

Thursday, 13 April 2023

Te Hui o Te Kaunihera ā-Rohe o Heretaunga
Hastings District Council
Commissioner Hearing

Kaupapataka

Agenda

NOTIFIED RESOURCE CONSENT APPLICATION FOR PROPOSED MEDIUM DENSITY RESIDENTIAL LIVING IN THE HASTINGS CENTRAL COMMERCIAL ZONE - 206 QUEEN STREET WEST, HASTINGS (RMA20220352)

Te Rā Hui:
Meeting date: **Thursday, 13 April 2023**

Te Wā:
Time: **9.00am**

Te Wāhi:
Venue: **Council Chamber
Ground Floor
Civic Administration Building
Lyndon Road East
Hastings**

Te Hoapā:
Contact: **Democracy and Governance Services
P: 06 871 5000 | E: democracy@hdc.govt.nz**

Te Āpiha Matua:
Responsible Officer: **Group Manager: Planning & Regulatory Services - John O'Shaughnessy**

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HASTINGS DISTRICT COUNCIL
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TE KAUNIHERA Ā-ROHE O HERETAUNGA

Thursday, 13 April 2023

Te Hui o Te Kaunihera ā-Rohe o Heretaunga

Hastings District Council: Commissioner Hearing Meeting

Kaupapataka

Agenda

Te Komihana Whakahoahoa:
Hearing Commissioner:

Heamana
Chair: Commissioner Kitt Littlejohn

Apiha Matua:
Officer Responsible:

Group Manager: Planning & Regulatory Services – John O'Shaughnessy

Mahere Maarama:
Reporting Planner:

Consultant Planner – Jacqui Manning

*Te Rōpū Manapori me te
Kāwanatanga:*
Democracy & Governance
Services:

Christine Hilton (Extn 5633)

Te Rārangi Take

Order of Business

1.0 Apologies & Leave of Absence – *Ngā Whakapāhatanga me te Wehenga ā-Hui*

2.0 Notified Resource Consent Application For Proposed Medium Density Residential Living in the Hastings Central Commercial Zone - 206 Queen Street West, Hastings (RMA20220352)

DOCUMENTS CIRCULATED FOR HEARING - COMPILED AS FIVE SEPARATE DOCUMENTS

<u>Document 1</u>	The covering administrative report	Pg 1
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The Application and Agenda documentation can be viewed on the Council website.

Thursday, 13 April 2023

Item 2

Te Hui o Te Kaunihera ā-Rohe o Heretaunga

Hastings District Council: Commissioner Hearing

Te Rārangi Take

Report to Commissioner Hearing

Nā:
From: Christine Hilton, Democracy and Governance Advisor

Te Take:
Subject: Notified Resource Consent Application For Proposed Medium Density Residential Living in the Hastings Central Commercial Zone - 206 Queen Street West, Hastings (RMA20220352)

1.0 Purpose and summary - *Te Kaupapa Me Te Whakarāpopototanga*

- 1.1 This is a covering report relating to a Limited Notified Resource Consent Application For Proposed Medium Density Residential Living in the Hastings Central Commercial Zone – 206 Queen Street West, Hastings (RMA20220352).
- 1.2 The reporting consultant planner's report is attached to this covering report and contains the details regarding this resource consent application and the planner's recommendations.
- 1.3 The other attachments included as part of the agenda documentation for this hearing are contained in separate attachment documents and are listed below.

2.0 Recommendations - *Ngā Tūtohunga*

The recommendations relating to this hearing are contained in the planner's agenda report.

Attachments:

- | | | |
|---|----------------------------------|------------------|
| 1 | Consultant Planner's S42a report | RMA20220352#0029 |
|---|----------------------------------|------------------|

2	Assessment of Environmental Effects - Final January 2023	RMA20220352#0019	Document 2
3	History of site (AEE)	25706#0088	Document 2
4	Chronological Record of Investigations of Options by Council for Redevelopment Proposal (AEE)	25706#0089	Document 2
5	Structural Appraisal and Building Condition Reports for HB Farmers Garage (AEE)	25706#0090	Document 2
6	Drawings (AEE)	25706#0112	Document 2
7	Proposed Consent Conditions (AEE)	RMA20220352#0020	Document 3
8	Infir Servicing Report - Final 2022 (AEE)	25706#0114	Document 3
9	Urban Connections Parking Assessment - Final (AEE)	25706#0111	Document 3
10	Detailed Site Investigation Report (AEE)	25706#0094	Document 3
11	Crime Prevention Through Environmental Design (CPTED) Appraisal (AEE)	25706#0095	Document 3
12	Heritage Impact Assessment – Revised Jan 2023	25706#0113	Document 4
13	Record of Title	RMA20220352#0022	Document 4
14	S95 Notification Report and Decision	RMA20220352#0026	Document 4
15	S92 and Response	RMA20220352#0021	Document 4
16	Letter from Applicant's Legal Counsel	25706#0116	Document 4
17	Summary of Submissions (Brief overview of issues raised in submissions)	RMA20220352#0028	Document 4
18	Submissions (in Document 5)	25706#001#0061	Document 5
19	Heritage Review Report	RMA20220352#0023	Document 4
20	Development Engineer Memo	RMA20220352#0027	Document 4
21	Draft Recommended Conditions	RMA20220352#0024	Document 4
22	Plan Objectives and Policies	RMA20220352#0025	Document 4

ATTACHMENT 1

HASTINGS DISTRICT COUNCIL

Demolition of Heritage Building and Redevelopment of the Site

Application# RMA20220352

s42A Report

Report Date

20 March 2023

Hearing Date

13-14 April 2023



**RMA20220352 – Heritage Demolition & Site Redevelopment
s42A Report**

Applicant:	Hastings District Council
Applicant's Agent:	Sage Planning: Janeen Kydd-Smith
Site Address:	206 and 218 Queen Street West and 223 Heretaunga Street West, Hastings
Legal Descriptions:	Lot 1 DP 13663 (ROT HBF3/551) Lot 1 DP 5310 and Lot 1 DP 22385 (ROT HBP2/185) Lot 2 DP 22385 (ROT 584846) Lot 3 DP 22385 (ROT 1023932) Lot 3 DP 16426 (No ROT)
Site Area:	2,606m ²
Zoning and Overlays:	Zone: Hastings Central Commercial Zone Overlays: <u>Entire site:</u> Central Retail Core Precinct Central Character Precinct <u>206 Queen Street West:</u> Historic Heritage Feature – HB46: Hawke's Bay Farmers' Co-operative Association Limited Garage – Category II <u>223 Heretaunga Street West:</u> Designated Retail Frontage
PID's:	25706, 103681 and 21031
Proposal:	Demolition of existing buildings, earthworks, and redevelopment involving: <ul style="list-style-type: none"> • Earthworks and removal of an old fuel tank on-site; • Demolition of existing buildings, including a Heritage Item, excluding the façades; • Retention of the façades at 223 Heretaunga Street West and 206 Queen Street West Heritage Item; • Construction of a three-storey mixed-use commercial and 20-unit residential apartment building with 17 private parking spaces on the ground floor; • Widening an existing formed right-of-way from Queen Street West; • Provision of 18 public parking spaces along the exterior of the building; • Construction of a pedestrian laneway from 223 Heretaunga Street West through to a public park/greenspace; and • Provision of a public park/greenspace.
Activity Status:	Non-Complying Activity

21 March 2023

[1]



RMA20220352 – Heritage Demolition & Site Redevelopment
s42A Report

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3	History of the Site (AEE)
4	Chronological Record of Investigations of Options by Council for Redevelopment Proposal (AEE)
5	Structural Appraisal and Building Condition Reports for HB Farmers Garage (AEE)
6-	Drawings (AEE)
7	Proposed Consent Conditions (AEE)
8	Infir Servicing Report – Final 2022 (AEE)
9	Urban Connections Parking Assessment – Final (AEE)
10	Detailed Site Investigation Report (AEE)
11	Crime Prevention Through Environmental Design (CPTED) Appraisal (AEE)
12	Heritage Impact Assessment Revised Jan 2023 (AEE)
13	Record of Title
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18	Submissions
19	Heritage Review Report
20	Development Engineering Memo
21	Draft Recommended Conditions
22	Plan Objectives and Policies

21 March 2023

[2]



Interpretation

The balance of this report utilises the following terms and abbreviations:

TERM	MEANS
AEE	The assessment of environmental effects appended to the application (as amended February 2023)
Applicant	Hastings District Council in its role as Applicant
CBD	Hastings central business district
Commissioner	Hearing Commissioner
CSMP	Contaminated site management plan
Council	Hastings District Council in its other roles (excluding as Applicant)
CPTED	Crime Prevention Through Environmental Design
DMP	Dust management plan
DSI	Detailed site investigation
HAIL	Hazardous Activities and Industries List (October 2011) published by the Ministry for the Environment
FENZ	Fire and Emergency New Zealand
Hawke's Bay RC	Hawke's Bay Regional Council
HB-RMP	Hawke's Bay Regional Resource Management Plan, including the Regional Policy Statement (August 2006)
Heritage NZ	Heritage New Zealand Pouhere Taonga
HPHB	Historic Places Hawke's Bay
NES-CS	Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011
NPS-UD	National Policy Statement on Urban Development 2020
Plan	Partially Operative Hastings District Plan (March 2020)
PSI	Preliminary site investigation
RAP	Remedial action plan
RMA	Resource Management Act 1991
ROT	Record of title (land title)
ROW	Right-of-way
s95 report	Notification report for the proposal prepared under s95 of the RMA
site	The property to which the application relates as described above - 206 and 218 Queen Street West and 223 Heretaunga Street West, Hastings

Executive Summary

- i. I have been asked by Council to prepare this report pursuant to s42A of the RMA. The report relates to the proposed demolition of a heritage building and redevelopment by the Applicant at the site.
- ii. Having considered the application documentation, the further information and revised application provided by the Applicant since lodgement, the submissions, and the recommendation of Council's expert advisors I have evaluated the proposal under the relevant decision-making framework in the RMA.
- iii. As described in the application document, the proposal is anticipated to result in several positive effects for the CBD and community, and these are elaborated upon in the body of this report.
- iv. Notwithstanding those benefits, the following matters require attention to ensure the proposal does not result in an unacceptable level of adverse effects on the environment:
 - a. demolition of a heritage building;
 - b. traffic and transportation effects on adjoining sites and the surrounding roading network, and the operation of the parking and loading areas within the site;
 - c. human health due to activities identified within the HAIL, as referenced in the NES-CS, having operated within the site;
 - d. design and landscaping in relation to the interface with the streetscape and character and amenity (including heritage) of the surrounding area and for residents of the units within the development (including noise attenuation); and
 - e. the need for measures to be adopted to ensure construction activities (including demolition, dust, and noise) are appropriately managed during construction.
- v. For many of these issues, (human health, acoustics, internal site design and operation, landscape and building design), Council's technical officers have indicated that adverse effects can be sufficiently managed through conditions, should consent be granted.
- vi. For others, specifically the demolition of the heritage building, the adverse effects are not minor, given demolition and façade retention recognise major levels of impact on the heritage fabric. HPHB and Heritage NZ accept, while not advocating demolition of heritage buildings, that the retention of heritage elements alongside the recommendations / volunteered conditions contained within the application's Heritage Impact Assessment, and the public engagement with the site and its history mitigates the adverse effects.
- vii. I conclude that, for the reasons that follow, the issues raised relating to RMA matters can be resolved and through the imposition of the draft conditions recommended (or similar), consent may be granted for the proposal pursuant to s104, 104B and 104D of the RMA.

1.0 Introduction

Report Author

- 1.1 My name is Jacqueline Maree Manning (Jacqui). I am a Senior Consultant Planner with Resource Management Group Ltd (also known as RMG), an urban and environmental planning consultancy with offices in Christchurch, Wellington, Nelson, and New Plymouth.
- 1.2 I hold a New Zealand Certificate in Town Planning. I have over twenty-five years' experience in resource management planning in New Zealand. Prior to the last seven years in the employment of RMG, I have worked in the employ of both territorial authorities and multi-disciplinary consultancies, including New Plymouth District and Christchurch City Councils, Opus (as formerly known) and Beca.
- 1.3 My experience includes statutory land use planning, resource consents and outline plans, Notices of Requirement, environmental impact assessments, District Plan development, and presentation of evidence.
- 1.4 I was engaged by Council in July of 2022 to process on behalf of Council the Applicant's proposal once lodged, including the coordinating and preparing of this report in conjunction with the other authors identified below.
- 1.5 Along with contextual information and other matters of fact, this report includes my personal views and recommendations on the proposal. These views and recommendations are my own, except where I indicate otherwise.
- 1.6 Though not a requirement of Council resource consent hearings, I have read and agree to abide by the Code of Conduct for Expert Witnesses and have prepared this report in accordance with it. The report content is within my area of expertise except where stated otherwise. I have not omitted to consider the material facts known to me that might alter or detract from the opinion expressed in this report.
- 1.7 In some instances, I have specifically relied on the evidence, expertise and/or views of others, including Council's engineering advisor¹, Mr Bowman², and the Applicant's technical advisors who authored various reports attached to the AEE and response to the s92 RMA further information request.

Purpose of this Report

- 1.8 This report is provided pursuant to s42A(1) of the RMA. The primary purpose of the report is to assist the Commissioner in evaluating and making a determination on the proposal.
- 1.9 I note that this report is not a final decision on the proposal. That decision ultimately resides with the Commissioner, under delegation from Council, after the Commissioner has considered the proposal and heard the applicant and any submitters.

¹ See Attachment 20

² See Attachment 19

Report Structure

1.10 The report has been structured as follows:

- a. **Section 2** sets the scene for this report, providing further contextual information and an outline of relevant statutory matters;
- b. **Section 3** summarises the notification process and the submissions received; and
- c. **Section 4** contains an evaluation of key issues and a summary of the recommendations on those issues.

1.11 Attached to the report are the following appendices:

- a. **Attachment 2 - 12** contains the application documentation, incorporating further information request responses (**Attachment 15**) and the revision to the application dated February 2023 (note any superseded material has been removed such as to provide a complete set of documentation);
- b. **Attachment 16** includes a letter from the Applicant's legal counsel regarding scope of the amended application;
- c. **Attachment 20** includes a brief memo from Council's Development Engineer regarding servicing and transportation matters;
- d. **Attachment 19** includes a report / review from Mr Ian Bowman regarding the heritage building to be demolished;
- e. **Attachment 21** contains draft recommended conditions should the Commissioner be minded granting consent; and
- f. **Attachment 22** contains an index of relevant objectives and policies in the Plan.
- g. **Attachment 17** contains a table summarising the submissions received to the proposal and the full set of submissions received (**Attachment 18**).

2.0 Setting the Scene

Matters Addressed in this Section

- 2.1. This section of the report presents a factual overview of the proposal and the relevant matters to be considered for determining whether consent should be granted. The discussion here summarises:
- the site and existing environment;
 - the proposal, including February 2023 changes;
 - the relevant provisions of the Plan;
 - the relevant provisions of the NES-CS; and
 - the statutory framework for consideration of the proposal.
- 2.2. Where possible, I have relied upon, adopted, or referred to the detailed description of and / or information presented in some of these matters in the:
- various documents provided by the Applicant, both within the application and subsequently through the provision of further information: and
 - s95 report (**Attachment 14**) I prepared for Council in October 2022.

My intent in doing so is to minimise the repetition of material before the Hearing Commissioner.

The Site and Existing Environment

- 2.3. The site and surrounding environment are described at Section 3 of the AEE (pg. 4 – 9) (**Attachment 2**) and Section 5 of the s95 report (pg. 7 & 8) (**Attachment 14**) and I adopt those descriptions for the purposes of this report. In summary:
- the site is located primarily at 206 – 218 Queen Street West, with a narrow part of the site having frontage to 223 Heretaunga Street West, in the Hastings CBD;
 - it comprises six land parcels, containing two buildings which are vacant currently, and an electricity utility building;
 - fronting Queen Street West is the Hawke's Bay Farmers' Co-operative Association Limited Garage building constructed in 1925 and listed as a 'Category II' (2) item in both the Plan and the Heritage NZ List / Rārangi Kōrero³; and
 - the surrounding environment is characteristic of the CBD, with a mixture of commercial buildings of various character from heritage to modern design of 1-2 storey and varying age, construction, appearance, use, and condition.

³ Reference HB46 in the Plan and List no.1095 on the Heritage NZ List

The Proposal

Adequacy of the Application

- 2.4. Section 3 of the s95 report (**Attachment 14**) addresses the adequacy of the application that description should be read in conjunction with this report to understand the context that follows.
- 2.5. At the date of issue of the s95 (**Attachment 14**) report and Council decision to notify, Council was still awaiting a response to a further information request. The further information requested of the Applicant was not considered to alter the application documentation lodged such that it would affect the ability to undertake the assessments as required by s95A and s95B of the RMA.
- 2.6. Subsequently further information was received by Council from the Applicant on 6 and 18 October 2022 relating to:
- Project chronology.
 - Sunlight admission to Heretaunga Street West 'Designated Retail Frontage'.
 - Servicing - stormwater, wastewater, and water.
 - Signage not part of application.
 - Pedestrian visibility in relation to the Queen Street West vehicle access point.
 - On-site manoeuvring for loading.
 - Car parking numbers, dimensions and tracking curves.
 - Net floor area for residential activity.
- 2.7. On 6 February 2023 the Applicant submitted to Council an altered proposal, increasing the number of units from 18 to 20 within the building envelope as originally proposed and increasing the private and public car parking spaces from 15 to 17 and 13 to 18, respectively.
- 2.8. The Applicant's legal counsel provided supporting argument that the changes to the proposal are within the scope of the application as publicly notified, refer (**Attachment 16**) for correspondence.
- 2.9. All information received by Council to the further information request, which occurred after the public notice of the proposal, was made available to the public and more specifically to those parties identified as requiring notice. The altered proposal received in February 2023 was made available to the public and to those that lodged submissions to the original proposal.

The Proposal

- 2.10. With the proposal having been altered after the issue of the s95 report, (**Attachment 14**) that report is not considered here other than to provide context, as noted above. The proposal is comprehensively described in Section 6 of the AEE (pg. 14 - 39) (**Attachment 2**) and I adopt that description for the purposes of this report.
- 2.11. I note the proposal will result in the following key changes to the site and environment:
- a. demolition of all existing buildings on the site, including the listed heritage building, noting the proposal retains the street façades to Queen Street West and Heretaunga Street West;

- b. earthworks and removal of an old fuel tank/s to prepare the site for construction works, building foundations and site landscaping;
- c. Construction of a new three-storey mixed-use commercial and 20-unit residential apartment building with 17 private parking spaces on the ground floor;
- d. Widening an existing formed right-of-way from Queen Street West;
- e. Provision of 18 public parking spaces along the exterior of the building;
- f. Construction of a pedestrian laneway from Heretaunga Street West through to a public park/greenspace; and
- g. Provision of a public park/greenspace.

District Plan

The Plan

- 2.12. As noted in Section 6.2 of the s95 report (**Attachment 14**), the applicable District Plan is the Partially Operative Hastings District Plan (March 2020), with the only exception relating to Section 16.1 of the Plan (Wāhi Taonga District Wide Activity) which has legal effect but is not yet operative due to an Environment Court appeal, and the 2003 District Plan may still be relevant when applying that section.
- 2.13. This section of the Plan is not relevant to this proposal. The relevant provisions in the Plan as described below are therefore beyond legal challenge and operative. No consideration has been given, therefore, to the provisions in the District Plan 2003, which have been superseded.

Relevant Provisions & Consent Requirements

- 2.14. The AEE (**Attachment 2**) and Section 6.2.4 of the s95 report (**Attachment 14**) contain a description of the relevant rules and other methods, and compliance assessments against those rules. As shown on Council's eMaps the site:
 - a. is within the Hastings Central Commercial Zone;
 - b. adjoins Queen Street West and Heretaunga Street West, which are defined in the Legend for the ONRC Road Hierarchy as 'Primary Collector Roads';
 - c. is subject to the 'Central Retail Core Precinct' and 'Central Character Precinct' overlay;
 - d. includes a heritage building shown as 'HB46' (206 Queen Street West); and
 - e. is subject to a 'Defined Pedestrian Frontage' notation for its entire length along Heretaunga Street West.
- 2.15. Section 7.1.1 of the AEE (**Attachment 2**) and Section 6.2 of the s95 report (**Attachment 14**) record the non-compliances with Plan rules that give rise to the consents sought. With all requirements bundled together, the proposal is to be assessed as a non-complying activity based on the following summary of non-compliances:
 - a. Restricted Discretionary Activity Rule CCR20 due to the proposal's failure to meet the performance standards of:
 - Rule 7.3.5D: less than 75% of the Active Retail Frontage (223 Heretaunga Street West) will have a clear, glazed window display space, in that no provision for display windows fronting Heretaunga Street West is made; and

- Rule 7.3.6I (7): each residential unit will not have an outdoor service, rubbish, and recycling storage space of 5m², as the residential units and internal commercial tenancy will have access to two waste and recycling storage areas of approximately 10m² each, within the ground floor of the buildings, while the commercial tenancy facing Queen Street West will have its own waste and recycling storage area;
- b. Non-complying Activity Rule CCR24 due to the proposal's failure to meet performance standard of Rule 7.3.5D, as set out above, as a result of external alterations of buildings in the Central Character Precinct and construction of new buildings in the Central Character Precinct and Central Commercial Zone; and
- c. Non-complying Activity Rule H17 as the proposal involves the demolition of a Heritage Item identified in Schedule 1 (Category II).

NES-CS

- 2.16. The proposal also requires consent as a Restricted Discretionary Activity under Regulation 10 of the NES-CS, owing to:
- a. the proposal exceeding the permitted activity thresholds for earthwork volumes and duration, including that associated with the removal of the fuel tank/s under Regulation 8;
 - b. the proposal not meeting the permitted activity requirements for a change of use of the piece of land under Regulation 8;
 - c. the PSI (**Attachment 10**) identifying contaminants on site in elevated levels above expected background concentration levels; and
 - d. there being a DSI (**Attachment 10**) in support of the proposal.

Statutory Considerations

- 2.17. The decision-making framework for the proposal is contained in s104, 104B, and 104D of the RMA. The relevant aspects of s104 for this application are as follows:

104 Consideration of applications

- (1) *When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—*
- (a) *any actual and potential effects on the environment of allowing the activity; and*
 - (b) *any relevant provisions of—*
 - (i) *a national environmental standard:*
 - (ii) *other regulations:*
 - (iii) *a national policy statement:*
 - (iv) *a New Zealand coastal policy statement:*
 - (v) *a regional policy statement or proposed regional policy statement:*
 - (vi) *a plan or proposed plan; and*
 - (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

- (2) *When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.*

...

- (5) *A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for.*
- (6) *A consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.*
- (7) *In making an assessment on the adequacy of the information, the consent authority must have regard to whether any request made of the applicant for further information or reports resulted in further information or any report being available.*

- 2.18. Sections 104B and 104D are relevant given the proposal's classification as a non-complying activity. They state:

104B Determination of applications for discretionary or non-complying activities

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority —

- (a) *may grant or refuse the application; and*
- (b) *if it grants the application, may impose conditions under section 108.*

104D Particular restrictions for non-complying activities

- (1) *Despite any decision made for the purpose of notification in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—*
- (a) *the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*
- (b) *the application is for an activity that will not be contrary to the objectives and policies of—*
- (i) *the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
- (ii) *the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
- (iii) *both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*
- (2) *To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity.*

- 2.19. My evaluation of the proposal against the relevant provisions of s104 s104B, and s104D is set out in Section 4 of this report. Before turning to that assessment, I briefly discuss the notification process and submissions received.

3.0 Notification & Submissions

Notification of the Proposal

- 3.1. The Applicant formally requested public notification of the proposal in the AEE.
- 3.2. The application was formally notified on 8 October 2022. Relevant parties identified in Clause 10 of the RMA Regulations 2003 were served notice of the application at that time, including Hawke's Bay RC, iwi, and Heritage NZ.

Submissions (Attachments 17 and 18)

- 3.3. Thirty-seven submissions were filed by the closing date for submissions on 7 November 2022. No late submissions were received. The following summary of the submissions gives a brief overview of the various issues raised, refer to **(Attachments 17 and 18)** for submission summary table and the full set of submissions.
- 3.4. While four submitters remained neutral in respect of the proposal, one submitter was opposed to the overall proposal and the remainder were in support of the proposal in totality or in part.
- 3.5. The one submitter strongly opposed to the proposal considers the redevelopment as not being a core business of the Applicant (as a council), seeing it as adding to rates for eventual gain of others.
- 3.6. Those submitters in support of the proposal highlighted the following:
 - a. Adopts an innovative approach with laneway and pocket park;
 - b. Addresses site and building in poor state of repair;
 - c. Increases vibrancy and life to the CBD; and
 - d. Promotes inner-city living and range of housing options.
- 3.7. Matters raised in general by submitters were:
 - a. Disruption to businesses by construction activities – noise and dust;
 - b. Purpose for and ownership of residential units;
 - c. Design:
 - Units to be reorientated / designed for more light gain and address microclimate matters,
 - Car parking spaces as permeable surfaces,
 - Buildings / structures with care to colour choices,
 - Landscaping that provides for shade and seating areas for gathering,
 - Security / lighting for night in all areas,
 - Overall site for more / spilt open green space around site;
 - d. Retention of or increase in inner-city parking within town centre; and
 - e. Include informal retail (i.e. coffee carts and food trucks).

RMA20220352 – Heritage Demolition & Site Redevelopment
s42A Report

- 3.8. Hawke's Bay RC, while not opposed to the proposal, sought that the proposal manages soil contamination in accordance with the NES-CS. Hawke's Bay RC identify that regional consents may be required due to elevated levels of contaminants found at the site, particularly lead, and off-site disposal of those soils being unlikely to comply with HB-RMP standards.
- 3.9. FENZ submitted that the proposed development is required to have adequate water supply, including capacity and pressure, for firefighting purposes. Although neutral regarding the proposal, FENZ is concerned that the application does not provide certainty around:
- a. the final firefighting water supply methods,
 - b. whether these will need to be supported by on-site water source/s, and
 - c. ability for appliances to access and utilise water sources.
- 3.10. To ensure that level of design is achieved by the proposal, FENZ sought a condition of consent to be imposed requiring the site to be serviced with a firefighting water supply system and access that complies with the Code of Practice.
- 3.11. HPHB supports the proposal on the inability to retain/reuse the heritage building on economic grounds and that three heritage elements of importance will be retained to tell the heritage story.
- 3.12. Heritage NZ, while not advocating demolition as best heritage outcome, has remained neutral in their submission, seeking that the recommendations and volunteered conditions of the Heritage Impact Assessment (Pg. 29) (**Attachment 12**) in support of the application be imposed.
- 3.13. The Heritage NZ submission states that the Applicant has explored all options diligently, including using community engagement to determine key heritage features and how the space should be designed and used. Overall, Heritage NZ concludes that demolition and façade retention recognise major levels of impact on the heritage fabric, but it is countered by the public engagement with the site and its history.

21 March 2023

[13]



4.0 Evaluation & Recommendations

Introduction & Outline

- 4.1. This section of my report addresses the relevant requirements of s104, s104B, and s104D of the RMA and considers the matters raised in submissions. I have adopted an issue-based approach as opposed to a submission-by-submission analysis, including any specific outcomes sought by the submitters.
- 4.2. Given the comprehensiveness of the Applicant's assessment in the AEE (**Attachment 2**) and the s92 response (**Attachment 15**), I have adopted an audit approach and focused on the areas arising from submissions, Council technical expert assessment, and my own evaluation of the proposal. Except where I state otherwise, I have generally adopted the assessment of effects in the AEE (**Attachment 2**).
- 4.3. The following considerations have also shaped my evaluation:
 - a. the proposal falls as a non-complying activity, and the:
 - relevant assessment direction under s104 of the RMA is to "have regard" to the various matters set out in Section 2 of this report, which are on equal footing and are to be given weight as is appropriate to this proposal – this contrasts with other statutory directions in the RMA with a higher level of compulsion such as "have particular regard to" or "give effect to"; and
 - gateway test under s104D of the RMA is relevant – that is, consent may only be granted for the proposal if the adverse effects are minor and / or the proposal is not contrary to the Plan's objectives and policies; and
 - b. where s104D of the RMA is satisfied, the proposal is to be assessed on its merits and may be granted or declined consent under s104B of the RMA accordingly.
- 4.4. My discussion is organised as follows, with initial focus on the key issues as relevant to the matters in s104 of the RMA:
 - a. demolition of listed heritage building;
 - b. earthworks, contamination, demolition, and construction;
 - c. built form, character (including heritage), and amenity;
 - d. transportation;
 - e. servicing, including water supply for firefighting;
 - f. positive outcomes: and
 - g. any other relevant matters under s104(c) of the RMA.
- 4.5. Focus of my discussion then turns to:
 - a. the gateway test under s104D of the RMA; and
 - b. other higher order documents under s104(1)(b) of the RMA.
- 4.6. Most of the sub-sections referenced in 4.4(a) to (g) above commence with a brief summary of key issues I have identified and of my corresponding assessment. Rather than consider the Plan's objectives and policies separately to effects, those that are relevant are referred to under the applicable issue below.

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- 4.7. For completeness, I have attached a copy (**Attachment 22**) of all objectives and policies in the Plan I consider as having relevance to the proposal.
- 4.8. My assessment has been shaped by the following established legal principles:
- in considering the proposal's 'fit' with the policy framework, a fair appraisal of the relevant provisions when read as a whole is required⁴; however.
 - policies expressed in more directive terms should be given more weight than those that are phrased more generically⁵.
- 4.9. Finally, and for completeness, I note that no provisions of any other National Policy Statement or other regulations to those considered within this report, or the New Zealand Coastal Policy Statement are applicable to this proposal.

Demolition of Listed Heritage Building

Summary

- 4.10. The proposal will result in almost the complete and irreversible loss of historic heritage values associated with the 'Hawke's Bay Cooperative Association Limited Garage' building (206 Queen Street West), with only the façade being retained.
- 4.11. Two submitters, HPHB and Heritage NZ, address specifically the demolition of the heritage building and do not advocate demolition as the best heritage outcome due to the major impact demolition has on the heritage fabric. HPHB and Heritage NZ remain neutral in respect of the proposal on the basis that the Applicant has explored all options before deciding on retention of the façades and demolition / removal of the remaining structures.
- 4.12. One other submission in part focussed on the heritage building, noting that it is earthquake prone and would cost a significant amount to retrofit such building. The submission further considers there to be enough heritage features retained as part of the proposal.
- 4.13. As stated in the Applicant's independent assessment carried out by Ms Ann Galloway⁶ (**Attachment 12**) the effects of the loss of the heritage building are more than minor. An independent review for Council undertaken by Mr Ian Bowman⁷ (**Attachment 19**) supports this finding.
- 4.14. The Applicant within the AEE and appended Heritage Impact Assessment has carried out an assessment against the matters stipulated in the Plan in instances where Category II heritage buildings are proposed to be demolished. Mr Bowman's review has identified deficiencies in the matters assessed in the Heritage Impact Assessment. In my opinion, while those matters could have been assessed further by Ms Galloway, the conclusion of both parties would not have varied in that both parties agree to there being more than minor effects as a result of the loss of the heritage building.

⁴ See *Dye v Auckland Regional Council* (2001) 7 ELRNZ 209; and *Davidson R J Davidson Family Rust v Marlborough District Council* [2018] NZCA 316

⁵ See *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38 SC82/13

⁶ AEE, Attachment 12 Heritage Impact Assessment (revised February 2023) – Conclusion

⁷ Attachment 19 – Section 5 - Conclusion Pg. 22

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- 4.15. For the reasons that follow, I consider the proposal does not offend that policy direction such that the proposal amounts to inappropriate use or development in relation to historic heritage.

Discussion

Objectives and Policies

- 4.16. The Plan includes five objectives for heritage items, which are implemented by nine policies. One of those objectives / policies relates to archaeological sites which is not a consideration in respect of the proposal. The remaining outcomes sought in the objectives are for:
- a. protecting significant heritage items and preserving the heritage character and history⁸;
 - b. promoting continued use of heritage buildings where such encourages their retention, restoration, and maintenance⁹;
 - c. protecting historic areas of the CBD which contribute to the heritage character of the area¹⁰; and
 - d. encouraging heritage building upgrade where there is an identified safety risk¹¹.
- 4.17. While some of the policies are directed towards regulatory management methods, advocacy, and education¹²; my considerations below have focussed on the more directive policies of relevance, Policies HP2, HP4, HP5, and HP8.
- 4.18. Where Policy HP5 *allows* for a heritage building to be used for a range of activities and Policy HP8 *facilitates* and *encourages* alterations to improve performance, safety, and access to *promote retention* and *minimise significant loss* of heritage values, Policies HP2 and HP4, respectively, are related to *ensuring*:
- a. activities do not *adversely affect* the character of heritage items; and
 - b. the protection and retention of different and distinct heritage architectural styles by not having new development, alterations or finishing colours detract from this.
- 4.19. The Plan does not differentiate activity status / approach when considering demolition of Category I or II buildings. The focus of Policies HP2 HP4, and HP5 is on *ensuring* protection and retention, with Policy HP8 *minimising* loss of buildings – I note the Plan does not provide more stringent policy direction in this regard, such as *avoidance*.
- 4.20. Given the above, my interpretation of the direction of Policies HP2 HP4, HP5, and HP8 is that the demolition of the District's Category II buildings across the District as a whole over the life of the Plan is to be limited (minimised), and where demolition is proposed this should be assessed in consideration with the ability to undertake viable / achievable options of activity and / or alterations within / to the building.

Assessment

⁸ Objective HO1 (**Attachment 22**)

⁹ Objective HO2 (**Attachment 22**)

¹⁰ Objective HO3(**Attachment 22**)

¹¹ Objective HO4(**Attachment 22**)

¹² Policies HP1, HP3, HP6, and HP7 (**Attachment 22**)

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- 4.21. Section 18.1.6A sets out the assessment criteria relating to heritage items for controlled and restricted activities, noting that for discretionary and non-complying activities regard shall be had to the criteria however discretion is not restricted to the criteria and other matters may be considered.
- 4.22. In the context of the direction of Policies HP2 HP4, HP5, and HP8, I consider the following matters identified in relation to the demolition (including partial demolition) of Category II heritage items (refer Section 18.1.6A (7)) as being relevant:
- a. Whether adaptive re-use has been adequately considered as an alternative to demolition, and the economic and social benefits to the owner and the wider public through retention of heritage items.
 - b. Whether the building in its current state poses a safety risk, including loss of life, in the event of an earthquake, and safety alterations are not an option.
 - c. Where the retention of the façade only is proposed, the extent to which the heritage value of the remainder of the building has already been compromised to the extent that demolition is the only viable option, and the impact of this on the heritage fabric of the District.
- 4.23. Considering these in turn, the history of the site (**Attachment 3**), together with the chronology of the options (**Attachment 4**), considered from **adaptive re-use** to retention of the façade only from conception through to this application, has been well documented within the AEE and appendices (**Attachments 2-12**). This has been acknowledged within the submissions by HPHB and Heritage NZ.
- 4.24. Full restoration and adaptive re-use were comprehensively explored under the advice of Heritage Architect, Jeremy Salmond, Salmond Reed Architects, Factors that the Applicant considered prior to consideration of demolition of the heritage item were:
- a. functionality and desirability of the heritage building for commercial and / or residential use;
 - b. internal spaces within the existing built form;
 - c. the condition of the building / material and composite parts;
 - d. cost to strengthen to required Seismic Standards and how that would affect the integrity of the original form, including poor foundations identified in a Structural Appraisal (**Attachment 5**).
- 4.25. The Applicant has carried out an extensive assessment of the feasibility of adapting the building for other uses as well. This approach is consistent with the Plan's expectation that demolition should be a last resort after all reasonable alternatives are exhausted.
- 4.26. In terms of **safety risk**, the Structural Appraisal (**Attachment 5**) identified that the building has several severe structural weaknesses requiring extensive seismic strengthening, including all major building elements. Reference to a 2020 geotechnical report states that this identified the risk of seismically induced ground deformation and liquefaction would require at a minimum extensive foundation improvement below ground level.
- 4.27. A second review of the findings reached the same conclusions as the Structural Appraisal, including:
- a. The condition of the building is very poor.

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- b. Roof and internal gutters appear to be leaking, and the ground floor slab does not appear to be waterproofed.
 - c. Walls show eroded mortar in areas, with several significant cracks to the side and rear walls.
 - d. The building would be considered an earthquake prone building, in that the seismic strength of the building would be significantly less than 34% of the new building standard.
 - e. Strengthening and re-use would be very expensive and require a very high level of structural intervention to the extent where the heritage values of the building will be significantly compromised.
- 4.28. As part of its consideration of alternatives and the feasibility of adaptive reuse of the existing building, the Applicant assessed **economic implications** of partial and total seismically strengthening the building. The Structural Appraisal (**Attachment 5**) concluded that future development of the site and building would *'require considerable cost to strengthen or replace any structure that is to remain'*.
- 4.29. The estimated the cost for the strengthening work was in the order of \$5M¹³. A more minimal option of retaining one of the barrel vaults was considered which on further consideration and advice would also result in a multi-million-dollar cost.
- 4.30. Cost-effective seismic strengthening options may be more visible and/or detract from the building's heritage values, while options that achieve seismic rating and maintain sympathy with the building's appearance may incur greater cost.
- 4.31. The Applicant, as a local authority, also records in the AEE the economic responsibility it has in terms of best practice and financial responsibility to ratepayers (the wider public). The restoration of the building in whole or part is not tenable to the Applicant.
- 4.32. I have no expertise in property development or economics to be able to advise on the commercial viability of such a prospect; as a planner considering the Applicant's evidence in the context of this application, however, the methodology adopted by the Applicant appears to be fit-for-purpose, and the resulting conclusions reasonable.
- 4.33. The Applicant's assessment shows that alternative uses and safety risk management for the building are physically possible. However, in my view, the economic implications identified by the Applicant demonstrates that to convert and repurpose the building would be significant.
- 4.34. On the above basis, I consider the Applicant's findings support an interpretation that the feasibility of adaptive re-use of the building for alternative purposes and the undertaking of safety risk management is very low. This is accepted by HBHP and Heritage NZ.
- 4.35. Lastly, I turn to the **retention of the façade only** and whether the heritage value of the remainder of the building has already been compromised to the extent that demolition is the only viable option, and the **impact of that on the heritage fabric of the District**.

¹³ AEE, – 'Structural Appraisal and Peer Review' (**Attachment 5**).

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- 4.36. I note Ms Galloway's assessment is that the effects will not only relate to the loss of the building itself, but to the impact it will have on the historic character of CBD. This is relevant to the heritage character of the area and is discussed later in this report.
- 4.37. Ms Galloway has assessed the proposal against various practice sources and the provisions of the Plan. While Mr Bowman's review identifies additional sources he considers to be relevant which are not assessed in the Heritage Impact Assessment, **(Attachment 12)** there is no apparent contention between the experts that the nature and scale of effects on historic heritage will be moderate- to significantly-adverse.
- 4.38. Ms Galloway and Mr Bowman have both identified specific heritage values of the building which would be lost, with Mr Bowman noting that the building is likely worthy of a higher listing due to it being the oldest motor garage in New Zealand and as a building type nationally rare.
- 4.39. There are several indicators of the building's importance to the community which I believe are relevant to consider here, including:
- a. the building being listed in the Plan is a clear indication that it has valuable historical merit for the community;
 - b. in a relative sense, however, it is not a Category I building under either the Plan or the Heritage NZ list – I understand such a classification is reserved for buildings of very high significance and/or community importance;
 - c. relatedly, the Council's heritage inventory underpinning the building's listing¹⁴ identifies the key elements of architectural and townscape importance as the form and fabric of the street elevation, whilst the concrete structure, steel roof trusses and other original fabric (i.e. linings and skylights) are of technical importance;
 - d. the inventory also records that the architectural quality of the building as having been compromised by unsympathetic alterations, albeit some are superficial, although maintaining a *well-articulated and strong industrial façade to Queen Street which would extend to the interior had it not had major changes too*; and
 - e. no submissions were received from the local community expressing concern about the proposed demolition as part of this process and HPHB and Heritage NZ remain neutral in their submissions, that is they have not opposed the building's demolition whilst not supporting it either.
- 4.40. Regarding the first two points above, it is clear from the Plan's policy direction and the guidance in the assessment criteria table that Category I items are of greater relative value than Category II items. While this guidance signals that the demolition of Category I buildings 'should not occur at the expense of the setting, streetscape or to the detriment of the District's historic heritage', that same guidance is not expressed for Category II items. This is not to suggest that the Plan anticipates, or that I support, wholesale demolition of Category II items – it is simply to note the difference in direction for the two categories as context for considering this specific proposal.
- 4.41. While the proposal does not maintain the existing form of the building, it maintains the façade and envelopes through re-purposing the central barrel vault trusses, being notable features of the building. It is further proposed to reuse other materials from the building within the design. This is not to suggest that these factors fully mitigate effects on historic

¹⁴ Hastings Central City Heritage Inventory Project (2004)

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heritage, but they do align with the Plan's guidance on situations where partial demolition is proposed. Furthermore, there is no evidence to suggest that the design will detract from the heritage values of other nearby listed buildings.

- 4.42. Overall, in my view, the above suggests, taking into consideration the low feasibility of adaptive re-use of the building and safety risk management, that the Applicant's proposal seemingly balances competing factors.
- 4.43. My focus returns therefore to Policies HP1, HP2 HP4, HP5, and HP8 and the relevant direction guided by these:
- a. Policy HP1 recognises the significance of a heritage item in the Plan by the relative importance of the classification assessment having been undertaken by Council in conjunction with Heritage NZ. The heritage building is not afforded the highest classification available, being identified as a Category II building, and as such its hierarchy aligns to the level of protection anticipated.
 - b. Policy HP2 focuses on the character of the heritage item. For the public, while the history of the building may be known, the association in the main is with the façade as a prominent feature of the Queen Street West streetscape and the interaction that then has with the overall building, the arched roofline in behind. The proposal retains the façade and re-purposes the central barrel vault trusses, the key / important features of the building, retaining their character and making them the focal point and integral design elements of the community area.
 - c. Policy HP4 seeks to protect and retain the architectural style of heritage character of Hastings. The above consideration identifies the key elements of the architectural style of the building. There is no evidence in either of Ms Galloway's or Mr Bowman's reports to suggest, beyond the central barrel vault trusses, that there is further internal architectural character to the building. In my view it is a fair consideration that the key elements are being retained or repurposed to be focal points for the community and tell a story to the history of the site.
 - d. Policy HP5 allows the use of heritage buildings for a range of activities where this promotes the retention of the building. The heritage building in its entirety is not going to be retained, however elements of the heritage building are being retained and incorporated into the overall site layout. In any case, Policy HP5 is enabling, rather than directive.
 - e. Policy HP8 seeks to facilitate and encourage structural enhancement to minimise the loss of heritage buildings. In the above assessment I found that any structural enhancement would be cost prohibitive to the Applicant. However, the Applicant in working through various alternative options has determined that the façade can be made structurally sound and retained, such that it can be incorporated within the overall site design, together with the re-purposed trusses. While the loss of the overall building to heritage fabric of Hasting is an adverse effect, the Applicant has sought to minimise¹⁵ that loss through the preservation of key elements that the public most associate with the building.
- 4.44. In considering all the above factors in context, my view is that the although the nature and scale of effects on historic heritage is moderate to significantly adverse, the proposal does not offend Policies HP2 HP4, HP5, and HP8 to the extent that it is contrary to, or

¹⁵ Definition in the Oxford Concise Dictionary – 'Minimize something to reduce something, especially something bad, to the lowest possible level.'

inconsistent with, the policy direction of the Plan in relation to heritage items. Though, where other policies encourage proactive heritage advocacy, conservation, and education, the proposal clearly does not implement those aims.

Earthworks, Contamination, Demolition, & Construction

Summary

- 4.45. A range of effects are relevant to the demolition, earthworks, and construction phases of the project, including the management of the removal of the fuel tank/s, stormwater, noise, dust, vibration, and temporary construction traffic.
- 4.46. Given that the site has been identified as containing contaminants in concentrations above recommended background levels, the management of health effects for workers and people near the site is also relevant.
- 4.47. While not opposed to the proposal, one submitter commented on the nuisance effects associated with vibration, noise, and airborne dust as they affect the day-to-day operation of adjoining businesses. Another submission also raised noise as a concern during demolition. Relief sought by these submitters includes:
- a. application of controls on dust and vibration;
 - b. considered timing of the works – days and hours; and
 - c. ensuring business owners operating in area are kept well informed of works.
- 4.48. The submission from Hawke's Bay RC while not opposing the proposal, specifically addressed management of soil contamination. Due to the elevated levels of contaminants in the ground and the DSI report highlighting a potential implication for off-site soil disposal Hawke's Bay RC highlighted the potential need for regional consents in respect of the HB-RMP.
- 4.49. For the reasons set out below, I consider that conditions of consent will sufficiently manage any adverse construction effects, consistent with the expectations of the Plan¹⁶.

Discussion

- 4.50. My discussion below is organised to consider in turn general demolition and construction effects, and earthworks, contaminated land, and fuel tank removal effects.

Objectives and Policies

- 4.51. Of the activities of earthworks (including addressing soil contamination and the fuel tank/s), demolition and construction, the following objectives and policies in the Plan are relevant to the proposal:
- a. Objective EMO5, and Policy EMP14 relate to ensuring earthworks do not compromise historic heritage features; and
 - b. Objective NSO2 and Policies NPS5 and NPS6 address construction noise; and

¹⁶ Objectives EMO5, NSO1 & NSO2, and CCO1, and Policies EMP14, NSP1, NSP5, & NPS6, and CCP5 (**Attachment 22**).

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- c. More broadly Objective CCO1 and Policy CCP5 seek to ensure activities are undertaken in the Central Commercial Zone where consideration is given to noise, glare, and traffic.
- 4.52. The above objectives and policies in the main seek directly or indirectly to minimise the impact of noise, earthworks, traffic, and light associated with demolition and construction activities. More specifically Objective EMO5, and Policy EMP14 seek to ensure earthworks do not compromise heritage features.
- 4.53. In my view, and given the specific direction expressed in the Plan, where the effects associated with demolition and construction activities can be managed / mitigated then it is reasonable to consider such activities as being consistent with the policy direction of the Plan.
- 4.54. Management of contaminated soil / land and the fuel tank removal falls to the NES-CS.

General Demolition and Construction Effects

- 4.55. As noted above, the Plan includes objectives and policies for the maintenance of amenity values, including through management of potential nuisance effects, these may be those effects associated with construction and demolition activities.
- 4.56. This matter is not greatly addressed in the AEE (**Attachment 2**), but has been raised by submitters of adjoining businesses. The most appropriate way to manage the effect of construction and demolition activities is through a comprehensive management plan. In my experience, management plans are commonly used to ensure construction effects of proposals of this nature are well controlled, and there is no reason why they should not be utilised here.
- 4.57. The conditions in (**Attachment 21**) I have drafted provide separately for a DMP and CSMP. While there are elements of commonality between these conditions, which amounts to partial duplication, the reason for this is to facilitate the management of the separate phases for the activities.
- 4.58. To that end, each of the management plans must:
 - a. achieve the purpose stated in the conditions;
 - b. be prepared by a suitably qualified expert;
 - c. be certified by Council before works commence;
 - d. be adhered to during construction and demolition activities; and
 - e. be subject to additional certification process for any review or amendment that may occur over time.
- 4.59. Each management plan must address minimum information requirements set out in the conditions, including:
 - a. description of the activities, process, equipment, hours of operation and the like;
 - b. timing and staging;
 - c. measures to manage construction vehicle traffic;
 - d. erosion and sediment control measures, and management of drainage paths;
 - e. measures to be adopted to ensure noise and vibration are managed in accordance with relevant New Zealand and International standards;

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- f. protocols to be adopted for accidental discovery of archaeological materials;
 - g. protocols for advising persons within the construction area of days and times of activity at the site and a contact person on-site;
 - h. processes for receiving and resolving any complaints received; and
 - i. processes for monitoring and review.
- 4.60. In my view, the management plan conditions will ensure any temporary construction effects are no more than minor.

Contamination

- 4.61. The Plan is silent on this topic and the matter is therefore considered within the domain and scope of the NES-CS. Soil disturbance, earthworks and remediation activities on land that is contaminated can lead to potential adverse effects if not managed properly.
- 4.62. The Applicant has obtained a PSI and DSI (**Attachment 10**), which are important tools in the suite of measures adopted in the NES-CS as best practice for managing health effects of use and development of contaminated land¹⁷. This is reflected in the Applicant's DSI, which anticipates that further investigation will be required prior to full site works commencing due to the inability to access under the building's floor and in particular in the region of the old fuel tank/s. Once investigations are complete a CSMP / RAP would result.¹⁸
- 4.63. The condition framework volunteered by the Applicant requires a CSMP / RAP to be prepared and provided to Council for certification. I propose additional conditions to administer the process for certification and ensure the safe reuse of contaminated soil on site and the disposal of soils off site. A validation report should also be provided by the Applicant after the earthworks are completed to confirm that all advice of the Applicant's expert has been adopted during the proposed works.
- 4.64. I have accordingly proposed amendments (including additional conditions) to the condition framework volunteered by the Applicant to manage effects on human health arising from potential exposure to contaminants in soil on the site.
- 4.65. In my view, the conditions will ensure any effects from contaminated soil will be sufficiently managed in accordance with best practice so that they are no more than minor.
- 4.66. In considering all the above factors, my view is that the nature and scale of effects associated with earthworks, demolition and construction can be managed such that they are no more than minor and the proposal is not inconsistent with the relevant objectives or policies.

Built Form, Character (including Heritage) & Amenity

Summary

- 4.67. Most submissions address either the development or design aspects of the proposal. While 32 submitters signalled general support of the entire proposal and the revitalisation

¹⁷ See Ministry for the Environment. 2012. *Users' Guide: National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health*. Wellington: Ministry for the Environment. p.15

¹⁸ AEE, Section 9.10 (**Attachment 2**). and (**Attachment 10**) – *Detailed Site Investigation [EAM NZ Ltd] 2022*

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of the area of the CBD, some of those submitters raised the following key matters and/ or sought the following relief:

- a. One submitter identified the need for the units to cater for the demographic with a preference for such living style (young couples or singles), while another sought to understand the quality standard of construction and occupancy arrangement;
 - b. Eight submitters sought further consideration within the design to accommodate more green space, more trees for greater shade, and permeable car parking areas, with some identifying with climate change and microclimates;
 - c. Two submitters sought areas within the communal space for informal food and coffee carts; and
 - d. One submitter sought the adoption of CPTED (**Attachment 11**) principles in the laneway, including lighting and security, while another seeks to ensure ready access for emergency services 24/7.
- 4.68. One submitter strongly opposes Council's involvement in redevelopment of the site and does not consider this to be a core business of Council. This is not a matter that can be addressed through this process. While the submission is acknowledged, I have not considered it further.
- 4.69. I generally agree with the Applicant's AEE (**Attachment 2**) and the submitters that the proposal will contribute positively to the urban character and amenity values of the CBD.

Discussion

Objectives and Policies

- 4.70. The main aims to be achieved by the Central Commercial Zone objectives¹⁹ are for:
- a. encouragement and promotion of the commercial area as the principal commercial heart of the District;
 - b. promotion and ensuring good urban design principles and outcomes so the commercial area is an attractive place to live, work, and play;
 - c. a pedestrian focussed environment that is compact, convenient, pleasant, and safe, and
 - d. existing buildings to be strengthened where there is an identified safety risk in the event of an earthquake.
- 4.71. Implementing those outcomes are a range of policies that I consider are well aligned with the proposal, including to:
- a. maintain and enhance the character and amenity of the area by defining it as a community focal point, including medium density residential mixed-use development²⁰;
 - b. enable residential and commercial activities, with comprehensive residential development above-ground floor level, and promote mixed use development²¹;

¹⁹ Objectives CCO1 to CC05 (**Attachment 22**)

²⁰ Policy CCP1 (**Attachment 22**)

²¹ Policy CCP4 (**Attachment 22**)

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- c. ensure adverse effects associated with commercial activities are managed to maintain amenity levels for the residential component of mixed-use development and nearby residential areas²²;
 - d. promote high quality developments that are compatible with the character of the commercial environment using urban design and site-specific design assessment criteria and that avoid large blank walls and other adverse effects on visual character and amenity²³;
 - e. ensure the central retail core is defined, convenient, interconnected, pleasant, safe and has a high level of landscape amenity²⁴;
 - f. improve connectivity with safe linkages to promote walking and cycling and promote pedestrian movement with laneway linkages between known and predicted destinations²⁵;
 - g. promote efficient and effective use of car parking, which provide convenient access and parking and does not undermine pedestrian safety²⁶;
 - h. maximise safety and security²⁷; and
 - i. ensure developments utilise the amenity benefits of green spaces²⁸.
- 4.72. The proposal is less aligned with other directions, including maintaining and enhancing the:
- a. urban form, heritage fabric and built character so development reflects character of the existing buildings, and
 - b. special urban character of built heritage and human scale, fine grain development through use of Performance Standards and requiring design assessment for new buildings...
- in the Central Character Precinct²⁹;
- 4.73. While the proposal is less sympathetic to the existing historic character than the status quo, I do not consider that the proposal is out of keeping with the City Centre's general character to the extent that it is inconsistent with this direction.

Assessment

- 4.74. The **occupancy arrangement** is a matter for the Applicant to determine and does not have any consideration in terms of the Plan. The Plan has a focus on ensuring good design outcomes for any occupant as identified by the policy direction given in paragraph 4.70 above, which includes improving connectivity and the utilisation of amenity benefits of green spaces, such as the **communal space**.

²² Policy CCP6 (**Attachment 22**)

²³ Policy CCP9, CCP14, and CCP15 (**Attachment 22**)

²⁴ Policy CCP17 (**Attachment 22**)

²⁵ Policy CCP18, CCP19, and CCP20 (**Attachment 22**)

²⁶ Policy CCP21 (**Attachment 22**)

²⁷ Policy CCP23 (**Attachment 22**)

²⁸ Policy CCP24 (**Attachment 22**)

²⁹ Policy CCP10 and CCP11 (**Attachment 22**)

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- 4.75. The remaining submission matters pertaining to **green space provision, shade areas, permeable car parking areas, and security and emergency services access** are matters well aligned to Policies CCP6, CCP9, CCP14, CCP15, CCP23, and CCP24.
- 4.76. I have reviewed the Applicant's AEE (**Attachment 2**) that addresses the design of the overall site and the CPTED report (**Attachment 11**) with respect to passive surveillance and safety. In my view, while not all matters raised by submitters, such as reorientation of rooms, may be addressed by the proposal, there is opportunity through final detailed design for the Applicant to refine some aspects of the design, including the landscaping / details associated with the communal space.
- 4.77. One amenity matter that the Applicant cannot presently address is specific **sound attenuation** within the residential units' noise sensitive rooms, particularly due to the unknown nature of the final materials, layout, and design.
- 4.78. The applicant has volunteered a condition (**Attachment 7**) to ensure prior to the development proceeding an acoustic design report is provided stating that the noise limits of the Plan will be complied with. Provided the conditions in (**Attachment 21**) are adopted, I consider the effects associated with this issue will be no more than minor.
- 4.79. The proposal results in two non-compliances with the built form standards for the Central Commercial Zone being that:
- a. **No display windows** face Heretaunga Street West on an Active Retail Frontage. That matter is addressed in Policy CCP12, which states:
- CCP12 Maintaining the character of the main shopping street with active front building design to strengthen street edge definition.*
- b. Two **service spaces** for the smaller commercial tenancy and residential units are located at the lower level, rather than each residential unit having its own space. That matter is addressed in Policy CCP5, which states:
- CCP5 Ensure that activities undertaken in the Central Commercial Zone avoid, remedy, or mitigate adverse effects on other uses including noise, lighting and glare, and visual impacts.*
- 4.80. I have reviewed the Applicant's AEE (**Attachment 2**) that addresses the design of the overall site with respect to these matters and share the author's views that these non-compliances and policy non-conformities are not inappropriate given the proposed use of the site, interconnectivity between two street frontages, and linkage to adjoining spaces. Verandah coverage is retained along Heretaunga Street West to ensure pedestrian comfort and building continuity is maintained within a pedestrian area.
- 4.81. In my view, it is also relevant to consider the 'trade-off' achieved by retaining the building's façade to Heretaunga Street West. The retention of the façade while opening the area behind enables a laneway to access a communal open space to be established in the heart of the CBD, with good aspect and telling the story of the heritage of the site and area.
- 4.82. While this does not ignore the loss overall of the heritage building facing Queen Street West, it is providing a public good, and on balance with the prior assessments, the outcome is appropriate in my view – consistent with the Plan's aims of achieving an attractive streetscape environment and greater opportunity for enhanced public open space and associated amenities.

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- 4.83. For completeness, I also note that the applicant has indicated that proposed signage will be compliant with the relevant permitted activity requirements. Should the applicant decide to adopt signage in the future that requires consent, the associated environmental effects can be appropriately considered at that time.
- 4.84. Overall, I consider that the proposal will result in generous landscaping and an attractive new communal area within the CBD of Hastings. In my view, it will enhance the local streetscape, urban amenity, and vibrancy of the CBD, consistent with the expectations of the Plan. The proposal also will introduce a highly compatible mixed-use development into the area.

Transportation

Summary

- 4.85. While not opposed to the proposal, two submitters seek to ensure there is adequate car parking remaining available for those that work within the CBD and surrounding area.
- 4.86. The Applicant's revised Parking Assessment (**Attachment 9**) to address 20 units on the site demonstrates that any resulting adverse effects of the development in respect of parking will be minor. Appropriate provision has been made for vehicle parking, and temporary construction vehicle traffic can be suitably managed by a CMP.
- 4.87. I consider the proposal will be generally consistent with the relevant transportation provisions in the Plan, and any adverse effects on the safety and efficiency of the transport network will be acceptable.

Discussion

Objectives and Policies

- 4.88. Objectives TPO1 to TPO4 contain the Plan's relevant transportation aims, collectively seeking:
- safe, efficient road networks to ensure reliable movement of people and goods;
 - urban land to be used for higher purposes other than car parking; and
 - well-designed and located vehicle access and parking to ensure safety of all road users and the efficient operation of the road network.
- 4.89. These objectives are implemented by a range of policies, including of most relevance the directions to:
- Provide for public off-street parking in the Hastings Central Commercial Zone;
 - Prioritise transport modes in the Commercial Zones with pedestrians being at the top of the hierarchy followed by cyclists, service vehicles, public transport, and private vehicles; and
 - Establish appropriate design standards for car parking spaces, and parking and loading areas.
- 4.90. For the reasons set out below, I consider the proposal will be consistent with these provisions.

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- 4.91. As noted in Appendix G (**Attachment 9**) to the AEE, on-site parking for the facility is not required under the Plan. In that respect, the Plan is flexible as to how the car parking resource is administered.
- 4.92. The Applicant's parking assessment has confirmed that the proposed car park has been designed to comply with the size and manoeuvring requirements in the Plan. The assessment also notes that through appropriate on-site parking management, the proposed development can accommodate the parking demands anticipated at the site.
- 4.93. Given the applicant's assessment, I consider any adverse effects associated with the site's proposed parking arrangements will be negligible.

Servicing

Summary

- 4.94. Key to this issue is the need for the proposed facility to be serviced for wastewater, stormwater management, and water supply including for firefighting purposes.
- 4.95. FENZ has sought a condition of consent be imposed requiring the proposal to be served by water supply in accordance with the relevant Code of Practice and I have included it in the draft conditions at Attachment 6.
- 4.96. I have relied on the advice of Mr Kelly Nikora (3 Waters Senior Engineer) that effects associated with the proposal can be addressed by additional conditions imposed with respect to design criteria for water supply, and stormwater and wastewater management.

Discussion

- 4.97. A review of the objectives for subdivision and land use only provides a link to land use when considering subdivision consents. However, Policy SLDP8 enables Council to refer to the design standards for land developments contained in the Council's Subdivision and Infrastructure Development in Hastings: Best Practice Design Guide and/or Engineering Code of Practice.
- 4.98. Mr Nikora has considered the proposal and is not satisfied that servicing for the proposal can be administered through future building consent and bylaw processes and as such has recommended conditions (**Attachment 20**) be imposed to ensure future on-site servicing and off-site connections are fit for purpose in accordance with Council's expected levels of service.
- 4.99. I have included draft conditions (**Attachment 21**) on the advice of Mr Nikora that collectively require detailed design for stormwater, water, and wastewater.
- 4.100. The submission by FENZ and the associated request for the conditions to require compliance with the relevant code of practice has been supported by Mr Nikora.
- 4.101. The conditions signalled at (**Attachment 21**) relating to servicing matters are those recommended by Mr Nikora. Accordingly, I consider that the proposal will achieve the aims of the Plan as relates to servicing and any associated adverse environmental effects will be acceptable.

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General Support and Positive Outcomes

Discussion

- 4.102. As noted in Section 3 of this report of the 37 submissions (**Attachment 18**) received, 32 submissions expressed general support of the proposal, identifying the following as reasons for that support:
- innovative approach with laneway and pocket park;
 - addresses site and building in poor state of repair;
 - increased vibrancy and life to the CBD; and
 - promote inner-city living and range of housing options.

Other s104(1)(c) Matters

- 4.103. There are two other matters relevant in my view, being:
- the Hawke's Bay Farmers' Co-operative Association Limited Garage being listed with Heritage NZ; and
 - the effect of granting consent on the integrity of the Plan.

Heritage NZ List

- 4.104. Addressing these in turn, I firstly note that the listed building being scheduled with Heritage NZ does not materially affect the way I have approached my assessment of heritage effects. The Plan has been prepared in a manner that is compatible with the Heritage NZ listing system, whereby the most significant items are afforded a Category 1 status, and items with less significance have a lower categorisation. The heritage building carries a Category 2 status in respect of both the Plan and the Heritage NZ list.
- 4.105. HPHB and Heritage NZ have both lodged submissions, with neither opposing the demolition of the heritage building. Rather they have sought the recommendations and conditions as volunteered by the Applicant be imposed on any consent granted.

Integrity of the Plan

- 4.106. Concern about the effect which allowing the activity might have for consideration of subsequent applications for resource consent for the same or similar activities (in the sense of like cases being treated alike), and thus on the integrity of the relevant planning instrument, is not an effect on the environment.
- 4.107. However, potential precedent effects can be considered as a relevant matter in determining an application and may weigh against the grant of consent under s104(1)(c) of the RMA. I believe caution should be exercised to this matter as with this proposal, each must be considered on its merits and there is no expectation under the RMA that consent will be granted.
- 4.108. In my view the following distinctions can be made about this proposal that support a finding that precedent and plan integrity effects are not likely to follow:
- the proposal is not one for total demolition, the key heritage features recognisable to the public are being retained and incorporated / integrated into the overall design of the site,

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- b. there are key structural integrity issues with the building, alongside a prohibitive economic cost to remedy those issues,
- c. this is the first Category II building under the Plan to be demolished, with over 50 listed Category II buildings, 28 of which are in the CBD,
- d. the site is large in comparison to many of the Category II heritage building sites within the CBD and it is unique in its listing as described in the inventory, such that it has its own unique values that will distinguish it from other heritage buildings that is not replicated elsewhere, and
- e. while not 'supporting' the proposal, Heritage NZ and HPHB accept the proposal goes some way towards retaining the heritage value and story associated with the site and Hastings.

Gateway Test

- 4.109. Section 104D of the RMA requires consideration of the "gateway" tests of subsection (1), one (or more) of which must be passed before resource consent can be granted for a non-complying activity. There is no primacy given to either of the two limbs, so if one limb can be passed then the 'test' can be considered to be passed.
- 4.110. The first test is whether the adverse effects of the proposal are minor and the second, whether the activity is contrary to the relevant objectives and policies of the relevant plan.
- 4.111. In considering the **first** gateway test, it is only the 'adverse' effects which are to be considered. As determined earlier in my assessment of the adverse effects of the demolition of the heritage building, the adverse effects on the heritage fabric of the district are more than minor, an opinion held in agreement with both technical experts, Ms Galloway and Mr Bowman. Therefore, this test is not passed.
- 4.112. In respect of the **second** gateway test, each of the preceding sections, assessments, has considered the relevant objectives and policies of the Plan. In considering all the above in context, my view is that the proposal does not offend the objective and policies to the extent that it is contrary to, or inconsistent with, the policy direction of the Plan. I am therefore of the opinion that the application passes the second test of section 104D and is therefore able to be considered for approval under section 104.

Higher Order Statutory Direction

Summary

- 4.113. Here I briefly discuss higher order direction from the HBRMP, the NPS-UD and the RMA in turn.

Hawke's Bay Regional Policy Statement

- 4.114. I consider that there are three suites of provisions in the HBRMP of particular relevance to the proposal. These include Urban Form UD Objective 1, and Objectives 1, 33.1AA.1, and 38, and their supporting policies.
- 4.115. UD Objective 1 seeks to establish compact, and strongly connected urban form throughout the region. UD Policies 1 and 2 implements the objective interrelationship of provision for urban activities and business activities through:

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- f. prioritising and promoting utilisation of existing and ultimately planned already committed to infrastructure;
 - g. promoting the utilisation, redevelopment, and intensification of existing commercial land; and
 - h. ensuring development close to major transport hubs and multi-modal transport networks.
- 4.116. Objective 1 seeks the integrated management of natural and physical resources of the region while recognising the importance of resource use and its contribution to the development and prosperity of the region.
- 4.117. Objective 33.1AA.1 signals that over the short to medium term and long-term sufficient development capacity should be achieved to meet the demand for housing, plus a competitive margin.
- 4.118. Objective 38 and associated policy seek the sustainable management of land to avoid compromising future use and water quality by various means, including restricting inappropriate land use and discharge of contaminants leading to soil contamination.
- 4.119. For the reasons I have expressed above, my view is that the proposal does not amount to inappropriate use and development. I consider that the proposal is not in conflict with these HBRMP provisions.
- 4.120. The Plan has been designed specifically to give effect to these objectives and policies, albeit to a greater level of specificity. To the extent that I have found above that the proposal is consistent with the provisions of the Plan, that same finding can be applied to these relevant parts of the HBRMP.
- 4.121. In my view, there are no areas of invalidity, incomplete coverage, or uncertainty between the HBRMP and the Plan provisions such that my evaluation need be taken any further.

National Policy Statement on Urban Development

- 4.122. The AEE (**Attachment 2**) has included an assessment of the NPS-UD finding that the proposal is consistent with the relevant objectives in that policy statement.
- 4.123. The key focus of the NPS-UD and the matter of national significance it addresses are twofold:
- a. urban environments and the need to enable such environments to develop and change; and
 - b. providing sufficient development capacity to meet the needs of people and communities and future generations in urban environments.
- 4.124. Contrary to the statement in Section 11.1 of the AEE (**Attachment 2**), Hastings is a Tier 2 Urban Environment as identified in Table 2 of the Appendix to the NPS-UD.
- 4.125. The NPS-UD is subject to eight objectives that are applicable to all urban areas. The applicable aims are to be applied to all decision-making when considering proposals that affect an urban environment. In addition to Objectives 1, 3, and 4 identified and considered in the AEE (**Attachment 2**), I also consider Objectives 6 and 8 to be of relevance.
- 4.126. Objective 6 specifically requires local authority decisions on urban development that affect urban environment to be:

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- a. integrated with infrastructure planning and funding decisions;
 - b. strategic over the medium and long term; and
 - c. responsive, particularly in relation to proposals that would supply significant capacity.
- 4.127. Objective 8 of the NPS-UD seeks that New Zealand's urban environments support reduction in greenhouse gas emission, and are resilient to the current and future effects of climate change.
- 4.128. I share the applicant's assessment and conclusions that the proposal is consistent with the aims of the NPS-UD to the extent relevant. In particular, the AEE (**Attachment 2**) and this assessment have considered the benefits of the proposal and the infrastructure necessary to service it.

Part 2

- 4.129. Schedule 4 of the RMA requires an assessment of the proposal against the Act's purpose (which the applicant addressed in the AEE) (**Attachment 2**), and the determination of the proposal under s104 is 'subject to Part 2'.
- 4.130. I have considered the proposal against the RMA's sustainable management purpose, and in my view the proposal is broadly consistent with Part 2. In reaching that conclusion, I further note my view that:
- a. the proposal will not amount to inappropriate use or development for the purposes of protecting historic heritage under section 6(f) for the reasons outlined above;
 - b. the proposal has recognised and addressed or provided for the management of significant risks from natural hazards associated with seismic activity and fire, consistent with section 6(h);
 - c. the matters at s7(c) and 7(f) relating to the maintenance and enhancement of amenity values and of the quality of the environment (respectively) have been sufficiently considered by the proposal;
 - d. overall, people's health, safety and well-being will be enabled by the proposal and adverse effects of the proposal will be avoided, remedied or mitigated; and
 - e. the principles of the Treaty of Waitangi have been taken into account, in particular the principle of consultation, which the applicant has carried out at intervals with local iwi throughout the duration of the proposal's conception.

Closing Comments

- 4.131. Under s104B of the RMA, the Council may grant or refuse consent for this proposal.
- 4.132. Having applied a fair appraisal of the objectives and policies as a whole and applying greater weight to more directive policies where applicable, my view is that the proposal is broadly consistent with the objectives and policies of the Plan.
- 4.133. I consider it will result in positive effects. It will also result in more than minor adverse effects on historic heritage values. When considered within the Plan's policy framework for the demolition of Category II buildings I consider the net result to be acceptable for the reasons expressed above. All other adverse effects can be effectively avoided or mitigated.

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- 4.134. Overall, I recommend that consent be granted subject to the conditions at (**Attachment 21**).

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