BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No. [2018] NZEnvC 237

IN THE MATTER	of the Resource Management Act 1991 (the Act)
AND	of an appeal pursuant to s 120 of the Act
BETWEEN	VIEW WEST LIMITED
	Appellant
	(ENV-2017-AKL-000151)
AND	AUCKLAND COUNCIL
	Respondent

Court:	Environment Judge J A Smith Environment Commissioner A C E Leijnen Environment Commissioner W R Howie K G Stevenson (Special Advisor)
Hearing:	at Auckland 26-30 November and 6 December 2018
Counsel:	B J Tree and P G Senior for View West Limited **(View West)** W S Loutit and R J O'Connor for Auckland Council (**Council**) R B Enright for Civic Trust Auckland (**Civic Trust**)
Date of Decision:	14 December 2018
Date of Issue:	14 December 2018

DECISION OF THE ENVIRONMENT COURT

A: The appeal is allowed. The Court grants consent for the demolition of the St James hall building at 31 Esplanade Road, Mt Eden, Auckland, also known as the Sunday School hall (**the Hall**) subject to conditions. Draft conditions are Annexed hereto and marked **A**. Subject to the modifications indicated in this decision and further discussion by the parties.

B: (a) The appellant is to circulate its preferred conditions in light of this decision to the parties prior to 24 December 2018.

(b) The Council and Civic Trust are to provide any comments on or alternatives

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

to those conditions to the appellant by 18 January 2019.

(c) The appellant is then to provide its preferred conditions with an explanation of the differences if any between its position and that of any other parties to the Court by 1 February 2019. The Court will then decide whether it needs to convene a hearing or can conclude the matter on the papers.

C: Costs applications are not encouraged but any application is to be filed by 1 February 2019; any response within a further 10 working days; and any reply within five working days thereafter.

D: Under s 292(1) of the RMA the Court directs the Council to amend the AUP: D17.3(14) the word **unless**, is to be on a separate line to make it clear that sub-clauses (i), (ii) and (iii) apply to both sub-paragraphs (a) and (b) above them.

REASONS

Introduction

[1] View West made an application to demolish one of two historic heritage buildings on the site of the St James Church, 31 Esplanade Road, Mt Eden, Auckland. The application applies only to the Sunday School hall and not to the church for which a resource consent is held for renovation, modification and partial demolition.

[2] The demolition consent was refused by Commissioners appointed by the Council and that decision was appealed by View West.

[3] This case raises important issues not only as to the resource consents for a building subject to a dangerous building notice under s 121 of the Building Act 2004 (**Building Act**), but also as to the interrelationship of heritage issues under the Auckland Unitary Plan (**AUP**) and public safety issues in terms of the Resource Management Act 1991 (**RMA**).

[4] Given our concerns as to the public safety aspects of the hall, we have determined to issue a prompt decision in this matter. For this reason, we acknowledge that the decision is not subject to the usual degree of refinement in decisions of this Court. Nevertheless, we believe that it is in the public interest that this decision be issued as soon as possible so that the position in respect of this site can be regularised.

Application for demolition

[5] This application seeks to demolish the church hall situated at 31 Esplanade Road. The whole of this site is a historic place in terms of the Auckland Unitary Plan. It has within it two heritage buildings, the church hall / Sunday School built in around 1885 and the church itself built in around 1900. Both buildings were used as part of the St James Congregational Church and owned by trustees of the Presbyterian Church. In recent years the site has been used by the Mount Eden Pasifika Islands Presbyterian Church (**PIPC**) for services and activities using the church and hall.

[6] In March 2012 a report to the Mt Eden PIPC identified the hall as being a dangerous building under s 121 of the Building Act. This was duly reported to the Auckland Council on around 12 April 2012. As a result on 20 April 2012 a dangerous building notice was issued under s 121 of the Building Act which is annexed hereto and marked **B**. The hall has not been used since April 2012 by the community or the congregation but regular services are still conducted in the church next door which was not subject to the notice.

[7] In 2016 a consent was granted by the Auckland Council for the modification, restoration and partial demolition of the church to enable it to be adapted for use as four apartments. This involved strengthening by replacing portions of the church including a new roof and steel framing and the like and reutilising and adapting the building for use for apartments. That consent is still current and has not expired since it was granted in March 2016.

[8] At the time the church application was considered, the activity was non-complying as some 40 per cent of the church was to be demolished and the relevant rule in the AUP made demolition over 30 per cent non-complying. Now the AUP is operative in part, demolition of 30 per cent or more is a discretionary activity and demolition over 70 per cent is also discretionary but subject to more stringent assessment.

[9] An application was made in June 2016 for total demolition of the St James Hall. This was referred for decision as a discretionary activity under delegated authority by the Council. The hearing panel of A Watson and R Knott declined the application on 18 September 2017 and the matter was appealed to this Court. Directions were made by the Court on 4 October 2017. Auckland Council subsequently filed a number of requests for adjournment or further extensions for time to report as they developed an alternative scheme for the hall. Requests were made on 15 December 2017, 20 April 2018 and 25 May 2018.

[10] The Court made directions on 27 April 2018 for circulation of the Council alternative scheme by 18 May 2018 which occurred. There were then issues relating to further extension requests in respect of that. There were further exchanges of memoranda which eventually lead to joint memoranda being filed by the parties with dates for further caucusing assisted by Court members, and the matter being set down for hearing to commence on 26 November 2018.

The issues for hearing

[11] On the Courts preliminary reading of the evidence of the parties, there appeared to be issues relating to the state of the building and the applicability and effect of the dangerous building notice.

[12] A request was made for the early taking of the evidence of Ms Fogel, a key witness for the Council. The Court therefore convened a full preliminary hearing of that evidence for 12 November 2018. In that process, the Court identified orders for witnesses and also issues to be addressed. A Minute annexed hereto as **C** also listed issues for the appellant and those issues the Court considered might be relevant.

[13] On 19 November 2018 and prior to the commencement of the hearing on 26 November, the Council served, contemporaneously with their memorandum, a further notice under s 121 of the Building Act identifying the building as a dangerous building and requiring further works to be undertaken as well as additional fencing.

[14] In addition to the dangerous building issue, extensive evidence has been given concerning an alternative scheme promoted by the Council to retain the hall. This alternative scheme was not advanced as an application by the Council or any other party and was not supported by the applicant for resource consent.

The resource consent for the church

[15] The relevance of the resource consent for the church was an issue before this hearing. This non-complying activity consent was granted on a non-notified basis for partial demolition, modification and restoration. This turns upon interpretation by Council staff of the AUP provisions as they related to modification versus demolition. The calculations on which the Council's staff appeared to have relied for the church works turned on the volume and footprint being around 40 per cent of the building and thus a non-complying activity under the relevant rules as they stood at that time.

[16] The current application for total demolition of the hall is a discretionary activity

under the Plan (a less stringent status than for the application for the church). One of the arguments for the demolition of the hall is that its removal would unlock this part of the site for development which could be used to fund the consented works for the church. A condition has been proffered requiring a bond to ensure that the seismic work, identified in the church resource consent, is undertaken. That is proffered on an *Augier* basis[1] although it appears to us that in any event it would be for a resource management purpose on the same site and thus permissible in terms of the *Estate Homes* decision given by the Supreme Court.[2]

[17] A question as to whether or not the church consent is relevant for both this purpose (providing for the seismic upgrading envisioned) and also as a part of the existing environment (particularly if it is connected by virtue of the bond arrangement) is a matter that seemed to be in dispute at the hearing. It was at the heart of the Council's case that the applicant had chosen to separate these two applications and therefore could not argue before this Court there were any benefits from the retention of heritage in relation to the church. For this reason, it is important to understand the background to this application and we make the following factual findings as a result.

Background to the application

[18] We are satisfied from the evidence of Reverend Elikana (Session Clerk at St James) that since 1990 the Church and/or the trustees had spent some $225,000.00 installing a new kitchen and toilet facilities in the hall, putting a new floor in the hall and fencing around the entire property. They also spent further monies on the church building.

[19] Having observed cracking in the hall walls, the Mount Eden Pacific Island Presbyterian Church Reverend Elikana sought professional advice received from Mr A Wild of Archifact. On 12 April 2012 Mr Wild advised that the building was dangerous. Appended to that letter was a letter from MSC Consulting Group, Mr J Syme, a structural engineer. This letter is annexed hereto and marked **D**. The letter identified:

(a) "The request was prompted by the fact that a timber and steel roof truss had lost its support when a corbel supporting it had broken off. This truss has

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1 *Augier v Secretary of State for the Environment* (1978) 38 P & CR 219 (QBD) as approved in *Frasers Papamoa v Tauranga City Council* [2010] 2 NZLR 202, [2010] NZRMA 29, (2009) 15 ELRNZ 279.

2 *Waitakere City Council v Estate Homes Ltd* [2006] NZSC 112; [2007] 2 NZLR 149; [2007] NZRMA 137 at [65] – [67].

twisted above what is left of the corbel. Settlement of the timber floor and water damage to the concrete/masonry wall surface has occurred on the other end of the truss."

(b) "The side walls of the hall have been constructed with built in timber member approximately 1200mm above the timber floor. This timber has completely rotted out leaving a 100 deep by 20 wide slot along the inside of the walls."

(c) "The concrete/masonry walls are 300mm thick so that only two thirds of the wall is effective".

(d) "Should the truss that is defective move further it would pull in the wall and could break at the slot."

(e) "The wall appears to have no steel reinforcing in it. This could result in a catastrophic failure."

(f) "The hall would not reach 33% of the current seismic requirements."

[20] Finally the engineer advised, "The unsafe state of the building requires a rapid response and this letter confirms the reasons for our recommendation to close the building."

[21] On the basis of this advice the Council issued a dangerous building notice under the Building Act. The notice cites s 121(1) of the Act:

> (1) A building is **dangerous** for the purposes of this Act if,—
> (a) in the ordinary course of events (excluding the occurrence of an earthquake), the building is likely to cause—
> (i) injury or death (whether by collapse or otherwise) to any persons in it or to persons on other property; or
> (ii) damage to other property; or
> (b) in the event of fire, injury or death to any persons in the building or to persons on other property is likely.

[22] The notice goes on to identify that the building is considered dangerous for the following reasons:

- The structural stability of the roof and supporting structure is in danger of collapsing.

[23] The notice went on to require certain actions under s 124(1)(c)(i) of the Building Act. Namely:

(1) Erect a fence or hoarding to prevent people from approaching the building nearer than is safe **(IMMEDIATELY)**.

(2) Attach in a prominent place on, or adjacent to, the building a notice that warns the people not to approach the building **(IMMEDIATELY)**.

(3) The owners are required to supply to Auckland Council a Full Structural report, and supporting evidence of reason of the structural failure (28 days) from a Registered Structural Engineer.

[24] Reverend Elikana tells us that he worked with the Auckland Council and the Heritage Trust after the closure of the hall in April 2012 and:

> ... found no support or financial assistance forthcoming. The Eden PIPC ran a story in the New Zealand Herald and Tagata Pasifika to share our plight but this did not result in any support or financial assistance either. We therefore place the property on the market for sale.

[25] In evidence Mr van Lier, Executive Officer for the Presbyterian Church property trustees, advised us that the Mount Eden PIPC had day-to-day management of the site including any decision to develop or to sell it. He told us that once the congregation decided to sell the site in 2014 (as indicated earlier in the evidence of Reverend Elikana), Mount Eden PIPC was then required to seek approval of the Presbyterian Church for the sale of the site. The Presbyterian Church agreed with Mount Eden PIPC and made a recommendation to the trustees.

[26] Mr van Lier then told us that in this case all three entities agreed with the decision to sell the site. A sale and purchase agreement was entered into in late 2014. It is clear to us from this evidence that ongoing discussions occurred during this period with a view to trying to see if the building could be remedied by either the PIPC, the trustees or with the financial assistance of the Council or other parties. However, a decision was made to sell the property to release funds to enable the Mount Eden PIPC to find another property more suited to its purposes.

Redevelopment

[27] View West became involved at this stage. The property was subject to a conditional contract for purchase and later an unconditional contract for purchase but with payment due only when consents were obtained. As we understand it, this was entered into around 31 March 2016 when Montana Trustees Ltd (the party to the agreement) declared the contract unconditional but no date for settlement was set. After further agreement, a settlement date was set for five working days after a resource consent for the demolition of the hall was granted and either the appeal period expired or any appeal was disposed of. The final sale price for the whole site and buildings was

$3,525,000.

[28] Our understanding is that the purchase is unconditional but the settlement date turns on a demolition consent being granted. In 2017, as a result of the ongoing problems with obtaining a demolition consent for the hall, the property was marketed. From Mr Montgomery's (CEO View West Ltd) answers to questions, we are satisfied that there was interest in the property but only if the demolition consent were granted. In fact, advertising for this site shows that this was a pre-condition of the sale (that is, the site was offered for sale on the basis that the hall demolition consent would be obtained). In short, if no demolition consent is granted, the sale contract appears to be frustrated with no other action for the hall envisaged.

The Court's approach

[29] As a discretionary activity, we are guided by s 104(1) generally and s 104B (discretionary activity). In this case the effects (including positive effects) are bound up with the heritage and safety issues arising under the AUP and Building Act respectively. No national standards, regulations or policy statute were identified. The Building Act and safety generally would arise in any event under s 104(1)(c). We have concluded that we should address these matters in a general sense dealing with:

(1) Heritage values

(2) Council decision under s 290A

(3) Dangerous building issues under the Building Act

(4) Safety issues under the RMA

(5) Alternatives

(6) Integrated decision in exercise of our discretion

(7) Conclusion

[30] We conclude this will avoid the decision being repetitive, given the urgency of our decision, while ensuring all relevant matters are addressed.

Heritage values of the place

[31] There is no real dispute as to the significant heritage values of this place.

Although there was some argument between the experts as to the relative values of the church and the hall in relation to the overall place, we are satisfied that the demolition of the hall would constitute a significant loss of heritage value.

[32] The retention of the church in a modified and adapted form would retain some of the historic values of the church and place. However, the relationship between the hall and the church is a matter of importance and contributes to the value of the place as a whole. Whether some of the values of the relationship might be retained in any new building structure replacing the hall is entirely speculative, given there is no application before us. Accordingly, we take the cautious view that, notwithstanding the retention of some historic values by virtue of the site itself, the position on the corner of the road and the retention of the church, there would overall be a significant loss of heritage values.

[33] The Auckland Unitary Plan has identified the historic heritage values in relation to this area at both regional and district level and the site has been identified as a Category B scheduled historic heritage place. The result is that Regional Policy Statement (**RPS**) objectives at B5.2.1 for historic heritage come into play:

> (1) Significant historic heritage places are identified and protected from inappropriate subdivision, use and development.
>
> (2) Significant historic heritage places are used appropriately and their protection, management and conservation are encouraged, including retention, maintenance and adaptation.

[34] As a historic heritage place, a range of criteria, including for historical, social, mana whenua, knowledge, technology, physical attributes, aesthetic and context, apply. Although various values were given to each criterion by the relevant experts, we are satisfied that the St James hall demonstrates the importance of worship in early Auckland through the development of first the Sunday School and then the church some 15 years later, the technology of early cement buildings through the use of scoria cement walls, and gothic architecture in relation to the design of the building by a recognised architect. There is also a connection with Mr Firth who was a member of the Congregational Church and an early utiliser of concrete walls (Firth Concrete).

[35] The RPS provisions of the AUP in section B5 set the framework for the District Plan Chapter at D17 which provides the implementation method for regulation and presentation of historic heritage. The regional policies at B5.2.2(1)-(5) set out a methodology for the identification of such features and the policies found at B5.2.2(6)-(8)

set out expectations for protection of historic heritage places. The subject place with these buildings (hall and church) has been scheduled by the Council as Category B (reference B5.2.2(4) RPS policy and Schedule 14.1).

[36] After some thought and an agreement on behalf of the Council's planning witnesses, it was agreed by all the planning witnesses that policy B5.2.2(7) was the applicable RPS policy for this site.

> Avoid where practicable significant adverse effects on significant historic heritage places. Where significant adverse effects cannot be avoided, they should be remedied or mitigated so they no longer constitute a significant adverse effect.

[37] Given that the application is for demolition or destruction of the item, it is difficult to see how these effects might be mitigated directly. Nevertheless, the appellant proposed that the retention of the church particularly by a bond to provide for the remedial seismic work on that church, would sufficiently mitigate the effect.

[38] The District Plan Chapter D17 of the AUP contains the Historic Heritage Overlay and confirms that Category B places are of considerable significance to a locality or greater geographic area. Most scheduled heritage places are identified as Category B consistent with the approach taken with this site. Historic places include an identified area around the heritage feature to which the AUP refers as the "extent of place" (D17.1 page 2). In this case, the heritage place includes some of the street (along both the Esplanade Road and View Road frontages) owned by the Council. We are in no doubt that part of the significance of this site is due to its street frontage at the corner of View and Esplanade Roads, an important corner within Mount Eden.

[39] The key relevant policy is contained within D17.3(14):

(14) Avoid the total or substantial demolition or destruction of:
  (a) the primary features of Category A* and Category B scheduled historic heritage places;
  (b) the non-primary features of Category A and A* scheduled historic heritage places; and contributing features within Historic Heritage Areas; unless:
    (i) the demolition or destruction is required to allow for significant public benefit that could not otherwise be achieved; and
    (ii) the significant public benefit outweighs the retention of the feature, or parts of the feature, or the place; or
    (iii) the demolition or destruction is necessary to remove a significant amount of damaged heritage fabric to ensure the conservation of the scheduled

historic heritage place.

[40] There was initially an argument that sub-clauses (i),(ii) and (iii) only applied to sub-paragraph (b). However, after referring to the original notified plan and the reorganisation of the text undertaken by the Independent Hearing Panel, it was agreed that it is clear that the word "unless" is intended to relate to both sub-paragraphs (a) and (b) so that sub-clauses (i), (ii), (iii) should apply to both (a) and (b). We have concluded that this is the only logical interpretation of the provision; otherwise the status of the demolition of Category B could not be supported.

[41] Importantly, to avoid future misapplication of this provision, we have concluded that we should require the word "unless" to be dropped down onto a separate line to make it clear that it applies to both D17.3(14)(a) and (b). We make such directions under s 292(1) of the RMA so that the rule will now read:

(14) Avoid the total or substantial demolition or destruction of:

(a) the primary features of Category A* and Category B scheduled historic heritage places;

(b) the non-primary features of Category A and A* scheduled historic heritage places; and contributing features within Historic Heritage Areas;

unless:

(i) the demolition or destruction is required to allow for significant public benefit that could not otherwise be achieved; and

(ii) the significant public benefit outweighs the retention of the feature, or parts of the feature, or the place; or

(iii) the demolition or destruction is necessary to remove a significant amount of damaged heritage fabric to ensure the conservation of the scheduled historic heritage place.

[42] Most of the argument was focussed in this case on (i) and (ii) which are cumulative requirements. We are satisfied that in the end this feeds to the question of whether or not the total demolition or destruction of the building is appropriate, guided by whether it would allow for significant public benefit that can otherwise not be achieved and that outweighs the retention of the feature and or values of the place.

Section 290A – the Council decision

[43] We now turn to analyse the decision of the Council given that s 290A requires us to have regard to it.

[44] It is clear from the Council decision that this is a discretionary activity. This is in contrast to the more limited demolition of the church which was a non-complying activity. Its discretionary status was common ground at this hearing. As such the test can be seen as whether or not the removal of the hall is appropriate having regard to the provisions of the AUP and relevant matters under s 104(1).

[45] The Commissioners identified the principal issues in contention as:

- The acceptance that the hall has heritage significance but whether the circumstances relating to it are sufficient to support its demolition;
- whether the applicant has sufficiently investigated alternatives to demolition including the physical state of the building and reuse;
- the relevant provisions of the AUP, particularly the policies relating to historic heritage buildings and potential demolition;
- the actual and potential effects on the environment from the removal of the historic heritage building, the effects on the remaining church building and effects on the neighbourhood character; and
- public safety.

[46] For reasons that will become clear in due course throughout this case, the Commissioners' failure to address the dangerous building notice and the poor condition of the building are notable through their key findings in paragraphs 17, 45 and 46.

[47] Although the findings state that there are insufficient circumstances relating to the hall to support its demolition it does not go on to discuss the condition of the building, the dangerous building notice or any other matters surrounding the condition of this hall. This is surprising and notable in our view given the High Court decision in *Lambton Quay Property v Wellington City Council* which is binding on the Commissioners as it is on this Court.[3]

> One of the purposes of the Resource Management Act is the management of physical resources in a way that enables people and communities to provide for their safety.

[48] While we accept that in this case the AUP does not contain equivalent plan

3 *Lambton Quay Property v Wellington City Council* [2014] NZHC 878 at [87] – [89].

provisions to the Wellington Plan, there is similar wording as part of the restricted discretionary criteria. Furthermore, it was not contended by Mr Loutit for the Council that questions of health and safety were not relevant to an evaluation of this resource consent. If there were any doubt about this, this is addressed at [88] of the same decision where Collins J said:

> [88] There is some degree of commonality between the overriding purposes of the Building Act and relevant purposes in the Resource Management Act. There is also commonality between the public safety objectives of the Building Act and the relevant parts of the District Plan. Public safety must always prevail. For this reason in assessing the reasonable alternatives to demolition the Environment Court needed to consider the risks to public safety of nothing being done to the building because of the owners inability to comply with the Building Act notice.
>
> [89] The Environment Court erred by not reconciling the relevant provisions of the Resource Management Act with the Building Act. However to find a successful appeal the error of law must be material. The Environment Court's error must be assessed by examining the consequence of that error.

[49] Whilst the Supreme Court in *EDS* noted that it is not necessary in every case to revisit Part 2 of the RMA, it does note several exceptions.[4]

> ... there may be instances where the NZCPS does not "cover the field" and a decision maker will have to consider whether pt 2 provides assistance in dealing with the matter(s) not covered.

[50] Section 5 clearly identifies health and safety as being a primary element of sustainable management. That sustainable management also relates to not only natural but also physical resources including such things as buildings. In this case the failure of the Plan to address questions of public safety must enable the Court to have recourse to Part 2 to "fill the gap". Mr Loutit and Mr Enright agreed that safety was an issue in relation to this application.

[51] Put another way, we consider the application of the well-established legal maxim *salus populi suprema lex esto*, or "the highest purpose of the law is the safety of the people".[5] In doing this we do not say it is the only purpose of the RMA as clearly heritage and amenity values also impact upon the welfare of people. Whether public safety will justify demolition in any particular case turns on the facts.

[52] The final decision in *Lambton Quay* is testament to the fact that identification of

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4 *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 38 at [88].

5 Cicero, *De Legibus* Book III Part III Sub. VIII.

public safety issues is not in itself a veto on restoration or maintenance of a building.[6]

[53] However, at paragraphs 31-36 of their decision the Commissioners essentially ignored the question of public safety or the benefit that would be obtained from removing the danger. They do not address the question of the danger to the neighbouring property or the church or the people in the property or nearby properties but, rather, at paragraphs 47 and 48 dismiss this out of hand, saying that:

> ... public safety is not we believe sufficient as a standalone factor to support demolition in this case but needs to be supplemented by expert evidence relating to upgrading retention and reuse options for the hall.

[54] We can see no basis whatsoever for this conclusion and the question of the potential impact on the human safety is a matter that the Commissioners should properly have considered given it was identified as an issue and was a subject of evidence before them.

[55] Instead, they seem to have seen the solution as being re-use of the hall. In this regard, we note that the Building Act itself identifies at s 127 that the building work envisaged includes demolition of the building. Thus, the Council could properly have given notice as part of its s 121 notice in April 2012 for the building to be demolished. It could have also required other work to be done. In this case it was the failure to identify any works to be done which led to the ongoing delay and eventual application by the applicant for demolition.

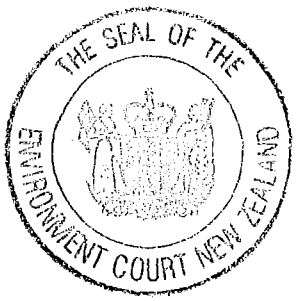
[56] A more significant failure of both the Commissioners and witnesses before this court was a failure to consider the Council policy on dangerous heritage buildings. Sections 131 and 132 of the Building Act require the local authority to adopt and maintain a policy stating:

(a) the approach to be adopted in performing its functions for dangerous buildings;

(b) the authority's priorities; and

(c) how the policy will apply to heritage buildings.

[57] Given the policy was not subject to evidence, the Court concluded that this policy



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6 *Lambton Quay v UDC* [2014] NZEnvC 229 at [120]-[122].

was relevant and the same was accepted by all parties. The policy includes heritage structures under the AUP (see pages 7 and 11).

[58] Chapter 2.10 deals with heritage buildings (page 7). Importantly:

(a) dangerous buildings will not be given systematic dispensation;

(b) if a risk is minor innovative approaches can be examined (on the facts here, that is not applicable);

(c) where the role as a heritage item is compromised (as is agreed here), then dispensation may be considered on a case-by-case basis.

[59] In short, we conclude that the policy sees safety as a priority but will examine alternatives if risks can be mitigated.

[60] This stands in contradistinction to the Commissioners' conclusion and the Council's evidence that heritage is the prime concern.

[61] We conclude the Commissioners' decision cannot be relied on.

The hall structurally

[62] While there was general discussion in at least one person's evidence of the possibility of the building being repaired, no details of this were given. As the case progressed, we became increasingly concerned that the retention of the north and south walls of the hall was highly problematic, given that both of these walls were rotating outwards from the top. It was not until the fourth day of the hearing that we learnt of the wood inserts at the skirting[7] and 1200mm height which further weaken the wall. This may to some extent explain our alarm when undertaking a site visit as to the state of the northern wall both horizontally and vertically.

[63] We have concluded that both the northern and southern walls have failed structurally. Given their extremely weak composition (0-10% of New Building Standard or NBS), it is simply a matter of time before they collapse. The brick/scoria cement material has no reinforcing and was described as easily penetrated with a screwdriver. No expert witness gave us a view that they were safe. To the contrary, in fact in the alternative scheme we will discuss shortly, the solution offered by Mr Robertson, the

[7] Observed by the witness engineers on the joint site visit during this hearing

engineer for the Council, was essentially a multi-pronged epoxied steel frame which would try and hold the failed walls in place. It was important that this frame be separated from the structure of the building for seismic reasons as the walls did not have any load-bearing or structural function. Accordingly, to the extent that the alternative proposal addresses rendering the building safe, it does so only in respect of the exterior walls by attaching them to a building structure within it.

[64] A fundamental difficulty of this entire arrangement of the Council alternative, is that it in itself requires a discretionary consent involving similar or greater non-compliance than the current proposal and would raise similar issues to this case. It involves more than 30 per cent demolition (perhaps over 70 per cent depending on the calculation method) and a serious non-compliance with plan provisions for proposed additions and modifications to the building. Although the Council alternative may arguably retain greater heritage value, there is the potential for different effects including continuing concerns about public safety as a result of the methods envisaged for retaining the walls.

[65] Witnesses cited to the Court several examples in Auckland including Commerce Street, the High Court Building and the Palace Hotel on the corner of Victoria and Federal Streets where attempts at retaining heritage wall structures had led to their partial or total collapse.

[66] In this case, we are particularly concerned that an attempt to secure the walls against the new frame requires extended periods where the walls have to be supported by propping and other methods and may involve at least some level of undermining or other intrusive works such as holes to hold the steel retainers which may, in themselves, lead to the collapse of the building. How this could be done within the boundary on the southern side of the building was not explained to the Court. Given the close proximity of the house at 33 Esplanade Road to the hall, the height of the south wall being some 6.4m and the overall height of the hall 12.4 at peak (Frost diagram Exhibit C), it seems almost inevitable that extensive works would need to be constructed over the boundary to support the force of any failure of the wall and/or the props. Again, we are not satisfied from the evidence we have heard that a 2m perimeter wall would be sufficient, even if stoutly constructed, to prevent weight, concrete or other materials from the hall crossing the boundary onto the adjacent site.

[67] We conclude that any extended construction period, while steps were taken to permanently secure the wall, would in itself result in a significant public safety hazard. Construction also involves the potential for failure of other elements of the structure

including retaining scaffolding and the like. In its memorandum of 19 November 2018 counsel for the Auckland Council advised that "while the hall is stable and not at imminent risk of collapse it remains a dangerous building (in part)."

[68] We are satisfied that for over six years the hall has been, and remains, a dangerous building. Having heard the evidence from the witnesses, we are not satisfied that the works described in the 19 November notice including further fencing and the truss prop, will significantly change the risk of that collapse.

[69] As we understand it, the engineers agree. They now identify stronger fencing, propping, new tie-rod design fixing and the truss prop as being necessary to prevent immediate deterioration. We are not convinced that either the 19 November works or the extended works now recommended will lessen the risk of collapse in whole or in part. This is because the actual cause of the failure is unknown and these steps may in themselves exacerbate the current situation. Mr Robertson himself noted that any attempt to lift the existing trusses should not be attempted. The reality of working in these environments can mean that steps are taken which have consequences. Given that there are no known load paths for the structure at the present time, we consider that any works carry with them an increased degree of risk of failure and danger to the public. To undertake work when there is no known reason for the structural failure is very concerning.

Is the building dangerous?

[70] The Court visited the hall and church site on the afternoon of Wednesday 28 November 2018. We were able to view the hall from the north, the east and the west sides but it was difficult to see the external face of the south wall of the hall because the structure is close to the boundary with the neighbouring property which we did not enter. There are single story 'lean-to' structures around parts of the main hall walls. The most notable feature of the exterior of the hall walls would have to be the failed roof drainage pipe on the north wall. Extensive staining of the wall in the vicinity of the downpipe was obvious and the downpipe was completely severed and displaced from its rainhead at gutter level. Distortion of the roof line and roof plane was also visually clear including displaced roof tiles.

[71] The building is classed as a dangerous building and has been so designated since 2012. Entry is prohibited. We viewed the inside of the hall from a doorway in the timber west wall. We could easily see the failed corbel on the south wall and the

distortion of the roof truss at that location. Some cracking of paint at the truss seating on the north wall was apparent. Both the north and south walls of the hall showed deformation with cracking consistent with outward movement of the top of the wall. Although entry is prohibited, it was clear some itinerant occupation of the hall was occurring.

[72] It was clear that if the hall walls collapsed, material from the walls could spill north and south onto the church grounds and into the neighbouring property at 33 Esplanade Road. Whether it would reach the street is not clear. We were alarmed by what we saw.

[73] Our observations of the structure and its problems have been very helpfully informed by the views of Environment Commissioner Howie, who is a qualified engineer and a fellow of IPENZ. All three engineers who gave evidence, Mr Robertson, Mr Liu and Mr Frost, agreed with the observations of Commissioner Howie when they were questioned jointly about them at the resumed hearing on the following Thursday.

[74] The Court understood that the dangerous building notice in 2012 was preceded by an engineering inspection and report. The Court asked the Council to produce it. This was made available on Thursday but it became apparent that the engineers had not seen it previously.

[75] We have quoted from that original letter from Mr Syme (structural engineer) earlier. He concluded at that time that the building was dangerous and that a rapid response was required. He also identified that a horizontal timber had been cast into the concrete walls at 1200mm above the floor. This timber member had completely rotted out, the slot left being about 100mm deep by 20m wide. When the engineers made their joint site visit as instructed by the Court, they found a second timber member near the floor of the wall also rotted out which they concluded was designed to take the bottom of the wall lining between the floor and the member at 1200mm above the floor. The engineers estimated this slot measured about 80mm deep. As the walls are thought to be about 300mm thick, the slots created by these rails reduced the effective thickness of the walls significantly and, having rotted, presented further weakening of the walls.

[76] The Court was also advised that contractors were due to enter the hall in order to install a temporary propping system beneath the failed corbel. The intention of the prop was to stabilise the truss but not to fix the failure.

[77] Clearly for the Court, issues of immediate public safety arose, both for those entering the building and persons on the neighbouring property. So the Court, with the

agreement of the parties, requested the three engineers, now seized with the current risks of the dangerous building, revisit the site and report back to the Court in the afternoon.

[78] In the afternoon, the Court invited the three engineers together to advise it about their current views on the stability of the hall walls and on public safety.

[79] Mr Robertson considered the danger was not so imminent that the opportunity to retain the structure as proposed was lost. Mr Liu agreed. Mr Frost remained of the opinion that the risk of structural failure was particularly significant and remedial action is required now.

Public safety and consents

[80] The difficulty before the Court is that this case is about whether or not a demolition consent for the hall should be granted. If it is granted there is no guarantee that demolition would follow, although the applicant proposes demolition. If it is not granted there is every likelihood that the present unsatisfactory position will remain as neither the applicant nor the owner is willing to proceed with the development proposed by the Council or any other development that retains the shell of the hall. The Court is not provided with emergency powers sufficient to avoid the public risk from collapse of the structure but the Court is required to consider public safety. At this stage, there is no clear path for Council works that would render the building free from collapse. Refusal of demolition consent will result in the building remaining a danger unless and until some remedial action can be devised. None has been identified in six years and none was provided to the Court which would render the building not dangerous.

[81] We are of a mind that public safety is paramount and that the present state of the hall presents an unacceptable hazard. We are not convinced that adequate temporary measures are available or would be effective in avoiding the risk of collapse.

[82] In "hot-tubbing" during the hearing on Thursday afternoon after the engineers had undertaken their joint site visit, the engineering experts agreed that the building was a dangerous building. The next morning Mr Robertson partly recanted this view. Although he was of the view that the building was likely to collapse in whole or in part in the ordinary course of events, he considered:

(a) That additional works that had been identified including the trusses prop, exterior building props and tie-rod would reduce that risk, he was not

prepared however to say by how much.

(b) That by preventing people from entering onto the property this would avoid a dangerous building as there would be no persons who could be killed or injured in or on the property.

[83] There are several problems with this assertion. The first is that Mr Robertson himself accepted that the dangerous building notice of 19 November did not require fencing that was sufficient to contain debris from a collapse within the property. Secondly, although he surmised that it was possible to secure the area so that people could not get in, we struggle with how this would be achieved in the real world. There is clear evidence that the building has been vandalised and occupied by itinerants notwithstanding the existing fencing. Although we acknowledge that fencing could be improved, it is difficult to see how one could erect fencing that could prevent people scaling it, getting through it with bolt cutters or the like, or otherwise entering onto the property.

[84] Even if this could be done, we have significant concern that such an interpretation of a dangerous building under s 121 of the Building Act would mean that whether a building was dangerous or not would turn singularly on whether it was occupied. We note that if it is not dangerous, Councils lose power to control it or prevent occupation.

[85] More importantly, the definition of a dangerous building includes persons on other property. In this case it is not only the public footpath but the church grounds and church outside the fence and, most particularly, 33 Esplanade Road to the south. After hearing from all the engineers, we prefer the evidence of Mr Frost that it would be difficult to prevent debris from a collapse of the hall entering onto the property at 33 Esplanade Road and potentially injuring the residents there. After listening carefully to the evidence of witnesses and viewing the site, we consider there is potential for elements of the building, that is the slate elements or particular parts of the cement wall, to be projected across the boundary and enter the site and potentially the building adjacent. A piece of slate, in our view, could cause serious injury or death. Accordingly, we are not satisfied that the imposition of the 19 November notice would render the building or public safe, even if the fencing is erected as instructed.

[86] Mr Enright suggested that the Council would be able to adequately control this issue through the Building Act and we could be satisfied that there is no risk to public safety.

[87] We are concerned that this situation has now gone on for some six years and the building has been subject to further degradation. It is not the place of this Court to estimate the exact date of collapse of this building but we are satisfied that the structure has failed and that eventually it will collapse. If it does so, there is a risk to persons outside the property and a clear and present risk of death or injury to any person who may be on the property (legally or otherwise) at the time of that collapse. We also consider that there is a prospect of damage to the church building (a heritage building) in the event of such collapse.

The alternative plan

[88] We now come to the major issue raised by the Council that there are alternatives to demolition. The alternative raised in this case is one which would involve a significant re-adaption of the building greater than that proposed for the adjacent church building. It would involve significant cost in the order of $10m (the sum being in dispute) and the creation of some 15 apartments. The alternative would also involve removing and re-laying the roof and floor and creating a new structure within the existing remaining three walls. The rear western wall would also be removed as part of the process.

[89] There would be new extensions added and the building overall would occupy more of the site and intrude into district plan building limitations more than the current building. The greatest intrusion would be a lift well situated approximately 1.7m from the southern boundary which would intrude into the height to boundary plane by some 6.5m. There would also be a number of other common areas and balconies which would overlook the neighbours to the west and south, with the creation of three floors within the existing hall building.

[90] This alternative would be a discretionary activity under the district plan. Council witnesses told us that they consider that the application would likely be granted. Clearly such predetermination of the application cannot be assumed and it appears to us that it would also involve issues relating to the extent and modification of the existing building and public safety which are likely to be at least as significant as the heritage demolition in this case.

[91] More particularly there is a strong prospect that the application may be opposed by neighbouring owners, given the intrusion into height to boundary setbacks and consequent adverse effects on their privacy and outlook.

Scope of alternatives

[92] This Court has considerable difficulty with the proposed alternative put before it. We acknowledge that Schedule 4 to the RMA enables the consideration of alternatives. Schedule 4, Clause 6(1) states:

> An assessment of the activities and effects on the environment must include the following information; (a) if it is likely that the activity will result in any significant adverse effect on the environment, a description of any possible alternative locations or methods for undertaking the activity.

[93] We note, in particular, that Schedule 4 deals with "locations" and "methods". Clearly in this case the demolition cannot be undertaken on any other site and so location is not an issue. When we deal with methods of the applicant, the Council appears to have interpreted this as an alternative to demolition. That view is supported by reference to the AUP D17.3(14).

[94] On the face of it, however, the methods identified in Schedule 4(6) are the methods to undertake the proposed works, in this case demolition. It can be argued that, given the majority of the building is removed under the Council's alternative, leaving only the three walls, this is an alternative method to achieve demolition of most of the building. However, given that it preserves the three walls, this could not be seen as an alternative method to achieve the AUP demolition objective.

[95] We have more fundamental issues with the alternative proposed in this case given that:

(a) there is no current application before us for this alternative (or any other);

(b) it is not a permitted or controlled activity and would require a resource consent; and

(c) any such resource consent is going to be difficult to assess and will involve a number of factors including the significant heritage values of this site, the extent of demolition, modification or restoration, and the potential impacts upon safety in the meantime, so that the effects could not be judged without significantly more detail.

[96] Overall, we see this proposal as speculative at best and because it has not been developed as a full application before the Court, it would not meet the necessary

informational tests required under the Schedule 4, particularly Clause 2. As several of the witnesses noted, further design would have to be undertaken before the actual impacts could be measured.

[97] More fundamentally, this Court has a concern that the reference to alternatives is not an opportunity for a party to suggest there is a use to which the land could be put of a different nature or kind. Cases such as *Rural Land Owners Society Inc v Queenstown Lakes District Council*,[8] *Living Earth v Auckland Regional Council*[9] and *Te Maru o Ngati Rangiwewehi v Rotorua District Council*[10] support consideration of alternatives. However, we consider that these cases establish that caution needs to be exercised in using such alternatives. Although questions of alternative sites for the activity can clearly be considered, it is less clear if other activities that require resource consent should be considered.

[98] Our tentative view on this topic is that the question of an alternative reconstruction is outside the scope of the RMA.

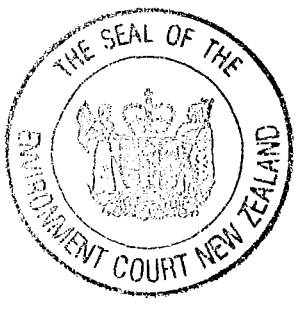
[99] However, there are several reasons why we go on to consider the alternative in this case:

(i) We do so out of caution in case we are wrong as to the appropriateness of this alternatives in this case.

(ii) There are important issues of heritage involved and the Plan at least intends that there be a consideration as to whether there is any other alternative which may avoid adverse heritage effects or at least reduce the extent of those adverse effects on the heritage place.

(iii) Given the significant adverse effect on heritage here, we should consider whether there are alternatives to evaluate the strength of the demolition application.

(iv) We have a relatively well-developed proposal that gives us some ability to assess it as an alternative.



8 *Rural Land Owners Society Inc v Queenstown Lakes District Council* C162/01 at [64], [65] and [66].

9 *Living Earth v Auckland Regional Council* A126/06 at [122].

10 *Te Maru o Ngati Rangiwewehi v Rotorua District Council* [2008] 14 ELRNZ 331 at [52]-[57] and [149]-[151].

The Council alternative

[100] As we have identified, Auckland Council commissioned advice on the commercial feasibility of the potential redevelopment of the hall. It received advice from Mr McKenna who is a property developer with extensive experience which has included the redevelopment of heritage buildings in the Mount Eden locality.

[101] Also involved on behalf of Auckland Council were Mr Matthews who provided architectural advice, Mr Walker, a registered valuer, and Mr Sammons, a quantity surveyor.

[102] Based largely on plans prepared by Messrs McKenna and Matthews, a proposal was developed to convert the existing hall into a three-level apartment building providing a total of 15 apartments. These would consist of seven studio one-bedroom units, eight two-bedroom units plus nine basement car parks.

[103] This became known as 'Council's Alternative Scheme' (the **Alternative**). The Alternative provided for adaptive re-use of most of the existing structure and building extension to be retained. The purpose of the Alternative was to demonstrate that there was a feasible option for the development of the hall that produced an economic return and thus there was no need for demolition.

[104] Advice on the Alternative was reviewed on behalf of View West by Mr Pearson, architect, Messrs Tookey and Frost, both engineers, Mr Scragg, a quantity surveyor and Mr McCabe, a registered valuer.

[105] Even after expert conferencing commissioned by the Court, there remained significant differences between the parties. Major points of difference are summarised as in this table with the Court conclusions also listed. We describe our reasoning for the figures of the Court as follows:

	Auckland Council $	View West $	Court Conclusion $
Gross return	13,760,000	11,770,000	13,000,000
Less GST	1,794,783	1,535,217	1,695,652
	11,965,217	10,234,783	11,304,348
Less Commission & Marketing	375,200	335,400	360,000
Net return – SAY	11,590,000	9,900,000	10,940,000
LESS			
Construction	6,732,000	7,790,348	7,300,000
Fees	675,000	1,436,100	1,300,000
Consents	405,000	405,000	405,000
Property costs	100,000	100,000	100,000
Driveway	-	550,000	-
Land cost	400,000	1,650,000	900,000
Total expenses - SAY	8,310,000	11,930,000	10,000,000
Contingency	830,000	1,443,774	1,000,000
	9,162,000	13,375,222	11,000,000
Finance costs	578,000	1,692,583	1,400,000
Total	9,740,000	15,067,805	12,400,000
Profit/Loss	**+ 1,850,000**	**- 5,167,805**	**- 1,460,000**

[106] Assuming a freehold site of 1040m² that contained the hall could be acquired at $400,000, the Auckland Council estimates produced a net profit of $1,850,000 which is just under 20 per cent. Adopting a land value assessed by Mr McCabe of $1,650,000, the View West experts submitted that the development of the Alternative would produce a loss in the vicinity of $5,000,000.

[107] The differences between valuers on the estimated sale price of the proposed units

was discussed at some length. The Court is of the view that the nearby development at Chambers and Station, which we were able to view internally, is a useful comparison to the proposed larger units on the subject. However, regard would need to be taken of the fact that that was a six-unit development of luxury apartments whereas there are 15 proposed for the subject, seven of which will be studio units of less than $30m^2$.

[108] The valuers agreed that there was no evidence to clearly establish a likely value of the studio units under the Council minimum size. Mr McKenna was of the view that these would sell to investors and 'empty nesters' whereas Mr McCabe considered they could be difficult to sell due to the banks refusing to lend on this size apartment.

[109] In the final analysis, even if a midpoint was taken on the 15 per cent difference between valuers, there would still be a difference in gross return of $1,000,000. Given the differences are reasonable, we have concluded a gross sale price of $13m is appropriate for evaluation.

[110] Other unresolved issues were construction costs for which there was a difference of just over $1,000,000 and a $760,000 difference on fees. Those differences remained after expert conferencing and are therefore unresolved. We have concluded that there are elements of complexity and the grid wall retention system and foundations that involve particular extra construction costs. We conclude that $7,300,000 is a reasonable estimate, taking this and the Heritage NZ consent conditions into account.

[111] There is also a difference of over $1,100,000 in the estimate of finance costs. This turns on whether a two-year period for concept to completion should be allowed or a longer period. We accept the evidence of Mr Putt that consenting is likely to take in the order of 18 months to two years in this case, together with a further two years for development to completion. Given the complexity of the design involved to deconstruct existing buildings, reconstruct a new subframe, patch that subframe to the existing three walls (which have structurally failed), and allowing for re-incorporation of elements of the existing construction, we agree with Mr Putt that the design alone is likely to take around 12 months and then would need to go through a consenting process.

[112] Assuming that there was no appeal to the Environment Court (particularly from neighbours), we would anticipate that this would take somewhere between six months and a year depending on issues that arise. From there, assuming that development has been prepared in advance (including a number of quite complex plans to do with deconstruction and safety), we consider that it may be possible to complete the

construction itself in a further two years.

[113] Mr McKenna's financing figures need to be adjusted accordingly and, given the potential for delays to arise, that is from archaeological finds or wall failure at a mid-point in the development, some of the construction costs may have been incurred. In the end we agree that Mr McKenna underestimated the financing cost for this particular project by around $1m. We adopt a conservative figure of $1,400,000 lower than the applicant's.

[114] We have allowed extra costs, given the requirement for specialist demolition, preservation, archaeological and other expert fees. When we consider those additions probably in the order of $500,000 over the Council estimate, that is $7.3 million. It can be seen that the project would only be marginally economic on the Council's figures and then on the assumption that the land could be acquired for $400,000 and there was no additional cost for the driveway.

[115] We agree with the Council witnesses that the driveway costs are ephemeral, a redesign of the church building could overcome any detriment to existing apartments in our view, and we conclude that no account should be made for that.

[116] On the other hand, we consider that to place the value of the land at $400,000 significantly underestimates the value of the land itself, even with the building on it. We note that the Council's rating valuation undertaken in 2016 values the property at over $5m. Only a proportion to this relates to the land value. There is no reason in our view to differentiate the land value between the church and the hall site to the degree that the Council has done. Even with a modest adjustment of that figure, say, to $800,000-$1m for the hall land (we adopt $900,000), the reconstruction of the building/alternative would become uneconomic.

Holistic evaluation of Alternative

[117] Looking at the matter more broadly, it is not generally the role of this Court to decide whether a particular project will be economic or not. Here we are dealing with whether the alternative is fanciful. We need to look at the matter more broadly. The fundamental difficulty we see with this site compared with others such as Chambers and Station is that the building is a dangerous building and that two of the side walls that are intended to be retained have structurally failed and are rotating outwards. Given that they have no integral strength (there is no reinforcing nor do they have any seismic strength) they are in themselves not part of the new structure. We even suspect they cannot be used as a weather wall although that issue was unresolved during the hearing.

[118] The complexity of the pinning required to hold those walls up, particularly for seismic events, makes the cost significantly greater than comparable buildings where seismic strengthening can be incorporated as part of any structural changes. A clear example of this is Chambers and Station undertaken by Mr McKenna and in fact the proposed church building which adopts a similar approach.

[119] Fundamentally we conclude that extra cost to render the hall safe will not be met by the market. Those works have not been separated out in the alternative but are likely to run to several million dollars given the complex nature of the steel frame and the possible grid patterning to be attached to the wall by some method that is uncertain. We need to keep in mind, in order to do this, that the walls would need to be propped and protected during the deconstruction of the roof and introduction of new floor areas.

[120] We also need to keep in mind that the new structure will involve footings in the order of 400mm from the existing wall on the inside, to replace the floor with a concrete base and footings. In one portion of the wall, the wall will need to be undermined and pinned in some way. All of these issues add significantly to the costs and care that will need to be taken with the alternative.

[121] Overall, we are unanimous that the evidence before us is such that the Alternative cannot be undertaken economically and is unrealistic. More particularly, we are concerned that the advancement of such an alternative would involve the temporary support of walls which are already failing structurally and have no inherent strength. There is a strong prospect that those walls could collapse during the construction period and may in themselves create a danger, not only to workmen but to the neighbouring property, particularly to the south. At this stage, we have not seen any methodology that would satisfy us that such dangers can be avoided. As Mr Frost said, engineers can achieve anything provided cost is not an issue. That is cold comfort when human safety is at large.

[122] The difficulty with retaining safety to the south is that there is so little room to work between the existing wall and the boundary that propping during initial deconstruction of the extension areas at least seems problematic. We retain serious concerns given the rotted-out inserts at skirting at 1200mm and the weakness of the wall at that point. If the lean-tos on the outside of the structure to the south are removed, the wall may then rotate outwards. Although there might be technical solutions to this, we suggest they have not been provided to us and are likely to be expensive and difficult.

[123] Overall, we have concluded that the Alternative raises at least as many safety issues as retaining the current building and involves matters of discretion and decision which in themselves may not only have cost consequences, but may lead to appeals before this Court at the least, or even refusal of consent in the exercise of discretion on the activity status.

Conditions

[124] The demolition activity is a discretionary activity and the discretion of this Court is unfettered in any specific terms. We have had regard to the AUP provisions and recognise that the demolition of this building would have significant adverse effects on the heritage values of this place. We have described other effects and benefits including issues arising under s 104(1)(c) of the Building Act.

[125] We do see some benefit in requiring the seismic improvement of the church as a condition on this consent. We agree that this does not in any way mitigate the loss of the hall itself and its relationship with the church. Nevertheless, it will retain some of the heritage values that relate to the place as a whole, particularly on the corner of Esplanade and View Roads.

[126] It also may be possible for some of the heritage fabric to be recovered from the demolition. Mr Frost in particular, considers that a deconstruction of the hall, before demolition of the walls, could be done in an ordered and safe way. That might mean that some of the heritage fabric of the building could be retained and conditions might be proposed to allow that fabric to be held in appropriate conditions until it can be re-incorporated in a building if possible. We agree that this does not mitigate for the loss of heritage values but might preserve some heritage fabric for re-incorporation in a future redevelopment and thus be considered as a benefit at that time. No such condition is currently imposed but the parties have agreed that if the Court is otherwise minded to grant consent, an opportunity to examine the conditions should be allowed.

[127] Given that Mr Frost is acting for the appellant, we conclude (notwithstanding our high level of concern for the integrity of this building) that we should give an opportunity for the parties to see if a condition could be imposed to allow for the orderly deconstruction of the hall and the salvaging of appropriate heritage fabric. It appears to us that the best that could be hoped for is that all reasonable steps would be taken to try and incorporate appropriate heritage fabric into any new construction. Nevertheless, that would need to be a matter considered as part of any future application for use of the site.

Discretion

[128] We have already discussed at length the Alternative and the Building Act issues. In the end it is clear from our decision that we are concerned as to public safety, both through the Alternative and through the refusal of a consent.

[129] In this case, we have considered public safety issues including the notice under the Building Act. We are entitled to do so under s 104(1)(c) and also as the AUP does not address safety issues.

[130] The statutory policy under ss 131-132 of the Building Act is clearly relevant to dangerous heritage buildings. More broadly, we are dealing with the sustainable management of a physical resource under s 5(1) of the RMA.

[131] That physical resource, a church hall, is no longer fit for purpose. We are satisfied that the structure has failed and collapse is likely. In such circumstances, the principle of sustainable management of the resource would suggest that the best outcome would be its safe removal and substitution with a new resource fit for purpose.

[132] While this will have significant adverse effects on heritage values, these are overwhelmed by the public interest in maintaining safe structures, especially those for public access and use. If the cause of structural failure were known and a repair to the building were practicably available, we would be unlikely to consent to demolition.

[133] Here, the cause of failure and any cure to render the structure safe for use is unknown. Pinning the failed walls as a decorative facade to a new structure confounds the purpose of the walls as structural elements.

Conclusion

[134] We have concluded unanimously that the building should be demolished to avoid issues of safety to the public and particularly to the property to the south and the church to the north. Even with improved fencing, we are not satisfied that there is no danger to public safety. We consider that the continuation of the dangerous building notice of six years is entirely inappropriate. We have not been presented with, nor can we see, any other alternative which would render this building safe for use and occupation and provide for public safety both for people in the building and on other property.

[135] We are, with great reluctance, unanimous in the view that the building should be demolished. In the exercise of our discretion and consideration of all relevant matters

we discussed, we consider that this is one of those rare cases where demolition of the building is appropriate. A significant factor in this is that it has been identified as a dangerous building for some six years and that the walls have failed structurally and have no inherent strength.

[136] We are not satisfied that there is any evidence that there has been any negligence or failure to maintain the Hall on the part of the landowner. It appears that the cause of the failure of the walls and truss is at this stage still unidentified. In those circumstances, we are not satisfied that this physical resource should be managed further into the future, given that it is not able to fulfil its purpose as a building structure. We have concluded that the incorporation of parts of the wall into a new structure is not appropriate.

[137] We do consider there is merit in trying to salvage other elements of the heritage fabric particularly the roof tiles, trusses, sarking and floorboards. We would also consider that that needs to be addressed in the context of whether this can be achieved safely. To that extent, we rely on Mr Frost's comments that this might be possible.

[138] As to incorporation of that fabric into a future building, that is a matter that clearly would be addressed in any application for further use of the site and it may be that a building of similar design to the current hall, perhaps similar to that of the Council's plan, might be constructed. That is a matter for further consideration.

Conditions

[139] It is the Court's view that the conditions need to be cognisant of the evidence of the structural engineers and particularly of Mr Frost whose evidence the Court prefers in terms of his understanding of this building and the consideration he has given to public safety, the demolition of it and potential for salvage. Further, supervision of demolition by an engineer qualified as Mr Frost is, and experienced in demolition as he has indicated to the Court he is, is essential to the managed demolition of this building to meet the objectives the Court's consent.

[140] The underlying principle being that the activity must be carried out in the first instance, safely. For this reason, it is the Court's view that the final determination on the "what, where and how" must rest with the supervising engineer.

[141] The parties were provided with the opportunity to respond to the draft conditions attached to Ms Tree's reply and the Court questioned the respective counsel to

understand clearly their concerns and preferences regarding them. In summary, the responses included:

a) For Auckland Council:

(i) The external walls should be retained.

(ii) In the event this is not considered appropriate by the Court, no salvage attempt at other heritage fabric is required.

(iii) A greater degree of certainty is required in the Bond condition (17) including:

(a) Church strengthening should occur prior to demolition of hall

(b) A completion date is required for the demolition

(c) Given the undertakings of the applicant, the consent should rest with the applicant as named consent holder and with liability relative to undertakings

b) For Civic Trust:

(i) Rule D17.9 of the AUP sets out special information requirements for resource consents and includes in the case of total demolition, a requirement for a conservation plan. We understood Mr Enright to mean that such a plan should attach to the salvaged heritage fabric from the demolition.

(ii) There is value in undertaking salvaging of heritage material and that this should be reused on the site in some way.

(iii) An inventory of likely salvageable heritage fabric (condition 12) is required and a Civic Trust heritage specialist should be involved in the development of that inventory. The Court suggested that an advisory committee which might include a Civic Trust heritage specialist, a Council Heritage specialist and a specialist retained by the consent holder, might be helpful to inform this process. However, this would be with the ultimate decision as to what will be saved, being left to the supervising engineer based on safety reasons in carrying out the demolition. This suggestion appeared to find favour with Mr Enright.

(iv) In relation to the Bond, the time frame of three years in condition 17(e) was considered to be too long

(v) The absence of a minimum in condition 17(a) provided no certainty

[142] The Court has concluded that:

a) the General condition proffered by the Appellant has no utility and should be deleted.

b) The first condition of the consent should ensure that the demolition shall be carried out so as to ensure the safety of workers, the general public, neighbouring properties and their occupiers and users of the Church site.

[143] The Court has also concluded that the conditions should address the following matters:

a) Require a suitably qualified engineer to oversee the project being the demolition, salvaging of heritage fabric and safety. The "buck stops" with this person so their decision relative to safety is paramount and will supersede any other objective expressed in the conditions.

b) A condition shall be included along the lines that the consent holder shall employ their best endeavours to salvage heritage fabric from the Hall which shall not include the walls but may include (in no particular hierarchy of importance):

(i) Roof slate

(ii) Pointed-arched window frames and entrance doors

(iii) Timber trusses

(iv) Timber tongue and groove sarking and floor boards

c) An inventory of any likely salvageable heritage fabric shall be prepared by the consent holder. This inventory shall be informed through consultation with an advisory group made up of:

(i) A heritage expert from the Civic Trust

(ii) A heritage expert from the Council and a suitably qualified council Compliance Officer

(iii) A heritage expert for the consent holder if they wish

d) The inventory shall be included in the demolition plan. The demolition plan should provide the methodology for a controlled demolition and set out the most appropriate manner, measures and detail to at a minimum:

(i) maintain the health and safety of the public and workers;

(ii) minimise nuisance and inconvenience to the public during the demolition period;

(iii) Protect the health and safety and avoid damage to property of neighbours;

(iv) avoid damage to the heritage Church building on the site;

(v) regulate hours of work and sequencing of the demolition (Work Plan);

(vi) maintain the site in a tidy condition in terms of disposal /storage of rubbish, storage and loading of materials and similar construction activities;

(vii) provide the design, detail and installation of protective site hoardings so that the site can made secure for public safety purposes;

(viii) manage and control of dust and debris;

(ix) manage noise;

(x) manage and control parking for related vehicles and designate location(s) for loading / working areas;

(xi) ensure the safe storage of salvaged heritage fabric;

(xii) set a code of practice for unforeseen circumstances with a communication tree and action plan; and

(xiii) set in place a communication plan for immediate neighbours and the Church users for the purposes of informing these parties of the process and any key events associated with the project which will help them to understand what is happening and plan for them if necessary as well as address safety matters.

e) For the purposes of this consent the term **salvage** should be defined perhaps along the lines of:

> *means to rescue, recover, retrieve, during the managed demolition process and store these heritage fabric items in an appropriate manner (on or off the site) to retain their integrity so that they may be reused on site in the future.*

f) Condition(s) should address the appropriate storage of the salvaged materials (conservation plan) and how they might be identified when and if a future development of the site comes about so that they are considered for use in that some way.

g) There should be a condition to require that the church be protected through the demolition and salvaging operation.

h) Condition 15 is appropriate but the time frame needs to reflect the desire of the Court to ensure the demolition is enabled as soon as practical.

i) To that end, a condition needs to be drafted to address the courts concern for a timely implementation of the consent.

[144] The bond condition needs to reflect the issues raised by the Council and Civic Trust outlined above.

Outcome

[145] We conclude that we should reverse the decision of the Council and grant consent for the demolition on conditions. We annex hereto those produced by the appellant as **A** but these are to be subject to further discussion.

[146] The parties are to confer as to appropriate conditions on the following basis:

(a) The appellant is to circulate its preferred conditions in light of this decision to the parties prior to 24 December 2018.

(b) The Council and Civic Trust are to provide any comments on or alternatives to those conditions to the appellant by 18 January 2019.

(c) The appellant is then to provide its preferred conditions with an explanation of the differences of any between its position and that of any other parties to the Court by 1 February 2019. The Court will then decide whether it needs

to convene a hearing or can conclude the matter on the papers.

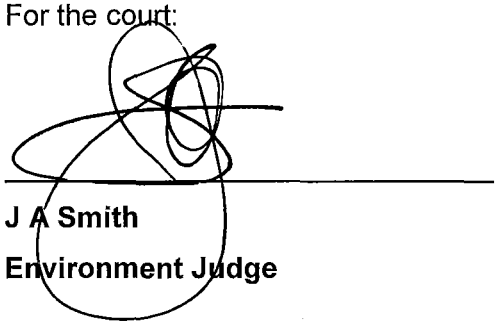
[147] Costs applications are not encouraged but any application is to be filed by 1 February 2019; any response within a further 10 working days; and any reply within five working days thereafter.

Comment

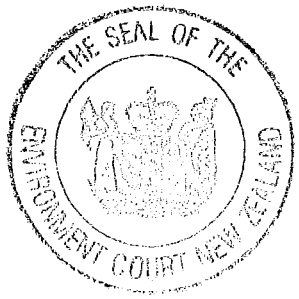
[148] We make two additional comments. First, Mr Loutit advised the Court that the question of compliance with the further dangerous building notice (the truss prop) and other techniques suggested by Mr Robertson would be discussed directly with the property owner. We have highlighted that we retain a safety concern, particularly to the property to the south. We do not see the proposals as avoiding this risk.

[149] We also wish to note that the questions of preservation of heritage have been the matter of some concern worldwide. Areas such as Auckland suffer not only from climatic issues, particularly rain penetration, rot, and seismic activity, but also a lack of public funding for the preservation of heritage. We again note that in other countries heritage is often addressed as a public interest issue with funding provided by local or national agencies. We note that such an arrangement is not likely to be helpful where a building has failed for unknown causes but may enable seismic and other improvements to be undertaken where a building has not deteriorated significantly to date.

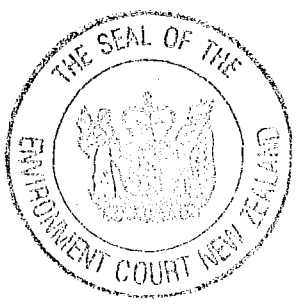
For the court:



J A Smith
Environment Judge



Annexure A



Appendix A: Draft conditions of consent

Conditions

Under section 108 of the RMA, this consent is subject to the following conditions:

General conditions

1. The activity shall be carried out in accordance with the plans and all information submitted with the application, detailed below, and all referenced by the Council as consent number R/LUC/2016/2243.

   (a) Application Form, and Assessment of Effects prepared by Lee Boyt and Philip Brown of Campbell Brown Planning Limited, entitled '*Demolition of a Category B Scheduled building - the St James Church Hall - 31 Esplanade Road, Mt Eden*', dated 03 June 2016;

   (b) '*Former Sunday School, 31 Esplanade Road, Mt Eden – Heritage Inventory*', prepared by Dave Pearson Architects Limited and dated November 2015;

   (c) '*Former St James Sunday School building, Mt Eden, Auckland, – Proposed Demolition Heritage Impact Statement*', prepared by Dave Pearson Architects Limited and dated May 2016;

   (d) '*Structural Appraisal of Existing St James Sunday School Building – 31 Esplanade Road, Mt Eden*', prepared by No.8 Engineering Limited and dated November 2015;

   (e) '*St James Sunday School, Esplanade Road, Mt Eden: Archaeological Assessment*' prepared by CFG Heritage and dated 29 August 2016.

   (f) The following drawing:

Drawing ref number	Title	Architect / Author	Dated
BC001	*Site & Location Plans*	Townsend Architects	-

2. This consent (or any part thereof) shall not commence until such time as the following charges, which are owing at the time the Environment Court's final decision is released, have been paid in full:

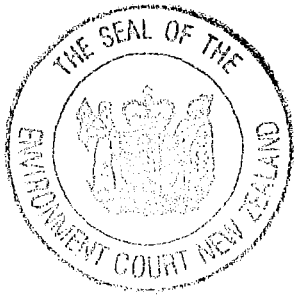
   (a) All fixed charges relating to the receiving, processing and granting of this resource consent under section 36(1) of the Resource Management Act 1991 (**RMA**).

   (b) All additional charges imposed under section 36(3) of the RMA to enable the Council to recover its actual and reasonable costs in respect of this application, which are beyond challenge.

   (c) All development contributions relating to the development authorised by this consent, unless the Manager Resource Consents has otherwise agreed in writing to a different payment timing or method.

3. The consent holder shall pay any subsequent further charges imposed under section 36 of the RMA relating to the receiving, processing and granting of this resource consent within 20 days of receipt of notification of a requirement to pay the same, provided that, in the case of any additional charges under section 36(3) of the RMA that are subject to challenge, the consent holder shall pay such amount as is determined by that process to be due and owing, within 20 days of receipt of the relevant decision.

4. Under section 125 of the RMA, this consent lapses five years after the date it is granted unless:



(a) The consent is given effect to; or

(b) The Council extends the period after which the consent lapses.

5. The consent holder shall pay the Council an initial consent compliance monitoring charge of $845 (inclusive of GST), plus any further monitoring charge or charges to recover the actual and reasonable costs that have been incurred to ensure compliance with the conditions attached to this consent.

Demolition Management

6. Prior to the commencement of demolition (but not including site preparation or investigations), a Demolition Management Plan (**DMP**) must be submitted to the Council's Team Leader Compliance & Monitoring – Central for certification. The DMP shall address the following aspects of the demolition process:

(a) Details of the site manager, including their contact details (phone, email, postal address);

(b) A methodology for demolition of the Hall in the most appropriate manner, including details of measures to maintain the health and safety of the public and workers, and minimise nuisance and inconvenience to the public during the demolition period;

(c) Proposals for supervision of the demolition works by a suitably qualified engineering professional;

(d) Provide hours of work, sequencing of the demolition period;

(e) Measures to be adopted to maintain the site in a tidy condition in terms of disposal /storage of rubbish, storage and loading of materials and similar construction activities;

(f) Measures for waste management which include designated sites for refuse bins, and for recycling bins for glass, plastic and cans storage and collection in accordance with the Council's waste reduction policy;

(g) Location and height of any site hoardings;

(h) Noise management;

(i) Dust management;

(j) Provide a parking management plan for construction related traffic. Parking shall be contained within the site where possible;

(k) Provide a designated location for loading / working areas;

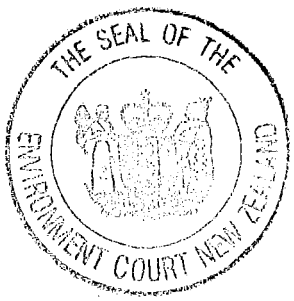
(l) Provide cleaning facilities within the site to thoroughly clean all vehicles prior to exiting the site to prevent mud or other excavated material from being dropped on to the street network. In the event that such deposition does occur, it shall immediately be removed by the consent holder;

(m) Address the transportation and parking of oversize vehicles such as cranes or cherry pickers;

(n) Provide traffic management plans in compliance with the latest edition of the NZTA 'Code of Practice for Temporary Traffic Management' (COPTTM) document;

(o) The traffic management plans must be approved by Auckland Transport prior to the commencement of any demolition or construction works.

The approved DMP shall be implemented thereafter throughout the demolition period.



7. The consent holder shall at all times control any dust in accordance with the 'Good Practice Guide for Assessing and Managing Dust', Ministry for the Environment (November 2016).

8. All demolition, earthworks and construction works shall be restricted to the hours between 7.30am to 6.00pm Monday to Saturday (unless, in the opinion of the site manager, work is required outside of these times to address an immediate public safety issue). No such works shall occur on Sundays or public holidays.

9. Noise arising from construction works shall comply with the Auckland Unitary Plan construction noise standard E25.6.27.

10. Sediment control shall be established in accordance with Auckland Council publication GD05. The consent holder shall ensure that at all times all stormwater runoff from the site is managed and controlled to ensure that no silt, sediment or water containing silt or sediment is discharged into stormwater pipes, drains, channels or soakage systems to the satisfaction of the Council's Team Leader Compliance & Monitoring – Central.

Heritage Management

11. The Consent Holder shall prepare a Heritage Management Plan (**HMP**) to outline the management processes that will be put in place to guide the heritage aspects of the project during demolition. The HMP must include the following information:

    (a) Contact details of project stakeholders, including contractor(s), heritage architect, archaeologist, applicant, and Council officers;

    (b) Demolition schedule, with approximate timing for the extent of the proposed works;

    (c) Work plan and methodology for each aspect of the demolition work, detailing demolition methods;

    (d) Measures for ensuring a photographic record is created of the St James Hall prior to its demolition;

    (e) Proposals for heritage and archaeological supervision of the demolition phase of the work;

    (f) Outline of measures that will be taken to protect the Church from damage during construction.

    The HMP must be submitted to the Council's Team Leader Compliance & Monitoring – Central for their approval at least ten (10) working days prior to the pre-demolition meeting required by Condition 13 below.

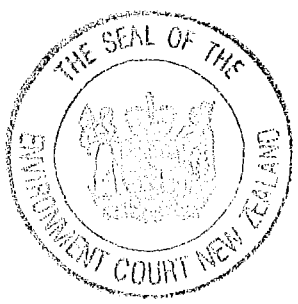
12. The consent holder must, at least 30 working days prior to demolition of the Hall:

    (a) provide an inventory of any likely salvageable heritage fabric within the Hall that has been prepared by a suitably qualified and experienced heritage architect taking into account the demolition methodology and health and safety obligations under the Health and Safety at Work Act 2015. This inventory is to include heritage fabric that can be salvaged to either:

        (i) be re-used in future construction activities and / or heritage interpretation purposes on the site; or

        (ii) be used for heritage interpretation purposes off the site.

    (b) In respect of salvageable heritage fabric within the Hall, the consent holder must, at least 30 working days prior to demolition of the Hall commencing, provide the inventory to the Council and Team Leader Compliance and Monitoring – Central detailing what heritage fabric the consent holder has identified as practicable to salvage and must:



(i) take into account any feedback provided by the Council within 10 working days of it giving such notice; and

(ii) provide reasons as to why any heritage fabric that the Council considers is practicable to save is not, in the consent holder's opinion, practicable to save, at least 15 working days prior to demolition of the Hall commencing.

13. A pre-demolition meeting on site should be held with the project stakeholders, including contractor(s), heritage architect, applicant, site manager and a Council specialist heritage representative from the Council's Built Heritage team to ensure implementation of the proposed details as outlined in the Heritage Management Plan. The consent holder shall give the relevant Auckland Council's heritage representative at least ten (10) working days' notice of the intended time and date of the pre-commencement meeting. Please contact Team Leader Built Heritage, Rebecca Fogel, to arrange this meeting (Rebecca.Fogel@aucklandcouncil.govt.nz (09 890 8246)).

14. A representative from the Council's Built Heritage Team shall be invited to supervise all demolition works undertaken under this consent. Please contact Team Leader Built Heritage, Rebecca Fogel, to enable this (Rebecca.Fogel@aucklandcouncil.govt.nz (09 890 8246)).

15. A Photographic record shall be created of the St James Hall before demolition commences. Photographs shall be taken by a professional photographer to record as much of the heritage fabric of the Hall as reasonably practicable. These photographs shall be submitted to the Council's Team Leader Compliance & Monitoring – Central within two months following completion of the works.

Bond

17. Prior to commencing any demolition of the Hall (not including preparatory works) under this consent, the Consent Holder shall post and maintain a bond in favour of Auckland Council:

(a) For the purpose of ensuring completion of strengthening works on the Church to achieve as close to 100% new building standard (**NBS**) as reasonably practicable (**Bonded Works**).

(b) The Bond Amount must be set by agreement between Auckland Council and the consent holder four weeks prior to the demolition of the Hall under this consent (**Bond Amount**) by:

(i) Providing Auckland Council with a Quantity Surveyor's certification summarising the details of the work to be undertaken and identifying the assessed cost to complete the Bonded Works; and

(ii) Obtain acceptance from Auckland Council that the Quantity Surveyor's certification of the Bond Amount is sufficient to cover the Bonded Works, such acceptance being deemed to have been given if no response is received within 7 working days of the request.

(c) The Bond Amount may be reduced to a lesser amount at any time after the Bonded Works have commenced to reflect work undertaken towards completion of the Bonded Works, provided that any reduced bond remains sufficient to cover the outstanding cost of completing the remaining Bonded Works. The Consent Holder must:

(i) Before the Bond Amount is reduced, provide Auckland Council with a Quantity Surveyor's certification summarising the details of the work

undertaken and identifying the assessed cost remaining to complete the bonded works; and

(ii) Obtain acceptance from Auckland Council that the Quantity Surveyor's certification of a lessor amount is sufficient to cover the remaining cost of completing the Bonded Works, such acceptance being deemed to have been given if no response is received within 7 working days of the request.

(d) On completion of the Bonded Works, the redevelopment of the Church pursuant to resource consent R/LUC/2015/5026 (**Church Redevelopment Works**), or any other resource consent granted for the Church that achieves strengthening works of the Church to achieve as close to 100% NBS as reasonably practicable, Auckland Council shall, without delay, return the Bond Amount to the Consent Holder.

(e) If the Consent Holder fails to commence the Bonded Works, to the satisfaction of Auckland Council, within 3 years of the demolition of the Hall under this consent:

(i) Auckland Council may enter the site, complete the Bonded Works, and recover its cost to the extent provided for by the Bond Amount; and

(ii) On completion of the Bonded Works, any money or securities remaining after payment of the cost of the Bonded Works must be returned to the Consent Holder.

18. Prior to commencing any demolition of the Hall (not including any preparatory works) under this consent, the consent holder shall register an encumbrance instrument against the certificate of title of the site for the purposes of securing the consent holder's obligations under condition 17.

Advice notes

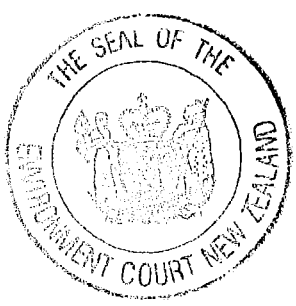
1. *The applicant needs to obtain all other necessary consents and permits, including those under the Building Act 2004, and comply with all other relevant Council Bylaws. This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007 and the Health and Safety at Work Act 2015 regulations, relevant Bylaws, and rules of law).*

2. *The scope of this resource consent is defined by the application made to Auckland Council and all documentation supporting that application.*

3. *The initial monitoring charge is to cover the cost of inspecting the site, carrying out tests, reviewing conditions, updating files, etc, all being work to ensure compliance with the resource consent. In order to recover actual and reasonable costs, inspections, in excess of those covered by the base fee paid, shall be charged at the relevant hourly rate applicable at the time. The consent holder will be advised of the further monitoring charge or charges as they fall due. Such further charges are to be paid within one month of the date of invoice. Only after all conditions of the resource consent have been met, will the Council issue a letter confirming compliance on request of the consent holder.*

4. *A copy of this consent shall be held on site at all times during the establishment and construction phase of the activity.*

5. *An authority to modify or destroy an archaeological site is required from Heritage New Zealand Pouhere Taonga under section 44 of the Heritage New Zealand Pouhere Taonga Act 2014. It is the consent holder's responsibility to apply for an obtain this authority prior to demolition commencing.*



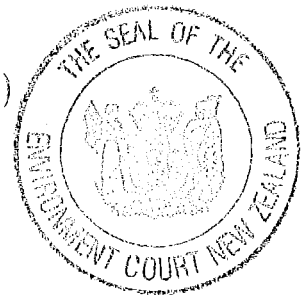
6. *The consent holder is requested to notify the Council, in writing, of their intention to begin works, a minimum of seven days prior to commencement. Such notification should be sent to the Resource Consent Monitoring Team Leader (email: rcmadmin@aucklandcouncil.govt.nz or fax: 353 9186) and include the following details:*

   – *name and telephone number of the project manager and the site owner*

   – *site address to which the consent relates*

   – *activity to which the consent relates*

   – *expected duration of works.*



Annexure B

Auckland Council

20 April 2012

The Presbyterian Church Property Trustees
PO Box 27602
Mt Roskill
Auckland 1440

Dear Sir/Madam

Re: Mt Eden Presbyterian Church Hall 31 Esplanade Road, Mount Eden, Auckland 1024
RFS: I/2012/10764.

Please find attached a Dangerous Building Notice issued on the 20th April 2012 on site to the Church Elder/Deacon, who represents the Church Property.

The Auckland Council have issued this notice, in response to the letter and interim report supplied by Archifact Limited and MSC Consulting.

The Auckland Council, requires you to carry out the requirements of Section 124(1) © (i) of the Building Act to reduce the danger to the public.

Should you require any further Information, do not hesitate to contact the writer in the first instance, should any of the requirements be not able to be meet. DDI 353.9405

The fencing or hoarding must remain at all times, until a scope of works, and full structural report has been submitted to Council, Council Heritage are to be involved in the process.

Should you require any further information, do not hesitate to contact the writer or Heritage Architects at Auckland Council.

Yours sincerely

Chris Napier
Compliance Inspector.
Central Area
Auckland Council.

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

Dangerous building notice

Issued under section 124 of the Building Act 2004

Auckland Council

NOTICE ISSUED TO:

Owner name(s):	The Presbyterian Church Property Trustees
Mailing address:	PO Box 68396, Newton, Auckland 1145

THE BUILDING:

Street address of building:	31 Esplanade Road, Mount Eden, Auckland 1024		
Legal description of land where building is located:	CT-567/297 PT LOTS 16-17 DRO 1355		
Building name:	Mt Eden Presbyterian Church Hall		
Location of building within site/block number:	Church Hall	Level / unit number:	N/A

MEANING OF THE TERM DANGEROUS BUILDING:

Section 121 states that:

(1) A building is dangerous for the purposes of this Act if,-

(a) in the ordinary course of events (excluding the occurrence of an earthquake), the building is likely to cause-

(i) injury or death (whether by collapse or otherwise) to any persons in it or to persons on other property; or

(ii) damage to other property; or

(b) in the event of fire, injury or death to any persons in the building or to persons on other property is likely because of fire hazard or the occupancy of the building

REASON(S) WHY BUILDING IS CONSIDERED DANGEROUS:

Auckland Council is satisfied that the building located at 31 Esplanade Road, Mount Eden, Auckland 1024 (the Building) poses a danger to the safety of people / property in that the building is dangerous in accordance with s121(a) or (b) and is *either*

(a) in the ordinary course of events is likely to cause injury or death to persons in it or to persons on other property, or damage to other property; or

(b) in the event of fire, injury or death to any persons in the building or to persons on other property is likely because of fire hazard or the occupancy of the building

The Building is considered dangerous for the following reasons:

- The structural stability of the roof and supporting structure is in danger of collapsing.

In accordance with section 124(1) (c)(i) of the Act, Council requires that you undertake the following building work, which Council reasonably believes is necessary to reduce or remove the danger:-

1. Erect a fence or hoarding to prevent people from approaching the building nearer than is safe. **(IMMEDIATELY)**
2. Attach in a prominent place on, or adjacent to, the building a notice that warns the people not to approach the building. **(IMMEDIATELY)**
3. **The owners are required to supply to Auckland Council a Full Structural report, and supporting evidence of reason for the structural failure (28 days) from a Registered Structural Engineer**

This notice must be complied with by:	IMMEDIATELY and Engineers Report by the 19th May 2012

FURTHER PARTICULARS

Under s126, Council may apply to the District Court for an order authorising it to carry out building work required under a notice given by Council under section 124(1)(c), if the work is not completed, or it is not proceeding with reasonable speed, within—

(a) the time stated in the notice; or

(b) any further time that the territorial authority may allow

Before the Council applies to a District Court under subsection (1), it must give you not less than 10 days written notice of its intention to do so.

If Council carries out any building work under the authority of a District Court order:

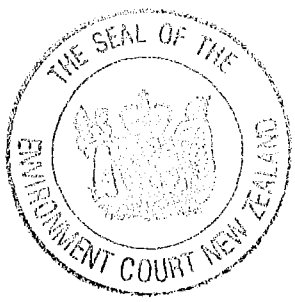
(a) the owner of the building is liable for the costs of the work; and
(b) the Council may recover those costs from the owner; and
(c) the amount recoverable by the Council becomes a charge on the land on which the work was carried out

Note:
You are committing an offence under s124(3) if you fail to comply with a notice given under subsection (1)(c).
A person who commits an offence under this section is liable to a fine not exceeding $200,000

Name:	J Barnard	Role:	Team Leader Compliance & Inspections		
Signature:	Jan BARNARD	Date:	20-Apr-2012	Time:	0800hrs.

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

Annexure C



BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

IN THE MATTER	of the Resource Management Act 1991
AND	of an appeal under section 120 of the Act
BETWEEN	VIEW WEST LIMITED
	(ENV-2017-AKL-151)
	Appellant
AND	AUCKLAND COUNCIL
	Respondent

Hearing:	At Auckland on 12 November 2018
Court:	Environment Judge JA Smith Environment Commissioner ACE Leijnen Environment Commissioner RA Howie Commissioner K Stevenson
Appearances:	B Tree for Appellant/Applicant W Loutit for Auckland Council R Enright for Civic Trust Auckland
Date:	15 November 2018

MINUTE OF THE ENVIRONMENT COURT
(12 November 2018)

Issues

[1] The parties attended a hearing on 12 November 2018. The parties have discussed the issues, and:

(a) annexed hereto and marked **A** is a list of the key issues identified by the applicant;

(b) the Court noted several potential issues which are annexed as **B**; and

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND

(c) Mr Loutit and Mr Enright will provide their views as to the issues and whether they accept the building is a "dangerous building" by **Monday 19 November 2018**.

Supplementary evidence

[2] In relation to the application for supplementary evidence, the Court considers that it is unnecessary to allow those documents in at this stage. Mr Loutit indicates that the issue of a daycare centre / single house / office building are not live in terms of alternatives at this point. In the event that situation changes, Ms Tree can renew her application to admit that evidence.

[3] In relation to issues of the feasibility report and valuation in respect of the driveway, these are matters that Ms Tree may wish to produce separately through witnesses as items in her evidence. It is unclear to us whether they add or assist significantly, but that is a matter than can be addressed if and when they are raised with the Court.

Procedure

[4] View West will commence and close, followed by Auckland Council and then Civic Trust.

[5] The Court will commence at **9.20 each day**, but will be adjourning at **12.30pm on Wednesday 28 November** and at **3.30pm on Thursday 29 November**.

For the court

JA Smith
Environment Judge

Issued:

15 NOV 2018

A

ENV-2017-AKL-000151 ***View West v Auckland Council***

Issues paper for Pre-Hearing Conference on 12 November 2018

Planning and Legal

- The relevance of the Auckland Council unsafe building notice on the Hall.
- Interpretation and application of AUP RPS Policy B5.2.2(6). Whether the policy applies solely to Category A items, or whether it also applies to Category B items.
- Interpretation and application of AUP DP Policy D17.3(14). Whether the criteria (i)-(iii) apply to 14(a) and (b) or 14(b) only. The difference in application means that demolition of Category B items should be *avoided*, or *avoided subject to assessment against the criteria.*
- The likelihood and time frame to obtain resource consent for the Council's Alternative Scheme.
- The appropriateness of a bond to provide certainty that strengthening works will occur to the Church if the Hall is demolished.

Heritage

- Whether the Hall or the Church has more heritage value, and if the adverse effects of demolishing the Hall can be mitigated by providing for the preservation of the Church.
- If the heritage value of the Church after demolition of the Hall would be a Category B heritage place.
- The effects on the heritage values of the Hall from the Alternative Scheme.

Engineering

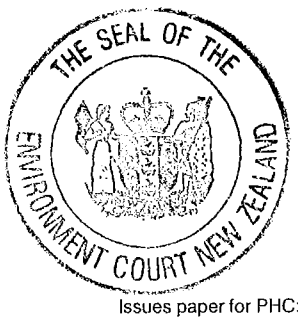
- There remains uncertainty on the ground conditions of the Hall site, and in particular extent of basalt to be removed.
- There remains uncertainty (and disagreement) on the implications of the failed collar tie and truss in the Hall and the risk of collapse of the Hall.
- There is disagreement between the parties that the Council's engineering approach to the Alternative Scheme is appropriate, particularly in respect of the heavy steel framing, fire safety, acoustic insulation and floor to ceiling height.

Valuation

- Whether the appropriate valuation method for the Hall Site is market value or the residual method.
- How the access to the Alternative Scheme across the Church site should be valued, and what the valuation impact this driveway would have on the Church apartments.
- The valuers disagree on the sales revenue for the Alternative Scheme.
- The marketability of the Alternative Scheme.

Quantity Survey and Economic Feasibility

- The relevance of the economic feasibility of the Church Development in considering the economic feasibility of the Hall, including the Alternative Scheme.
- Whether the Alternative Scheme is economically feasible.
- Whether the other alternatives assessed to develop the Hall are economically feasible.
- If the following items should be included in the economic feasibility schedule - the easement for the driveway; cost escalation; and return on equity.
- The parties disagree on the cost of construction, professional fees, and consent costs for the Alternative Scheme.
- The parties disagree on bank financing and purchaser lending requirements for the Alternative Scheme.



View West Limited v Auckland Council (EV-2017-AKL-151)

Issues raised by the Court

1. Is this a dangerous building?
    - Robertson unclear whether he disagrees with 2012 notice.

2. Is Council pursuing repair?
    - No notice for works complying with s 121-125 Building Act.

3. Works includes demolition
    - Relationship BA – RMA. S 5(1)(RMA.

4. On evidence Council position involves at least partial demolition (see Robinson
    - No remaining volume – Footprint only walls → over 70% of original = demolition

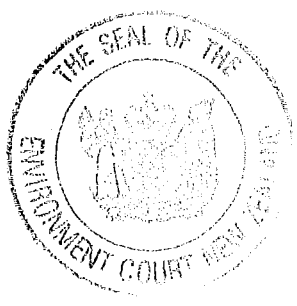
5. If so, only condition of demolition, ie
    (a) Retain and protect 3 walls;
    (b) Rescue materials (slate, trusses, sarking);
    (c) Bond for works;
    (d) Conditions of consent.

6. Public Safety – Relevance Harcourts etc
    - See 1 above.

7. Is Church consent Affected building under Building Act?

8. What are we valuing?

Annexure D



MSC Consulting Group Ltd, 12 - 14 Como Street
PO Box 33426, Takapuna, North Shore City 0740, New Zealand
P 09 486 2210 F 09 486 0225
www.msc.co.nz

Consulting Engineers
Structural • Civil

32795R

17 April 2012

Auckland Council
Private Bag 92303
Auckland 1142, New Zealand

Attention: Chris Napier

Dear Chris

Re: Mt Eden Pacific Island Presbyterian Church Hall
- 31 Esplanade Road. Mt Eden

We were requested by Archifact to attend on site to inspect the structural stability of the hall and to advise on whether it could continue to operate or not.

The request was prompted by the fact that a timber and steel rod roof truss had lost its support when a corbel supporting it had broken off. This truss has twisted above what is left of the corbel. Settlement of the timber floor and water damage to the concrete/masonry wall surface has occurred on the other end of the truss.

The side walls of the hall have been constructed with built in timber member approximately 1200mm above the timber floor. This timber has completely rotted out leaving a 100 deep by 20 wide slot along the inside of the walls.

The concrete/masonry walls are 300mm thick so that only two thirds of the wall is effective. Should the truss that is defective move further it would pull in the wall and could break at the slot. The wall appears to have no reinforcing steel in it. This could result in a catastrophic failure.

The building has suffered from lack of maintenance and continuing water ingress. The condition of the foundations is unknown. The hall would not reach 33% of current seismic requirements.

At this stage we have not been instructed to undertake a thorough investigation and IEP. The unsafe state of the building requires a rapid response and this letter confirms the reasons for our recommendation to close the building

Yours faithfully

MSC CONSULTING GROUP LTD

John Syme
cc: Adam Wild: adam@archifact.co.nz
Mt Eden Pacific Island Church: mtedenpipc@gmail.com

THE SEAL OF THE ENVIRONMENT COURT NEW ZEALAND