

WESTLAND DISTRICT COUNCIL

Report and Decision of the Westland District Council through a Hearing Commissioner

**Hearing held in the Council Chambers, Hokitika
on 6 April 2016**

The Westland District Council appointed me as an independent Hearing Commissioner to hear and make a decision on the application lodged by **Renton Partnership** for land use consent to demolish the heritage listed Renton Building located at 21 Hamilton Street, Hokitika.

The application, made in accordance with the Resource Management Act 1991, is referenced as RC150083.

- PRESENT:** **Hearing Commissioner**
Mr G Rae (Independent Commissioner)
- APPLICANT:** Mr M Bell (Solicitor)
Mr G King (Managing Director of Renton Hardware)
Mr J Mackenzie (Consultant engineer)
Mr K O'Donnell (Real estate agent)
Mr M Kennedy (Consultant planner)
- CONSENT AUTHORITY:** **Westland District Council**
Ms R Beaumont (District Planner)
Mr S Percy (Building Control Manager)
- SUBMITTERS:** Mr M Walker (architect and interested party)
Mr V Bradley (interested party)
Mr R Daniel (Heritage Hokitika Incorporated)

Introduction

1. This application is to demolish the Renton Building, located on the corner of Hamilton and Tancred Streets, in the southern part of the Hokitika town centre.
2. The building is a listed heritage item in the Westland District Plan, and it is classified as a Category II building by Heritage New Zealand.
3. I have been appointed by the Westland District Council as an independent Hearings Commissioner to hear and decide the application and submissions.

The Site and Building

4. The main features of the Rentons Building are:
 - (a) constructed in 1907/1908.
 - (b) two level building built right to the boundary of Hamilton and Tancred Streets.
 - (c) rectangular shape with shop windows and a verandah along Hamilton Street.
 - (d) windows on the second floor are distinctive with round sash windows and a parapet with recessed detailing.
 - (e) constructed of unreinforced masonry supporting timber floors and a timber trussed corrugated steel roof.
5. The other buildings on the site are a building supply store, Jade products shop, and a chainsaw sales and repair outlet.

Application

6. Renton Partnership made application on 7 September 2015 to demolish the building.
7. The basis for the application is that the building has been identified as earthquake prone building and is well below the minimum 33% threshold required under the Building Act 1991. The earthquake strengthening will cost over \$540,000 to bring it to the minimum standard required to maintain a safe building, and further costs would be required to bring it to standard where it could be occupied.
8. The application states that an offer has been made for the re-development of the site for a retail development, conditional upon the demolition of the Renton building.

Further Information

9. The applicant responded to a request for further information on 28 September 2015. This clarified the extent of investigations that had been carried out on the building.

10. A report had been commissioned from Elmac Consulting, and this included costings to bring the building to the required standard. The company directors had considered options to retain the building, but in light of the costs they had considered it would not be viable for any tenant to cover the rental requirements.

Notification and Submissions

11. The application was publicly notified on 15 October 2015, and the period for submissions closed on 6 November 2015. Twenty nine submissions were received, twenty four in support, one neutral and four in opposition to all or part of application.
12. The submissions are summarised in the table on pages 6 to 12 of the Section 42A report ("the Staff Report").

The Hearing

13. A hearing was held at the Council chambers on 6 April 2016. A list of attendees is provided at the front of this Decision. The evidence and submissions presented at the hearing are summarised at various parts of this decision, particularly in the discussion on Principal Issues 1 and 2, and in other places where the evidence relates to the specific matters being evaluated.
14. No procedural matters were raised at the hearing. The hearing was closed at 3pm on 6 April 2016.
15. I carried out a preliminary site visit on 5 April 2016. A further site visit was made during an interval in the hearing on 6 April 2016.

The Planning Framework

16. The site is located in the Commercial Core zone of the operative Westland District Plan.
17. The Renton building is listed within Appendix A Schedule of Historic Places and Trees as 'Site 10', a Category II registered building.
18. Rule 5.2.2.3 for the Commercial Core zone sets out that any commercial activity that complies with the standards for permitted activities for the zone within Table 5.1 and the general rules within Part 8, is a permitted activity. Section 5.1 (j) sets out that in order to be a permitted activity, there must be "*No modification to Appendix A items/ sites*". Standards for discretionary activities are set out in Table 5.2. Section 5.2 (j) lists "*Modification to Appendix A items/sites*".
19. Modification is specifically defined as "*physical works to a building or site which are outside of those normally expected by minor works and exclude demolition and removal.*" Minor works are also a defined term: "*minor repair of buildings where minor repair involves the repair of materials by patching, piecing in, splicing and consolidating existing materials and including minor replacement of minor components such as individual bricks, cut stone, tiles and slate where these have been damaged beyond reasonable repair or*

are missing. The replacement should be of the original it replaces and the number of components replaced should be substantially less than the existing.”

20. The proposed demolition of the building does not comply with either of the permitted or discretionary standards.
21. Rule 5.2.2.1 for all zones within the Hokitika Policy Unit states that: *“Any activity which does not fall within the permitted, controlled or discretionary categories is deemed to be a non-complying activity.”* The activity is therefore classified as a non-complying activity. I note for the record that Ms Beaumont and Mr Kennedy were unanimous in their conclusion that the application is for a non-complying activity, and therefore needs to be assessed under Section 104 and Section 104D of the Resource Management Act 1991.
22. The District Plan has no assessment matters specifically for non-complying activities. However, as noted in the Staff Report there are some general assessment matters for discretionary activities, and these contain specific matters relating to heritage buildings, including their modification and demolition. Ms Beaumont’s advice is these can be used as a guide (refer to ‘District Plan Assessment Matters’ in a later part of this decision).

Issues

23. Section 113 of the RMA directs me to state the principal issues that were in contention, together with my main findings of fact in relation to those issues. I consider there were two main issues of contention, and these are outlined and discussed below.

Principal Issues in Contention

Issue 1: The condition of the building and the cost of strengthening works

24. As noted earlier in this decision, the application to demolish the Rentons building is made on the basis that it is an earthquake-prone building and requires costly strengthening works to bring it to the required standard. The evidence on this issue is discussed below.
25. The applicant’s engineer, Mr Mackenzie, is a very experienced engineer who has been involved in the seismic assessments and earthquake strengthening of a large number of buildings in Canterbury and on the West Coast, including the Regent Theatre in Hokitika.
26. Mr Mackenzie’s statement highlights the deficiencies in the construction of the building, as set out in the Detailed Engineering Evaluation Report (DEE) he prepared for this building in November 2015. These deficiencies include the construction in unreinforced brick masonry; there are no substantial connections between the first floor and the external load bearing walls; the lime mortar has deteriorated so the bricks are not properly held in place; and the ground conditions are such that there has been settling of the building. He also noted that Hokitika is situated very close to the Alpine Fault, and it has one of the highest earthquake hazard design factors in New Zealand. Overall he assessed the seismic rating of the building at only 10% of the National Building Standard (‘NBS’).

27. For those reasons, Mr Mackenzie's evidence is that the Rentons building is relatively high risk. He also notes that there has been little in the way of seismic strengthening undertaken on the building in past years; and it is currently unoccupied and is deteriorating further.
28. He provided costings which he said had been prepared in association with Harrisons, a Quantity Surveying firm in Christchurch. These showed the estimated costs to bring the building to 33% standard (where it would be safe in an unoccupied state) were in the order of \$545,000, and to bring it to 67% standard (i.e. where it could potentially be occupied) would be in the order of \$1 Million.
29. Mr Mackenzie concluded that:
- "In my view the Rentons building does qualify as 'dangerous' under the Building Act, and as it currently stands it could potentially cause injury or death to persons in or near it and potentially result in damage to neighbouring property due to ongoing deterioration"*¹; and
- "Furthermore under the Building Act it is an earthquake "prone" building (under 33% NBS). The building will have its ultimate capacity exceeded in a moderate to severe earthquake and will likely collapse causing injury or death to persons or damage to other property"*.²
30. I asked Mr Percy (Council's Building Control Manager) whether he could comment on the state of the building. He said that he had been involved extensively in assessing buildings in Christchurch post-earthquake and that in general a building with a rating of less than 24% would be deemed to have an urgent problem in terms of safety, and notices would be issued on the owners under section 124 of the Building Act. He said formal decision to issue such a notice with respect to the Rentons building would first await the outcome of this hearing. However, he said in his experience, and having viewed the DEE report prepared for this building, he would expect such a notice would need to be issued. Such a notice would include restricting entry to the building and bringing it a standard where the building was considered safe.
31. I also asked Mr Percy to comment on the estimated costs that had been presented by Mr Mackenzie. He said that the costs to bring the building to occupation standard appeared conservative as the true costs of upgrading to that standard would also include costs for providing appropriate means of fire escape, building consent fees, and fit out.
32. Mr Walker presented evidence as a submitter, calling on his considerable expertise as an architect with experience in renovation, seismic work and upgrading of existing buildings including heritage buildings. Mr Walker said he is currently engaged in a commercial re-purposing project in Hokitika, for the conversion of the Old Government Buildings (i.e. Seddon House) to a boutique hotel (on a site close to the Rentons building).
33. Mr Walker's evidence was that: *"The Rentons building is not dangerous"*, and *"is acceptable for occupation as it is"*.³ He did not provide any detailed evidence to support those statements, and focused more on the alternative uses that he considered the building could potentially be put to.

¹ J. Mackenzie, para 45

² J Mackenzie, para 46

³ M Walker, response to J Mackenzie, page 1

34. Heritage New Zealand's submission includes a concern that no engineering assessment had been included to demonstrate that the building is earthquake prone, and that a detailed seismic assessment under the NZ Society of Earthquake Engineer Guidelines should be undertaken. Heritage New Zealand also suggested that proper costs assessed by a quantity surveyor should have been made available.

Discussion

35. In considering all of the evidence on this issue, and the points made in submissions, I find that the expert evidence of the applicant's engineer, Mr Mackenzie, is quite conclusive and can be relied upon. Mr Walker's credentials in having been involved with many projects on heritage buildings is not questioned, however the facts of this case are that the only in-depth and qualified assessment of the condition of the Rentons building, and the options for strengthening works, has been carried out by Mr Mackenzie. His assessment has been accepted by Council staff as appropriate and sufficient for the application to be notified. Council's Building Control Manager (Mr Percy) advised he had studied the DEE report, and on the basis of that report and his own experiences in working with earthquake prone buildings post the Christchurch earthquakes, this would most likely lead to the Council issuing a notice under the Council's *'Dangerous Earthquake-Prone, and Unsanitary Buildings Policy'*.
36. I also find that the evidence on costs for strengthening the building can be relied upon as a reasonable estimation of the true costs. Mr Mackenzie said his detailed costings had been prepared in conjunction with a quantity surveyor. Mr Percy said he considered those costs to be reasonable, and possibly even conservative.

Finding on Issue 1

37. I find that the Rentons building is in very poor condition, and it is most likely it will be deemed a 'dangerous building' under the Building Act 1991, and therefore will require urgent repair or even demolition. The options to strengthen it sufficient for it to be re-occupied are limited (due to the construction and materials of the building, the site's ground conditions, and Hokitika's seismic conditions) and the cost consequences for the building owners for such work are considerable.

Issue 2: Alternative uses of the building

38. The applicant's case, expressed in opening submissions, is that there are no practical alternative uses of the building. The case is the applicant has made best endeavours to sell the land and buildings, but the problem has been that the costs of strengthening the building to standard required for occupation would be more than an owner or tenant could sustain in the Hokitika market. The evidence on this issue is discussed below.
39. Mr King, Managing Director of Renton Hardware, gave evidence on the reasons for Rentons closing in February 2015. These included competition from companies supplying house packages from Canterbury; competition from larger building supply and home improvement stores on the West Coast; as well as the results of the DEE report into the costs to strengthen the Rentons building. He provided a calculation of the rental costs that

would be required to reflect the investment and costs to upgrade the building, and including fit out and other firewall and easement issues. He concluded that: *"the overall costs in getting the building tenantable would be approximately \$1.5 million. At a 9% return rental this would need to be \$135,000 plus outgoings. We will simply not be able to find a tenant to pay that sort of rental in Hokitika in the current market"*.⁴

40. Mr King gave evidence on the process undertaken to sell the property. It was listed for tender with Harcourt's at the start of 2015. Mr O'Donnell, from Harcourts, gave evidence on the extent of advertising that took place, and it is fair to say it was considerable. However, no responses were received by the close of tenders on 20 March 2015. The property remained on the market and the only offer received was from Griffen and Smith in September 2015, for extension of their Hokitika Mitre 10 business onto the Rentons site. This resulted in a sale and purchase agreement, conditional upon the prior demolition of the Rentons building. The property has remained on the market but no further offers to purchase have been received.
41. Mr King outlined some other options that had been considered for the building. Subdivision was discounted due to technical issues relating to easements for sewerage; a firewall would be required to be added to safeguard the building next door; there are two existing openings from the building which would then be facing onto adjoining land and would have Building Act implications; and a subdivision would likely restrict the intended use of the site by Griffen and Smith. Mr Kennedy, a qualified and very experienced planner for the applicant, said he did not support subdivision for those reasons and it would potentially place additional land and building owners at risk from the building, and so does not resolve the risk issue.
42. Mr King discussed possible commercial uses of the building, emphasising there is no demand in Hokitika for commercial uses. He said there is a surplus of sites and buildings which are not being utilised, and pointed to insurance difficulties and buyer reluctance with respect to the Rentons building. Mr O'Donnell, the real estate agent responsible for marketing the property, said an insurance company had advised him unless the building was upgraded to the 67% NBS standard it could not be insured for commercial use. Mr O'Donnell outlined the approaches he had made to a number of hotel companies and investors. He had also approached building supply and home improvement firms, as well as retail outlet operators and supermarkets. His evidence was that they all responded to the same effect - i.e. Hokitika as a destination is too small in population to warrant the investment risk. He said, to be viable, the building would need to be multi-tenanted and in his experience of the Hokitika market, which he said is *"extremely slow at the moment"*⁵, and as *"the commercial buildings available have been empty for some considerable time which gives choice to potential purchasers"*⁶, this would be very unlikely indeed.
43. For the submitters, Mr Walker took issue with the claims by the applicant's witnesses that sufficient efforts had been made to seek alternative uses for the building. He noted that the building was put up for sale in March 2015 and the application for demolition was made only 6 months later in September 2015. He took issue with the economics that had been used in evidence and in particular he surmised that Rentons had ceased trading not

⁴ Mr King, para 26

⁵ Mr O'Donnell, para 26

⁶ Mr O'Donnell, para 26

because of the building but because of the effects of competition and the general economy of the town. He considered that the rental of 9% used in Mr King's calculation is unrealistically high, and a 7% rental with no seismic upgrade or upgrade to 34% of NBS would become very affordable. He also took issue with the claims the building could not be readily insured.

44. Mr Bradley, a submitter, gave a presentation which included a discussion on a range of potential future uses for the Rentons building, focused mainly on heritage tourism. Mr Bradley emphasised the importance of tourism to the West Coast economy, and he outlined a number of examples of where heritage buildings had been re-purposed for tourism activities. His point was that a short term decision should not be taken now to demolish the Rentons building, particularly when there was the prospect that the building might become attractive to a yet unknown tourist venture. Mr Bradley pointed to 'The Luminaries' venture, which would highlight the heritage of Hokitika's town centre and could possibly lead to increased interest in re-use of the Rentons building which is a key part of the town's heritage. He also spoke of an initiative, still in its very early stages, to develop a Hokitika Town Plan which would highlight the heritage buildings in the town.
45. Mr Bradley also outlined an on-line campaign he had initiated to save the Rentons building, and this had raised funds but not sufficient to purchase the building. He noted that the conditions of the sale and purchase agreement that the Rentons have with Griffen and Smith would appear to preclude consideration of another offer to purchase the building.

Discussion

46. In considering all of the evidence and submissions on this issue I accept that, overall, reasonable efforts have been taken to sell the property. The property has been on the market for about 14 months, and Mr O'Donnell's evidence was that it has been vigorously marketed leading up to the sale and purchase agreement in September 2015, and has remained for sale since that time. I accept the evidence on the local economy and the market factors, as well as the significant costs of strengthening and refurbishment that are significant factors which restrict the ability to re-purpose this building.
47. I agree with Mr Walker's point regarding market returns and that the model used to estimate rental returns seems unrealistically high. However, I have found in Issue 1 that the estimated costs to bring the building to standard for occupation (at over \$1 Million) are significant and even applying a lower rate of return would still make the building an unlikely proposition for re-purposing at an economic return, based on that evidence.
48. Mr Bradley gave an impressive presentation on the heritage of Hokitika, and he discussed potential future uses of the building for heritage tourism ventures. He said that given the recent significant increases in tourism, and other initiatives including the filming and tourist spin offs from 'The Luminaries', it seems highly possible that a demand for re-use of heritage buildings in Hokitika could in time eventuate. However, I concur with the point made by Mr Bell in closing submissions, that the applicant is entitled to have the application considered now on its merits, as things stand. It would not be appropriate to 'park' a decision on this application, pending the outcome of a future Town Plan, or to

await any future expressions of interest that might arise from the increased exposure of Hokitika to the tourist industry.

49. I am also mindful that, on the evidence, the Rentons building is likely to be classified as a dangerous building and it is untenable to leave it in its current state to await any new developments such as this. The costs to upgrade the building to safe standard (i.e. \$545,000) and the ongoing costs to retain it (the holding costs were estimated by Mr King to be a further \$25,000 per annum) are prohibitive in this regard.

Finding on Issue 2

50. I find that, on the evidence, reasonable endeavours have been taken to find alternative uses for the building, and the application needs to be determined on the evidence as it now stands.

Statutory Assessment Framework

51. Section 104(1) of the Act requires that when considering an application for resource consent the consent authority must *"have regard to"* any actual and potential effects on the environment of the proposal, and the relevant provisions of various statutory documents. In this case the central relevant statutory document is the operative Westland District Plan (the 'District Plan').
52. Consideration under section 104 is *"subject to Part 2"* of the Act, which sets out the purpose and principles of the Act.
53. Section 104B of the Act provides that applications may be granted or refused, and if granted conditions may be imposed under section 108.
54. Section 104D provides that applications with non-complying status cannot be granted unless they meet one or both of the gateway tests set out in that section:
- (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 the relevant plan.*

Effects on the Environment

Safety Effects

55. The current condition of the Renton building is addressed in the discussion on Principal Issue 1.
56. The evidence of Mr Mackenzie, in the Staff Report, and also by Mr Kennedy, that there is a potential safety effect to any occupants of the building if left in its current state, and the application to demolish the building will remove that risk. Mr Kennedy's statement said that there is also a risk to adjoining land and buildings, including public land, from the building in its current state, and that these effects are of high potential impact. As noted in Principal Issue 1, Council's Building Control Manager said he expected a determination

would be made find the building is a 'dangerous building', necessitating a notice to be issued.

57. I accept the evidence that a positive effect of the application to demolish the building will be to remove the safety risk that is currently posed. I note that the risk would also be removed, or at least managed, by upgrading the building to the appropriate standard under the Building Act.

Visual and Amenity Effects

58. The Staff Report notes that the Rentons building is a landmark within Hokitika, and it is one of a group of other key heritage buildings which include the Carnegie building (on Tancred Street), and Seddon House (on Sewell Street). The report also states that the retention of the building in its current vacant state: *"can lead to gradual 'demolition by neglect' and further amenity loss"*⁷.
59. Mr Kennedy also acknowledges the adverse effect from the loss of the building. However, his evidence is that the re-use of the site for a commercial use (such as is intended with the Mitre 10 extension) would at least ensure the land is utilised, as anticipated by its commercial zoning, and that this would have a positive effect in terms of amenity (rather than leaving an unused, unkempt and potentially unsafe building on the site).
60. Mr Bradley presented a series of photographs and simulations showing the visual effect of an empty Renton's site in the Hokitika context. His opinion was that the loss of this important landmark building would have an adverse effect in terms of the amenity of the central part of the township. Mr Bradley also opined that the site would be used as a car park and showed photographs of the visual effects of a car park on this site. I consider that an evaluation of potential end uses of the site is not relevant, particularly when any number of activities could establish on a site left vacant by the demolition of the building (including an extension of the Mitre 10 hardware business). Provided such activities are permitted, or provided for, in terms of the Commercial Core Zone, then those outcomes are anticipated by the District Plan and cannot therefore be considered as an adverse visual effect.
61. I accept that the removal of the Renton building will have an adverse effect on visual amenity. However having considered the evidence of Mr Kennedy and Ms Beaumont on the adverse effects that will arise if the building is kept in an unused, unkempt and potentially dangerous state, overall, I consider that the adverse visual and amenity effects (as distinct from the heritage effects) are no more than minor.

Heritage Effects

62. The Rentons building is classified as List Number 5050 on the New Zealand Heritage Pouhere Taonga list as a 'Category II' historic place. This confirms it is a building of historic or cultural significance or value. Ms Beaumont's opinion, as author of the Staff Report, is that: *"The loss of such a building is therefore a significant adverse effect"*.⁸ However, the Staff Report then refers to the List Entry Record, and concludes from that

⁷ Section 42A Report, para 9.3

⁸ Section 42A Report, para 8.6

that the importance of the building is to the Renton family and their long standing association with the formation of Hokitika. Ms Beaumont's evidence is that the intended use of the site as part of the adjacent Mitre 10 hardware operation will provide an opportunity to continue to recognise the history of the site as a hardware business, i.e. *"to showcase the building's past in a new associated business"*.⁹

63. Mr Kennedy said that Heritage New Zealand, through its general policies, make a clear distinction between Category I and II buildings. Category I sites are those sites which have *"special or outstanding"* significance or value. He noted that the preservation fund, administered by Heritage New Zealand, is only available for Category I sites, and not for buildings such as the Rentons building (which is Category II).
64. Mr Kennedy referred to the List Entry, which states: *"Renton Hardware Building, constructed in 1907-8 on a prominent corner site in Hokitika's central business district, has historical significance for its long record as a family business of importers and merchants that goes back to early days in the town's establishment. It tells the story of the importance of such stores supplying hardware products to communities..."* His view was that this List Entry discusses the building and certain features *"but does not highlight these as being special or outstanding architectural features as a specific reason for the listing"*.¹⁰ Mr Kennedy, in a similar way to Ms Beaumont, places some significance on the potential re-use of the site for a Mitre 10 business, as this will maintain the type of use that the site has been historically used for.
65. Mr Walker's submission noted the Mitre 10 activity is not part of the application, and in any event it is subject to a sale and purchase agreement. His view was that the heritage significance of this building goes beyond just the historical use of the site as a hardware business. This was a point also made by Mr Bradley - that the historical use and the building itself are intertwined. Mr Bradley also emphasised the historical landmark quality of the building itself, which is something that he said cannot be replicated by a re-use of the site as car parking associated with a modern hardware store. I tend to agree, and note the List entry makes specific reference to the building's location *"on a prominent corner site in Hokitika's central business district"*, this suggesting the building also has significance as a landmark.
66. Whilst there was considerable discussion regarding the reasons why the building has been listed as a heritage building, the 'bottom line' for me is that the application is to completely remove a listed heritage building from the site, and that would have an adverse effect that is more than minor, in a heritage context. This is well summarised in Mr Kennedy's statement: *"The building and heritage amenity, including its proximity to the Carnegie building on the opposite side of Tancred Street will be lost, and it could not be considered that this effect from a heritage perspective is minor"*.¹¹

⁹ Section 42A report, para 8.6

¹⁰ Mr Kennedy, para 13.8

¹¹ Mr Kennedy, para 13.15

Economic Effects

67. The current condition of the Rentons building, and the costs associated with required strengthening works, is addressed under Principal Issue 1 in this decision. The evidence on costs provided by the applicant was accepted as realistic. These included costs \$545,000 to upgrade the building to 33% NBS standard, and more than \$1 Million to bring it to 67% NBS standard. The evidence was that, with the rental returns expected in the Hokitika economy, it would simply not be viable to repair the building, fit it out, and tenant the building. The evidence was also that the building has attracted only one offer to purchase in over one year of being on the market and that offer is conditional on the building being demolished, and that there are holding costs in the order of \$25,000 per annum in retaining the building (even without any required upgrading).
68. From that evidence I am satisfied there would be significant adverse economic effects for the owners in retaining the building. I also note the submission of Heritage Hokitika Incorporated on this point. The Chairperson, Mr Daniel, stated that the submitter would like to see the building retained, but that: *"We do not consider it fair and equitable on the Renton family to be required to accept the financial burden of retaining the building for heritage reasons, without a real prospect of a commercial purchaser within the foreseeable future"*.¹²
69. The Staff Report noted there would also be positive economic effects for the economy of Hokitika and the West Coast region if the building was able to be retained and re-purposed, especially with the increasing trend towards marketing Westland as a destination for multi-day heritage tourism. This is accepted, but as for the discussion in Principal Issue 2, my finding was that reasonable endeavours have been taken to sell the building and to find alternative uses, and other than the Griffen and Smith proposal, no such proposals have been identified and no funds have been made available to retain the building from the Westland District Council, Heritage New Zealand, or from any other source. I accept the point made by Mr Bell in legal submissions that it is not appropriate to require the building to be retained, and strengthened to avoid the safety risk, at considerable cost and hardship to the owners to await future viable uses that may or may not eventuate.
70. I accept that the application will have positive economic effects. There is strong evidence that demolition will enable the site to be re-used in an economically viable manner (i.e. through use as a hardware store extension), and the costs of upgrading the building to the appropriate standard would be avoided. There was no evidence on any adverse economic effects associated from removing the building for me to make a determination on.

Conclusion on Effects

71. My findings are that the application will have positive effects in terms of safety, and economic effects. I also find that the adverse visual effects will be minor. However, the adverse effects on heritage will, on the evidence, be more than minor.

¹² Mr Daniel, para 4

Objectives and Policies of the District Plan

72. Parts 3 and 4 of the Westland District Plan contain the key resource management issues that are relevant to this application. The most relevant objectives and policies are addressed below.

Objective 3.2.1 Sustainable Communities

To establish levels of environmental quality for Westland which enables people and communities to provide for their social, economic and cultural well-being, while meeting the principles of sustainable management of physical resources.

73. This objective largely reflects the purpose of the Resource Management Act for sustainable management of resources, and the balancing of priorities when assessing any proposal. It is therefore also relevant for the consideration of the application in terms of Section 5, Part 2 of the Act.
74. The discussion in Principal Issues 1 and 2 is directly relevant to consideration of this objective. I have accepted the evidence that the Rentons building is in poor and potentially dangerous condition, requires substantial strengthening works, and reasonable attempts to find alternative uses have not been successful - due in large part to the state of the building and current market conditions. The sale and purchase agreement, while not part of the application, reflects there is a viable use for this site. This is a strong indication that removal of the building will enable this site to be re-used in an economically viable manner, and this will assist to rejuvenate and add vitality to an area that currently has several vacant sites and buildings.
75. Mr Walker gave evidence on his work in refurbishing Seddon House for a hotel development, and also that the site adjacent to Rentons is intended to be developed for another hotel venture. These are positive signs for the future of the Hokitika central business district, and in time may lead to a demand for new ventures. However, the evidence available at this time is that there is a viable use for the Rentons site, but only if the heritage building is removed.
76. The removal of the Rentons building would clearly be a loss in terms of the cultural well-being of the community (heritage values are further discussed below). However, when also considering the social and economic aspects, on balance I consider the proposal is overall consistent with this objective for sustainable management of resources. I accept the expert planning evidence of both Ms Beaumont and Mr Kennedy in that regard.
77. Other relevant objectives and policies are addressed below.

Objectives 3.9.1 and 3.9.2 the Built Resource

3.9.1 To identify, protect and enhance the distinctive Westland character of the District's settlements.

3.9.2 To provide for the “intermingling” of land use activities within Westland’s settlements and towns, where this does not detrimentally impact on the amenities, health and safety of residents and workers.

Policy 4.2 Settlement Character

- A. A range of activities should be able to locate in the urban areas provided that any adverse effects on the environment or neighbouring land uses are avoided, remedied or mitigated.
- B. The status and importance of historic and cultural settlements and parts of settlements should not be adversely affected by development.

Policy 4.4 Amenity

- A. The effects of activities which can have significant adverse effects on amenities and the well-being of residents shall generally be avoided, remedied or mitigated.

Policy 4.5 Heritage

- A. Buildings, places and items of significant historic, cultural or scientific interest and their relationship with places in Westland District should be preserved and maintained.
- B. The re-use of historic buildings and incorporation of heritage buildings features and/or sites into future developments which are planned on the same site or location shall be encouraged.
- C. Activities within historic buildings should generally be in accordance with the zoning requirements, but in recognition of the building’s value, where a different activity will help preserve the building, special consideration should be given. Such applications are likely to be more favourably considered than would otherwise be the case.

78. These policies have as their main focus the provision of a wide range of activities in the Commercial Core Zone, whilst at the same time protecting and enhancing the character and heritage features of the settlement. Mr Kennedy’s evidence is that these should be evaluated in an holistic fashion, i.e. to provide an overall evaluation of whether the proposed demolition of the Rentons building will be consistent with, or contrary to, these matters when considered as a whole.

79. In relation to the policies on heritage, Mr Kennedy statement accepts that “*the proposed demolition will not achieve preservation and maintenance of the heritage building*”.¹³ However, he notes that Policy 4.5A is not absolute in its direction, i.e. there is no absolute requirement that buildings shall or must be preserved or maintained, rather it provides general direction (i.e. “*should be preserved*”). I note also that Policy 4.2B uses similar language, i.e. “*The status and importance of historic and cultural settlements and parts of*

¹³ Mr Kennedy, para 14.13

settlements should not be adversely affected by development”, and that this also allows an assessment of the status of a heritage building or buildings to be considered. A similar tenor is used in Policies 4.5B and 4.5C, with use of the words “*should*”, and “*is encouraged*”.

80. I agree with Mr Kennedy that the District Plan does not provide for absolute preservation of heritage buildings. It is also relevant that the District Plan’s assessment matters for applications involving heritage buildings make specific references to demolition, as well as modification, of such buildings. For these reasons, I agree that the provisions of the District Plan, when considered as a whole, do acknowledge there will be instances where it may not be sustainable to retain a heritage building, and that an application may be made for demolition. It follows that such proposals need not in every case be contrary to the policies for heritage, and can be considered on their merits.
81. The circumstances of the Renton’s application are discussed in detail in the Principal Issues section of this decision. My findings on those key matters are that the Rentons building is in very poor condition, there are significant costs associated with strengthening it to an appropriate standard, and there are no known alternative uses at this time. For those reasons I consider that this is an application that could well be said to be contemplated by the District Plan, and when considered in an holistic fashion, it does not offend against the policy provisions outlined above relating to amenity and heritage.
82. The evidence of Mr Kennedy, and Ms Beaumont in the Staff Report, is that this application is not consistent with the policies relating to preservation and maintenance of a heritage building, and some aspects relating to amenity. However, I also agree with Mr Kennedy’s assessment that, this application is “*not contrary to*” the objectives and policies relating to heritage, for the reasons outlined above.

The Gateway Tests

83. From the above discussion on effects on the environment and on objectives and policies of the District Plan, it is my finding that the application:
 - (a) **fails** the first gateway test for a non-complying activity (i.e. the adverse effects on heritage will be more than minor); and
 - (b) **passes** the second test (i.e. the application is for an activity that will not be contrary to the objectives and policies of the relevant plan).
84. Having passed one of these tests, the application is therefore able to be assessed further under Section 104 of the Resource Management Act.

Section 104 (1)

85. In relation to Section 104(1)(a) - my findings in the ‘Effects on the Environment’ section of this decision are that the application will have positive effects in terms of safety, and economic effects; adverse visual effects which will be minor; and adverse effects on heritage which will be more than minor.

86. In relation to Section 104(1)(b) - the two planning witnesses considered there are no other statutory documents that are relevant for consideration of this application, noting in particular that the West Coast Regional Policy Statement contains no provisions that are relevant to heritage buildings.
87. In relation to Section 104(1)(c) - after having heard the evidence, the two 'other matters' that I consider are relevant and reasonably necessary to determine the application are the assessment matters in the District Plan for heritage buildings, and precedent.

District Plan Assessment Matters

88. The relevant assessment matters in the District Plan are:
- *Where the application removes the historic merit of the item or demolishes it, the Council will seek meetings with the applicant and any other interested persons in order to develop proposals for amending the application.*
89. My role is not to examine the Council's performance in processing the application or arranging meetings with the applicant and other parties. However I note that, in any event, the application was processed in accordance with the relevant statutory requirements, and this included the usual notification and submission processes, a request was made by Council officers for further information on options to strengthen the building and future uses, and that information was sent to the parties for information.
90. The submitters (in particular Mr Walker, Mr Bradley, and Heritage New Zealand) contended there should have been more thought given to alternatives to demolition, including through meetings with interested parties. There is no requirement under the Resource Management Act for an applicant to consult. However, Mr Kennedy's evidence was that the additional information response, including an engineering assessment of the building and updated estimates of costs, were provided to submitters in opposition. He said that further consultation was undertaken with those submitters where possible, however it became apparent there would be no resolution to the matters raised.
- *The category in which the resource is scheduled by the New Zealand Historic Places Trust and the reasons why it has been scheduled.*
91. The heritage status of the Rentons building has been discussed in terms of 'Heritage Effects' earlier in this decision. I found that whilst the List Entry focuses more on the association of the building with the Renton family's historical use of the property as a hardware and merchant trading store, it also notes the significance of the building as a landmark in Hokitika. The significance of removing the building is not diminished in my consideration simply because the building itself is not listed for any architectural merit.
92. It is a fact however, that the building has a Category II rating, and therefore does not have quite the same significance as a Category I building. The significance is that it does not qualify as a building for which Heritage New Zealand's preservation fund applies, and accordingly it becomes more difficult to preserve the building without viable alternative uses being available.
- *Any conservation plan or assessment of environmental effects submitted with the application*

93. This is addressed in the discussion on 'Principal Issue 2'
- *Whether the consent of the New Zealand Historic Places Trust (now Heritage New Zealand) has been obtained.*
94. Heritage New Zealand has submitted in opposition to this application. One of the concerns expressed in its submission is the lack of robust engineering assessment, including assessment by a quantity surveyor. Additional assessments and information were attached to Mr Mackenzie's statement and this was sent to the submitters prior to the hearing and so it is not clear whether that evidential statement and further information met the submitter's concerns or not, as the submitter was not in attendance at the hearing to confirm this. Be that as it may, the submitter's concerns have been given due consideration, in particular in the assessment of Principal Issue 1 and also in Principal Issue 2.

Precedent

95. It is generally the case that any application for resource consent can be determined on its merits. However, where an application is made for a non-complying activity, the issue of precedent may be relevant, essentially because non-complying activities are activities that are not specifically provided for in a particular zone, and if consent was granted to non-complying activities as a matter of course this could have an effect on the integrity of a district plan. The grant of consent may place pressure on a consent authority when considering other similar applications to treat 'like with like'. This has been referred to as the 'opening of the floodgates' issue. To avoid this applicants are often asked to identify unique, or at least unusual, circumstances pertaining to their application.
96. Precedent appears less of an issue in this case because the Westland District Plan contains assessment matters that relate specifically to demolition of listed heritage buildings (refer to discussion on 'District Plan Assessment matters'). Therefore, even though the application to demolish this Rentons building falls to be considered as a non-complying activity, the assessment matters in the Westland District Plan would indicate that any such application can be considered on its merits.
97. Having said that, I signalled at the start of the hearing that precedent is a matter that needs special consideration, as Hokitika has only a limited number of heritage buildings. Accordingly, I first asked Mr Percy if he was able to comment on the condition of the Rentons building relative to other listed heritage buildings in Hokitika. He said that the 9% earthquake rating was in his experience very low, but a full assessment of other buildings in Hokitika had yet to take place as part of the Council's implementation of its policy on earthquake buildings. I then asked Ms Beaumont's advice on the extent and status of other listed heritage buildings in Hokitika. She said there are fifteen listed buildings in Hokitika, five of which are in Category I and ten in Category II. Ms Beaumont noted that all of those Category II buildings were either monuments (e.g. the town clock tower) or were occupied. Her opinion was that there would be no precedent from the grant of consent to demolish the Rentons building which had its own circumstances, and can be considered on its merits.

98. Mr Bell provided a list of factual matters at paragraph 15 of his opening legal submissions, which he said can be considered special circumstances applying to the Renton's building. Mr Kennedy, in answer to a question, said he endorsed this list as being relevant to a consideration of precedent.
99. My finding on this matter, having considered the evidence, is that precedent is not an issue for this application, and the consent authority need not feel obliged to grant consent for any other application that may be made for demolition of a listed heritage building as a result of this decision.

Part 2 of the Act

100. Part 2 of the Resource Management Act, and more particularly Section 5, requires an overall assessment of the proposal and its ability to achieve the Act's overriding principal of sustainable management. The relevant sections in Part 2 are addressed below.

Section 5

101. Section 5 sets out the Purpose of the Act, and states:

- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources. The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—*
- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

102. This proposal will result in the loss of an important heritage and landmark building in Hokitika. However, the evidence is clear that the Rentons building requires substantial strengthening works, and reasonable attempts have been made to sell the property and to find alternative uses. These have not been successful which is due in large part to the state of the building and current market conditions. There is strong evidence that this site in Hokitika's central business area can be used in an economically viable manner, to assist to rejuvenate and add vitality to an area that currently has several vacant sites and buildings. The evidence is this can only be achieved by removing the building.
103. Overall, I accept the evidence of the two expert planning witnesses that on balance the sustainable management of the land and buildings on this site are better achieved by demolition of the building.

Section 6

104. Section 6 contains matters which must be recognised and provided for. Of relevance is:
- (f) the protection of historic heritage from inappropriate subdivision, use, and development.*
105. Ms Beaumont's view was that the demolition of a Category II building cannot be considered to be achieving the "protection" of historic heritage or an "appropriate" development. However, Mr Kennedy's evidence was that *"this is not a prohibition, but requires a determination as to whether it is appropriate in the circumstances of this particular application"*.¹⁴ He said this must be considered in a thorough manner, ensuring all considerations are weighed and a fair, appropriate and reasonable outcome achieved.
106. Mr Bell, in opening legal submissions, referred to the case *Lambton Quay Properties Nominee Limited v Wellington City Council [2014] NZHC*. In that case the Court considered section 6(f) and what is meant by "inappropriate" development. It found that consideration of an application to demolish a heritage building must be founded upon an assessment of whether demolition was a balanced response which required all competing considerations to be weighed, and the outcome was a fair, appropriate and reasonable outcome. It was also there found that: *"No factor in Section 6 creates a veto over an application being considered under Section 5"*.¹⁵
107. Having evaluated all of the relevant evidence and submissions, and the relevant provisions of the District Plan, my determination is that the proposal is not "inappropriate development" in the circumstances of this case.

Section 7

108. The relevant matters in Section 7, which I am required to have regard to, are:
- (b) The efficient use and development of natural and physical resources.*
- (c) The Maintenance and enhancement of amenity values.*
- (d) Maintenance and enhancement of the quality of the environment.*
- (g) Any finite characteristics of natural and physical resources.*
109. As outlined in previous sections of this decision, the loss of the Renton's building will affect the amenity values and heritage values of this part of the Hokitika Settlement. However, it is not considered an efficient use of resources for the building to be required to be retained, particularly given its current condition, the significant costs to upgrade the building to a standard that would enable its re-purposing, and the uncertainty and lack of evidence that there will be any viable future uses for the building. On balance, therefore, I consider that the proposal is not in conflict with the section 7 matters.

¹⁴ Mr Kennedy, para 17.5

¹⁵ *Lambton Quay Properties ...*, para 15

Decision

110. Pursuant to Sections 104B and 104D of the Resource Management Act 1991, I hereby **GRANT** resource consent for the application lodged by **Renton Partnership** for land use consent to demolish a heritage listed building, that being the Renton Building, located at 21 Hamilton Street, Hokitika. The consent is subject to the conditions in the Schedule of this decision.

Reasons for the Decision

111. The reasons for the decision are provided throughout this decision report, in the main in the discussions on Principal Issues 1 and 2, and also in the 'Effects on the Environment', 'Objectives and Policies of the District Plan', and 'Part 2 Considerations'.
112. In summary:
- (a) Whilst there will be adverse effects on heritage that are more than minor, the overall adverse visual effects will be no more than minor, and there will be positive effects in terms of safety and economic effects;
 - (b) The proposal is consistent with Objective 3.2.1 Sustainable Communities; and while it is not consistent with some of the objectives and policies relating to amenity and heritage, it is overall not contrary to those policies;
 - (c) In overall terms the application meets the relevant assessment matters in the District Plan relating to modification or demolition of listed heritage items;
 - (d) Consent to this application need not create a precedent that would oblige the consent authority to grant other applications for demolition of heritage buildings in Hokitika; and
 - (e) An overarching evaluation of the proposal under Part 2 of the Act is that the sustainable management of resources is best achieved by granting consent to the application.

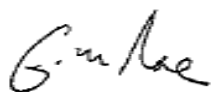
Concluding Comments

113. This was a difficult decision to arrive at. It has called for a balancing of the strongly held views of the submitters and advocates for retention of the Renton building against the interests of the applicant which is in the situation where it owns and is responsible for a heritage building which no longer serves its purpose, and is in such condition that it seems inevitable a notice will be issued under the Council's policy on earthquake prone buildings.
114. In hearing all the evidence from the applicant I am satisfied that all reasonable endeavours have been made to consider options to strengthen and upgrade the building, and also to market and sell the property. The costs of the strengthening are prohibitive and there is no evidence there are alternative uses of the building that could be viable at this time. As noted in this decision, it is not appropriate when considering an application

for resource consent to essentially 'park' it in order to await another viable use for the building to eventuate before making a decision.

115. Having said that I do not in any way wish to diminish the arguments advanced by the submitters in opposition to the application. In particular, Mr Bradley and Mr Walker are to be congratulated for presenting strong, well-reasoned and articulate arguments in favour of retention of the building. I have also considered the reasons contained in the other opposing submissions. In the final analysis the decision has been made in favour of the building being removed, on the basis of the evidence before me.
116. Whilst I acknowledge the impact of this decision, which will result in the loss of this important building, having considering all relevant matters under the Resource Management Act, I consider the decision to grant consent is the correct one in this instance.
117. Conditions have been imposed as recommended in the section 42A report, with only a modification to conditions 2 and 3. The change to condition 2 is to clarify that the commemorative plaque is to be placed on the site. The change to condition 3 is to reflect the point (as made by Mr Kennedy) that the applicant, Renton Partnerships, will at the end of this process cease to exist. It will not therefore be in a position to re-use any remnant features from the building off site, and so provision needs to be made for either the District Council or Heritage New Zealand to manage that process. The remaining conditions were accepted by the applicant as appropriate.
118. An advice note has been included on the need for an archaeological authority to be obtained before undertaking any demolition works on the site, as requested by Heritage New Zealand.
119. Finally, I would like to thank all of the parties for the efforts they have made in presenting their evidence and views, and in the manner in which they conducted themselves, at the hearing.

Issued this 27th day of April 2016



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Gary Rae
Independent Commissioner

Schedule of Conditions

Pursuant to Section 108 of the Resource Management Act 1991, this Resource Consent has the following conditions:

1. The activity shall be undertaken in accordance with the application and plans dated September 3, 2015, except as amended by any conditions below.
2. Prior to any work commencing on the demolition of the building, the applicant shall submit a plan indicating the location and design of a commemorative plaque or other structure to be placed on the site identifying the history of the site and the Renton family. This shall be maintained in an ongoing manner at the cost of the landowner.
3. The consent holder shall submit a demolition plan to the District Planner prior to works commencing that sets out the methodology for recording and archiving the heritage features and history of the building. This plan shall detail any discussion with Heritage New Zealand, and consideration given to the retention and storage of any heritage features by the Westland District Council and/or Heritage New Zealand for reuse off site.
4. The consent holder shall submit a traffic management plan to the Manager: Operations for approval prior to any demolition work taking place on site.

Advice Note:

An archaeological authority will be required from Heritage New Zealand prior to any demolition works on the site.

5. That construction noise shall be managed in accordance with the construction noise standard: NZS6803:1999 Acoustics-Construction Noise.
6. The consent holder shall meet all costs associated with monitoring procedures undertaken by the Westland District Council, or its agents, to establish compliance with conditions of this consent.
7. Pursuant to Section 125 of the Resource Management Act 1991, this resource consent will lapse within five years of the date of granting of this consent if the consent is not exercised before the end of this period. However, this period can be extended under the Resource Management Act 1991 upon application to the Consent Authority.