

IN THE MATTER of the Resource Management Act 1991 (RMA or Act)

AND of the Resource Management Act 1991 (the RMA) and an application to the Hamilton City Council by The Church of Jesus Christ of Latter-Day Saints Trust Board for the proposed demolition of the Block Plant building (H135), a B-ranked historic heritage item listed in the Hamilton City Operative District Plan at 435-495 Tuhikaramea Road, Temple View.

INTRODUCTION

DEFINITIONS

1. In this Decision we use the following terms:

Applicant- The Church of Jesus Christ of Latter-Day Saints Trust Board

Church- The Church of Jesus Christ of Latter-Day Saints Trust Board at Temple View

Centre- Matthew Cowley Pacific Church History Centre

Council- Hamilton City Council

District Plan/ODP- Operative Hamilton District Plan

NES-CS- National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011

NPS-UD- National Policy Statement on Urban Development 2020

RMA- Resource Management Act 1991 and its amendments

THE APPLICATION

2. Resource consent has been sought to demolish the Block Plant building, which is a B-Ranked Historic Heritage Item in the District Plan (item H135). The resource consent application describes that the site will be cleared and repurposed for residential development and associated infrastructure, including roading.
3. The application further proposes the erection of a memorial plinth in the vicinity of the Block Plant site for the purpose of memorialising the form and function of the Block Plant building. It is intended that the plinth will direct visitors to the nearby Museum where detailed records of the Block Plant are held. In addition, the applicant proposes to include memorial items associated with the Block Plant as part of the proposed rose garden memorial to be developed immediately north of the Mendenhall Building.

SITE & SURROUNDING ENVIRONMENT

4. The site is located within the Temple View area, a suburb approximately 7km south-west of the Hamilton City Centre. The site is zoned Temple View Zone in the Operative District Plan and is located within the Temple View Character Area.
5. As set out in the original s42A report¹, commencing in 2009, the applicant has been through a comprehensive master-planning process for their Temple View campus. In 2016 the Applicant applied for a Comprehensive Development Plan (now known as CDP2) to guide re-development of the mid-section of the former Church College site. The CDP2 area included multiple historic buildings comprising the Wendell B Mendenhall Library (H109), the First House (H133), the G.R. Biesinger Building (H107), the Kai Hall (H134), and the Block Plant (H135). CDP2 showed the retention of the Block Plant (H135), with the surrounding land developed for residential purposes.
6. Further consents were granted for CDP Areas 1 and 3 in June 2017 and July 2018, respectively. All three CDP areas are currently in various stages of redevelopment.

APPOINTMENT AND PROCESS

7. We have been appointed by the Council as an Independent Commissioner in terms of s34A of the Resource Management Act 1991 to hear the applicant, submitters, and the Council's reporting officer and to determine the application. The information available to us prior to the hearing included the application material, assessment of environmental effects (AEE) report, the submissions, the s42A report and Supplementary s42A report, and expert technical evidence on behalf of the applicant.
8. We issued two directions:

¹ s42A Report, section 2.2

- Direction 1, 1st September 2020. This set dates for the exchange of evidence and procedures for the hearing.
 - Direction 2, 19th October 2020. Following their receipt of the Council's s42A report the Applicant had asked for deferment of the hearing so that matters raised by the Council in the s42A report could be considered. This Direction set out updated dates for the exchange of evidence, including a supplementary s42A report from the Council.
9. We carried out a site visit on the 2nd December 2020. We were shown around by representatives of the Applicant and the Council. We did not hear any evidence whilst on our site visit, with the purpose of the site visit being for us to view the existing context and condition of the Block Plant building, to view other heritage buildings at the Temple View site which have been repaired, refurbished, and reused and to see the new development which has taken place in the area.
 10. The Hearing was held on the 3rd December 2020.
 11. At the hearing we resolved to accept the late submission from Kershaw Trust Ltd.
 12. Mr Nolan, Counsel for the Applicant, provided a verbal reply at the hearing.
 13. Ms Macdonald, a submitter who had appeared at the hearing, provided additional information to the Council Governance Administrator on the 7th December 2020 and asked that this be provided to us. Unfortunately, as Mr Nolan had already provided a reply on behalf of the Applicant, we were not able to accept this additional information.
 14. Having considered whether we had sufficient information to make a decision, we closed the Hearing on the 17th December 2020.

NOTIFICATION

15. The application was publicly notified on 14 July 2020, with the submission period closing on 1 September 2020. It was noted that the applicant had requested that the Application be publicly notified.
16. Thirteen submissions were received, with twelve in support and one in opposition to the proposal. One late submission was received.
17. Submissions were received from;

In support

- Wendy Lorraine Walmsley
- David Thomas Leonard Walmsley
- John Angus Kendall
- Shirley Burgess
- Annie Louisa Robinson
- Fay Lorraine Richards
- New Zealand Labour Missionary Charitable Trust

- Julie Coward
- Walter Philip Hague
- Te Haa O Te Whenua O Kirikiriroa
- Joan Elizabeth Lake
- Claudia Anne Rebecca Mason

In opposition

- Meshweyla MacDonald

Late submission

- Kershaw Trust Ltd

The late submission was in support of the proposal.

18. The key matters highlighted by the submissions in support are summarised² as follows:

- It is considered that the Block Plant has little purpose remaining and would be almost impossible to repurpose because of the material it was built with and modern seismic strengthening requirements, and where it is situated
- The Block Plant has had various uses over the years including rugby changing rooms and maintenance equipment storage. It is considered that the building does not fit with the future use of this area and is it not currently fit for use
- The Block Plant building has served its purpose
- The Labour Missionary Charitable Trust has members who built and worked on the Block Plant building and considers that the building does not have any historical significance to its members. The purpose of the building was to provide shelter, and since it ceased operation, it has been used for a multitude of other purposes
- The heritage and history of the site is already well presented through the retention of the Kai Hall, GRB and the archives kept in the Church History Museum
- The land should be utilised for residential purposes and the demolition would facilitate effective redevelopment of the site
- A sign or plaque is all that is required to memorialise the building and is a suitable historical marker
- Suggested alternative uses costs outweigh any heritage value of the building

19. The key matters raised by the submitter in opposition included:

- The demolition of the Block Plant will cause increased adverse cumulative effects on the Temple View environ, further dissolving the special character of the Temple View community provided for in the District Plan.

² S42A Report, paragraph 29

ACTIVITY STATUS

20. We were advised that the District Plan had been made operative in October 2017.
21. Plan Change 3 which relates to the Temple View area had been made operative on 12 December 2019. This Plan Change aligned the re-zoning of 14 hectares of land transferred from the Waipa District with the planning provisions in the Hamilton City Operative District Plan.
22. The current application had been lodged on the same date that the plan change had been made operative, and therefore we have considered the application in respect of the Plan Change 3 provisions.
23. Ms Gooderham³ advised that in her opinion there were no provisions of relevance to the proposal in respect of Plan Change 6 to the District Plan, which had been publicly notified on 20 July 2019, and decisions made on submissions.
24. The proposal involves demolition of a building ranked B within Schedule 8A: Built Heritage which is listed as a Discretionary Activity pursuant to Rule 19.3 of the Operative District Plan. As a Discretionary Activity, Council has full discretion over the application. Notwithstanding this, it is noted that none of the specific standards listed in Chapter 19 are relevant in respect of the application.

STATUTORY PROVISIONS CONSIDERED

25. In considering the application, we have had regard to the matters to be considered as set out in Section 104 of the RMA, recognising the status of the proposal as a 'Discretionary Activity'. We are required to consider all relevant matters as outlined by s104 of the RMA as follows:

Section 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.*

³ S42A Report, paragraph 25

26. As a discretionary activity application, it may either be granted or refused consent, and if granted, conditions may be imposed under s108 of the RMA.
27. We have had regard to all of the relevant matters contained in s104 of the RMA including the provisions of the ODP and relevant policy statements, and to Part 2, being the purpose and principles of the RMA.

PRINCIPAL MATTERS IN CONTENTION

28. Having considered the application, submissions and evidence provided, we consider that the principal issues of contention are:
 - The Urban and Visual Effects of Leaving the Block Plant in situ
 - The availability of other options
 - Cumulative Effects
 - Mitigation Measures
 - Positive Effects

EVIDENCE AND SUBMISSIONS

29. The following summary is not intended to be a full coverage of all matters raised in the applicant's evidence, submission or s42A report. All written evidence and the Applicant's opening legal submissions are available on the Council's website. Relevant parts of the s42A report, evidence and submissions are referred to in the Main Findings section of this decision, where it forms a component of our findings in deciding the application.

APPLICANT

Derek Nolan and Aidan Cameron

30. Mr Nolan and Mr Cameron provided opening legal submissions on behalf of the applicant, including introducing the application and evidence, some relevant background, the statutory framework, and the assessment carried out. They also addressed some issues arising from the evidence which has been filed.
31. They confirmed that the building was erected in 1956 around a block making machine, with the blocks produced used in the development of buildings at Temple View and for Church projects elsewhere in New Zealand and the Pacific. Block making at the site ceased in 1965 and the block making machine sold. The building has been used for a variety of purposes since that date and is currently not used.
32. Whilst Mr Nolan suggested that in part the removal of the building was to align with the master-planned vision for the residential neighbourhood consented under CDP1 and

CDP2⁴, in response to our questions it was confirmed that the approved CDPs show the retention of the Block Plant and differ from the Applicant's current 'masterplan' for the site (which has evolved since the CDP1 and CDP2 consents).

33. In answer to our questions, Mr Nolan confirmed that there was no obligation on the Applicant to maintain the building should consent not be granted for its removal.

Adam Aalders

34. Mr Aalders appeared by video conference. He set out an overview of the Church operations in New Zealand, the history of Temple View, the current Temple View Project, the application, comments on submissions and a response to the s42A reports.
35. He provided information of the various historic heritage buildings which have already been renovated at the site, including the GRB Hall, Kai Hall, Mendenhall Library and First House.⁵
36. He pointed out that the Block Plan building is redundant to the needs of the Church and community and serves no useful purpose in being retained.⁶
37. He confirmed that the overall revisioning project was not a profit-making commercial venture, and that the costs far exceed any revenue, with the aim to safeguard space around the Temple and to provide for the local community.

Barry Garlick

38. Mr Garlick is the Director of the Matthew Cowley Pacific Church History Centre (Centre). He provided an outline of the background to the Centre, the facilities provided at the Centre, including the Church Museum, and the approach of the Centre to preserving the history of the CCNZ site, as well as comments on the s42A reports and draft conditions.
39. He confirmed at the hearing that the intention was that all information at the Centre will in time be made available digitally.

Michael Graham

40. Mr Graham, a Landscape Architect, provided a brief description of the existing environment surrounding the Block Plant building (as consented through CDP1 and CDP2) and the landscape, visual and amenity effects that would arise from retaining the Block Plant building in its current location.
41. Much of Mr Graham's evidence related to urban design matters. In response to questions, he confirmed that he had based his assessment and evidence on the layout for the area

⁴ Legal opening of Mr Nolan and Mr Cameron paragraph 2.7

⁵ Evidence of Adam Aalders paragraph 25

⁶ Evidence of Adam Aalders paragraph 36

around the Block Plant as shown on the Applicant's current masterplan for the area, rather than that shown on the approved CDP plans.

Adam Wild

42. Mr Wild, an Architect specialising and qualified in building conservation and heritage management, provided evidence regarding the historic heritage values of the Block Plant building, the protection afforded to the building by the ODP, the appropriateness of the proposal to demolish the Block Plant building, cumulative effects, and the consideration of alternatives, in addition to providing comment on submissions, the s42A reports and draft conditions.
43. He noted that he has considered the future of the Block Plant building in the context of the wider envisaging project for the wider site, which provides a focus on the Temple. He sees all of the other historic heritage buildings on the site being focused towards the Temple, whereas the Block Plant building turns its back on the Temple. He sees it as the bottom of the hierarchy of historic heritage buildings on the site (even when all other buildings were on the site).
44. He confirmed that he did not think that there is a future use option which had been missed and that the lack of an existing use for the building would bring the obligation to bring it up to current building code were it repurposed.

Ashley Gillard-Allen

45. Mr Gillard-Allen, an Architect, provided evidence regarding the concept designs for alternative uses for the block plant building, as well as comment on submissions, the s42A reports and draft conditions.
46. In response to questions, he indicated that the Library has been refurbished to 66% of new build earthquake standard and the Kai Hall to 100% of the standard. The Building Act would require that the refurbished/reused Block Plant would need to meet 67% of the standard. He indicated that potential purchasers would be very focused on building code compliance when undertaking their due diligence. The seismic upgrade of the building is a relatively small proportion of the overall cost of the upgrade and conversion of the building for a new use.

Aaron Beer

47. Mr Beer, a structural engineer, provided evidence regarding investigations into the Block Plant building, seismic strengthening options, and the challenges for the refurbishment of the building, as well as providing comment on submissions, the s42A report and draft conditions.
48. He confirmed that at 34% of the Building Code the building is dangerous. When altering a building it should at least meet the current standard for the building, and that when changing the use of a building it is necessary to get as close to the code as reasonably

practical. The Council will have discretion on this matter, but it is usually expected to achieve at least 67% of the new building Code.

49. He confirmed, as did Mr Gillard-Allen that the bulk of conversion cost comes from other work, not from seismic strengthening.
50. In considering the potential adaptation of the building, he has been pragmatic and tried to keep existing fabric when possible. Retaining the existing mezzanine level has not been a big driver for additional cost.

Douglas Saunders

51. Mr Saunders, a Valuer, provided evidence on the economic feasibility of the considered redevelopment options for the alternative use of the building. This included comparing the market value of each option against the cost to compete each option. He also provided comment on submissions, the s42A report and draft conditions.
52. He confirmed that due to the small scale of any development of the Block Plant building, the small market for development in Temple View would not have implications for his assessments.

Leonard Gardner

53. Mr Gardner, CEO and Director of Foster Construction, provided evidence regarding the viability of development opportunities to retain the Block Plant building.
54. He confirmed at the hearing that the Block Plant is in a remote location and he cannot see a developer taking the risk of converting the Block Plant to a new use. This risk is made greater as the building was constructed using volunteer labour.

David Heperi

55. Mr Heperi did not provide written evidence to us. In response to questions that we raised at the hearing, he confirmed that the stage 1 residential development (currently underway) has all been sold, with the majority of buyers being Church members.

Chris Dawson

56. Mr Dawson provided planning evidence, as well as comments on submissions, the s42A report and draft conditions.
57. At the hearing he confirmed that it was his view that any of the alternative options for the building would be difficult to consent, due to the impact each would have on the building's heritage fabric. He questioned the purpose of these alternatives if they would each have such a negative impact on the heritage building.
58. He emphasised that the six additional lots which could be delivered were the building demolished are a relevant consideration, and better provide for the social, economic, and cultural wellbeing of the Temple View community.

59. In relation to the various options considered for the reuse of the building, he noted that the commercial options would not be a good fit with the surrounding residential development due to their different mode of operation; for instance, their use could extend into the evening. He does not consider boarding up and retaining the building to be a sustainable use of the building and would not help with the understanding of the heritage of the area.
60. He made reference to Objective 4 of the National Policy Statement – Urban Development, which states:

Objective 4: New Zealand’s urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities, and future generations.

61. He indicated that the area has changed, and the focus of the CDPs has been to retain the overall special character of the wider site, with the maintenance of the Tuhikaramea Road corridor, curtilage walls and viewshafts to the Temple.

SUBMITTERS

New Zealand Labour Missionary Charitable Trust

62. Mr Owen Purcell (Chairman) and Mrs Hoki Purcell (Secretary) provided a submission on behalf of the New Zealand Labour Missionary Charitable Trust, in support of the application.
63. They outlined that they feel that Temple View was built on faith, and they look forward to the development of Temple View with positivity.
64. They support the demolition of the building.
65. Mrs Purcell set out:
- Their mission had been to serve voluntarily to build the Temple View site.
 - They had only the bare necessities.
 - Their family and Church members from their local area had helped to support them.
 - The Labour Missionaries were mainly Maori.
 - They came from poor homes and were uneducated, with professional men coming the from the USA to teach them how to build.
 - They lived a balanced life and were happy.
 - They built their own homes and shared skills.
 - The building programme taught them new skills and led them to be better people.
66. Mr Purcell outlined:
- He had been a Labour Missionary at Temple View for two years, including six to nine months working in the Block Plant.
 - Later they had moved to Hamilton and their grandchildren had been through Church College.

- He had supported the changes at Temple View, including closing the school and demolishing the sports hall.
- In all his visits to other Temples, including the USA, he had not seen another view as good as that from the Museum to the Temple.
- He sees the demolition of the Block Plant as only a minor issue compared to the demolition of the other buildings.

Meshweyla-Kusheyla Macdonald

67. Ms Macdonald submitted in opposition to the application. She spoke to her written statement. Key points raised included:
- Her Grandfather was a Labour Missionary.
 - She was aghast to be at the hearing, as the applicant had indicated at a previous hearing that it was their intention to retain the Block Plant as mitigation for the loss of another historic heritage building; this was not in good faith.
 - She does not believe that the removal of the building is an afterthought.
 - Community input was carried out to recognise the special character of the area; this was clearly defined, and a code was put together for development in the area; this has been continually tweaked by the developer.
 - The applicant has spent millions on roads, play areas, etc but the surrounding buildings which contributed to the relevance of the Block Plant have now gone.
 - This previous work was not justified on an economic business case; an economic case is only now being made as the Church do not want to keep the Block Plant.
 - The final result of this is not what was originally intended; individual small modifications have cumulatively made a massive change to the area.
 - Where is the community in all of this; in 2009 there was originally significant opposition. She outlined how she felt that the Applicant has discouraged opposition and steamrollered over the community voice.
 - The Campus is significant to Maori; built with Maori labour, timber from Maori forest and Maori Alumni.
 - The Council list is not protecting heritage and requests to demolish buildings keep being approved.
 - Everything which formed the special character of the area has now gone, houses walls, dormitories etc. The culture, look and feel of Temple View has changed.
 - The cumulative effect is that the Block Plant is the last unaltered structure standing.
 - The public voice should be valued, the application should be refused, and the Block Plant building retained.
68. In answer to a question, she confirmed that she considered that the special character of the area consisted of the brick, treescape, old dormitory, low curtilage wall and that you could see into the community. All you see now is the new wall along Tuhikaramea Road.

COUNCIL

69. Having heard the applicants' evidence and the submitters, the Council officers confirmed their view regarding the application:

Wendy Turvey

70. Ms Turvey, a historic heritage specialist, read the key points from her evidence and supplementary evidence, and confirmed that the conclusions in her Evidence in Chief still stand.

71. She indicated that the fact that the building was not on the Heritage NZ list did not mean that less weight had been given to the significance of the building.

72. She confirmed that what was shown on the CDP1 plan would provide an appropriate setting to the building; the change in levels shown helps the relationship between the building and its surroundings.

Lana Gooderham

73. Ms Gooderham, the Council's reporting planner, provided supplementary evidence to address any residual matters raised by the applicant and submitters and to introduce a revised set of conditions.

74. She confirmed that the compelling matter in support of the demolition of the building is the economic feasibility of alternative use, and that the demolition of the Block Plant represents a balanced approach. She recommends that the resource consent be approved, subject to conditions.

MAIN FINDINGS

75. The application, submissions and s42A report and the evidence presented at the hearing identified a range of effects for consideration. As noted above, having considered the application, submissions and evidence provided, we consider that the principal issues of contention are:

- The Urban and Visual Effects of Leaving the Block Plant in situ
- The availability of other options
- Cumulative Effects
- Mitigation Measures
- Positive Effects

76. Each of these matters is considered below.

THE URBAN AND VISUAL EFFECTS OF LEAVING THE BLOCK PLANT IN SITU

77. Mr Graham provided an assessment of the visual effects of leaving the Block Plant in situ⁷. He found that:
- The scale of the Block Plant building is inconsistent with surrounding dwellings.
 - The Block Plant building is not aligned with the road network or lot orientations.
 - The Block Plan sits at a higher elevation to its immediate surroundings and is not integrated into surrounding contours.
 - The Block Plant building does not address the surrounding street network, will not present an active frontage and is not complementary to the consented character of the residential development.
 - He set out the effects of this on the urban amenity of future neighbours.
78. However, we note that Mr Graham confirmed at the hearing that his assessment was made on the basis of the Applicant's current masterplan for the site, not on the basis of the consented CDP1 layout. It is our understanding that whilst the CDP1 layout can be considered to form part of the receiving environment, the Applicant's masterplan does not have consent and cannot be taken account of in the same way. Given this, we consider that we can give little weight to Mr Graham's assessment.
79. Ms Turvey confirmed at the hearing that what was shown on the CDP1 plan would provide an appropriate setting to the building; the change in levels shown helps the relationship between the building and its surroundings. We accept the evidence of Ms Turvey in relation to this matter.

THE AVAILABILITY OF OTHER OPTIONS

80. The Applicant provided comprehensive range of options for the upgrade and reuses of the Block Plant building, with evidence regarding these options from all of their expert witnesses.
81. The Applicant's witnesses found shortcomings with all of these options; Mr Saunders' concluded that 'The substantial development cost for each option clearly shows that the redevelopment of the Block Plant building is uneconomic. The building is shown to have no added market value to the land.'⁸
82. The Council commissioned a peer review of the costing provided by the Applicant; whilst this found a small potential overestimate of costs in the Applicant's budget, Ms Gooderham

⁷ Evidence of Mr Graham, paragraph 15.

⁸ Evidence of Mr Saunders, paragraph 15

considered this amount to be of minor significance in the overall budget and opined that it would not alter the overall economic viability of the proposal to a significant extent.⁹

83. Based upon the Applicant's evidence and Council's review of the costs, we accept that none of the potential reuse options considered by the Applicant are financially viable.
84. We recognise Ms Macdonald's concerns around the previous promises to retain the Block Plant building. However, we were not provided with any evidence from any party that showed that this carried any specific requirement to maintain and invest in the Block Plant building. Whilst we note that in his reply Mr Nolan indicated that such promise had not been made, we note that the Block Plant building was shown retained on the approved CDP plans. However, without any specific requirement that the building be maintained there is nothing to stop the building falling into (greater) disrepair and for it to fall prey to 'demolition by neglect'.
85. In this circumstance, whilst we have sympathy for Ms Macdonald's view, we consider that it is appropriate to consider the financial viability of the alternative uses (which together appear to cover the most probable and appropriate potential future uses for the building).
86. On balance, we accept the applicant's evidence that there is not a financially viable future use for the building.

CUMULATIVE EFFECTS

87. Ms Macdonald set out how the Council, through a process with community input, created a plan that recognises the cultural and heritage value of the Temple View community special character and architecture.¹⁰
88. She indicates that the resulting code 'was then 'prostituted' by the applicant, a little bit here on removing a wall, a little bit there on removing a building, a small change here in terms of minimum section sizes, removing another few buildings, a tweak there in terms of treescapes, but as long as the new stuff was painted white like the old stuff, it was approved, until the final result looks nothing like what was intended. Retaining the Block Plant is consistent with the development of and adherence to the plans and regulations Council made to recognise and preserve the special character of Temple View.'
89. Mr Wild considered the matter of cumulative effects and opined that 'in considering what has already happened and has been authorised, the particular environs of the Block Plant building are not sensitive to change'.¹¹

⁹ Supplementary s42A, paragraph 78

¹⁰ Statement of Ms Macdonald, paragraph 3.1

¹¹ Evidence of Adam Wild, paragraph 34

90. Mr Wild discussed the work which has taken place for the conservation and adaptive reuse of the Category B listed First House, Mendenhall Library, GR Biesinger Hall, Kai Hall and the Category A listed Temple. He suggested that *'Separately each, and collectively all, of those conservation and upgrade works described here have generated positive cumulative effects which need to be considered in balancing any perceived adverse effects in this context.'*¹²
91. We accept Ms Macdonald's view that over the past years there has been significant change to the Temple View area. We know from our own knowledge and previous visits to the area that the character of the area as a whole has changed substantially; the Tuhikaramea Road streetscape has altered significantly with the views of houses alongside the street now replaced by the views of walls. Whilst we do not dispute that this work is all of the highest quality¹³, and we recognise that as pointed out by Mr Wild significant investment has been made in the adaptive reuse of a number of heritage buildings, it is clear that the Temple View that a passer-by sees today is not the Temple View they would have seen before the revisioning project.
92. Notwithstanding this change, the question for us is whether the demolition of the Block Plant building would, taken with these other changes, create adverse cumulative effect on any building or structure listed in Schedule 8A¹⁴ and on the character of the area as a whole¹⁵.
93. Given the location of the building away from Tuhikaramea Road, in a location which was previously in part screened by other now removed school buildings, and which is relatively remote from the retained heritage buildings, we accept Mr Wild's view that the removal of the Block Plant building will not create significant adverse cumulative effects.

MITIGATION MEASURES

94. As detailed above, the application proposes the erection of a memorial plinth in the vicinity of the Block Plant site for the purpose of memorialising the form and function of the Block Plant building. It is intended that the plinth will direct visitors to the nearby Museum where detailed records of the Block Plant are held. In addition, the applicant proposes to include memorial items associated with the Block Plant as part of the proposed rose garden memorial to be developed immediately north of the Mendenhall Building.
95. The Council s42A reports each included draft conditions, addressing mitigation measures. Further draft conditions were provided to us by Ms Gooderham at the Hearing. These conditions move beyond the initial offer from the applicants, and require the provision of

¹² Evidence of Adam Wild, paragraph 35

¹³ As pointed out by Mr Nolan in his verbal reply.

¹⁴ Policy 19.2.3d42, as referred to in evidence of Mr Dawson paragraph 86

¹⁵ Policy 5.2.1a

various mitigation measures, including a commemorative plinth in the location of the Block Plant building, commemorative information at the Rose Garden and a detailed record of the building (as it currently stands). The set of conditions provided with the supplementary s42A report did not require that a Block Plant history showcase should be included as a permanent feature in the Pacific Church History Museum, as had been required by previous versions of the suggested conditions, responding to the Applicant's concerns regarding this requirement. The conditions circulated at the hearing alongside Ms Gooderham's supplementary evidence had reinstated this requirement, although we understand that this change was not intended, and the Council did not wish to insist upon a permanent showcase feature.

96. Notwithstanding the position of the Council and Applicant, we consider that the removal of the Block Plant building would warrant a permanent exhibit in the Pacific Church History Museum, as additional mitigation over and above the commemorative plinth in the location of the Block Plant building, commemorative information at the Rose Garden and a detailed record of the building (as it currently stands). However, we do not believe that there should be any requirement regarding the size of this exhibit or whether it be a showcase.
97. Subject to the requirement of a permanent exhibit in the Museum, we are content that these conditions provide appropriate mitigation for the removal of the heritage building should that be the outcome of the application.

POSITIVE EFFECTS

98. Ms Gooderham and Mr Dawson both noted that the demolition of the Block Plant building will enable the applicant to develop the subject site for residential purposes, thereby increasing housing stock and housing choice within Hamilton City.
99. We accept this.

SECTION 104(1)(B) – RELEVANT PROVISIONS

NATIONAL POLICY STATEMENTS & NATIONAL ENVIRONMENTAL STANDARDS

100. We have had regard to the National Policy Statement on Urban Development 2020 (NPS-UD), and to the National Environmental Standard for Assessing and managing Contaminates in Soil to Protect Human Health (NES-CS). We noted that the ODP had not been amended to give effect to the NPS-UD and therefore agree with Mr Dawson that consideration of it is required under s104(1)(b) of the RMA.
101. We have considered his evidence and the NPS-UD objectives and policies¹⁶ he brought to our attention. While removal of the Block Plant would result in an additional six dwellings

¹⁶ Evidence of Mr Dawson, paragraphs 57-63

to be provided on the residentially zoned land, such additional housing capacity has not been significant in us concluding to grant consent to the proposal. Overall, it is not a large number in the overall context of residential development capacity in the Hamilton urban area.

102. Mr Dawson was of the opinion that the proposal was generally consistent with the NPS-UD objectives and policies. We accept that view.
103. In regard to the NES-CS, Mr Dawson¹⁷ advised us that the subject building had housed a generator which is still in situ and had also been used for the storage of fuels and chemicals associated with grounds maintenance. He also noted that the applicant wished to take a precautionary approach and sought consent to a Discretionary Activity under the NES-CS.
104. Given that the applicant has conservatively assessed the building site has been subject to a HAIL activity, it is willing to accept appropriate conditions¹⁸ requiring either a Preliminary or Detailed Site Investigation after removal of the Block Plant. While we have not been presented with any technical evidence on this matter, we acknowledge that the applicant has offered up such a condition and we have therefore imposed a requirement for site investigations under the NES-CS.
105. This approach would address any matters related to the NES-CS.

WAIKATO REGIONAL POLICY STATEMENT

106. The Waikato Regional Policy Statement (WRPS) provides an overview of the resource management issues in the Waikato region and provides the direction to regional and district plans, which must give effect to the WRPS.
107. We were advised through the s42A report that Objective 3.18 sets out that sites, structures, landscapes, areas, or places of historic and cultural heritage are protected, maintained, or enhanced in order to retain the identity and integrity of the Waikato region's and New Zealand's history and culture. It is noted that this Objective is to be achieved through various policies, including Policy 10.3.2 which outlines a set of criteria that District Plans should have regard to when assessing whether an activity is appropriate.
108. The RPS seeks that heritage items be identified in District Plans and provides guidance as to matters to consider. However, it is further noted that the RPS does not identify how, or to what level, this protection and enhancement is to be achieved. Ms Gooderham was of the opinion that the RPS direction was more relevance to District Plan review processes than an individual resource consent application.

¹⁷ Evidence of Mr Dawson, paragraph 66

¹⁸ Evidence of Mr Dawson, paragraph 66

109. Mr Dawson was of the opinion that the proposal would conflict to a degree with Objective 3.18 in that the Block Plant as a building of historic heritage will not be maintained given the application is for its demolition. He further noted though that the proposal aligned with Policies 10.1 and 10.3 of the WRPS in that the historic heritage value attached to the building and associated site will be recognised and recorded through the Matthew Cowley Pacific History Museum. We were advised that it is intended to install a plinth to recognise the location of the Block Plant which would act as a reference for those visiting the Temple View site. The applicant's commitment to telling the story of the Block Plant is in our view consistent with the intent of Policies 10.1 and 10.3 of the WRPS.
110. Having considered the WRPS provisions and that while the Block Plant will be demolished and as such may conflict with the intent of Objective 3.18, we are of the opinion that overall, the proposal is generally consistent with the WRPS and particularly with Policies 10.1 and 10.3 to recognise the historic heritage of the Block Plant.

DISTRICT PLAN

111. Both Mr Dawson and Ms Gooderham provided through evidence, comprehensive assessments of the proposal against the relevant objectives and policies and assessment criteria of the ODP.
112. It is acknowledged that the ODP has a strong focus on the retention of heritage buildings. We note Ms Gooderham's opinion expressed in her s42A report that it was difficult for her to conclude that the proposal when considered overall achieves the Objectives and Policies in Chapter 19 of the ODP. However, she noted that when Policy 19.2.3b which refers to B-ranked buildings is read in conjunction with the associated explanatory notes, that some form of heritage loss is anticipated in specific circumstances.
113. She concluded that the applicant had demonstrated through the assessment of potential re-use options, that any such re-use was not economically viable, and that the options explored had been reasonable and non-fanciful uses.
114. We note the conclusions reached by Ms Gooderham in respect of Special Character Zone objectives and policies where she was of the opinion that while re-use of the Block Plant would align with the objectives of the Special Character Zones, that the proposal was not contrary to the zone objectives and policies.
115. Having considered the assessments of ODP policies and objectives contained in both s42A reports, we generally concur with them and the conclusions reached. After considering the re-use options outlined by the applicant, the economic feasibility and costs associated with any adaptive re-use, Ms Gooderham considered that taking a balanced approach, the applicant has demonstrated exceptional circumstances that has led to a conclusion that demolition of the Block Plant is an acceptable response. While Policy 19.2.3a states that demolition of A ranked buildings shall be avoided, Policy 19.2.3b takes a less onerous approach and states that demolition shall be discouraged. This does indicate that in some

circumstances, the loss of B ranked heritage buildings is envisaged. Mr Dawson expressed a similar view in regard to Policy 19.2.3b.

116. Having considered the evidence, we are of the view that the applicant has demonstrated exceptional circumstances in that the re-use options are not economically viable, and that demolition of the Block Plant is appropriate in the circumstances outlined by the applicant.
117. While the proposal is not consistent with all objectives and policies, we take the view that it is not inconsistent with the overall objective and policy framework. The mitigation proposed will assist in acknowledging the role the Block Plant played in respect of the Temple View campus development and that its story is told in the museum, and through other means as required by consent conditions. This approach is envisaged by the objective and policy framework.

SECTION 104(1)(C) - OTHER MATTERS

Hamilton City Council Strategies and Plans

118. We were advised that the Council had a range of non- RMA related strategies and plans in terms of social and economic growth as well as for the supply of services and provision of infrastructure and these are referred in Section 1.1.2.2 of the District Plan. These strategies and plans have helped to inform and shape the provisions of the District Plan which provides the direct planning framework and assessment of land use activities.
119. Ms Gooderham was of the view that the did not raise any fundamental issues in respect of those strategies. Given this situation we did not consider any particular strategies or plans further in our consideration of the application.

Waikato-Tainui Environmental Plan

120. The s42A report referenced the Waikato-Tainui Environmental Plan which includes objectives and policies that aim to ensure that urban development is well planned; and the environmental, cultural, spiritual, and social outcomes are positive. The Plan's purpose is to assist with enhancing Waikato Tainui participation in resource and environmental management and to provide clarity on what the aspirations of Waikato-Tainui as an Iwi Authority are.
121. Ms Gooderham was of the opinion that the proposal was not inconsistent with the urban growth aspirations of the plan. No contrary view was provided to us.

PART 2: RESOURCE MANAGEMENT ACT 1991

122. Part 2 defines the purpose and principles of the RMA. Recent case law has confirmed that it may be appropriate to have recourse to Part 2 in the context of a resource consent application [RJ Davidson Trust v Marlborough District Council [2018] NZCA 316]. The Court of Appeal found that:

'[75] If a plan that {sic} has been competently prepared under the Act it may be that in many cases the consent authority will feel assured in taking the view that there is no need to refer to Part 2 because doing so would not add anything to the evaluative exercise. Absent such assurance, or if in doubt, it will be appropriate and necessary to do so. That is the implication of the words "subject to Part 2" in s 104(1), the statement of the Act's purpose in s5, and the mandatory, albeit general, language of ss 6, 7 and 8.'

123. Both Ms Gooderham and Mr Dawson believed the ODP had been competently prepared. Mr Dawson however took the view that given the ODP had not been amended to give effect to the NPS-UD it was not therefore a complete statement in respect of the purpose and principles of the RMA. He also outlined that the objectives and policies of the ODP leave room for debate and do not provide clarity in 'one direction or the other' in respect of the removal of a B-ranked heritage building.
124. Having considered the above matters and relevant evidence we have taken a conservative approach and given consideration to Part 2 matters.
125. In respect of section 5, we have concluded that demolition of the Block Plant building would facilitate efficient development of the subject site for residential purposes and enables the applicant to provide for its economic, and social well-being through provision of housing. In addition, the proposal provides for use of the site that otherwise could have resulted in an unused building with little purpose, surrounded by residential activity.
126. Section 6 of the RMA provides for *"the protection of historic heritage from in appropriate subdivision, use and development"*. We noted the different conclusions reached by the respective heritage consultants. Mr Wild was of the view that it was appropriate to demolish the building given that the moderate heritage value of its' external fabric and not significant historic heritage and given the mitigation proposed.
127. Ms Turvey wished to see the Block Plant retained and that further investigation of alternative uses be undertaken.
128. On balance we have concluded that demolition of the building was appropriate. The context for the Block Plant to a significant degree has been removed through the removal of other buildings on the site, and that there appears to be few economically viable, re-use options.
129. Mitigation has been proposed by the applicant and while this does not mitigate the actual removal of the Block Plant as an item of historic heritage, it does at least record information about the plant, it's significance to development of the Temple View campus, and that visitors will be able to understand its history and former location through displays in the museum and interpretative signage and information.
130. While the plant building will not be protected from demolition, we also acknowledge that it is a B-ranked building and demolition is not precluded by such a ranking.

131. Section 7 of the RMA outlines a range of matters that a consent authority is required to have regard to in achieving the sustainable management purpose of the RMA. The proposal will provide for an efficient use of the land resource through the development of the site in a similar way to the surrounding land, being of a residential nature. Potentially if it remained on the site and was not re-purposed it could remain in an un-used and poorly maintained state. This is unlikely to contribute to the maintenance and enhancement of amenity values or quality of the environment.
132. No matters relating to the Principles of the Treaty of Waitangi were raised with us. There had been consultation with Ngaa Uri o Maahanga, and a support submission from Te Haa o Te Whenua o Kirikiriroa.
133. Overall, we conclude that the proposal contributes to and is generally consistent with the sustainable management purpose of the RMA.

CONCLUSIONS

134. Having considered the plans and application material, the s42A reports, submissions, and all evidence before us, we consider that the demolition of the building is a balanced response when all matters have been considered. The demolition of the building is appropriate and reasonable in the circumstances, where:
- There is no requirement for the applicant to keep the building in good condition and the applicant has shown that it is not economically viable to undertake re-purposing of the Block Plant building for alternative uses, and that the re-purposing of the building would have the potential to significantly compromise the heritage values of the external fabric of the building.
 - The existing upgrade and preservation of other heritage buildings on the wider site and the recording of heritage aspects of the Block Plant building in the Matthew Cowley Pacific Church History Museum, associated Block Plant display and archive, and identification of the site of the Block Plant will together assist with providing mitigation for the removal for the Category B heritage building.

DECISION

That pursuant to sections 104, 104B, and 108 of the Resource Management Act 1991, and the provisions of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health, the Hamilton City Council grants consent (discretionary activity) to the application by the Church of Jesus Christ of Latter-day Saints Trust Board to demolish a B-ranked Heritage Building being the Temple View Block Plant Building, in respect of land legally described as Lot 1, DP South Auckland 88403, located at 435-495 Tuhikaramea Road, Temple View, Hamilton, subject to the following conditions:

General

1. *That the development be in general accordance with the information submitted with the application on 12 December 2019 and the further information submitted on 4 March 2020, 18 May 2020, and 9 October 2020.*

Heritage

2. *A commemorative plinth shall be established in the vicinity of the location of the Block Plant at a location that is accessible by members of the public. A plan illustrating the location, design/contents and maintenance schedule shall be submitted to the Planning Guidance Manager, Hamilton City Council (or nominee) for certification prior to establishment of the plinth.*
3. *A commemorative display shall be established in the proposed Rose Garden. The commemorative display shall include information on the Block Plant and may include information on other aspects of the former Church College campus. A plan illustrating the location, design/contents and maintenance schedule of the commemorative display shall be submitted to the Planning Guidance Manager, Hamilton City Council (or nominee) for certification prior to the installation of the commemorative display.*
4. *A Block Plant history exhibit shall be included as a permanent feature in the Pacific Church History Museum. The detailed building record as required by condition 5 below shall be permanently filed in the Matthew Cowley Pacific Church History Museum archive.*
5. *A detailed record of the Block Plant building shall be prepared and submitted to the Planning Guidance Manager, Hamilton City Council (or nominee), prior to demolition of the Block Plant. As a minimum, the record shall include those matters referenced under section 5.3 in the Heritage New Zealand Guideline No. 1 Investigation and recording of buildings and standing structures (Nov 2018) for a Level II building as set out below:*
 - i. *Measured Drawings of all principal interior and exterior elevations.*
 - ii. *Recording of the principal parts of the internal timber frame of the building or structure (as necessary).*
 - iii. *Measured drawings of overall building/structure, including where relevant, all floor plans, ceiling plans and roof plans*
 - iv. *Subfloor plans, including floor joists, bearers, wall footings or piles.*
 - v. *Plans and sections (as necessary) to record ceiling joists and roof structures.*
 - vi. *Cross sections to show interaction of building elements and spaces (as necessary).*
 - vii. *Detailed written description of the structural elements.*
 - viii. *Detailed written description of the exterior.*
 - ix. *Detailed written description of each room.*
 - x. *Detailed written description of the building's/structure's development over time (potentially including a stratigraphic matrix or matrices).*
 - xi. *Extensive photography.*
 - xii. *Selective sampling of historic fabric.*
6. *The two posters in the upper room of the Block Plant titled "The Bench Press" and "Back Workout" as shown in Appendix BE of the Assessment of Environmental Effects shall be removed intact and retained. These posters shall be placed in the museum archive.*

Accidental Discovery Protocol

7. *During earthworks on the site, in the event of any archaeological feature, artefact or human remains being discovered or suspected to have been discovered, the following protocol shall be followed:*
 - i. *All work on the site will cease immediately. The contractor/works supervisor will shut down all equipment and activity.*
 - ii. *The area shall be secured, and the consent holder or proponent, and Council must be advised of the discovery.*
 - iii. *Heritage New Zealand Pouhere Taonga must be notified by the consent holder or proponent so that the appropriate consent procedure can be initiated.*
 - iv. *The consent holder or proponent must consult with a representative of the appropriate iwi to determine what further actions are appropriate to safeguard the site of its contents.*

In the case where human remains have accidentally be discovered or are suspected to have been discovered the following will also be required:

- v. *The area must be immediately secured by the contractor in a way which ensures human remains are not further disturbed. The consent holder or proponent must be advised of the steps taken.*
- vi. *The Police shall be notified of the suspected human remains as soon as practically possible after the remains have been disturbed. The consent holder or proponent shall notify the appropriate iwi, Heritage New Zealand Pouhere Taonga and Council within 12 hours of the suspected human remains being disturbed, or otherwise and soon as practically possible.*
- vii. *Excavation of the site shall not resume until the Policy, Heritage New Zealand Pouhere Taonga and the relevant iwi have each given the necessary approvals for excavation to proceed.*

Demolition/Earthworks

8. *The Consent holder shall ensure that all appropriate sediment and erosion control measures are adopted to minimise any sediment leaving the site and entering any water way. The measures should include: the erection of silt fences, stabilised entranceways, cut off drains and the connection of downpipes to the storm water system, as necessary. These sediment control measures should be erected and maintained on site for the duration of the works.*

Note: refer to Waikato Regional Council's "Erosion & Sediment Control, Guidelines for Soil Disturbing Activities" which can be found at <http://www.waikatoregion.govt.nz>.

9. *That the activity is conducted in such a manner so as to not create a dust nuisance. A dust nuisance will occur if:*
 - *There is visible evidence of suspended solids in the air beyond the site boundary; and/or*
 - *There is visible evidence of suspended solids traceable from a dust source settling on the ground, building or structure on a neighbouring site or water.*

Engineering

10. *Any pipes and connections not required as a result of the removal of the Block Plant building shall be appropriately disconnected to the satisfaction of the General Manager,*

City Infrastructure (or nominee). Removal of existing connections shall be done by Council at the consent holder's expense.

Soil Contamination

11. The suitability of any land where contamination is discovered must be determined by adopting the appropriate approach to investigation, remediation and validation as outlined in the relevant MfE's Guidelines incorporated by reference in the NESCS. This may involve the undertaking of a Preliminary Site Investigation, and if necessary, a Detailed Site Investigation in accordance with the requirements of the NESCS, as offered by the consent holder, and undertake any remedial works that are required to address any soil contamination.

*The **reasons for this decision** are detailed in the preceding discussion but can be summarised as follows:*

- a. That the proposal is in general accordance with the matters outlined in Part 2 of the Act and will contribute to the sustainable management of natural and physical resources through the redevelopment of an existing site whose previous use and purpose no longer exists.*
- b. That although the demolition of the Block Plant building will result in the loss of a B-ranked heritage building, it is noted that the applicant has upgraded and preserved other buildings on the wider site, and together with the recording of heritage aspects of the Block Plant building in the Matthew Cowley Pacific Church History Museum, associated Block Plant display and archive, and identification of the site of the Block Plant, assists in providing mitigation.*
- c. That the applicant has shown through technical assessments and evidence that it is not economically viable to undertake re-purposing of the Block Plant building for alternative uses, and that the re-purposing of the building would have the potential to significantly compromise the heritage values of the external fabric of the building. Therefore, demolition is a balanced response where all matters have been considered and the demolition outcome is appropriate and reasonable in the circumstances.*
- d. That with the imposition of conditions, adverse effects can be sufficiently mitigated so they are no more than minor.*
- e. That the proposal on balance and when taking an overall view, is generally consistent with the relevant planning instruments we are required to have regard to as set out in section 104 of the RMA.*
- f. The proposal is considered to be consistent with the purpose and principles of the Resource Management Act 1991.*
- g. That a condition has been imposed regarding soil contamination investigation and assessment which had been requested by the applicant in its AEE and in the evidence of Mr Dawson, as the applicant wished to undertake a precautionary approach to this matter.*



Richard Knott
Commissioner (Chair)



Bill Wasley
Commissioner

Date: 28 January 2021