

<b>IN THE MATTER OF</b>	<b>the Resource Management Act 1991</b>
<b>AND</b>	<b>a resource consent application made pursuant to the Act</b>
<b>TO</b>	<b>Wellington City Council: SR 464277</b>
<b>BY</b>	<b>IPG Corporation Limited</b>
<b>IN RELATION TO</b>	<b>Land use consent for the demolition of a listed heritage building (“Adelaide Hotel 1899”) and the creation of vacant land</b>
<b>SITE LOCATION</b>	<b>114 Adelaide Road, Mt Cook, Wellington</b>

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#### **DECISION OF HEARING COMMISSIONERS**

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<b>HEARING DATE</b>	<b>29 November 2021</b>
<b>COMMISSIONERS</b>	<b>Alistair Aburn (Chair) Helen Atkins Ray O’Callaghan</b>
<b>DATE OF DECISION</b>	<b>16 February 2022</b>

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#### **SUMMARY OF APPLICATION AND DECISION**

- [1] The application (SR 464277) subject to this Decision is one of two applications submitted to the Wellington City Council (“the Council”) by IPG Corporation Limited (“the Applicant”) relating to the site at 114 Adelaide Road, Mt Cook, Wellington.
- [2] The application is for the demolition of the existing building (“the Building”) on the site and the creation of vacant land.
- [3] The Building is a listed heritage building, Adelaide Hotel 1899 (Symbol Ref 346, Planning Map 6). The Building is also subject to an Earthquake Prone Building Notice issued under s133AL of the Building Act 2004.
- [4] Following a one-day hearing and evaluation of the evidence by the Commissioners, the decision is that a compelling case has not been made to justify the demolition of the Building and the creation of vacant land.

- [5] Consequently, the Commissioners acting under delegated authority from the Council, pursuant to s104(1(c) of the Resource Management Act 1991 (“the Act”), and under the provisions of the Wellington City District Plan, **DECLINE** consent to the application.

## **INTRODUCTION**

- [6] The application subject to this Decision is one of two applications submitted to the Wellington City Council (“the Council”) by IPG Corporation Limited (“the Applicant”) relating to the site at 114 Adelaide Road, Mt Cook.
- [7] The application SR 464277, referred to as Application 1, was lodged with the Council in May 2020 and sought land use consent to demolish a listed heritage building (the Adelaide Hotel 1899) and to create vacant land. The application was publicly notified on 23 October 2020.
- [8] Application 2 (SR 490717) was lodged with the Council in May 2021 and sought land use consent for the partial demolition of a listed heritage building (the Adelaide Hotel 1899) and for additions and alterations to a listed heritage building. Consent was also sought for site earthworks and for a new electronic sign. The application was publicly notified on 17 August 2021.
- [9] A Hearing Panel consisting of commissioners Alistair Aburn, Helen Atkins and Ray O’Callaghan (“the Commissioners”) was appointed by the Council pursuant to s34A of the Resource Management Act 1991 (“the Act”) to consider both applications.
- [10] This report is the Commissioner’s Decision on Application 1 (SR 464277).
- [11] The Commissioners have issued a separate Decision on Application 2 (SR 490717).

## **TIME PERIOD FOR DECISION**

- [12] At the closure of the hearing on 20 December 2021, it was agreed that the normally accepted time period of 15 working days from the close of the hearing for the decision to be released would need to be extended given the complexity and importance of the issues before us, and the Christmas/New Year period. All parties were advised of this extension by a Minute dated 21 December 2021.<sup>1</sup>
- [13] Accordingly, pursuant to sections 37 and 37A of the Act, we exercised our discretion to extend the time period for this decision from 15 working days from the close of the hearing (being 1 February 2022) to 25 working days (being 16 February 2022). In making this decision we had regard to the interests of any person who may be directly affected by the extension and the duty to avoid unreasonable delay in determining the application.

## **BACKGROUND**

### **The Application**

- [14] The application is for the demolition of the listed heritage building, Adelaide Hotel 1899 (Symbol Ref 397, Planning Map 6) and for the creation of vacant land.
- [15] The application does not seek consent for a replacement building.

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<sup>1</sup> Minute 7.

## The Site

- [16] The site address is 114 Adelaide Road, Mt Cook, which is a corner site with frontage to Adelaide Road and Drummond Street - refer Figure 1.



Figure 1: 114 Adelaide Road

- [17] Legally described as Lot 1-2 DP 21496, Record of Title WN919/71, the site comprises 455m<sup>2</sup>. There are no interests on the title. The registered owner is Lakhi Maa Limited.
- [18] The site is zoned "Centres" (Planning Map 6).

## The Building

- [19] The Building is a two-storey unreinforced masonry building, formerly operating as a hotel known as the Tramway Hotel - refer Photo 1.



Photo 1: former Tramway Hotel, 114 Adelaide Road, Mt Cook

- [20] The Building is a listed heritage building under the Operative Wellington City District Plan (Adelaide Hotel 1899, Symbol Reference 397, Planning Map 6). The Building is not registered by Heritage New Zealand Pouhere Taonga ("Heritage NZ").

[21] The Building has been vacant since circa 2008-2009 and is subject to an Earthquake Prone Building Notice issued under s133AL of the Building Act 2004.<sup>2</sup> The Notice states that the owner:

*... is required to carry out building work to ensure that the building is no longer earthquake-prone (seismic work).*

## **NOTIFICATION AND SUBMISSIONS**

[23] The application was publicly notified on 23 October 2020.

[24] A total of eleven submissions were received by the close of submissions on 23 November 2020.

[25] Of the eleven submissions, ten were opposed to the application, including submissions from the Newtown Residents' Association, Heritage NZ, Historic Places Wellington Inc., and Wellington's Character.

## **PRINCIPAL ISSUES IN CONTENTION**

[26] In the Council's s42A Report it was noted that the following general themes/issues were raised in the submissions:

- (a) heritage effects (loss of heritage, heritage significance of the building, potential for adaptive re-use/façade retention, economic viability of retention);
- (b) deteriorated state of the building;
- (c) streetscape/townscape value;
- (d) general significance of the building; and
- (e) other options for retention.

## **THE HEARING**

[27] The hearing was conducted on-line on Monday 29 November 2021 commencing at 9.00am and concluding at 5.14pm.

[28] The Council's s42A Report, prepared by Mr Peter Daly, Senior Resource Consents Planner, and the Applicant's and Submitters' pre-circulated evidence, were all taken as read at the commencement of the hearing, following which we heard from the:

- (a) Applicant;
- (b) Submitters; and
- (c) Council officers

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<sup>2</sup> The Notice was issued on 24 May 2019. It records that "Wellington City Council has previously issued a written notice under section 124(2)(c)(i) of the Building Act 2004", which required the owner to complete the seismic work by 17 December 2013. The 2019 Notice records/confirms the 17 December 2013 date.

in that order.<sup>3</sup>

## DISTRICT PLAN CONTEXT

[29] The demolition of the Building and the creation of vacant land requires consent under two District Plan rules:

- (a) Heritage Rule 21A.2.1 - demolition of a listed heritage building; and
- (b) Centres Rule 7.3.3 - creation of vacant or open land.

[30] Both rules are Discretionary Activity (Restricted) rules. The matters over which the Council has restricted its discretion are:

- (a) Rule 21A.2.1:
  - historic heritage; and
  - height, coverage, bulk and massing of buildings (to the extent that these affect historic heritage); and
- (b) Rule 7.3.3:
  - the effect on the vitality of the Centre; and
  - the effect on the visual quality of the streetscape.

## THE SECTION 42A REPORT

[31] The s42A Report assessed the effects of the proposed demolition of the Building and the creation of vacant land under the following headings:

- (a) positive effects;
- (b) effects on historic heritage;
- (c) effects on the visual quality of the streetscape; and
- (d) effects on the vitality of the Centre.

[32] Having assessed the effects, the District Plan objectives and policies, and having regard to the provisions of the National Policy Statement on Urban Development (2020) (“NPSUD”), the Regional Policy Statement for the Wellington Region (“WRPS”) and Part 2 of the Act, and, in particular, s6(f):

*(f) the protection of historic heritage from inappropriate subdivision, use and development*

Mr Daly concluded that the proposed demolition of the Building and the creation of vacant land, without any replacement building being proposed, was unacceptable and that consent should be refused accordingly.

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<sup>3</sup> While the on-line hearing concluded at 5.14pm, the hearing was not closed but adjourned to enable the Applicant and Council officers to meet to discuss potential amendments to the new building proposed under Application 2 (SR 490717).

## SUMMARY OF APPLICANT'S AND SUBMITTER'S EVIDENCE

### The Applicant

[33] The Applicant was represented at the hearing by the following witnesses:

- (a) Mr Dennis Parbhu - the applicant and owner of 114 Adelaide Road;
- (b) Mr Michael Horsley - urban valuer;
- (c) Ms Chinara Sharshenova - architect;
- (d) Mr Ignatius Black - structural engineer;
- (e) Mr David Pearson - conservation architect;
- (f) Mr Neil Jamieson - wind consultant; and
- (g) Mr Ian Leary - planner.

[34] The pre-circulated evidence and the witness comments at the hearing principally addressed Application 2 and not Application 1, the focus of this Decision. Nevertheless, Application 1 was not withdrawn.

[35] The principal points made by the Applicant's witnesses in relation to Application 1 are set out in this section of the Decision.

[36] **Mr Dennis Parbhu:** Mr Parbhu is the managing director of IPG Corporation, the Applicant, and the owner of the site through Lakhi Maa Limited. Mr Parbhu is experienced in commercial property development and construction. Mr Parbhu opined that the "*most sensible option*" (his words) with regard to maintaining financial viability was total demolition. Mr Parbhu challenged the Council officers' statements that alternatives to demolition had not been fully considered, that the social and economic value of retaining the listed heritage building was more important than public safety, and that no replacement building had been proposed.

[37] **Mr Michael Horsley:** Mr Horsley is an experienced urban valuer specialising in the Wellington commercial property market. Although Mr Horsley stated that his evidence related to Application 2, we consider it relates to Application 1, as it provides comment on the costs of strengthening the existing building. No evidence was provided in relation to the valuation of the new building proposed under Application 2. Mr Horsley advised that if the Building was strengthened and refurbished it would provide a lease space of about 664m<sup>2</sup> (ground and first floor) and would have a market value of \$2.25m (April 2020), which he estimated would have increased to \$3.05m by late 2021. Mr Horsley concluded that the value of the strengthened/refurbished building would fall well short of the \$6.5m cost to undertake and complete the works. Consequently, it was Mr Horsley's opinion that it was not economic to strengthen the Building.

[38] **Ms Chinara Sharshenova:** Ms Sharshenova is a senior architect with IPG Construction Limited. Ms Sharshenova's evidence related only to Application 2.

[39] **Mr Ignatius Black:** Mr Black, a structural engineer, is a principal and Director of Silvester Clark. He confirmed that he was engaged by the Applicant to prepare a seismic capacity and

strengthening review of the Building. He confirmed his opinion that the Building was earthquake prone and that a detailed seismic assessment would conclude that the Building achieves less than 20% NBS due to the weight of the unreinforced masonry façade and the inadequate capacity of the timber-framed structure behind the façade that provides lateral load resistance. As an earthquake prone building, Mr Black confirmed that the legal requirement was for the Building to either be strengthened or demolished. He outlined the works required to increase the seismic capacity to 34% NBS, but nevertheless recommended that the strengthening target should be 100% NBS to minimise the risk to life safety.

- [40] Mr Black was of the opinion that the structural works required to seismically strengthen the Building would involve significant demolition, temporary support structure and reinstatement works, noting that in particular significant demolition and reinstatement of the timber structure would be required.
- [41] Mr Black confirmed that he was aware of the QS estimate prepared by the Applicant which had estimated a cost for the seismic strengthening works and reconstruction at approximately \$6.5 million and said that the estimate did not surprise him.<sup>4</sup>
- [42] **Mr David Pearson:** Mr Pearson is a registered architect and principal of DPA Architects. He specialises in conservation architecture and has some 40 years' experience in the field. Mr Pearson advised that his evidence related only to Application 2.
- [43] **Mr Neil Jamieson:** Mr Jamieson is a specialist in wind engineering and the Research Leader (Wind Engineering) at the WSP Research and Innovation Centre. He is experienced in preparing wind assessments of proposed developments. Mr Jamieson's evidence related only to Application 2.
- [44] **Mr Ian Leary:** Mr Leary is a Director of Spencer Holmes Ltd and has over 25 years' experience in land development, resource management planning and surveying. Mr Leary prepared the assessment of environmental effects (AEE) report submitted with the application. Mr Leary said that if the certainty of a consent for demolition was obtained, then a new building would be proposed in the short to medium-term. Mr Leary said that he accepted that the demolition of the Building would not have any positive or compensation elements to assess; although he did opine that the demolition of the Building would provide for the health and safety of the community.
- [45] Mr Leary was critical of the S42A Report which, he alleged, failed to discuss and consider economic wellbeing.
- [46] Referring to District Plan Policy 20.2.1.2, Mr Leary noted that demolition of a listed heritage building can be considered if there is no reasonable alternative, adding that:

*... In this case, there is no reasonable alternative, except the partial demolition and construction of a new building as proposed [as the second option].<sup>5</sup>*

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<sup>4</sup> The cost estimate Mr Black referred to was contained in a 4 March 2020 report prepared by Maltbys "114 Adelaide Road: Concept Restrengthening Estimate" which formed part of the Application 1 documentation. The Maltbys estimate was \$6.138 million based on then (March 2020) current rates and prices. We note that we did not receive any contrary evidence challenging the Maltby's cost estimate.

<sup>5</sup> Ian Leary, Statement of Evidence, para 5.82, page 23.

- [47] Mr Leary accepted that the full demolition option was not going to avoid, remedy or mitigate the effects on historic heritage.<sup>6</sup>
- [48] Mr Leary also accepted that creating vacant land as proposed, was not consistent with the outcomes sought by the District Plan, adding, however, that “*this is only a temporary outcome*”.
- [49] Accepting that the proposal would, in the short term, be inconsistent with the District Plan’s objectives and policies for Centres, Mr Leary stated that he considered that the replacement of the Building would have positive effects on visual character and vitality in the long term.
- [50] Mr Leary commented on each of assessment criteria under Heritage Rule 21A.2.1. He opined that the assessment criteria and the rules are “*set-up*” to place the emphasis on the preservation of heritage buildings, adding that:

*Therefore, with a proposal for demolition, it is not surprising that it would be assessed against the relevant criteria and found to be inconsistent with those criteria which seek the preservation or enhancement of the heritage qualities*<sup>7</sup>

but noting that some of the criteria raise issues of ‘structural stability and public safety’ and ‘reasonable and economic use’.

- [51] In the end, however, and referring to the overall intent of the criteria under Rule 21A.2.1, Mr Leary accepted that:

*... there is a very high threshold to reaching the point where a consent for demolition can be granted.*<sup>8</sup>

- [52] Although this Decision Report addresses only Application 1 (SR 464277), we consider it appropriate to cite Mr Leary’s ultimate conclusion, which was:

*10.9 It is therefore my recommendation that approval to the new building option be granted and the demolition option be declined.*

*10.10 If however the commissioners do not accept the new building should be granted consent, then the full demolition consent should be granted.*<sup>9</sup>

[our emphasis]

### **The Submitters**

- [53] As noted previously, there were a total of eleven submissions on Application 1. We have read all of the submissions and taken note of the issues raised.

- [54] In addition, we had the benefit of hearing from the following submitters at the hearing:

(a) Newtown Residents’ Association (Submission #1);

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<sup>6</sup> Ian Leary, Statement of Evidence, para 5.92, page 24.

<sup>7</sup> Ian Leary, Statement of Evidence, para 6.39, page 34.

<sup>8</sup> Ian Leary, Statement of Evidence, para 6.41, page 35.

<sup>9</sup> Ian Leary, Statement of Evidence, page 50.



- (b) Heritage NZ (Submission #3);
- (c) Historic Places Wellington Inc (Submission #5); and
- (d) Wellington’s Character (Submission #6).

- [55] **Newtown Residents’ Association:** the Association was represented at the hearing by its President, Ms Rhona Carson, who confirmed that the Association opposed the total demolition of the site and leaving it as vacant land; but also confirmed that the Association would support the partial demolition to retain the façade on both the Adelaide Road and Drummond Street frontages in order to construct a housing development behind the facades.
- [56] **Heritage NZ:** Heritage NZ was represented at the hearing by Ms Laura Kellaway, a registered architect specialising in heritage with over thirty years’ experience and presently a conservation architect with the Heritage NZ.
- [57] Ms Kellaway confirmed that 114 Adelaide Road was not listed as a historic place by Heritage NZ.
- [58] Notwithstanding that the Building was not listed as an historic place, Ms Kellaway opined that it is an important historic building as demonstrated by the District Plan’s listing and that it remains a *“key heritage building and landmark within its streetscape”*, concluding that its demolition would result in a full loss of heritage values which would be irreversible. Ms Kellaway confirmed that she supported the Council’s position that consent should not be granted.
- [59] **Historic Places Wellington:** Historic Places Wellington was represented at the hearing by Ms Felicity Wong the Chair and Dr Ben Schrader the Vice-Chair. Dr Schrader is a prominent urban historian.
- [60] Both Ms Wong and Dr Schrader made it clear that Historic Places Wellington opposed the demolition of the Building given that, in the opinion of their organisation, the Building had high heritage significance and that its demolition would result in a major negative effect that would be permanent and irreversible.
- [61] **Wellington’s Character:** Ms Wong also represented Wellington’s Character which, we were advised, was established as a heritage-based campaign organisation that opposes, inter alia, the removal of protections in Wellington’s historic ‘character’ suburbs.
- [62] Ms Wong advised that Wellington’s Character position was the same as that of Historic Places Wellington - namely that the Building had high heritage significance and that its demolition would result in a major negative effect that would be permanent and irreversible.

## STATUTORY CONTEXT

### Relevant Planning Instruments

- [63] The relevant planning instruments are:
- (a) Operative District Plan: Chapters 20 and 21 (Heritage); and Chapters 6 and 7 (Centres); and

- (b) Operative Wellington Regional Policy Statement.

### **Reasons for Resource Consent being Required**

- [64] Neither the demolition of a listed heritage building or the creation of vacant land in the Centres Area is a permitted activity. Rather, resource consent is required for a Discretionary Activity (Restricted) for both activities under the following rules:
- (a) Rule 21A.2.1 for the demolition of a listed heritage building; and
  - (b) Rule 7.3.3 for the creation of vacant land in the Centres Area.

### **EVALUATION AND FINDINGS**

- [65] Drawing on the s42A Report and the submissions, it is readily apparent that the application to demolish the Building and replace it with vacant land is strongly opposed.
- [66] Our responsibility, however, is to consider all points raised, both those supporting demolition (as detailed in the application and the Applicant's evidence) and those opposing demolition (as detailed in the submissions and the Submitter's evidence).
- [67] To this end, our approach has been to adopt as a framework for our evaluation the headings used in the s42A report, namely:
- (a) effects on historic heritage;
  - (b) effects on the vitality of the Centre;
  - (c) effects on the visual quality of the streetscape; and
  - (d) positive effects.

#### **Effects on Historic Heritage**

- [68] Under Rule 21A.2.1 discretion is limited to:
- (a) historic heritage; and
  - (b) height coverage, bulk and massing of buildings (in terms of the extent that these affect historic heritage).

Due to the scope of the application, only the first matter "historic heritage" is relevant, given that if the Building is demolished it would be 'replaced' with vacant land.

- [69] To reach our conclusion on this matter we have had regard to the heritage evidence of Ms Stevens,<sup>10</sup> Ms Kellaway and Dr Shrader, the architectural evidence of Mr Pearson,<sup>11</sup> and the planning evidence of Mr Daly and Mr Leary.

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<sup>10</sup> Ms Chessa Stevens the Council's heritage expert and witness.

<sup>11</sup> Although Mr Pearson's evidence to the hearing was directed at Application 2, in his heritage assessment report lodged with that application he was of the opinion that the demolition of the Building would "mean that all traces of the 120

[70] Drawing on the heritage evidence, we accept that the demolition of the Building will result in a permanent and irreversible loss of heritage values. The Building will be no more, other than in people's memories and as recorded in photographs.

[71] Ms Stevens in her evidence drew our attention to a report prepared by Mr Ian Bowman, an experienced conservation architect, noting that the report formed part of the SR 464277 application. Although Mr Bowman was not called as a witness at the hearing, his report is part of the application documentation to which we consider we should have regard in our evaluation of the proposal to demolish the Building.

[72] Mr Bowman's conclusion, inter alia, was that:

*The proposal to demolish [sic] 114 Adelaide Street [sic], Newtown will result in a moderate/large negative effect that will be permanent and irreversible to the heritage values of the building.*<sup>12</sup>

[73] In the 'assessment of effects on the environment' section of the May 2020 application, and drawing on the Bowman assessment, it is recorded that:

*"... the proposal to demolish the building will have a significant effect on the heritage values of the building itself (by removing them) and the heritage effects in respect of the subject building are significant, but are moderate with respect to the overall heritage values of the city".*<sup>13</sup>

[74] In our opinion, if the demolition of a listed heritage building is found to result in a significant loss of heritage values, the activity must be found to be inconsistent with the primary District Plan policy framework of protecting the City's historic heritage from inappropriate subdivision, use and development.

[75] For completeness, and before recoding our finding in relation to historic heritage, we record the following conclusions reached by the witnesses:

(a) Ms Stevens: *the proposed demolition of the former Tramway Hotel at 114 Adelaide Road will have a significant adverse effect on the heritage values of the building, which is permanent, irreversible and cannot be mitigated in any way;*<sup>14</sup>

(b) Ms Kellaway: *the former Tramway Hotel building is an important historic building as demonstrated by the Wellington City Council scheduling. The building remains the keystone heritage building and landmark within its streetscape ... the proposed demolition does not comply with the heritage criteria for demolition under Heritage New Zealand Guidelines and falls fully outside of the ICOMOS New Zealand Charter. The effect is full loss of heritage values and is irreversible;*<sup>15</sup>

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*year old Tramway Hotel will be lost forever. Wellington would be the poorer should that be allowed to occur".* Reference: "114 Adelaide Road, Newtown, Wellington, Heritage Assessment and Impact Statement" dated April 2021 by DPA Architects, page 25 - submitted as Section 9 to Application for Resource Consent by IPG Corporation, May 2021.

<sup>12</sup> "Assessment of Environmental Effects: Former Tramway Hotel, 114 Adelaide Road, Wellington", Ian Bowman, Architect and Conservator, May 2020, Attachment 8 to the Application for Resource Consent.

<sup>13</sup> IPG Corporation, Application for Resource Consent, May 2020, Section 3.0, Assessment of Effects on the Environment, page 14.

<sup>14</sup> Chessa Stevens, Section 42A Report, Heritage Assessment, page 26.

<sup>15</sup> Statement of Evidence of Laura Kellaway, page 11.

- (c) Mr Daly: drawing on Ms Stevens' advice,<sup>16</sup> concluded that *"the adverse effects on historic heritage will be significant, and unacceptable"*; and
- (d) Mr Leary: *The assessment criteria and the heritage rules, are "setup" to place the emphasis on the preservation of heritage buildings. Therefore, with a proposal for demolition, it is not surprising that it would be assessed against the relevant criteria and found to be inconsistent with those criteria which seek preservation or enhancement of the heritage qualities.*<sup>17</sup>

[76] Referring to Mr Leary's comment regarding "setup", yes, we accept that he makes a valid point. However, those are the District Plan provisions that we must have regard to, and perhaps not too surprising they do indeed focus on protecting historic heritage.

#### Finding

[77] In the end, and having regard to all the evidence before us, we have concluded that the demolition of the Building will result in significant and unacceptable adverse effects on the Building's historic heritage values.

#### **Effects on the Vitality of the Centre**

[78] Under Rule 7.3.3 discretion is restricted to two matters, the first of which is - effects on the vitality of the Centre.

[79] The evidence before us on this matter was limited to the urban design evidence of Sarah Duffell (on behalf of Council), the planning evidence of Mr Daly (on behalf of Council) and the planning evidence of Mr Leary (on behalf of the Applicant).

[80] Ms Duffell accepted that given that the Building is currently vacant, and has been for approximately 10 years, it provides no contribution to the economic vitality of the area; adding, however, that removing the Building does not improve on this situation at all.

[81] Ms Duffell advised that it was the Council's urban design view that:

*... the effect on the vitality of the local centre by removing the building would be negative as it would create a void with an uncertain and negative perception within the area.*<sup>18</sup>

[82] Mr Daly correctly, in our opinion, had regard to the 'existing environment' which is a vacant earthquake prone building which cannot be occupied in its current state. Accordingly, he accepted that while the impact of the removal of the Building will cumulatively detract from the vitality of the Centre, such impact would be relatively minimal and therefore acceptable.<sup>19</sup>

[83] Mr Leary also referred to the 'existing environment' of a building which is vacant and provides no contribution to the vitality of the local area, adding that:

*By being able to demolish the building, it will allow for a new building to be constructed which would then make a positive effect on the vitality of the area ...*<sup>20</sup>

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<sup>16</sup> Section 42A Report, para 59, page 12.

<sup>17</sup> Ian Leary, Statement of Evidence, para 6,39, page 34.

<sup>18</sup> Preliminary Urban Design Comments SR 464277, 114 Adelaide Road, 12 June 2020, page 2.

<sup>19</sup> S42A Report, page 12.

<sup>20</sup> Ian Leary, Statement of Evidence, para 6.47, page 35.

and concluding that:

- (a) the short-term effects on the vitality of the Centre are neutral; and
- (b) the medium to long-term effects on the vitality of the Centre will be positive, by allowing for the construction of a new building.

#### Finding

[84] Having regard to the evidence before us, we have concluded that the demolition of the Building will not adversely impact the vitality of the Centre in any significant way. We accept that a new building would, as Mr Leary opines, make a positive contribution. However, we are unable to have regard to such an outcome as Application 1 does not seek consent for a replacement building.

#### **Effects on the Visual Quality of the Streetscape**

[85] The second matter over which discretion is restricted under Rule 7.3.3 is - effects on visual quality and streetscape.

[86] Again the evidence before us on this matter was limited to the urban design evidence of Sarah Duffell (on behalf of Council), the planning evidence of Mr Daly (on behalf of Council) and the planning evidence of Mr Leary (on behalf of the Applicant).

[87] Ms Duffell advised that the Building makes a positive contribution to the local townscape character due to its age, architectural features and intactness, and that the visual effect of removing the building would be substantial.<sup>21</sup>

[88] Ms Duffell also advised that occasionally demolition of a structure with townscape value can be considered and that usually the 'yardstick' for this would be a replacement building that delivered equal or better townscape quality outcomes than the building being lost.

[89] However, as we have noted, Application 1 does not propose a replacement building, but rather the establishment of vacant land in the form of a grassed site.

[90] Mr Daly, drawing on Ms Duffell's advice, concluded that the demolition of the Building will have a significant detrimental effect on the visual quality of the streetscape environment, which, in the absence of any mitigation, would be unacceptable.<sup>22</sup>

[91] Mr Leary accepted that the Building does make a positive contribution to the quality of the local streetscape and that its removal will have an adverse effect on the overall quality of the streetscape given its prominent location on the corner of Adelaide Road and Drummond Street.

#### Finding

[92] Having regard to the evidence before us, we have concluded that the demolition of the Building and its replacement with grassed vacant space will result in significant and unacceptable effects in respect of the visual quality of the streetscape.

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<sup>21</sup> Preliminary Urban Design Comments SR 464277, 114 Adelaide Road, 12 June 2020 page 3.

<sup>22</sup> S42A Report, para 54, page 11.

## Positive Effects

[91] Firstly, it is important to confirm that positive effects are not a matter over which discretion is restricted under the applicable rules (Rule 7.3.3 and Rule 21A.2.1). Therefore, and notwithstanding that the definition of effects under the Act includes positive effects, we do not consider we can place any weight in our decision-making on perceived positive effects associated with the demolition of the Building, other than as a potential 'other matter' under s104(1)(c) of the Act.

[92] Both Mr Daly and Mr Leary addressed positive effects.

[93] Mr Daly addressed positive effects as a relevant s104(1)(c) other matter, commenting that:

*The existing Tramway Hotel is subject to an earthquake prone building notice, and is currently derelict. The demolition of this building will remove an earthquake prone building alongside a busy road. This removes the potential risk of physical human harm that could result during/after an earthquake, and the potential disruption to an important stretch of road serving the southern suburbs of Wellington, and Wellington hospital.*

[94] Mr Leary opined that 'health and safety' are factors to be considered within the discretion available under the Rule 21A.2.1 assessment criteria.

[95] In particular, Mr Leary drew our attention to criterion 21A.2.1.22:

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

[96] Mr Leary then commented as follows:

*6.35 This criterion has two arms to consider. The first is in the public interest in enhancing the heritage qualities of the city. The second is the public interest in promoting a high quality, safe urban environment.*

*6.36 In this case there are potentially mutually exclusive interests at play. Given the economic issues with strengthening the building, it is not possible for the applicant/owner to carry our strengthening works to preserve the heritage qualities of the building and therefore promoting a safe urban environment.*

*6.37 If the consent to demolish is approved, then there will be heritage qualities lost to the city. If the consent is declined, the risk to public safety is continued.<sup>23</sup>*

[97] We fully appreciate the point Mr Leary is making and we accept that the demolition of the Building will remove an earthquake prone building and therefore remove the public safety risk. We also accept that we can have regard to Building Act matters, and in this case the Earthquake Prone Building Notice, as a relevant other matter under s104(1)(c). However, in our opinion having regard to this matter does not 'trump' our conclusions reached in respect of the significant adverse effects on historic heritage.

[98] If, as part of Application 1, we were also considering a replacement building, then our conclusion may have been different. However, that is not the case as Application 1 is limited to the demolition of the Building and its replacement with grassed vacant land.

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<sup>23</sup> Ian Leary, Statement of Evidence, page 34.

## Finding

[99] Although the demolition of the Building would result in the removal of an earthquake prone building, we find that the case has not been made for its demolition given the significant adverse heritage effects that would result.

## **DISTRICT PLAN OBJECTIVES AND POLICIES**

[100] During the course of our evaluation of the evidence, particularly the evidence relating to any actual and potential effects on the environment of allowing the activity [s104(1)(a)], we have had regard to the relevant District Plan objectives and policies [s104(1)(b)(vi)].

[101] In our opinion the proposed demolition of the Building is inconsistent with Heritage Policy 20.2.1.2:

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

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

[102] Although this is only one policy, it is nevertheless central to our assessment of the application.

[103] The creation of vacant land is also, in our opinion, not well aligned with the objectives and policies for Centres which seek, inter alia, to promote intensification of activities and buildings in and around Centres (Policy 6.2.1.4), and to establish positive visual effects and promote a strong sense of place and identity within Centres (Policy 6.2.3.1).

## **PART 2 RMA**

[104] Given our findings in relation to 'environmental effects' and 'District Plan provisions' we have not found it necessary to have regard to Part 2 matters. However, we do acknowledge that the protection of historic heritage from inappropriate subdivision, use and development is a matter of national importance [s6(f)] which should be recognised and provided for.

[105] Based on our evaluation of the evidence, we have concluded that the demolition of the Building and its replacement with vacant land does not constitute appropriate development.

## **DECISION**

[106] Having regard to the evidence presented, and the relevant statutory criteria under the s104(1)(c) of the Act and the provisions of the Wellington City District Plan, and for the reasons summarised below, as Commissioners acting under delegated authority from the Council, we **DECLINE** resource consent to the application by IPG Corporation Limited to demolish the listed heritage building (Adelaide Hotel 1899) at 114 Adelaide Road, Mt Cook.

## REASONS FOR DECISION

[107] Section 113(1)(a) of the Act requires that we state the reasons for our decision.

[108] As detailed above in our “Evaluation and Findings”, the principal reasons for our decision to decline consent to Application 1 (SR 464277) are:

(a) the demolition of the listed heritage building (Adelaide Hotel 1899) will result in a significant loss of historic heritage that cannot be avoided, remedied or mitigated if demolition occurs; and

(b) the building makes a positive contribution to the Adelaide Road streetscape, and its demolition will result in an unacceptable reduction in the visual quality of the streetscape.

[109] We accept that the demolition of the Building, an earthquake prone building, will remove a public safety risk. However, and while we have had regard to this matter, we do not consider that of itself it is sufficient reason to grant consent to the demolition of the Building, particularly in a situation where there is a viable alternative to its demolition, an alternative that will address the requirement that the Building is “*no longer earthquake prone*” as specified in the Notice issued under s133AL of the Building Act 2004.

## CONCLUDING COMMENT

[110] As we record at the beginning of this Decision Report, we were appointed by Council to hear two separate resource applications relating to the property at 114 Adelaide Road, Mt Cook:

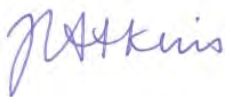
(a) Application 1 for the demolition of the listed heritage building and the creation of vacant land; and

(b) Application 2 for the partial demolition of the listed heritage building and the construction of a new building behind the existing building facades fronting Adelaide Road and Drummond Street.

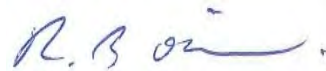
[111] Although both applications were heard concurrently at the 29 November 2021 hearing, in reaching our decision on Application 1 we have not had any regard to the potential outcome envisaged under Application 2.



Alistair Aburn  
Commissioner



Helen Atkins  
Commissioner



Ray O'Callaghan  
Commissioner

Dated: 16 February 2022