granted.
- [5] Following a four day hearing and evaluation of the evidence by the Commissioners the conclusion reached is that a compelling case has not been made to justify demolition of the building.
- [6] Consequently, the Commissioners acting under delegated authority from the Council, pursuant to s104C of the Resource Management Act 1991, and under the provisions of the Wellington City District Plan, **DECLINE** consent to the demolition of the building situate at 30 Grey Street/203-213 Lambton Quay, Wellington Central.

APPOINTMENT

- [7] Following a request by the Applicant, an independent hearing commissioner panel (“the Commissioners”) was appointed by the Wellington City Council (“the Council”) in terms of s34A of the Resource Management Act 1991 (“the Act”) to hear the Applicant and submitters, and the reporting officers for the Council, and to make a decision on the application.

TIME PERIOD FOR DECISION

- [8] At the closure of the hearing on Wednesday 9 January 2013 we agreed that the normally accepted time period of 15 working days from the close of the hearing for the decision to be released would need to be extended given the complexity and importance of the issues before us, and given we had annual leave commitments during January 2013. All parties were advised of this decision by email on 15 January 2013.
- [9] Accordingly, pursuant to sections 37 and 37A of the Act, we have exercised our discretion to extend the time period for this decision from 15 working days from the close of the hearing (being 1 February 2013) to 30 working days (being 25 February 2013). In making this decision we have taken into account the interests of any persons who may be directly affected by the extension and the duty to avoid unreasonable delay in determining the application.

BACKGROUND

The Application

- [10] The application is for the demolition of the listed heritage building, the Harcourts Building (aka the former T & G Building) located on the corner of Grey Street and Lambton Quay, Wellington Central. Consent is also sought for all associated demolition activities including removal of debris, erection of protection hoardings and implementation of mitigation measures.
- [11] The application does not seek consent for a replacement Central Area building, or for the creation of vacant land/open space.

The Building

- [12] The Harcourts Building, known to some as the former T & G Building, hereafter “the Harcourts building”, is a listed heritage building under the operative Wellington City District Plan - symbol reference 185 (Map 17). The building is also registered by the New Zealand Historic Places Trust (“NZHPT”) as a Category 1 historic place under the Historic Places Act 1993 - register number 1435.
- [13] The building comprises ground floor and 7 upper floors and occupies most of its 978m² site. A portion of the site is occupied by the lift shaft and stairs of the adjacent HSBC building, a 26 level tower on the immediately adjacent site to the north. The HSBC lift shaft and stairs occupy the former light well of the Harcourts building. The ground floor lobby spaces of both buildings are connected, but the buildings are otherwise functionally and structurally separate.
- [14] The following short description summarises the main features of the building:

The T & G building is a worthy representative of the transitional period between the Classical revival and Art Deco movements. The building uses contemporary materials of structural steel and reinforced concrete in an imaginative manner combined with the formality of classicism.

A recognisable style became associated with the company and the building owes much to the designs of T & G offices in the major Australian cities such as Melbourne, Brisbane and Adelaide. The building,

however, lacks the characteristic tiered tower. Largely in original condition its substantial size, bold form and decoration make it a major landmark on Wellington's principal thoroughfare.

The character and scale of the land and building are comparable to the nearby DIC building and together they form a coherent statement. The T & G building adds significantly to the east side architecture of Lambton Quay. Its corner siting gives it a strikingly handsome appearance.¹

Earthquake-Prone Building Notice

- [15] The building was issued with an Earthquake-Prone Building Notice pursuant to s124(1)(c) of the Building Act 2004 on 27 July 2012. The Notice states that the building owner must either strengthen the building to a sufficient degree so that it is not earthquake prone, or demolish the building in part or whole, so that the remainder of the building (if any) is not earthquake prone.

Site and Locality

- [16] The 978m² site is located on the corner of Grey Street and Lambton Quay. Lambton Quay is part of the "Golden Mile", the city's premier retail street. While a number of buildings fronting Lambton Quay are listed heritage buildings,² many others, including the HSBC tower building to the north and the ANZ tower building to the south are prominent modern 'high rise' buildings.
- [17] Lambton Quay, which has very high pedestrian counts, particularly the western side, is part of the public transport (bus) route through the Central Area which 'commences'/'terminates' at the Lambton Bus Exchange opposite the Wellington Railway Station.
- [18] Grey Street runs east to west and provides a connection to the Wellington waterfront at Queens Wharf Square. The western end of Grey Street is a 'cul de sac' with an area of public open space and seating established immediately in front of the Harcourt building's Grey Street entrance. Almost directly opposite the site on the western side of Lambton Quay is Cable Car Lane, which provides access to the downtown terminus of the Wellington Cable Car, which runs between Lambton Quay and Upland Road (Kelburn).
- [19] The ground floor of the building accommodates a number of shops (on both the Lambton Quay and Grey Street frontages), with office accommodation above, although the vast majority of the floorspace over the 7 office floors is presently vacant.

NOTIFICATION AND SUBMISSIONS

- [20] The application was publicly notified on 2 October 2012.
- [21] A total of 48 submissions were received by the closing date for submissions. Of these submissions 30 were opposed to the application and 18 were in support.

PRINCIPAL ISSUES IN CONTENTION

- [22] In the Reporting Officer's s42A report it was noted that the following general themes/issues were raised in the submissions:
- Loss of heritage values
 - Contribution of the building to the streetscape/Golden Mile
 - Earthquake risk to public safety

¹ NZHPT Registration Notice

² These buildings include Kirkcaldies & Stains, Harbour City Centre (former DIC Building), MLC Building and former Bank of New Zealand Building, all on the eastern side of Lambton Quay; and Whitcoulls Building, South Insurance Building, CBA Building and Prudential Assurance Building, all on the western side of Lambton Quay

- Cost of strengthening works
- Uneconomic to strengthen
- Owner's responsibility to strengthen
- Lack of regulatory incentives for strengthening
- Questions relating to whether the building is an earthquake risk
- Economic vitality a new modern building will bring to the CBD.

[23] Essentially, and as became even more apparent as the hearing progressed, the principal issue in contention was the tension or 'conflict' between the loss of a significant heritage building and the risk to public safety, if a building identified as an earthquake prone building remained un-strengthened. A second issue was the tension between the costs associated with strengthening and commercial / economic viability.

THE HEARING

[24] The hearing took place over four days (10, 11, 18 and 19 December 2012). A site inspection was undertaken on the morning of 18 December 2012 when the building was viewed both internally and externally.

[25] As the hearing concluded late on the fourth day (19 December 2012) the hearing was 'adjourned' until Wednesday 9 January 2013 when the Commissioners reconvened to commence their deliberations. The hearing was formally closed on 9 January 2013.

SUMMARY OF EVIDENCE

[26] The following summary of submissions and evidence presented at the hearing, which is presented on a topic by topic or theme basis, is not intended to be a full coverage of all matters raised; but rather is intended to highlight the main points covered by the parties who attended the hearing.

[27] We confirm that with the agreement of the parties attending the first day of the hearing, the Reporting Officer's Report, which was pre-circulated to the parties in accordance with s42A of the Act, was taken as read.

[28] The Applicant, Lambton Quay Properties Nominee Limited, was represented by the following persons:

Con Anastasiou	Legal counsel
Mark Dunajtschik	Director and owner of Lambton Quay Properties Nominee Limited
Grant Corleison	Valuer
Win Clark	Consulting engineer
David Cooke	Quantity surveyor
Jeremy Salmond	Heritage architect
Andrew Washington	Valuer
Ian Leary	Resource management planner

[29] Submitters who appeared and presented or called evidence in support of their submissions were:

Supporting Submitters

Brent Slater (#10)
 Phillip Stratford (#18)
 Primeproperty Group (Eyal Aharoni) (#22)
 Kent Atkinson (#31)
 Mark Jerling (#32)
 Seddon Associates (Miles Seddon) (#45)

Chris Gollins (#48)

Opposing Submitters

Phil Kelliher (#4)

Alex Gray (#25)

Rosamund Averton (#30)

Wellington Civic Trust (#36)

New Zealand Historic Places Trust (#41)

Tim Bollinger (#43)

Historic Places Wellington Inc (#46)

Principal Topics or Themes Covered in Submissions and Evidence

[30] We have summarised the evidence around the following principal topics or themes:

- Heritage
- Structural Engineering / Building Act / Earthquake-Prone Buildings
- Costs
- Economic / Commercial Viability
- CBD Vitality
- Planning
- Other Matters

[A] Heritage

[31] A number of witnesses presented heritage evidence, and in some cases urban design evidence. There was agreement that the Harcourt's building was a significant heritage building, which was both listed in the District Plan and registered under the Historic Places Act 1993.

Applicant

[32] **Jeremy Salmond:** Mr Salmond presented evidence on behalf of the Applicant. He is an experienced conservation architect whose firm, Salmond Reed Architects, specialises in the conservation of heritage buildings, sites and areas. Mr Salmond advised that he was the author of the 1999 Conservation Plan for the building.

[33] Mr Salmond also advised that he had prepared an assessment of the effects of the proposed activity (i.e. demolition) on heritage values by reference to "*WCC and other assessment criteria*". Mr Salmond told us that he had:

"... attempted to give some appreciation of the tensions raised by the requirements of compliance with contemporary building codes, the desire in the wider community to see buildings such as Harcourts preserved and protected, and the contemporary commercial context for this debate".³

[34] Accepting that the building had been well-maintained and has the appearance of being robust, Mr Salmond nevertheless emphasised that the Council had issued an earthquake-prone building notice under the Building Act 2004, and that as a result the Applicant was required to strengthen the building or demolish it.

³ Salmond evidence para 3.2

- [35] Noting that some \$4.5m was spent (we understand in circa 2000) on remediation of the building to make it safe and tenantable, Mr Salmond told us that:

*“... while the conservation plan appears to have served its intended original purpose as an enabling document, there is some irony that contemporary factors now conspire to require the demolition of the original building”.*⁴

- [36] Mr Salmond referred us to the 2009 Wellington City Earthquake-Prone Buildings Policy that states that the Building Act 2004 requires the Council to “ensure all earthquake-prone buildings are strengthened to at least the minimum prescribed standard (or be demolished)”. Referring to the following section of the Policy that states that the:

“... approach to heritage buildings is to reduce the impact of any strengthening work required on the heritage fabric of the building. This means that for earthquake-prone heritage buildings:

- strengthening is required so that it is no longer earthquake-prone*
- the maximum timeframes will apply, just as it does to all buildings*
- a management plan outlining how strengthening will preserve the heritage buildings is to be provided*
- demolition is not encouraged”.*⁵

Mr Salmond said that:

*“These factors are relevant to a discussion of the heritage significance of an earthquake-prone heritage building”.*⁶

- [37] Mr Salmond next referred to the baseline concept for strengthening the building that had been developed and the costs of undertaking the work, adding that it was his understanding that the “costs have been placed in the context of the Wellington CBD property market” and that “they bear on the commercial practicability of retaining and strengthening the Harcourts building”.

- [38] Mr Salmond opined that an issue for all parties and for the owner in particular was the financial cost of the necessary strengthening works and whether the costs are justified in market terms by the significance of the building; or whether an alternative strategy for implementing such work could be found. He then said:

“To place this issue in a broader context, it is useful to consider the full range of options available to address the building, and the consequences of the concept of retention of heritage values. The specific options investigated by others provide a useful basis for the examination of effects on heritage values of the various possible approaches to the building. I summarise these as follows:

- a. total demolition;*
- b. facade retention, including some remnant of original construction behind the street frontage, with new building behind;*
- c. full structural upgrade of existing building; and*
- d. full structural upgrade of existing building with additional floors above existing”.*⁷

⁴ Ibid para 3.11

⁵ WCC Earthquake-Prone Buildings Policy (2000) page 8

⁶ Salmond evidence para 3.14

⁷ Ibid para 3.16

[39] Before turning to his assessment of 'effects on heritage values' Mr Salmond said that each option has an effect on both the cost and benefit to the owner and the wider public interest in the building.

[40] Turning to his assessment Mr Salmond confirmed that *"the heritage significance of the Harcourt's Building is not disputed"*. He then said:

"The issue to be addressed in this application is, therefore, the effects on the identified heritage values of undertaking any action to preserve, or demolish (in whole or in part) the building, and to balance those effects against other non-heritage impacts such as cost and how those costs can or should be attributed".⁸

[41] Referring to the four possible options he had identified he accepted that they had different effects on heritage values, which he identified as follows:

- a. total demolition = total loss of heritage values
- b. facade retention = retention of heritage streetscape, substantial loss of interior heritage values except for some specified primary spaces
- c. full structural upgrade of existing building = substantial retention of all heritage values
- d. full structural upgrade + plus additional floors above existing building = retention of heritage streetscape, modified by additional floors above.

[42] Noting that the cost implications of each option would be dealt with by other witnesses, Mr Salmond said that he considered that:

"This is an important consideration for private owners of heritage buildings, where a fundamental issue is the commercial underpinning of the investment in refurbishment".⁹

[43] Referring to Option (b), facade retention, Mr Salmond said that this raises the question of facadism, a concept which he said is widely understood to be generally inadequate as a solution to meaningful heritage preservation. He nevertheless added:

"While there is no doubt that there are circumstances in which facade retention may be justified, this is only where it can be shown that the primary heritage values of a place subsist in the exterior and the street facade in particular - the presumption being that either there are no surviving interior values or that the reasons for which value has been established in the first instance is the wider context of the street, as the primary heritage artefact. The corollary of this is whether the survival of only some heritage values is better than the loss of all".¹⁰

[44] Mr Salmond said that his own view was that the listed and registered artefact is an entire building and that for the Harcourts building high heritage value has been identified for the *"building as a whole"*, for the interior in general and the public areas in particular; adding however that *"high value attaches also to the street facades"*.¹¹

[45] Notwithstanding his position on the importance of the building as a whole, Mr Salmond said that if redevelopment behind a retained facade is to be contemplated then the manner in which this is implemented is a factor that may aggravate the adverse effects due to loss of a substantial part of the existing building. He then said:

⁸ Ibid para 4.5

⁹ Ibid para 4.7

¹⁰ Ibid para 4.8

¹¹ Ibid para 4.12

"It may be argued in this context that a redevelopment which results in a building of similar (or slightly increased) bulk to that of the existing building will not diminish the townscape value of the building (which is only one of its primary heritage values)

but that:

A new development of significantly greater height and bulk than that which exists could, however, further diminish the heritage value of the retained facade by challenging the architectural rationale of the original design".¹²

- [46] Concluding his evidence Mr Salmond referred to related questions of 'cost and who pays', 'return on investment' and 'commercial viability' saying that that heritage values must be balanced against such matters.

Submitters in Opposition

- [47] **Alison Dangerfield:** Ms Dangerfield gave evidence on behalf of the NZHPT. Ms Dangerfield holds qualifications in building science and architecture and is the Trust's Heritage Advisor for Architecture, a position she has held for 7 years. In total she has 30 years' experience in the building and architecture industry.
- [48] At the commencement of her evidence Ms Dangerfield told us that she considered that the demolition of the Harcourts building was inappropriate because of the effects on the building and its heritage values.
- [49] Ms Dangerfield confirmed that the Harcourt's building is a Category 1 registered historic place under the Historic Places Act 1993 and, as such, was considered to be a *"place of outstanding or special significance or value"*. Ms Dangerfield told us that the building was considered to have:
- historic significance as the New Zealand head office of T & G Mutual Assurance;
 - architectural significance for its bold, recognisable style adding that *"its substantial size, monumental form and impressive decoration make it a major landmark on a principal thoroughfare of Lambton Quay"; and*
 - significance for its contribution to townscape adding that the building *"is an unflinching component of the architecture on a side of Lambton Quay where most of the remaining built heritage is located. Its corner siting encourages it to project a strong visual presence up and down Lambton Quay with a striking and interesting expression of its style".¹³*
- [50] Referring to the Conservation Plan, which she considered to be not 'out of date', she referred us to two particular sections of the Plan:
- the Plan's stated purpose, namely that it was *"... a statement about the significance of Harcourts Building as an historic place, and is intended to assist with the long-term conservation maintenance of the building"; and*
 - the Plan's policies which Ms Dangerfield considered clearly direct conservation of the original form and appearance of the building, encourage conservation and reinstatement of any lost features and allow *"no room for interpretation that demolition should be a tenable possibility"*.

¹² Ibid paras 4.15 and 4.16

¹³ Dangerfield evidence para 18

- [51] Referring to the 'impact of the proposal' Ms Dangerfield told us that she considered that a full loss of a building of high heritage value, which the Harcourts building clearly is, is contrary to:
- the principles of the Historic Places Act 1993;
 - the conservation principles of the ICOMOS NZ Charter 2010; and
 - the policies of the Conservation Plan.
- [52] Ms Dangerfield told us that she considered that:
- "The proposed demolition would mean the loss of the fabric of a building which defines the context of this section of Lambton Quay. The building on its corner site has a visibility and a presence which would be lost. The building is a major component in a row that connects two historic areas with substantial, well-articulated buildings of this height. The loss of a building of high contextual value would be a significant loss to Lambton Quay and the "Golden Mile" of Wellington.*
- Like Ms Rickard, I consider the demolition of the T & G Building to be a very significant loss of the historic heritage of Wellington City and New Zealand".¹⁴*
- [53] Referring to the Canterbury earthquakes and the heightened awareness of seismicity, Ms Dangerfield said that *"in Wellington, seismicity concerns are not a surprise"* - but that there continues a long standing and high concern about performance of buildings in Wellington. *"This has not changed"*. Continuing, she told us that she considered notwithstanding the 'momentum of concern' often not all the necessary facts to assist understanding of individual building issues are available. This led Ms Dangerfield to recommend that *"before any decisions are made regarding the future of the T & G Building, a detailed structural assessment is undertaken to determine the scale of the seismic issues and what parts of the building are involved"*.¹⁵
- [54] Ms Dangerfield said that she considered that there were a number of possible future options for the building, including the reuse of the streetfront sections and lobby in a new structure that enables the townscape values of the building to be retained, the addition of several additional floors, or a new tower setback from the façade.
- [55] Ms Dangerfield then concluded by reiterating her opinion that the building has outstanding or special heritage significance and that these values make it worthy of retention, in some way; and that total demolition as sought by the Applicant is inappropriate.
- [56] **John Daniels:** Mr Daniels is the Chairman of Historic Places Wellington. We were told that Historic Places Wellington is an incorporated society set up in 2011 to further heritage protection in the Wellington region. Historic Places Wellington has no formal connection with the NZHPT.
- [57] Mr Daniels told us that he was the Director of NZHPT from 1971 to 1988 and that he had held senior heritage management positions with the Department of Conservation from 1988 to 1998.
- [58] As did Ms Dangerfield, Mr Daniels emphasised the status of the building as a registered Category 1 historic place, adding that Category 1 registration requires passing the test of 'special or outstanding historic or cultural significance or value'.
- [59] Acknowledging that other witnesses had/would cover the historical, architectural and townscape merits of the building, Mr Daniels told us he wanted to emphasise two aspects: the building's streetscape and townscape values; and the building's foyer with its original features.

¹⁴ Ibid paras 30 and 31

¹⁵ Ibid para 36

- [60] Mr Daniels told us that if the application was granted the implications for other Category 1 buildings would in his opinion be serious given the 'signal' it would send - namely, that it is acceptable to demolish our architectural heritage.
- [61] Accepting that public risk and safety considerations are paramount in the inner city, Mr Daniels told us that he accepted that building owners need to make decisions and move forward as soon as possible, adding that *"compromise will often be required to save at least some of our most important heritage buildings. These compromises should aim at preserving, if not all, then as much as possible of the significant fabric of these buildings"*.¹⁶
- [62] Mr Daniels confirmed that Historic Places Wellington would call two witnesses: Ms Deborah Cranko an architect; and Mr Peter Dowell an owner/manager of a number of heritage buildings (we refer to Mr Dowell's evidence below - refer Economic/Commercial Viability).
- [63] **Deborah Cranko:** Ms Cranko is a registered architect and Director of Cranko Architects Limited. Ms Cranko confirmed that her experience included work associated with earthquake strengthening in Wellington and Hutt cities.
- [64] The main 'thrust' of Ms Cranko's evidence was to challenge/raise questions about a number of issues including market demand, seismic standards, structural assessments and strengthening costs. One particular question she posed was: *"why has only a 100%NBS strengthening scheme been the brief to the structural engineering consultant"*? She said that she considered that the question was 'linked' to market demand and the situation whereby the public sector, which occupies some 40% of the total leased space in the Wellington CBD, is constrained by the Government 'drive to cut spending'. Noting that the Applicant had stressed the importance of large floor plates and securing Government tenants, Ms Cranko surmised that this may be due to the fact that the Applicant already has a long-term Government tenant in the adjoining HSBC tower building. This led Ms Cranko to suggest that to assess the economic viability of strengthening a structural brief that suits the building's location and the 60% of the potential tenant market be used, and that the economics of that scheme then be considered.
- [65] In the end it appeared to us that Ms Cranko's evidence was directed toward her challenge of the Applicant's assertion that the Harcourt's building would have a nil value after strengthening to 100%NBS.
- [66] **Barbara Fill:** Ms Fill appeared as a witness for submitter Rosamund Averton. Ms Fill is a heritage consultant with over twenty years' experience in heritage and heritage-related fields. This experience included four years as the senior heritage advisor for Wellington City Council between 2002 and 2006, during which time she prepared the Council's Built Heritage Policy 2005. Ms Fill also confirmed that she was involved in District Plan Change 43, which was a review of the District Plan's heritage provisions.
- [67] Ms Fill drew on the 'significance assessment' report prepared for the Council by Michael Kelly (which formed part of the s42A Report), hereafter referred to as the "Kelly Report", noting that the building was historically significant and had a distinctive architectural style. Commenting that the building is in a largely authentic condition, particularly the two main street facades, Ms Fill then said:
- "There are few buildings left in Wellington of this 1920s era that have so many original features. Possibly only the AMP building. With so few left and the only one of this style in Wellington it gives the building significant **rarity** value"* [Ms Fill's emphasis]¹⁷
- [68] Ms Fill commented that the building occupies a prominent corner on Lambton Quay and as such enhances the immediate streetscape or setting. She said that she considered that the building had

¹⁶ Daniels evidence page 3

¹⁷ Fill evidence para 24

significant townscape value and that it was an integral part of its immediate surroundings and located amidst a number of other heritage buildings, adding that she considered that the building:

*“... provides a vital visual and historic link between the Old BNZ complex at the southern end of the Quay to the former Public Trust Building at the northern end of the Quay on the eastern side”.*¹⁸

Ms Fill concluded her historic heritage assessment by stating that in her opinion the building has *“significant historic heritage qualities”*.

[69] Ms Fill next drew our attention to Policy 5 of the Regional Policy Statement (“RPS”) which is:

“... to recognise, when planning for and making decisions on new subdivision, use and development, the heritage values of regionally significant cultural heritage resources and to manage those heritage resources in an integrated manner with other natural and physical resources”.

Ms Fill noted that as the building is a Category 1 historic place, it is a regionally significant heritage resource. She concluded that the RPS placed an onus on local authorities to protect the building from inappropriate subdivision, use and development - i.e. from *“demolition as proposed”*.¹⁹

[70] Next Ms Fill referred to the District Plan heritage objectives and policies and associated rules. Confirming that the building had been listed in the District Plan since 1994. Ms Fill drew our attention to Policy 20.2.1.2 as follows:

20.2.1.2 To discourage demolition, partial demolition and relocation of listed buildings and objects while: ...

Giving consideration to total demolition or relocation only where the Council is convinced that there is no reasonable alternative to total demolition or relocation.

[71] Referring to Rule 21A.2.1 Ms Fill agreed that the proposed demolition of the building was a discretionary activity (restricted), with the Council’s discretion restricted to two matters:

- historic heritage
- height, coverage, bulk and massing of buildings (to the extent that these affect historic heritage).

[72] Ms Fill noted that the rule incorporates a number of assessment criteria in order to determine whether consent should be granted. She added that most of the criteria (of which there are 20) relate to modifications (i.e. additions and alterations) and/or relocation of heritage buildings, rather than demolition per se. Three of the criteria that appeared to us to be especially relevant, to which Ms Fill referred, were:

21A.2.1.3: The extent to which the work significantly detracts from the values for which the building or object was listed.

21A.2.1.14 Whether there is any change in circumstances that has resulted in a reduction of the building’s heritage significance since the building was identified in the plan.

21A.2.1.22 The public interest in enhancing the heritage qualities of the City and in promoting a high quality, safe urban environment.

[73] Referring to 21A.2.1.3 Ms Fill told us that she considered it was self-evident that if approved the proposal would result in the demolition of a significant heritage building.

¹⁸ Ibid para 29

¹⁹ Ibid para 36

- [74] In relation to 21A.2.1.14, Ms Fill said that she did not consider that ‘financial viability’ was a means used to determine any change (i.e. ‘reduction’) in the heritage significance of a place.
- [75] In relation to 21A.2.1.22 Ms Fill told us that in her opinion:
- “... demolishing a listed heritage building will be detrimental to the heritage qualities of the city. The loss is permanent. While the building has been deemed an earthquake risk the degree of risk is not clear as discussed earlier. In my opinion the building is at no greater risk than many buildings in Wellington, whether heritage buildings or not”.²⁰*
- [76] Ms Fill concluded her evidence by stating that in her opinion the Reporting Officer had failed to give any consideration to the social and cultural aspects and focussed too much on economic and health and safety matters; and that in terms of s6(f) of the Act, the proposal does not protect this significant part of Wellington’s historic heritage from inappropriate subdivision, use and development.
- [77] **Gerald Blunt:** Mr Blunt, who appeared on behalf of the Wellington Civic Trust, is an experienced architect and urban designer. His statement on behalf of the Trust covered both urban design and heritage matters. For convenience we have summarised his evidence under ‘heritage’.
- [78] Mr Blunt’s evidence was structured under the following principal headings:
- multi-faceted cities
 - heritage - story of Wellington development
 - townscape
 - quality of older commercial development
 - composition of existing block of buildings
 - heritage policy/listing
 - risk
- [79] Under ‘heritage - the story of Wellington development’ Mr Blunt noted that the building was built as the head office of T & G in New Zealand in 1928 and continued in that function for 55 years before T & G merged with National Mutual in 1983. He considered that the building was part of the story of Wellington’s commercial development when the majority of banks and financial institutions had their head offices in Wellington.
- [80] Under ‘townscape’ Mr Blunt described Lambton Quay as a dynamic space that is enhanced by the buildings and their activities, adding that the Harcourts building sits on the corner of Lambton Quay and Grey Street enhancing the Grey Street link between the Golden Mile and the main waterfront entry point, the Queen’s Wharf gates.
- [81] Under ‘quality of older commercial development’ Mr Blunt acknowledged that a city needs to change and grow and that economic influences are the main drivers in this. However, he also considered that, while the use of older commercial buildings has changed from what they were originally built for, they do have a robustness that allows them to change and evolve. He considered that these older buildings create the city’s distinct identity.
- [82] Under ‘heritage policy/listing’ Mr Blunt said that the District Plan listing and NZHPT registration confirmed that the building has substantial heritage value. Referring to Policy 20.2.1.2 which included the statement that Council would only give consideration to total demolition where it is convinced that there is no reasonable alternative to total demolition or relocation, Mr Blunt contended that the Applicant had not provided any reasonable alternative to demolition.

²⁰ Ibid para 53

[83] Under 'risk' Mr Blunt accepted that there is a risk but asked: "*but what is that risk*"?

[84] Concluding his evidence Mr Blunt said that a collective consideration of the factors he had discussed did not lead to support for the demolition of the building. Mr Blunt considered that an alternative approach would be to start with the proposition that the building must stay and posed a series of questions: are there alternative strengthening options?; would a different owner approach the project from a different perspective?; are there different funding options?; should a longer return on investment be considered?; could the building be moth-balled until the economic situation improves?; if other owners have been able to strengthen their buildings, then why is it not possible in this situation?

Council

[85] **Vivien Rickard:** the final heritage witness was Ms Rickard. Ms Rickard is the Council's Principal Heritage Advisor. The s42A Report did not include any assessment by Ms Rickard. Rather, it included a statement of heritage significance prepared by Mr Michael Kelly (the Kelly Report). At the commencement of the hearing we noted that the s42A Report did not include an assessment of effects on historic heritage. This led us to request Ms Rickard to provide us with an effects assessment of the proposal.

[86] In the time available Ms Rickard was only able to provide us with a short four page assessment. Her summary was:

"It is acknowledged that there are issues broader than the heritage values that will impact on determining the future of this building.

The building at 30 Grey Street is unquestionably of significant heritage value. An assessment of comparative values of this building with other buildings in the CBD has not been undertaken as any form of ranking buildings is not an objective of the Wellington City District Plan heritage list.

From a heritage perspective, the demolition of the building at 30 Grey Street would be a very significant loss to the historic heritage of Wellington City and New Zealand.

It is timely to also take into account the effects on the townscape of Lambton Quay and Wellington City and the consequent effects that the demolition of this building would have on other similar situations in Wellington".²¹

[B] Structural Engineering / Public Safety Evidence

Applicant

[87] **Con Anastasiou:** In his legal submissions for the Applicant Mr Anastasiou advised us to consider a number of aspects relating to structural engineering and public safety matters. These were:

- the Canterbury earthquakes and their aftermath have produced a paradigm shift in attitude to risk throughout New Zealand;
- the expected seismic performance of the building in earthquakes and the impact this is likely to have on inhabitants of the building, passers-by and adjacent buildings;
- the strengthening works required to bring the building to 100%NBS (new building standard) including that a significant portion of the building would need to be removed to avoid a pounding effect with the adjacent HSBC tower building;
- the Council's engineering consultants have assessed the building at 17%NBS; and

²¹ Rickard evidence pages 3 and 4

- an Earthquake-Prone Building Notice has been received from the Council in relation to the building and notices have been sent to tenants, and posted on the building.

These matters were addressed in evidence by Mr Win Clark for the Applicant and by a number of submitters in support.

- [88] **Win Clark:** Mr Clark is an experienced structural engineer, based in Wellington but with experience throughout New Zealand, including in Christchurch following the Canterbury earthquakes.
- [89] Mr Clark was engaged by the Applicant as an independent consultant on the recommendation of the NZHPT. We noted that the NZHPT did not call its own structural engineering expert and in answer to a question from the Chair, the NZHPT confirmed that it had adopted Mr Clark's report.
- [90] Mr Clark's evidence covered the following aspects:
- a description of the building's structure;
 - the probable earthquake performance of the existing building;
 - structural strengthening concept designs to achieve 100%NBS; and
 - interaction of Harcourts building with the adjacent HSBC tower building.

Mr Clark advised us that he had assessed the building as having an NBS value of 42% and thus having a "moderate risk" of sustaining significant damage in an earthquake. He confirmed during questioning that this was based on all of the information that he had at his disposal and some calculations, but advised us that this should not be considered to be a detailed seismic assessment. Mr Clark also confirmed that it was his view that a detailed seismic assessment was likely to confirm the building was not earthquake prone.

- [91] Mr Clark advised that he had assessed that there was a high probability of pounding between the Harcourts building and the HSBC tower building in a severe earthquake. In response to our questions he confirmed that this assessment was based on the assumption that the movement of both buildings at the Ultimate Limit State would be the maximum allowable in the New Zealand loadings code of 2.5% of the height of the Harcourts building, which he had adjusted by judgement. Mr Clark confirmed that he had not completed detailed calculations to determine the movement of either building.
- [92] Mr Clark presented a concept retrofit scheme that he believed to be viable and the reasons why other schemes were rejected. He invited us to accept that 100%NBS was an appropriate level to strengthen to, given protection of heritage values, the building's location and market perceptions. In response to our questions Mr Clark agreed that rather than necessarily being the best structural solution available, the concept put forward provided a reasonable basis for estimating a price for strengthening and a baseline against which other options could be tested. He acknowledged that if he was the project engineer he "*wouldn't necessarily accept that current scheme*". He also advised that reducing the standard of strengthening may not necessarily require less intervention in the building as the number of members would not necessarily reduce, only decrease in size.

Submitters in Support

- [93] **Mark Jerling:** Mr Jerling is an architectural designer and technologist working in residential construction. Mr Jerling also confirmed that he was an engineer.
- [94] Mr Jerling told us that the building has an irregular plan shape and a structure of uncertain integrity and condition that can only be checked by removing large amounts of the encasing concrete. He also expressed the view that strengthening may only result in larger pieces of the structure (infill panels and decorative elements) coming loose; and loss of glazing and the metal windows should be expected in the event of a sizable earthquake.

[95] Mr Jerling listed a number of published references relating to unreinforced masonry buildings in support of his view that public safety concerns should outweigh heritage retention. He offered the option of recreation of historical features in lightweight materials as a possible way forward.

[96] **Other Submitters:** a number of other submissions in support of the application cited concerns around public safety. These included submissions from:

Steve Ashton
Arthur Stewart
Roger Blaylock
Gary Denton
Antonios Focas
John Hale
Philip Stratford
Perrin Kirby
Andrew Wall (on behalf of Land Lease Limited)

Only Mr Stratford appeared at the hearing (see paragraph 120).

Submitters in Opposition

[97] **Rachel Devine:** Ms Devine appeared as counsel for the NZHPT. She invited us to consider several aspects in relation to the structural engineering matters raised by the Applicant. These included:

- NZHPT has always taken the view that heritage buildings must be safe and has advocated for heritage buildings to be strengthened on safety grounds for many years;
- the Canterbury earthquakes have not affected the seismic status of the Harcourts building or the likelihood of Wellington experiencing a seismic event and therefore have no direct relevance to the application;
- the Applicant's evidence that the building's capacity is 42%NBS recognises that the building is not earthquake-prone or, at least, raises uncertainty about the precise level of earthquake risk posed by the building and that the Applicant, now in receipt of Mr Clark's report and evidence, should seek a reassessment by the Council of whether the building is in fact earthquake-prone and is legally required to be strengthened or demolished at all;
- the Applicant has been repeatedly reminded of the building's seismic status since the building was purchased and chose to upgrade the building in 2000 without earthquake strengthening work;
- the Applicant has constructed the HBSC tower building in a manner that contributes to the earthquake risk associated with the Harcourts building, but no detailed assessment has been completed to definitively determine the risks associated with the interaction between the two buildings;
- the Applicant has not assessed all reasonable alternatives to total demolition, including the option of strengthening the building to less than 100%NBS; and
- the public interest in promoting a safe urban environment can be addressed by alternatives (likely to involve strengthening of some sort) other than total demolition.

[98] **Alex Gray:** Mr Gray is a civil engineer and a resident of Wellington who appeared on his own behalf. He told us that he disagreed with the statement in the assessment of heritage values that the building

“appears deceptively robust”. He invited us to consider the performance of the building in the 1942 Wairarapa earthquakes, for which there was no reported damage to the Harcourts building, while damage was caused to 5000 homes and Manners Street was closed for 3 months for safety reasons. Mr Grey suggested that this indicated that the building was robust for its age.

[C] Costs of Strengthening

Applicant

[99] **Con Anastasiou:** in support of his submissions on behalf of the Applicant, Mr Anastasiou presented various ‘rough order of cost’ estimates associated with strengthening the building. These costs included the following:

- cost of strengthening the building to 100%NBS - \$10.85m (plus GST)
- cost of façade retention - \$5.7m (plus GST)

The derivation of these costs was addressed in evidence presented by David Cooke.

[100] **David Cooke:** Mr Cooke is a Director of Mallard Cooke Ltd. He presented the basis for his cost estimate for strengthening of the building to 100%NBS. Mr Cooke’s evidence confirmed the cost estimates presented by Mr Anastasiou, but noted that once additional works to the facades, deemed necessary by Win Clark, were included the cost of facade retention increased to \$6.5m (plus GST).

[101] In response to our questions Mr Cooke confirmed that the cost estimate included costs to bring the building back to a tenatable state (i.e. included painting, carpet etc) but did not allow for any enhancements. He also confirmed that the implied accuracy of his estimates were in the range $\pm 10\%$.

[102] Mr Cooke provided a breakdown of the costs associated with façade retention in response to one of our requests. It is clear from this breakdown that a significant proportion of the cost of this option is related to temporarily supporting the façade while a new building is constructed behind it.

Submitters in Opposition

[103] **Debra Cranko:** as noted above (refer paragraph 63) Ms Cranko appeared as a witness for Historic Places Wellington. In relation to the issue of costs associated with strengthening, Ms Cranko brought to our attention *some inconsistency* in the application of GST in the Applicant’s evidence. She also noted that the relative cost of the alternative strengthening options that had been investigated and rejected by the Applicant had not been disclosed.

[104] Ms Cranko queried the cost of strengthening presented by the Applicant and invited us to consider the cost of other building strengthening examples which she presented.

[D] Economic / Commercial Viability

Applicant

[105] In his legal submissions for the Applicant Mr Anastasiou introduced us to two matters that we have described as economic and/or commercial viability. These were:

- the viability of implementing the strengthening work specified by Win Clarke and costed by Mallard Cooke; and
- the positive effects that would ensue for the central business district of Wellington, should demotion of the existing building be allowed to occur and a new building be erected on the site.

These matters were addressed in evidence by Grant Corleison and Andrew Washington for the Applicant, and by a number of submitters in support and in opposition.

[106] **Grant Corleison:** Mr Corleison is a qualified valuer and business associate of Mr Dunajtschik. He has had extensive experience over the years in relation to valuation and real estate and is very familiar with the application site having negotiated and facilitated its acquisition and that of the neighbouring site, where the HSBC tower building is now situated.

[107] Whilst Mr Corleison may be considered to not be entirely independent due to his relationship with the Applicant we accept his qualifications as a valuation and real estate expert. We further acknowledge that Mr Corleison stated that he would comply with the Environment Court Code of Conduct for Expert Witnesses. Finally, we note that no party took exception to Mr Corleison's expertise or claimed expert status. We therefore consider that Mr Corleison was providing evidence as an expert.

[108] Mr Corleison provided a detailed overview of the history and current condition of the building and the various attempts to provide an on-going economic use for the building. In conclusion he told us that the current owner has done everything *"humanly possible to achieve a sensible and sustainable outcome to the situation he now finds himself in"*. Further (based on the evidence of others that we heard from) he concluded that strengthening and retention of the Harcourts building or its facades is not commercially viable and invited us to find that the only sensible outcome is the granting of consent for the demolition of the building.

[109] In answers to our questions around the issue of the on-going viability of this heritage building, Mr Corleison stated that in recent years (i.e. since the Housing New Zealand Corporation vacated the building in 2010) there have been a number of factors that have led to the building's undesirability for tenants, namely:

- general tenant requirements for quality office spaces linked in part to the requirement for more 'green' office environments;
- earthquake rating and status issues that have been further emphasised and exacerbated by the Canterbury earthquakes; and
- the amount of vacant office space (particularly in the lower C and D grade spaces) as a result of the recession and the down-sizing of government occupancy.

[110] **Mr Andrew Washington:** Mr Washington is a registered valuer and director of Colliers International (Wellington Valuations) Limited. He was engaged as an independent expert by the Applicant, with the agreement of the NZHPT, to assess the commercial viability of strengthening the Harcourts building and retaining it. The report ("Colliers' Report") prepared by Mr Washington was part of the application documents and his evidence provided further narrative and context to that report.

[111] Mr Washington informed us that the report he authored assesses the value of the property "As Is" and compares this with the value of the property assuming the building can be demolished - the "Redevelopment Land Value".

[112] We were told that the "As Is" value takes into account the value of building strengthened to 100%NBS, minus any likely direct and indirect costs, plus the required developer's profit and risk allowance. Likewise we were told that the "Redevelopment Land Value" takes into account the value of the land minus the total building demolition cost. Mr Washington stated that if the value of property "As Is" is less than the "Redevelopment Land Value", then the strengthening works are not considered commercially viable in valuation terms.

- [113] Mr Washington provided detailed evidence supporting his overall conclusion that the strengthening and reinstatement works are not commercially viable and the highest and best use of the property is as a redevelopment site cleared of the existing building. In his evidence Mr Washington noted that his value conclusions take no account for the perceived heritage value of the property over and above what he described as market heritage or character factors.
- [114] In answer to our questions around the reason for adopting 100%NBS strengthening standard, Mr Washington stated that a lower strengthening standard, such as 70%, will impact on the ability to rent the property and thereby potentially increase vacancy and may have insurance implications. In short, Mr Washington told us that tenants are demanding 100%NBS as seismic issues are at the top of tenants' minds and anything less than 100%NBS will not result in a reasonable tenancy profile.

Submitters in Support

- [115] We heard from a number of submitters in support of the application many of whom were property developers or were experts advising property developers. We turn to consider each of these submitters in turn.
- [116] **Mr Ian Cassells:** submitter Brent Slater called Ian Cassells, a well-known and experienced commercial property owner and developer in Wellington, as his witnesses. Mr Cassells confirmed that he had undertaken a number of redevelopment projects including some involving listed heritage buildings.
- [117] The primary focus of Mr Cassells' evidence was on the importance of a vibrant and vital CBD. He noted that Wellington was currently in a very poor condition with retail and office uses flagging and property values low.
- [118] Mr Cassells told us that while he personally "*loved*" the Harcourt's building, it was in a prime location for development as a vacant site for high value office and retail tenancies that will help bring needed "*life*" back into the CBD.
- [119] Mr Cassells did not support preserving the street facades as he did not consider that this would result in a good heritage outcome either for the building or for the City. He went on to state that heritage is largely a public benefit and the public ought to be prepared to pay for the retention of heritage buildings rather than the entire burden being borne by the private sector.
- [120] **Mr Phillip Stratford:** Mr Stratford, also an experienced property developer, spoke to his written submission and highlighted the key points. He emphasised concerns about the impact that the Harcourts building could have on the HSBC tower building (the so-called "pounding effect" discussed elsewhere in this decision) and the general difficulties associated with earthquake-prone buildings.
- [121] In relation to the comment in his submission about the Kirkcaldies building and the retention of that façade, Mr Stratford noted that that building and surrounds differ markedly from the Harcourts building.
- [122] **Mr Eyal Aharoni:** Mr Aharoni, managing director of Primeproperty Group, a company with a significant ownership of commercial buildings in the CBD, spoke to his submission and also provided an additional written submission that he specifically addressed at the hearing. Mr Aharoni focused on the following matters:
- the viability of Wellington retail and the Golden Mile telling us that one of the biggest challenges the City has is its ability to retain its CBD as a viable centre and desirable retail destination;
 - the need for large floor plate office buildings which a vacant lot on the site would offer;

- that the contribution of historic buildings in making Wellington an attractive destination is overstated;
- that the history of the site shows that changes have occurred to it over time and any heritage values of the site can be adequately addressed by a display of the site in the lobby of any new building; and
- that Mr Dunajtschik is a man to be trusted to deliver of his promises in relation to this site.

[123] **Miles Seddon:** Mr Seddon is an Associate of Seddon Associates, a firm specialising in architecture, interior design and project management. We heard that the firm has had experience and involvement in some of the schemes proposed for the Harcourts building.

[124] Mr Seddon spoke to his written submission and reiterated the main points which concluded that there were too many negative factors to strengthening the building and that the huge financial cost makes the overall task impossible from an economic point of view.

[125] **Kent Atkinson:** Mr Atkinson presented in support of his written submission. He told us that he owned heritage buildings in Petone and as a qualified joiner he had extensive experience in strengthening such buildings. Mr Atkinson also told us that there has been a 400% increase in insurance costs for heritage buildings and as such the preservation of such buildings is becoming prohibitively expensive. Finally, Mr Atkinson, in acknowledging the heritage value of the Harcourts building, stated that he felt that replication of some of the more important elements of the building ought to be able to be achieved.

[126] **Chris Gollins:** Mr Gollins spoke to his written submission and provided additional written material in support. Mr Gollins confirmed his expertise in commercial real estate and stated that he is currently a member of the New Zealand Property Council Executive. In this capacity Mr Gollins provided an analysis of what the cost of retaining the building would be versus the benefit of demolishing the building and constructing a new building in its place and told us that the loss to the City over a 20-year period would be, conservatively, \$728,000,000.

Submitters in Opposition

[127] A few submitters in opposition also addressed the issue of economic or commercial viability, notably Mr Peter Dowell for Historic Places Wellington, and Mr Steve McColl for the NZHPT.

[128] **Peter Dowell:** Mr Dowell provided a statement of evidence and presented to us via a telephone link. Mr Dowell has significant investment experience and owns and manages a portfolio of heritage buildings in the Wellington CBD. In answer to our questions Mr Dowell provided details of the buildings he part owns and manages, including information of their NBS status, tenancy arrangements and floor plate sizes.

[129] Mr Dowell agreed with the Applicant that the Canterbury earthquakes have had a huge impact on the values of unreinforced masonry buildings. However, Mr Dowell went on to provide a different perspective from the Applicant on the economic value of heritage buildings, particularly in Wellington as follows.

[130] In relation to the demand for office space, Mr Dowell confirmed what the Applicant had said, namely, that the government is looking to downsize its office space requirements by some 17% and that this has put huge pressure on landlords who need to provide more incentives to attract tenants into their buildings. We heard from him that there is over 50,000 sqm plus of floor area vacant in the market at present, generally in B to C grade buildings. We heard that these buildings are not character buildings and are typified by low stud heights and very little character. We understood Mr Dowell to be agreeing that in relation to this type of office space there is limited demand.

- [131] In relation to character buildings Mr Dowell did not agree with Mr Corlesion's view that there is little demand for B grade character space. He told us that there is still good demand for B grade character office space in the CBD, with very few floor plates in excess of 1000 sqm. Majority of demand in this character market is for floor plates less than 500 sqm.
- [132] Mr Dowell agreed with the Applicant that the government tends to stay away from character space, but disagreed that top commercial and corporate tenants are not attracted to such space. He gave the example of 56 Victoria Street, which is the old Poultry Building,²² which is part of the Chews Lane development. This building is occupied by a number of commercial tenants, including Powershop and accountants WHK.
- [133] Further Mr Dowell referred us to the demand for even smaller spaces with tenants having their own exclusive floors which was "*well documented*" in the Colliers valuation. Again he gave an example of 58 Victoria Street, the former Ballinger building, being a "*fine example of what can be done with the facade and a new build behind, whilst attracting rates in excess of \$400 sqm*".
- [134] Mr Dowell then went on to cover the NBS issue. In relation to the Victoria Street building examples Mr Dowell said that it is well documented by various government ministries and corporate tenants that the minimum that they require is at 67% not 100%. He noted that smaller businesses are prepared to occupy buildings that sit around 50%. Finally, Mr Dowell noted that the Canterbury Earthquakes Royal Commission Report states that the minimum NBS should remain at 34%.
- [135] Mr Dowell acknowledged the evidence from the Applicant that the strengthening of the Harcourts building did not stack up economically, but he asked us to note that there was limited evidence provided on a proposal that kept the heritage features and added floors to the top of the building. Likewise he said that the issue of the relationship with the HSBC tower building has only been allowed to arise because the two buildings are in common ownership.
- [136] **Steve McColl:** Mr McColl is a registered valuer employed at Bayleys Valuations Limited and confirmed that he was one of the authors of report by Bayleys commissioned by the NZHPT and called "Commercial Viability Evaluation Report October 2012" ("Bayleys Report"). We had been provided with a copy of this report by the Applicant and a further copy was appended to Mr McColl's evidence.
- [137] Similar to the Colliers Report, the Bayleys Report modelled three scenarios for the building as follows:
- an 'as is' scenario which included the cost of strengthening to 100%NBS;
 - a four storey addition on top of the existing structure that was strengthened to 100%NBS; and
 - a multi storey on top of the existing structure strengthened to 100%NBS.
- [138] Similar to the Colliers Report none of the scenarios appeared to be commercially viable. However, Mr McColl asked that we note the various assumptions and limitations in the Bayleys Report, including that it was a discussion document only and it had not been prepared as a valuation document. In addition, he said the report only considered the commercial viability of the three scenarios and no others. Mr McColl noted that there may be other scenarios that would warrant consideration.
- [139] In relation to the NBS issue Mr McColl questioned whether there was any need to strengthen to 100%. He noted that 70-80% is the government's focus and in his experience this is what market sentiment would support.

²² Aka Colonial Carrying Company Building

[140] Mr McColl agreed with the Applicant that the seismic status of a building is an important contributing factor in attracting tenants, but he noted that the limited demand for office space cannot wholly be attributed to the seismic issues, citing the government policy on reducing office space requirements as one example.

[E] CBD Intensity and Vitality

[141] As noted in the above section on economic/commercial viability, a number of submitters supporting the proposal made the point that in their opinion the demolition of the Harcourts building would essentially 'pave the way' for a new replacement building, which in turn would increase intensity of development on the site and strengthen the vitality and vibrancy of the CBD. Submitters who advanced this proposition included:

Ian Cassells (a witness for Brent Slater)
Philip Stratford
Primeproperty Group (Eyal Aharoni).

[F] Planning Evidence

[142] During the course of the hearing we heard from three experienced planners: Angela Jones the Council's Reporting Officer, Ian Leary for the Applicant and Robert McLean for the NZHPT.

[143] **Angela Jones:** Ms Jones, a Senior Consents Planner with the Council's Development Planning & Compliance unit, was the author of the Council's s42A Report. In her report, which was taken as read at the commencement of the hearing, she confirmed that:

- the Harcourts building is a listed heritage building under the District Plan (ref; 185, Map 17) and is also listed with the New Zealand Historic Places Trust as a Category 1 historic place (register number 1435);
- the existing building was issued with an Earthquake-Prone Building Notice pursuant to a124(1)(c) of the Building Act 2004 on 27 July 2012;
- consent was sought for the total demolition of the listed heritage building, but consent was not being sought for any new building which the Applicant proposes to replace the existing building with. A new and separate resource consent application would need to be made for any replacement building, if the current application for demolition is successful; and
- the application does not seek consent for the creation of a vacant land/open space.

[144] In her report Ms Jones confirmed the activity status of the proposal was as a discretionary activity (restricted) under Rule 21A.2.1.

[145] Under the heading "District Plan Assessment" Ms Jones stated that the primary objective was:

"... to anticipate the effects that the proposal may have on surrounding environment, particularly the extent or degree to which the proposal would adversely affect historic heritage. The second consideration is whether the proposal is consistent with the relevant objectives, policies and assessment criteria as set out in the District Plan".²³

[146] With respect to the heritage effects of the proposal Ms Jones confirmed that she had drawn on the heritage expertise from three areas: firstly, the heritage assessment submitted with the application

²³ Section 42A Report page 16

prepared by Jeremy Salmond; secondly the Kelly Report commissioned by the Council; and thirdly the NZHPT's submission on the application.

[147] Referring to Mr Salmond's heritage assessment Ms Jones said that it included an explanation of what 'heritage significance' means and that it was a good starting point for considering heritage effects and that it was evident from Mr Salmond's assessment that the building holds significant heritage values. However, she noted that Mr Salmond's assessment *"does not offer an opinion on the loss of these heritage values should the building be demolished"* adding that *"it would be useful if Mr Salmond could offer his opinion in this regard as part of his evidence presented at the hearing"*.²⁴

[148] Referring to the Kelly Report Ms Jones noted that while the assessment does not include an overarching conclusion on the significance of the building, she was able to draw from the assessment that the building is *historically* significant for the period of ownership and occupation by T & G Mutual Assurance, was *aesthetically* significant for its bold, sculptural facade, and has *technical* values for the use of contemporary materials of structural steel and reinforced concrete. Ms Jones also noted that the Kelly Report made the point that in a city largely devoid of 19th and early 20th commercial buildings, the Harcourts building has both a rarity and very great townscape value, adding interest to the central business district, particularly the east side of Lambton Quay, where the majority of the street's older buildings can still be found.

[149] Referring to positive effects, Ms Jones stated in her report that the demolition of the building would also result in some positive effects relating to the protection of public health and safety given the earthquake-prone status of the building. She concluded that although there would be a more than a minor effect on heritage, there would also be a positive effect in the elimination of earthquake risk.

[150] Referring to the District Plan provisions, Ms Jones firstly identified the heritage objective (20.2.1) and associated policy (20.2.1.2), which are:

20.2.1 To recognise the City's historic heritage and protect it from inappropriate subdivision, use and development.

20.2.1.2 To discourage demolition, partial demolition and relocation of listed buildings and objects while:

- acknowledging that the demolition or relocation of some parts of buildings and objects may be appropriate to provide for modifications that will result in no more than an insignificant loss of heritage values; and*
- giving consideration to total demolition or relocation where the Council is convinced that there is no reasonable alternative to total demolition or relocation.*

In her report Ms Jones then said:

"It is evident that any application to demolish a listed heritage building has an effect on historic heritage. This objective specifically refers to protection from inappropriate development. I consider that because the alternative strengthening works are not economically viable demolition may not be inappropriate".²⁵

[151] Ms Jones' report also drew our attention to the commentary under Policy 20.2.1.2 which noted that when total demolition of a listed building is intended, the Council will need to be convinced that there is no reasonable alternative option to losing the heritage building.

[152] Ms Jones' report next discussed the objectives and policies relating to Central Area development generally and noted that a number of submitters had advanced the proposition that a new modern building to replace the Harcourts building would provide for a more efficient use of resources and would

²⁴ Ibid page 7

²⁵ Ibid page 9

increase the vitality of this part of the CBD and Golden Mile. Ms Jones stated that although raised by submitters this was not a matter that was within our discretion.

[153] In her report Ms Jones next addressed the assessment criteria under Rule 21A.2.1. She considered the relevant criteria to be:

21A.2.1.5 The nature, form and extent of the proposed work and the extent to which the work:

- *retains the main determinants of the style and character of the building or object and in respect of buildings, particularly the street elevation. The Council seeks to ensure that modifications to street elevations are kept to a minimum, and if possible not altered at all. If necessary, preference shall be given to altering rear or secondary elevations;*
- *respects the original scale of the original building or object. The Council seeks to ensure new work is not usually dominant, particularly where rooftop additions are proposed;*
- *is sympathetic in form, proportions, materials, colours and the patina of materials of the existing building or object;*
- *avoids loss of heritage fabric and the destruction of significant materials and craftsmanship;*
- *maintains the relationship of the building or object with its setting; and*
- *respects the historic or other values for which the building was listed.*

21A.2.1.8 The extent to which the work is necessary to ensure structural stability, accessibility, and means of escape from fire and the extent of the impact of the work on the heritage values of the building. The Council will seek to ensure that in any case every reasonable alternative solution has been considered to minimise the effect on heritage values.

21A.2.1.11 Whether professional heritage or conservation advice has been obtained from the NZHPT or any other professionally recognised expert in heritage conservation.

21A.2.1.14 Whether there is any change in circumstances that has resulted in a reduction of the building's heritage significance since the building was identified in the plan.

21A.2.1.21 Whether adaptive reuse of a listed building or object will enable the owners, occupiers or users of it to make reasonable and economic use of it.

21A.2.1.22 The public interest in enhancing the heritage qualities of the City and in promoting a high quality, safe urban environment.

[154] Ms Jones noted that the proposed demolition would see the total loss of significant heritage fabric and values. Referring to criterion 21A.2.1.8 she asked the question if there was any possibility of it being viable to retain at least some of the building's original features, possibly the facade, and to incorporate these into a replacement building. In her report she requested that the Applicant further consider if any heritage values of the building could be retained and incorporated into a new building. Other areas where Ms Jones sought further information/clarification from the Applicant included:

- clarification around the building's NBS percentage; and
- clarification around the 'pounding effect' between the Harcourts building and the HSBC tower building and how this might be addressed.

[155] Addressing s6(f) of the Act Ms Jones noted that while any application to demolish a listed heritage building has an effect on historic heritage, the section specifically refers to protection from 'inappropriate' development, adding that:

"It is considered that because the alternative strengthening works are not economically viable demolition may not be inappropriate".²⁶

- [156] Addressing s7 "other matters" Ms Jones noted that a number of submitters considered that the existing heritage building contributes to the amenity values of the area and is a valued component in the surrounding streetscape, but said:

"Whilst I do not disagree with these submissions, this view must be weighted against the public safety and economic viability matters discussed above".²⁷

- [157] In the end result Ms Jones concluded that consent should be granted. She wrote:

The consideration of this application presents the commissioners with the difficult task of balancing environmental effects, in this case the loss of heritage, with the relevant matters of public safety and economic viability. All of these considerations, and the weight we should give them, are subjective to some extent. This is evident by the submissions received and the split between those that support the application and those who wish to see it declined.

Although through this report I have requested that the applicant provide clarification around a number of issues, I believe the conclusions I have reached in the separate assessments of my report are the correct ones, namely:

- *the building requires strengthening (irrespective of what is the absolute correct %NBS) to both protect public safety and to attract tenants;*
- *the cost of this strengthening work is not economically viable; and*
- *the demolition of the building will result in a significant loss of heritage.*

In my view the main consideration therefore comes down to where it is appropriate to require a private owner/developer to burden the cost of protecting heritage, which has a wide community benefit and is even a matter of national importance under the Act. In my opinion this is not a reasonable expectation and therefore my recommendation to the hearing committee is that consent should be granted.²⁸

- [158] **Ian Leary:** Mr Leary is a Director of Spencer Holmes and Wellington-based engineering, survey and resource management consultancy. He holds qualifications in resource management and land surveying and has some 20 years' experience in land development, planning and resource management. Mr Leary confirmed that he had been requested by the Applicant to provide planning evidence in support of the application. He noted that he had not prepared the application or had involvement with the consent process prior to preparing his evidence.

- [159] Mr Leary confirmed that consent was only sought under Rule 21A.2.1 (i.e. for the demolition of the building) and not for the construction of a new (i.e. replacement) Central Area building, nor for the creation of vacant land/open space under Rule 13.4.2. Mr Leary did however advise us that after the demolition of the building it was the Applicant's intention to construct an extension to the adjacent HSBC tower building on the Harcourts site and to integrate the new structure into the existing HSBC tower.

- [160] Mr Leary told us that he accepted that the proposal will demolish a building with heritage value resulting in a loss of historic heritage; but given that the Applicant had demonstrated that structural strengthening of the building was uneconomic, and that there was no economically viable use for the building, demolition of the building was a sustainable use of resources and consistent with the overall purpose of the RMA.

²⁶ Ibid page 14

²⁷ Ibid page 14

²⁸ Ibid pages 14 and 15

[161] Referring to the District Plan's objectives and policies for heritage, including Objective 20.2.1 and Policy 20.2.1.2 (refer [150] above), Mr Leary said that he accepted that the objective and policy clearly seek to protect historic heritage, but noted however that total demolition is specifically provided for in certain circumstances.

[162] Commenting on the reference to 'inappropriate' use and development in Objective 20.2.1 Mr Leary said that in order to meet the objective, the proposed demolition of the Harcourts building must be deemed to be 'appropriate'. Then, referring to Policy 20.2.1.2, Mr Leary noted that there is an acknowledgement in the policy that Council could give consideration to total demolition, where it is convinced that 'there is no reasonable alternative to total demolition or relocation'. In the context of this policy Mr Leary told us that he was *"satisfied that all reasonable alternatives have been traversed"*.²⁹ This led Mr Leary to ultimately conclude that the demolition of the building was 'appropriate' and consistent with the objective and related policies.

[163] Mr Leary also spent some time traversing the District Plan's objectives for Central Area buildings, particularly those relating to:

- enhancing a vibrant, dynamic Central Area with a distinctive physical character and sense of place;
- encouraging the development of new buildings;
- ensuring that new buildings maintain and enhance the amenity and safety of the public environment of the Central Area; and
- promoting energy efficiency and environmental sustainability in new building design.

[164] Noting that the objectives and policies for Central Area development focus on ensuring that amenity values as well as safety and efficiency are considered in development decisions in the zone, Mr Leary told us:

"While heritage forms part of the amenity, the objectives, policies and rules of the Plan ensure that a new building constructed under the District Plan will have its design and external appearance considered and its contribution to the amenity of the City considered."

*While the demolition of the Harcourts building can be deemed to be inconsistent with Objectives and Policies relating to the preservation of historic heritage, its preservation will also be inconsistent with other Objectives and Policies relating to promoting a safe and efficient Central Area".*³⁰

[165] Further on in his evidence when traversing the scope of the applicable rule (Rule 21A.2.1), and in particular the following assessment criterion:

21A.2.1.22 The public interest in enhancing the heritage qualities of the City and in promoting a high quality, safe urban environment

Mr Leary made the following observations:

This criterion perhaps summarises the contradictory issues that need to be considered for this proposal. While I have discussed all the other criteria above, my discussion of relevant issues could have been limited to just this criterion. Essentially, it is the crux of the matter.

The criterion has two 'arms' to consider. On the one side the enhancing (or maintenance) of heritage qualities. On the other is a high quality, safe urban environment.

²⁹ Leary evidence para 104

³⁰ Ibid paras 142 and 143

I would agree that this proposal to demolish the Harcourts Building, will not enhance the heritage qualities of the City.

On the other hand, the proposal if granted, will promote a high quality, safe urban environment by removing a potentially dangerous and unsafe building, and later replacing it with a new, modern, efficient building.

There is an obvious tension between these two important outcomes, which are both promoted by the District Plan and the RMA.

The heritage values are acknowledged and accepted.

Ultimately it is the economic viability of the building and the cost of retaining that determines the outcome. Even buildings which are seen as imperative or extremely high heritage buildings will have a point where the financial cost of saving/retaining them is too high.³¹

- [166] Referring to s6(f) of the Act, which provides for the protection of historic heritage from 'inappropriate' subdivision, use and development as a matter of national importance, Mr Leary told us that he had come to the conclusion that the effects on historic heritage in the circumstances was appropriate given that those effects were unavoidable as no other practicable or reasonable alternative had been identified.
- [167] **Robert McLean:** Mr McLean is the Senior Heritage Policy Advisor for the NZHPT. He holds a Bachelor in Resource Management Planning and is a full member of the New Zealand Planning Institute. He confirmed that he had 15 years' experience in heritage and resource management research and planning.
- [168] Drawing on the evidence of Ms Dangerfield, Mr McLean told us that he accepted that the building had significant historic and architectural values.
- [169] Referring to the matter of earthquake risk and strengthening work Mr McLean commented that the demolition of earthquake-prone buildings removes the potential of earthquake risk that may arise during a strong earthquake, adding that this removal can be viewed as a positive provision in terms of reducing potential (and perceived) risk to the public. However, Mr McLean said that he did not consider that Win Clark's engineering assessment provided sufficient evidence to justify demolition on the basis of removing risk.
- [170] Commenting on the actual and potential effects on the environment resulting from the demolition of the building, Mr McLean said that he considered that demolition would have "*actual adverse effects of high potential impact*" as it would remove the options for present and future generations to adapt and reuse the building.
- [171] Referring to the Wellington Regional Policy Statement ("RPS") Mr McLean noted that the Harcourts building, as a Category 1 registered historic place under the Historic Places Act 1993, falls within the definition of a regionally significant heritage resource.
- [172] Referring to the District Plan's heritage provisions Mr McLean noted that the provisions were reviewed and updated by Plan Change 43, which is now operative, with the motivation behind the plan change being the elevation of historic heritage to a 'matter of national importance' under s6(f) of the Act in 2003.
- [173] Mr McLean drew our attention to the genesis of Rule 21A.2.1 through the plan change process, noting that Council had decided to adopt a restricted discretionary activity rule for the demolition of listed

³¹ Ibid paras 208-214

heritage buildings. He told us that the restricted discretionary approach was given considerable attention by Council at the time. He referred to the Council's decision report on the plan change, dated October 2007, where it is recorded that Council gave 'very careful consideration to the various arguments for and against applying Discretionary (Unrestricted) status', but that the decision was that restricted discretionary activity status was more appropriate to avoid consideration of wider or extraneous issues in the application of the heritage rules. Mr McLean quoted the following passage from the Report of the District Plan Hearing Committee:

"The Committee accepted that it was common practice to apply rules under the various activity classes in a hierarchical way, i.e. from Permitted, Controlled, Discretionary (Restricted), Discretionary (Unrestricted) to Non Complying. Activities were usually given one classification or another on the level of regulatory control that the Council wished to exercise. This was in the understanding that more regulatory 'teeth' could be applied the higher the activity classification.

However, the Committee did not accept that in respect of discretionary activities there was any marked difference in the power of regulatory control. The key distinguishing features between Discretionary (Restricted) and Discretionary (Unrestricted) activities were seen as the matters over which discretion could be exercised and the ability to provide for the non-notification of Discretionary (Restricted) proposals. The Committee first agreed that given the specific focus of the heritage chapters in the Plan that it would be appropriate to apply the Discretionary (Restricted) classification to heritage activities with the matters for discretion solely restricted to historic heritage.

As a consequence the Discretionary (Unrestricted) heritage rules would not act as a 'backstop' - i.e. enabling consideration of wider issues not 'triggered' by other land use rules in the District Plan. It was acknowledged that while there was no real evidence that Discretionary (Unrestricted) rules have been used in this way it was nevertheless accepted as a possibility and the Committee was firmly of the view that the consideration of extraneous matters should be avoided".³²

[174] Turning next to the now operative heritage provisions Mr McLean referred firstly to Objective 20.2.1 (refer [150] above) noting that it reflects the wording of s6(f) of the Act, and to Policy 20.2.1.2 (also refer [150] above). Referring to Policy 20.2.1.2 and the explanation to the policy, Mr McLean also noted that it was stated that the Council would consider total demolition only where it was convinced that there was no reasonable alternative.

[175] Mr McLean next addressed the applicable rule, Rule 21A.2.1, and in particular the assessment criteria. His assessment led him to conclude:

" ... the proposed demolition of the Harcourts building is inconsistent with the relevant objectives, policies and assessment criteria of the district plan. The operative district plan, as modified by plan changes 43 and 48, seeks to retain heritage buildings as part of a diverse and creative city, to discourage demolition and requires the consideration of all reasonable alternatives to demolition to minimise impacts on heritage values. The plan changes discussed were motivated by the elevation of historic heritage as a matter of national importance under section 6(f) of the RMA in 2003, the Urban Design Protocol (especially to promote more concentrated and accessible urban environment) and a greater recognition of the city's economic, social and cultural wellbeing".³³

[176] Under s104(1)(c) of the Act as relevant "other matters" Mr McLean drew our attention to two matters: registration under the Historic Places Act 1993 and the Wellington City Council's Heritage Policy. On the first matter, Mr McLean noted that a Category 1 registration, such as applies to the Harcourts building, confirms that the building is a 'place of special or outstanding historical or cultural heritage significance

³² Proposed District Plan Change 43: Heritage Provisions. Report of the District Plan Hearings Committee, adopted by Council - 10 October 2007. Appendix 1

³³ McLean evidence para 94

or value'. Mr McLean advised that it was his opinion that demolition of the building is incompatible with the building's registration as a Category 1 historic place.

[177] In relation to the Council's Heritage Policy, Mr McLean noted that the policy contains three goals:

- recognition - Wellington's heritage is recognised as contributing to our understanding of our cultural diversity and awareness of sense of place;
- protection, conservation and use - Wellington's unique character is enhanced by the protection, conservation and use of its heritage; and
- sustainable economic use - Wellington's heritage is acknowledged as contributing to a vibrant economy.

Overall, Mr McLean said that he considered the heritage policy aims to promote the protection of the City's historic heritage and also encourage earthquake strengthening in a manner that minimises negative impacts on heritage values.

[178] Concluding, Mr McLean summarised his evidence by saying that he considered the demolition of the Harcourts building was inappropriate because:

- demolition would result in actual and potential adverse effects;
- demolition does not protect heritage resources of regional significance;
- demolition is contrary to the District Plan heritage objectives, policies and assessment criteria as the Plan does not support demolition of significant heritage buildings unless all reasonable alternatives have been considered;
- demolition will remove a building that has statutory recognition as a registered Category 1 historic place under the Historic Places Act 1993; and
- the building is not 'beyond repair' or structurally unsafe.

Expanding on the last point Mr McLean said that the Harcourts building:

"... will, as with other significant heritage buildings, require on-going earthquake strengthening upgrade along with regular repair and maintenance. Demolition would therefore be an inappropriate use. Strengthening this significant building is a better alternative to demolition".³⁴

[F] Other Matters Addressed in Evidence

[179] **Phil Kelliher:** the only other submitter to present evidence to the hearing was Phil Kelliher. Mr Kelliher spoke to his submission and emphasised that he was presenting as a 'passionate Wellington citizen' who considered the building has significant heritage value and is a building which adds to his enjoyment and pride of living and working in Wellington. He said that he considered that the Council should be defending heritage values, and particularly those of special/outstanding significance or value. In essence Mr Kelliher explained what the building meant to him, that heritage needed to be defended and that earthquake strengthening was the responsibility of the building owner.

³⁴ Ibid para 110

[G] Council Officer's Right of Reply

[180] In her 'right of reply' as the reporting officer Ms Jones confirmed that she considered that the Applicant had brought forward the further information that she had requested, particularly that relating to the significance of the loss of heritage if the building was demolished; the assessment of alternatives, the ability to retain some of the building's heritage features; and the public safety risk (percentage NBS) and significance of the 'pounding effect'.

[181] Responding to submitter comments that the Applicant was not seeking consent for a new replacement building, Ms Jones said that while the Council does not 'unbundle' a lot of consents it considered that demolition could reasonably be unbundled (i.e. separated) from any future application for a new replacement building - the two matters were not 'inter-twined'. Ms Jones confirmed that consent was not required for a 'vacant site' as a consent condition was being recommended that required that consent must be granted for a replacement building before demolition could be undertaken. Here Ms Jones was referring to consent conditions (b) and (c) which she was recommending:

(b) Prior to any works commencing for the demolition of the listed heritage building a resource consent must be granted for a replacement building for the site.

(c) Construction on the replacement building as approved in accordance with condition (b) above must commence within 6 months from the completion of the demolition of the listed heritage building.

[182] Referring to positive effects associated with a new replacement building Ms Jones confirmed that these would be a matter for assessment when an application for a replacement building was being considered, and not as part of the present application.

[183] Referring to the 'earthquake-prone' status of the building and the percentage NBS achieved by the Harcourts building, Ms Jones said that a 'do nothing option' was not an option.

[184] Commenting on submitters' assertions that demolition was not in accordance with the Conservation Plan, Ms Jones said that the plan was not a statutory document and does not preclude an application for demolition.

[185] Ms Jones confirmed that the building interior was not protected under the District Plan listing and that internal additions and alterations, including removal of interior fabric, could proceed as a permitted activity.

[186] Referring to District Plan Change 43 Ms Jones confirmed that when the change was first notified minor alterations were a restricted discretionary activity, whereas all other additions and alterations, including partial demolition and total demolition, were an unrestricted discretionary activity. However, through the submission and decision-making process the change was made to make all additions and alterations, including partial demolition and total demolition, a restricted discretionary activity.

[187] Ms Jones concluded her right-of-reply by reaffirming that she considered her assessment and conclusions as outlined in the s42A report were 'correct' and that her recommendation that consent should be granted, subject to her recommended consent conditions, remained her position.

Applicant's Right of Reply

[188] In his right-of-reply Mr Anastasiou traversed all of the major matters that had been discussed during hearing, with a particular focus on the following:

- bundling/unbundling
- scope of the application
- positive effects
- where the building sits in terms of percentage of new building standard (NBS)
- funding options
- the 'history' of Plan Change 43
- scope of Rule 21A.2.1 and the extent of our discretion.

[189] In summary, Mr Anastasiou stated the Applicant's position as follows:

Bundling/Unbundling

[190] Mr Anastasiou's position was that separating (i.e. unbundling) the application for consent to demolish the Harcourts building from an application for a new replacement building was, in the circumstances of this application, appropriate.

Scope of Application

[191] There was no intent to create vacant open space but rather the Applicant's intention was, should consent be granted, to seek consent for a new building to be erected on the site covering the whole building footprint. The new building would be connected to the adjacent HSBC tower building.

Positive Effects

[192] Noting that Ms Jones had stated that the positive effects associated with a new replacement building were not effects to be taken account of in the context of the current application, Mr Anastasiou submitted that positive effects arising for the application to demolish the Harcourt's building are those associated with the 'enhancement of public safety'.

New Building Standard (NBS)

[193] It was Mr Anastasiou's submission that the actual percentage NBS of the Harcourts building was a 'sideshow' in the context of the current application. The determinative point was that the building had been identified as an earthquake-prone building through the statutory process, however 'imperfect purists may say the statutory process is'. Here Mr Anastasiou was referring to the issue of the Earthquake-Prone Building Notice issued under s124(1)(c) of the Building Act 2004.

[194] Noting that there had been various percentage NBS figures mentioned during the course of the hearing, Mr Anastasiou submitted that our findings with regard to the earthquake behaviour of the building must reflect the evidence of Win Clark which, he said, was the only evidence based on any "*rigor or any kind of analysis or assessment*".

Funding Options

[195] Responding to submitters' comments about the availability of funds (from Council and NZHPT) to assist with heritage protection, Mr Anastasiou said that there were "*no funding options that are realistic*" given that the total cost of strengthening and refurbishing the building is \$10.85m.

History of District Plan Change 43

[196] Mr Anastasiou outlined his understanding of the plan change and that when initially publicly notified demolition of heritage buildings required consent for a discretionary activity (unrestricted); but that through the submission and decision-making process the change to discretionary activity (restricted) had been made.

[197] This change, and the consequent outcome - i.e. Rule 21A.2.1 - led Mr Anastasiou to next refer to the discretion available to us, including our ability to have regard to Part 2 matters.

Scope of Rule 21A.2.1 and the Extent of Our Discretion

[198] In summary, Mr Anastasiou's submission was:

"... you are clearly entitled to go to Part 2 to look at reasons for granting this resource consent and that you are not corralled and prevented by going to Part 2 because of the drafting of this particular rule".

He told us that 'historic heritage' does not exist in a vacuum.

[199] We discuss the statutory context in the next section of this decision. Suffice to say here, that at a general level we agree with Mr Anastasiou that 'historic heritage' does not exist in a vacuum.

STATUTORY CONTEXT

Relevant Planning Instruments

[200] The relevant planning instruments are:

- Operative District Plan - (a) Chapters 12 and 13 "Central Area" provisions (as amended by Plan Change 43 in relation to heritage and Plan Change 48 in relation to Central Area provisions generally); and (b) Chapters 20 and 21 "Heritage" provisions (as amended by Plan Change 43); and
- Wellington Regional Policy Statement (both operative and proposed).

Reasons for Resource Being Required

[201] As will be apparent from earlier comments, resource consent is required under the District Plan as a discretionary activity (restricted) under Rule 21A.2.1 for the demolition of a listed heritage building.

[202] An issue raised at the commencement of the hearing was related to 'what the activity status of the application means', to which we now turn to consider.

[203] In his opening submissions Mr Anastasiou addressed us at some length on the status of the activity. He referred us to s104C which is concerned with the matters a consent authority must consider when determining restricted discretionary activity. That section states:

104C Determination of applications for restricted discretionary activities

- (1) *When considering an application for a resource consent for a restricted discretionary activity, a consent authority must consider only those matters over which -*
 - (a) *a discretion is restricted in national environmental standards or other regulations;*
 - (b) *it has restricted the exercise of its discretion in its plan or proposed plan.*
- (2) *The consent authority may grant or refuse the application.*

- (3) *However, if it grants the application, the consent authority may impose conditions under section 108 only for those matters over which -*
 (a) *a discretion is restricted in national environmental standards or other regulations:*
 (b) *it has restricted the exercise of its discretion in its plan or proposed plan.*

- [204] Mr Anastasiou submitted that s104C is subject to the overriding provisions in Part 2 of the Act and cited several cases to support this submission.³⁵ We now comment on the case law that we were invited to review.
- [205] The first series of cases cited were the Environment Court and High Court judgments in what has become known as the *Woolley Trust* cases.³⁶ This case law preceded an amendment to the Act in 2009 and indeed was responsible for such an amendment being made. Prior to the amendment the law was when considering a restricted discretionary activity a consent authority could consider any Part 2 matters as long as it was a matter that would result in a grant of consent.
- [206] Mr Anastasiou also referred to a more recent case (i.e. since the 2009 amendment) of *Ayrburn Farms Estate Limited v Queenstown Lakes DC* [2012] NZHC 735. In this case the High Court found that the since the 2009 amendment the Environment Court was obliged to have regard to “any Part 2 matters which related to the matters over which the council had reserved its discretion”.³⁷
- [207] The 2009 amendment, as cited above, clarifies that we can only consider those matters that the plan has restricted our discretion too.
- [208] Both the Applicant and the Council’s planning witness invited us to take a broad view of the application of Part 2 of the Act. We must, therefore, consider whether this is appropriate in light of the statutory framework.
- [209] The rule in question is Rule 21A.2 which provides as follows:

Any modification to any listed heritage building or object which is not a Permitted Activity, or the demolition or relocation of any listed heritage building or object, except:

- ***modifications required to erect signage (which require consent under rule 21D)***

is a Discretionary Activity (Restricted) in respect of:

21A.2.1.1 Historic heritage

21A.2.1.2 Height, coverage, bulk and massing of buildings (to the extent that these affect historic heritage).

- [210] The assessment criteria number 20 and are preceded with the words “*In determining whether to grant consent and what conditions, if any, to impose, Council will have regard to but will not be restricted to the following criteria*”.
- [211] As noted by the planning witnesses, we heard that many of the criteria are not directly relevant to the demolition of heritage buildings. We discuss this further below.
- [212] The issue therefore is: what are the matters in this rule that our discretion is limited to?

³⁵ Paragraph 87 Opening Legal Submissions

³⁶ *John Woolley Trust v Auckland CC* 92007) 13 ELRNZ 243 (Env) and *Auckland CC v John Woolley Trust* (2008) [2008] NZRMA 260

³⁷ Ibid para 100

- [213] As noted above, the Applicant and Council planner took a broad approach to the Part 2 assessment and in the case of Mr Anastasiou³⁸ many matters in Part 2 were brought to our attention.
- [214] In contrast Ms Devine, counsel for NZHPT, submitted that the approach taken by Mr Anastasiou - to consider all of the matters under s104 of the Act, subject to the broad balancing exercise required by Part 2, is not correct.³⁹ In short, Ms Devine submitted that this, incorrect, approach endeavours to balance the acknowledged heritage values of the Harcourts building against the commercial viability of strengthening the building and the safety concerns that have been raised about the building's current state. The approach taken and submitted to be correct by NZHPT is that our consideration is limited to considering historic heritage.
- [215] Ms Devine also cited the *Ayrburn Farms* case to support her conclusions and referred us to a very recent case of the Environment Court that followed the *Ayrburn Farms* position. In *Oman Holdings Limited v Whangarei DC*⁴⁰ the Environment Court stated that: "*We agree that the 2009 Amendment Act does not change the position expressed in Woolley that we must take into account s104(1) and Part 2, but only in so far as they relate to the matters over which discretion is restricted*".⁴¹
- [216] We agree that the law is now that set out in s104C and as discussed and applied in the *Ayrburn Farms* and *Oman Holdings* cases cited to us. We therefore agree with the submissions of Ms Devine that our Part 2 consideration is limited to applying and interpreting Part 2 in relation to those matters over which discretion has been restricted.
- [217] As set out above, Rule 21A.2 provides that demolition of a heritage building is a discretionary activity (restricted) in respect of 'historic heritage' and 'height, coverage, bulk and massing of buildings (to the extent that this affect historic heritage)'. Submissions and evidence from all parties who addressed us on this issue accepted that only the first matter, historic heritage, is relevant to the demolition of a heritage building. The latter matter would be relevant to partial demolition, the addition of additional floors to the existing building, or relocation.
- [218] In relation to the assessment criteria list we accept that these criteria are not the matters over which discretion is reserved. We consider that the criteria are to be applied to assist us in determining what matters we are to consider under the ambit of Rule 21A.2.1 "historic heritage".⁴²

Are we entitled to consider commercial viability issues either under the assessment criteria of Rule 21A.2.1 or under Part 2?

- [219] In this section we review the submissions and evidence of the Applicant and NZHPT in relation to their analysis of the assessment criteria and Part 2 and their respective views on whether we are entitled to consider commercial viability issues under either of these.
- [220] Ms Devine submitted that the Applicant's concerns about the commercial viability of strengthening the building compared to constructing a new building can be given little or no weight due to the limited discretion provided by the rule. Ms Devine elaborated by referring to the definition of historic heritage in the Act and noting that it does not enable us to consider commercial viability issues.⁴³ Further Ms Devine acknowledged that the term historic heritage can also be informed by the assessment criteria relating to historic heritage under the Plan (as we have noted above).

³⁸ Opening submissions paragraphs 189 - 206

³⁹ Paragraphs 32 and 33 of her opening submissions

⁴⁰ [2012] NZEnv 137

⁴¹ Ibid para 7

⁴² As noted by Ms Devine at para 44 of her legal submissions citing *Tuscany Ltd v Christchurch CC* C99/2005

⁴³ Para 43 NZHPT Legal Submissions

- [221] The legal submissions for the Applicant and for NZHPT, together with the planning evidence for the Applicant, Council and NZHPT, all provided analysis of the assessment criteria.
- [222] The Applicant referred us to a number of the assessment criteria as supporting the position that the commercial viability issues and related matters (i.e. the seismic status of the building) are valid considerations. The criteria referred to plus the rationale for inclusion of it is as follows:
- 21A.2.1.14 - *Whether there is any change in circumstances that has resulted in a reduction of the building's heritage significance since the building was identified in the plan.*
- 21A.2.1.15 - *The extent to which the building or object has been damaged by fire or other human generated disaster or natural disaster*
- We consider these two criteria together as the rationale for both overlaps.
- [223] The Applicant noted in this regard that we ought to consider the earthquake-prone building notice issued by Council under s124 of the Building Act 2001 on 27 July 2012 and the implications of that notice as fitting these criteria. In particular, the Applicant noted that the most significant part of the heritage value is the unreinforced masonry that cannot be economically retained to avoid collapse in the event of a significant seismic occurrence.⁴⁴
- 21A.2.1.8 - *Whether adaptive reuse of a listed building or object will enable the owners, occupiers or users to make reasonable or economic use of it.*
- [224] The Applicant told us that the possibility of adaptive reuse has been explored by the Applicant and by at least 3 independent experienced developers, and all concluded that such reuse is not commercially viable. Further, the Applicant noted that in the absence of demolition of the building and redevelopment of the site it is impossible to make 'reasonable and economic use' of the site.⁴⁵
- 21A.2.1.22 - *The public interest in enhancing the heritage qualities of the city and in promoting a high quality safe urban environment.*
- [225] The Applicant told us that in its current state the building is earthquake prone and imposes a risk to life, limb and property and therefore does not contribute to the provision of a safe urban environment⁴⁶. In contrast, the Applicant told us that the demolition of the building will pave the way for a modern, sustainable building consistent with the provisions of Part 2 of the Act.
- [226] The NZHPT did not agree with the assessment of the Applicant and considered that the application was contrary to all but one of the relevant criteria (that criterion being 21A2.1.11 - i.e. that the Applicant has obtained professional heritage advice). In respect of all other criteria NZHPT took the view that either the criteria did not apply to demolition and/or the application could not meet such criteria. In short, NZHPT did not consider the criteria allowed a consideration of the wider economic or commercial viability issues that the Applicant was seeking us to consider.
- [227] In relation to Part 2 matters the Applicant invited us to take an unfettered approach to applying Part 2. The Applicant placed particular emphasis on the decision of the Environment Court in *New Zealand Historic Places Trust v Manawatu DC* [2005] NZRMA 431 and invited us to follow the reasoning and framework adopted by the Court in that case.

⁴⁴ Applicant Legal Submissions paragraphs 146-151

⁴⁵ Ibid paragraphs 158 - 160

⁴⁶ Ibid paragraphs 162 - 164

- [228] This case was the first one where the Court had considered the insertion of historic heritage as a matter of national importance in s6. For this reason we agree with the Applicant that this is an important case that we need to consider in more detail.
- [229] The *Manawatu* decision was concerned with an application for resource consent to demolish a Category B heritage building in Fielding. Demolition of such a building was a discretionary activity under the Manawatu District Plan. The Council in that case had given consent to demolish the building and the NZHPT had appealed. The Court held in favour of the Council decision and confirmed that consent to demolish was upheld.
- [230] The key legal finding of the Court was that the elevation of historic heritage as a matter of national importance did not mean that the heritage embodied in a building needed to be protected at any cost, rather it was to be weighed as a nationally important factor in deciding whether the proposal promoted sustainable management.
- [231] In relation to the facts in the case there are some similarities with the present case. First, the Court had evidence that it would be very difficult, if not impossible to make the building economically self-sustaining. Secondly, there is limited funding available to assist owners of heritage properties to maintain and protect them. Thirdly, there was no application for consent to replace the building with any particular redevelopment. Fourthly that while the building could be brought up to a tenantable state, the income stream would not support the capital expenditure required.
- [232] The Court concluded that to refuse consent to demolish the building would not promote sustainable management:
- a) in the sense of enabling the owners to provide for their economic wellbeing in an attempt to impose upon them the cost of preserving this building as a form of museum exhibit; nor
 - b) in the sense of providing for the cultural wellbeing of the community and condemning this building to a slow and sad deterioration to the point where, quite feasibly, it would have to be demolished as a safety risk.
- [233] We consider that the important legal distinction between the *Manawatu* case and this case is that that case concerned a fully discretionary activity whereas this one is restricted. The important factual or contextual difference is that since the *Manawatu* case there has been the Canterbury earthquakes which have altered both peoples' perceptions of heritage buildings and the ability to fund their retention (both in the sense of insurance and structural strengthening costs).
- [234] In relation the application of Part 2 matters, as noted above, Ms Devine for the NZHPT invited us to include that the only Part 2 matter that we are entitled to consider is s6(f) - the protection of historic heritage from inappropriate subdivision, use and development. Citing the case of *Wellington Boys' and Girls' Institute Inc v Wellington City Council*.⁴⁷ Ms Devine submitted that the conclusion of the Court in that case is the same conclusion we should reach in the case of the Harcourts building, namely that the demolition is an inappropriate use and development because of:
- the building's Category 1 status deeming it to be worthy of the highest level of protection;
 - Plan Changes 43 and 48 that "*indicate a clear view that a more rigorous and protective assessment is to be made of proposals to modify heritage buildings and areas*";⁴⁸ and
 - the inconsistency with the guidelines in ICOMOS.

⁴⁷ [2010] NZRMA 137

⁴⁸ Ibid at para [56]

Our Findings and Approach

[235] As already indicated we agree with the submissions of NZHPT that our discretion is limited by the matters in the District Plan. The only relevant matter in the Plan that our discretion is restricted to is historic heritage.

[236] We find that Part 2 of the Act and the assessment criteria under Rule 21A.2.1 should be considered to help us assess the meaning of, and effect on, historic heritage in the context of this application.

[237] We acknowledge that the District Plan assessment criteria do not easily fit with an application to demolish and appear to have been developed to apply more to applications to partially demolish, add new features to a building, or relocate a building. We were told of the history of the development of the rule which would support this assessment.⁴⁹

[238] In relation to the District Plan assessment criteria we do not consider the limited approach taken by NZHPT is appropriate. To make the criteria meaningful to an application to demolish a heritage building we agree that the broader approach taken by the Applicant is the more appropriate.

[239] In relation to the following assessment criteria:

- 21A.2.1.14 - *Whether there is any change in circumstances that has resulted in a reduction of the building's heritage significance since the building was identified in the plan*
- 21A.2.1.15 - *The extent to which the building or object has been damaged by fire or other human generated disaster or natural disaster*

we do not consider that the earthquake-prone building notice can be said to have reduced the building's heritage significance. Nor can the notice be said to fit into criterion 15 either. That is not to say the notice is irrelevant and we deal with this later in our decision.

[240] In relation to 21A.2.1.8 - *Whether adaptive reuse of a listed building or object will enable the owners, occupiers or users to make reasonable or economic use of it*, we accept that this criterion does allow us to consider the Applicant's evidence about what options have been explored to make reasonable and economic use of the building.

[241] Finally to criterion 21A.2.1.22 - *The public interest in enhancing the heritage qualities of the city and in promoting a high quality safe urban environment*, we accept that this allows for consideration of both the heritage values of this building, but also the safety aspects associated with the seismic status of this building, and whether it is reasonably practicable and sustainable economically to strengthen the facades so that public safety is assured.

[242] Turning now to consider Part 2 matters, as we have noted we accept that we can only consider Part 2 matters in as much as they assist in our assessment of the matter over which discretion (historic heritage) is limited.

[243] We therefore accept (as asked of us by NZHPT) that the first point of call in Part 2 is s6(f) which states:

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

[244] However, we do accept that we should not read s6(f) in a vacuum. That section and its components must be read in the context of the purpose of the Act in s5. Section 5 (as noted by the Court in the *Manawatu* case) requires us to consider whether the application to demolish the Harcourt's building is

⁴⁹ Submissions of Mr Anastasiou and the evidence of Mr McLean

managing that physical resource in a sustainable manner. By its nature and definition sustainable management includes all the 'wellbeings' of which economic wellbeing is one.

[245] Therefore, while we accept that our application of Part 2 should be limited to "historic heritage" matters, we consider that we cannot consider historic heritage in anything but a holistic manner which includes economic considerations.

[246] Having said this we agree with Ms Devine that we should not approach this case on the basis that we should balance the acknowledged heritage values of the Harcourts building against the commercial viability of strengthening the building and the safety concerns that have been raised about the building's current state.

[247] The way in which we have considered economic matters, including commercial viability and safety matters, is to consider them in the context of the relevant assessment criteria to determine whether a case for demolition has been made out by the Applicant.

EVALUATION AND FINDINGS

[248] We have summarised the evidence, confirmed the relevant statutory instruments, confirmed the activity status of the proposal under Rule 21A.2.1, and finally confirmed our approach to exercising our discretion. We now turn to our evaluation of the issues before us, which we intend to do under the following headings:

- Environmental Effects
- Positive Effects
- Alternatives
- District Plan Objectives and Policies
- Regional Policy Statement
- Other Matters
- Part 2 RMA

Environmental Effects

Heritage Effects

[249] The evidence before us confirmed that the Harcourts building is an important heritage building. All the heritage witnesses were of that opinion, a position adopted by the three planning witnesses.

[250] We accept that the heritage significance of the building derives from a number of 'qualities' including its townscape significance. We also accept that the building has an element of rarity.

[251] As did all witnesses (both heritage and planning) we accept that the demolition of the Harcourt building would result in a significant loss of historic heritage.⁵⁰

Structural Engineering / Earthquake Prone Buildings

[252] While we accept that an Earthquake-Prone Building Notice has been served on the building we were not convinced by the evidence presented that the building actually falls below the earthquake-prone level of 34%NBS. The Applicant's engineer advised us that in his view the building achieves 42%NBS which adds support to our view.

⁵⁰ We note (again) that it is only the external fabric (i.e. not the interior fabric) that is listed in the District Plan

- [253] We agree that public safety would and should be improved by strengthening of the building, but if the building exceeds the minimum legislative level for an earthquake-prone building it must, by implication, also exceed minimum requirements for public safety. We note also that the Royal Commission has not recommended that this level (i.e. 34%NBS) be increased.
- [254] The Applicant has raised concerns over falling masonry presenting a significant risk to pedestrians. We have noted that the cost of reducing this particular hazard is relatively modest.
- [255] The Applicant's position is that there would be pounding between the Harcourts building and the HSBC tower building in severe earthquakes causing distress to both, but particularly to the latter. However this was not based on a detailed investigation of the expected displacement of each building.
- [256] Witnesses, including the Applicant's engineer, noted the need for a detailed seismic assessment of the building. Without a detailed seismic assessment to confirm the current seismic status of the building we have not been persuaded that the Harcourts building, in its present state, presents an unacceptable risk to either the HSBC tower building or to public safety.

Costs

- [257] We accepted the costs of strengthening to 100%NBS and of retaining the façades as presented by the Applicant.
- [258] The Applicant advised us that the presented strengthening concept option simply provided a basis for costing a 100%NBS scheme and we accepted it as such.
- [259] We accepted the view expressed by Mr Cooke that the cost of strengthening is very building specific and will vary over a large range depending on the extent of work required. We did our own calculation of cost per m² based on the area of the building given in the Mallard Cooke estimates. This gives a cost per m² for strengthening to 100%NBS of \$1500/m². This number compares well with the numbers provided by Ms Cranko which range from \$1363/m² for the proposed Hope Gibbons building to \$1538/m² for the Huddart Parker building. We understand that both of these buildings are being strengthened to a standard of approximately 100%NBS.

Economic and Commercial Viability

- [260] In relation to economic and commercial viability we accept (as Mr Anastasiou asked us to) that the evidence before us was consistent and not in conflict. We therefore accept that there are significant challenges in making the Harcourt's building economically and commercially viable at this time. However, we need to note that there are some important assumptions and limitations inherent in the respective reports that considered economic and commercial viability as follows:
- the assessments have been done assuming that the strengthening standard will be 100%NBS; and
 - not all of the options have been fully explored as noted by Mr McColl of Bayleys and Mr Dowell.

In addition, issues such as the relationship with the HSBC tower building and the comparison of what is an expected commercial level of return for a heritage building, as opposed to a new building, are also important.

- [261] In summary, we accept the evidence of economic and commercial viability but we are not persuaded, within the confines of the statutory framework we must apply, that this issue overcomes the significant loss of heritage values that would occur should the building be demolished.

CBD Vitality and Vibrancy

- [262] The evidence from several submitters who supported the proposed demolition of the building focused on the enhanced CBD vitality and vibrancy that would result if the site was developed more intensely with a new replacement building.
- [263] We do not disagree that this might be the outcome if a new replacement building was built. However, these considerations relate to any future application for a new building rather than to the current application and the matter of 'historic heritage', which is our central focus given the matters over which we have discretion under Rule 21A.2.1.⁵¹ Accordingly, we have not given weight to post-demolition positive effects.
- [264] Also, we should note that we accept that the point made by a number of submitters opposing the application to demolish the building that heritage buildings can and do make a contribution to the amenity and indeed vitality of the CBD.
- [265] We have also given consideration to potential adverse effects on CBD vitality and vibrancy associated with the declining of this application and potentially some period when the building is unoccupied or little used (notably on the office floors) pending strengthening work being implemented by the current or future owner(s). This may occur, but in our assessment is unlikely to be a significant adverse effect in the context of "historic heritage".

Positive Effects

- [266] While we have just recorded that there could well be positive effects if a new building was built if consent were granted to demolish the existing heritage building, they are not positive effects we can have regard to in determining this application under Rule 21A.2.1.
- [267] We do however, accept that there could very well be positive effects from the 'removal' of a heritage building that is identified as an earthquake-prone building; just as there could be positive effects if the building was strengthened to an appropriate level that removed the potential and actual threat to public safety and therefore to peoples' health and safety.
- [268] In the end result we are not persuaded that the positive effects that we consider fall within our discretion are of such a scale that they justify demolition of the Harcourts building.

Alternatives

- [269] Counsel for NZHPT submitted that that Applicant has not assessed all reasonable alternatives to the total demolition of the Harcourt's building.⁵²
- [270] Schedule 4 of the Act requires a description of any possible alternative methods for undertaking an activity to be included in the assessment of environmental effects, where it is likely that an activity will result in any significant adverse effect on the environment.

⁵¹ We note that we consider our approach is consistent with the 'reasoning' of the District Plan Hearings Committee on District Plan Change 43 - refer para [173] above

⁵² Legal Submissions paragraph 74

[271] In addition, Policy 20.2.1.2 of the District Plan provides that the Council will only consider total demolition, *“where the Council is convinced that there is no reasonable alternative to ... demolition.”*

[272] We have concluded that the demolition of the Harcourts building will have significant adverse effects in terms of a loss of historic heritage and therefore agree that the Applicant is required to consider any possible alternatives to demolition under Schedule 4. We also agree that we are required to consider alternatives by virtue of the District Plan policy.

[273] NZHPT submitted that the Applicant has not considered all reasonable alternatives for a number of reasons as follows:

- there is no assessment of the option of strengthening the building to less than 100%NBS;
- there is no assessment of the structural strength of the HSBC tower building to determine if structural strengthening could be undertaken on the tower as an alternative to the demolition of Harcourts building;
- there is no assessment of the costs that the HSBC tower building should bear for any strengthening works given that the tower will benefit from such works;
- there has been no attempt to seek external funding to assist with the costs of strengthening when such funding may have a material impact on the financial assessment made about the viability of the strengthening works; and
- there is no assessment of the options to partially demolish the building allowing the retention of some of the original features and incorporation of these into a replacement building.

[274] We accept (and NZHPT appeared to also accept) that the Applicant has considered some alternatives to demolition. In particular we heard evidence about various options that had been explored for the retention and re-use of the building, including as a boutique hotel and student accommodation.

[275] However, we have concluded that in terms of assessing alternatives to demolition the Applicant has not gone far enough. Whilst we agree with the submission of the Applicant that it is not required to exhaustively consider all alternatives or conduct a full cost-benefit analysis of alternative locations and methods,⁵³ we do not consider that all reasonable alternatives have been adequately considered.

[276] We say this because it is undisputed that the loss of the building will have significant adverse heritage effects and therefore it is necessary for us to have careful consideration of alternatives to total demolition. We simply do not have thorough enough evidence before us to make an appropriate assessment.

[277] At this point we also note that the Earthquake-Prone Building Notice served on the Applicant states:

“... the owners of the building are required by 27 July 2027 to either:

- (a) strengthen the building to a sufficient degree so that is not earthquake-prone; or*
- (b) demolish all or part of the building, so that the remainder of the building (if any) is not earthquake-prone”.*

The Notice, therefore, does not require a particular percentage of the NBS to be met (other than the earthquake prone defined target of 34%NBS) and, if as suggested by Mr Clark, the building is not

⁵³ As held in *Meridian Energy Limited v Central Otago District Council* [2010] NZRMA 477

earthquake-prone then the implication is that no strengthening will be required to meet the requirements of the Notice.

Regional Policy Statement

- [278] We accept that in the context of the RPS the Harcourts building is a regionally significant heritage resource. In this respect we accept the evidence of Mr McLean and find that the demolition of the Harcourts building would be contrary to regional policy which seeks to protect regionally significant historic heritage from inappropriate modification, use and development.
- [279] We note that while both Ms Jones and Mr Leary accepted that the RPS was relevant to the proposal, they nevertheless did not provide an assessment of the proposal against the RPS provisions. Rather they both focused on the District Plan provisions on the basis that the District Plan policies on historic heritage were consistent with the RPS.
- [280] Although we agree that in the context of this hearing the District Plan is the primary instrument that should guide our decision-making, we nevertheless conclude, for the reasons that will become apparent in our discussion of the District Plan objectives and policies, that the proposal to demolish the Harcourts building is inconsistent with regional policy, policy which seeks to protect regionally significant historic heritage resources from inappropriate modification, use and development.

District Plan Objectives and Policies

- [281] Our approach to identifying which of the District Plan objectives and policies are most relevant is firstly guided by the 'scope' of our discretion under Rule 21A.2.1, with the clear focus on 'historic heritage'. Thus the primary objective and policy respectively are Objective 20.2.1 and Policy 20.2.1.2. Thus, the policy direction of the District Plan is protection of historic heritage from inappropriate subdivision, use and development, and discouragement of demolition, unless it can be shown that there is no reasonable alternative to demolition.
- [282] Mr McLean's evidence is that demolition would be '*inappropriate*'. Ms Jones concludes that demolition may not be '*inappropriate*'. Mr Leary considers that the demolition of the building can be considered '*appropriate*'. Both Ms Jones and Mr Leary put considerable weight on the estimated costs involved in strengthening based on achieving 100%NBS.
- [283] As will be apparent from previous discussion above, particularly in relation to alternatives, we have not been able to conclude that 'every reasonable alternative to demolition' has been sufficiently explored. Consequently, we have concluded that demolition of the Harcourts building is inappropriate within the context of Objective 20.2.1 and Policy 20.2.1.2. Therefore the proposal to demolish the Harcourts building is contrary to District Plan policy on protecting historic heritage.
- [284] All three planning witnesses addressed us on other District Plan objectives and policies, principally those relating to Central Area development generally. Central Area objectives and policies that were identified by all or some of the planning witnesses included those relating to:
- enhancing the Central Area's natural containment / promoting efficient use and development [Objective 12.2.1]
 - facilitating a vibrant, dynamic Central Area [Objective 12.2.2]

- recognising and enhancing those characteristics, features and areas of the Central Area that contribute positively to the City's distinctive character and sense of place [Objective 12.2.3]
- encouraging the development of new buildings within the Central Area [Objective 12.2.5]
- ensuring that new building works maintain and enhance the amenity and safety of the public environment in the Central Area [Objective 12.2.6].

[285] Two particular policies under Objective 12.2.6 which were highlighted by Mr Leary were:

Policy 12.2.6.15 Improve the design of developments to reduce the actual and potential threats to personal safety and security.

Policy 12.2.6.16 Promote and protect the health and safety of the community in development proposals.

[286] One of Mr Leary's concluding points was that while the demolition of the Harcourts building can be deemed to be inconsistent with objectives and policies relating to the preservation of historic heritage, and we agree, *"its preservation will also be inconsistent with other objectives and policies relating to promoting a safe and efficient Central Area"*.

[287] We have given careful consideration to the above policies and the more general Central Area objectives that we have identified above. In respect of promoting a safe public environment this could potentially be achieved through achieving a strengthening of the Harcourts building to a NBS percentage less than 100%, but above the level which a building is identified as 'earthquake-prone'.

[288] The end result of our consideration of the relevant objectives and policies is that we are unable to agree with Mr Leary's opinion, which is that the proposal to demolish the Harcourts building is consistent with the objectives and policies of the District Plan.

[289] As a 'rider' to our conclusion we record that we consider that a number of the Central Area objectives and policies that were identified in the planning evidence would relate more to an assessment of a replacement building than they do to the demolition of an existing heritage building.

[290] In our opinion the most important and directly relevant objectives and policies are those relating to historic heritage. Having had regard to the conflicting evidence before us (noting however that the evidence was not conflicting in relation to the historic heritage objectives and policies) we find that the proposal to demolish the Harcourts building is, overall, contrary to the relevant District Plans objectives and policies.

Other Matters

[291] Under s104(1)(c) of the Act we have had regard to the following as "other relevant matters" when assessing "historic heritage":

- Earthquake-Prone Building Notice / Building Act 2004
- Earthquake-Prone Buildings Policy
- Canterbury Earthquakes Royal Commission Report
- Conservation Plan

Earthquake-Prone Building Notice / Building Act 2004

[292] If the Building-Prone Building Notice remained in place there is the expectation that the building would need to be either strengthened or demolished within a period of 20 years under the current Wellington City Earthquake-Prone Building Policy and we accept that the existence of such a Notice may have a detrimental effect on a number of issues associated with the building, including ability to insure and marketability.

[293] If, however, as the Applicant's evidence suggests, the building exceeds 34%NBS then it is clear that the basis for the Notice can be challenged.

Earthquake-Prone Buildings Policy

[294] In her s42A Report Ms Jones referred us to the Wellington City Council's Earthquake-Prone Buildings Policy adopted by Council in May 2006. A copy of the policy was attached to her report.

[295] We note that the policy was adopted by the Council prior to the Canterbury earthquakes and the Royal Commission's Report. Under the heading "Heritage Buildings" the Policy states:

"The Building Act requires that Council must ensure all earthquake-prone buildings are strengthened to at least meet the minimum prescribed standard (or be demolished) to reduce the potential of injury, loss of life or damage to other property in the event of a moderate earthquake. This Policy's approach to heritage buildings is to reduce the impact of any strengthening work required on the heritage fabric of the building. This means that for earthquake-prone buildings:

- *strengthening is required so that it is no longer earthquake-prone*
- *the maximum timeframes will apply, just as it does to all buildings*
- *a management plan outlining how strengthening will preserve the heritage fabric of buildings is to be provided*
- *demolition is not encouraged.*

A heritage incentive fund has been operating since 2007/07 (called the Built Heritage Incentive Fund as at the date of adoption of this policy). This fund may provide assistance to owners of earth-quake prone buildings".⁵⁴

[296] Although the Earthquake-Prone Buildings Policy is not a statutory instrument, we have had regard to the policy in reaching our decision. It seems to us to be consistent with the District Plan policy in that demolition is not encouraged. However, we also add that the District Plan does contemplate the possibility of demolition, hence the ability under Rule 21A.2.1 to apply for consent for the demolition of a listed heritage building.

Canterbury Earthquake Royal Commission Report

[297] In his closing submissions Mr Anastasiou drew our attention to the report of the Canterbury Earthquake Royal Commission. The report had also been referred by some submitters during the course of the hearing.

⁵⁴ WCC Earthquake-Prone Buildings Policy (2009) page 8

- [298] We accept that there are findings in the report that are generally relevant to the earthquake proneness of some heritage buildings. In the context of this application we are satisfied that we have considered all of those matters relevant and within our jurisdiction to consider in our deliberations and determination.

Conservation Plan

- [299] As we have already noted the Conservation Plan was prepared by Salmond Architects in 1999. In the Executive Summary it is stated that:

"Harcourts Building - formerly the T&G Building - in Wellington, has special significance in the history of the insurance industry in New Zealand. The building was constructed as the head office for the Australasian Temperance and General Mutual Life Assurance Society Ltd and has very great local historic significance and particular national significance in the history of insurance companies and the practical role they played in capital investment.

Constructed in 1928 to a design by the Australian architects Anketell and Kingsley Henderson, the former T&G building is a landmark in the Wellington commercial centre. The building is registered under the Historic Places Act 1993, and is included in the schedule of significant buildings in the proposed Wellington City District Plan.⁵⁵

The above statement to which we have had regard is consistent with the heritage evidence before us - namely, the building is an important heritage building with townscape significance that can reasonably be described as a 'landmark' building on this section of Lambton Quay.

- [300] Under the heading "Statutory Procedures and Approvals", the comment is made that:

"Harcourts Building is owned by a publicly listed company and as such has very limited opportunity to attract public money for maintenance and conservation work. The desire of the owner to realise the best economic use of a valuable site should be tempered by an understanding of the building itself, although requiring maintenance and alteration to improve its functioning capacity, is a place of cultural heritage significance as well as a commercial asset".⁵⁶

In reaching our decision we have had regard to the fact that the Harcourts building is both a place of heritage significance and a commercial asset held in private ownership.

Part 2 RMA

- [301] As noted above, we have considered all the relevant matters in Part 2 that we consider we are entitled to consider in the context of this discretionary (restricted) activity. To recap:

- we accept that our application of Part 2 should be limited to 'historic heritage' but hold that we cannot consider historic heritage in anything but a holistic manner which includes economic considerations;
- we have not approached this case on the basis that we balance the acknowledged heritage values of the Harcourts building against the commercial viability of strengthening the building and the safety concerns that have been raised about the building's current state; and

⁵⁵ Conservation Plan "Harcourts Building former T&G Building Wellington, Salmond Architects, December 1999, page 1

⁵⁶ Ibid, page 36

- we have considered economic matters, including commercial viability and safety matters, in the context of the relevant assessment criteria to determine whether a case for demolition has been made out by the Applicant.

[302] In the end, for the reasons we have outlined, we have concluded that the demolition of the Harcourts building would not constitute sustainable management of an important physical resource, namely a heritage building of considerable significance.

DECISION

[303] Consequently, having regard to the evidence presented, and the relevant statutory criteria under s104(C) and Part 2 of the Resource Management Act 1991, and for the reasons set out below, the Independent Commissioners **DECLINE** consent to demolish the listed heritage building at 30 Grey Street/203-213 Lambton Quay, Wellington Central (being Pt Lot 1 DP A/207 and Lot 1 DP 8093) and being all the land comprised in Computer Freehold Register WN56A/636.

REASONS FOR DECISION

[304] Section 113(1)(a) of the Act requires that we state the reasons for our decision. Although it will be clear from the body of our report, for the avoidance of doubt we confirm that the principal reasons for declining consent are:

1. The Harcourts building is a heritage building of city and regional significance. Demolition of the building will result in a significant loss of historic heritage resulting in adverse effects that cannot be avoided, remedied or mitigated if demolition occurs.
2. In relation to the matter of the building having been identified as an earthquake-prone building under the Building Act 2004 and consequential 'public safety' issues, we agree that peoples' health and safety is a matter we should have regard to, and we have.
3. Based on the evidence before us, we have concluded that not every 'reasonable alternative solution' for retaining the building has been considered. This includes strengthening to a standard of less than 100%NBS.
4. With regard to the positive effects, we have not taken into account those positive effects that might result from the construction of a new Central Area building, including any positive effects in relation to CBD vitality and vibrancy. These effects we consider fall outside our discretion, which is restricted to an assessment of 'historic heritage'.
5. In relation to Part 2 matters we have concluded that the demolition of the Harcourts building would not constitute 'appropriate' use and development - rather, based on the possibility that the building is equal to or greater than 42%NBS (and here we draw on the evidence of Win Clark) we consider that its demolition would be inappropriate within the meaning of s6(f) which directs that we should have regard to the 'protection of historic heritage from inappropriate subdivision, use and development' as a matter of national importance.
6. The demolition of the Harcourts building would be inconsistent with regional policy, as expressed in the Regional Policy Statement, and with District Plan policy, in relation to historic heritage.
7. For the above reasons we have concluded overall that the demolition of the Harcourts building would be inconsistent with Part 2 of the Act which promotes the sustainable management of natural and physical resources, including historic heritage resources.

CONCLUDING COMMENT

[305] We have found our decision-making on the application to be challenging. We acknowledge the significance of the issues we have been asked to consider and determine. On the one hand there are important matters of historic heritage, and on the other important matters of public safety and costs.

[306] It may be that this is one of the first, if not the first, publicly notified resource consent applications in the post-Canterbury earthquakes 'environment' where consent is being sought under the Resource Management Act 1991 to demolish a significant heritage building, principally on the grounds of public safety, given that the Applicant has been served with an Earthquake-Prone Building Notice under the Building Act 2004. We acknowledge that the Applicant has also addressed the issue of commercial viability, in addition to public safety.

[307] It was very clear to us that the evidence presented by the Applicant and submitters, both those in support and in opposition, drew out the very real 'tension' between these two important 'public interest' matters.

[308] We fully appreciate the heavy responsibilities that are very clearly falling on the Applicant as the owner of the Harcourts building.

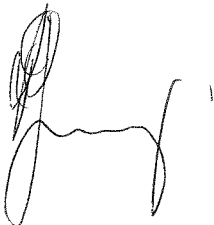
[309] However, in the end result, and based on the evidence before us, and guided by the various statutory responsibilities that flow from the Resource Management Act 1991 and, in this case, the operative Wellington City District Plan, we have concluded that we should decline the application. This is not a decision we have made easily or taken lightly. It is, however, the decision that we consider in the circumstances of this application and the evidence before us to be the 'correct' decision.



Alistair Aburn
Chair



Helen Atkins



Rob Jury