

IN THE MATTER

of the Resource Management
Act 1991 ("the RMA")

AND

IN THE MATTER

of an application by Ministry
of Health, LUC -2020-263

DECISION OF COMMISSIONER GM RAE

INTRODUCTION

1. The Ministry of Health ("**the applicant**") proposes to demolish several of the existing Cadbury factory buildings and protected facades on the sites at 280 and 336 Cumberland Street, Dunedin, with the exception of the former Dairy and Machine House building on the Castle Street frontage.
2. The purpose of the application is to provide a clear site for construction of the proposed new Dunedin Hospital Inpatients Building ("**NDH**").
3. Resource consent is required, overall, for a non-complying activity in terms of the Proposed Second Generation Dunedin City District Plan ("**2GP**"). The application was publicly notified.
4. I was appointed pursuant to section 34A of the Act by the Dunedin City Council ("**the Council**") to hear submissions and make a decision on the resource consent application.

THE SITE

5. The application sites ("**the site**") are located in the central city block bounded by Cumberland Street to the west, St Andrew Street to the north, and Castle Street to the east. The site comprises three titles with a total area of 2.23 hectares, with legal descriptions as provided in the section 42A Report¹.
6. The heritage facades along the Cumberland and Castle Street frontages which are proposed to be demolished are all located within the site at 280 Cumberland Street site. The site at 336 Cumberland Street has been included in the application because it is likely to be used as a staging area for the proposed demolition activity and for vehicle access. Resource consent LUC-2019-540 authorised the recently completed deconstruction of the Cadbury warehouse distribution building on that site.

¹ Section 42A, paragraph [20]

7. A number of commercial properties are located directly to the south of the site, including the Allied Press building and other character contributing and heritage buildings within the Stuart Street Commercial Heritage Precinct.
8. Resource consent LUC-2019-558 authorises the above ground demolition of the buildings owned by the applicant located within 360 and 398 Cumberland Street, in the Wilsons block located across St Andrew Street to the north of the site.

THE APPLICATION

9. The application is accurately described in the section 42A Report, which I adopt as an accurate summary for the purposes of this Decision ².
10. By way of brief summary, the proposed demolition of the buildings will be undertaken in stages, from about March 2021 until February 2022. Demolition works will be limited to Monday – Saturday between 7.30am and 6pm each day.
11. The application was accompanied by a number of technical assessments to support the applicant's view that retention of the buildings or facades for incorporation into the hospital is not practicable. A noise and vibration assessment report was also included with the application.
12. During the processing of the application Council officers issued a request for further information. The applicant responded with information on the chronology of the new hospital build; and with an opinion on the 2GP and the Partially Operative Otago Regional Policy Statement 2019.

NOTIFICATION AND SUBMISSIONS

13. The application was publicly notified on 11 July 2020, and received five submissions by the closing date of 7 August 2020. A submission from the Otago Chamber of Commerce Inc was received late. This is addressed below, under 'The Hearing'.
14. Submissions lodged on behalf of the Southern District Health Board, and Heritage New Zealand Pouhere Taonga ("**Heritage NZ**"), were in support of the application. The submissions by Mr Athol Parks (City Walks), Mr Ted Daniels (Exchange Renaissance Ltd), and Allied Press Limited were all in opposition.
15. The submission of the Southern District Health Board related to the health-related and economic benefits that it considers will arise from the NDH. The submission from Heritage NZ requested several conditions be imposed on the consent, relating to retention of the Dairy and Machine House Building, a conservation plan, a noise and vibration management plan, and the salvage of historical and archaeological features.
16. The submissions by Mr Park and Mr Daniels sought a greater level of certainty regarding the delivery of the new hospital to justify the removal of the heritage facades at this time. The submission of Allied Press Ltd was concerned with the potential adverse effects of demolition work on adjacent business premises and operations.

² Section 42A, paragraphs [8] – [14]

CONSULTATION WITH SUBMITTERS

17. Following receipt of the submissions, the applicant requested that processing of the application be suspended to enable it to engage with submitters.
18. Subsequently, Mr Daniels and Mr Park confirmed to the Council that they no longer opposed the application, on the basis of information received regarding the certainty of the hospital proceeding³. Allied Press Limited withdrew its opposition to the application on the basis that the applicant had provided the additional information and assurances requested⁴.
19. Heritage NZ confirmed that it would withdraw its concerns with respect to the application provided amended conditions as proposed by Heritage NZ were included⁵.
20. Whilst the submissions of all but Allied Press Limited remained in place, the outcome from the applicant's consultation with submitters was that, in essence, there was no longer any opposition from submitters to the proposal. I accept that to be the case, as put by counsel for the applicant in opening submissions⁶.

THE HEARING

21. A hearing was held in Dunedin on 2 November 2020. Whilst none of the submitters had requested to be heard, I considered this was an appropriate forum for questions to be put to the Council's reporting officers on the planning framework and also for the applicant's planner, Mr Gimblett, to describe the suggested conditions that had been developed as a result of his consultation with submitters.
22. A procedural matter was raised in the section 42A Report relating to the submission by Otago Chamber of Commerce lodged after the closing date for submissions. At the hearing I determined that the submission be accepted under Section 37 of the RMA, as it was lodged only a few days late, was in support of the application, and no party was disadvantaged by its acceptance.
23. I heard from:

Applicant:

- Ms Lauren Semple, legal counsel; and
- Mr Ken Gimblett, consultant planner.

Council officers:

- Ms Karen Bain, reporting officer; and

³ Confirmed in e-mail correspondence from Mr Parks to Ms Semple, Mr Hodgson, and Ms Collard dated 10 September 2020

⁴ Confirmed in e-mail correspondence from Mr McKenzie to the Council, dated 28 September 2020

⁵ Confirmed in letter from Heritage NZ to Mr Gimblett, dated 19 October 2020.

⁶ Ms Semple's opening legal submissions, paragraph 14

- Dr Andrea Farminer; heritage advisor.

24. The hearing was adjourned, and was subsequently closed on 9 November 2020.

ZONING, AND CONSENTS REQUIRED

25. Ms Bain's evidence was that the relevant rules in the Operative Dunedin City District Plan 2006⁷ are deemed inoperative, and have been replaced by rules in the 2GP.
26. The zoning of the site in the 2GP is 'Commercial and Mixed Use: CBD Edge – Commercial North'. The Schedule of Protected Heritage Items and Sites (Appendix A.1.1) includes the facades of the Cadbury factory buildings on Castle and Cumberland Streets, as Item B030.
27. The rules of most relevance to this application relate to Temporary Activities (including construction, noise and vibration aspects); Heritage (including special information requirements such as Heritage Impact Assessments); and performance standards for this zone (including demolition of a protected part of a scheduled heritage structure, and boundary treatments and other landscaping).
28. The most restrictive rule, with respect to this application, is Rule 18.3.6.19 which requires that demolition of a protected part of a scheduled heritage structure is to be assessed as a non-complying activity. Ms Bain's evidence was that it is appropriate to apply the 'bundling principle' and to therefore apply non-complying activity classification to the whole proposal.
29. I adopt Ms Bain's evidence in this regard⁸, and note also that Mr Gimblett agrees with her assessment of activity status⁹.

STATUTORY REQUIREMENTS

30. Under section 104(1), when considering an application, I am required, subject to Part 2 of the RMA, to have regard to (relevantly):
- a) Any actual and potential effects on the environment of allowing the activity; and*
 - b) Any relevant provisions of:*
 - v. a regional policy statement; and*
 - vi. a plan or proposed plan.*
 - c) Any other matter the consent authority considers relevant and reasonably necessary to determine the application.*
31. As the application is, overall, for a non-complying activity under section 104D of the RMA, consent may only be granted if I am satisfied that either the adverse effects of the activity on the environment will be minor, or the application will not

⁷ Section 10 (Industry) and Section 13 (Townscape)

⁸ Section 42A Report, paragraphs [21] – [45]

⁹ Mr Gimblett, paragraph 4.2

be contrary to the objectives and policies of the District Plan. These are known as the 'gateway tests'. Conditions may be imposed under section 108.

32. These matters are addressed below.

EFFECTS ON THE ENVIRONMENT

Heritage Values

(a) Applicant's assessment

33. The relevant assessment rules in the 2GP require consideration of the strategic direction objectives. In addition, a heritage impact assessment is required which must address the effect of the demolition on heritage values, and consideration of alternatives and reasons why alternatives are not reasonable¹⁰.
34. The application describes a range of alternative hospital developments and locations that were considered, and sets out the reasons why the Cadbury factory and Wilson's block sites were chosen¹¹. The applicant then developed a preliminary master plan for development of the NHD, and as part of that process it investigated the options for, and practicality of, retaining the building facades.
35. That process included obtaining technical reports on structural options (from engineers WSP); costs of the options (from quantity surveyors RLB); construction feasibility for retaining the facades (from project managers RCP); the heritage implications (from heritage assessors Underground Overground Archaeology); and implications for the design and functionality of the hospital (from architects CCM)¹².
36. The technical reports identified a number of factors (including a range of design, seismic risk, construction feasibility, and cost considerations) that in essence make the retention of the facades as part of the NHD impracticable¹³.
37. The assessment by the applicant's heritage advisers (UOA) was that, overall, the Cadbury buildings are of "medium heritage significance", due to the modification of several of the buildings on the site affecting their architectural integrity. It determined that the buildings have higher significance in terms of architectural rarity and historic values in terms of connection to function, individuals and companies.
38. The UOA assessment was that the proposed adaptive re-use of the Dairy and Machine House building would have a "moderate beneficial effect" but that, overall, the loss of the remaining buildings and facades will have a "moderate to large" adverse effect on the heritage values of those buildings. With the implementation of their recommended mitigation measures the magnitude of adverse effects on the heritage values was assessed as "moderate". The application included a list of

¹⁰ Rules 13.8.2.1, 13.8.3.1, 18.12.2.1 and 18.12.4.1

¹¹ These matters are summarised in the Section 42A Report, paragraph [78]

¹² Section 42A Report, paragraph [80]

¹³ Section 42A Report, paragraphs [82] & [83]

consent conditions that reflect many of those measures, including retention of the Dairy and Machine House building).

(b) Council Reporting Officers

39. Council's consulting engineers (Stantec) peer reviewed the technical assessments and costings provided with the application. Stantec supported the significant issues identified in WSP's technical report which make retention of the facades impractical from an engineering and cost perspective. It made the observation that the estimated costs may even have been too conservative. Based on that advice, Ms Bain concurred with the information included in the application on this matter¹⁴.
40. Council's heritage advisor, Dr Andrea Farminer, noted that the facades are a Category 2 Historic Place on the New Zealand Heritage List, which denotes "valued historical and cultural heritage places". She assessed the facades as having "high architectural value" based on the quality of their architectural design and evolution, representativeness, architectural integrity and context/group value¹⁵. Dr Farminer assessed the cultural values of the facades as "high", referring to the long-term relationship between Hudsons/Cadbury on this site with the people of Dunedin, that survived until the closure of all business operations on the site in 2018.
41. Dr Farminer considered the almost total loss of the historic facades has "major adverse effects" on the heritage values of the scheduled Cadbury facades. In her view the retention of the Dairy and Machine House building can only be seen as a very small scale of mitigation in this context.
42. Dr Farminer, in her answer to my question at the hearing, confirmed that her role in this process was to advise the Reporting Officer of the heritage effects of the proposal and that Ms Bain would consider that in making her overall recommendation on the application.
43. Ms Bain concluded that, whilst there is a difference between the applicant's advisers and Dr Farminer as to the degree of significance of the effects on heritage values, what is clear is that those effects are substantially more than minor. She also noted that whilst the application does not seek to remove the Dairy and Machine House building it is protected in any case by its inclusion in Appendix A.1.1 of the 2GP.
44. Whilst accepting Dr Farminer's assessment as to the scale of effects, Ms Bain also accepted the evidence regarding the impracticalities associated with retaining the facades and the effects this would have on the NHD (based on the preliminary master plan). She recommended that a condition be imposed on any consent to require the retention of the Dairy and Machine House building, as well as conditions relating to other mitigation and compensation measures offered by the applicant in response to matters raised in the submission of Heritage NZ¹⁶.

¹⁴ Section 42A Report, paragraph [92]

¹⁵ Summarised in Section 42A Report, paragraph [96]

¹⁶ Section 42A Report, paragraph [109]

(c) Submitters

45. Whilst recognising the heritage value of the scheduled facades, the submissions of Mr Athol Parks and Mr Ted Daniels accepted it would be impractical to incorporate the scheduled facades into any hospital build. They sought assurances that the facades would not be demolished until the government has fully committed to the NHB project proceeding. As noted previously, these submitters subsequently advised the Council that their concerns had been met.
46. Heritage NZ's submission whilst in support of the application also requested some amendments to the proposed conditions to require:
 - 46.1 The draft Demolition Management Plan to be forwarded to it for review and comment, prior to it being forwarded to the Council for approval;
 - 46.2 The Noise and Vibration Management Plan to include measures for vibration received at all surrounding heritage buildings and monitoring for structural and cosmetic damage;
 - 46.3 The salvage of historical or archaeological features and materials to be appropriately stored for re-use or to be made available to the community;
 - 46.4 A copy of the draft Conservation Plan and Cyclical Maintenance Plan for the Dairy and Machine House building to be forwarded to it for review and comment; and
 - 46.5 An advice note advising the applicant of the need to obtain an archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014¹⁷.
47. The applicant considered those requests were appropriate. Accordingly, Mr Gimblett sent a revised set of conditions incorporating those matters to Heritage NZ, on 3 September 2020. Heritage NZ confirmed that the amended conditions addressed the relief it had sought, and that this submitter would withdraw its concerns with respect to the application if the amended conditions were included on the consent¹⁸.
48. Mr Gimblett said that, following receipt of the section 42A report, he had liaised with Ms Bain and together they made some further minor modifications to the conditions. The agreed set of conditions was then sent to Heritage NZ on 20 October 2020, and on the following day the submitter confirmed that the updated conditions were acceptable to it. Mr Gimblett's evidence outlines the specific changes made to those conditions¹⁹.

My Findings:

49. Despite some differences between the applicant's heritage assessment and Dr Farminer's evaluation of the proposal as to the scale of heritage effects, the

¹⁷ As summarised in Mr Gimblett's evidence, section 5

¹⁸ Letter from Heritage NZ to Mr Gimblett, dated 19 October 2020

¹⁹ Mr Gimblett, paragraph 6.3 and Appendix 2.

evidence is clear that the removal of the building facades will have adverse effects on heritage values that are significantly more than minor.

50. However, I make the following observations pertinent to my overall evaluation of the application. All parties have accepted that from the technical assessments there is no reasonable alternative to demolition if the master plan for the NHD is to be implemented on this site. In short there is now no remaining opposition to the proposal on heritage grounds. Through consultation initiated by the applicant, there is now an agreed set of conditions which are provided as partial mitigation for the unavoidable loss of the facades in this instance.

Other Adverse Effects

(a) Noise and Vibration

51. The application includes a demolition noise and vibration assessment by Marshall Day Acoustics. It notes that the construction noise limits in the 2GP will be exceeded at times when demolition works occur at the boundaries. However, NZS 6803:1999²⁰ is also relevant and provides guidance for proposals like this. It acknowledges that construction noise is generally of limited duration and so higher levels of noise can usually be tolerated; and also that in situations like this (with high ambient noise) less stringent noise limits may be appropriate.
52. The Marshall Day report also focused on the need to manage noise and vibration so as not to adversely affect neighbouring properties, including the Otago Daily Times building at 260 Cumberland Street. Accordingly, the application included a commitment to developing a Noise and Vibration Management Plan, as well as a condition requiring demolition noise to comply with the recommended noise limits in NZS 6803. to address those effects.
53. As noted in the section 42A Report, Council's Environmental Health Officer, Ms Lyn Pope, supports the findings and the recommended conditions of the Marshall Day report²¹. Ms Bain's recommendation was that the noise and vibration effects could be appropriately managed by conditions as included in the application (with some minor modifications). She also recommended that the conditions should reference the vibration data gathered during implementation of a resource consent recently issued to the applicant for test piling works across three locations on the Cadbury and Wilsons Blocks²².

(b) Streetscape Amenity

54. The current application is for demolition and is a pre-cursor to the construction of a new hospital. In that context Ms Bain acknowledged any issues of amenity will likely be considered when an application for building or resource consent is made for the new hospital. However, she said a performance standard is breached in this regard with this current application, and should be addressed now.

²⁰ The New Zealand Standard for Acoustics – Construction Noise

²¹ Section 42A Report, paragraph [62]

²² LUC-2020-365

55. Council's Urban Designer, Mr Peter Christos, in his report to Ms Bain noted that a landscape buffer is not generally required when subsequent development of a site is pending. However, he said there might be a risk where a large centrally located site could have negative effects on streetscape if left for any significant time as a cleared site. Accordingly, he recommended a condition to require the developer to install a landscape strip if the site was not developed within a reasonable timeframe.
56. The submission of Mr Daniels had also expressed concern at the potential situation that might arise where the demolition proceeds but the site is left undeveloped for some time.
57. Ms Bain recommended a condition to address that, suggesting a timeframe of three years before landscaping was required. She further advised that following discussions with Mr Gimblett the timeframe had been amended to four years, in recognition that the NHD was a very large construction project and some additional time may be required to reflect the planning and programming required for a project of this scale.

(c) Manawhenua

58. The application includes a cultural narrative precis which Ms Bain considered demonstrates its willingness to engage and consult with Manawhenua at the outset of the resource consenting process. She said this is consistent with the direction anticipated by the 2GP²³.

(d) Traffic management

59. Council's Transport Department advised that any effects on footpaths and traffic and cycle lanes during the demolition works would be addressed in a Traffic Management Plan (to form part of the Demolition Management Plan). A condition was also recommended to require repair of any damage to the roading infrastructure.

(e) Dust and sediment Control

60. A Demolition Management Plan is proposed, to incorporate controls to suppress and minimise dust nuisance, and avoid the tracking of sediment off the site or into the Council reticulated stormwater network.
61. Council's 3 Waters Department recommended conditions requiring the preparation of a Dust and Sediment Control Plan, and to require sealing off of redundant wastewater and stormwater laterals. These conditions were accepted by the applicant.

My Findings:

62. I accept the evidence of Ms Bain, supported by Mr Gimblett, that the other adverse effects of the proposal, as identified above, will be no more than minor.

²³ Section 42A Report, paragraph [113]

Beneficial effects

63. A key point promoted in the application is that the new hospital will deliver significant benefits for the health and wellbeing of the community, and that those benefits will substantially offset the loss of heritage values. Those benefits are also endorsed in the Southern Health Board's submission.
64. Ms Bain said she does not dispute the benefits associated with the NHD, however those benefits do not translate into a direct and quantifiable environmental effect directly associated with the demolition of an existing heritage structure. She noted the NHD is not part of this application and precise details of that project are uncertain at this time. Accordingly, Ms Bain assessed the beneficial effects as 'other matters' under section 104(1)(c).
65. Mr Gimblett acknowledged this point, but he considered it is nevertheless appropriate to factor those benefits into the determination of this application on the basis of "probability of outcome". He considered the NHD had a high probability of proceeding.
66. This point was also addressed in opening legal submissions. Ms Semple outlined that "... *a significant amount of money, time and public political commitment has been expended on this project*"²⁴. She also made the point that the applicant owns a large area of land in the central city which can now only be used for health purposes. Ms Semple said the project is now in Preliminary Design phase, planning for procurement of contractors is underway, and the demolition of buildings on the site has commenced. In her submission the significant positive effects of the NHD cannot be realised without demolition of the facades.

My Findings:

67. Caution is required when assigning weight to the beneficial effects arising from an end-use project, when there is no guarantee that project will proceed.
68. However, I accept the evidence of Mr Gimblett that the NHD has a high probability of outcome. The expected significant beneficial effects are therefore a valid consideration in determining this application, and these outweigh the significant adverse effects on heritage values arising from the application.
69. I also find it is not material whether the beneficial effects are treated as 'actual and potential effects', or as 'other effects' in the determination of this application in terms of both section 104(1)(a) and section 104(1)(c).

Conclusions on Effects

70. Whilst the 'other adverse effects' are no more than minor, the key adverse effect of the proposal is clearly the loss of heritage values caused by the removal of the building facades. My overall finding, from the evaluation of effects outlined above, is that the adverse effects of the proposal will be more than minor.

²⁴ Opening legal submissions, paragraph 31

71. This part of the 'gateway tests' for determination of a non-complying activity is therefore failed.

STATUTORY PLANNING DOCUMENTS

Operative District Plan

72. The section 42A Report provides a comprehensive evaluation of the proposal against the relevant objectives and policies of the Operative District Plan. These primarily relate to effects on the transportation network, and noise effects. Ms Bain's assessment is that the proposal is consistent with those provisions, and Mr Gimblett agreed with that assessment²⁵. I accept the evidence of both planners on this aspect.

2GP

73. The section 42A Report assessed the proposal as consistent with the objectives and policies of the 2GP relating to Temporary Activities; Transportation; and Commercial and Mixed Use Zones; and Streetscape and Amenity.
74. It also assessed the proposal against the more relevant Objective 2.4.1 (Form and Structure of the Environment); Objective 2.4.2 (Heritage); Objective 13.2.1 (Scheduled Heritage Buildings); Objective 13.2.4 (Archaeological Sites); Objective 18.2.1 (Commercial and Mixed Use environments); Objective 18.2.3 (Streetscape Amenity), and their associated policies.
75. Ms Bain's overall conclusion was that the proposal is consistent with these objectives and policies. The key points in her assessment are as follows:
- 75.1 While the Strategic Directions and Objectives 13.2.1 and 13.2.4 strongly indicate that built heritage is to be protected, retained, and actively used, the policies²⁶ to implement these objectives indicate that, in limited circumstances, the loss of heritage is provided for and acceptable;
- 75.2 The circumstances of this application are considered to constitute "limited circumstances", and this policy seeks to "restrict" rather than "avoid" demolition;
- 75.3 With regard to Policy 13.2.1.7, in weighing up the public benefit against the loss of the building and heritage values, it is considered the retention of the facades is not a reasonable option (taking account of the constraints and costs identified in evidence); and
- 75.4 In relation to Objective 18.2.3, while final design details for the NHD are not available yet the preliminary master plan indicates that the Cadbury buildings and facades will be replaced by a development that will enhance streetscape amenity.

²⁵ Mr Gimblett, paragraph 4.9

²⁶ In particular Policy 2.4.2.1(ii)

76. Mr Gimblett agreed with Ms Bain's evidence on those points. He noted that "*... the built heritage provisions do not see absolute protection and it is recognised that demolition may be appropriate in some circumstances, including to allow for a significant public benefit that outweighs the loss of the building, and where there is no reasonable alternative to demolition*²⁷".
77. The evidence of both planners, that the proposal is overall consistent with the relevant policy provisions of the 2GP, is accepted.

Partially Operative Otago Regional Policy Statement 2019 (RPS)

78. Ms Bain and Mr Gimblett were in agreement that as the 2GP provisions pertaining to heritage are beyond appeal they are deemed to give effect to the relevant objectives and policies of the RPS²⁸.
79. I accept the expert planning in that regard.

Conclusion on Statutory Documents

80. For the above reasons I find that the proposal is consistent with the relevant objective and policies of the Operative District Plan, 2GP, and RPS.

Part 2 RMA

81. Ms Bain's evidence was that the 2GP has been developed to give effect to Part 2 of the RMA, and that her overall assessment was that the proposal is consistent with the policy direction in the 2GP. Accordingly, her view was that the proposal is deemed to achieve the overall purpose of the RMA (i.e. the sustainable management of natural and physical resources) and the principles of Part 2²⁹.
82. Mr Gimblett concurred with that³⁰. I accept the evidence of both planners on Part 2, noting further that the provisions of the 2GP are very recent and can reasonably be assumed to give effect to the RMA.

CONCLUSIONS ON STATUTORY CONSIDERATIONS

83. My findings, as set out above, are that the proposal fails one test of section 104D for assessment of a non-complying activity, that being the adverse effects are more than minor.
84. I have also found that the proposal is consistent with and "*not contrary to*" the relevant objective and policies of the Operative District Plan, 2GP, and RPS. Accordingly, it passes the second gateway test of Section 104D, and consideration may therefore be given to the granting of consent.

²⁷ Mr Gimblett, paragraph 4.10, referring to Policy 13.2.1.7 (a)(ii)

²⁸ Section 42A Report, paragraph [138]

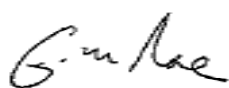
²⁹ Section 42A Report, paragraph [139]

³⁰ Mr Gimblett, paragraph 4.12

85. In terms of Section 104(1)(a) the adverse effects have been found to be significantly more than minor.
86. In terms of Section 104(1)(ab) I have had regard to measures proposed or agreed by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for the significant adverse effects arising from the loss of the heritage facades. I have found that whilst the new hospital development is not part of the application, and the outcome is not guaranteed, it is nevertheless an outcome of high probability and have placed weight on this in the overall assessment.
87. In terms of Section 104(1)(b) I have found the proposal is consistent with the relevant objectives and policies of the Operative District Plan, the 2GP, and the RPS.
88. In my overall balancing of the issues, I acknowledge that there are no parties opposed to the application. In addition, all parties including the planning experts have accepted that from the technical assessments there is no reasonable alternative to demolition if the master plan for the NHD is to be implemented on this site, an event with a high probability of outcome which will bring significant benefits to the community and users of the new hospital. Through consultation initiated by the applicant, there is now an agreed set of conditions provided as partial mitigation for the unavoidable loss of the facades.
89. For all of the above reasons I find that, subject to the conditions imposed, the proposed activity overall represents sustainable management of natural and physical resources and is consistent with Part 2.
90. The conditions attached to the resource consent are the result of discussions between the applicant, the Council reporting officers, and Heritage NZ.
91. I consider they are appropriate and address all relevant matters to ensure the demolition proceeds in a manner that will not adversely affect adjacent buildings and activities and infrastructure; the Dairy and Machine House building will be retained; Heritage NZ is involved in the process of developing various management plans for the site; significant historical and archaeological features and building materials are appropriately stored for re-use or made available to the community; and streetscape amenity is maintained.

DECISION

For the reasons set out above, under sections 104 and 104D of the Resource Management Act 1991 resource consent is **granted** to The Ministry of Health to demolish several of the existing Cadbury factory buildings and protected facades on the sites at 280 and 336 Cumberland Street, Dunedin, with the exception of the former Dairy and Machine House building on the Castle Street frontage, subject to conditions set out below.



Gary Rae
Hearings Commissioner, 12 November 2020

CONDITIONS for LUC-2020-263

1. *The proposed activity must be undertaken in general accordance with the approved plans attached to this consent as Appendix One, and the information provided with the resource consent application received by the Council on 11 June 2020, except where modified by the following conditions.*
2. *The Dairy and Machine House building, which forms part of protected item **B030** in 2GP Appendix A.1.1 (Schedule of Protected Heritage Items and Sites), must be retained.*

Conditions to be met prior to any site works or demolition commencing

3. *Detailed building recording of the Cadbury Factory buildings must be completed by a suitably qualified heritage practitioner. This recording must be undertaken in accordance with the Level II standards set out in Section 5.3 of the Heritage New Zealand – Pouhere Taonga 'Investigation and Recording of Buildings and Standing Structures' (2018) document. The recording must be provided to the Dunedin City Council at rcmonitoring@dcc.govt.nz; and to Heritage New Zealand Pouhere Taonga.*
4. *Each building to be demolished must be surveyed by a suitably qualified heritage practitioner to identify significant historical or archaeological features and historic building materials that are able to be salvaged, for reuse in the hospital development or to be made available to the wider community.*
5. *If vibration from demolition activities might exceed 2.5mm/s PPV at an occupied building, the consent holder must consult with the occupants where such exceedance is anticipated, to:*
 - a) *discuss the nature of the work and the anticipated days and hours when the exceedances are likely to occur;*
 - b) *determine whether the exceedances could be timed or managed to reduce the effects on the receiver; and*
 - c) *provide in writing, no less than three days prior to the vibration-generating works commencing, details of the location of the works, the duration of the works, a phone number for complaints and the name of the site manager*

The consent holder must maintain a record of these discussions and make them available to the Council upon its request.

If the building is not occupied, then the 2.5mm/s PPV vibration limit does not apply. This allows higher vibration work to be scheduled when receivers are not present, subject to compliance with building damage criteria, and with the controls at other nearby occupied buildings.

6. *A Demolition Management Plan (DMP) must be submitted to rcmonitoring@dcc.govt.nz and approved by the resource consent manager. This*

plan must include details of the consultation with Heritage New Zealand – Pouhere Taonga required by condition 7 below; and:

- a) An Asbestos Removal Control Plan outlining how asbestos will be removed from buildings in accordance with the Health & Safety at Work (Asbestos) Regulations, and WorkSafe NZ Approved Code of Practice (ACOP).*
- b) A Waste Management Plan that outlines how the amount of waste sent to landfill will be minimised, and ensures hazardous materials and other waste sent to landfill is disposed at consented facilities with the appropriate waste acceptance criteria.*
- c) A Heritage Protection Plan, prepared by a suitably qualified heritage practitioner outlining how works will be conducted to ensure there are no adverse effects on structural integrity and heritage values of surrounding heritage buildings, and in particular the Dairy and Machine House building, and the Allied Press (Otago Daily Times) Building.*
- d) A Noise and Vibration Management Plan prepared by a suitably qualified professional that addresses the requirements of Annex E of NZS6803:1999 "Acoustics – Construction Noise" and DIN 4150-3:2016 "Vibration in buildings – Part 3: Effects on structures" as a minimum; and outlines how noise and vibration will be minimised and mitigated during demolition activities. The plan must incorporate the vibration data gathered during the test piling activities authorised by resource consent LUC-2020-365; and must include:*
 - i. measures for higher noise generating activities that cannot practicably comply with the noise limits set out in NZS6803: 1999 "Acoustics – Construction Noise"*
 - ii. the procedures and management measures for noise received at the Dunedin Fire Station crew sleeping quarters (to be developed in consultation with Fire and Emergency New Zealand)*
 - iii. measures for the management of noise received in the office areas of the Allied Press Limited building*
 - iv. measures for the management of vibration received at the Allied Press Limited building, including sensitive working areas, and vibration sensitive equipment such as the printing press*
 - v. measures for the management of vibration received at all surrounding scheduled heritage buildings (including the Dairy and Machine House building and the Allied Press Limited building), outlining the area of influence of vibration effects, and including monitoring of the buildings for structural and cosmetic damage.*
 - vi. A procedure for the receipt, management and response to any complaints received about noise or vibration.*
- e) A Site-Specific Safety Plan that outlines how hazards will be managed to ensure the safety of the public and site workers.*

- f) *A Traffic Management Plan that outlines how truck movements, traffic/cycle lane relocation and closures, and pedestrian routes will be managed to ensure the safe and efficient operation of the road network.*
 - g) *A Dust and Sediment Control Plan that outlines the controls to be implemented to suppress and minimise dust nuisance, and avoid the tracking of sediment off the site or into the Council reticulated stormwater network. (Refer to advice note 3 below.)*
7. *Prior to the DMP required by condition 6 above being submitted to the Council for approval, it must be provided to Heritage New Zealand – Pouhere Taonga, who must be given no less than 15 working days to provide comments on it.*

Conditions to be met at commencement of, or during, demolition

- 8. *Significant historical or archaeological features and historic building materials identified for salvage in accordance with condition 4 above, must be carefully removed and securely stored in a manner that will not cause damage to the materials, for potential reuse in the hospital development and/or made available to the wider community. Details of the storage location(s) must be provided to rcmonitoring@dcc.govt.nz.*
- 9. *All site works and demolition must be undertaken in accordance with the approved Demolition Management Plan required by condition 6 above.*
- 10. *All redundant wastewater and stormwater laterals within the sites must be sealed off at the DCC pipes in the road way.*
- 11. *The undertaking of demolition works must be limited to between 7.30am and 6.00pm, Monday to Saturday (inclusive). No demolition work may occur outside of these times, on Sundays, or public holidays observed on Monday to Saturday, except where emergency works are required to protect public health and safety, or to accommodate the requests of specific stakeholders (such as undertaking high-impact works while an adjacent property is unoccupied).*
- 12. *Noise from demolition works must comply where practicable with the recommended residential and commercial noise limits for long term construction outlined in Tables 1 and 2 of NZS6803: 1999 'Acoustics - Construction Noise'. Where compliance is not practicable, works must be undertaken in accordance with the measures for higher noise generating activities that are identified in the Noise and Vibration Management Plan required by condition 6(d).*

Note: Noise from demolition works associated with this activity must be assessed cumulatively with all demolition and/or construction activities associated with the New Dunedin Hospital project.

- 13. *The guideline vibration limits set out in DIN 4150-3:2016 must not be exceeded, except where the vibration data required to inform the Noise and Vibration Management Plan required by condition 6(d) has demonstrated that the receiving building(s) are capable of withstanding higher levels of vibration; and indicated what the new vibration limit is.*

Conditions to be met at the conclusion of demolition

14. Any public road, footpath, or other public roading asset that has been affected/damaged as a result of the demolition works must be reinstated to the satisfaction of the relevant road controlling authority (i.e. the NZ Transport Agency and/or the DCC) at the expense of the consent holder.
15. The following plans must be prepared and submitted to the Dunedin City Council at rcmonitoring@dcc.govt.nz and to Heritage New Zealand Pouhere Taonga within six months of the commencement of demolition of the Cadbury Factory buildings, and prior to any work being undertaken to the Dairy and Machine House Building:
 - a) a Conservation Plan prepared by a suitably qualified heritage practitioner, which provides guidance for the adaption, repair, restoration, execution of works, and the maintenance of the Dairy and Machine House building, in a way that ensures interventions to heritage fabric of the building are sympathetic and kept to a minimum; and
 - b) a Cyclical Maintenance Plan prepared by a suitably qualified heritage practitioner, which sets out routine maintenance actions to be undertaken to ensure the preservation of the heritage fabric of the Dairy and Machine House building.
16. Prior to the plans required by condition 15 above being submitted to the Council for approval, they must be provided to Heritage New Zealand – Pouhere Taonga, who must be given no less than 15 working days to provide comments on them.
17. With regard to the significant historical or archaeological features and historic building materials required to be stored by condition 8 above, where re-use of those materials as part of the hospital redevelopment is not practicable or reasonable, or would compromise clinical and functional outcomes, the features and materials must be securely stored in a manner that will not cause damage to the materials, and made available to the wider community for a minimum of two years following completion of the hospital development on the sites. Details of the storage location(s) must be provided to rcmonitoring@dcc.govt.nz.
18. If a building consent application for development of the site has not been lodged within four years of demolition being completed, then a landscaping plan must be submitted to rcmonitoring@dcc.govt.nz and approved by the resource consent manager. The plan must:
 - a) detail how the site is to be remediated to provide a landscaping area with a minimum width of 1.5m along the full length of any road boundary that does not have a building within 1.5m of that boundary.
 - b) meet the performance standards for boundary treatments and other landscaping set out in Rule 18.6.1 of the Proposed 2GP.

Upon approval, the landscaping plan must be implemented.

Advice Notes

Heritage

1. *The Heritage New Zealand Pouhere Taonga Act 2014 defines an 'archaeological site' as any place occupied prior to 1900 that may provide archaeological information on the history of New Zealand. This includes building and structures constructed prior to 1900. An Archaeological Authority will be required for any works that may modify or destroy an archaeological site, including demolition of a building built prior to 1900. It is an offence to undertake activities that may modify or destroy an archaeological site unless authorised by an Archaeological Authority issued under the Heritage New Zealand Pouhere Taonga Act 2014. A building consent or resource consent does not constitute such authorisation.*

Noise and Vibration Management

2. *It is recommended that the Noise and Vibration Management Plan required as part of consent condition 6(d) is provided to Allied Press Limited for their information.*

Management of Dust and Sediment

3. *It is recommended that prior to submitting the Dust and Sediment Control Plan required as part of consent condition 6(g), the plan is provided to the Council's 3 Waters Department for review; and any feedback from them incorporated into the plan before it is submitted to the DCC for approval. The plan will be required to detail all practicable measures and devices to prevent sediment-laden stormwater run-off from the site into the Council stormwater network and neighbouring properties during any stages of site disturbance associated with the proposed demolition. It should include details of:*

- *Dust Mitigation measures*
- *Objectives of the plan*
- *Roles and Responsibilities*
- *Training*
- *Environment Auditing*
- *Dealing with wind generated dust*
- *Monitoring*
- *Complaints record*
- *Plans for inclement weather*

Transportation

4. *It is recommended that prior to submitting the Traffic Management Plan required as part of consent condition 6(f), the plan is provided to the NZ Transport Agency for review; and any feedback from them incorporated into the plan before it is submitted to the DCC for approval.*
5. *In the event of future development on the site, the DCC Transport Department will assess any associated transportation effects at the time of application for resource consent/building consent.*

6. *Demolition/deconstruction traffic will need to be managed in such a way so as to retain appropriate provision/level of service for all road users, to ensure that the safety and efficiency of the transport network is maintained to an appropriate standard, throughout the demolition period. This includes the bus service, as well as vehicle, pedestrian and cycle traffic.*
7. *Separate approval for any temporary vehicle access locations might also be required. These will need to comply with the vehicle access performance standards detailed within Rule 6.6.3 of the 2GP.*

General

8. *In addition to the conditions of a resource consent, the Resource Management Act 1991 establishes through Sections 16 and 17 a duty for all persons to avoid unreasonable noise, and to avoid, remedy or mitigate any adverse effect created from an activity they undertake.*
9. *Resource consents are not personal property. The ability to exercise this consent is not restricted to the party who applied and/or paid for the consent application.*
10. *It is the responsibility of any party exercising this consent to comply with any conditions imposed on the resource consent prior to, during and after (as applicable) exercising the resource consent. Failure to comply with the conditions may result in prosecution, the penalties for which are outlined in Section 339 of the Resource Management Act 1991.*
11. *The lapse period is 5 years from the date of this decision (12 November 2025). This may be extended on application to the Council pursuant to Section 125 of the Act.*

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