

HAMILTON CITY COUNCIL

and

WAIPA DISTRICT COUNCIL

**Application for Resource Consent
to
Remove Existing Buildings, Redevelop Part of the
former Church College Campus and Upgrade a
Section of Tuhikaramea Road, Temple View**

Applicant

**Church of Jesus Christ of Latter Day Saints
Trust Board**

**DECISION OF
HEARING COMMISSIONERS
10TH JANUARY, 2014**

**Doug Arcus
Barrister
HAMILTON**

**Alan Watson
Planning Consultant
AUCKLAND**

CONTENTS

1. INTRODUCTION	3
2. PROCESS.....	5
3. PRELIMINARY MATTERS	8
4. PROPOSAL.....	12
5. EFFECTS	15
6. PLANNING INSTRUMENTS.....	35
7. STATUTORY FRAMEWORK.....	45
8. CONCLUSION	48
9. DECISION.....	49
10. HAMILTON CITY COUNCIL RC.....	50
11. WAIPA DISTRICT COUNCIL RC.....	57

**Application
by
The Church of Jesus Christ of Latter Day Saints Trust Board
for
Resource Consent
to
Remove Existing Buildings, Redevelop Part of the former Church College
Campus and Upgrade a Section of Tuhikaramea Road, Temple View

Decision of Commissioners**

1. INTRODUCTION

There has been a feature of this case which has distinguished it from most of the other cases that either of us, as experienced commissioners, has conducted over many years. We were impressed and indeed touched by the degree of passion, commitment and emotion that many of the lay submitters, whether they be in support or opposed, brought to the Hearing. We were faced with a series of heart-felt personal testimonies. Not once, but several times during the presentation by submitters, we felt obliged to pause the proceedings whilst a submitter speaking re-gathered their composure.

As experienced commissioners we are well accustomed to submitters opposed expressing a view contrary to the proposal advanced by an applicant. However, in the course of the hearing of this case we came to appreciate the reasons why many submitters in this case found appearance before us extremely difficult. That appeared to be caused by one or more of the following elements:

- The submitter had a family member who volunteered his/her “blood sweat and tears” as a missionary labourer to “Build for Eternity” which they understood was building the complex at Temple View. It did not help that the Church College of New Zealand (CCNZ) adopted that phrase as its motto. Some submitters considered it highly inappropriate that some of what was intended for eternity was now proposed to be demolished.
- By opposing the Applicant’s proposal, the submitter was challenging a decision made higher in the hierarchy of the Church when such a challenge may be inconsistent with the culture of the Church and the expectation of obedience.
- Even worse, the submitter’s appearance may be seen as a challenge to the very faith to which they have committed themselves and their family.

We also observed that for those submitters opposed who were female, there may have been an additional element given the strong male presence in the officials of and advisers to the Applicant.

Ms Meshweyla MacDonald told us and we accept that:

...this application has polarized the community. It is something that people are reluctant to share their view on because it is something that evokes strong emotions – emotions about history and heritage, and emotions about God, faithfulness and conformity.¹

Similar comments were made by other submitters.

The Applicant itself acknowledged the difficulties that the school closure generated:

¹ MacDonald EIC para. 5.9

*To say the closure of the college was a difficult time for many is probably a massive understatement...*²

Our site visit served to provide us with a greater awareness of the sadness which now pervades what we thought is now a rather forlorn campus. On the site visit, we were impressed with the facilities which had been provided for CCNZ. Mr Paul Coward confirmed that *the school among many things was essentially the social, educational and economic heart of the Temple View Community.*³ It was not difficult for us to imagine the busy, thriving community full of vitality that existed when CCNZ was in full operation. That has now all gone.

These elements of the case are not usual in an application for resource consent. We have therefore given careful consideration to them in our deliberations on the application. While these elements provide some uniqueness to the proposal, we consider we should reaffirm our independent role in these proceedings. We come to this matter completely afresh. Our duty is to assess the application as it has been made against the criteria set out in the relevant statutes and applicable planning instruments. We need to exercise that duty in an objective manner, taking into account all that is presented to us, but doing so without becoming influenced by the emotion attaching to the application.

² Coward EIC Summary Pg. 1

³ Ibid. Pg.1

2. PROCESS

2.1 Appointment

Section 34A of the Resource Management Act 1991 (RMA) allows a local authority to delegate to a hearings commissioner or commissioners any of its functions, powers, or duties, including the power to hear and determine an application for resource consent.

Hamilton City Council (HCC) and Waipa District Council (WDC) would ordinarily hear and determine an application for a resource consent. However, in this case:

- Because the application for resource consent was to two territorial consent authorities, it would be necessary to have a joint hearing. It was therefore seen to be more efficient if one panel heard and determined the matter for both Councils.
- RMA s100A requires a local authority to make a delegation under s34A to hearings commissioners who are not members of the local authority if the applicant or any submitter so requests. In this case the Applicant made such a request.

Both Councils as consent authorities exercised their power of delegation to appoint us as the Hearings Commissioners to hear and make a determination in respect of the applications for resource consent to both HCC and WDC.

Because only two independent hearing commissioners were appointed and to avoid the possibility of a split decision, both Councils appointed Commissioner Arcus as Chair and accorded him a casting vote. In the event a casting vote was not necessary.

In addition both Councils engaged Mr Todd Whittaker of Harrison Grierson Consultants Ltd of Tauranga to make an assessment and provide the s42A Report.

Both HCC and WDC as consent authorities have therefore been completely removed from the assessment and decision-making in this case.

2.2 Proposal

A summary of the proposal is included in Section 4 of this Decision.

2.3 Notification

Both resource consent applications were publicly notified on 31st August 2013. The date for lodging submissions was 27th September 2013.

2.4 Submissions

Some 880 submissions were received (including those which were late but accepted).

A further 15 submissions were late but were not accepted.

We deal with late submissions in Section 3 of this Decision.

2.5 Pre Hearing Case Management

Prior to the Hearing, we had the matter under Case Management from September 2013. We issued the following:

- Directions of Hearing Commissioners dated 19th September, 2013
- Further Directions dated 3rd October, 2013
- Minute and Further Directions dated 18th November, 2013.

In addition during the course of the Hearing we issued a further Minute and Directions dated 3rd December, 2013 relating to the evidence of Mr Ra Puriri.

The primary thrust of our Directions was to set up an appropriate pre-hearing evidence exchange timetable. The purpose of that is to ensure that at the hearing, there are no surprises and as a result all parties can present a considered position. We consider that is a matter of fairness.

We were therefore disappointed that Mr Wiremu Puke, who left us in no doubt that he sought to present as an expert, failed to comply with our pre-hearing Direction in respect of his expert evidence. He was the only expert who did not comply.

2.6 Hearing

We conducted the Hearing of the application to both Councils in the Council Chamber of the Hamilton City Council on 2nd, 3rd, 4th and 6th of December 2013.

In the course of the Hearing we heard from the persons set out in the Schedule in Appendix 1 to this Decision.

2.7 Site Visit

Prior to the Hearing we each undertook a locality orientation visit to familiarise ourselves with the general layout and key features in the locality so that we could better understand the evidence as it was tendered to us.

On the morning of Friday 6th December, 2013 we undertook a site visit to Temple View and the former CCNZ site in particular. We were accompanied by Mr Whittaker the author of the s42A Report. Also there to provide access to the various buildings was Mr Ken Williams. We were aware that Mr Williams was a submitter to the resource consent applications. He is to be commended for providing us with the information we sought on site without any suggestion of advocacy in respect of his submission.

We also drove along the approach to Temple View from both the north and the south which included the approach to both the proposed Stake Centre and the Temple itself.

We drove around the entire former CCNZ campus.

We went in and inspected the following buildings:

- The GRB building;
- The Kai hall;
- The girls' dormitory (in order to see a completely fitted out dormitory for comparison with the boys' dormitory where internal fittings had been removed);
- The Wendell B Mendenhall Library;
- The David O McKay building; and
- The boys' dormitory.

We also drove around the residential area on the western side of Tuhikaramea Road.

2.8 Definitions

In this Decision we use the following terms:

AEE	Assessment of Effects on the Environment report;
Applicant	The Church of Jesus Christ of Latter Day Saints Trust Board;
CCNZ	Church College of New Zealand, Temple View;
HCC	Hamilton City Council;
HDP	Hamilton District Plan (Operative July 2012);
HPDP	Hamilton Proposed District Plan (notified December 2012);

LDS	The Church of Jesus Christ of Latter Day Saints;
RMA	The Resource Management Act 1991 and its amendments;
RPS	Waikato Regional Policy Statement (Operative 2000);
PRPS	Proposed Waikato Regional Policy Statement (notified November 2012);
Section 42A Report	The report prepared by Mr Whittaker in accordance with RMA s42A;
SNA	Significant Natural Area
WDC	Waipa District Council;
WDP	Waipa District Plan (Operative December 1997);
WPDP	Waipa Proposed District Plan (notified May 2012);
WRC	Waikato Regional Council

3. PRELIMINARY MATTERS

3.1 Late Submissions

There were a number of submissions which were lodged after the date prescribed in the Public Notification, namely 5pm on Friday, 27th September, 2013. In our Minute and Directions of 18th November we provided our preliminary view of how we might deal with those late submissions. If parties wished to address us at the commencement of the Hearing in respect of any late submission they would have the benefit of our starting point. That was:

We consider that for a late submission to be accepted then:

- (a) An application for waiver under RMA s37 must be made. If there is no application then we will make no order under that section; and*
- (b) If an application is made, then:*
 - Compelling reasons need to be provided sufficient to satisfy us that an order should be made. In particular the criteria for making an order as set out in RMA s37A need to be satisfied; and*
 - We need to know the attitude of the Applicant. This is particularly important in any submission which is more than 20 days late because that is over double the period allowed. RMA s37A (Requirements for waivers and extensions) requires, in those circumstances, that the Applicant must agree to the granting of a waiver. By our calculations some of the most recent submissions are more than 20 days late.*

The time limit was clear in the Public Notice. That notice required that the submission needed to be either physically or electronically with the respective council by the date and time specified.

Several applications for waiver have been made in respect of some of the late submissions. Some of those plead delays in the post. RMA s352(5) deals with postal delivery as follows:

“Where a notice or other document is sent by post to a person ..., it shall be deemed, in the absence of proof to the contrary, to be received by the person at the time at which the letter would have been delivered in the ordinary course of the post.”

We are aware that NZ Post is not as reliable as it used to be but at worst any mail is likely to be only one or two days late. We are prepared to accept three working days ie 3rd October, 2013. That also happens to be the date on which we issued further Directions including confirmation of the pre-hearing exchange timetable. We consider after that date, parties can be presumed to have commenced preparation for the hearing in earnest and may be prejudiced by any new party entering the proceedings thereafter.

We expressed our preliminary view in respect of the late submissions as follows:

- (a) In respect of those late submissions (whenever lodged) which are not the subject of an application for waiver or extension, no order extending the submission period will be made and the submissions will not be accepted;*
- (b) In respect of those submissions which were received by the relevant council on or before 3rd October and where there is an application for waiver or extension, the application for extension of the submission period will be granted and the submissions will be accepted;*
- (c) In respect of those submissions which were received by the relevant council after 3rd October and where there is an application for waiver or extension, the application for waiver or extension of the submissions period will be declined and the submissions will be not accepted.”*

At the commencement of the Hearing we invited submissions from any party on our preliminary view relating to late submissions. There were none. Accordingly we confirmed our preliminary view (as set out above) as our formal procedural decision on the matter.

Attached to this Decision as Appendix 2 is a schedule of those late submissions which were accepted and those which were not.

3.2 Applicant Decision-Making

There was a significant amount of focus particularly by submitters opposed about the manner in which and the process by which the Applicant made its decision to lodge and proceed with the application before us.

RMA allows an application to be made by *any person*⁴. A person is widely defined so that it would include the Applicant Trust Board in this case. Having made a formal application, the Applicant is then entitled to a decision by the consent authority.

We do not constitute some sort of review or appellant tribunal in respect of the Applicant's decision to proceed, any more than we would expect to review the decision of a corporate applicant at the request of that company's shareholders who may take a view different from the company. If there is a constitutional issue then that may be challenged in a different jurisdiction. However, in this case it appears the concern is a matter of opinion and process within the Church itself. We consider that is a matter internal to LDS and the Applicant.

Beyond the criteria which we are required to consider, and which is set out in the relevant statutes and planning instruments, we cannot assist those who challenge the Applicant's decision making prior to making the application.

3.3 Consultation

A number of submitters raised the issue of consultation asserting that it did not happen, that something happened which was called consultation but was something else (eg *presentation*⁵), or that in some other way it was inadequate. Consultation was also raised by some as part of the Applicant decision making process which we have considered above.

RMA s 36A makes it quite clear that consultation is not mandatory. That section provides:

The following apply to an applicant for a resource consent and the local authority:

- (a) *neither has a duty under this Act to consult any person about the application; and*
- (b) *each must comply with a duty under any other enactment to consult any person about the application; and*
- (c) *each may consult any person about the application.*

It is nevertheless considered best practice that an applicant does consult. By doing so an applicant has the benefit of identifying any adverse effects not otherwise identified. In the case before us, a long period of discussion has elapsed during which the Applicant has become very aware of the issues. There was certainly nothing raised by any submitter which was within our jurisdiction but was novel.

We understand that some submitters may have thought that consultation should have amounted to consensus. In the circumstances, we consider that consensus would have been most unlikely.

We consider that consultation or the lack of it is not a decisive issue in the matter before us.

⁴ RMA s96

⁵ MacDonald EiC para. 4.8

3.4 Church of Jesus Christ of Latter Day Saints Trust Board Empowering Act 1957

In our Minute of 18th November 2013 we noted:

...reference in some submissions to the Church of Jesus Christ of Latter Day Saints Trust Board Empowering Act 1957 (the Empowering Act).

Although we have not been faced with that particular piece of legislation before, we have on a number of occasions been faced with a plea of other legislation in the context of an RMA proposal - eg Hazardous Substances and New Organisms Act in relation to an RMA application for a spray discharge, and legislation relating to airways operations (Civil Aviation Act etc) relation to the RMA planning provisions of the Hamilton Airport.

Mr Kirkpatrick for the Applicant has provided a legal opinion on the application of the Empowering Act to the matter before us and has waived legal privilege of that opinion (which means it can be tabled at the hearing and considered by us).

We indicated in our Minute that we had read Mr Kirkpatrick's opinion and our preliminary view was that he is correct.

We also invited anyone advancing the Empowering Act as part of their case to justify as a matter of law its relevance to the matter before us. Although a few submitters raised the Empowering Act as part of their submission only one tendered any legal argument to challenge Mr Kirkpatrick's opinion. Mr Pita Witehira produced a letter from Mr Wayne Rumbles, Senior Lecturer in Law at the University of Waikato. Mr Rumbles did not appear. We agree with Mr David Kirkpatrick that Mr Rumble's letter does not constitute a legal opinion and in any event does not seriously challenge the full submission advanced by Mr Kirkpatrick.

We accept Mr Kirkpatrick's opinion and hold that:

- The Empowering Act authorises but does not require the LDS Trust to do anything in relation to any particular building, provided it is for one of the Trust purposes set out in Section 4 of the Empowering Act;
- In the absence of any specified trust applying to property, it is entirely within the scope of the Trust Board's discretion to choose how it will use its property for those Trust purposes; and
- There is no power under the RMA that would authorise consent authorities to direct the Trust Board to use its property in any particular way, other than under the general law or on the basis of the Empowering Act, beyond the imposition of reasonable conditions of consent on the ground of a resource consent.

We therefore do not consider the Empowering Act further in this Decision.

3.5 Deferral to Await Decisions on the HPDP

We discuss later in Section 6 of this Decision the HPDP. The procedural position of the HPDP as at the date of Hearing before us was that submissions and further submissions had been lodged and hearings were being conducted simultaneously as the Hearing we were conducting. A number of the submitters had already been involved in the HPDP hearings and asked us to delay the matter before us pending the decisions on the HPDP.

We indicated at the Hearing and we now confirm that we are not prepared to allow any delay on that account. We do that for several reasons:

- (a) Having made its application, the Applicant is entitled to a decision;
- (b) The thrust of recent amendments to RMA has been to reduce the time frame within which an application for resource consent is to be dealt with. The statutory time frames are now relatively tight. We have a duty to observe those time limits;
- (c) Even if we were to delay the matter before us until HCC made its decisions on the HPDP, that may not be the end of it. If there are any appeals which relate to the HPDP planning provisions pertinent to the matter before us, the resolution of those appeals could be months if not years away; and
- (d) Planning by its nature is a dynamic discipline. We are well accustomed to being required to address planning provisions which are not yet settled. Indeed it is probably the norm. If consents were required to wait until all relevant planning instruments were settled, they may not ever get decided.

We reject all submissions that seek any kind of deferral pending the outcome of the HPDP.

3.6 Witness Conflict

The expert planning witness for the Applicant was Mr Chris Dawson. It was evident that Mr Dawson had been substantially involved in the work leading up to the lodgement of the application. We accept that Mr Dawson has the appropriate qualifications and experience to make him an expert. In tendering his evidence, Mr Dawson gave the usual undertaking of compliance with the Environment Court's Code of Conduct for Expert Witnesses.

The submitter Mr Witehira, referred to Mr Dawson being "*a high ranking member of the Church*"⁶ (from which we took he meant LDS) but the submitter made no further issue of that statement at the hearing. Unfortunately the matter was not clarified in the Applicant's Reply.

In our view, if Mr Dawson is a high ranking member of the LDS, that should have been addressed in some appropriate manner during the Hearing. On the face of it, we consider it raises a potential conflict to Mr Dawson's independence as an expert witness. It would have been acceptable to us if Mr Dawson had acknowledged that potential conflict and given some further assurances about his independence with regard to the Applicant. Had he done so, we probably would have accepted that and given his evidence due weight. We are disappointed that he did not.

We do not intend to take the potential conflict issue further except to say that we consider we now have to approach the evidence of Mr Dawson with some caution. Having said that, it is reassuring that much of the planning opinion expressed by Mr Dawson is corroborated by the author of the s42A Report, Mr Whittaker.

⁶ Witehira EIC para. 17

4. PROPOSAL

4.1 Application

The Applicant seeks consent for a number of changes to the CCNZ site at Temple View. The Applicant conveniently summarised the proposal and divided it into three components as follows:

Part A

Part A is seeking consent for the 'removal of selected buildings on the south-western corner of the campus', 'the construction of a stake centre, including associated car park', 'the construction of a new internal access road' and 'the development of Legacy Park'.

The buildings proposed for removal include 9 residential units located on the eastern side of Tuhikaramea Road and the former automotive and trades workshop. The removal works do not extend to the 'First House' (teacher's residence), which is an historically important structure protected under the Operative District Plan or to the adjacent house.

A key component of Part A relates to the erection of a stake centre, which is to be located to the west of the existing Kai Hall, adjacent to Tuhikaramea Road. The stake centre will serve as a meetinghouse for local congregations and a headquarters for the local Temple View stake. Although primarily a place of worship, the stake centre will include provision for recreation and teaching facilities...

...Part A includes provision for extensive earthworks and landscaping in order to create 'Legacy Park'. Legacy Park will comprise a network of elevated walkways and raised lawns integrated with the existing remnant kahikatea forest. In addition to retaining existing protected trees, Legacy Park will be built around a feature lake and wetland swale areas, created by the diversion of existing boundary drains. Legacy Park will traverse the boundary between Hamilton City and Waipa District.

Part B

Part B of the proposal relates to the north-western corner of the site. It is proposed to remove four disused dormitories ('Boyack', 'Wiser', 'Oakes' and 'Taylor') together with the former lounge / recreational building, the former medical centre and a garage. The indicative timeframe for undertaking these works is early 2014 depending upon the availability of consents. None of the buildings proposed for removal are protected under the Operative Hamilton City District Plan.

Removal of the dormitory buildings and medical centre are necessary to facilitate development of a new roundabout (described in Part C, below) and a new internal feeder road. The new road will function as a new northern access from the Tuhikaramea Road roundabout onto the site. Consent is sought to form approximately 150m of new road, thereby providing access to an existing formed car park located to the rear of the Matthew Cowley administration building. Currently, the car park can only be accessed via Mission Way, which will become a no-through road in the future stages of the campus redevelopment. The new access road is therefore critical to enable alternative access to the northern part of the site following the closure of Mission Way.

The proposed new road will be designed to Hamilton City Council standards but will remain in private ownership until site redevelopment works are further progressed. The road will be vested in Council as part of the overall site redevelopment. This is expected to be some years hence.

Part C

The proposed stake centre is part of a comprehensive redevelopment of the site and infrastructure upgrades will be necessary to accommodate that growth. Part C therefore provides for the upgrading of Tuhikaramea Road as a means of facilitating better site access and improving road safety.

Proposed upgrading works include the construction of two new roundabouts on Tuhikaramea Road. These are to be located at the intersection of Tuhikaramea Road / Foster Road, and immediately north of the Tuhikaramea Road / Cowley Drive intersection. The roundabouts will serve a dual purpose of traffic calming on Tuhikaramea Road and facilitating safer access onto the site. The Tuhikaramea Road / Foster Road roundabout will also provide safer access into and out of the residential area on the western side of Tuhikaramea Road.

The geometry and placement of the roundabouts will necessitate marginal encroachments beyond the boundaries of the existing road corridor. These encroachments will be vested in Council at the completion of the works and primarily affect Church-owned land. Approximately 76m² of a Council Recreation Reserve (Lot 22 DPS 25245) will be affected by the pedestrian/cycle pathway encroachment.⁷

4.2 Scope of Application

A number of submitters addressed elements of what they considered were included in the proposal but which are in fact outside the scope of the application. We set them out here.

4.2.1 Heritage Buildings

The application before us does not involve any works affecting any of the buildings identified for heritage protection in the HDP. We accept the submission of Mr Kirkpatrick that:

...it is not within the scope of the application for any person to seek to include any building or area outside the development area within the assessment of it, beyond having regard to such building and areas as are part of the setting of the development in terms of an assessment of the character of the environment and potential effects on it.⁸

4.2.2 David O McKay Building

In particular the future of the David O McKay building is not a matter which is before us. Any work which may adversely affect the David O McKay building requires a resource consent. That is not in the proposal before us but may be a matter for a later date. We accept the submission of Mr Kirkpatrick that:

The proper time for consideration of that will be in relation to that application not now.⁹

4.2.3 Residential Development

In the course of the community discussion prior to the present application being made, there was obviously mention of further residential development. We received some inkling of that when in his reply Mr Kirkpatrick tabled a plan for the purposes of establishing a preliminary geotechnical investigation. We suspect that plan is the master plan for the CCNZ site. That certainly showed substantial residential development on the northern part of the CCNZ site.

⁷ Application - Proposal Summary

⁸ Kirkpatrick opening para. 17

⁹ Ibid. para. 21

However, any application which might allow further residential development is not before us and will need to be the subject of a subsequent resource consent application. We therefore express no view about it.

4.2.4 School Closure

The decision to close the school was made in 2006 for closure at the end of 2009. That decision was obviously a huge disappointment to the Temple View community.

The Applicant anticipated that some submitters may wish to revisit the decision to close the school.

In fairness to the submitters opposed, all were careful to say that the decision to close the school was not part of their case.

In the event therefore, the decision to close the school was not an issue but we record here that it was not part of the present application before us. We therefore do not comment on the merits of the closure.

4.2.5 Alternatives

A number of submitters opposed suggested that the Stake Centre should be in some other place.

This was anticipated by the Applicant. In his opening Mr Kirkpatrick observed:

Further, there is some suggestion that the Church is obliged to consider alternative uses for existing buildings as part of this application. That is not correct, as there is clear authority that there is no requirement for an applicant for resource consent to consider alternatives: see Dome Valley Protection Society Inc v Rodney DC (unreported, HC Auckland CIV-2008-404-587, 8 December 2008, Priestly J) at [88]-[99], where the Court concluded:

[98] . . . The approach which needs to be adopted to a resource consent application for a non-complying activity is well known. There is no authority, of which I am aware, which suggests, that as part and parcel of the consideration of a resource consent application, alternative sites have to be considered or cleared out.¹⁰

We consider the effects of the proposal in some detail in Section 5 of this Decision. Our conclusion is that there are no significant adverse effects.

Our understanding of the law is as Mr Kirkpatrick has put it to us. The Applicant is under no obligation to consider alternatives and still less to eliminate all other alternatives. The Applicant is entitled to a decision on the application it has made.

We therefore consider alternatives no further.

¹⁰ Kirkpatrick opening para. 22

5. EFFECTS

5.1 Effects Identified

In the application, the submissions and the Hearing the following effects were identified for consideration:

- Visual
- Amenity
- Traffic
- Noise
- Earthworks
- Heritage
- Stormwater
- Water Safety
- Ecological
- Contamination
- Positive effects.

We consider each of these in turn.

5.2 Visual

Included in the AEE were both a visual and an urban design assessment prepared by Mansergh Graham Landscape Architects. At the Hearing the Applicant tendered evidence from Mr Michael Graham an appropriately qualified and experienced landscape architect with experience in visual assessments. Mr Graham provided with his evidence:

- A number of detailed landscape plans;
- Several photo montages;
- An electronic 3D model which we could “drive” ourselves.

The submitters’ evidence on visual effect was variable. In general terms those who supported the Applicant’s proposal considered there were few if any adverse visual effects and the overall visual effect would be positive. Those submitters who were opposed to the proposal thought that the adverse visual effects were considerable. We found it very helpful therefore to have the more objective approach of Mr Graham who used recognised visual assessment criteria and methodologies.

The Temple View Heritage Society led evidence on visual matters from Mr Niall Baker a planner and Mr Andrew Bydder an architect. We agree with Mr Graham when he commented on that evidence that:

...there is no supporting methodology or analysis contained in their evidence¹¹

In addition, Mr Baker’s qualifications and experience is not in visual assessment but in planning. Whilst Mr Bydder as an architect is able to comment on the built form, his evidence was extremely brief and was focused solely on the scale and location of the Stake Centre. We consider it was inadequate to challenge the evidence of Mr Graham.

Mr Graham’s evidence addressed the two separable yet related issues:

- (a) how the proposal affects the existing urban and landscape character; and
- (b) how it affects the amenity values derived from it.

To provide an informed opinion on both those matters Mr Graham:

¹¹ Graham Supplementary Evidence para. 29

- (a) provided an overview of the assessment approach he used;
- (b) identified the existing landscape context and provided a description of the site;
- (c) identified the key elements of the proposal that affect the landscape, visual and urban amenity;
- (d) identified and discussed the effects of the proposal on existing landscape character; and
- (e) identified and discussed the effects of the proposal on existing visual and urban amenity values.

He also addressed the relevant planning matters, the submissions and the s42A Report.

5.2.1 The Character of Temple View

Mr Graham considered:

In my opinion, the present day distinctive character of the Church College Character Area is a combination of the built and landscaped environment. It contains a variable building vernacular due to the differing development phases that have occurred as a consequence of the site planning, opportune incremental development, and the removal, remodelling and repurposing of different buildings over time under management by the Church of Jesus Christ of Latter Day Saints.

The application of a limited colour palette to the wide range of building types and styles within the Church College Character Area, provide a sense of coherence to structures which would otherwise appear markedly different. This sense of coherence is reinforced by the consistent, high quality maintenance of the surrounding landscape; tidy groomed planting and specimen trees contained within a wider matrix of manicured lawn. In my opinion this combination of factors lends the former CCNZ campus and Teacher Housing an ostensibly coherent character in spite of obvious differences in architectural form¹².

Having heard all of the evidence and having undertaken a detailed site visit ourselves we agree with Mr Graham's assessment.

We refer to character again in Section 6 of this Decision dealing with the Temple View Character Area.

5.2.2 Tuhikaramea Road Upgrade

The Tuhikaramea Road Upgrade includes the introduction of two roundabouts, a carriageway realignment, changes to berm configurations and new street planting and street furniture.

We consider the most significant visual change to Tuhikaramea Road will be the removal of the avenue of 47 evergreen magnolia trees growing along both sides of the road through the village from just north of Cowley Road right through to the entrance drive of the Temple at the south end of the village. Most of the trees were planted in the berm between the carriageway and the footpath.

Mr John Wakeling a recognised tree surgeon and arborist gave evidence that:

- The trees all appear to be of uniform age and range in size between 7.5 – 8.5m in height, with girths of around 1600 – 1800mm.
- The crown spread of the trees varies between 8 – 12m.
- The trees would be classed as being in an early mature stage of life.¹³

Mr Wakeling considered that:

¹² Graham EIC paras. 15 & 16

¹³ Wakeling para. 7

*The trees have all been maintained in accordance with good arboricultural practices. They all have clear stems with sound branch unions. All have been pruned over the carriageway to give adequate clearance for high sided vehicles; clearance over the footpath as suitable for pedestrian.*¹⁴

Mr Wakeling considered that the trees could continue to thrive a further twenty five years or more. The trees are not protected under the HDP or HPDP but it does appear that the Tuhikaramea Road corridor is part of the area with a special character overlay. The trees must be regarded as an important contributor to that character.

Having seen the trees for ourselves we were at first concerned that the visual effect of the existing avenue of trees would be significantly disturbed. However, we take into account:

- If the other very positive effects of the roading upgrade are to be gained then at least half¹⁵ of the existing magnolia trees would need to be removed. That would then make for a very broken line in the avenue of trees;
- Although the avenue currently presents a pleasant visual effect, the evidence established to our satisfaction that the trees are also having an adverse effect on infrastructure and the retaining walling in particular; and
- If all the existing avenue trees are removed and replaced by a more appropriate species, in due course that new line of trees either side of Tuhikaramea Road will reestablish a similar avenue. The effect of removing the trees is therefore relatively short term and certainly not permanent.

Taking these matters into account and in particular the short term nature of the effect we consider that the visual effect of the Tuhikaramea Road upgrade is minor.

5.2.3 Boys' Dormitory Demolition and New Roding

Included in the proposal is the demolition of the boys' dormitory and replacement of approximately 150 metres of roading extending to the east of the northern roundabout along the crest of the northern ridge line.

In our view the boys' dormitories do not occupy a significant position on the site. Nor are they visually significant, screened as they are from the north by a stand of mature trees and from the south by the contour.

We consider that the visual effect of their removal is minor. We consider their heritage value in Section 5.7 following.

We are also unconcerned about the visual effects of the short section of the proposed new road in that part of the site. Paved roading is to be seen throughout the site. This is no different.

In respect of this component of the proposal, we find that any adverse effects are minor.

5.2.4 Stake Centre

We have recorded that the Stake Centre consists of a split level one and two storey building containing a chapel, meeting rooms and offices, external courtyards, an outdoor plaza area, access road and associated 134 car park area.

Although the Stake Centre is a relatively large building in terms of its footprint it is "book-ended" by two other large buildings in the vicinity namely the Wendell B Mendenhall

¹⁴ Wakeling para. 9

¹⁵ Ibid. EIC para. 17

building at the northern end and the Temple at the southern end but with substantial open landscaped gaps between all three buildings.

It is clear particularly from the 3D model that the Temple will remain the dominant feature both because of its building height and its elevated siting.

The Architect, Mr Christopher Bowkett, described the manner in which the Stake Centre had been designed and located on the site:

- The design of the building did not follow the normal Church design processes with the instructions being to carefully consider and design for the neighbourhood and the urban design context, which includes such issues as the design and materials of neighbouring buildings, landform, addressing the street, the design of the surrounding Legacy Park and more.
- In order to best utilize the existing landform the building has been positioned longitudinally parallel to Tuhikaramea Road with a single storey structure on the higher street level and a two storey block away from the street facing towards the lower level car park. This serves to maintain the strong formal building axis parallel to the main road and positions the chapel itself towards the proposed new roundabout as a frame for that corner of the intersection. Parking areas are away from the main street.
- The Stake Centre has been located between the existing Mendenhall Library building and the Temple and has been designed to accommodate four distinct internal volumes (the chapel, cultural hall, multi-purpose, and classroom/offices) rather than the traditional approach of fitting all volumes into a single uniform mass of similar cross sectional profile.
- The various blocks of the Stake Centre are separated in order to present as a layered façade stepping up and away from the street with the finer grain detailing at street level and the larger rectangular forms, higher and further away from the street.
- The facades are simple and clean, borrowing design elements and proportion from the Temple with some strong horizontal roof edge banding reflecting the Mendenhall Library frontage. The building has a very limited palette of exterior materials and colour, reflecting the buildings and the surrounding church precinct.

Mr Bowkett concluded in summary that:

*The design is a careful blending of Church “standard plan” requirements and site specific drivers such as the Temple View character overlay and site land form.*¹⁶

Mr Graham had assessed the proposal in terms of how it would affect the existing urban and landscape character. His evidence included commentary that:

- The Stake Centre development will have positive effects on the landscape character and urban amenity values of Temple View. The detailed design of the Stake Centre is responsive to the existing architecture utilising materials, form and a colour palette that references existing key buildings in the area, such as the Mendenhall Library building and the Temple. In addition, the proposal will maintain existing spatial character values, such as the 'gateway' effect of the teacher housing and road corridor.
- There will be a change in the grain of development within the area, which alters the ratio of existing elements, rather than the introduction of elements that are not

¹⁶ Bowkett EIC para. 28

already present within the area. The overall proposal will create a coherent precinct with a more “open” spatial character.

- On balance, once the Stake Centre development works have been undertaken, the visual character of the surrounding environment will not be adversely affected. The form of the proposed development and mitigation measures will successfully integrate the proposal into the site and surrounding context by maintaining critical spatial relationships while using forms, materials and colours and that are consistent with or complementary to the character of the area.
- The development of Legacy Park enhances the amenity of the existing environs both from an aesthetic and ecological perspective.
- Overall the Stake Centre development is considered to have a positive effect on urban character and visual amenity.

Mr Bydder expressed a contrary view to these experts but gave very little basis for that view.

We are unconcerned about the visual effects of the Stake Centre. We consider those visual effects are minor.

5.2.5 Legacy Park

There is no doubt in our minds that the proposed Legacy Park development constitutes a substantial visual improvement in that area of the site. The only respects in which the Legacy Park was opposed were:

- Whether allocating the Park as a “Legacy” was adequate to offset the loss of the buildings constructed by the labour missionaries. We do not see that as a visual issue.
- Water safety associated with the proposed stormwater retention pond. We deal with that later in Section 5.9 of this Decision.

5.3 Amenity

Leaving aside amenity considerations associated with visual effects, character of the area or heritage (which we discuss elsewhere in this Decision), we identified in the proposal a number of other significant enhancements of amenity which we list below:

5.3.1 Tuhikaramea Road Upgrade

There is no doubt that the upgrade of Tuhikaramea Road will provide an enhanced level of amenity in respect of pedestrian and cycle movement, and resident parking. There will be a reduction in amenity provided by the tree replacement strategy but as we have already observed in relation to visual effects, that will be temporary. For the same reasons we provided in respect of visual considerations, we find that any adverse effects on amenity are minor.

5.3.2 Stake Centre

The Stake Centre provides a considerably enhanced level of amenity for the community of Temple View providing as it does facilities which either do not currently exist or are currently inadequate. The only amenity issue therefore is the visual amenity which we have discussed in the preceding section.

5.3.3 Legacy Park

We consider that Legacy Park will also provide an enhanced level of amenity in the provision of a passive recreational area for the use not only of the Temple View Community but also the wider community who may be drawn to the site for religious or secular reasons. The only respect in which the proposed park may provide an adverse level of amenity is in respect of water safety which we discuss in Section 5.9 of this Decision.

We consider that the effects on amenity are largely positive. To the extent they may be negative, in our view those negative effects are minor.

5.4 Traffic

Included in the application was a full traffic assessment of the proposal. At the Hearing the Applicant tendered evidence from Mr Cameron Inder an appropriately qualified and experienced transportation engineer. Except to the extent that the traffic assessment in the original application was commented on by HCC qualified staff¹⁷, Mr Inder was the only qualified transportation engineer to give evidence. His evidence was unchallenged by any other expert.

Mr Inder provided evidence in relation to:

- The proposed upgrade to Tuhikaramea Road;
- The traffic impact assessment in relation to the Stake Centre.

5.4.1 Tuhikaramea Road Upgrade

In the traffic assessment in the application and in Mr Inder's evidence a number of deficiencies in the present Tuhikaramea Road carriageway were identified. We accept that there are many deficiencies within the existing road environment which should be addressed as part of the Stake Centre project.

Mr Inder identified the following key features of the upgrade:

- *New stormwater drainage (kerbs, sumps and new culverts)*
- *Addition of roadside parking for visitors and residents of Temple View*
- *New access provision for the Stake Centre and future college campus development via two new roundabouts*
- *Increased traffic calming within the urban extents of Temple View and new road crossing points for pedestrians*
- *New shared walking and cycling paths on both sides of Tuhikaramea Road*
- *New street lighting*
- *New street trees*
- *New road retaining wall on western side.*¹⁸

Mr Inder then considered each of those elements of the upgrade.

Mr Inder's evidence was corroborated by HCC staff.

*City Development staff have assessed the engineering aspects of the roading proposal and reviewed the Traffic Impact Assessment submitted with the application, and are confident that the proposal will deliver a safer and more appropriate roading environment for the Temple View community and other road users*¹⁹.

¹⁷ S42A Report Appendix 7

¹⁸ Inder EIC para. 10

¹⁹ S42A Report para. 132

Of the many submitters who supported the proposal in its entirety, a significant number specifically mentioned supporting the road upgrade works with a focus on the improved safety that the traffic calming and walking and cycling aspects will bring, the renewed infrastructure for the future and the reduced damage to footpaths and kerbs that the tree replacement offers.

However, a similar number of other submitters raised concern about traffic effects. Mr Inder specifically addressed those concerns and disagreed with the submitters who considered that the adverse effects would be more than minor. Mr Inder considered that:

There will be overwhelmingly positive traffic effects as a result of the upgrade proposal.²⁰

We prefer the evidence of Mr Inder in respect of the traffic effects of the proposed Tuhikaramea Road upgrade and we find that any adverse effects are less than minor but overall the effects are very positive.

5.4.2 Stake Centre Traffic

A detailed analysis of the traffic generation and parking requirements of the Stake Centre was provided with the application. Mr Inder provided further evidence at the Hearing and that evidence was not seriously contested at the Hearing.

In respect of the traffic effects relating to the proposed Stake Centre, we find that any adverse traffic effects are less than minor.

5.4.3 Traffic Overall

We agree with Mr Inder that the proposed Stake Centre and the associated upgrade of Tuhikaramea Road at Temple View will not result in adverse traffic effects that are more than minor provided the upgrade works are carried out in general accordance with the design as submitted to Council and further, that the traffic effects of the completed upgrade of Tuhikaramea Road will be overwhelmingly positive.

5.5 Noise

The Applicant tendered evidence by Mr Rhys Hegley a chartered acoustic engineer with appropriate qualifications and experience in acoustics. He gave evidence on the noise issues likely to be generated by the proposal.

Several submitters opposed expressed concern about noise but none adduced any expert evidence to challenge that of Mr Hegley.

Noise can be considered under three heads.

5.5.1 Stake Centre

The principal noise generating elements of the proposed Stake Centre comprise those from the chapel, cultural hall and the proposed car park. The activities in the complex will vary but will include church music and hymns, sports and social events some with amplified music.

Mr Hegley undertook an analysis and concluded:

that it will practical to construct and operate the Stake Centre in such a manner as to comply with the District Plan Noise Rule.²¹

Submitters cannot expect better than that. No submitter seriously challenged that.

²⁰ Inder EIC para. 50

²¹ Hegley EIC para. 4

5.5.2 Construction Noise

Mr Hegley considered that there are construction options that would allow the Stake Centre building and Legacy Park to be completed in accordance with the District Plan noise standards which requires compliance with the construction standard NZ 6803. However, Mr Hegley identified that:

- *Driven piles could potentially exceed the criteria; and that*
- *The upgrade required for Tuhikaramea Road is unlikely to achieve the construction noise criteria.*²²

He therefore recommended the preparation of a Construction Noise Management Plan to identify and manage the effects of the construction noise and to ensure that construction standards would be met.

We are less concerned with construction noise than we are with long term noise effects because construction noise is of temporary duration and is not unexpected during construction.

A condition requiring a Construction Management Plan is very common in a proposal which includes construction. We accept Mr Hegley's recommendation and we are prepared to include it.

The submitters cannot expect better than compliance with the Construction Standards. No submitter seriously challenged that.

Given that compliance can be achieved in this manner it is therefore not necessary for the consent to include, as the application seeks, "*potential noise levels in excess of construction standards depending on final construction method.*"

We consider that the adverse effects of construction noise from the proposal are less than minor.

5.5.3 Traffic Noise

One submitter was concerned that the installation of roundabouts would increase traffic noise as heavy vehicles decelerated into the traffic islands and accelerated away.

Mr Hegley gave evidence that:

*Modelling confirms my understanding that roundabouts have little effect on noise level with the largest predicted increase being one dBA to house G. As a guide a 3 dBA change in level is the smallest that the average person can detect meaning that the effect of the roundabout can be described as negligible.*²³

We accept the evidence of Mr Hegley.

In addition, several witnesses expressed the view that with two new traffic islands on Tuhikaramea Road heavy through traffic may well adopt a different route into Hamilton (eg Collins Road) so that the volume of heavy through traffic in Temple View may well decrease following the road upgrade thereby reducing any traffic noise issues.

²² Hegley para. 5

²³ Ibid. EIC para. 36

5.5.4 Conclusion on Noise

Although there may be noise effects generated by the proposal, the noise levels will be within accepted standards. We therefore consider the adverse effects of noise to be less than minor.

5.6 Earthworks & Archaeological

5.6.1 Introduction

The proposal includes extensive earthworks and landscaping to the south and south-east of the proposed Stake Centre and to the south of the Kai hall. The majority of the earthworks are required for the formation of the Legacy Park including the formation of the proposed stormwater lake and associated wetland swales. The earthworks are also associated with the construction of building platforms, roads, car park areas and footpaths. There is an estimated 62,817m³ of cut and 21,690m³ of fill. The development of the Legacy Park will span areas within both Hamilton City and Waipa District and require resource consents for the earthworks from both Councils as part of the current application.

5.6.2 Discussion

The potential adverse effects associated with earthworks include sediment run-off from exposed site surfaces (potentially affecting water quality and ecology), nuisance dust beyond the boundary of the site and possible impacts on archaeological sites.

The effects associated with sediment run-off and dust are capable of being managed by way of standard practices which are adopted by developers and which are usually included as conditions on resource consents. The WRC resource consents which have already been granted for land disturbance²⁴ contain a number of conditions including a requirement for a finalized Erosion and Sediment Control Plan based upon its "Erosion and Sediment Control Guidelines for Soil Disturbing Activities". Similar measures are included in the conditions forming part of this Decision along with standard dust management practices to avoid adverse dust effects to the greatest extent practicable beyond the boundary of the site.

In relation to potential impacts on archaeological sites, the AEE includes an archaeological assessment report²⁵ by Mr Warren Gumbley which includes historical research into the discovery of several Māori burials in the Temple View area during the construction of the Temple in the 1950s. In his report and his evidence Mr Gumbley points out that the nature of land development related to construction in the 1950s was such that there is now low potential for further intact archaeological deposits to be found within the development zone. The buildings currently in the area proposed for development were located on the ridge and more particularly, located on earth-worked terraces. Further, an identified site of earlier burial, where Koiwi were re-interred, is located to the south of the Stake Centre site and north-west of the Temple visitors centre in a location where it would not be affected by any of the proposed activities. Mr Gumbley concluded there is low potential for intact archaeological deposits to be found within the Stake Centre site and that the proposed development will not adversely impact any known archaeological resource within the Temple View area.

He confirmed that position in his evidence²⁶ and also pointed out the Church's continuing commitment to on-going discussions with Iwi in respect to these matters.

We discuss the Māori elements of RMA Part 2 in Section 7.3.4 of this Decision.

²⁴ Waikato Regional Council consents 127626- 127629

²⁵ Applicant's Assessment of Environmental Effects, Appendix 9

²⁶ Gumbley EiC, para. 31

We received evidence from Tuahu Watene as a Kaumatua for Ngati Mahanga as part of the Applicant's presentation. He supported the application and stated that the Applicant had met their expectations regarding consultation and they looked forward to a long lasting relationship into the future.

Mr Wiremu Puke presented evidence on behalf of the Nga Mana Toopu O Kirikiriroa Trust / Te Taniko Trust opposing the application. He highlighted how the land is of great historical importance to Ngati Koura and Ngati Wairere, in addition to Ngati Mahanga. Mr Puke outlined their strong association with the land and with the Church. He had concerns with the information that had been provided with the application and stated that consultation had not been undertaken with Ngati Koura and Ngati Wairere. He concluded that the application should be declined consent but that was on the basis until such time as RMA s6(e) had been addressed through meaningful consultation with Ngati Wairere and Ngati Koura as mana whenua through the Te Taniko Trust. Mr Puke provided draft conditions to be imposed upon any grant of consent to the application for our consideration, those conditions relating to consultation, protocols governing the discovering of any taonga or human remains and the incorporation of some appropriate features into the design of the building and development of the site.

It is accepted practice that decision makers under the RMA should not be required to make decisions on mana whenua or groups who have status and the rights to talk in relation to any particular areas of land. It is however the case that we hear the evidence from the parties and make decisions on applications and associated conditions accordingly. In that respect we acknowledge there is a strong historical association of Māori with this area, as evidenced by Messrs Watene and Puke for their respective Iwi, and also with the development of the Church facilities on the Temple View site.

We find that the Applicant has consulted in good faith with Ngati Mahanga, on the advice of HCC officers, and also with Mr Puke but not to the extent that he finds desirable. We observe that such consultation is not mandatory under the RMA but is sensible in terms of dealings with tangata whenua and having regard to the matters in Part 2 RMA.

We do not see it being necessary to impose any conditions in respect of the matters raised by Mr Puke. There is a condition relating to accidental discovery and we do, by way of an Advice Note, encourage the Applicant to undertake further consultation with tangata whenua to consider any design motifs or structures which may be established as part of the redevelopment to recognize the ancestral and cultural connections of tangata whenua to the area.

5.6.3 Non-Complying Activity Status

The proposed works within the Significant Natural Area (SNA) feature associated with the stand of Kahikatea trees has non-complying activity status in the Hamilton Proposed District Plan. We find from the evidence that these works would have only a minor adverse effect on the SNA and would not be contrary to the objectives and policies of the district plans.

5.6.4 Conclusion on Earthworks and Archaeological

The potential adverse effects associated with earthworks can satisfactorily be handled by way of standard conditions on consent to the application, these being supported by similar conditions imposed by WRC in relation to the regional consents earlier granted to the proposal. The archaeological investigation associated with the proposal has demonstrated that the proposed development will not impact adversely on any known archaeological resource within the Temple View area. Further consultation with tangata whenua, based on the evidence presented to us at the hearing, is encouraged in order to recognize the ancestral and cultural connections of tangata whenua to the area.

We find that the potential adverse effects associated with earthworks and archaeological considerations are minor and can satisfactorily be addressed through procedures included in the application which are confirmed as conditions we have included as part of this Decision.

5.7 Heritage

5.7.1 Introduction

The manner in which heritage values would be affected by the proposal was one of the most contentious issues raised in submissions to the application.

There were a significant number of submissions both for and against the application that provided personal testimony to the historical development of the former CCNZ including accounts of the people and processes used to build the campus and from family members who had taught and been educated at the college over a number of generations. Submitters in support acknowledged that history and connection to the former CCNZ but recognized the merits of the proposal in terms of meeting their continuing and growing needs. They expressed disappointment with the loss of some buildings but saw that as being overshadowed by the provision of new facilities whilst retaining those buildings that have been scheduled for heritage protection.

Opposing submitters' concerns included that the removal of the existing buildings will adversely affect the heritage values of the site. They did not wish to see buildings which their forebears had helped to build now being demolished. These submitters considered that alternative locations were available for the proposed Stake Centre and that there were alternative uses of the buildings rather than their demolition.

As recorded in the s42A Report, the matter of the need for a heritage expert to provide evidence was raised with the Applicant. The AEE had provided specialist reports addressing the range of potential effects associated with the proposal but this had not included a report from a heritage expert. The Applicant addressed this matter with the engagement of Mr Adam Wild to:

Undertake a series of heritage assessments of individual built elements on the site including both built elements already recognized and others [sic] built elements and wider or collective contextual matters which have lead to a more complete understanding of the cultural heritage values of the place as found today.²⁷

Mr Wild's evidence was pre-circulated on 8 November 2013 (in accordance with our Directions of 19 September 2013). That served to inform all parties (us included) of the details of that evidence. It also provided the opportunity for submitters with any concerns in this respect to present their own expert evidence, or a critique of Mr Wild's evidence, when they provided their submitter expert evidence on 20 November. There was a further opportunity to do so at the hearing on 2 December 2013.

5.7.2 The Position of the Applicant

We have already observed in Section 4.2 of this Decision that the application did not involve any works affecting any of the buildings identified for heritage protection. On that basis it was not within the scope of the application for any person to seek to include any building or area outside the development area within the assessment of it, other than having regard to such buildings and areas as part of the setting of the development in terms of the assessment of the character of the area and potential effects on it. Further, that there is no requirement for an applicant for resource consent to consider alternatives.

²⁷ Adam Wild EIC, para. 4

Mr Wild presented evidence based on his investigation and two of four reports he had been involved with relating to the overall and specific heritage values of the former CCNZ campus. He provided some observations on heritage protection in the context of the RMA and the proposal that we found very relevant. He stated:

Heritage, or more particularly “the protection of historic heritage from inappropriate subdivision, use, and development”, is regarded as a matter of national significance in accordance with Section 6(f) of the RMA. The RMA obliges Council to recognise heritage where it lies and provide for its protection. At the same time the RMA has an enabling purpose which balances the public’s expectation for heritage protection with opportunities for development. These should not be seen as mutually exclusive activities, but rely on a carefully considered understanding of what contributes to the distinctiveness of a place and to its particular heritage.

Heritage is not a static phenomenon. This is well illustrated in considering the layers of value evident in the former Church College site which I will discuss in more detail shortly.

Equally heritage and development are not incompatible. The policies and objectives of the Operative District Plan, much like the purpose of the RMA itself, recognise opportunity for development within the Temple View area including the former Church College site while having regard for the recognition, protection, and enhancement of the heritage of the Temple View area.

The value to be found in recognising and responding appropriately to those distinctive heritage values will result in benefits to the existing and anticipated future Temple View community in founding growth on established and locally distinct qualities precisely as the proposed Stake Centre envisages.²⁸

We found these statements of relevance in highlighting that the s6 RMA matters of national importance are not just concerned with protection but, consistent with s5 the RMA, has an enabling purpose whereby there is a balance to be struck between protection and development. We agree that heritage is a dynamic process and that the heritage values of the Temple View area should be considered in terms of both the buildings and the community which relates to them.

The six buildings which have been included as heritage items of recognized heritage value in the HDP were identified by Mr Wild, those being in addition to the Temple which is situated outside the development site. He said that the heritage of the site *per se* is not limited to the acknowledgement of values associated with or of those identified buildings. He stated:

*I agree with the reporting planner’s comments at 115(c) that “the heritage values of the buildings are influenced by the nature of activities, the scale and interrelationship of other buildings, outdoor spaces and plantings around the site and within the immediate area.” That being said the focus of that understanding must be assessed against the values for which a place may be seen to have cultural heritage significance on a case-by-case basis. In this case the values are not limited to those represented in a number of the buildings identified in the extant building stock, but that the weight of heritage assessment we have undertaken shows that Church enterprise, training, and its people are the resounding legacy and these appear to be recognised in the spirit of the covenant agreed between the NZHPT and the Church of Jesus Christ of Latter-day Saints Trust Board. The heritage of the site *per se* is not limited to the acknowledgement of values associated with or of those buildings listed in the District Plan, but is recognisable in the technologies, resources, and human legacy that emerged from the Church College, which were supported by a wider and evolving local community, and which remain a vital part of Temple View as a centre for The Church of Jesus Christ of Latter-day Saints in accordance with its original precepts and into the future. Protection of the buildings alone confuses that sense of heritage value.*

²⁸ Adam Wild paras. 23 to 26

*The **cultural heritage values** of the area have been recognised and understood and used to inform appropriate development in the context of those recognised heritage items. I believe this is reflected appropriately in the proposed Stake Centre development and the LDS submission²⁹.*

Mr Wild made a further observation on which we place some importance when he stated:

The weight of heritage assessment we have undertaken shows that Church enterprise, training, and its people are the resounding legacy and not the buildings recognised in the District Plan. Protection of the buildings alone confuses that sense of heritage value. To oblige retention of the buildings in an unbalanced way risks driving away the very legacy (the people) who established this distinctive community. Temple View is fundamentally a place of its people; conceived by its people; built by its people; and, whose skills, technologies and building materials went around the world to further those goals. Having achieved those primary goals Temple View evolves into the contemporaneously conceived greater vision.³⁰

He did not see heritage as a static phenomenon but rather that the district plan provisions, much like the purpose of the RMA itself, recognized opportunity for development while having regard for the recognition, protection, and enhancement of recognized cultural heritage values. He was of the view that the cultural heritage values of the area had been well recognized, carefully understood and, through their protection, used to inform appropriate development including the adaptive re-use of those identified heritage items.

In assessing the effects on the environment from the proposed development with respect to heritage, Mr Wild stated he did not believe the Stake Centre proposal presented any negative effect on heritage values. No recognized heritage is directly affected and adjacent heritage was in his opinion, enhanced by the proposed Stake Centre scheme which acknowledges those values and addresses the special character recognized by Council and evident in the Tuhikaramea Road special character area. He saw the positioning of the proposed Stake Centre equidistant between the recognized heritage of Temple (to the south) and the first teacher house and former Mendenhall Library building to the north as an important relationship and to be consistent with the scale and arrangement of the CCNZ building historically upon the site. He noted that relationship is not a natural one, but one designed following the intensive modification of the site including the manipulation of land form and planting as part of the overall building scheme.

Mr Wild's conclusions included:

- That the proposed Stake Centre development adds to and enhances the heritage values, legacy, and original envisaging project associated with the former CCNZ campus. At the same time it has acknowledged and been informed by the special character evident along the Tuhikaramea Road ridge.
- The scale, form, materiality, and articulation of the proposed Stake Centre demonstrates appropriate consideration to its heritage context and to the special spatial pattern of the teacher housing/Tuhikaramea Road area and other adjacent heritage.
- The proposal has no negative effect on the recognised heritage elements on the site.
- The proposal maintains and builds on the original vision which created Temple View and should be seen as a positive evolutionary step forward in the vision held by the LDS for this distinctive place and community.

²⁹ Adam Wild paras. 34 and 35

³⁰ Ibid. para. 39

We have referred above extensively to Mr Wild's evidence because we considered it appropriately described the RMA context in which we are to make a decision on the application and the heritage qualities of Temple View in particular. It also addressed some of the concerns by submitters opposed to the proposal. Perhaps of most importance, his evidence encapsulated the very qualities of Temple View that we heard of and experienced a little of from our site visits. He highlighted the "people" aspect of the heritage and the continuation of the legacy and activity of the LDS and its people at this location.

Mr Kirkpatrick, in his reply, observed that historic heritage is not limited to buildings or other tangible artifacts and, in referring to the evidence of all the submitters who drew connections between their own lives in the buildings at Temple View, he submitted that what was equally, if not more, important is their continuing presence as a community living there and continuing to create a heritage.

Further, that where an identification and scheduling process for heritage items has been undertaken, then persons making decisions in the context of s6(f) RMA should be guided by the outcomes of that process. He contended that expert witnesses for the Temple View Heritage Society were asserting that as all buildings on the CCNZ campus are historic heritage, then any loss of any building constitutes an adverse effect which is contrary to section 6 (f) RMA and consequently contrary to the policies of the regional and district planning documents. Mr Kirkpatrick did not agree and again highlighted the continued use, enjoyment, and value by the community as being of importance and that their approach would leave the site as a "museum piece".

5.7.3 Position of Submitters

Mr Paul Majurey, counsel for the Temple View Heritage Society submitted that this was a case involving "effects creep" whereby the Applicant has plans for demolition of other additional buildings which was a relevant consideration when assessing the effects on historic heritage. Those buildings directly contribute to the amenity of Temple View and the approach of the Society is "*to honour the rich history of these buildings*". He also submitted that we could request evidence of an alternative location for the Stake Centre or a configuration that meets the issues raised by the Society. Mr Majurey saw the establishment of a new Stake Centre that does not compromise historic heritage, character and amenity as being achievable.

The expert evidence of the Temple View Heritage Society relating to heritage was tendered from Dr Ann McEwen. Her evidence was also supported by other experts and submitters who are not experts in matters relating to heritage but nonetheless held views that we take account of in this Decision. We acknowledge the statement by Ms Nicola Hamon that provided historical details in addition to the views of the Society.

Dr McEwen brought a number of points to our attention including:

- The RMA definition of historic heritage includes "*surroundings associated with the natural and physical resources*" and this, along with similar statements in the HDP means, in her view, that while demolition of listed heritage items is not proposed in the application, the proposed changes to the setting of the listed items on the former CCNZ campus does in fact constitute a type of modification to these heritage items.³¹
- The assessment criteria in the HDP require consideration of the relationship of the heritage item with its setting, with the streetscape appearance and the heritage values of a neighbouring heritage item.³²

³¹ McEwen EIC para. 3.2

³² Ibid. 3.3

Dr McEwen expressed a number of concerns that there was no heritage assessment with the original application, notification of the application and the s42A Report. In our view these matters have been satisfactorily addressed by the Applicant commissioning such a report and associated expert evidence prior to the Hearing which all the parties had time to consider before having to provide their expert evidence but more particularly ample time to consider before presenting at the Hearing. We also observe that much of Dr McEwen's evidence was a response to the evidence of Mr Wild, but expert evidence needs to also be focused on the witness's own evaluation of the situation as opposed to a focus on refuting what another expert may have raised in evidence.

Other points advanced by Dr McEwen were:

- Her view that the physical proximity of the scheduled buildings to the proposed Stake Centre support her client's contention that the proposal will impact upon the surroundings of scheduled heritage buildings and therefore due consideration of the heritage impact of the proposal must be given.³³
- That just because a building, structure or site is not scheduled on a district plan or registered by the NZ Historic Places Trust it does not follow that such a resource has no significant heritage values.³⁴
- With the benefit of hindsight a unitary heritage area over the entire Temple and college complex would have been more appropriate, given the historic, architectural, contextual and cultural significance of the entire complex.³⁵
- For the members of the Temple View Heritage Society and many other submitters there is no distinction to be drawn between the legacy and historic heritage values of the Temple and college complex.³⁶
- In discussing historic heritage values and significance of Temple View, Dr McEwen pointed out that the significant historic heritage values of both the Temple and its environs and the former CCNZ campus arise out of the following factors:
 - The complex's place within the international history of LDS;
 - Its mid-20th century modernist architectural design;
 - The integrated landscaping and planning of the complex in which the Temple and CCNZ campus are at once unified and individualized; and,
 - The spiritual and cultural importance of these places of Christian worship and education.³⁷

Dr McEwen highlighted the large scale construction of the CCNZ and its history as being the only co-educational boarding school in New Zealand when it opened and its sporting and cultural history intersecting with a number of strands in the history of New Zealand society, including those of basketball and Māori performing arts. It was the only LDS sponsored secondary school in New Zealand and a magnet for church members who moved to Temple View so that their children could be educated close to their faith, just as church members were drawn to the only LDS Temple in New Zealand.

In her opinion the former CCNZ campus is a location of a number of especially notable buildings and the grounds on which they stand were a place of community, of religious faith, of work, and of education. The buildings within the Temple View Heritage Area and Church College Character Area have international, national, and regional significance. In this respect she saw the protections offered by the HDP and the PHDP needing to be fully implemented.

³³ McEwen para. 4.2

³⁴ Ibid. para. 4.4

³⁵ Ibid. para. 4.5

³⁶ Ibid. para. 4.7

³⁷ Ibid. section 5

A number of submitters shared Dr McEwen's views and particularly that all of the buildings at CCNZ had significance as heritage items and should be retained and, rather than being left vacant as is the case with a number of them currently, put to re-use.

5.7.4 Discussion

The respective parties, providing competing points of view on heritage, have now had ample opportunity to present both written and oral material to us and to comment on each other's points of view. Because issues of heritage constituted the primary consideration for many of the submitters, particularly those opposed, we have considered very carefully all of the evidence regarding heritage.

We find it difficult to agree with the view that all of the buildings intended for demolition as part of this application should be retained and put to some form of undefined adaptive re-use. The evidence, supported by our site visit and inspection of the buildings, is that a number of the buildings are simply "past their use by date". The boys' dormitory buildings sought for demolition for example would clearly require significant work to be brought up to any reasonable state for re-use apart from the fact that there are no specific proposals for re-use, or evidence being put before us to support that re-use is practicable. Instead, the proposal is to retain the listed heritage buildings in a manner that is intended by their scheduling in the district plans. If it was the case that such scheduling should apply more widely upon the site then the Council has had the opportunity to do so. The evidence indicates that the demolition and new building construction is designed to have due regard to the heritage qualities of the site and in all respects to have cognisance to the requirements of the planning documents and the RMA.

We find the evidence of Mr Wild to be particularly appropriate when he stated that the protection of the buildings alone confuses the sense of heritage value. That is, the retention of buildings alone, whether or not they be re-used, may not serve to appropriately recognise the heritage values of the site.

We accept Mr Kirkpatrick's submission in reply that:

*In my submission, the whole point of Mr Wild's assessment is that the historic heritage at Temple View goes well beyond the physical structures, their surrounds and their layout to connect to an aspect of New Zealand's history and culture which still exists at Temple View, and, even more importantly, continues to develop and progress. Temple View is full of historic heritage but it is not a museum: it is a community. The evidence of all the submitters, for and against, who drew connections between their own lives and the buildings at Temple View is important, but equally if not more important is their continuing presence as a community living here and continuing to create a heritage. In this setting, the Church advances this proposal to enable the well-being of the community to be provided for appropriately while protecting historic heritage from inappropriate subdivision, use and development.*³⁸

He submitted further and we accept that:

.... the thesis of the evidence of Dr McEwan and Mr Baker is misconceived. In essence, they assert that as all buildings on the CCNZ campus are historic heritage, then any loss of any building constitutes an adverse effect which is contrary to section 6(f), and consequently makes the whole proposal contrary to the policies of the RPS and the objectives and policies of the District Plan. The fallacy of this thesis is exemplified by Dr McEwan's answer to a question from Commissioners about her view of the future of the site, where she said: "Continued use, enjoyment and value by the LDS community and others" but could not say what that use would be. Ms McDonald, speaking in support of her submission, identified the issue as being what the campus looks like. Such an

³⁸ Kirkpatrick Closing Submissions, para. 11

*approach would leave the site as a museum piece, and does not respond to the needs of the community in a manner that promotes sustainable management of the resources at Temple View*³⁹.

The essence of the heritage considerations was usefully commented on by Mr Kirkpatrick in his reply when he highlighted to motto of CCNZ as being “*Build now for eternity.*” He submitted it is significant to note the use of the verb “build” rather than the noun “buildings”. His submission was that the evidence of the submitters who were labour missionaries better reflects the motto as relating to building a community rather than simply creating buildings which in fact do not last for eternity but have a limited life span.

This is a proposal which seeks to integrate new building forms into the current environment, having due regard to the listed heritage items of the site. Perhaps more particularly it is to provide facilities for the LDS community to meet their current and growing needs and allows the historic LDS activity at this location to continue in a manner that is consistent with the heritage and legacy that this area has to the LDS church.

We were able to question submitters opposed regarding their views and found those who sought retention of all the buildings on the site, with respect, were not accepting the realities of the state and condition of some of the buildings sought to be demolished and the desire included in the application to provide for the continuing needs of the LDS community.

5.7.5 Conclusion on Heritage

We find the heritage assessment and evidence provided by Mr Wild to be thorough and well - reasoned. On the basis of all the evidence put before us we, find that the adverse effects from the proposal associated with heritage will be minor in the context of the site and locality.

5.8 Stormwater

The Applicant tendered evidence by Mr Eugene Vojdajnsky, civil engineer with appropriate qualifications and experience in stormwater, river mechanics and flood plain management.

Mr Vojdajnsky examined the existing drainage at Tuhikaramea Road and then set out a summary of the standards and design objectives for the project including:

- Stormwater model and methodology;
- Proposed conditions for stormwater management;
- Treatment of stormwater runoff; and
- Results by the numbers.

Mr Vojdajnsky told us that as a result of the proposed new stormwater system:

- Stormwater runoff which is not currently treated will be treated prior to release into the Koromatua Stream;
- Koromatua Stream flood levels will be slightly reduced and downstream flood flows will be significantly reduced;
- Street flooding on Tuhikaramea Rd will be reduced; and
- The proposed stormwater system will meet or exceed the requirements as outlined in the HCC Development Manual, the Operative Hamilton City District Plan, and the Operative Waikato Regional Plan.

³⁹ Kirkpatrick Closing Submissions, para. 13

Mr Vodjansky also reported that WRC has already granted the required Stormwater Discharge Consent⁴⁰.

The only issue in relation to stormwater which was contested by submitters relates to water safety which we consider in Section 5.9 following.

Beyond that, the evidence of Mr Vodjansky was uncontested.

We hold that the stormwater effects of the proposal are positive in that existing flooding including street flooding on Tuhikaramea Road will be reduced and there will be an improvement in stormwater quality.

5.9 Water Safety

One of the adverse effects identified by submitters opposed, and Ms Jodhi Ponga in particular, was that the proposed stormwater lake will create a significant hazard for children. Ms Ponga was well qualified to speak on that issue as a:

- Mother of three;
- Former volunteer Learn to Swim teacher; and
- Current volunteer Sunday School teacher of ten children aged 6 and 7 years old.

Ms Ponga made the observation that in an area around a place of LDS worship, inadequately supervised children are not unusual.

We took that concern seriously and invited the Applicant to address the matter in its reply.

In reply the Applicant tabled a set of landscape plans prepared by Mansergh Graham Landscape Architects and drew attention particularly to:

- (a) the bench below water level around the edge of the stormwater retention pond as shown in the cross sections in drawing 2-B170 being a metre wide and 400 mm deep;
- (b) the steel barrier around the edge of the southern courtyard on drawing 2-B110 and 2-B115;
- (c) the balustrades on the sides of the pavilion timber courtyards as shown on drawings 2-B160 and 2-B161; and
- (d) as shown on the overview drawing 2-A015, the other parts of the edge of the stormwater retention pond have riparian planting, and will not be mown grass.⁴¹

We have examined those plans.

We accept that adequate measures have been adopted in respect of the paved southern courtyard with a steel barrier fence around the lower deck of that courtyard nearest to the water.⁴²

Whilst the pavilion timber courtyards have some walling, the lower platform of the timber deck remains open to the water and indeed overhangs the water in part.⁴³ It therefore presents a hazard of the kind concerning Ms Ponga. In respect of the pavilion timber courtyard we consider that further provision should be made so that adequate swimming pool type fencing is provided somewhere on the timber deck to prevent unrestricted child access to the stormwater retention pond. We impose a condition accordingly.

⁴⁰ Refer WRC consent 127627,8 & 9 included as Attachment 4 to the evidence of Mr Dawson.

⁴¹ Kirkpatrick reply para. 3

⁴² Plans 2-B110 & 2-B115

⁴³ Plans 2-B160 & 2-B160

We accept the general purpose of creating the stormwater pond both for stormwater management reasons and to beautify the site and creating an area of peace and tranquillity particularly between the Stake Centre and the Temple. Those effects are all positive.

We consider that with the imposition of an appropriate condition the water safety issue is adequately mitigated.

5.10 Ecological

The Applicant tendered evidence from Mr Dean Miller, Ecologist and Senior Environmental Scientist with Tonkin & Taylor Limited. Mr Miller considered the ecological values associated with the site and in particular the significant natural area (SNA 43 as shown on the PDP Map 60B) and the Koromatua Stream. Mr Miller:

- Undertook a detailed assessment of ecological effects;
- Assessed the stormwater pond proposal against the appropriate objectives in the PDP; and
- Commented on issues raised by submitters and in s42A Report.

Mr Miller concluded:

In summary, freshwater ecological values within the proposed works area are currently limited due to the heavily modified nature of the stream flowing through the site. Proposed works will divert the stream from the 430 m straightened channel and twin culverts, into a more natural freshwater environment consisting of stream channel sections and two ponds.

Diverting the stream, installing a fish passage structure as well as the planned planting of the surrounding environment will connect ecological local ecological resources and improve both freshwater and terrestrial biodiversity. Mature native stands identified within SNA 43 will be unaffected by the works and ongoing operation of the pond and will benefit from the proposed planting. Additional options to the enhancement already proposed, to protect and further improve ecological values on site include; planting the understory of mature stands within SNA 43, using native eco-sourced plants, controlling pest plants, and removing and preventing the disposal of green waste within and surrounding SNA 43. These options have been accepted by the Church and included as proposed draft condition....⁴⁴.

Mr Miller's evidence was not contested by any submitter.

We accept that ecologically there is likely to be a significant improvement if the proposal is allowed to proceed.

We hold that the ecological effect is positive.

5.11 Contamination

An issue of site contamination was raised in the application and was also raised by some submitters. The Applicant has previously applied for and received consent from both HCC and WDC for earthworks to manage soil contaminants.⁴⁵ We note that included in Appendix 6 of the s42A Report were technical comments from HCC Environmental Health Manager Mr Peter McGregor. He was of the view that the site contamination issues had been appropriately and adequately addressed in the previous consents. He considered that the conditions of the previous consents should be applied and given effect to prior to any works associated with the current proposal and recommended conditions accordingly.

An appropriate condition has been recommended in the s42A Report and we adopt it.

⁴⁴ Miller EIC paras. 30 & 31

⁴⁵ HCC land use Consent RC 010.2012.661.001 granted on 14th November 2012;
WDC Consent PG/0037/12 granted on 13th November 2013

We consider that site contamination has been addressed through previous statutory processes which are subject to existing consent conditions.

We consider that it is not necessary to revisit the contamination consents or those issues as part of the current consenting processes beyond imposing a condition requiring compliance of the previous consent conditions before any construction under the consent currently applied for commences.

5.12 Positive Effects

A significant number of positive effects were identified. From the discussion of effects above we have already identified the following positive effects:

- Traffic improvements on Tuhikaramea Road;
- Infrastructure improvements on Tuhikaramea Road including new circuits for the Tuhikaramea Road trees Xmas lighting;
- Stormwater improvements on Tuhikaramea Road;
- Reduction in flood levels in the Tuhikaramea Stream;
- The enhancement of amenity that these improvements bring;
- The enhancement of amenity in the provision of passive recreation in Legacy Park;
- Improvement in stormwater quality; and
- Improvement in ecology in an SNA.

In addition to these positive effects there are the other more significant positive effects overall:

- The provision of a new Stake Centre to the benefit and convenience of the constituent LDS wards;
- The provision of a new cultural hall and associated spaces which we are confident will become the new social centre of Temple View;
- Additional parking for the annual Xmas lighting at the Temple which lighting has become a major secular attraction well beyond LDS;
- With the possible future refurbishment of both the GRB building and Kai hall, appropriate parking will be provided for both which in turn will have the effect of rendering these heritage buildings more attractive and useful well into the future;
- Located as the GRB building and Kai hall are, reasonably close to the Stake Centre facilities, the whole area will become the primary social area for Temple View.

A number of the submitters in support, identified these positive effects and saw them as more than offsetting any adverse effects that there may be.

We see these more significant positive effects as going to RMA Part 2 and in particular RMA s5 which looks to enable *people and communities to provide for their social, economic, and cultural well-being*. We deal with this again in Section 7 of this Decision.

6. PLANNING INSTRUMENTS

6.1 Introduction

The primary planning instruments that provide the planning and policy framework under which the LDS application is to be considered are:

- Hamilton City Operative District Plan, 2012⁴⁶
- Hamilton City Proposed District Plan, 2012
- Operative Waipa District Plan, 1997
- Proposed Waipa District Plan, 2012
- Operative Waikato Regional Policy Statement, 2000
- Proposed Waikato Regional Policy Statement, 2010
- Waipa 2050 Growth Strategy, 2009
- FutureProof Growth Strategy, 2009.

A small part of the proposed development works will be located within Waipa District because the Waipa District/Hamilton City territorial boundary cuts into the site in the area of the proposed Legacy Park on the application site. It is therefore necessary to assess that part of the proposal against the relevant provisions of both the Hamilton and Waipa planning documents. We discuss these planning instruments below.

There are no national policy statements that apply.

6.2 Activity Status

Hamilton City Operative District Plan, 2012 (“HDP”)

The HDP provides a Community Facilities Zone over the site along with a number of overlays and plan annotations. These include a Church College Character Overlay affecting the main part of the application site with the southern part of it being affected by the Temple Heritage Precinct Overlay. There are also listed Heritage Items and a Significant Tree Overlay along with a Teacher Housing notation along a portion of the site frontage.

This is a relatively complex array of planning provisions applying to the site. The details are provided in the Assessment of Environmental Effects (“AEE”) provided with the application and further in the evidence of Mr Dawson and in the s42A Report by Mr Whittaker. As concluded by Mr Whittaker:

*Although the Hamilton District Plan has a multitude of plan provisions and activity rule mechanisms which apply to the proposal, overall, it is considered that the application should be assessed as a Discretionary Activity.*⁴⁷

We accept that.

Hamilton City Proposed District Plan, 2012 (“HPDP”)

The HPDP includes the sites of the proposed works in a new Temple View Zone along with a small area of Natural Open Space Zone over the stand of Kahikatea trees. The Temple View Zone comprises the Temple View Heritage Area, covering largely the area associated with the existing Temple, and the Temple View Character Area, covering the application site. In addition there are seven buildings identified as having heritage protection with immediate effect and a Significant Natural Area (“SNA”) associated with the stand of Kahikatea trees.

The hearings on submissions to the HPDP are currently proceeding and we were advised that a large number of submissions have been received to the Temple View Zone and its associated provisions.⁴⁸

⁴⁶ Not made operative until this date due to appeals that took a long time to resolve

⁴⁷ S42A Report, para. 59

⁴⁸ Ibid. para. 60

Notwithstanding the hearing of submissions, a small number of provisions within the HPDP have immediate legal affect upon notification, albeit they are not beyond challenge. In the context of this application those rules include the rules relating to the protection of historic heritage in the Special Character zones and rules for the control of earthworks. However, none of the buildings proposed for removal are listed for heritage protection and otherwise the quantum of earthworks falls for consideration as a restricted discretionary activity.

The SNA that covers the stand of kahikatea trees is affected by the establishment of the proposed Legacy Park at the southern end of the site and this component of the application has a non-complying activity status.

Operative Waipa District Plan, 1997 (“WDP”)

That part of the site located within the Waipa District is zoned Rural and is proposed to be developed as part of the Legacy Park. The proposed use of Legacy Park as a non-rural activity as well as the required earthworks are discretionary activities.

Proposed Waipa District Plan, 2012 (“WPDP”)

The decisions on submissions to the WPDP have not yet been issued but in terms of rules having immediate effect, the only rule of relevance is that requiring a set back of 23m for any earthworks or vegetation from the edge of a lake or waterway. This aspect of the application is a discretionary activity.

6.3 “Bundling” and Activity Status Summary

The Legacy Park component of the proposal includes the development of a boardwalk, walkway and earthworks for the development of the central part of the Legacy Park pond. These proposed works are partly within an area identified as a SNA, being the stand of Kahikatea trees behind the teacher housing and below the Temple. These works require consent pursuant to Rule 20.3(g) of the PHDP as a non-complying activity.

Mr Kirkpatrick submitted that these aspects of the overall development do not need to be “bundled” with the other parts of the development, those being the proposed Stake Centre building, car park and internal roading, upgrading of Tuhikaramea Road and the removal of existing buildings. He saw the works in this SNA as being assessed separately on the basis that the effects are quite distinct and do not overlap. In addition, all of the required authorizations for stormwater disposal have already been obtained from the Waikato Regional Council and no additional stormwater authorizations are required from the HCC.

We agree with Mr Kirkpatrick that the established legal position, where an activity requires multiple land use consents under a district plan, subject to one exception, is that the consent status of the activity as a whole is “bundled” across the specific consent requirements. This has the effect of the activity taking on an overall status for assessment and determination from the most stringent classification, notwithstanding that aspects requiring consent might not be given that status under the relevant planning provision. The exception is where the effects are quite distinct and there is no such overlap. Mr Kirkpatrick submitted that in this case, the effects of the proposed earthworks and boardwalk are quite distinct from the effects associated with the proposed Stake Centre, roading and other parts of the proposal.

Mr Kirkpatrick referred us to the Court of Appeal decision in *Body Corporate 97010 – Auckland CC* [2000] NZRMA 529 (CA) as authority for his opinion. We consider that decision to be of direct application.

We note that the position advanced by Mr Kirkpatrick was supported by Mr Whittaker in his s42A Report. There was no substantial argument to the contrary.

In considering the “bundling” question it seems to us that because the SNA is only part of the Legacy Park proposal, we need to assess whether the bundling delineation comes at the limit of the SNA or the limit of the Legacy Park proposal.

We consider that the effects in the SNA are somewhat difficult to distinguish from the effects of the Legacy Park. The SNA occurs seamlessly within the whole Park. We therefore consider that the non-complying status runs to the whole of Legacy Park. However, we have no difficulty in holding that the effects of Legacy Park are quite distinct from the effects associated with the proposed Stake Centre, roading and other parts of the proposal.

We therefore apply a discretionary activity status to the application under the Hamilton and Waipa District Plans with the exception of the Legacy Park, which is separately assessed as a non-complying activity.

6.4 Weighting of the District Plans

There is both an operative and a proposed District Plan for each of Hamilton City and Waipa District. It is then necessary to consider what weighting will be given to those respective plans in assessing this application. This is usually determined on the basis of how far a proposed district plan is through the statutory process of having been notified, submissions heard and decisions made upon it.

The HPDP was notified in December 2012 and the HCC has commenced hearing the submissions to it. We have been informed, through the s42A Report, that a large number of submissions have been received to the Temple View Zone and the associated provisions.⁴⁹ On that basis, we find that the provisions of the HPDP can only have limited weight as opposed to the predominant weighting that is to be afforded to the operative HDP. We accordingly give limited weight to the provisions of the HPDP.

In the case of Waipa District, the WPDP was notified in May 2012 and the Council has now completed its hearing of submissions and is due to release its decisions in early 2014. It is only part of the site that is to be considered in terms of both the WDP and the WPDP. This is the part proposed to be developed into a passive outdoor recreational area and park (Legacy Park). These proposed works are not contentious in the context of the application. We afford greater weight to the WDP on the basis of its operative status and lesser weight to the WPDP although this is not a matter of great significance in terms of our consideration of the LDS application.

We consider the above was common ground between the parties and no serious challenge was raised in relation to it.

6.5 Objectives and Policies

Hamilton City Operative District Plan

There are a range of objectives and policies that require assessment in relation to the proposal, these relating to the following:

- Community Facilities
- Church College Character Area
- Heritage Items
- Transport Networks
- Indigenous Vegetation Remnants
- Character and Amenity Values.

Of these provisions it is the Church College Character Area that provides the key objective and policies in relation to this application. The entire objective and policies are quoted below:

⁴⁹ S42A Report paras. 35-38

Objective 7.6.1 Church College Character Area

To ensure development within the Church College Character Area maintains and enhances its special character.

Policies

- a) *Control development to maintain its character and appearance and relationship to Tuhikaramea Road and the Temple View Village.*
- b) *Ensure the design of new buildings and structures in terms of their height, materials, scale and form are in keeping with the scale and character of the area.*
- c) *Ensure that new buildings and structures within the Teacher Housing area are located to retain the existing set back from Tuhikaramea Road.*
- d) *Ensure that new buildings and structures are located to retain the pattern of spacing between dwellings within the Tuhikaramea Road corridor.*
- e) *Ensure that new structures such as fences and walls within the setback of the Teacher Housing fronting Tuhikaramea Road are consistent with the original colour and materials used throughout the Character Area.*
- f) *Ensure that the existing low brick walls in the front yard of houses fronting Tuhikaramea Road are retained.*
- g) *Ensure that additions, alterations and renovations of the Teacher Housing are undertaken in a sensitive and sympathetic manner that retains the form and style of existing buildings and the appearance of the streetscape.*
- h) *Control the demolition, removal and alteration of buildings and structures that contribute significantly to the overall cohesion and character of the area.*
- i) *Control works that could affect the treatment of open spaces and boundaries.*
- j) *Ensure that new development uses materials and colour that are consistent with the predominant themes of the Character Area.*
- k) *Provide for the continued use and development of the Church College buildings and grounds in a manner that is consistent with their distinctive character.*

The objective and policies provide a clear framework for any development or works within the Character Area and the policies are quite specific in terms of the controls and nature of works which are promoted within it.

In addition, the Heritage Item objective is (Objective 7.1.1):

To retain and enhance heritage items that contribute to the character, heritage visual amenity of Hamilton.

The associated policies include ensuring the protection and management of heritage items reflecting their significance and overall heritage values and avoiding the demolition or relocation of all heritage items listed within the Heritage Items Schedule to retain heritage values in the city. Encouragement is given for heritage items being used for a range of activities where this promotes the retention and re-use of the item.

In relation to the Transport Network the objective is to maintain a safe and efficient transport network that allows the city to function and develop with minimal conflicts between land uses, traffic and people (Objective 4.2.1).

Other objectives seek to maintain and enhance the city's remaining indigenous vegetation ecosystems and associated ecological processes (Objective 3.1.3) and also to maintain and enhance character and amenity values of residential areas by ensuring a level of on-site

amenity for residents and ensuring that neighbouring properties are not adversely affected by development (Objective 5.1.2).

We find that the proposal is consistent with these objectives and policies for the following reasons:

- (a) The Stake Centre will provide for a community facility, thereby providing for the continued use of the campus as a focus for the Community.
- (b) The Stake Centre has been designed and located to ensure compatibility with the campus character.
- (c) The Stake Centre has been designed and located to ensure that its physical form is clearly subservient to the neighbouring Temple.
- (d) The Stake Centre has been designed to mirror the existing building setbacks from Tuhikaramea Road.
- (e) The new development utilises materials and colours that are consistent with the predominant themes of the Character Area.
- (f) The Stake Centre provides for the retention and enhancement of landscape features, including the partial re-contouring of the site to create Legacy Park.
- (g) The teacher houses proposed for removal are highly visible from Tuhikaramea Road, but are located some distance north of the Temple and their removal does not adversely impact upon the landscape significance of the Temple.
- (h) The dormitory buildings and medical centre removal are buildings that do not contribute significantly to the overall cohesion and character of the area.
- (i) The proposal avoids fragmentation of the site through subdivision as the Stake Centre and Legacy Park area will continue to be owned and maintained by the Church.
- (j) Provision is made for a new boundary wall treatment which has been designed to be consistent with the original colour and materials used throughout the Character Area.
- (k) The proposed includes provision for road upgrades and new, improved accesses off Tuhikaramea Road.
- (l) The proposal locates the large scale car park to the rear, between the Stake Centre and the Kai hall.
- (m) There will be positive effects from the upgrade of Tuhikaramea Road.

In reaching the conclusion that the proposed development within the Church College Character Area maintains and enhances its special character, we note the evidence of the architect, Mr Bowkett and the landscape architect, Mr Graham which we have discussed in relation to visual effects in Section 5.1 of this Decision.

We also take into account the evidence of Mr Wild ,heritage expert, which addressed the heritage values of the former campus, specifically that part potentially affected by the proposed works. In that evidence he stated;

- The weight of heritage assessment we have undertaken shows that Church enterprise, training, and its people are the resounding legacy and not the buildings recognised in the District Plan. Protection of the buildings alone confuses that sense of heritage value. To oblige retention of the buildings in an unbalanced way risks driving away the very legacy (the people) who established this distinctive community. Temple View is fundamentally a place of its people; conceived by its people; built by its people; and, whose skills,

technologies and building materials went around the world to further those goals. Having achieved those primary goals Temple View evolves into the contemporaneously conceived greater vision.

- I do not believe that the Stake Centre proposal presents any negative effect on heritage or archaeological sites or the values associated with such places on the former Church College site or on the wider Temple View area. No recognised heritage is directly affected and adjacent heritage is, in my opinion, enhanced by the proposed Stake Centre scheme which acknowledges those values and addresses the special character recognised by Council and evident in the Tuhikaramea Road special character area.
- Importantly the proposed Stake Centre lies equidistant between the recognised heritage of the Temple (to the south) and the first teacher house and former Mendenhall library building to the north. I believe this relationship is important and the Stake Centre recognises the potency of its position within that context.
- With that sense in mind, and given the architectural and spatial references evident in the proposed Stake Centre building I am confident that the insertion of this new element will enhance the special character of this area and that the loss of some of the existing Teacher Houses will, in balance, have a less than minor effect.
- The scale, form, materiality, and articulation of the proposed Stake Centre in my opinion demonstrates appropriate consideration to its heritage context and to the special spatial pattern of the Teacher Housing/Tuhikaramea Road area and other adjacent heritage.
- The proposal has no negative effect on the recognised heritage elements on the site. The application for resource consent for the proposed Stake centre at Temple View should be granted. This is a scheme that maintains and builds on the original vision which created Temple View and should be seen as a positive evolutionary step forward in the vision held by the LDS for this distinctive place and community

We find from our consideration of the evidence, supported by the two visits we arranged to the site and locality, that we agree with the above evidence from the Applicant and that the proposal is consistent with the range of objectives and policies in the HDP that are to be considered in the assessment of it. Our conclusions are in accord with those of Mr Whittaker in his s42A Report and also with our findings from our analysis of the effects of the proposal, including the visual, amenity and heritage effects.

Hamilton City Proposed District Plan

We have earlier concluded that we can only give limited weight to the PHDP in our consideration of the application.

We note that relevant objectives and policies are provided in relation to Special Character Zones, the Temple View Zone and in relation to built heritage and significant natural areas. The details are provided in the AEE, in the evidence of Mr Dawson and the s42A Report.

In the Special Character Zones the objective is to retain and enhance their identified values (Objective 5.2.1) and within the specific Temple View Zone, the objective is to ensure that development within the Temple View Heritage Area maintains and enhances the special heritage characteristics of the area (Objective 5.2.6).

We list below the associated policies for the Temple View Zone:

- 5.2.6a** *The continued use of the Heritage Area as a focus for the Church of Jesus Christ of Latter-day Saints shall be provided for.*
- 5.2.6b** *Development within the Heritage Area shall be compatible in terms of scale, form and design with the existing heritage characteristics of the area.*
- 5.2.6c** *Fragmentation through subdivision shall be prevented.*

- 5.2.6d** *Development shall ensure that the siting and design of new buildings and structures are sensitive to the setting and significance of the Temple as a spiritual and physical landmark*
- 5.2.6e** *The maintenance and repair of buildings, curtilage wall, landscapes, roads, tracks and car parking areas should have regard to the distinctive character of the precinct and the pre-eminence of the Temple building.*
- 5.2.6f** *Additions and alterations to buildings and curtilage wall should be consistent with the character of the precinct and the pre-eminence of the Temple building.*
- 5.2.6g** *Demolition shall not adversely impact on the landscape significance of the Temple.*
- 5.2.6h** *Works that would adversely affect the strong relationship between the Temple, visitor centre and Temple president's house shall be avoided.*
- 5.2.6i** *Re-contouring or modification of the landscape shall recognise the high visibility and prominence of the precinct and provide for the management of effects on archaeological deposits or features.*
- 5.2.6j** *The landscape characteristics and qualities of the Heritage Area shall be retained, including open and structured spaces, in particular the formal front entry staircases, lawns, walls and planting boxes.*

We find that the proposal is consistent with these objectives and policies for the following reasons:

- (a) The Stake Centre has been designed and located to ensure compatibility with the Church College character, including but not limited to, adopting a standardised setback from the road boundary and a colour palate which is consistent with existing buildings.
- (b) The design and form of the new boundary wall fronting Tuhikaramea Road will be strongly reminiscent of the existing structure.
- (c) The former automotive and trades workshop and dormitory buildings which are proposed for removal do not contribute significantly to the cohesion and character of the campus. The trades workshop sits at a lower level than Tuhikaramea Road and its removal will have a very minor effect on the overall character of the campus. The dormitory buildings and the medical centre sit closer to Tuhikaramea Road but their clustered arrangement and orientation means that they do not have a prominent visual presence. Removal of these buildings will have limited impact in terms of streetscape cohesion and campus character.
- (d) None of the buildings proposed for demolition are listed as Heritage Buildings under the PHDP.
- (e) The Stake Centre will produce a localised change in the distribution of elements within the Church College Character Area but it will not affect the overall cohesion and character of the area due to the sympathetic design and sensitivity of it.
- (f) The open space will be developed in accordance with a comprehensive landscaping plan.

We conclude that the proposal is consistent with these objectives and policies noting in particular the evidence we received from the architect, the landscape architect and the heritage expert on behalf of the Applicant. The Stake Centre is a large building but has been specifically designed and located on the site in a manner that ensures it does not create any adverse effect of significance within the neighbourhood or wider landscape. Its built form is balanced by the open space about it and the development of the Legacy Park.

As was pointed out by Mr Whittaker,⁵⁰ Objective 5.2.6, in seeking to ensure development within the Temple View Heritage area maintains and enhances the special heritage characteristics of the area, clearly contemplates development within that area and not preservation of the existing site and buildings in the current form as was sought by some submitters. Rather, development

⁵⁰ S42A Report, para. 178

is to be considered against the form, scale, and siting of any building in relation to the heritage values and the distinctive character of the site.

The proposal is also supported in the comments from the HCC's Urban Design Panel. We find it will maintain and enhance the character of the site. With respect to heritage values, we note the objective and policies in relation to built heritage which provide for assessment of both development on and around the scheduled heritage buildings and also a broader assessment of the site surrounding the heritage item. The proposal is for the retention of the listed heritage buildings and for site and building development to have appropriate regard to these heritage buildings. The proposal is consistent with these provisions.

In relation to the protection, maintenance, restoration and enhancement of SNAs, we have already referred in Section 5.2 (Visual effects) to the evidence from Mr Dean Miller, a senior environmental scientist who specializes in ecology. He pointed out he had recommended a series of consent conditions for the works to be carried out within the SNA 43 to ensure that any adverse effects were mitigated and that proposed ecological enhancement planting is successful. With those arrangements accepted by the Applicant we find that the proposed works within the SNA are consistent with the relevant objective and policies.

We note further that the HPDP contains a broad range of objectives and policies with respect to amenity, transportation and infrastructure. We accept the evidence of Mr Whittaker and from witnesses for the Applicant that these are not materially different from those contained in the operative HDP.

We find the proposal is consistent with the objectives and policies included in the HPDP. Our conclusions are in accord with those of Mr Whittaker in his s42A Report and also with our findings from our analysis of the effects of the proposal, including the visual, amenity and heritage effects.

Waikato Regional Policy Statement

The RPS provides the broad level strategy for the management of natural and physical resources at a regional level and in accordance with the Regional Council's functions. It identifies the resource management issues in the region and provides objectives and policies and methods to achieve integrated management of the region's natural and physical resources. The RPS also serves to provide a statutory framework for the subservient regional plan and associated district plans in the region.

In his planning evidence for the Temple View Heritage Society, Mr Baker highlighted the heritage provisions of the RPS as being the most relevant to our considerations. He quoted the objective (Section 3.15.2) for the Heritage section as:

The protection of regionally significant heritage resources, and allowing subdivision, use, and development of other heritage resources, while ensuring that there is no net loss to the Region.

This is sought to be achieved through the following policies:

- *Ensure the protection of significant natural and cultural heritage resources*
- *Allow subdivision, use and development, while avoiding, remedying or mitigating any adverse effects on other natural and cultural heritage resources.*

Further, the RPS states the anticipated environmental results as:

Regionally significant natural and cultural heritage resources identified and protected.

Mr Baker was of the view that *"the application is contrary to the objectives, policies and anticipated environmental effects outlined in the RPS"*⁵¹ on the basis, from his evidence, that the proposal included the demolition of buildings other than those scheduled as heritage items

⁵¹ EIC Niall Baker, para. 7.1.17

in the District Plans, but which he saw as historic heritage resources. He was of the view that the removal of these non-scheduled buildings further degraded the heritage values of the heritage items that are scheduled.

Quite apart from the fact that Mr Baker does not have the qualifications and experience to be a heritage expert, we do not accept that approach. The District Plans give effect to the RPS by having investigated and scheduled the heritage resources referred to in the RPS.. In that exercise it has not been deemed necessary to schedule all the buildings at the CCNZ and whilst a character overlay is applied, the heritage overlay applies to the area including and surrounding the Temple itself. We agree that the scheduled heritage resources should be considered in the context of other buildings around them but cannot agree that the resultant adverse effects from the proposal could be considered to be contrary to these RPS provisions. Indeed, the Applicant is protecting the heritage resources that have been identified as being significant.

We note there are other RPS provisions relating to heritage, hazardous substances and landscape values which are broadly relevant to the application but these provisions do not inform the assessment process beyond that provided by the Hamilton and Waipa District Plans.

We note further that the Regional Council has granted resource consents associated with the earthworks proposals in this application and it has also had the opportunity, which it has not taken up, to make submissions on the current applications to the District Councils.

We find the proposal to be consistent with the objectives and policies of the RPS.

Proposed Waikato Regional Policy Statement

The PRPS was notified in November 2010, hearings of submissions completed and a decisions version of the PRPS released in 2012. Appeals are currently under consideration.

Again, we received evidence from Mr Baker that concluded:

*The application is contrary to the PRPS.*⁵²

We cannot agree with the analysis provided by Mr Baker that leads him to that conclusion. He refers to Objective 3.17 which seeks heritage being “*protected, maintained or enhanced*”. It is supported by two policies. The second of the policies, Policy 10.3, is the most specific and it refers to the effects of development on historic and cultural heritage. It states:

Manage subdivision, use and development to give recognition to historic and cultural heritage and to integrate it with development where appropriate.

Mr Baker refers also to the explanation to these provisions highlighting in particular the reference to destruction of or damage to heritage resources needing to be avoided. However, he concludes with the above quote as being what is sought to be achieved by these PRPS provisions.

This management role is exactly what the proposal seeks to do by retaining scheduled heritage buildings upon the site and, with other techniques such as generous open space areas and new building design, seeking to achieve integration of the new with the old in order to meet the needs of the Applicant. We see the regional planning provisions of both the RPS and the PRPS being directed towards the management of the heritage resources of the region with the specific rules providing for that to occur being expressed through the District Plans.

We record that Mr Baker was somewhat critical of Messrs Dawson and Whittaker for not providing sufficient analysis of the regional planning provisions in their respective assessments and reports. We accept there was limited analysis in these respects but note Mr Whittaker's statement that in his opinion there are no matters at a regional policy or plan level which are

⁵² EIC Niall Baker para. 7.2.7

material to the assessment of the land use consent applications⁵³. We come to the same conclusion from having heard the evidence from the respective parties.

We find the proposal to be consistent with the objectives and policies of the PRPS.

6.6 Other Planning Instruments

In addition to the district and regional planning instruments, a range of other non-statutory planning instruments have been prepared by the individual authorities or at the sub-regional level. These include, *Waipa 2050* and the *Future Proof Growth Strategy and Implementation Plan 2009*.

Mr Whittaker advised, and we agree, that these documents do not offer any further value in terms of the objectives, policies or strategies which would have a bearing on the assessment of the LDS Trust Board application.

6.7 Conclusion on the Planning Instruments

We find ourselves generally in agreement with the planning analysis of expert planning witnesses Messrs Dawson and Whittaker. The only other expert planning witness was Mr Baker but we found his evidence unconvincing. Mr Baker's evidence also traversed matters outside his area of expertise contrary to his assurances about meeting the Code of Conduct for Expert Witnesses.

We have had regard to the relevant district and regional statutory planning instruments and also to the non-statutory planning instruments.

We apply a discretionary activity status to the application under the Hamilton and Waipa District Plans with the exception of Legacy Park, which is separately assessed as a non-complying activity. We find the principal planning instrument of relevance is the operative HDP and further, that the proposal is consistent with all of the statutory planning instruments.

We set out the reasons for our conclusions above and have noted the evidence that leads us to these views, including the evidence provided in the s42A Report.

⁵³ S42A Report, para. 197

7. STATUTORY FRAMEWORK

7.1 Gateway Test

We have noted that part of the proposal falls to be decided as a non-complying activity. That part of the proposal must therefore first meet one of the tests set out in RMA s104D. That section provides that:

a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—

- (a) the adverse effects of the activity on the environment ... will be minor; or*
- (b) the application is for an activity that will not be contrary to the objectives and policies of—*
 - (i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
 - (ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
 - (iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*

We have found in Section 5 of this Decision that the adverse effects of that part of the proposal will be less than minor. The first gateway test is therefore met.

We have found in Section 6 of this Decision that that part of the proposal is not contrary to the objectives and policies of the relevant planning instruments. The second gateway test is therefore also met although only one of the gateway tests need be met.

We consider that the proposal meets the requirements of RMA s104D

7.2 Statutory Criteria

RMA s104 sets out the matters to be considered when assessing a resource consent. That section requires that, subject to Part 2 (Purpose and Principles), regard must be had to a number of matters of which the following are relevant in this case.

- (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.*

We have considered effects in Section 5 of this Decision. We have considered the relevant planning instruments in Section 6 of this Decision.

There were no “other matters” which were brought to our attention.

7.3 RMA Part 2

RMA s104 requires that our assessment of this application should be subject to RMA Part 2.

7.3.1 Purpose

The purpose of RMA is set out in s5 and is to promote the sustainable management of natural and physical resources which is then defined.

Many of the submitters opposed focused heavily on the provisions of RMA ss6 and 7. However, those provisions, particularly relating to heritage (as discussed in Section 5 of this Decision) need to be balanced with the over-arching requirement of sustainability contained in RMA s5.

7.3.2 Matters of National Importance

RMA s6 sets out a number of matters which we must recognise and provide for. We agree with the s42A Report that the following s6 matters are relevant to our consideration:

- (d) *The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development*
- (e) *The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.*

These sections are relevant in respect of the proposed Legacy Park which includes in part a Significant Natural Area. The proposal in respect of Legacy Park goes to some lengths to ensure that these subsections are met. No submitter seriously argued to the contrary in respect of Legacy Park.

We find that these subsections of RMA s6 are satisfied.

Some submitters pleaded the provisions of RMA s6(e):

the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

We deal with that below.

The most significant element of s6 in this case is s6(f) which provides as a matter of national importance to be recognised and provided for

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

We have discussed heritage at some length in Section 5.7 of this Decision. Our conclusion is that the adverse effects from the proposal associated with heritage will be minor in the context of the site and locality.

7.3.3 RMA s7- Other Matters

RMA s7 requires us to have particular regard to a number of other matters:

- (a) *kaitiakitanga:*
- (aa) *the ethic of stewardship:*

We consider these in Section 7.3.4. of this Decision below.

- (c) *the maintenance and enhancement of amenity values:*
- (f) *maintenance and enhancement of the quality of the environment:*

These two subsections are substantially addressed in our discussion on effects contained in Section 5 of this Decision. Our conclusion is that there are a number of effects which are significantly positive. To the extent that effects are negative, we consider those effects to be minor.

7.3.4 Māori RMA Provisions

Several Māori submitters pleaded the Māori provisions of RMA Part 2. In doing so there appeared to be some overlap between Ngati Mahanga⁵⁴ on the one hand and Ngati Wairere and Ngati Koura on the other⁵⁵ as to which has mana whenua over the CCNZ site. We make no finding on that. We consider we do not need to.

We agree with Mr Kirkpatrick that whoever has mana whenua, there is no evidence before us that indicates that the proposal before us does not recognise and provide for the relationship of Māori and their culture and traditions with their ancestral land water, sites, waahi tapu, and other taonga⁵⁶.

Mr Kirkpatrick referred us to the decision of the High Court in *Royal Forest and Bird Protection Society Inc v W A Habgood Ltd*⁵⁷.

We reject the suggestion by some Māori that because Māori were involved as labour missionaries in the construction of CCNZ and the Temple as recently as the late 1950s, that in itself qualified the site to be considered under RMA s6(e). That is a construct which is altogether too modern. The RMA section refers to *ancestral land, water, sites, waahi tapu, and other taonga*.

There was evidence of koiwi being found during construction and an appropriate protocol adopted at the time in that regard. To cover the possibility that that may occur again in the course of developing the present proposal a condition has been suggested which we adopt.

Whilst on the evidence of Mr Mahanga and Mr Puke, the CCNZ site may have had some ancestral use, there was no evidence that identifies or otherwise indicates any particular ancestral connection or waahi tapu that needs to be recognised and provided for in terms of s 6(e).

For the same reason we have difficulty applying the other provisions of Part 2 in relation to Māori.

7.4 Discretion

RMA s104B provides:

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

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

Accordingly we have a complete discretion to be exercised.

7.5 Conclusion

We consider that the proposal generally meets the provisions of the legislation we have identified.

⁵⁴ Watene EIC

⁵⁵ Puke EIC

⁵⁶ Kirkpatrick Reply para. 18

⁵⁷ (1987) 12 NZTPA 76

8. CONCLUSION

8.1 Effects

We have considered the effects of the proposal in some detail in Section 5 of this Decision. We have identified a number of positive effects which we consider are significant. With the imposition of conditions we consider that the adverse effects can be sufficiently mitigated to render them no more than minor.

8.2 Planning Instruments

In Section 6 of this Decision we have considered the relevant planning instruments and have concluded that the proposal is consistent with those instruments.

8.3 Statutory Framework

In Section 6 of this Decision we have addressed the statutory framework and concluded that:

- (a) The Legacy Park component of the proposal meets not one but both the gateway tests set out in RMA s104D;
- (b) We have had regard to the criteria set out in RMA s104;
- (c) We have taken into account the purpose and principles of RMA set out in Part 2 of the Act. We are particularly influenced by the s5 considerations that:
 - The suggestion by many submitters opposed that the CCNZ campus should largely be retained but re-purposed is in our view unsustainable; and
 - Particularly the Stake Centre and Legacy Park components of the proposal do positively enable people and communities to provide for their social, economic and cultural wellbeing.

8.4 Conditions

In its application the Applicant offered a set of proposed draft consent conditions⁵⁸. As is quite usual in applications of this complexity, those proposed conditions were further developed both prior to and during the Hearing. Towards the end of the Hearing, Mr Whittaker tabled an updated set of draft conditions. In our deliberations we have taken into account those proposed conditions and then modified or added to them ourselves.

8.5 Conclusion

We consider that with the conditions we now propose, the application should be granted.

⁵⁸ Application Appendix 13

9. DECISION

Having had regard to the provisions of the Resource Management Act 1991; and

Having considered the effects on the environment; and

Having considered the submissions and evidence of the Applicant in respect of the proposal now before us, the submissions lodged in respect of that application, and the evidence tendered in support of those submissions, and the report provided under RMA s42A; and

Acting under a delegation from the Hamilton City Council and the Waipa District Council to hear and determine the respective applications before each Council; and

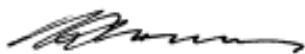
For the reasons set out in the text of this Decision; and

Making a broad overall judgement; and

Pursuant to Sections 104, 104B, 104D, 105 and 108 of the Resource Management Act, 1991,

We make the separate decisions which follow for the Hamilton City Council and Waipa District Council respectively.

DATED this 10th day of January, 2014



.....
C. D. Arcus
Chairman of Hearings Commissioners

**10. HAMILTON CITY COUNCIL
Resource Consent**

The **Hamilton City Council** (as consent authority) **grants consent** to the application by **The Church of Jesus Christ of Latter Day Saints Trust Board** to:

1. The removal of selected buildings.
2. The construction of a Stake Centre, which will serve as a meetinghouse and headquarters for local congregations, including an associated car park.
3. The construction of a new internal access road.
4. Upgrading works of Tuhikaramea Road including removal and replacement of all existing street trees.
5. The development of Legacy Park for passive recreational uses, including earthworks and extensive landscaping.

subject to the following consent conditions:

General Condition

1. That the activity be established, operated and maintained in accordance with;
 - The Assessment of Environmental Effects submitted by the LDS Trust Board (BBO dated August 2013) and all the associated technical reports and appendices; and
 - The further information provided by the LDS Trust Board (letters from BBO dated 27 August 2013 and 10 October 2013).

unless otherwise specified or amended by the following conditions of consent.

Noise

2. Noise emissions from the consented activities on the former college campus site (excluding construction noise) shall not exceed the noise levels in the table below when assessed at any point at or within the boundary of any other site in the Residential Zone. Sound levels shall be measured in accordance with NZS6801:2008 'Acoustics — Measurement of Environmental Sound' and assessed in accordance with NZS6802:2008 'Acoustics — Environmental Noise'.

Monday to Saturday LAeq(15-mins),	Noise Levels Lrnax	Noise Levels
0600hr — 0700hr	45dBA	
0700hr — 2000hr	50dBA	
2000hr — 2300hr	45dBA	
2300hr — 0600hr	40dBA	75dBA
Sunday and Public Holidays		
0700hr — 2300hr	45dBA	
2300hr — 0700hr	40dBA	75dBA

3. The design and construction of the State Centre building shall include the design features documented in Section 4.4 (Mitigation) of the 'The Church of Jesus Christ of Latter Day Saints Proposed Stake Centre Temple View, Hamilton - Acoustic Design Report' (Hegley Acoustic Consultants - Report No 9674 - June 2013), or similar design features that provide the same degree of mitigation as those documented in the report.
4. An acoustic design certificate, provided by a suitably qualified and experienced acoustic practitioner and showing how the cumulative noise emission from all mechanical plant on site

will comply with the noise performance standards in condition 2 above when combined with the other activities proposed for the site, shall be provided to the Planning Guidance Manager before or at the time an application for building consent is lodged at Council.

5. Construction activity involving mechanised or powered vehicles and equipment shall be limited to the hours of 07:30am to 06:00pm Monday to Saturday (excluding public holidays).
6. All demolition and construction work on site shall be designed and conducted to ensure that construction noise from the site does not exceed the noise limits in the following table. Sound levels shall be measured and assessed in accordance with the provisions of NZS 6803:1999 'Acoustics – Construction Noise'. The assessment location of this standard is approximately 1m from the wall of the surrounding residential dwellings most exposed to construction noise and 1.2 – 1.5m above the floor of interest.

<u>Time Period</u>	<u>Construction Noise Limit at Assessment Location (dBA)</u>	
	<u>Leq</u>	<u>L_{max}</u>
<u>0730 – 1800 hours</u>	<u>70</u>	<u>85</u>

7. A Construction Noise Management Plan developed by a suitably qualified and experienced person shall be provided to Council's Planning Guidance Manager for approval at least 1-month prior to construction work (including earthworks) is commenced on site. The plan shall address the following matters:-
 - (a) The duration of construction works;
 - (b) Hours of operation;
 - (c) Means of complying with the provisions of NZS 6803:1999 "Acoustics – Construction Noise as per condition 6 of this consent;
 - (d) Identification of likely affected persons;
 - (e) Identification of construction works that are likely to or that have been predicted to exceed the applicable noise performance standards;
 - (f) Proposed mitigation measures to apply to those works identified in clause (e);
 - (g) Education and training of workers in noise management;
 - (h) Sound level monitoring to ensure compliance with the applicable noise performance standard;
 - (i) Community liaison, as part of clause (f) or in response to situations where construction noise exceeds the applicable noise performance standard;
 - (j) Consultation procedures for special works (for works that exceed any of the required parameters);
 - (k) Procedures for responding to noise complaints, including notification to Councils Planning Guidance Manager.

Land Contamination

8. Construction works (including earthworks, but excluding any demolition of existing buildings) in the areas labelled Site A and Site B shall not occur until such time as:-
 - (a) Conditions 1 to 8 of the 'Land Use Resource Consent 010.2012.6661.001 to Undertake Site Remediation Works to Manage Contaminants in Soil at 465 Tuhikaramea Road (former Church College of New Zealand), Hamilton' (dated 14 November 2012) have been satisfactorily fulfilled in relation to land investigated in the area of the former automotive workshop, the engineering workshops and the oil and grit interceptor; and

- (b) The results of the investigation of the areas around the former underground storage tank locations have been reported to Council's Planning Guidance Manager by a suitably qualified and experienced practitioner in accordance with the current edition of the Guidelines for Assessing and Managing Petroleum Hydrocarbon Contaminated Sites in NZ, Wellington, Ministry for the Environment, and these results show that these areas comply with the applicable environmental guideline values for residential use in relation to hazardous contaminants in soil.
9. Any soil contamination that is detected through visual, olfactory or any other means during demolition or excavation works that is not already covered within the scope of the 'Land Use Resource Consent 010.2012.6661.001 to Undertake Site Remediation Works to Manage Contaminants in Soil at 465 Tuhikaramea Road (former Church College of New Zealand), Hamilton' (14 November 2012) or is not associated with a known underground storage tank, shall be investigated in accordance with the current edition of Contaminated Land Management Guideline #5 - Site Investigation and Analysis of Soils (MfE) and reported in accordance with the current edition of Contaminated Land Management Guideline #1 - Reporting on Contaminated Sites in New Zealand (MfE). The investigation and reporting shall be carried out by a suitably qualified and experienced practitioner.

Landscaping and Street Trees

10. The consent holder shall submit to Council (prior to the commencement of construction and/or removal of any existing street trees) for approval by the Manager of Parks and Open Spaces, or nominee, a Site and Street Landscaping Planting Plan for the whole development. The landscaping planting plan shall include the following information:
- i. A description showing the location of the existing planting and the proposed planting;
 - ii. A list of existing street trees which are to be retained and relocated along with information relating to how the trees will be relocated and where they are to be relocated to;
 - iii. A schedule of species to be planted with the mature height for each;
 - iv. Information regarding protective measures for associated Council infrastructure. This would include the installation of root guards around each specimen.
 - v. The manner in which unrestricted child access to the stormwater retention pond is prevented from the pavilion timber courtyard in accordance with Condition 32.
11. The replacement species for the street trees shall be *Acer Rubrum*. These will replace the *Magnolias* like for like (in terms of numbers), will be of a minimum size of 80 Litre Bag, be a minimum of 3m in height, have a minimum calliper of 50mm and be replanted in the locations indicated in the Street Landscape Planting Plan as requested as part of Condition 11. These new trees shall be planted within the first planting season upon completion of the consented works.
12. Prior to works commencing on site the consent holder shall notify the Council's Parks and Open Spaces Unit with a start date and time of commencement of all development which is taking place on the site.
13. Prior to works being undertaken the consent holder shall provide to Parks and Open Spaces a maintenance agreement for the proposed plantings. This will include information on leaf/fruit drop collection (depending on the species proposed) and a schedule for ongoing maintenance.
14. For the existing street trees which are to be retained and relocated, prior these works commencing the consent holder shall notify the Council's Parks and Open Spaces Unit in with a start date and time of commencement for this work, so that a suitably qualified Council staff member can be present to oversee these works.

15. The consent holder shall supply plans to the Parks and Open Spaces Unit for the proposed works which will be taking place at Wade Lane Reserve. These plans will include:
 - i. A description and plans of existing play equipment which the developer proposes to retain or remove along with information (description and plans) of new equipment proposed for the park (if any);
 - ii. A description showing the location of the existing planting and the proposed planting (this includes any street trees which are intended to be relocated to this reserve);
 - iii. Drawings and information showing the location of the new footpath which is to be located through the existing park;

Engineering Conditions

A. GENERAL

16. Engineering plans for the development shall be submitted to the Planning Guidance Unit for review and acceptance by the City Development Unit prior to works commencing on site. The plans shall detail the proposed road upgrade, access and parking for the new Stake Centre, and proposed water, wastewater and stormwater systems, including disconnections of existing services and new connections to public infrastructure.
17. Construction management plans shall be submitted to the Planning Guidance Unit for review and acceptance by the City Development Unit prior to works commencing on site. The plan shall include traffic management plans, site access and controls, expected timeframes for the works, and other relevant matters.
18. All engineering works shall be in accordance with the Hamilton City Development Manual (available from the internet at www.hcc.govt.nz) and/or to the satisfaction of the General Manager City Infrastructure (see Advisory Note).

B. EARTHWORKS

19. All earthworks shall be carried out in accordance with the conditions on the Waikato Regional Council's consents 127626, 127627, 127628 and 127629 which include the carrying out of earthworks in association with roads and construction of a chapel/pavilion facility.
20. All site works, including demolition, earthworks, construction, and infrastructural works, will be subject to site erosion and sediment controls in accordance with Waikato Regional Council's "Erosion and Sediment Control Guidelines for Soil Disturbing Activities, January 2009" and an approved earthworks consent from the Regional Council.
21. Site works shall be strictly controlled so that all adverse effects remain within the site and no debris is carried onto public roads. If any construction traffic uses public roads for the transport of cut or fill material, truck wash down facilities may be required within the site in the vicinity of the site access at the discretion of the General Manager City Infrastructure.
22. In conjunction with the earthworks on the site, the land shall be progressively stabilised and/or revegetated as necessary. Dust control measures will be set in place for the duration of the earthworks and stabilisation period.

C. TRANSPORTATION/ROADING

23. The proposed upgrade of Tuhikaramea Road and all works within the road corridor shall be carried out in accordance with approved engineering plans and traffic management plans, and shall include pedestrian, cyclist and public transport facilities, traffic features, road lighting and road drainage as appropriate in accordance with the Hamilton City Development Manual. The road shall be designed and constructed as a minor arterial route, but shall be engineered to create a lower speed environment more fitting to the Temple View community. The works shall include the construction of 2 roundabouts built to Austroads standards, the level adjustments of the road, the construction of associated retaining walls, and provision for traffic calming measures as determined in consultation with Council staff. Catchpit filters capable of

mitigating the effects of gross contaminants and suspended solids shall be installed in all catchpits along the upgraded section of road.

24. All land necessary for road widening under the upgrade of Tuhikaramea Road shall be vested in Council. Where new retaining walls are required as a structural element in the road design, the walls shall be entirely contained within the boundaries of the road corridor, and easements for the purpose of access for maintenance works shall be created over the adjoining properties as necessary.
25. The Consent Holder shall undertake safety audits on the upgrade of Tuhikaramea Road, at both the design stage and post-construction. The recommendations of the audit will be considered, and, where deemed appropriate, implemented into the design or retrofitted into the construction.
26. The new internal road shall be designed and constructed for the purpose intended, and shall include pedestrian and cycle facilities, traffic facilities, road lighting and road drainage as appropriate in accordance with the Hamilton City Development Manual and consistent with the layout of the future overall development.
27. All new vehicle accesses and manoeuvring and parking areas associated with the new Stake Centre shall be formed, drained and sealed, and thereafter maintained, in a permanent dust-free all-weather surface such as concrete, cobblestones, chip seal or asphalt.
28. All on-site car parking spaces at the new Stake Centre are to be delineated with white painted lines or any other method as approved by the General Manager City Infrastructure. Accessible spaces and loading spaces shall be delineated with yellow painted lines and identified with appropriate signage. Markings shall be regularly maintained.

D. WATER AND DRAINAGE

29. The development shall be provided with a means of wastewater disposal, stormwater disposal and water supply (for both potable and firefighting purposes). Note: All potable water mains of 63mm OD or greater must be pressure tested and sampled by the Development Engineer from City Development Unit prior to connection to the main network.
30. All existing water, stormwater and wastewater infrastructure that is being modified or realigned shall be upgraded to Hamilton City Council Development Manual standards, and, where appropriate, vested in Council. All new or realigned infrastructure should be located so as to be consistent as far as is reasonable with the final proposed scheme for the overall site, with private pipes not crossing existing or future boundaries.
31. Facilities for the management and treatment of stormwater run off from the site and the upstream catchment shall be designed and constructed to achieve the outcomes of Hamilton City Council's Stormwater Discharge Consent 105279 and shall be subject to a consent from the Waikato Regional Council.
32. The proposed wetland pond in Legacy Park shall be designed and constructed in accordance with the requirements of the Infrastructure Technical Specification Section 4 Stormwater, and shall be fenced where there is a potential drop of more than 1 metre on batters or vertical surfaces more than 45 degrees to the horizontal. The proposed wetland pond shall be designed in general accordance with the Stake Centre and Legacy Park Stormwater Retention Pond Plan 2-B170 R2 dated 4/12/2013 prepared by Mansergh Graham, Landscape Architects. In addition the Consent Holder shall design and construct a suitable barrier to prevent child access to the pond from the pavilion timber court yard.

Works within SNA Feature

33. The dripline boundary of the existing stands of mature trees within SNA 43 shall be clearly marked prior to works commencing to exclude machinery access and/or earthworks within those areas.

34. Specifications for planting works within SNA 43 shall be prepared in consultation with a suitably qualified ecologist and detailed on the Site and Street Landscaping Planting Plan required by Conditions 10 to 15. Specifications for SNA 43 shall include the requirement for native eco sourced plant stock, provide details on plant species, sizes and planting densities and maintenance and monitoring requirements.
35. Planted areas within SNA 43 shall be maintained and monitored for a period of at least three years following the original planting. The programme of maintenance and monitoring shall include:
- weeding of planted areas on one occasion per year for three years;
 - monitoring for changes in the condition of the existing mature trees;
 - monitoring of seedling survival and understory development;
 - infill planting as required; and
 - an annual report on maintenance and monitoring activities and the health of existing mature trees and planted areas.

A report shall be prepared by a suitably qualified ecologist at the completion of three years of maintenance and monitoring and submitted to Council. The report shall provide details on the health of the existing mature trees and native plantings and outline any ongoing maintenance and monitoring recommendations if needed, including measures to address any observed effects on existing mature trees.

Archaeological Sites

36. In the event of any archaeological site or waahi tapu being discovered or disturbed whilst undertaking works to give effect to this consent, the works in the area of the discovery shall cease immediately, and iwi and the Council shall be notified within 24 hours. Works may commence with the written approval of Council and subject to any provisions of the Historic Places Act.

Heritage Conditions

37. Prior to the removal of any buildings within activity Site A, the consent holder shall complete a building inventory record for each building for archival purposes. A copy of the building inventory record shall be provided to Council.

Review Condition

38. In accordance with S.128 of the Resource Management Act 1991, Council may initiate and undertake a review of the consent conditions to ensure that there are no unintended effects arising from the establishment or undertaking of the activities granted by this consent.

A review may be initiated and carried out specifically for the purpose of checking that water safety measures are effective for the purpose of preventing unsupervised children being in any potential danger in relation to the stormwater retention pond/water feature in the Legacy Park.

A review may commence in the month of February 2015 or 2 years after the date of commencement of the consent (whichever is the later).

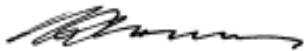
ADVICE NOTES

- (a) Based on the details of this application, development contributions will be levied on the development. An estimate of the development contributions has been calculated and will be provided to you in a letter from the Development Contributions Officer. Council reserves the right to re-calculate this estimate taking into account any increase or reduction in demand created by this consent after this initial estimate.

Please note: development contributions are not a condition of resource consent and are not subject to any rights of appeal within the RMA 1991.

- (b) Landscaping species and gardening specifications should be in accordance with the Planting Guidelines for City Beautification and the Urban Development Manual. Copies are available from the Parks and Open Spaces Unit.
- (c) When considering construction noise for the purposes of the Construction Noise Management Plan reference should be made to the Annexes of NZS 6803:1999, which contain useful information on noise sources, remedies, sound level data, estimation of noise and practical measures to reduce piling noise.
- (d) The Consent Holder is encouraged to undertake further consultation with tangata whenua to consider any design motifs or structures which may be established as part of the redevelopment to recognise the ancestral and cultural connections of tangata whenua to the area.
- (e) Although the restoration of the carvings on the GRB and Kai hall buildings was not part of the application, we also encourage the Consent Holder to consult with tangata whenua in that regard.

DATED this 10th day of January, 2014



.....
C. D. Arcus
Chairman of Hearings Commissioners

11. WAIPA DISTRICT COUNCIL Resource Consent

The **Waipa District Council** (as consent authority) **grants consent** to the application by **The Church of Jesus Christ of Latter Day Saints Trust Board** to

The development of Legacy Park for passive recreational uses, including earthworks and extensive landscaping

subject to the following consent conditions:

General Conditions

1. That the activity be established, operated and maintained in accordance with;
 - The Assessment of Environmental Effects submitted by the LDS Trust Board (BBO dated August 2013) and all the associated technical reports and appendices,
 - The further information provided by the LDS Trust Board (letters from BBO dated 27 August 2013 and 10 October 2013), and
 - [Further technical evidence — yet to be received];

unless otherwise specified or amended by the following conditions of consent.

Noise

2. Noise from the activities granted by this consent shall not exceed the following requirements within any site which is zoned Residential or within the notional boundary of any rural dwelling:

Day Time	7.00am - 8.00pm	50dBA(L10)
Night Time	8.00pm - 7.00am	40dBA(L10).
3. Construction noise emanating from a site where construction is ancillary to the principal use shall meet the limits recommended in and be measured and assessed in accordance with New Zealand Standard NZS 6803P:1984 The Measurement and Assessment of Noise from Construction, Maintenance and Demolition Work.

Archaeological Sites

4. If taonga (treasured or prized possessions, including Māori artefacts) or archaeological sites are discovered in any area being earth-worked, the consent holder shall cease work within a 100m radius of the discovery immediately and contact local iwi, the New Zealand Historic Places Trust (NZHPT) and Council's Manager Planning and Regulatory. Earthworks shall not recommence in that area until a site inspection is carried out by iwi representatives, relevant Council staff and staff of the NZHPT (if they consider it necessary); the appropriate action has been carried out to remove the Taonga and record the site, or alternative action has been taken; and approval to continue work is given by Council's Manager Planning and Regulatory. The site inspection shall occur within 3 working days of the discovery being made.

If during construction activities, any Koiwi (skeletal remains) or similar material are uncovered, works are to cease within a 100m radius of the discovery immediately, and the consent holder shall notify the New Zealand Police, local iwi, the New Zealand Historic Places Trust (NZHPT) and Council's Manager Planning and Regulatory. Earthworks shall not recommence in that area until a site inspection is carried out by iwi representatives, relevant Council staff and staff from the NZHPT and the New Zealand Police (if they consider it necessary); the appropriate ceremony has been conducted by iwi (if necessary); the materials discovered have been removed by the iwi responsible for the tikanga appropriate to their removal and preservation or re-interment, or alternative action (e.g. works are relocated) has been taken; and approval to continue work is given by Council's Manager Planning and Regulatory.

Review Condition

- 5. In accordance with S.128 of the Resource Management Act 1991, Council may initiate and undertake a review of the consent conditions to ensure that there are no unintended effects arising from the establishment or undertaking of the activities granted by this consent.

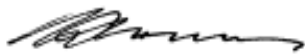
A review may be initiated and carried out specifically for the purpose of checking that water safety measures are effective for the purpose of preventing unsupervised children being in any potential danger in relation to the stormwater retention pond/water feature in the Legacy Park.

A review may commence in the month of February 2015 or 2 years after the date of commencement of the consent (whichever is the later).

ADVICE NOTES

- (a) Council has previously issued a consent associated with managing any site contamination (PG10037112 granted on 13 November 2013). The terms and conditions of that consent shall to the area of works located within Waipa District and which are associated with the current land use consent.
- (b) The Waikato Regional Council has also issued an earthworks consent for the site. The terms and conditions for the Regional Council consent will also need to be satisfied by the consent holder.

DATED this 10th day of January, 2014



.....
C. D. Arcus
Chairman of Hearings Commissioners

SCHEDULE OF PERSONS HEARD

(a) Applicant

Church of Jesus Christ of Latter Day Saints Trust Board

Mr David Kirkpatrick, Legal Counsel
 Mr Chris Bowkett, Architect, Walker Community Architects
 Mr Paul Coward, Director for the Church of Jesus Christ of Latter Day Saints
 Mr Chris Dawson, Senior Planner, Bloxam Burnett & Olliver
 Mr Michael Graham. Landscape Architecture, Mansergh Graham Landscape Architects Ltd
 Mr Warren Gumbley, Archaeologist
 Mr Rhys Hegley, Chartered Acoustic Engineer, Hegley Acoustic Consultants
 Mr Cameron Inder, Transportation Engineer, Bloxam Burnett & Olliver
 Mr Dean Miller, Senior Environmental Scientist, Tonkin & Taylor Ltd
 Mr Eugene Vodjansky, Senior Water Resource Engineer, Bloxam Burnett & Olliver
 Mr John Wakeling, Arborist, Wakeling and Associates Ltd
 Mr Tuahu Watene, Tangata whenua consultation (Ngati Mahanga)
 Mr Don White, Church Project Management & Design
 Mr Adam Wild, Heritage Architect, Archifact

(b) Submitters – in support

Mr Robert Belbin	In person, resident, Temple View
Ms Keao Daniels	In person, resident, Temple View
Mrs Diana Farthing	In person, resident, Temple View
Mr Philip Hague	In person, resident, Temple View
Mrs Kerin Hague	In person, resident, Temple View
Mr Rawiri Hemi	In person, Volunteer Labourer, resident, Temple View
Dr Tiwini Hemi	In person, resident, Temple View
Mr William Heperi	In person, resident, Temple View
Mr John A Kendall	In person, resident, Temple View
Mrs Paula Matenga	In person, resident Temple View
NZ Labour Missionaries Charitable Trust	Ms Renee Smith and Mr Owen Purcell
Mr Tom Sutcliffe	In person, Stake President, Glenview Stake
Mr David Walmsley	Messrs David and Michael Walmsley
R & K Wieliczko	Mr Robert J Wieliczko, in person, former resident

(c) Submitters – in opposition

Mr Kena Alexander	In person, former student CCNZ from Ngapuhi
Mr Bruce Gordon	In person, resident, Temple View
Mrs Meshweyla-Kusheyla Harata	In person, resident, Temple View
Alexander Macdonald	
NaMTOK Consultancy Ltd	Mr Wiremu Puke, Consultant
	Mrs Hekeiterangi Broadhurst
Jodhi Ponga	In person, resident, Temple View
Temple View Heritage Society	Mr Paul Majurey, Legal Counsel
	Mr Niall Baker, Planning Consultant
	Mrs Nicola Hamon, Secretary of Temple View Heritage Society
	Dr Ann McEwan, Architectural Historian & Heritage Consultant
	Mr Andrew Bydder, Architect, Andrew Bydder Creative Design Ltd
Ms Elizabeth Witihera	in person, former resident, Temple View
Pita Witehira	In person, former resident, Temple View and former student CCNZ

(d) S42A Author

Mr Todd Whittaker, Planning Consultant, Harrison Grierson

SCHEDULE OF LATE SUBMISSIONS

(a) *Late submissions allowed*

Jacqueline Alma Ramsden
John Ramsden
Tiwini Hemi and Arnelle Hemi
Meshweyla-Kusheyila Harata
Alexander Macdonald

(b) *Late submissions not allowed*

Peter & Kristin Hartley
Johanna Ormond and Whanau
Ra Puriri
Arnelle Te Purei Hemi
Eunice Huriwaka
Courtney Elizabeth Hemi
Morgan Eunice Hemi
Hohua Warren Hemi
Yi Li
Sandra Elizabeth Erueti
Blair Gordon Hooper Johnston
Kaye Dawn Nonoa
NZ Fire Service Commission
Shane & Kasey Luki
John and Sandra Erueti
Robert Andrew Joseph