

**Decision of Hearing Commissioner David Caldwell
on Publicly Notified Resource Consent Application**

(Sections 104, 104B and 104D)

Application Reference:	Land Use: RMA/2021/3921
Applicant:	Canterbury Jockey Club
Site address:	165 Racecourse Road
Legal Description:	Section 2 Survey Office Plan 534960
Proposal:	Demolish the heritage listed Grand National Stand at Riccarton Racecourse
Zoning:	Open Space Metropolitan Facilities zone
Overlays and map notations:	The GNS is a Highly Significant (Group 1) heritage item (item #453) within heritage setting (#183) The site also contains The Tea House which is also a heritage item (item #452) within heritage setting (#183) Christchurch International Airport Protection Surfaces An Environmental Asset Waterway runs along the southwest boundary Protected trees – there are 48 Significant trees on the site
Activity status:	Non-complying
Submissions:	6 in support / 5 in opposition
Date of Hearing:	1 September 2022

AttendancesApplicant**Ms Jo Appleyard and Ms Lucy Forrester**, Chapman Tripp – Counsel for Applicant**Mr Tim Mills** – Applicant Representative**Mr Nik George** – Engineer**Mr Chris Lang** – Quantity Surveyor**Mr William Fulton** – Heritage Architect**Mr Tim Joll** – PlannerS42A Reporting Officers**Mr Stephen Hogg** – Engineer**Mr Gareth Wright** – Heritage Advisor**Ms Odette White** – Senior PlannerSubmitters**Mr Ross Gray, Dr Lynne Lochhead and Professor Chris Kissling** on behalf of Christchurch Civic Trust and Historic Places Canterbury

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Introduction and Background

1. This is the decision of Independent Hearings Commissioner David Caldwell. I was appointed by the Christchurch City Council (**Council/CCC**) under s34A(1) of the Resource Management Act 1991 (**RMA**) to hear and decide this application.
2. The application was received by Council on 24 November 2021. It was publicly notified on 18 May 2022.
3. Due to delays in the provision of technical reports, and in the provision of expert advice, there were some delays in progressing the application. The submission period closed on 16 June 2022. 11 submissions were received with 6 being in support, and 5 in opposition.

4. Ms White provided a helpful summary of the submissions. The reasons for submissions in support were summarised as:¹
- The presence of the unusable stand is an impediment to the normal operation of the racecourse;
 - The building is redundant / no longer needed;
 - Little heritage or architectural value;
 - The cost of upgrading would be a waste of money;
 - The funds required to remediate the building are beyond the CJC's resources.
5. The reasons for submissions in opposition were summarised as:²
- The heritage significance of the building;
 - Much of the Luttrell Brothers work has been demolished;
 - Environmental impact of the demolition – waste of materials;
 - Could be repurposed;
 - Shortcomings in the application's AEE;
 - Applications for heritage grants have not been made.
6. Ms White also identified that a number of the matters raised by the submitters were beyond the scope of the resource consent process and could not be addressed. These included: reuse of concrete from the building for prevention of coastal erosion; gifting or repurposing the building for the arts; and allocation of Council funding to assist with restoration of the building. I agree that the matters summarised are beyond the scope of this process, and my delegated powers.³
7. I was provided with, and read, the application and accompanying documents some time before the hearing. I have also read all of the submissions lodged and considered the matters raised in each of them in reaching my decision. While I do not expressly address each and every issue identified in the written submissions, the matters raised have all been considered.

Procedural Matters

8. I issued a Minute on 18 July 2022 confirming my appointment and confirming the directions in relation to evidence and legal submissions. I recorded in that Minute that I intended to read all expert evidence in advance and would not require it to be read at the hearing. I directed that all experts prepare a summary of their evidence to be read at the hearing. I confirmed that evidence from submitters other than expert

¹ S42A Report at para [22]

² S42A Report at para [23]

³ S42A Report at para [24]

evidence may be presented orally or in writing at the hearing, as could legal submissions on behalf of all of the parties.

9. Following the hearing, I issued Minute No 2 on 2 September 2022 setting out a proposal in relation to my site visit and providing the parties with an opportunity to identify any particular area or items they would like me to view.

Site Visit

10. I undertook that site visit on 7 September 2022. I was escorted by Mr Eric Cormack, the Operations Manager for the Applicant. Mr Cormack had not given evidence at the hearing. Mr Cormack guided me through the building and around its surrounds. I went through all of the floors internally. I went out onto the main GNS itself and then into the basement area. I note from that site inspection the building is obviously deteriorating. Externally there is considerable pigeon guano. There did not appear to be significant visible signs of earthquake damage, at least not from a lay person's perspective. There are a number of areas where the concrete has been drilled and cut out, I understand for inspection purposes. There is obvious internal cracking. Externally there is a considerable amount of cracking in the external surfaces.
11. I also viewed the GNS from the racecourse side, viewed the Tea House and its setting, and the collection of buildings within the southern area of the site.
12. Prior to the site visit I received correspondence (through the Hearings Officer) from the Christchurch Civic Trust/Historic Places Canterbury which identified matters related to the site visit in particular and also provided further information. The further information included a letter and accompanying information which largely sought a "pause" to enable a full assessment of a number of ideas identified. That correspondence also responded to matters raised by the Applicant. Given it was provided prior to the Applicant's right of reply, I advised, in my Minute No 3 dated 9 September 2022, that I did not consider there to be any prejudice to the Applicant if I received that information and considered it as part of my decision-making process.
13. The site visit was helpful and aided my understanding of a number of matters which had been identified by the Applicant's witnesses, the reporting officers, and the witnesses for the Christchurch Civic Trust and Historic Places Canterbury. It is certainly a substantial building.

Applicant's Reply and Closing of Hearing

14. My Minute No 3 also made directions in relation to the Applicant's right of reply and its timing. This was particularly in light of proposed Plan Change 13 – Heritage, which it was understood would be notified on 23 September 2022. Ms Appleyard had expressed a concern that if the hearing was closed and no decision was issued prior to that date, then the hearing may need to reopen for further submissions. I note Plan Change 13 was not notified on 23 September 2022 as anticipated.
15. Following receipt of the Applicant's reply, I issued Minute No 4 dated 3 October 2022 closing the hearing.

The Application

16. The application is for land use consent to demolish the heritage listed Public Grandstand. It is commonly known as the Grand National Stand (**GNS**) and is situated at Riccarton Racecourse, 165 Racecourse Road, Riccarton Park. While no particular replacement or reuse is proposed, it is intended that the cleared site will be re-grassed into a simple embankment form pending a decision as to any replacement option.
17. The demolition activities are proposed to be managed to ensure any environmental effects on the surrounding properties and environment are avoided or mitigated, with management measures to be detailed in a Demolition Management Plan which is to be prepared by the selected contractors and certified by Council prior to commencement of any works.
18. The management measures proposed also address site safety, traffic, noise and vibration, protection of significant trees, erosion and sediment control, and, if applicable, management of any soil contamination. Specific steps are proposed to ensure the Tea House and its setting are adequately protected. Separate conditions are proposed regarding the salvage of heritage fabric where appropriate and the provision of a photographic record whilst the works are undertaken.
19. The application identified that Environment Canterbury's Listed Land Use Register (**LLUR**) has identified the site as being contaminated or potentially contaminated from current or previous land use activities included on the Hazardous Activities and Industries List (**HAIL**). The provisions of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (**NES-SC**) may also need to be complied with. The application included an assessment against the provisions of the NES-SC.
20. The application advised that the GNS was constructed in 1923 and did not require an archaeological authority from Heritage New Zealand Pouhere Taonga (**HNZPT**) for works to, or removal of the structure down to, ground level. It identified the site has been used as a racecourse since 1857 and therefore an authority is likely to be required for works that disturb the ground, including the removal of foundation footings.

The Site and Existing Environment

21. This was described in paragraph [2.1] of the AEE. Very much in summary, the wider application site is known as Riccarton Park Racecourse. The site occupies an area of 82.3566 hectares. The main racecourse buildings, access roads, and carparking are clustered towards the southern boundary. The racetrack is located centrally. Within the site there are 48 significant individual trees which are scheduled in the District Plan, again clustered towards the southern boundary. In addition to the GNS, the Tea House (1903) is also scheduled.
22. The GNS is scheduled as a highly significant heritage item (#453) and sits within a heritage setting. The Christchurch City Council Heritage Assessment and Statement of Significance states as follows:

The Public Grandstand and its setting have high contextual significance as part of the complex of buildings and open spaces that constitute the Riccarton Racecourse . The setting consists of a large roughly rectangular block, situated to the south of the race track that contains the

main buildings of the racecourse. A large number of listed notable trees are a feature of the racecourse setting. The Public Grandstand has landmark significance within the precinct due to its size, bold appearance and steel and reinforced concrete construction. The Riccarton Racecourse was one of the prime reasons for the early development of the suburb of Riccarton and it remains an important venue and focus for the area.

23. The site is subject to the Reserves Act 1977. It is a recreation reserve for horse racing purposes.
24. The site is also subject to the Riccarton Racecourse Act 2016. Section 6 of that Act provides that the Board of Trustees continues. The Board is named as the Trustees of the Christchurch Racecourse and has the powers and authorities conferred on it by the Act.
25. Section 8 provides the powers of boards in relation to reserve land. The reserve land is to be held by the Board on trust for the purposes of racing, and subject to the Reserves Act 1977 (as a recreation reserve for racecourse purposes). The Board's powers in relation to the Reserves Act land as set out include the power to lease the reserve land, or any portion of it, for the rent and on the conditions that it thinks reasonable and not inconsistent with the purposes of the racecourse as long as the lease is for a term of no more than seven years (including renewal). Section 9 sets out how income from the reserve land must be applied.
26. The Riccarton Racecourse Act 2016 also identifies and addresses development land which is not relevant to this application.

The Hearing and Appearances

27. The hearing was held in the Christchurch City Council Committee Room 2 on 1 September 2022.

Appearances for the Applicant

28. **Ms Jo Appleyard** and **Ms Lucy Forrester** appeared as Counsel. Ms Appleyard advised that the application was made by the Canterbury Jockey Club (**CJC**) with a very heavy heart as it prides itself on its own heritage, as well as the heritage of the land which it occupies. She noted the recent restoration of the Tea House and the publication of its history in a book 'Thunder in the Wind'. She confirmed that there was no dispute that the building holds heritage values even in its current damaged state. She submitted the CJC did not have, and will never feasibly have, the financial means to fund the strengthening and restoration of the GNS, and neither I nor anybody else could direct it to do so. Additionally, the CJC no longer has a need for a building of this nature rendering it largely redundant to the operations of the CJC. She noted there were very few differences of opinion between the Applicant's experts and the Council officers.
29. Ms Appleyard addressed the planning context focusing on Policy 9.3.2.2.8 (Demolition of heritage items) which I will return to. If the consent was declined, the alternative was, in her submission, the status quo. The building would remain unused and fenced off and left to deteriorate further. That would impact on the public's enjoyment of the racecourse with the disused building taking up key viewing areas. She addressed the s104D gateway test and summarised the evidence to be given. She identified and discussed that there

were a number of particular matters relating to the reserve, and the Riccarton Racecourse Act 2016 which imposed limitations on the use of land for any purpose other than racing.

30. **Mr Tim Mills**, the Chief Executive of the CJC, described the history of the CJC, advised that it prides itself on its heritage and being one of the oldest organisations (if not the oldest) in Christchurch, and that it is committed to preserving heritage values at Riccarton Park Racecourse. He noted that it undertook the restoration of the heritage listed Tea House and the promotion of races which had been continuously run for decades, some over a century and half.
31. He addressed the evolving nature of the racing industry, particularly from the establishment of the TAB in 1951, with extended radio coverage, live trackside television, PubTabs, computer streaming and cellphones which had all increased the appeal of off-course participation and, hand-in-hand, a reduced on-course attendance.
32. He advised that the use of the GNS had steadily declined and it was no longer required by the CJC for even its best attended meetings. He discussed the modern theory of racecourse development which is to plan and build facilities for the third and fourth biggest race days with room to expand through temporary infrastructure on the biggest days. He advised that the cost of repairing and bringing the GNS up to the required level of new building standards would financially cripple the CJC, and would undermine its very purpose of being. He advised the CJC would not be able to restore the GNS and nor can it be required to remain on site, continue to be fenced off from the public, continue to deteriorate, and be an eyesore to those using and visiting the racecourse. He considered that the CJC has the opportunity with a potential redevelopment of the site of the GNS to enhance the CJC's purpose of being; to progress and benefit its stakeholders; to benefit the 650 plus people who derive employment from the CJC, and the people of Christchurch and Canterbury, for the next 168 years. He confirmed that it was with a "heavy heart" that the application had been filed but the damage suffered in the earthquake, the nature of the evolved racing industry, and the immense cost to restore the GNS to the required standard, meant it had no other choice.
33. **Mr Nik George** provided expert engineering advice. He specialises in structural engineering. In reviewing reports prepared for the GNS, he considered it clear that all the analyses indicate the GNS is at less than 34% of the New Building Standard (**NBS**) and could be considered to be earthquake prone as defined in the Building Act 2004. He noted the New Zealand Society for Earthquake Engineering (**NZSEE**) seismic performance has as the aim of structural performance the improvement achieve as near as practicable 100% but strongly recommended a minimum of 67% NBS is obtained. He considered that 67% was achievable and realistic from an engineering perspective and this would reduce the risk to between 2 and 5 times greater than that relative to a new building. He considered 67% appropriate in the context of a building which would be used by the public.
34. He addressed the solutions that had been considered to strengthen the GNS. He advised the solutions would all require significantly intrusive work. He considered the solutions would decrease the internal amenity by reduction of window frames, removal of internal walls and ceiling linings, and addition of new longitudinal frames. He considered any options to retrofit or repurpose the GNS would require substantially the same, if not greater, strengthening and they were unlikely to be practicable or viable.

35. **Mr Chris Lang** provided quantity surveying evidence. Very much in summary, based on the 34% NBS and 67% NBS solutions recommended, the estimated costs as at August 2022 would be \$15,796,470 (including GST) for the 34% NBS solution and \$18,063,342 for the 67% NBS solution. He noted the estimates relate to the concept design for strengthening works only and did not take account of any works required to repair other earthquake damage or other parts of the structure. He considered the estimates to be conservative.
36. **Mr William Fulton** is a director of Fulton Ross Team Architects and Team Architects Limited. He has over 20 years of professional experience in architecture and landscape architecture and has a specialist interest in heritage projects. He advised that the heritage values of the GNS as set out in the statement of significance in the District Plan were not disputed but that it was currently in a disused and dilapidated state. He advised that the proposed upgrade work would involve significant changes to the existing structure in order to achieve an acceptable NBS which would include the south façade needing to have much of the concrete frame replaced and some panels infilled.
37. He considered that upgrading and restoration would impact the architectural and aesthetic values, but not to the extent that it would diminish the highly significant heritage value the GNS currently holds. Given its structure, and position and function as a trackside viewing platform, he considered it had very limited options for repurposing. He considered it was essentially a grandstand. He discussed the limited availability and quantum of heritage grants. He recommended mitigation measures which he considered to be appropriate in the context of this application.
38. **Mr Tim Joll** provided the expert planning evidence for the Applicant.. Again he confirmed that the GNS heritage values were undisputed and considered that against those values is the lack of any financially plausible reuse of the building with the ongoing economic burden of retention needing to be met by the CJC as lessee of the land alone. He considered this retention produced an economic opportunity cost through the inability to develop the site in the manner anticipated by the zoning and a reduction of amenity over the balance of the racecourse whilst the building remains.
39. It was his opinion that if the continued retention of the GNS led to its continued degradation, sustainable management would not be provided for. He also considered that the drawn-out deterioration of the building would likewise result in a similar reduction in the heritage values currently held and that the judgement that needed to be made was whether the purpose of the RMA would be better achieved by the retention of the GNS in its current deteriorating condition, or by its demolition and associated increase in amenity. Overall he considered that, in the circumstances of this case, the environmental effects were acceptable and the demolition of the GNS would not be inappropriate, subject to the agreed conditions. He considered the proposal was, overall, consistent with the objectives and policies of the District Plan and would not create a precedent or threaten the integrity of it.

Submitters

40. **Mr Ross Gray, Dr Lynne Lochhead** and **Professor Chris Kissling** presented on behalf of the Christchurch Civic Trust and Historic Places Canterbury. They addressed the significance of the building, considering it was of the highest national significance even though it did not appear in the HNZPT list.

They considered that if it were retained, restored and adapted for reuse, it would almost certainly retain its highly significant Group 1 listing because of its importance as one of the very few remaining Luttrell Brothers large public buildings.

41. They advised that the heritage status of the GNS did not rest solely on its architectural qualities but encompassed other aspects such as the Riccarton Raceway and Riccarton stories and noted that such factors are highly valued in the CCC's 'Our Heritage, Our Taonga 2019-29' (heritage strategy). They discussed the contextual aspects and importance of the Riccarton Racecourse for the accelerated early social and infrastructural growth of Upper Riccarton/Riccarton and that continued to this day. They noted that the GNS was still the pre-eminent architectural feature of the entire area. They addressed the degree of demolition which occurred post-quakes and reiterated the importance of the Luttrell Brothers and their legacy, particularly given so much of their work had been demolished in the aftermath of the earthquake. They discussed the bond between the GNS and the adjacent Tea House.
42. They also identified concerns with climate change in terms of the construction and demolition, noting the oft-quoted adage that 'the greenest building is the one standing'. Demolition would result in the destruction of the considerable embodied energy of the building and further environmental ill-effects. Construction would add to the environmental cost.
43. They identified the level of agreement in relation to the heritage values and their ability to be maintained. They addressed the costs, accepting that they were not in a position to dispute the detailed costings provided. They agreed it was a massive structure and the deconstruction and demolition would also be very costly. They addressed reuse and identified possibilities including equine hotels. They also queried what they considered to be a lack of transparency in relation to insurance funds and their use. Dr Kissling addressed what he considered to be the imbalance in information provided to me in terms of retention and reuse. He identified and discussed the McLean's Mansion where, after a period of considerable 'anxiety', through the CCC Landmark Heritage Grant and a private philanthropic donor, demolition of that building was denied. He considered that a 'blocking' of the demolition would provide time for a focus on retention, restoration and effective reuse. The submitters considered that a little more time was needed and sought a "pause".

Reporting Officers

44. **Mr Stephen Hogg** had provided technical engineering advice to CCC by letter dated 1 July 2022. He noted the evidence statements which had been provided by the Applicant appeared to support the 'reluctant view' that the repair and strengthening of the GNS was not reasonably achievable to restore the GNS to a serviceable condition for a variety of reasons. He had no disagreement with the evidence presented. His evidence was, properly, discipline specific and included a consideration of the engineering evidence prepared by Mr George. In summary, he advised that if the GNS were to be retrofitted and returned to service, the target for strengthening would be expected at 67% NBS or greater on an Importance Level 3 building. He advised that achieving that strengthening level would require a new retrofitted seismic load restricted structure because the existing structure is deficient in most aspects of reliable seismic capacity and performance. The only feasible method for providing suitable seismic capacity performance was to retrofit a new seismic-resisting structure within the existing skeleton structure.

45. He noted that AECOM and Holmes had provided a structural steel option and either of them could be configured to achieve the same strengthening outcome. His opinion was that there was no other alternative viable methodology for strengthening to achieve 67% NBS or greater. He noted that when considering the structural repair in isolation, the main damage which required repair was mostly cracking damage either from earthquakes or pre-existing. Any strengthening solution would require that damage to be repaired by crack injection or concrete replacement. He considered that to be easily repairable and forming a small component of the scoping of the overall repair when compared to the costs of strengthening.
46. In summary, he advised that the evidence was consistent with his opinion that a retrofit structure is required to enable the GNS to be returned to service. He agreed there was a requirement to strengthen the GNS building. He considered there were limited options available and that was the most significant influencing factor affecting the feasibility of restoration to service.
47. **Mr Gareth Wright**, heritage advisor at CCC, provided the heritage assessment forming part of the s42A Report and provided evidence. He identified Objective 9.3.2.1.1(a)(iii) which acknowledges that in some situations demolition of a heritage item may be justified by reference to the matters in Policy 9.3.2.2.8(a). He identified the key matters as being:
- ii. whether the extent of the work required to retain and/or repair the heritage item is of such a scale that the heritage values and integrity of the heritage item would be significantly compromised;*
 - iii. whether the costs to retain the heritage item (particularly as a result of damage) would be unreasonable.*
48. In relation to matter (ii), he considered that the Applicant's recommended repair solution was reasonable and that the heritage values would be retained or restored to a sufficient level by such repair. He considered that the current (damaged) state of the item is largely irrelevant in terms of the assessment of appropriateness of demolition, as the focus of Policy 9.3.2.2.8(a)(ii) is on whether a repaired building would maintain its heritage values or those values would be restored. He considered that the unrepaired stand retained not only all of the values attributed to it, but had a higher degree of authenticity and integrity because the damage sustained by it was relatively inconsequential. He noted it had not suffered any obvious damage other than cracking; no elements had collapsed or were missing; and the features and attributes present at the time of the assessment for scheduling are still present. He also noted that it appeared, on the basis of the engineering analysis, that the issues facing the building were not primarily damage related but to do with the nature of the structural system as built.
49. He confirmed that a repaired building would retain its heritage values and significant authenticity and integrity to convey those values at a highly significant level. He agreed that some integrity would be lost. He did not consider there to be a convincing argument for demolition on the basis of effects on heritage values. Ultimately he set aside the heritage argument and considered the financial factors. He fully agreed with the Applicant that the costs of retention were "undeniably" unreasonable and considered that demolition an appropriate course of action.
50. **Ms Odette White** provided a summary of her s42A Report. She advised the District Plan did not seek that heritage buildings be protected and retained at all costs, rather it expressly provides that in some instances

demolition may be appropriate with reference to the matters identified in Policy 9.3.2.2.8. This includes whether the costs to retain it are unreasonable. She considered the costs of retaining the GNS were unreasonable for a number of factors including: the extensive engineering and seismic upgrade that would be required; lack of affordable alternative remediation options; lack of funds and limited availability of grants; difficulty in finding an alternative reuse; sale of the building or site being impractical; and that the building did not meet the CJC's future needs.

51. She considered the demolition would have significant adverse effects upon heritage values but on this occasion the demolition was appropriate and consistent with Policy 9.3.2.2.8. She identified that she had not specifically addressed the Racecourse Act or lease terms in her s42A Report but acknowledged their existence to be an 'other matter' under s104(1)(c).
52. She remained of the view that there would be significant adverse heritage effects from the demolition and agreed that there would be some positive effects from demolition in enabling the reuse of the area. She confirmed her agreement that demolition was appropriate with the key supporting matter being that the costs of retaining the building in the circumstances of this case are unreasonable. It is not therefore contrary to the objectives and policies of the District Plan.
53. She noted she had not included a detailed assessment against Part 2 taking guidance from the *Davidson* decision. She did not consider there to be any tension between Part 2 and the District Plan provisions and there was no uncertainty in respect to those provisions which would indicate a need to look at the higher order documents. This included the Canterbury Regional Policy Statement.

Summary of Evidence

54. The preceding paragraphs record what is very much a summary of the evidence of the various participants. I will address parts of the evidence in more detail when addressing the particular matters in contention. For completeness, I confirm that I have considered all of the matters raised in the evidence provided on behalf of the Applicant, by the reporting officers, and by the submitters appearing. I have also considered the legal submissions made and the content of all of the submissions lodged, both in support and in opposition.

Principal Issues in Contention

55. The principal issue in contention is, quite simply, whether the demolition of this highly significant heritage building is justified, or appropriate, in the particular circumstances and context of this application.
56. Within that broad issue, there are a number of matters which were identified as being in contention. These particularly arose from the submission and from the evidence of the Christchurch Civic Trust and Historic Places Canterbury. The issues related to the costs to the CJC, whether the CJC had properly explored funding options, and whether adaptive reuse had been properly explored.
57. Notably, there was no dispute as to the significance of the GNS although there was some dispute as to the appropriate lens for assessing the level of heritage effects its demolition would have.

Activity Status

58. As identified in the application and in Ms White's s42A Report, the site is zoned Open Space Metropolitan Facilities zone in the District Plan. She noted the District Plan description of the zone is :

These spaces accommodate public and private major sports facilities, larger recreation facilities, marine recreation facilities, and motorised sports facilities on sites that provide:

- i. Sufficient land area to accommodate large scale buildings and structures, car and cycle parking areas and, where necessary, buffer areas to minimise reverse sensitivity;*
- ii. Sufficient area to facilitate ... [n/a];*
- iii. Capacity for multifunctional use, co-location of complementary or compatible activities and for hosting city, regional, national and international events which provide entertainment to residents and visitors.*

59. The GNS is listed as Highly Significant (Group 1) in the District Plan. The Group 1 items are those which:

- 1. Meet at least one of the heritage values in Appendix 9.3.7.1 at a highly significant level; and*
- 2. Are of high overall significance to the Christchurch District (and may also be of significance nationally or internationally), because it conveys important aspects of the Christchurch District's cultural and historical themes and activities, and thereby makes a strong contribution to the Christchurch District's sense of place and identity; and*
- 3. Have a high degree of authenticity (based on physical and documentary evidence); and*
- 4. Have a high degree of integrity (particularly whole or intact heritage fabric and heritage values).*

60. Ms White advised that it is only the exterior fabric which is protected. The interior fabric of the building is not subject to any heritage protection under the District Plan.

61. Resource consent is required under Rule 9.3.4.1.5 NC1 and it therefore must be considered as a non-complying activity under the District Plan.

62. As a non-complying activity, pursuant to s104D, a consent authority may only grant a resource consent for a non-complying activity if it is satisfied that either the adverse effects of the activity on the environment will be minor, or the application is for an activity that will not be contrary to the objectives and policies of the plan.

63. If the gateway test in s104D is passed, then all relevant matters are to be considered. Pursuant to s108, if I grant consent, I may impose conditions. Pursuant to s108AA, a condition can be included only if agreed by the Applicant or directly connected to an adverse effect of the activity on the environment, or an applicable rule or standard.

64. Ms White also identified that consent was required under the NES-SC because it breached Regulations 8(3)(c) and 8(3)(d)(ii). It is a discretionary activity under the NES-SC.

Section 104

65. Section 104(1) of the RMA sets out the matters I must, subject to Part 2, have regard to. The relevant matters are as follows:

- (a) Any actual and potential effects on the environment of allowing the activity; and
- (b) The relevant provisions of –
 - (i) A national environmental standard;
 - (ii) Other regulations;
 - (iii) A national policy statement;
 - (iv) A New Zealand coastal policy statement;
 - (v) A regional policy statement or proposed regional policy statement;
 - (vi) A plan or proposed plan;
- (c) Any other matter the consent authority considers relevant and reasonably necessary to determine the application.

Actual and Potential Effects on the Environment – s104(1)(a)

66. The AEE identified the effects on the environment as:

- (a) Heritage effects;
- (b) Demolition effects;
- (c) The NES-SC; and
- (d) Positive effects.⁴

67. Ms White considered the relevant effects fall broadly into the following categories:

- Heritage values;
- Deconstruction and earthworks related effects (protected trees, waterways, amenity, land stability, noise, vibration, traffic, erosion and sediment control);
- Human health.⁵

68. Mr Joll, whilst noting that the discretion is unlimited, generally agreed with Ms White's summary of the relevant effects. He considered these fell into three topics: effects on heritage values; amenity and environmental effects associated with the demolition activity; and effects on human health under the

⁴ AEE at [6.1] – [6.4]

⁵ S42A Report at para 31

NES-SC. He added positive effects associated with the removal of an unsafe and dilapidated structure and associated enablement of the ongoing use of the Riccarton Racecourse as a major metropolitan facility.⁶

69. I agree that the broad topics identified by Ms White and Mr Joll are appropriate.

Demolition and Earthworks Related Effects

70. In terms of the effects relating to the deconstruction and earthworks – these being visual amenity, land stability, noise and vibration, traffic, erosion and sediment control, and protected trees and waterways – Ms White provided a thorough assessment of those effects at paragraphs [44] – [51] of her s42A Report.

71. Mr Joll agreed with Ms White's assessment of demolition related amenity/environmental effects and the effects on human health. He considered Ms White's findings on those matters was consistent with the findings set out in the application and he did not repeat them. He recorded that they are in agreement that these effects are able to be managed to acceptable levels via conditions of consent.

72. I accept the assessment of Ms White and Mr Joll. I agree that those effects can be appropriately managed to acceptable levels via conditions of consent.

73. In terms of human health, those matters can also be appropriately addressed through conditions. A Site Management Plan (**SMP**) can be provided as suggested by the Applicant. I accept that the recommended conditions and required testing and certification of an SMP will ensure that the risk to human health of contaminants is appropriately managed and human health effects avoided in accordance with the NES-SC.

74. The issue of resources/climate change was raised in a number of submissions and particularly was addressed at the hearing by the representatives of the Christchurch Civic Trust and Historic Places Canterbury.

75. The point is one well made. Ms White noted that some of the submissions had raised the issue that the demolition would result in a considerable amount of building materials going to waste/landfill. She accepted that there is an environmental cost to this because buildings contain a significant amount of locked-in carbon, which is wasted when they are demolished. She also noted that rebuilding then creates further emissions in the making of materials for new buildings which contributes to climate change. She considered that whilst the disposal of materials from the GNS is regrettable, at the present time, there were no rules in the District Plan restricting the demolition of buildings for climate change reasons. Nor do the heritage objective and policies relevant to demolition require consideration of climate change as a factor in deciding whether demolition is appropriate.⁷

76. I accept Ms White's evidence on this issue but do note that as a non-complying activity, my assessment is not restricted. I have considered the waste and other environmental costs identified arising from the demolition. I consider that to be very much a subsidiary issue and it is not one I have given any particular weight to in my overall decision-making.

⁶ Evidence of Tim Joll (planning) 17 August 2022 at para [37]

⁷ S42A Report at para [52]

77. For completeness, I note that pursuant to proposed condition 21 the consent holder is required to submit to the Council Heritage Team Leader or nominee for certification a list of the features and materials from the GNS that have been identified for removal and potential reuse in future development across the wider racecourse site. That condition records that the purpose of this documentation is to demonstrate that the salvage of heritage features and material is maximised wherever practicable.

Effects on Heritage Values

78. As stated by Mr Joll, the most important effect, and the effect that forms the 'crux' of the application, is the potential effects on heritage values.⁸

79. As noted, there is no dispute as to the high heritage significance of the GNS. That is reflected in its listing as such within the District Plan. Mr Joll noted that it was not registered with HNZPT but did not identify that as a particular issue. He identified that both heritage experts concluded that in the event of the necessary repair and strengthening works being undertaken, and despite their intrusiveness and associated loss of heritage fabric, the GNS's post-repair would still retain sufficient heritage value to justify its ongoing listing in the District Plan.

80. The Christchurch Civic Trust and Historic Places Canterbury recorded that it is a highly significant building in the CCC Schedule of Heritage Buildings and it is of the highest national significance even though it does not appear in the HNZPT list. They considered that its non-listing in the HNZPT list was not a matter to be given any weight. They noted that up until very recently (September 2020) neither was the Christchurch Town Hall listed. They considered that if the GNS were to be retained, restored and adapted for reuse, it would almost certainly retain its CCC Highly Significant (Group 1) status and because of its importance as one of the very few remaining Luttrell Brothers large public buildings, it may even be seen fit for listing by HNZPT as a Category 1 building. They were strongly of the view that the demolition would have significant heritage effects.

81. For completeness, while HNZPT were not a submitter, they were consulted. Ms White provided its comment in her s42A Report. This confirmed the GNS is not included on the HNZPT list but is scheduled as a highly significant item (#453) and is part of a heritage setting (#183), and it sits within the wider surroundings of the Tea House which is listed as a Category 2 historic place. The comments recorded HNZPT appreciated the investigative works carried out and the technical reports commissioned by the CJC to explore repair strategies to strengthen the GNS and that the CJC had considered various aspects. HNZPT supported the offered conditions in relation to a photographic record and a plaque, information board or other marker to be placed in a location clearly visible near the site of the GNS. It also identified that a condition had not been included to ensure the careful removal and reuse of certain materials and heritage features such as windows and doors, and it would support a condition to that effect. It commended the CJC on their restoration works to the Tea House. It noted that it did not consider the demolition of the GNS to have a significant impact on the Tea House setting.

⁸ Evidence of Tim Joll (planning) 17 August 2022 at para [39]

Level of Effects

82. There was some debate about the degree of adverse effects which would occur. The Christchurch Civic Trust and Historic Places Canterbury considered the demolition would have significant adverse heritage effects.
83. Ms White was of the opinion that given the significance of the building, the adverse effects will be significant as demolition would result in a total loss of the building's heritage values. She however considered that to be acceptable in the context of the unreasonable costs of its retention; limited availability of grants; difficulty in finding an alternative reuse; sale of the building or site being impracticable; and the building not meeting the CJC's future needs.
84. Mr Joll identified that the conclusions on heritage effects were a key area where he and Ms White had reached different conclusions. He acknowledged that the building has significant heritage value but considered it was not as simple as then extrapolating that assessment of heritage value to say that the effect of the loss of that value must be significant. He considered the significance of the values and the significance of the effects are not the same thing.
85. He considered an assessment of the level of effects resulting from demolition should not be based upon the loss of heritage values that would result from a properly repaired and strengthened building. He considered, given the evidence from Mr Mills in particular, the test of effects should instead be the loss of the building in its current damaged condition versus the alternative of the building remaining in a derelict and unoccupied state. Seen through that lens, which he considered to be more reflective of the choices available, the loss of the building is considered to result in no more than minor effects on heritage value when measured against the residual heritage values contained in an extant but derelict alternative.⁹
86. At the hearing, Ms White did not disagree with Mr Joll's evidence that the significance of the heritage values and the significance of the effects are not the same thing and that an assessment of the level of effects resulting from demolition should not be based upon the loss of heritage values that would result from a properly repaired and strengthened building. She also agreed that the test of effects is the loss of the building in its current damaged condition.
87. However, she considered that Mr Joll seemed to be of the view that the heritage values have been diminished as a result of the damage and state that the building is in. She noted the heritage advice that she had received was that the building, even in its currently damaged and unusable state, still retains all of its heritage values. Furthermore, she noted that based on the engineering advice, the damage it has incurred is not substantial. She recorded that the building is also subject to the higher of the two levels of protection in the District Plan and it seems that there are no other racecourse grandstands designed by the Luttrell Brothers in existence in Christchurch. For those reasons, she found it difficult to see how she could conclude anything other than "significant" adverse effects when the building and its heritage value will be lost in its entirety.¹⁰

⁹ Evidence of Tim Joll (planning) 17 August 2022 at para [49]

¹⁰ Hearing Evidence of Odette White at para [5]

88. Mr Wright, in his summary of evidence, commented on the evidence of Mr Joll. He interpreted his evidence in respect of this matter as:
- (a) The heritage values are derived (at least in part) from condition and use. As the GNS is not in use or in good repair, its heritage values have dissipated and become 'residual'; and
 - (b) The scale of the effects of demolition should not be considered in terms of heritage values alone. This is because a compelled retention would have significant downstream effects on the functionality of the racecourse as a whole.
89. Mr Wright did not agree that heritage values (or heritage significance) are contingent on use and repair. He advised that heritage values are defined in the District Plan as tangible and intangible attributes which contribute to the significance of an item and setting. The current use (or lack thereof) did not, in his opinion, determine value as heritage (by definition) considers the full history of an item. Continuous use may contribute to an item's significance.
90. He identified that according to Objective 9.3.2.1.1(ii), condition should be accounted for when considering whether an item should be scheduled. He considered this to be independent of the assessment of value however. The issue of state of repair relates most closely to the more tangible values of aesthetic and architectural significance and the integrity threshold. He considered it is possible for an item to be in poor repair and still possess sufficient integrity to effectively convey these and other values.¹¹
91. In discussions, Mr Fulton advised that the seismic impact would have an impact on the building but still remains a significant heritage item. He noted that the context of the social history and similar were not affected by it.
92. Ms Appleyard in opening summarised the basis for Mr Joll's finding that the effects were no more than minor related to:
- (a) Section 6 of the RMA seeks to protect historic heritage from inappropriate (her emphasis) subdivision, use and development and not necessarily just development (or demolition) per se;
 - (b) The sustainable management purpose of the RMA points to the demolition of the GNS as the most appropriate use;
 - (c) An assessment of the proposal is more nuanced than simply looking at the significance of the heritage values and concluding that any loss of that value must also be significant;
 - (d) An assessment of effects must consider the effects as a whole and in the context of the application, including any positive effects of the proposal; and
 - (e) When considered against the counterfactual should consent not be granted (i.e. the GNS remaining in its current derelict and unoccupied state to degrade further), the loss of the GNS is considered to have no more than minor effects on heritage value.

¹¹ Summary of Evidence of Gareth Robert Wright 31 August 2022 at para [10]

93. She submitted Mr Joll was correct as the loss of one significant heritage building is not a significant adverse effect per se.

Assessment of Heritage Effects

94. I have carefully considered this issue. I have discussed Mr Joll's findings in relation to the effects on heritage values and the reasoning for them. I explored that with him during the hearing. I accept that it is not appropriate to address significance of effects against a fully repaired and strengthened building. However I do not accept that the present state of the building is such that the heritage values lost through demolition can be said to be no more than minor. On the evidence of the heritage experts, it is clear that the building largely retains its heritage values even in its present state.
95. Ms Appleyard's submissions on this issue were helpful. However in my view, they are more relevant to my overall consideration, rather than in assessing the effects on heritage values.
96. I do not find Ms Appleyard's 'counterfactual' argument particularly compelling but I accept I do not have the ability to direct repairs be carried out, nor do I have the ability to direct the Applicant to take any measures to prevent further deterioration. I explored with Mr Joll the possibility of works to avoid further deterioration. This was by reference to the works undertaken on the Canterbury Provincial Chambers in terms of capping and waterproofing. I acknowledge I have no jurisdiction to direct that any such works be undertaken. I also acknowledge that leaving the building sitting where it is, in its unrepaired state, has economic and amenity effects but they are matters which, in my view, go towards my overall consideration rather than determination of heritage effects.
97. In light of all the information and evidence I have been provided in terms of the importance of this building, the importance of the Lutrell Brothers and the evidence that a great deal of their works had been demolished, and its undisputed heritage significance, I consider the demolition will have more than minor effects on heritage values overall.

Positive Effects

98. Mr Joll identified what he considered to be positive effects arising from the demolition. The demolition would enable the area where the building currently sits to be reused for its intended purpose, and enable the public's enjoyment of the racecourse with an improved amenity.
99. Ms White in her summary presented at the hearing agreed that there would be some positive effects in that regard. It was her view that the positive effects were not so substantial as to render the overall effects of the proposal to be minor. I agree with Ms White's opinion that the positive effects are not so substantial as to render the overall effects of the proposal as minor.

Overall Assessment of Effects

100. Overall, I accept that the demolition amenity related effects are less than minor. Those effects can be appropriately addressed by conditions, as can any effects on human health. I also accept that there will be positive effects for the Applicant in enabling the public's enjoyment of the racecourse with an improved

amenity. In terms of effects on the heritage values, I consider that the demolition will result in more than minor adverse effects on heritage values and that these are not 'offset' by the positive effects.

101. However I agree with Ms White and Mr Joll that in the particular context of this application, the adverse effects on heritage values are acceptable. Ms White identified the context as including unreasonable costs of its retention, limited availability of grants, difficulty in finding an alternative reuse, sale of the site being impractical, and the building not meeting the Applicant's future needs. I will address those matters in my discussion on the relevant objectives and policies and other provisions which follows.

Relevant Objectives, Policies and Other Provisions of a Plan or a Proposed Plan (s104)(1)(b))

102. The AEE contained a comprehensive assessment of the proposal against the suite of relevant District Plan objectives and policies. Ms White addressed these in her s42A Report.¹² Mr Joll's evidence focused on the key objectives and policies addressing demolition.

103. While the heritage objective and policies are the most critical and this discussion focuses on those, I have considered all of the relevant objectives and policies. These include those addressing waterways (Objective 6.6.2.1), protected trees (Objective 9.4.2.1.1 and Policy 9.4.2.2.3). The proposal is consistent with those objectives and policies. In terms of the earthworks objectives and policies (Objective 8.2.4 – Earthworks, Objective 8.2.5 – Earthworks health and safety, and the implementing policies), again I consider the proposal is consistent with those. As Ms White identified, the recommended conditions of consent and separation distances will ensure that any earthworks effects can be appropriately managed; the significant trees and amenity value they provide are maintained; and the waterway running along the south boundary is suitably protected from any adverse impacts associated with the demolition works.¹³

104. The relevant open space objectives and policies were identified. These were identified as:

- (a) Objective 18.2.1.1 – Provision of open space and recreation facilities;
- (b) Objective 18.2.1.3 – Character, quality, heritage and amenity;
- (c) Policy 18.2.2.1 – The role of open space and recreation facilities; and
- (d) Policy 18.2.2.5 – Environmental effects.

105. The AEE, and Ms White, identified that Objective 18.2.1.3 sets out further direction for the management of heritage outcomes in the Open Space zones. In particular it seeks to minimise adverse effects on historic heritage values and amenity values, both within and outside the open space. Ms White identified Objective 18.2.1.3.a.v. which seeks to minimise adverse effects on historic heritage values within and outside the open space. She considered the proposal was clearly not minimising the adverse effects on heritage values but for the reasons she had identified, she considered the demolition of the heritage item was acceptable on this occasion. Further, it was her opinion that the proposal does not undermine the open space objectives overall and the site will still fulfil its purpose. She considered that, if anything, removal of

¹² S42A Report at paras [56] – [67]

¹³ S42A Report at para [66]

the building would enable this part of the site to be better used for entertainment and recreation than it can be currently and in that way is in line with the purpose of the zone. Overall she considered the proposal to be consistent with the open space objectives and policies.

Heritage

106. Ms White summarised the heritage objectives and policies in the District Plan as generally seeking that the contribution of historic heritage to Christchurch's character and identity is maintained in a way which enables and supports ongoing retention, use and adaptive reuse; and maintenance, repair, upgrade, restoration and reconstruction of historic heritage. She noted they also seek to manage the effects of development on heritage items in a way that is sensitive to their heritage values, whilst recognising the need for works to be undertaken to accommodate the long-term retention, use and sensitive modernisation. She identified that Objective 9.3.2.1.1 acknowledges that in some situations demolition may be justified by reference to the matters in Policy 9.3.2.2.8.

107. The critical objective is Objective 9.3.2.1.1 – Historic heritage. This seeks:

- a. *The overall contribution of historic heritage to the Christchurch District's character and identity is maintained through the protection and conservation of significant historic heritage across the Christchurch District in a way which:*
 - i. *enables and supports:*
 - A. *the ongoing retention, use and adaptive re-use; and*
 - B. *the maintenance, repair, upgrade, restoration and reconstruction; of historic heritage; and*
 - ii. *recognises the condition of buildings, particularly those that have suffered earthquake damage, and the effect of engineering and financial factors on the ability to retain, restore, and continue using them; and*
 - iii. *acknowledges that in some situations demolition may be justified by reference to the matters in Policy 9.3.2.2.8.*

108. In terms of the policies, while I have considered all of the historic heritage policies, the critical policy is Policy 9.3.2.2.8 – Demolition of heritage items. This provides:

- a. *When considering the appropriateness of the demolition of a heritage item scheduled in Appendix 9.3.7.2 have regard to the following matters:*
 - i. *whether there is a threat to life and/or property for which interim protection measures would not remove that threat;*
 - ii. *whether the extent of the work required to retain and/or repair the heritage item is of such a scale that the heritage values and integrity of the heritage item would be significantly compromised;*
 - iii. *whether the costs to retain the heritage item (particularly as a result of damage) would be unreasonable;*
 - iv. *the ability to retain the overall heritage values and significance of the heritage item through a reduced degree of demolition; and*
 - v. *the level of significance of the heritage item.*

109. In relation to Objective 9.3.2.1.1, Ms White noted that the objective seeks that heritage is maintained through protection and conservation but that is tempered by the specific recognition of engineering and financial factors on the ability to retain the heritage buildings. She advised that it also expressly provides that in some situations demolition may be justified by reference to the matters in Policy 9.3.2.2.8. In light of the unreasonable costs of the extensive engineering works required, she considered the proposal to be consistent with the objective.¹⁴
110. Mr Joll considered it important to recognise that the District Plan's heritage provisions in particular were prepared with an explicit focus on post-earthquake recovery. He considered the Hearings Panel to be particularly mindful that Christchurch faced a unique position of having both lost a large number of heritage buildings, and also having a large number of heritage buildings that had experienced varying levels of damage.¹⁵ After identifying the other relevant matters, he considered the "resultant" heritage policy framework to be untypical of provisions that are commonly found in district plans, which often have a simple 'avoid' policy for the demolition of heritage buildings. He considered the Christchurch plan to be context-specific and nuanced in its approach to heritage and it was overt in its recognition of the post-earthquake environment and the implications that has for heritage buildings and how heritage buildings are to be managed.
111. The planning context was a matter which Ms Appleyard focused on in her opening. In terms of Policy 9.3.2.2.8 she noted that whether demolition is justified expressly includes consideration of whether the costs of retaining a heritage item (particularly as a result of earthquake-induced damage) would be unreasonable.¹⁶ She submitted the "very specific policy" provides clear guidance that there may be occasions where it is appropriate to demolish a building despite the level of significance of its heritage values.¹⁷ She stated that many of the submitters opposing the application had relied on the fact that the building is highly significant as a heritage item as a reason to decline the consent. In her submission significance is a relevant factor but is not the only factor as Policy 9.3.2.2.8 makes clear. She submitted there will be circumstances, as was the case here, where regardless of the significance of the building, demolition was the appropriate outcome.¹⁸
112. During discussions with a number of witnesses, I raised whether Policy 9.3.2.2.8(a)(iii) should be determined subjectively or objectively. Ms Appleyard submitted that the test must be an objective one but in light of the context of the particular case. In other words, she submitted, the policy must be considered from the viewpoint of a reasonable landowner in the context of the CJC. She submitted the CJC's position was one of a reasonable landowner.¹⁹ She submitted that through the evidence it had been demonstrated that the costs of retaining the GNS would be unreasonable from the point of view of any reasonable landowner in the CJC's position. She submitted it was not reasonable to expect the CJC to spend in the vicinity of \$16-18 million of money it does not have on the strengthening only of a building which is redundant and of no use to the CJC's operations.²⁰

¹⁴ S42A Report at para [58]

¹⁵ Evidence of Tim Joll (planning) 17 August 2022 at para [53]

¹⁶ Opening Legal Submissions on behalf of Canterbury Jockey Club 1 September 2022 at para [10]

¹⁷ Opening Legal Submissions on behalf of Canterbury Jockey Club 1 September 2022 at para [11]

¹⁸ Opening Legal Submissions on behalf of Canterbury Jockey Club 1 September 2022 at para [12]

¹⁹ Closing Legal Submissions on behalf of Canterbury Jockey Club 28 September 2022 at para [4]

²⁰ Closing Legal Submissions on behalf of Canterbury Jockey Club 28 September 2022 at para [6]

113. The Christchurch Civic Trust and Historic Places Canterbury focused on the unreasonable costs issue, and potential alternative uses.

Assessment

114. In terms of the objective, I consider that Ms White has appropriately summarised what the objective seeks – being that heritage is maintained through protection and conservation but that is tempered by the specific recognition of engineering and financial factors on the ability to retain heritage buildings. She also noted that it expressly provides that in some situations demolition may be justified by reference to the matters in Policy 9.3.2.2.8.²¹

115. I consider the objective is clear as to what it seeks to achieve. I acknowledge the discussions in Mr Joll's evidence and in Ms Appleyard's submissions as to the context for, and the contents of, the IHP's decision. While that has been helpful in providing the context, ultimately I consider there is no need for me to have recourse to the IHP's decision in this determination. Clearly, the maintenance of heritage through protection and conservation is sought, but that is not at all costs. The objective recognises the condition of buildings, particularly those that have suffered earthquake damage, and the effect of engineering and financial factors on the ability to retain, restore and continue using them. I consider that it is clear that part of the objective is not restricted to earthquake damaged buildings. That is very clear from the use of the word 'particularly'. It expressly acknowledges that in some situations demolition may be justified by reference to the matters in Policy 9.3.2.2.8.

116. I now address my findings on the five matters to which I must have regard.

i. Whether there is a threat to life and/or property for which interim protection measures would not remove that threat

117. Ms White identified that fencing would keep visitors to the site at a safe distance from the building which would remove the threat to life from the earthquake-prone building.²² Mr Joll noted that the building is earthquake-prone and is fenced off to remove the threat the building could pose in the event it collapses. He advised further the building was therefore not able to be used.

118. Mr Hogg, in discussions, noted that the building had come through the earthquake sequence well, although damaged. He advised that if another earthquake was to occur which "hit the sweet spot" more damage could occur.

119. Overall, having viewed the site and the interim protection measures, I do not consider the threat to life and/or property is such that it would justify demolition.

²¹ S42A Report at para [58]

²² S42A Report at para [62(i)]

ii. Whether the extent of the work required to retain and/or repair the heritage item is of such a scale that the heritage values and integrity of the heritage item would be significantly compromised

120. Both Mr Wright and Mr Fulton ultimately agreed that the extent of the work required to retain and/or repair the item was not of such a scale that it would significantly compromise its heritage values. I accept that evidence.

iii. Whether the costs to retain the heritage item (particularly as a result of damage) would be unreasonable

121. This is the key matter relied on. I accept Ms Appleyard's submission that this should be determined objectively but in context.

122. Mr George's engineering evidence was thorough. He considered a repair to 67% NBS was achievable and realistic and in the context of a public building appropriate. He addressed the solutions that had been considered and advised that any options to retrofit or repurpose the GNS would require substantially the same, if not greater, strengthening that would be unlikely to be practicable or viable.

123. As noted, Mr Hogg considered the earthquake damage formed a small component of the overall scope of the works that was needed, with the majority being attributable to seismic strengthening/upgrade. He recommended the building be strengthened to 67% NBS seismic loading in order to be suitable for crowd loading, that an entirely new retrofitted seismic structure was required to achieve the necessary seismic capacity, and that the AECOM reports of damage and repair and strengthening concepts were plausible and reasonable. He also identified that an alternative repair/strengthening scheme could not be devised that would drastically reduce the extent of the work and associated costs.

124. Ms White summarised the reasons set out in the application for the proposed demolition as being in large part based on the extent of work that would be required to repair and strengthen the building and the costs of that being beyond the Applicant's ability to fund and thus unreasonable. She noted the extensive engineering reports provided as further information that the building was earthquake-prone and likely to collapse in a moderate earthquake, and that in addition to repairing earthquake damage, the building needed to be seismically upgraded to a minimum of 67% NBS and ideally 100% NBS. She identified the costs estimates for a 67% seismic upgrade scheme to be in the order of \$17.8 million. She noted that in a further information response, the Applicant advised that they had received a payout from their insurer but that was for all of the buildings at the racecourse and was less than half the cost of the repair or rebuild of all damaged buildings on site. She noted that their advice was that there were no funds available from the insurance proceeds for the repair and reinstatement of the GNS and that there was no realistic prospect of raising the necessary funds. She also noted the Applicant maintains that even if the GNS were to be remediated and able to be used, it would not meet the current or future needs of the racecourse and it has become redundant.

125. Mr Wright acknowledged the limited opportunity to find a viable alternative use for the building given its specific form, function and location. He considered the costs of retaining the building to be unreasonable and accepted that demolition was appropriate subject to conditions in line with the mitigation measures offered.

126. Mr Fulton specifically agreed that the costs of the upgrading/restoring are unreasonable.²³

Assessment

The Estimated Costs

127. On the evidence it is clear that significant engineering works are required to enable the GNS to be returned to service, or for it to be repurposed. Mr George noted that the GNS had been subjected to considerable structural analysis through a number of engineering consultants as part of the insurance claim process. These included analysis by AECOM – for the trustees of the Riccarton Racecourse; Thornton Tomasetti – for the insurance company; and Holmes Consulting acting as independent peer reviewer. The building assessment has been undertaken rigorously. There is no dispute from the engineers as to the GNS sitting at less than 34% of the NBS, nor is there any dispute between the engineers as to the appropriateness of the works required to upgrade the building to the appropriate 67% NBS or greater.
128. I accept that expert engineering evidence as to the works required, and the appropriateness of the repair and strengthening concepts proposed.
129. Mr Lang's quantity surveying evidence, and the various reports provided, were comprehensive. As already identified, to bring the building up to 67% NBS those costs were estimated at \$18,063,342. That is a conservative assessment in my view. In discussions Mr Lang identified that heritage buildings can be difficult and that everything takes longer. He advised that they considered alternatives when undertaking the quantity surveying exercise but they need to be looked at in terms of 'buildability' as opposed to design. He identified that each building has its own challenges. He noted that there were a number of works that were not included within the estimate that would likely need to be undertaken including restrengthening of the bleachers etc. He advised that the cost could be \$21-23 million if it took into account all of the other works needed. He was satisfied that the works proposed on this site were feasible and reasonable. He noted that the costs for construction were increasing.
130. I accept his evidence and agree that the assessed costs are conservative and likely to be exceeded. I also accept the evidence that any options for retrofitting or repurposing the GNS would result in further work, and the costs are likely to be the same or greater. Those costs are clearly significant.
131. Mr Mills was very clear in his evidence that the CJC simply did not have the means to fund the financial deficit. It had already spent or committed to spending the insurance proceeds received and its annual reports (which were referenced) clearly demonstrated it did not have the ability to fund millions of dollars into the restoration of a building, particularly one that had no commercial, functional or racing use. I accept that evidence.

Insurance Proceeds

132. The Christchurch Civic Trust and Historic Places Canterbury raised a number of issues in relation to the question of costs. They noted the monies received pursuant to an insurance settlement which were

²³ Evidence of William Fulton (heritage architect) 17 August 2022 at para [50.4]

recorded in the CJC's accounts. They accepted they were not in a position to dispute the detailed costings provided. Their focus in this regard was on alternative uses and potential for funding, whether by way of full heritage funding, or potentially philanthropic funding. They also identified the costs of deconstruction and demolition would also be considerable. I note in her reply Ms Appleyard provided an estimate of the demolition costs at \$1.2 million.

133. The insurance issue was identified during the processing of the application and further information provided. In terms of the evidence of the gap between insurance and the cost of necessary work, Chapman Tripp provided a response to Mr Joll which was subsequently provided to the Council. I accept that there are no funds available from the insurance proceeds for the repair and reinstatement of the GNS.

Exploration of Grants

134. The Christchurch Civic Trust and Historic Places Canterbury were critical of what they saw as a failure by the CJC to explore grants. Ms White had also queried what grants had been explored or applied for. Chapman Tripp provided, in tabular form, an assessment of the various grants that may be available and the limitations on those. Email correspondence was provided to Ms White including from New Zealand Thoroughbred Racing. The response was that NZTR was not in a position to contribute to the upgrading of the GNS facilities and that there was no plan in the future to make industry funds available for such projects.
135. Likewise, a request was made to TAB NZ seeking advice as to what level of funding may be available. The response identified the potential to apply through the Net Proceeds Committee process. It advised that while that potential option existed, COVID-19 had impacted on the TAB gaming activities and noted that access to any funding was extremely tight. This was identified as particularly in the short to medium terms, with significant existing commitments to fund industry integrity services having priority.
136. Mr Wright advised that for the three schemes which the CJC had investigated and for which it was theoretically eligible, they would clearly be insufficient to make a substantive difference to the scale of the insurance shortfall. He advised the Lotteries Significant Projects Fund could potentially get the CJC closer as it has awarded large sums of up to \$4.5m in recent years. He described that as a very best case scenario and even a grant at that level would still leave the CJC with a significant shortfall. Mr Wright also noted that it was unclear if, given its traditional occasional use, the GNS would be considered to be of sufficient community benefit to be eligible.
137. On the basis of the evidence, I consider it is clear that even if some funding was available through grants, it would leave a significant shortfall, and one the CJC is not able to fund. In terms of potential philanthropic funding, the building has been in this state for some time and the evidence before me was that no such philanthropic funding had been offered or identified.

Adaptive Reuse

138. Potentially relevant to the question of the reasonableness or otherwise of the costs is that of potential adaptive reuse. If the repaired and strengthened building would have a viable alternative use, that may support my finding that the costs are not unreasonable. This was raised by the Christchurch Civic Trust

and Historic Places Canterbury. In their evidence they submitted that matters such as innovative, adaptive reuse had not been explored and suggested if such an approach were taken, it could result in a national centre of horse racing heritage which may include boutique HRH apartments and which the income from sales would be strong. They noted that in the McLean's Mansion demolition application heard by the Environment Court, the cost estimates presented "proved to be far greater" than the actual costs of earthquake strengthening even after a lapse in time and inflationary impacts. They identified in further information they provided that the question of funding seems not to have been pursued vigorously and widely. They accepted that the sale of the building was impractical but raised the possibility of an assignment of the lease to a trust set up to save and continue the use of the building as an "allowable facility in accordance with the Racecourse Act". They considered that possibility needed to be further explored. They identified as a possible auxiliary use an indoor horse dressage and show jumping ring. Ultimately they sought a delay whilst these suggested alternative uses were evaluated.

139. The engineering evidence from Mr George identified the alternative uses which had been raised in submissions. These included an arts facility/museum. He noted the building would still require strengthening as above and introducing a cover would require further structural framing as it is very likely the existing structure will have no additional capacity to support a new roof. He considered the cost of transformation is likely to be higher than for the GNS and in light of the unknown demand, are unlikely to be financially viable.²⁴ He addressed boutique apartments noting the demand was unknown. He identified that the existing windows face away from the racecourse so views were not of the racecourse itself. He identified the building would still require strengthening and that forming apartments would likely remove all of the internal features. He considered the cost of transformation was likely to be significantly higher than retaining and strengthening the building as a grandstand.²⁵
140. There are, in my view, considerable restrictions on alternative uses. These arise from various issues including its orientation, that it is not close to other facilities such as would occur in the central city, there are restrictions of ownership and restrictions in relation to use. In combination, I consider that viewed from a realistic perspective, opportunities for an adaptive reuse which would render the required spend reasonable, are very limited.
141. I have carefully considered the question of whether the costs are unreasonable as it is, to a large degree, the sole justification for the proposed demolition. I consider the evidence is clear that there are real limitations on the ability for the CJC to fund the estimated costs. As noted, I find that the assessments are conservative in the sense that they are likely to be exceeded. Of course, as noted, the CJC does not own the land upon which the GNS sits. It is a tenant. The GNS was constructed as a grandstand and that, by its nature, does impose, in my view, limitations on adaptable reuse although, given the size of the building, and the internal spaces in particular, it is clearly a building that could be used to accommodate functions and similar, as it did previously.
142. The evidence from the CJC is very clear. It does not have the funds or anything approaching that. There would be difficulties in obtaining funding, and I note that the legislative framework imposes considerable

²⁴ Evidence of Nik George 17 August 2022 at paras [38]-[40]

²⁵ Evidence of Nik George 17 August 2022 at paras [41]-[43]

limitations in relation to potential sale, raising of funds, limitations on reuses, which are all matters that feed into the unreasonableness of the costs. Further, its use is largely redundant. The trotting industry has been through significant changes and the use of the GNS is extremely limited.

143. In all the circumstances, having carefully considered the matters well raised by the Christchurch Civic Trust and Historic Places Canterbury, I accept the Applicant's evidence, and that of the reporting officers, that the costs are unreasonable.

144. For completeness, I agree with Ms White's opinion that matter (iii) is not limited only to costs associated with repairing damage and the fact that the majority of the costs are attributable to strengthening works with a smaller proportion being due to repair of damage, does not preclude the proposal from being supported by that sub-policy.²⁶

iv. the ability to retain the overall heritage values and significance of the heritage item through a reduced degree of demolition

145. Ms White noted that there had been little evidence in relation to this issue but accepted that a reduced degree of demolition was not a viable or practical option given the engineering agreement to the necessity for strengthening to 67% NBS as well as the nature of the structure and the trackside position.²⁷

146. Mr Joll considered that the damage sustained and the extent of the works required to bring the structure up to the recommended minimum, combined with the nature of the structure and its position and function as a trackside viewing grandstand, meant that a reduced degree of deconstruction was not a viable consideration.

147. On the basis of the evidence, and informed by my site visit, I do not consider that a reduced degree of demolition is appropriate or practical.

v. the level of significance of the heritage item

148. There was no real dispute in relation to the level of significance of the GNS. That is a matter that I have considered carefully.

Overall Finding on Policy 9.3.2.2.8

149. Overall and having had regard to all of the relevant matters, I give some weight to the significant, and in my view, unreasonable costs that would be required to retain the GNS. While the focus has been on the costs of strengthening, and in and of themselves they are in my view unreasonable, arguably the costs on the CJC go further than simply that. Those costs are simply for the strengthening, and the other financial costs are also considerable. I accept Ms Appleyard's submission that it would not be reasonable to expect the CJC to spend in the vicinity of \$16-18 million of money it does not have on the strengthening only of a building which is redundant and of no use to the CJC's operations.²⁸ My finding in this regard is very context specific – reached on an objective basis, but acknowledging the particular context here.

²⁶ S42A Report at para [62]

²⁷ S42A Report at para [62]

²⁸ Closing Legal Submissions on behalf of Canterbury Jockey Club 28 September 2022 at para [6]

150. That context includes the statutory context and the limitations that imposes, the fact that the CJC is a tenant and does not own the land, the nature of the building itself and its primary role, and other factors associated with its location which make adaptive reuse considerably more difficult. In my view the costs are such, again in this particular context, that notwithstanding the undisputed heritage value, the demolition is consistent with Policy 9.3.2.2.8. Overall, I accept Ms White's and Mr Joll's evidence that the proposal is consistent with the relevant objectives and policies of the District Plan.

Section 104(1)(b)(v)

151. Both Mr Joll and Ms White considered that the District Plan gave effect to the Canterbury Regional Policy Statement and there is no need to consider its provisions further. I agree. Chapter 13 addresses historic heritage. One of the issues identified is loss or degradation of historic heritage. It states:

Inappropriate use, development or subdivision can lead to loss or degradation of historic heritage values that make a significant contribution to a regional sense of identity.

152. I have had regard to the relevant objectives and policies but they add, in my view, nothing that is not encapsulated in the District Plan.

Relevant Other Matters – Section 104(1)(c)

Our Heritage, Our Taonga – Heritage Strategy 2019-2029 (Heritage Strategy)

153. The Christchurch Civic Trust and Historic Places Canterbury advised they had contributed to the formation of the Heritage Strategy. They identified it had very broad input from the community and tangata whenua and was adopted by CCC on 28 February 2019. They noted the message from the Deputy Mayor which notes the devastating impacts of the Canterbury earthquakes and advises that there was now an opportunity to look forward to the future of heritage and to treasure and celebrate the heritage buildings and places we still have left.

154. The Christchurch Civic Trust and Historic Places Canterbury considered the document to be a change of direction and it was a document which had been "built from the ground up". They considered that it gets away from just big buildings and notes the importance of living heritage with stories and similar.

155. Mr Joll addressed the Heritage Strategy in discussions at the hearing. He sees it as providing guidance. He was not aware that any charter or plan had been prepared under it. He advised that it did not bind private property owners but does guide plan changes. Ms White noted it is a non-statutory document which appeared, in her view, to be a very broad document and acknowledged that demolition was not really in accordance with its broad aim.

156. I have considered the Heritage Strategy, its Whāinga – Goals, and Mahinga – Actions. Whāinga Goal 4 is that Our Heritage, Our Taonga is protected through collaboration and partnership. The Actions note that Council, in partnership with the papatipu rūnanga and together with its communities, will seek to (1) protect heritage, including through seeking to develop the strongest possible regulatory framework to ensure effective protection of significant and highly significant heritage places; increase the scope and breadth of regulatory and non-regulatory protection measures which could achieve recognition of various matters

including heritage interiors, places of significance to Ngāi Tahu, a broadened range of heritage places and values and other matters. It notes the promotion of voluntary protection methods. Action (2) is to investigate and promote funding sources for heritage projects available through other agencies, and to provide information and support to communities to access the funding. Action (4) is to provide support to owners of heritage buildings through ongoing provision of Heritage Incentive Grant Funding; providing conservation information and advice including promotion of the ICOMOS New Zealand Charter, 2010; providing free heritage advice including pre-application advice for resource consents; and guidance on adaptive reuse.

157. In terms of its implementation, there are a number of steps. The document notes that the Heritage Strategy itself provides strategic direction and actions for implementation plan. A Heritage Strategy Implementation Plan is to be developed with rūnanga and the community and a Heritage Charter with Council, rūnanga and signatories to collaborate on actions.
158. I have had regard to the Heritage Strategy. It is helpful from an information perspective and I have considered it carefully.

Precedent / Plan Integrity

159. Ms White addressed these issues in her s42A Report. She identified that given the non-complying status it was appropriate to have regard to the issue of precedent and the effect of granting consent upon the integrity of the District Plan. She discussed the *Rodney District Council v Gould* High Court decision noting that it was a matter that I may have regard to depending on the facts of a particular case.
160. Ms White noted that in this case the proposal is not contrary to the objectives and policies and was satisfied that issues of precedent or plan integrity did not arise. For completeness, and notwithstanding that, she considered there were a number of sufficiently unusual characteristics of this site and proposal to set the proposal aside from the generality of cases including the nature of the racecourse and its land use, the difficulties in repurposing for a viable alternative use, that it was impractical to sell or relocate the building, and the high cost of repair and strengthening.
161. Overall, I agree that granting consent is unlikely to give rise to any significant precedent effect which would challenge the integrity of the District Plan. Indeed, the District Plan anticipates precisely this type of outcome, albeit subject to a very thorough assessment.

Part 2

162. Ms White, taking guidance from *R J Davidson Family Trust v Marlborough District Council*,²⁹ considered the District Plan to be the mechanism by which the purpose and principles of the RMA were given effect to. She noted it had been competently prepared via an independent hearing and decision-making process in the manner that appropriately reflects the provisions of Part 2 and accordingly no further assessment, in her opinion, against Part 2 was considered necessary.

²⁹ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316

163. Mr Joll addressed s7 and s6 matters. In terms of s6, he referenced s6(f) RMA, and acknowledged that removal of the building was not something to be undertaken lightly and that likewise its removal must inevitably result in at least some loss of heritage value. He identified the approach which had been undertaken in the evidence. This was addressed in some detail in his paragraphs [42.1] – [49].
164. Very much summarising the contents of those paragraphs, he noted the heritage value of the building was recognised and acknowledged as set out in the evidence of Mr Fulton and confirmed in the evidence of Mr Wright; that the project engineer had assessed the building as earthquake prone as less than 33% NBS; the engineering works necessary had been explored and are set out in the evidence of Mr George and reviewed by Mr Hogg. He noted the engineering costs had been costed by a quantity surveyor and summarised in the evidence of Mr Lang; and that the QS estimate to undertake the works is substantially greater than the available insurance settlement proceeds which were not tagged to the repair of specific individual buildings.
165. He noted that the availability of grants had been explored to ascertain whether funding was potentially available and the review of potential grants sources confirmed no grants were available of sufficient magnitude to bridge the cost gap. It was not seen as necessary to apply for those grants as the review determined that even if successful, repair would remain financially unviable. He noted that Mr Wright had confirmed this review correctly identified the grant funding sources available.
166. Further, the CJC reviewed the right size of the facilities necessary, noted the fundamental shift as set out by Mr Mills, and that the GNS would only be used for a single day per year, and even then peak and race day crowds could still be suitably accommodated through the use of temporary structures such as marques and temporary stands.
167. Given a combination of factors, including its location in the middle of an actively used racecourse, its specific design as a grandstand, the lease terms and associated Act of Parliament that the CJC and the racecourse trustees operate under – namely that the racecourse and associated buildings are only to be used to support horse racing, he noted that Mr Fulton had concluded that in this instance, repair and strengthening of the building was unreasonable and that therefore the loss of the building and associated heritage values would not be inappropriate. Mr Joll noted that Mr Wright for the Council reached a similar conclusion.
168. Mr Joll acknowledged that the demolition of heritage buildings should only be considered in circumstances where practical alternative uses have been explored and retention is either not financially plausible or where the works necessary to ensure retention are so intrusive as to diminish heritage values to the point where their heritage values no longer meet the threshold for listing. He considered an ongoing financially plausible use is fundamental to ensuring the long-term protection and retention and again in this particular case, he identified the difficulties with the location, the building's poor condition and the negative amenity effect that was having on the race meeting experience for race-goers.
169. While Mr Joll's evidence outlined in the preceding six paragraphs was in the context of, and informed the effects assessment, it was a thorough assessment focusing on what in Mr Joll's opinion rendered this demolition not "inappropriate".

170. He addressed this again in his paragraphs [77] – [83]. Again he noted that demolition is generally considered to be an ‘inappropriate use’ as it necessarily results in the loss of the heritage values. He identified that the District Plan, in setting the framework for giving effect to Part 2, makes specific provision for the demolition of heritage buildings where the costs of repair and strengthening works were unreasonable. He considered the District Plan policy framework therefore contemplates an assessment of demolition on a case-by-case basis. After addressing the matters which had been discussed in the paragraphs above, the ongoing retention and reuse of the building is implausible and as such the loss of the building is not inappropriate.³⁰ He did acknowledge that despite the engineering and financial viability evidence, whilst the building still stands there remains the chance of a future owner or community organisation with different profit drivers being able to undertake restoration in a context where the works making a significant financial loss is acceptable. This was on the assumption that the current owner was willing to sell.³¹
171. He noted that it can be tempting to seek retention in the hope that a solution might be found at some point in the future, which he described as a proposition becoming one of the community accepting the costs of ongoing vacancy and low amenity in return for the hope of long-term retention and disregarding effects on the owner of limiting development options. He considered that the question which is then appropriate to ask is how long is it reasonable for a property owner to endure those ‘short term costs’ in the hope of a solution being found. He noted the building had been vacant for a decade (although he accepted that was not strictly correct) but in any event for a considerable period of time with no solutions or philanthropic funding being forthcoming. Ultimately he considered that, in all the circumstances, the loss of the building is able to be contemplated under s6(f), and subject to the broad assessment required under s5.
172. Mr Joll identified the relevant s7 matters. With regard to s7(a), he noted that the ethic of stewardship, as exercised by the Council, extends to the identification of heritage items in the District Plan and the encouragement of their retention. He identified that the District Plan itself does not however require protection in all instances. In terms of the property owner, he considered the principle of stewardship is not considered to impose an obligation to maintain a heritage building for community benefit in any or all circumstances. He noted the building is presently not able to be occupied without extensive engineering works, the costs of which are prohibitive.
173. Mr Joll also addressed s7(b) and s7(g). In terms of efficient use, he considered that in this case there is no need for, or use of, the building and therefore the investment of millions of dollars to maintain a building that had no ongoing use was not efficient. He stated further that the retention of the building as a large derelict structure likewise constrains the efficient use of the site as a high-quality racecourse. He considered that where the heritage values associated with the GNS are degraded and the productive use associated with the physical resource of both the building and the underlying site is undermined, then the principle of s7(b) would be better met through redevelopment. Overall he considered in terms of s7(b) that was better achieved through the reuse of the site for modern, right-sized spectator facilities in a manner that retains the site’s historical association and role as the location of Canterbury’s premier racecourse.³²

³⁰ Evidence of Tim Joll (planning) 17 August 2022 at para [80]

³¹ Evidence of Tim Joll (planning) 17 August 2022 at para [81]

³² Evidence of Tim Joll (planning) 17 August 2022 at para [75]

174. In terms of s7(c) and s7(f), he considered the character of the immediate area would change markedly from its current appearance. He noted at present it does not display high amenity values comprising as it does a vacant building and associated security fencing, and demolition was therefore considered to enhance amenity values and the quality of the environment rather than a continuation of the status quo.
175. Mr Joll also addressed the s5 Purpose. Again he noted the heritage values to be undisputed and against those values was the lack of any financially plausible reuse of the building, with the ongoing economic burden for retention needing to be met by the landowner alone. He identified that retention produces an economic opportunity cost through the inability to develop the site in the manner anticipated by the zoning and the reduction in amenity over the balance of the racecourse whilst it remains.
176. He considered that if the continued retention of the GNS inevitably leads to its continued degradation as an empty building, then that would not provide for the purpose of the RMA. He considered a drawn-out deterioration of the building would likewise result in a similar reduction in the heritage values currently held.
177. I agree with Ms White's approach to Part 2 in accordance with the *R J Davidson Family Trust v Marlborough District Council*³³ decision. Mr Joll noted that in setting the framework for giving effect to Part 2, there was specific provision for the demolition of heritage buildings where the costs of repairs and strengthening works are unreasonable. While Mr Joll's assessment against Part 2 as outlined above may not have been strictly necessary, I found it helpful.

Overall Finding on Part 2

178. Overall, and having considered carefully all of the evidence, submissions, planning documents and the other matters identified and discussed above, I consider that Part 2 and ultimately the purpose of the Resource Management Act 1991 is met by the granting of the consent on the conditions addressed below.

Section 108 Conditions

179. Ms White provided a comprehensive set of conditions in her s42A Report. Mr Joll noted that some of the conditions in the s42A Report were not entirely correct and noted in particular that an accidental discovery protocol condition had been omitted. Ms Appleyard provided, with her reply submissions, a corrected version of the conditions and advised that they had been confirmed as acceptable with Ms White.
180. Ms Appleyard also noted that the version of conditions removed the reference to 'temporary protection plans' previously in condition 2(p) and Advice Note (viii). Again Ms Appleyard confirmed that Ms White is comfortable with that amendment on the basis that Mr Wright considers the separation distance of the GNS from the Tea House and significant trees is sufficient and on the basis that this was not requested by submitters (including HNZPT). I accept those changes are appropriate.
181. Overall, I consider the conditions are appropriate, they address the relevant matters, and do so in a comprehensive manner.

³³ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316

Overall Decision

182. Having carefully considered the application in some detail, and having considered the submissions, the officer reports, the evidence and all other relevant matters, the application be **granted** pursuant to ss 104, 104B, 104D and 108 of the Resource Management Act 1991 subject to the conditions attached in Appendix A.

A handwritten signature in blue ink, appearing to read 'D Caldwell', is written above a horizontal line.

David Caldwell
Hearing Commissioner
Dated: 18 October 2022

APPENDIX A

1. Except where required to meet other conditions below, the development shall proceed in accordance with the information and plans submitted for the application and saved into Council records as RMA/2021/3921 Approved Consent Document.

Demolition Management Plan

2. All proposed works shall be carried out in accordance with an accepted Demolition Management Plan (DMP). The purpose of the DMP is to ensure that any potential effects arising from deconstruction activities on the site are effectively managed. The DMP shall be prepared by suitably qualified and experienced practitioners and shall include, but not be limited to the following:
 - a) Site description, topography, vegetation, soils and other reference information;
 - b) Details of proposed works including preparation of a deconstruction plan in accordance with the directions of a structural engineer to avoid collapse of weakened structures and ensure demolition occurs safely.
 - c) Roles and responsibilities, including contact details for the site manager appointed by the Consent Holder;
 - d) Site establishment;
 - e) Timing of works (including any staging required);
 - f) An Erosion and Soil Control Plan (ESCP), including drawings, specifications and locations of mitigation measures as necessary;
 - g) A Demolition Noise and Vibration Management Plan (DNVMP) demonstrating that noise and vibration nuisance will be minimised during demolition activities;
 - h) Storage of fuel and/or lubricants and any handling procedures;
 - i) Contingency plans (including use of spill kits);
 - j) Protocols for the discovery of archaeological material;
 - k) Construction traffic management measures, including measures to be adopted in accordance with the NZTA Code of Practice for Temporary Traffic Management; and demonstrating that vehicle and pedestrian movements will be controlled to keep the public safe;
 - l) Parking areas for construction staff;
 - m) Measures for identification and remediation of contaminated soil; and
 - n) Confirmation of approved disposal sites for waste;
 - o) Environmental compliance monitoring and reporting.
- The consent holder shall submit this DMP to the Council, Attention: Team Leader Compliance and Investigations for certification via email to rcmon@ccc.govt.nz at least 20 working days prior to the commencement of construction work associated with this consent. This DMP is to be certified by the Team Leader or their nominee as meeting the requirements of Condition 2 prior to the commencement of any demolition or earthworks and, once certified, the DMP will thereafter form part of the Approved Consent Document.

NOTE: The Team Leader (or their nominee) will either certify, or refuse to certify, the DMP within 10 working days of receipt. Should the Team Leader (or their nominee) refuse to certify the DMP, then they will provide a letter outlining why certification is refused based on the parameters contained in this condition.

- Should the Team Leader (or their nominee) refuse to certify the DMP, the consent holder shall submit a revised DMP to the Resource Consents Manager for certification. The certification process shall follow the same procedure and requirements as outlined in condition 2.

- The DMP may be amended at any time by the Consent Holder. Any amendments to the DMP shall be submitted by the Consent Holder to the Council for certification. Any amendments to the DMP shall be:
 - a) for the purposes of improving the measures outlined in the DMP for achieving the DMP purpose (see condition 2), and;
 - b) consistent with the conditions of this resource consent.

If the amended DMP is certified, then it becomes the certified DMP for the purposes of condition 16 and will thereafter form part of the Approved Consent Document.

3. The consent holder must notify Christchurch City Council no less than three working days prior to works commencing, (via email to rcmon@ccc.govt.nz) of the earthworks start date and the name and contact details of the site supervisor. The consent holder shall at this time also provide confirmation of the installation of ESCP measures as per the plan referred to in Condition 2 above.
4. Run-off must be controlled to prevent muddy water flowing, or earth slipping, onto neighbouring properties, legal road (including kerb and channel), or into a river, stream, drain or wetland. Sediment, earth or debris must not fall or collect on land beyond the site or enter the Council's stormwater system. All muddy water must be treated, using at a minimum the erosion and sediment control measures detailed in the site specific Erosion and Sediment Control Plan, prior to discharge to the Council's stormwater system.

Note: For the purpose of this condition muddy water is defined as water with a total suspended solid (TSS) content greater than 50mg/L.

5. No earthworks shall commence until the ESCP has been implemented on site. The ESCP measures shall be maintained over the period of the deconstruction and earthworks phases, until the site is stabilised (i.e. no longer producing dust or water-borne sediment). The ESCP shall be improved if initial and/or standard measures are found to be inadequate. All disturbed surfaces shall be adequately topsoiled **and** vegetated or otherwise stabilised as soon as possible to limit sediment mobilisation.
6. Dust emissions shall be appropriately managed within the boundary of the property in compliance with the *Regional Air Plan*. Dust mitigation measures such as water carts, sprinklers or polymers shall be used on any exposed areas. The roads to and from the site, and the site entrance and exit, must remain tidy and free of dust and dirt at all times.
7. All loading and unloading of trucks with excavation or fill material shall be carried out within the subject site.
8. Any surplus or unsuitable material from the project works shall be removed from site and disposed at a facility authorised to receive such material.
9. Any backfilling in the area of the excavated foundations shall be with clean fill only.
10. All public roads and footpaths shall be kept clear of any tracked material from the demolition site.
11. Any public road, shared access, footpath, landscaped area or service structure that has been damaged, by the persons involved with the development or vehicles and machinery used in relation to the works under this consent, shall be reinstated as specified in the [Construction Standard Specifications](#) (CSS) at the expense of the consent holder and to the satisfaction of the Council.
12. Any change in ground levels shall not cause a ponding or drainage nuisance to neighbouring properties. All filled land shall be shaped to fall to the road boundary. Existing drainage paths from neighbouring properties shall be maintained.

Noise

13. The use of machinery in association with the demolition and earthworks shall be limited to between 7.30am – 6.00pm Monday to Saturday and truck movements limited to between 7.30am – 5.00pm Monday to Saturday. There shall be no works associated with the demolition on Sundays and public holidays except in cases of operational necessity where there has been prior approval of a Council Environmental Health Officer.

Vibration

14. The maximum permitted vibrations outlined in the German Standard DIN 4150-3:1999 "Structural Vibration – Part 3: Effects of Vibrations on Structures" shall be adhered to during all deconstruction and excavation works.

NES – Contaminated soils

15. Prior to any earthworks or below ground excavations of the foundations commencing, soil testing shall be undertaken by a Suitably Qualified and Experienced Practitioner (SQEP) to determine the level of any contamination in the area of ground to be disturbed. The results of that testing shall be provided to Council by way of email to rcmon@ccc.govt.nz along with the Site Management Plan required under condition 16.
16. At least 10 working days prior to any earthworks or below ground excavations of the foundations commencing, a Site Management Plan (SMP) prepared by a Suitably Qualified and Experienced Practitioner shall be provided to Council by way of email to rcmon@ccc.govt.nz for certification. No earthworks or excavation of foundations may commence until the SMP has been certified by Council. The SMP shall include as a minimum:
 - a. Risk assessment, analysis and recommendations for treatment that are consistent with the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health 2011.
 - b. Procedures and mitigation methods to ensure that contaminated soil is excavated, handled and disposed of appropriately.
 - c. The consideration of stormwater and dewatering discharges, and the requirements of the Council's consents for these discharges.
 - d. Internal project monitoring methods to be undertaken by the SQEP, or Environmental Specialist under the supervision of a SQEP.
 - e. Procedures for sampling and record keeping.
 - f. Reporting to the Council's Team Leader, Environmental Compliance, or nominee, within 21 days of the completion of the project (Email rcmon@ccc.govt.nz).
17. All earthworks and excavation of foundations shall be undertaken in accordance with the SMP certified under condition 16.
18. Any soils removed from the site during the course of the activity shall be disposed of to a facility authorised to accept the material. The consent holder shall provide evidence of soil disposal to an authorised facility such as weighbridge receipts or waste manifest submitted to the Christchurch City Council's Environmental Compliance Team, or nominee (Email rcmon@ccc.govt.nz) within two months of the completion of works.
19. A copy of the relevant SMP required under Condition 16 shall be kept on site at all times.
20. The consent holder, and all persons exercising this consent, shall ensure that all personnel undertaking activities authorised by this consent are made aware of, and have access to, the contents of this consent document and the relevant SMP required under Condition 16 prior to the commencement of any earthworks or excavations.

Heritage

21. Prior to the letting of the contract for demolition, the consent holder shall submit to the Council Heritage Team Leader or nominee for certification, a list of those features and materials from the Grandstand that have been identified for removal and potential reuse in future redevelopment across the wider racecourse site. The purpose of this documentation is to demonstrate that the salvage of heritage features and materials is maximised wherever practicable.
22. A digital photographic record of the heritage item and heritage setting is to be lodged with Council's Heritage Team within three months of the completion of works. In order to adequately record changes to heritage fabric, photographs must be taken before commencement, at regular intervals during, and after completion of works. Photographs must be of printable quality, at least 1440 pixels by 960 pixels for a 4" x 6" print at a minimum resolution of 240 PPI. Also see Advice Note below.
23. Prior to the commencement of any new building or structure in the location of the Grandstand or within heritage setting #183, the consent holder shall submit to the Heritage Team Leader or nominee for certification, a scheme for interpreting the history of the former Grandstand in proximity to its original location.

Accidental Discovery Protocol

24. In the event that an unidentified archaeological site is located during works, the following applies:

- a. Work shall cease immediately at that place and within 10 m around the site.
- b. The contractor must shut down all machinery, secure the area, and advise the Site Manager.
- c. The Site Manager shall secure the site and notify Underground Overground Archaeology Ltd. Further investigation by an archaeologist may be required.
- d. If the site is of Maori origin, the Site Manager or project archaeologist shall notify the Heritage New Zealand Regional Archaeologist and the appropriate iwi groups or kaitiaki representative of the discovery and ensure site access to enable appropriate cultural procedures and tikanga to be undertaken, as long as all statutory requirements under legislation are met (Heritage New Zealand Pouhere Taonga Act, Protected Objects Act).
- e. If human remains (kōiwi tangata) are uncovered the Site Manager or project archaeologist shall advise the Heritage New Zealand Regional Archaeologist, NZ Police and the appropriate iwi groups or kaitiaki representative and the above process under 4 shall apply. Remains are not to be moved until such time as iwi and Heritage New Zealand have responded. Works affecting the archaeological site and any human remains (kōiwi tangata) shall not resume until Heritage New Zealand gives written approval for work to continue. Further assessment by an archaeologist may be required.
- f. Where iwi so request, any information recorded as the result of the find such as a description of location and content, is to be provided for their records.
- g. The project archaeologist, in consultation with Heritage New Zealand, will determine if an archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014 is required for works to continue.

Advice notes:

- i) If any dewatering is to occur separate consents may need to be obtained from Environment Canterbury.
- ii) It is the consent holder's responsibility to ensure that the activity, including where carried out by contractors on their behalf, complies with the below Christchurch District Plan standard - failure to do so may result in enforcement action and the need for additional land-use consent:
 - Rule 6.1.6.1.1 P2 - All earthworks related construction activities shall meet relevant noise limits in Tables 2 and 3 of NZS 6803:1999 Acoustics - Construction Noise, when measured and assessed in accordance with that standard.
 - Rule 8.9.2.1 P1 Activity Standard f. - Earthworks involving mechanical equipment, other than in residential zones, shall not occur outside the hours of 07:00 and 22:00 except where compliant with NZS 6803:1999. Between the hours of 07:00 and 22:00 the noise standards in Chapter 6 Rule 6.1.5.2 apply except where NZS 6803.1999 is complied with, and the light spill standards in Chapter 6 Rule 6.3.6 apply.
- iii) Earthworks involving soil compaction methods which create vibration shall comply with German Standard DIN 4150 1999-02 (*Structural Vibration – Effects of Vibration on Structures*) and compliance shall be certified via a statement of professional opinion from a suitably qualified and experienced chartered or registered engineer. The statement of professional opinion is to be submitted to the Christchurch City Council via rcmon@ccc.govt.nz a minimum of five working days prior to any compacting activities commencing.

Scope of work

- iv) This consent only covers earthworks involved in the demolition of the building. Any earthworks for redevelopment or a new building on the site will need to comply with the District Plan and NES or a further resource consent obtained.
- v) The applicant should not commence or should cease work on a given area if the works proposed in that area change from those in the approved consent document. Any variation should be discussed with the Christchurch City Council's Heritage Team Leader or nominee, who in consultation with Council's Resource Consents Unit will determine an appropriate consenting response. Five working days should be allowed for this process. Failure to discuss changes with the Council's Heritage Team or a Resource Consents Planner may constitute a breach of the conditions of this consent. Amended plans and information showing these changes, including any associated changes to the Temporary Protection Plan, may be required to be submitted to the Heritage Team Leader, Christchurch City Council (or nominee) for certification prior to work on that area commencing or resuming.

Submission of information

- vi) Information being submitted in relation to conditions of this consent is to be sent by email to: rcmon@ccc.govt.nz. The current nominated Heritage team contact for this consent is Amanda Ohs, ph. 9418292 or email: amanda.ohs@ccc.govt.nz, or heritage@ccc.govt.nz. Alternatively please contact Gareth Wright ph. 941 8026 or email: Gareth.wright@ccc.govt.nz, or Brendan Smyth, Heritage Team Leader, ph. 941 8934 or email: brendan.smyth@ccc.govt.nz.

Photographic Record

- vii) The intention of the photographic record condition is to maintain a record of the works with a focus on the areas undergoing change rather than individual elements. The same camera positions should be used for all photo sets before, during and after the works to enable comparison. Photographs should be of printable quality, at least 1440 pixels by 960 pixels for a 4" x 6" print at a minimum resolution of 240 PPI. They should be labelled with the position on site or in relation to the site, date and photographer's name, and submitted as individual image files, with a plan showing photograph locations. Photos should be submitted to the Council's nominated Heritage team contact electronically, either by email (noting that Council's email data transfer limit is 20MB per email), or via a file transfer website such as wettransfer.com or dropbox.com to rcmon@ccc.govt.nz.

Monitoring

- viii) The Council will require payment of its administrative charges in relation to **monitoring of conditions**, as authorised by the provisions of section 36 of the Resource Management Act 1991. The current monitoring charges are:
- (a) A monitoring programme administration fee of \$102.00 to cover the cost of setting up the monitoring programme; and
 - (b) A monitoring fee of \$175.50 (*commercial*) for the first monitoring inspection to ensure compliance with the conditions of this consent; and
 - (c) Time charged at an hourly rate if more than one inspection, certification of conditions, or additional monitoring activities (including those relating to non-compliance with conditions), are required.

The monitoring programme administration fee and initial inspection fee will be charged to the applicant with the consent processing costs. Any additional monitoring time will be invoiced to the consent holder when the monitoring is carried out, at the hourly rate specified in the applicable Annual Plan Schedule of Fees and Charges.

- ix) This resource consent has been processed under the Resource Management Act 1991 and relates to planning matters only. You will also need to comply with the requirements of the **Building Act 2004**. Please contact a Building Consent Officer (ph: 941 8999) for advice on the building consent process.
- x) This site may be an archaeological site as defined and protected under the provisions of the Heritage New Zealand Pouhere Taonga Act 2014. Archaeological sites are defined in the HNZPTA as any place in New Zealand where there is physical evidence of pre-1900 occupation, regardless whether the site is known or not, recorded in the NZAA Site Recording Scheme or not, or listed with Heritage New Zealand or the local council. Authority from Heritage New Zealand is required for any work that affects or may affect an archaeological site. **Please contact the Heritage New Zealand regional archaeologist on 03 363 1880 or archaeologistcw@heritage.org.nz before commencing work on the land.**