

BEFORE THE HEARING COMMISSIONER

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an application by Hamilton City Council – Community Facilities to demolish a Category B Heritage Building (Municipal Pools) and to undertake associated earthworks and site remediation

**CLOSING LEGAL SUBMISSIONS ON BEHALF OF HAMILTON CITY COUNCIL –
COMMUNITY FACILITIES**

Dated 19 November 2019

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INTRODUCTION

1. The Hamilton City Council ("**Council**") Community Facilities Unit's ("**applicant**") application for resource consent to demolish the Hamilton Municipal Pools complex ("**Pools**" or "**Municipal Pools**") was heard on 11 and 12 November 2019. The hearing was adjourned, and a direction issued to the applicant to file closing submissions by 19 November 2019. These submissions are filed in accordance with that direction.
2. The purpose of these submissions is to:
 - a) Address issues raised in the submissions and evidence on the structural condition and heritage value of the Pools presented in the hearing;
 - b) Address specific legal issues arising during the hearing;
 - c) Respond to the supplementary section 42A report dated 13 November 2019; and
 - d) Provide comment on the revised draft condition set appended to the supplementary section 42A report.

CONDITION OF THE POOLS

3. There is no dispute between the engineering experts concerning the condition of the Pools complex. All agree that the facility is structurally unsound, unsafe, and non-compliant with current legal and regulatory requirements¹ in its current state.
4. Mr Tarnowski gave evidence in response to questions from the Commissioner, that the main pool "as it is now, cannot be repaired"

¹ Building Act 2004, NZS4441:2008, the Hamilton Operative District Plan.

describing it as “impossible” due to the structure’s age and it being at the end of its economic life. He outlined all of the components of the Pools’ services that would require replacing, including all pipes (which would require larger pool wall penetrations, further weakening the existing structure), the pool water filtration system, pumps, strainers, the water treatment system, the underground reticulation system, the power supply, all nozzles, all valves, the filter unit, the plantroom space, all drains and architectural items such as lights and disability access². Mr Tarnowski indicated that in his 37 years as a mechanical engineer specialising in working with swimming pools, he has only recommended that two were not capable of being strengthened and refurbished. One being the Municipal Pools, due to its current state of deterioration, which he indicated was an inevitable and unpreventable outcome due to its age, rather than being a direct result of neglect or lack of maintenance.

5. Mr Lang’s evidence was that, in terms of structural issues of particular concern, the main pool is classed as an ‘extremely high risk’ earthquake prone building. Additionally, the large voids beneath the main pool present a high risk of collapse. Further, he confirmed that the main pool walls are significantly understrength at 70% and are at risk of caving in. He also indicated that “it is likely that there are deeper issues not yet investigated”. He confirmed that the grandstand structure was poor in both condition and strength and required significant upgrades in order to function as a code compliant stand-alone structure, rendering retention unfeasible. There is also a question as to the strength of the foundations and geotechnical conditions underneath the grandstand which have not been fully investigated. Mr Lang stated that he would not recommend that the public have access to the Pools in their current state due to significant safety concerns. He concludes that removing the defunct pool and associated structures would eliminate the inherent risk with the

² Also refer to the Statement of Evidence of Mariusz Tarnowski dated 25 October 2019 at paragraph 25.

deteriorating structures³ and that demolition is justified due to the many complex structural issues with the existing facility.

6. Mr Jacobsen, giving structural engineering evidence on behalf of the s 42A report writer, agreed with the engineering evidence presented by the applicant that the Pools complex has significant structural and seismic issues. Further, there are no straightforward engineering solutions that would overcome the complex issues that exist at the facility. Refurbishment he concludes, would be extremely challenging, if not impracticable.
7. The Courts have held on numerous occasions that the cost of works related to seismic strengthening is an important consideration in the context of demolition consent applications. The decision in *Hamilton East Community Trust v The Hamilton City Council* addressed the cost of strengthening a heritage building that had no viable on-going use, with the Environment Court finding that:⁴

While the heritage values of Euphrasie House are certainly not to be dismissed, we do not see them as so strong or rare as to outweigh the imposition of the cost of strengthening and refurbishing it upon an owner which sees no viable use for it, and which has other quite logical plans for the site. Put another way, we conclude that there are compelling reasons for the demolition of Euphrasie House. With the preservation and public availability of the Chapel, a replacement building which respects the Chapel, and appropriate memorialisation, we think that granting the consent to demolish the building is necessary, and the appropriate outcome.

8. All of the experts now agree that the refurbishment of the current facility is neither economically or practically viable to enable swimming use. They agree that future swimming use would only be possible through demolition of the existing Pools complex and the construction of a new swimming pool facility which would cost in the range of \$3m-\$4m (open-air option)

³ Statement of Evidence of Oliver Lang dated 25 October 2019 at paragraph 34.

⁴ *Hamilton East Community Trust v The Hamilton City Council* [2014] NZEnvC 220 at [112].

excluding geotechnical works⁵. In any event, the latter is not an available outcome in this process. The expert advice provided to Council was that refurbishment of the Pool complex would incur even more significant expenditure in the range of \$4m-\$6m⁶ excluding geotechnical works.

9. Some submitters have contested the expert structural evidence provided in this proceeding and that the condition of the Pools is not as poor as set out above. However, given those assertions are not supported by expert engineering evidence, it is submitted that the Commissioner should afford no weight to those assertions.

HERITAGE

Central issue

10. The assessment and treatment of heritage values remains a central issue.
11. During the course of the hearing, the Commissioner raised the issue of what weight should be placed on Mr Wild's original heritage assessment given his "departure" from the heritage scoring system established in the Hamilton Operative District Plan ("**ODP**"). Mr Wild explained the reasons for the methodology he adopted in **Attachment 1** to his evidence-in-chief:

1. Comments on the Richard Knott Limited Peer Review – Heritage

- 1.1 The peer review comments at the beginning of the penultimate paragraph on page 2 that:

"The Assessment of Heritage Values does not provide any comment on the proposal to demolish the Pools against relevant Objectives and Policies of the ODP or of other policy document, but instead concentrates on considering the heritage significance of the complex."

The comment is correct in that the Assessment of Heritage Values I have prepared is just that: an assessment of heritage

⁵ See Appendix I to the Application for Resource Consent and Assessment of Environmental Effects dated October 2018, p 1.

⁶ See Appendix I to the Application for Resource Consent and Assessment of Environmental Effects dated October 2018, p 1.

values. It was not prepared as an Assessment of Environmental Effects. In accordance with the brief given me, and in order that I could form an opinion addressing the supportability (or otherwise) of an application by the Hamilton City Council to seek resource consent to demolish the Municipal Baths, I undertook the assessment to better understand the historic heritage values of the Municipal Baths as found today; trace the chronologic inclusion of the Municipal Baths since 1999 in the legacy, proposed, and operative District Plans and the respective values recognised at the time; and, observe the current condition of the Municipal Baths today and the factors affecting that condition.

1.2 It is not correct where the peer review states that:

“...the methodology of this assessment has moved away from the [sic] that established in the ODP...”

Rather, my assessment has used a wider lens; applying criteria found in the Heritage New Zealand Act and the Auckland Unitary Plan in order to afford me a broader, more qualified and considered assessment, accepting that the Category B classification of this place in the ODP was not contested.

1.3 Accordingly, I refute Mr Knott’s assertion (in his final paragraph on page 2 of his Peer Review) that my assessment has in any way “...reduced the usefulness of the report...” as my Assessment of Heritage Values was not intended in any way to be an assessment of effects on heritage values arising from the proposed demolition (this assessment is included in the Assessment of Environmental Effects prepared by BBO and of which Mr Knott says:

“I do not have any significant concerns with the assessment of the proposed demolition against the ODP objectives and policies contained in the AEE ...”.

Rather my Assessment of Heritage Values was a means of considering historic heritage values as found today. **In accordance with conservation best practice a building or place is assessed as found. Such a process avoids predeterminations as to value and recognises that values are dynamic and can go up and down over time. I am aware from my own professional practice that Heritage New Zealand Pouhere Taonga recognise this phenomenon and acknowledge that “heritage values can alter (increase or diminish) with time and circumstance, and that significance may be reassessed if impacted by various factors”.**

[Emphasis added]

12. On the basis that his methodology followed Heritage New Zealand best practice, and in light of his qualifications and extensive experience in the

field of building conservation and heritage management,⁷ it is submitted that the Commissioner must give Mr Wild's evidence significant weight. Further, Mr Wild is the only expert to have conducted a full heritage assessment in these proceedings. Mr Knott acknowledged in the hearing that his assessment was limited to a review of Mr Wild's heritage assessment.

13. Regardless of any differences in their respective approaches, both Mr Wild and Mr Knott came to the same conclusion that both can support the demolition on the basis of the moderate heritage value of the Pools and the mitigation offered through meaningful site interpretation which addresses the loss of heritage values as a consequence of demolition. Their conclusions are not under direct challenge by any evidence from an experienced expert in this field.

Additional heritage issues

14. It has been alleged by some submitters that the Pools have undergone "demolition by neglect" amounting to a "dereliction of duty"⁸. This assertion is firmly rejected by the applicant. The voids in the main pool, among other significant structural and seismic issues, have been present for a long period of time, and certainly before 2012 when the pools were closed. As stated above, Mr Tarnowski's evidence is that the Pools' decline such that it is no longer fit for purpose, was unpreventable and, due to its age, the structure is simply at the end of its economic life.
15. Some submitters have taken issue with the heritage evidence of both Mr Knott and Mr Wild with regard to their assessments of heritage value and the proposed mitigation for heritage loss. However, given those assertions are not supported by evidence from experienced experts in the field of

⁷ See paragraphs 1 through 12 of the Statement of Evidence of Mr Adam Wild dated 25 October 2019.

⁸ Submissions of Katherine Luketina and Richard Swainson.

heritage buildings, the Commissioner should afford them little weight in his decision-making.

16. It is also acknowledged by both experts that even under the scenario preferred by some submitters, being refurbishment of the pool complex, demolition of the existing facility would be a necessary preliminary step due to its dilapidated state which renders it beyond repair. It follows that until demolition occurs, the facility is not capable of serving any useful purpose. Even if refurbishment of the Pools was a practicable option, the experts agree that very little, if any, original fabric would remain once strengthening and upgrade works were complete. Both Mr Wild and Mr Knott agree that these issues need to be balanced against the expectation under the ODP policy framework that development shall retain, protect and enhance the heritage values of the building.
17. That being the case, the critical issue is how to mitigate the loss of heritage values through the demolition of the Pools complex. Retention of any heritage fabric of the Pools has been ruled out as impractical by the engineering experts. Contrary to the assertions of submitters, the loss of heritage values is not resolved through the building of a new swimming complex. Such an outcome is not a heritage response. Mr Wild and the s 42A report writer, Mr Johnson, agree that the loss of heritage value is most appropriately mitigated through interpretation measures. On the basis of the submissions presented in the hearing, the applicant is comfortable with Mr Johnson's view that something more than what was previously proposed by way of interpretation at the commencement of the hearing is appropriate. The revised proposed Site Remediation and Interpretation conditions are discussed further below.

CONSIDERATION OF ALTERNATIVES

18. Some submitters are critical that a comprehensive consideration of alternatives was not undertaken by Council through this consent process. The applicant rejects that assertion. Council's decision to seek consent for demolition was informed by a thorough consideration of alternative options. The Options reports of 2012 and 2018 prepared by external experts have been included as evidence in this proceeding⁹. These reports show that 10 options were initially explored as part of a separate Council decision-making process, which was then narrowed to three primary options; refurbishment and strengthening, a complete new build, and demolition. Following further external advice on the three options, it was determined to proceed with applying for consent to demolish the Pools.

19. As part of this proceeding, Mr Tarnowski, Mr Lang, Mr Wild and Mr Dawson have referred to, and assessed, the three primary options, and a fourth; maintaining the status quo or retention of the derelict structure. The four options have also been tested in the hearing with the s 42A report writer and submitters. The Commissioner asked many of the submitters what they see as being the next step if the application for demolition is declined. None gave a definitive answer. However, most acknowledged that they were not necessarily concerned with retaining the existing Pools. Rather, they sought swimming facilities in the same location or somewhere in the CBD. Whether that be a refurbished pool facility or one that is entirely new, neither is relief that can be granted in this proceeding.

20. The applicant agrees with Mr Johnson that the loss of the opportunity for swimming itself, is not a relevant consideration for this hearing.¹⁰ Rather, if consent to demolish the Pools is granted, the future use of the site will be determined in separate Council decision-making processes after

⁹ See Statement of Evidence of Oliver Lang dated 25 October 2019 and Appendix I to the Application and AEE.

¹⁰ Supplementary s 42A report dated 13 November 2019 at paragraph 7.

demolition has occurred. If not granted, the experts are clear that if the Pools complex is left in its current state, it will continue to deteriorate and become increasingly more hazardous and expensive to implement safety and protection measures.

PART 2

21. The role Part 2 plays in decision-making processes for resource consents at the regional and district level plans was refined by the Court of Appeal decision *R J Davidson Family Trust v Marlborough District Council*¹¹.
22. The decision clarified that if it is clear that a plan has been prepared having regard to Part 2, and with a coherent set of policies designed to achieve clear environmental outcomes, the result of a genuine process that has regard to those policies should suffice and reference to Part 2 would likely not add anything, nor result in a different outcome. However, if it appears a plan has not been prepared in a manner that appropriately reflects the provisions of Part 2, the consent authority will be required to give emphasis to Part 2.
23. In the applicant's opening legal submissions, it submitted that the Commissioner need not have recourse to Part 2 of the Resource Management Act 1991 ("**RMA**") as the relevant provisions of the ODP had been competently prepared and appropriately recognise and provide for historic heritage, as required by s 6.
24. Section 6(f) of the RMA places an obligation on those who exercise powers under the Act to recognise and provide for, amongst other matters, "the protection of historic heritage from inappropriate subdivision and development".

¹¹ [2018] NZCA 316.

25. However, s 5 provides that one of the purposes of the RMA is the management of the use, development, and protection of physical resources in a way that enables people and communities to provide for their health and safety.
26. The Environment Court in *New Zealand Historic Places Trust / Pouhere Taonga v Christchurch City Council*¹², in considering the components of section 5, recognised the tension between these provisions in the context of proposals to demolish degraded heritage buildings:

The balancing exercise under Part 5

[99] As we stated at the outset this is a finely balanced case where the accepted recognition of the heritage value and group significance of these properties must be placed against the other criteria under section 5 to reach an outcome. There was significant debate between the parties as to the relevance of economic evidence in this balancing exercise. Our conclusion is that in the absence of health and safety issues which we will shortly discuss we would have concluded that the heritage value and group significance of the site outweighed the other considerations relating to the economic factors in particular and the general criterion assessment matters which we have discussed.

[100] In the end we have concluded **that the health and safety issues have significant weight in this case**. It was suggested that if the buildings were adapted for private residential use they would not require seismic upgrade. **Without upgrading, the buildings will constitute a health and safety risk which we must take into account under s 5**. If upgraded that cost would be significant. Similarly costs of rewiring, fitting out and fire risk all weigh for the granting of demolition consent.

...

[101] McKellar House in particular, is effectively a shell which would have to be entirely rebuilt on the inside to provide for any use including domestic use. This would include new bathrooms, kitchens, wiring, plumbing, internal walls, and removal of many of the additions which have altered the original character of the home. We have concluded that on balance, notwithstanding the heritage merit of the building and its group significance, that McKellar House should be subject to a demolition consent.

¹² *New Zealand Historic Places Trust / Pouhere Taonga v Christchurch City Council* C173/2001.

27. Similarly, the High Court held in *Lambton Quay*:¹³

There is some degree of commonality between the overriding purposes of the Building Act and the relevant purposes in the Resource Management Act. There is also commonality between the public safety objectives of the Building Act and the relevant parts of the District Plan. **Public safety must always prevail.** For this reason, when assessing the reasonable alternatives to demolition the Environment Court needed to consider the risks to public safety of nothing being done to the building because of the building owner's inability to comply with the Building Act Notice.

[Emphasis added].

28. It became clear in the hearing that although the ODP policy framework appropriately addresses the requirement to protect historic heritage, it does not squarely address health and safety issues in the context of heritage preservation and demolition. The applicant submits that this amounts to 'incomplete coverage' of a critical Part 2 matter in the relevant objectives and policy framework. It follows that, in this case, as a consequence of that particular omission it is appropriate, and indeed necessary, to have recourse to Part 2 and give paramount consideration to the issue of safety in determining this application.
29. Turning to s 6(f), we reiterate the threshold test set out in the applicant's opening legal submissions, described in *Lambton Quay Properties Nominee Ltd v Wellington City Council*¹⁴:

[73] In this case, s 6 of the Resource Management Act requires the consent authority to ensure heritage buildings are only demolished in appropriate circumstances. "Appropriate" in this context means the consent authority approves the demolition of a heritage building only when it is "proper" to do so. In my assessment this requires the consent authority to ensure its consideration of an application to demolish a heritage building is founded upon an assessment of whether or not the demolition is a balanced response that ensures all competing considerations are weighed, and the outcome is a fair, appropriate and reasonable outcome. We intend to proceed with our evaluation on that basis.

¹³ *Lambton Quay Properties Nominee Ltd v Wellington City Council* [2014] NZRMA 257 at [88].

¹⁴ [2014] NZHC 878.

30. Indeed, when discussing what is inappropriate for the purposes of s 6(f) of the RMA, the Courts have been clear that what is required is a weighing of competing interests in each individual matter. As the Environment Court set out in *Hamilton East Community Trust v Hamilton City Council*:¹⁵

What is inappropriate is a matter of judgment in each case. In some situations the combinations of time, condition and financial issues may mean that demolition is not inappropriate.

31. That the Municipal Pools have heritage value is acknowledged by the applicant. However, in this case, demolition is not only appropriate, fair and reasonable, it is the only practicable option available to the applicant, particularly noting:
- a) The limited extent of physical historic heritage fabric remaining in the much-altered facility;
 - b) The significant structural issues with the buildings and structures on the site;
 - c) The uneconomic cost of repair and strengthening;
 - d) The likely impact on the heritage fabric of any necessary upgrade works;
 - e) The unsuitability of the existing facility for modern purposes and non-compliance with the Code and other regulatory requirements;
 - f) The public health and safety risk, which is paramount;
 - g) The dilapidated and dangerous condition of the complex;
 - h) The potential for continued degradation.

¹⁵ [2014] NZEnvC 2002 at [108].

32. The High Court's emphasis on public safety, which held it to be paramount, supports affording significant weight to public health and safety in determining this application than to any other consideration. It is clear that retention of the Pools without strengthening and upgrade works is not practicably possible and decline of the consent will instead simply perpetuate the status quo. In this context, when recourse is made to Part 2, the proposal must be considered to be the fair, appropriate, and reasonable outcome. Indeed, to decline consent would "not promote a safe urban environment".

COUNCIL OFFICER'S SUPPLEMENTARY REPORT

33. After hearing the evidence presented at the hearing, Mr Johnson concludes in his supplementary s 42A report that the adverse effects of the proposal can be appropriately managed and confirms his recommendation that the resource consent can be granted, subject to the suite of conditions appended to his report. The applicant generally supports Mr Johnson's recommendation and with a few minor exceptions, agrees to the conditions recommended.

PROPOSED CONDITIONS

34. The supplementary s 42A report proposes a set of conditions to accompany the resource consent. The applicant generally accepts these conditions as proposed, with some minor refinements to Mr Johnson's Condition 29.
35. These proposed refinements are included in the set of conditions included as **Attachment 1** with the changes shown in track.
36. As stated above, the applicant is supportive of the intent to include enhanced Site Remediation and Interpretation conditions that more meaningfully capture and express the social history of the Pools as mitigation for the loss of heritage value through demolition. Mr Dawson's

amendments to Condition 30 seek to ensure a more efficient and effective consultation process by introducing parameters that are clearly articulated and understood by the applicant, the consent authority, and the submitters.

37. Mr Dawson acknowledged in his evidence at the hearing that there is no longer a need for an Accidental Discovery Protocol in the condition set as he agrees with Mr Johnson that the matter is appropriately addressed through the Archaeological Authority granted by Heritage New Zealand Pouhere Taonga. Accordingly, the applicant no longer seeks to include such a condition.
38. No other changes are sought to the conditions appended to the supplementary s 42A report.

DECISION ON APPLICATION

39. Pursuant to s 104B, this application for a discretionary resource consent calls for a binary determination. That is, whether to grant or decline the application for resource consent to demolish the Pools. If the consent authority grants consent, it may impose conditions in accordance with s 108 of the RMA. As correctly emphasised throughout the course of the hearing, the Commissioner has no jurisdiction to impose or direct any other outcome.
40. If the application is declined, the status quo will remain. The Pools facility, which cannot be used for swimming, will continue to degrade and become increasingly more hazardous. Such an outcome does not constitute sustainable management and therefore will not achieve the purpose of the RMA.
41. The demolition of the Pools and the proposed remediation of the site more appropriately accords with the outcomes sought in Part 2, and with the

overall sustainable management purpose of the RMA. Further, it is acknowledged by all of the experts that provided evidence in this proceeding as the only practicable option.

42. It is recognised that while there will be a loss of heritage values as a result of granting this application, it is the expert evidence of Mr Wild and Mr Dawson that the loss is appropriately mitigated through the Site Remediation and Interpretation conditions.
43. Moreover, it is the evidence of the applicant, confirmed by the analysis of Mr Dawson, that the effects of the proposal overall are no more than minor and that, while the proposal is not entirely consistent with the ODP heritage policy framework, which calls for heritage to be protected, the loss of heritage and the effects of demolition are appropriately mitigated through the proposed conditions of consent.
44. Fundamentally, the proposal to demolish the Pools meets the threshold test as an “appropriate, fair and reasonable” outcome when the following considerations are balanced against the expectation under the ODP policy framework that development shall retain, protect and enhance the heritage values of the building:
 - a) The facility is structurally unsound, unsafe, and non-compliant with current legal and regulatory requirements in its current state.
 - b) All of the experts now agree that the refurbishment of the current facility is neither economically nor practically viable to enable swimming use.
 - c) Despite taking different routes, Mr Wild and Mr Knott came to the same conclusion as to the moderate heritage value of the Pools.

- d) Even if refurbishment of the Pools was to be pursued, the experts agree that very little, if any, original fabric would remain once strengthening and upgrade works were complete.
 - e) On every aspect, the applicant's expert analysis of the effects of the application is not under direct expert challenge. Many of the submitters did not appear at the hearing and their submissions were not able to be tested by the Commissioner.
 - f) The public health and safety risk, which is the paramount consideration.
 - g) The dilapidated and dangerous condition of the complex and the potential for continued deterioration.
 - h) The applicant agrees to the amended Site Remediation and Interpretation conditions that more meaningfully capture and interpret the rich social history of the Pools, as provided in **Attachment 1**, so that the loss of heritage value is appropriately mitigated.
45. Accordingly, the applicant submits that resource consent can and should be granted for this application.

Dated 19 November 2019



Lachlan Muldowney/Shaye Thomas
Counsel for the applicant

Attachment 1

General

1. That the demolition, final contouring and restoration planting of the site be in general accordance with the plans and the information submitted with the application on 6 November 2018, except where superseded by information received 17 January, 11 February 2019 and 7 October 2019 and compliance with the conditions 2-49 below.
2. Prior to the certification of Management Plans as set out in conditions below, the only works authorised by this consent are site preparation works consisting of:
 - (i) Installation of security fencing,
 - (ii) Pre-demolition invasive and structural investigations,
 - (iii) installation of temporary traffic management,
 - (iv) health and safety signage,
 - (v) contact signage and
 - (vi) disconnection of wastewater and stormwater services.

General Engineering

3. The footpath shall be kept clear during construction, or, if not practicable, may be temporarily closed along the site frontage. An application for Temporary Use of the Road Corridor can be obtained at no charge from City Transportation Unit.
4. All obsolete service connections shall be removed following the demolition and removal of existing structures.
5. On completion of the stabilising embankment, any roadside damage shall be repaired, and the kerb and pedestrian footpath reinstated to match the surroundings.

Structural Engineering

6. Prior to application being made for building consent the consent holder shall undertake further investigations and detailed design by a suitably qualified engineer to confirm to the Hamilton City Strategic Development Manager or nominee that the existing subgrade beneath the proposed 4m high earth fill batter will be adequate to support the loads of the fill to be placed upon it without undergoing long-term settlement which, if it occurs, would potentially result in settlement/cracking to the Victoria Street footpath.
7. Prior to application being made for building consent the consent holder shall undertake further investigations by a suitably qualified engineer to confirm to the Hamilton City Strategic Development Manager or nominee whether the proposed cantilevered retaining wall adjacent to the Celebrating Age Centre building will require a foundation shear key to prevent sliding under static and seismic loads.
8. Prior to application being made for building consent, a detailed site liquefaction check by a suitably qualified engineer is to be provided to the Hamilton City Strategic Development Manager or nominee to determine an appropriate design to ensure that the proposed 4m high cantilevered retaining wall will not be at risk of settlement and/or rotation in an earthquake and will not affect the structural stability of the adjacent Celebrating Age Building.

9. The consent holder shall undertake further investigations by a suitably qualified engineer to confirm to the Hamilton City Strategic Development Manager or nominee whether the buried tank that is to be retained on site will require holes punched through the base of the buried tank to ensure seepage water can drain through the fill material inside the buried tank and into the underlying soils.
10. The consent holder shall undertake further investigations by a suitably qualified engineer to confirm to the Hamilton City Strategic Development Manager or nominee that the proposed fill material will be sufficiently free draining to ensure rainwater can soak into the fill and not discharge from the site as overland sheet flow.

Demolition Management

11. All demolition activity, including earthworks and the transfer of material on and off site shall be actively managed to avoid or otherwise remedy or mitigate any off-site adverse effects caused by traffic movements, dust, debris, silt laden run-off, noise and vibration.
12. At least 20 working days prior to the commencement of works authorised by this consent, the consent holder shall submit a Demolition Environmental Management Plan (DEMP) to the Hamilton City Strategic Development Unit Manager or nominee for written certification. The objective of the DEMP is to establish procedures and measures to manage and control any potential off-site nuisance or adverse effects as described in Condition 11 above.
13. The DEMP shall include, but not be limited to, the following:
 - a) Details of the works, intended start dates, timetable, sequencing and hours of operation;
 - b) Quality assurance/quality control including but not limited to:
 - (i) The roles, responsibilities and contact details of demolition management staff and the project contact person;
 - (ii) The name and contact details of the Consent Holder's representative on the project;
 - (iii) Training, briefing and health and safety requirements for contractors and visitors;
 - (iv) Procedures for hazard identification and control;
 - (v) Details of emergency contacts who have authority to authorise immediate response actions;
 - (vi) Methods for recording and responding to queries and complaints;
 - (vii) Methods for amending and updating management plans as required;
 - (viii) The location of all sensitive receivers in respect of noise generation or dust discharges;
 - (ix) The location of major cut and fill operations;
 - (x) Proposed hazardous substance management and mitigation measures – including contaminated site, spill prevention and response measures (refer Conditions 33 - 49);
 - (x) Procedures to be followed in the event that any taonga or koiwi are disturbed, being in accordance with any Authority obtained under the Heritage New Zealand Pouhere Taonga Act 2014;
 - (xi) Proposed methods and measures to ensure that demolition works do not adversely affect public utility infrastructure;
 - (xii) Erosion and Sediment Control Measures (refer Condition 21)

- (xiii) Measures to ensure that all demolition machinery and heavy vehicles leaving the site do not deposit soil or other debris on Grantham Street or Victoria Street and the remedial measures to be undertaken should that occur;
- (xiv) Measures to be employed onsite to minimise dust discharges to air;
- (xv) Maintenance, monitoring and reporting procedures;
- (xvi) Traffic management, including truck movements and routes and measures to provide for continued access to the Age Concern building;
- (xvii) General methods to manage construction noise and vibration (refer Condition 20)

14. The Consent Holder shall implement the certified and any updated certified DEMP. The DEMP shall remain in place until the completion of the works.

Note: Any changes to the DEMP shall be confirmed in writing by the Consent Holder following consultation with Hamilton City Strategic Development Unit Manager or nominee before implementation.

Demolition Traffic Management Plan

15. A Demolition Traffic Management Plan (DTMP), shall be prepared by a suitably qualified and experienced person in accordance with the NZTA Code of Practice for Temporary Traffic Management. The DTMP shall be submitted to the HCC General Manager Strategic Development or nominee, for certification no later than twenty (20) working days prior to the commencement of any stage of Works. Works, shall not commence until the Consent Holder has received the HCC General Manager Strategic Development or nominee's written certification of the DTMP.

16. The DTMP shall include, but not be limited to, the following:

- a) Objectives and purpose of the TDTMP;
- b) Description of the demolition activities and any proposed staging of activities;
- c) Hours of operation;
- d) Site access locations for demolition machinery and staff;
- e) Contact details of the consent holders representative and the authorised Contractor;
- f) Expected number of vehicle movements, especially heavy vehicle movements, during the demolition and site rehabilitation/ landscaping phases;
- g) A temporary traffic management strategy in accordance with the New Zealand Transport Agency's Code of Practice for Temporary Traffic Management (CoPTTM) for any traffic controls to be placed on Grantham Street;
- h) Parking for demolition staff.

17. The DTMP shall describe the measures which must be carried out to avoid, remedy or mitigate the local and network wide traffic effects of the works. In particular (but not limited to), the DTMP shall describe the following:

- (a) Measures to maintain pedestrian, cycling and vehicle access to roads and property to defined and approved levels of service. The DTMP shall identify notification thresholds and processes for communicating with affected parties and shall consider whether there are specific user needs that require specific responses.
- (b) Measures to maintain access for emergency vehicles, and methods to ensure that emergency service providers are regularly informed of the timing and sequencing of works, road closures and alternative routes.
- (c) How service providers are to be regularly informed of the timing and sequencing of works, any road closures and alternative routes.

- (d) The timing and sequencing of any road closures that will be required and the nature and duration of any traffic management measures that will result, including any temporary restrictions, detours or diversions.
- (e) Measures to ensure safe access to the site.
- (f) Management and sequencing of the works to avoid, remedy or mitigate traffic-related adverse effects.
- (g) Routes to be used and times for heavy haulage (and roads and times to be specifically avoided) for works-related Heavy Commercial Vehicles (HCVs) for shifting bulk materials (such as earth fill or pavement materials or water) (Bulk HCVs) and temporary traffic management controls in accordance with the Code of Practice for Temporary Traffic Management.
- (h) Measures to prevent the tracking of dust and debris onto public roads.
- (i) Assessment and monitoring of road conditions and response should severe and sudden deficiencies arise directly associated with development-related HCVs.

18. The certified DTMP shall be implemented throughout the period of the construction works.

Demolition Noise and Vibration Management Plan

19. At least 20 working days prior to the commencement of works authorised by this consent, the consent holder shall submit a Demolition Noise and Vibration Management Plan (DNVMP) to the Hamilton City Strategic Development Unit Manager or nominee for written certification.

20. The DNVMP shall include, but not be limited to, the following:

- a) Best practice options to avoid, remedy or mitigate the adverse effects of noise and vibration during demolition and to minimise the frequency, duration and degree of noise and vibration;
- b) An assessment of noise levels and proposed measures to ensure that noise received at any building containing a noise-sensitive activity or any site within a Residential Zone does not exceed the noise levels in Table 1 below. Demolition noise shall be measured and assessed in accordance with NZS6803:1999 ‘Acoustics – Construction Noise’.

Table 1: Noise limits

Time period	Monday to Friday		Saturdays		Sundays and Public Holidays	
	Leq (dBA)	Lmax (dBA)	Leq (dBA)	Lmax (dBA)	Leq (dBA)	Lmax (dBA)
06:30am to 07:30am	55	75	45	75	45	75
07:30am to 06:00pm	70	85	70	85	55	85
06:00pm to 08:00pm	65	80	45	75	45	75
08:00pm to 06:30am	45	75				

Note: Lower noise limits (shaded) mean that some construction work may not be able to take place during the corresponding time frames, which includes all times on Sundays and public holidays.

c) An assessment of vibration levels received at adjoining structures within the site, in

particular, the Celebrating Age Centre and Category A listed Band Rotunda (H12). Demolition vibration shall comply with, and be measured and assessed in accordance with, German Standard DIN 4150-3:1999 'Structural Vibration – Effects of Vibration on Structures'.

Earthworks

21. At least 20 working days prior to the commencement of works authorised by this consent, the consent holder shall submit an Erosion and Sediment Control Plan (ESCP) to the Hamilton City Development Unit Manager or nominee for written certification.
22. The ESCP shall include, but not be limited to, the following:
 - a) Details of all principles, procedures and practices that will be implemented to undertake erosion and sediment control to minimise the potential for sediment discharge from the site;
 - b) The design criteria and dimensions of all key erosion and sediment control structures;
 - c) A site plan of suitable scale to identify:
 - (i) The locations of waterways;
 - (ii) The extent of all earthworks and vegetation removal;
 - (iii) Areas of cut and fill;
 - (iv) All key erosion and sediment control structures;
 - (v) Locations of topsoil, cleanfill and demolition waste stockpiles (where applicable);
 - (vi) Any buffer areas to be maintained adjacent to protected vegetation or built heritage features;
 - d) Construction timetable for the commencement of enabling works, demolition and bulk earthworks proposed;
 - e) Timetable and nature of progressive site rehabilitation and re-vegetation;
 - f) Maintenance, monitoring and reporting procedures; and
 - g) Contact details of the consent holders' details and authorised Contractor responsible for the operation and maintenance of all erosion and sediment control structures.
23. All erosion and sediment control devices shall be constructed in accordance with the Waikato Regional Council's "*Erosion and Sediment Control, Guidelines for Soil Disturbing Activities*" technical publication (TR:2009/02) and shall be erected and maintained on site for the duration of the works.

Removal of Wastewater Main

24. In order to avoid potential damage to the Band Rotunda (Category A Built Heritage H12 (Schedule 8A), the trenching and associated removal of the wastewater main shown on the Site Services Layout drawing, Project No. 2-75963.00 Sheet 601 Rev. A prepared by WSP-Opus Ltd and contained within the "Report to Inform Resource Consent" shall comply with German Standard DIN 4150-3:1999 'Structural Vibration – Effects of Vibration on Structures'. A pre- and Post-Structural Investigation Report shall be prepared to assess the pre-trenching integrity of the structure, the post-trenching integrity of the structure and recommend any mitigation of vibration effects (if required).
25. In order to avoid potential damage to the group of protected trees scheduled as Protected Tree T7 in Schedule 9D of the District Plan, the cutting and capping of the wastewater main shown on Site Services Layout drawing, Project No. 2-75963.00 Sheet 601 Rev. A prepared by WSP-Opus Ltd and contained within the "Report to Inform Resource Consent" shall occur outside the Root Protection Zone shown on the Site Plan Landscape Proposal drawing, Project No. 2-75963.02 prepared by WSP-Opus Ltd and attached to these conditions.

Works surrounding Protected Tree T7.4

26. No works or activities shall occur within the root system and dripline Root Protection Zone (RPZ) of any of the trees scheduled as Protected Tree T7 '*Japanese Cedar*' (Schedule 9D), Ferrybank Plantation (Schedule 9D). The consent holder shall erect a temporary fence between the works and the dripline Root Protection Zone of the Protected Trees. The temporary fence must be constructed in accordance with the following requirements and removed on completion of works at the site:
 - a) The fence must be at least 1.8m high, be non-climbable and highly visible;
 - b) To the extent practical, the fence must align with the edge of the dripline/ canopy Root Protection Zone of Protected Tree T7 as shown on the Site Plan Landscape Proposal drawing, Project No. 2-75963.02 Sheet L02 Rev. D prepared by WSP-Opus Ltd attached to these conditions; and
 - c) The fence shall be supported by an above-ground base which avoids the need for driven posts.

Finished contouring

27. The finished contour and vegetation of the site shall be completed in general accordance with the existing and proposed ground profiles contained in the WSP-Opus "Report to inform resource consent" contained in Appendix G of the AEE, subject to any revisions made through certification of the Site Restoration and Interpretation Plan required by Condition 28.

Site Restoration and Interpretation

28. The consent holder shall engage a suitably qualified and experienced interpretation expert to prepare a Site Restoration and Interpretation Plan. The Site Restoration and Interpretation Plan is to be certified at least twenty working days prior to the commencement of demolition works (except works as described in Condition 2) by the Hamilton City Planning Guidance Manager or nominee. The objective of the Site Restoration and Interpretation Plan is to appropriately record the history, including the social history, of the former Pools facility and to determine appropriate interpretation through site restoration measures.

~~29. The Site Restoration and Interpretation Plan shall be prepared through a consultative process with the submitters to the application and shall identify the specific measures that are to be undertaken as part of the site restoration.~~

~~30-29.~~ The Site Restoration and Interpretation Plan shall include, but shall not be limited to the following components:

- a) Reuse of salvageable materials as part of signage, landscaping, park furniture or similar;
- b) Provide information through signage, plaques or other methods, detailing the important events over the operational life of the pools, and information on those individuals who were prominent in the life of the pools as either swimmers, divers, coaches, administrators or in other technical capacities.

30. The Site Restoration and Interpretation Plan shall be prepared through a consultative process with the submitters to the application and shall identify the specific measures that are to be undertaken as part of the site restoration. The consent holder shall facilitate sufficient consultation with those submitters to understand their views on the social history of the pools and how that social history may be reflected in the Site Restoration and Interpretation Plan. The consultative process shall include but not be limited to the following steps:

- a) The consent holder shall communicate with all submitters to the application and provide them with 10 working days to respond to the invitation to be involved in the consultative process on the Site Restoration and Interpretation plan;
- b) The consent holder shall invite those submitters who confirmed they wished to be involved under Condition 30 a) above to a facilitated workshop to discuss their ideas for recognising the social history on the site. The facilitated workshop shall provide an organised forum with sufficient information, time and materials to enable participants to share their ideas and memories in relation to the pools and for the facilitator to record all such contributions.
- c) The consent holder shall utilise the contributions recorded under Condition 30 b) to prepare a draft Site Restoration and Interpretation Plan.
- d) The consent holder shall provide the draft Site Restoration and Interpretation Plan prepared under Condition 30 c) for consideration by the submitters at least 5 working days prior to the second workshop;
- e) The consent holder shall facilitate a second workshop with all submitters who wish to be involved to consider the draft Site Restoration and Interpretation Plan and provide feedback.
- f) Following the second workshop, the consent holder shall prepare a final draft Site Restoration and Interpretation Plan utilising the information generated at the second workshop and shall provide the final draft Site Restoration and Interpretation Plan to all those submitters who expressed an interest in being involved. The submitters shall be given 10 working days to provide their response in writing to the consent holder.
- g) After consideration of any responses provided under Condition 30 f), the consent holder shall provide the final Site Restoration and Interpretation Plan to the Hamilton City Council Planning Guidance Unit for certification that it meets the objective for the Site Restoration and Interpretation Plan as set out in Condition 28 above.

31. The measures to recognise heritage values proposed through the Site Restoration and Interpretation Plan shall be implemented as part of the immediate site restoration, or

otherwise to a programme and timeframe confirmed by the Hamilton City Planning Guidance Manager or nominee through certification of the Site Restoration and Interpretation Plan.

32. In the event that subsequent demolition activity results in the discovery of archaeological remains, the consent holder shall submit a revised Site Restoration and Interpretation Plan for certification by the Hamilton City Planning Guidance Manager, incorporating measures to recognise archaeological values. Such measures shall be prepared through a consultative process involving Te Ha o Te Whenua o Kirikiriroa and Waikato Tainui.

Soil Contamination

33. That prior to any soil disturbance works commencing on or within the Municipal Pools Project site, the consent holder must arrange a pre-commencement meeting to discuss the NESCS soil contamination requirements. The matters for discussion will include (but not be limited to):
 - (i) *Defining the investigative approach to characterising the unknown nature of the soil being disturbed specific to piece(s) of land where HAILS have been undertaken.*
 - (ii) *Defining the approach to site management including identifying unknown hazards and implementing mitigation methods specific to NESCS requirements.*
 - (iii) *Defining compliance monitoring requirements with regard to timing, staging, notification and communication.*
34. In attendance must be:
 - (i) *The Suitably Qualified and Experienced Practitioner (SQEP) nominated to oversee the works/address NESCS matters*
 - (ii) *HCC Contaminated Land Officer and Compliance Monitoring Officer*
 - (iii) *All contractors and sub-contractors supervisory staff who are carrying out any works associated with NESCS-related requirements.*
35. Prior to any soil disturbance works commencing on land (identified in the the *Preliminary Ground Assessment Report prepared by Tonkin & Taylor, dated October 2018*) where activities described in the *HAIL* have been undertaken, further assessment must be done to verify if a comprehensive Detailed Site Investigation is necessary to determine the suitability of the piece(s) of land for the intended land use, and for soil handling, on-site reuse and disposal.
36. In the event that a detailed site investigation is required, the investigation must determine if any **piece of land** is impacted by the contaminants of concern in such a way that poses an unacceptable risk to human health or the environment (on-site or off-site) given the intended use and the associated soil disturbance.
37. The investigation sampling design strategy and subsequent analytical results determining the suitability of the piece(s) of land for the intended land use, and for soil handling, on-site reuse and disposal must clearly demonstrate compliance with the applicable NESCS soil contaminant standard for health and the appropriate disposal facility acceptance criteria.
38. The investigation findings must be documented in a Detailed Site Investigation report and include all evidence relied upon to form the concluding opinions and recommendations. A copy of the report must be provided to Council's Environmental Health Manager for acceptance prior to the commencement of any soil disturbance works occurring on any piece(s) of land.

39. In the event that the investigation results indicate contaminants of concern exceed the applicable NESCS standards, a Remedial Action Plan (RAP) must be developed that adequately reflects the scale and complexity of contamination on the impacted piece(s) of land. A copy of the RAP must be provided to Council's Environmental Health Manager for acceptance prior to any remedial works being done.
40. The implementation of the accepted RAP methodology must be supervised by the SQEP, or suitable persons nominated by the SQEP, to ensure contractors and surrounding population and environments are not exposed to contaminants, and to ensure that the human health risk is eliminated or sufficiently reduced to acceptable levels on completion. Council must be notified of any proposed variations to the accepted RAP and any alternative methods or measures must be proven to be consistent with the appropriate remediation standard prior to their implementation.
41. In the event that remedial works are undertaken, a Site Validation Report (SVR) must be prepared that confirms the approved remediation targets have been achieved. The SVR must adequately demonstrate that no unacceptable risk to human health or the environment remains on any piece(s) of land at the completion of the remedial works. The SVR must include confirmation that all the consenting requirements have been met, and compliance approved before further soil disturbance works can commence. A copy of the SVR must be provided to Council's Environmental Health Manager for acceptance as soon as practicable after remedial validation is completed.
42. In the event that the investigation determines management is required then a Contaminated Site Management Plan (CSMP) must be prepared and provided to Council's Environmental Health for acceptance prior to the Plan soil disturbance occurring. Any alternative methods or measures must be notified to Council, and must be proven to be consistent with the objective of the accepted CSMP prior to their implementation. The alterations must be consistent with the human health risk-based approach of the accepted CSMP to ensure the same level of protection is afforded to site workers, and future site users.
43. Works Completion reporting must be provided within two months of soil disturbance works being completed to confirm that the methods outlined in the CMMP were enforced for the period of the soil disturbance works, and that the measures were successful in ensuring the potential risks were adequately managed.
44. In the event that any previously unidentified contamination (including but not limited to asbestos) is discovered in any exposed or excavated soil, works are to cease immediately, and Council must be notified of the discovery. The SQEP must assess the risk and determine what actions are appropriate for reducing the potential risk to site workers, future site users and the environment given the extent of the discovery. The details of the discovery and the action taken must be reported either in the SVR or the works completion reporting.
45. Any soil exceeding the applicable NESCS standard must be removed under controlled conditions to a licensed waste facility or landfill for disposal in accordance with the requirements of the disposal site and the relevant authority. Receipts of transport and disposal must be included in the Site Validation Report or Works Completion Report.
46. The site must be investigated and reported on by a Suitably Qualified and Experienced Practitioner (SQEP) in accordance with the RMA (National Environmental Standards for

Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011. As a minimum the SQEP is required to be a Contaminated Land Specialist that is supported by a professional profile that includes the relevant specialist capabilities, or who ultimately is a certified practitioner registered with EIANZ CEnvP or CEnvP-SC scheme.

47. Any investigation, remediation, validation and soil management must be done and reported on in accordance with current editions of the Ministry for the Environment Contaminated Land Management Guidelines No. 5 – Site Investigation and Analysis of Soils, No.1 - Reporting on Contaminated Sites in New Zealand, and The Methodology for Deriving Standards for Contaminants in Soil to protect Human Health (2011).
48. 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. The approach must include meeting any specific requirements of other relevant regulations and guidance that governs the assessment, management and remediation of other contaminants of concern such as (but not limited to) BRANZ Asbestos Guidelines.
49. That pursuant to section 36 Resource Management Act 1991, the following fees and charges be paid:
 - a. Payment of additional Environmental Health fees for assessing consented reporting will be charged on a time-cost recovery basis in accordance with Hamilton City Council's Schedule of Fees and Charges, with adjustments coming into effect at the beginning of each financial year. The fees will be levied at the completion of the consent review process and will be payable to the Environmental Health Unit upon notification that compliance has been achieved.