

**IN THE MATTER**

of the Resource Management Act 1991 (RMA or Act)

**AND**

of the Resource Management Act 1991 (the RMA) and an application to the Hamilton City Council (Council) by Board of Administration of the Methodist Church of New Zealand and Te Kowhai Estate Ltd (the Applicant) for removal of a B ranked Heritage Item being the 'St Paul's Methodist Church' and installation of a commemorative display and legally described as Lot 1 DPS 7437, Part Lot 3 DPS 7437, Lot 1 DPS 21340 and Lot 2 DP 441703.

## **1. INTRODUCTION**

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### **1.1 APPLICATION**

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The applicant wishes to remove a B ranked heritage building (St Paul's Methodist Church) off its current site at 62 London Street and seeks consent to the installation of a commemorative display following the removal of the church building, involving signage and structures.

The applicant has not outlined any intended re-use of the site as part of the application. However, the proposal does include seeking consent for the establishment of a commemorative display for the church which will include signage/history, garden and seating area located fronting London Street.

It is proposed to relocate the building to a site at 714 Te Kowhai Road for use as a cafe. The proposed site falls within Waikato District. A separate resource consent has been obtained from the Waikato District Council for the relocation and proposed use, with the consent being approved on the 14 July 2017. The proposed relocation will involve the church building being seismically strengthened and refurbished.

Given the proposed site falls within Waikato District Council jurisdiction the future use and reinstatement of the building did not form part of application. However, the applicant has

offered up a restoration plan and a Deed of Covenant requiring timely restoration of the building within 12 months of its relocation.

It is noted that the church building has not been used since 2012 and that it is to remain vacant due to the need for seismic strengthening and refurbishment, and the Methodist Church stated that due to this situation, it is not in a financial position to do so.

## 1.2 SITE & SURROUNDING ENVIRONMENT

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The section 42A report described the site and environment as follows:

*“The site is located in the Hamilton Central City which is the primary centre for commercial, civic and social activities, and is the region’s cultural and recreational hub. The site is on London Street between Harwood Street and Victoria Street. The surrounding area contains a mix of commercial uses, with buildings of various styles and heights.*

*The wider site contains two existing buildings, being the St Paul’s Methodist Church (the Church) as well as the St Paul’s or Methodist Centre. The Church is a timber structure and was initially constructed in 1906 and is listed in the Partly Operative District Plan as a Heritage Item (H61). This building is located near to the London Street frontage of the site in the south-western part of the site. The Methodist Centre (or St Paul’s Centre) was opened in 1962, is located on the northern part of the site and is a community use building for the Methodist Church.”*

## 1.3 APPOINTMENT

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I was appointed by the Council as an Independent Commissioner in terms of section 34A of the Resource Management Act 1991 (“the RMA”) to hear the applicant, submitters and the Council’s reporting officer and to determine the application. The information available to me prior to the hearing included the application, assessment of environmental effects (AEE) report and other information; the submissions and a report prepared by Council’s reporting officer, being the section 42A report, and expert technical evidence.

## 1.4 BUNDLING PRINCIPLE

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The proposal involves District Plan rules that cannot be complied with that have both restricted discretionary and discretionary activity status.

The principle of bundling applications, a concept developed by the Environment Court, applies in respect of this manner. Where an activity is unable to comply with multiple District Plan provisions of differing activity status, they must be considered at the most onerous activity status and assessed using the more stringent criteria (King & Ors v Auckland City Council; [2000]

NZRMA 145). In respect of this application, the status of individual rules that are infringed include both controlled and discretionary activities.

The reporting officer has advised that in this instance, it is not considered appropriate to use the bundling approach. Ms Thompson considered that it would be unreasonable to assess the commemorative display proposal as a discretionary activity given it relies on the proposed removal of the church building.

She concluded that the proposed commemorative display be assessed as a restricted discretionary activity and the removal off site of the church building, be assessed as a discretionary activity.

After consideration of this matter, I concur with the advice of Ms Thompson.

## 1.5 NOTIFICATION

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The application was publicly notified on 31 May 2017, with the submission period closing on 29 June 2017. Three submissions were received to the proposal all being in opposition.

## 1.6 OTHER CONSENTS

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I was advised that Te Kowhai Estate Ltd had obtained consent from the Waikato District Council for the relocation of the Church building onto the site at 714 Te Kowhai Road, to be used as a cafe and gift shop. The resource consent was approved on the 14 July 2017, subject to conditions, a copy of such being provided to me.

## 1.7 ACTIVITY STATUS

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The applicant had submitted the application on the basis that the proposed removal of the 'B' ranked heritage item (building) and proposed commemorative display required consents as a Discretionary Activity and Restricted Discretionary Activity respectively.

The removal off site of any structure or building ranked B within Schedule 8A: Build Heritage is identified as a Discretionary Activity within Rule 19.3 of the District Plan.

The proposal also includes the establishment of a commemorative display following the proposed removal of the Church. I was advised that the applicant had not identified that new buildings will be established on the site at this stage. Erecting, constructing or extending any structure or fence on a site with a building within Schedule 8A: Building Heritage is a Restricted Discretionary Activity (Rule 19.3 I). Signs on these sites are also a Restricted Discretionary

Activity (Rule 19.3 n). In both cases discretion is restricted to E – Heritage Values and Special Character.

## 1.8 DEFINITIONS

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In this Decision I use the following terms:

AEE	-	Assessment of Effects on the Environment report
Applicant	-	Board of Administration of the Methodist Church of New Zealand & Te Kowhai Estate Ltd
District Plan	-	Hamilton District Plan (Part Operative 2016)
RMA	-	Resource Management Act 1991 and its amendments

## 2. HEARING

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The hearing was conducted on 21 November 2017 in the Hamilton City Council Chambers. Appearances were from:

### 2.1 APPLICANT

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- Mr Phil Lang- Counsel
- Rev David Bush- Applicant (General Secretary – Methodist Church of New Zealand)
- Mr Robert Short- Applicant (District Property Secretary)
- Mr Raymond Mudford- Applicant (Parish Steward & Property Manager)
- Mr Jason Barnes- Applicant & Shareholder: Te Kowhai Estates Ltd
- Mr Mike Neale- Real Estate Agent
- Ms Francesca Stevens- Heritage Consultant
- Ms Louise Feathers- Planning Consultant
- Mr Matthew Silverton- Valuer

### 2.2 SUBMITTERS

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- Ms Ros Empson
- Ms Lynette Williams

- Mr Warwick Kellaway  
Ms Laura Kellaway- Expert Witness on behalf of all submitters

## 2.3 COUNCIL

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- Ms Laura Thomson- Reporting Officer
- Mr Adam Wild- Heritage Consultant

## 2.4 SITE VISIT

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I conducted a site visit on 20 November 2017. There were no other parties in attendance.

## 2.5 CLOSURE OF HEARING

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I formally closed the hearing on 11 December 2018 after I had concluded that I had sufficient information on which to determine the application.

## 3. SUBMISSION & MAIN ISSUES RAISED

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The submissions were all in opposition to the proposal, with the main comments and matters raised in submissions including:

- Adverse heritage impacts due to removal of the church building. The removal will disconnect the building from its original historic setting.
- Unclear assessment of the reasons why relocation is required, with little consideration of alternative use or demonstration that removal is a 'last resort' for the building.
- The building will be no longer protected in its new location once removed.
- Hamilton's heritage is minimal and continues to be lost.
- Effects on the London Street streetscape environment and character of the area.

## 4. STATUTORY PROVISIONS CONSIDERED

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In considering the application, I have had regard to the matters to be considered as set out in section 104 of the RMA, recognising the status of the activities as a restricted discretionary activity, and as a discretionary activity. Activity status is discussed in section 1.7 of this decision.

I have had regard to the provisions of the District Plan and to Part 2, being the purpose and principles of the RMA.

In respect of a restricted discretionary activity, section 104C of the RMA requires that when considering an application for a resource consent for such an activity, the consent authority

must consider only those matters over which it has restricted the exercise of its discretion in its plan. If consent were granted, then conditions may be imposed under section 108 of the RMA but only for those matters over which the Council has restricted the exercise of its discretion.

In respect of a discretionary activity, section 104B of the RMA states that a consent authority may grant or refuse consent and if granted, conditions may be imposed under section 108 of the RMA.

## **5. PRINCIPAL MATTERS IN CONTENTION**

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Having considered the application, submissions and evidence provided, and being guided by the assessment criteria of the District Plan, I consider that the principal issues of contention are:

- Relocation of the church building to Te Kowhai away from current context
- Adverse heritage impacts with the building being removed
- Building no longer protected in new location
- Continual loss of Hamilton's heritage
- Effects on the London Street streetscape environment and character of the area

## **6. SUMMARY OF EVIDENCE**

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The following summary is not intended to be a full coverage of all matters raised at the hearing. Relevant parts of the evidence presented by the parties are referred to in the Main Findings section of this decision, where it forms a component of the findings by me, in deciding the application.

### **6.1 APPLICANT**

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**Mr Lang** outlined that the St Paul's Church is no longer fit for purpose for use as a church. He noted that it is earthquake prone, the exterior and interior are in substantial need of upgrading and the building only lends itself to a place of worship. The opportunities for re-use of the Church building, both on the London Street site and elsewhere have been examined and reviewed in appropriate detail. He stated that it would be unreasonable to require continuation of alternative uses, particularly on the site. The cost of the church carrying out the strengthening work would leave the church exposed to serious financial consequences.

The alternative response is to continue to leave the building unmaintained and unused. The alternative use of the building on the Te Kowhai site with the new owner giving commitments for restoration preserves the building.

He stated that the District Plan heritage provisions require the relocation to be considered a Discretionary Activity and the most relevant policy states that it 'should be discouraged'. In contrast with higher ranked items where the District Plan outlines it should be 'avoided'. Consideration of the realistic alternatives, the protection of the church building is most likely to be successfully achieved through the proposed relocation.

He outlined that the most common adopted interpretation of 'necessary' is that 'it falls somewhere between desirable or expedient on the one hand and essential on the other'. Further, he considered caselaw to determine the Methodist Church's obligation to maintain a listed heritage building, and concluded that in the absence of District Plan rules requiring maintenance, there is no obligation for the Church to do so.

He also considered case law regarding the implications for the owner caused by retention of a protected building, and he concluded that there is no obligation on a property owner to maintain a building to any particular standard or to ensure that it is occupied.

In regards consent conditions to provide assurance of immediate relocation and restoration he concluded that the Council is able to impose consent conditions prior to the removal of the building while it is still present on the Hamilton City site, and that the Council can also enforce the conditions preventing the removal of the building if the conditions are not complied with.

He summarised the applicant's evidence and outlined that the building is likely to remain unoccupied and unmaintained at the present location. The better outcome is to provide the best available assurance of strengthening, refurbishment and re-use of the building at the new location proposed.

**Ms Feathers** outlined that in her opinion the application to relocate St Paul's church to Te Kowhai is an appropriate and sustainable use of the heritage resource. The application is a balance between partial preservation of heritage values and providing an economic opportunity that would contribute to the revitalisation of the CBD.

She further noted that she did not agree with Ms Thompson's statements in her s42A report regarding the applicant not demonstrating the proposal is necessary, nor have undertaken the extensive research alternative options. Ms Feathers stated that the applicant's search for alternatives has been fruitless and the only viable option is the one proposed.

She further outlined that the proposal achieves sustainable management under section 5 of the RMA as it protects the original building by allowing partial heritage values to be retained. It enables the ongoing use of the building that can be enjoyed by the wider Waikato community. Ms Feathers outlined that the application was not contrary to section 6(f) of the RMA as when determining 'inappropriate use or development' it comes down to several matters. These being: significance of historic heritage; researching options and alternatives; the preservation of the building itself; mitigating effects and the proposed development or use. She noted that the building is a B ranked heritage resource with local significance only and as the building is being relocated and preserved the proposal is not 'inappropriate'.

Ms Feathers did not agree with the s42A report regarding the statements made that the proposal is an inefficient use of resources and therefore is contrary to section 7. She stated that it is efficient as land will be re-developed and the church will be retained.

She emphasised objective 3.18 of the Regional Policy Statement as it states, 'retain the identity and integrity of the Waikato Region's... history and culture'. Although the building will not be afforded heritage protection in the Waikato District, the structure will be enhanced through conformity with the proposed Restoration Plan.

Ms Feathers noted that the Strategic Framework Chapter sets out a list of statutory and non-statutory plans and strategies the District Plan seeks to integrate with. There are no heritage related documents referred to despite Council having a Heritage Plan.

She outlined that the relevant strategic objectives include 2.2.1 and 2.2.10. The objectives seek protection of heritage but only from inappropriate subdivision, use and development. She agreed with the objectives and policies the S42A report outlined but believed that they should be read in conjunction with the remaining policies which outlined sustainable development.

Ms Feathers stated that there were four specific policies that were relevant and formed the basis of her report. The policies seek to balance development and heritage but in her opinion, they lean in favour of revitalisation of the city centre rather than the protection of heritage.

Specifically, Policy 7.2.2d promotes diversity of activities and anchor investments. Ms Feathers outlined that 'and anchor investments' provides clear direction and the prospect of retaining the heritage building on the site does not provide for anchor investment.

She reiterated that the City Centre Zone encourages intensified commercial and residential development and supports the strategic objective of a sustainable city. The removal of the church would assist in achieving this as the site could be redeveloped.



If the proposal was refused consent she noted that continued vacancy and non-maintenance of the building is likely and therefore the heritage values will be lost regardless. In her opinion, the applicant has fully considered whether relocation is necessary. An opportunity has presented itself which will preserve the heritage fabric and allow the site to be developed for central city and Methodist church objectives.

Ms Feathers stated that Ms Thompson failed to recognise that the feasibility of an alternative use of the church is only relevant if there is a willing tenant. To date there has not been one, and this sets the site apart from other heritage examples within the City. She mentioned in response to Ms Thompsons issues of funding, that the Contestable Heritage Fund was limited and the building does not fit the criteria as there is no proposed tenant. Funding has therefore not been sought. The Church will not accept funding from the Lotteries Commission due to conflict of religious belief with gambling.

She noted that the submissions in opposition all have common threads; that it is the oldest church, the Council should assist in finding an alternative use, it will adversely affect people's appreciation of the area, streetscape and quality and character of the environment, heritage values diminishing, insufficient investigation into other uses. To address these concerns, she had relied on the evidence of Ms Stevens.

Ms Feathers noted she had met with the submitters to discuss their concerns in more detail. She stated it was clear from their collective opinion that the site could be developed around the church. However, they did not offer any feasible or specific proposal to achieve this.

She acknowledged that the existing Wilson carparking business onsite is operating without consent but stated this is a separate matter and is being dealt with separately.

Finally, she proposed draft conditions that included the building being relocated in accordance with the Restoration Plan and the erection of a commemorative display.

**Ms Stevens** stated that St Paul's is ranked as a significant B heritage item in the District Plan but is not listed with Heritage New Zealand. However, it is still a historically, physically, contextually and culturally significant building.

She noted that the building does not meet earthquake safety standards and is closed for public use. The removal of the building will have a negative impact on many heritage values of St Paul's including: diminishing its historic significance insofar as it is associated with the church and is representative of historical patterns in the CBD; eliminate its contextual significance, and negatively impact on the interpretation of its physical significance.

She considered that the relocation is only reasonable if the alternative outcome is lack of maintenance or the demolition of the building. If approved, she recommended various conditions to ensure that the building is appropriately photographed and documented, there is a temporary protection plan, the new location details the full history of the building and that the building should be retained and restored.

The subject site was purchased by the church in the early 1900s. The church took four years to build and opened in 1906. It was further extended in 1914 and refurbished in 1968. The building subsequently closed in 2011 as it did not meet earthquake safety standards.

Ms Stevens assessed the significance of the site and states that the church has high historic, physical and cultural value as well as limited contextual, technological and scientific value.

She acknowledged that through the objectives and policies of the District Plan, relocation is sometimes the only option to protect heritage items.

Ms Stevens responded to the submissions of John Kellaway and the joint submission of Lynette Williams and Ros Empson. She stated that although the church is the oldest surviving in Hamilton City this does not automatically confer heritage significance, although it was taken into consideration when she undertook her assessment. She noted that retaining a heritage building on its original site must be considered alongside other factors such as whether the building is being used or maintained.

Ms Stevens agreed with the submitters that the removal of the building must be a 'last resort' option, but it must be weighed in conjunction with financial investment.

**Mr Mudford** holds the positions of Parish Steward and Property Manager of the Hamilton Methodist Parish. He stated that the Parish has been relocated to two separate sites within Hamilton since the closure of the building.

He stated that the Parish had carried out a comprehensive investigation of the potential future uses of the site and had actively been seeking parties that may want to reinstate the building on a different site.

The only proposal that has been developed into a feasible option is for relocation to Te Kowhai. A conditional agreement was in place pending the outcome of the application. If granted, the building would be removed and restored in accordance with the Restoration Plan.

He outlined that the primary strategy for the Parish is to: provide a living example of Christ in today's world; help families and people less fortunate than themselves; provide education and a place of congregation and worship. The existing building was unsuitable to meet this strategy

as the layout restricts youth activities. Space for groups from 20-300 to be able to meet was required and the building and its layout was not flexible for the needs of the church.

Mr Mudford explained that the estimated cost of earthquake strengthening was too much money for the church to invest when the building is no longer fit for purpose. He outlined the parties interested in the building and had good interest.

**Mr Short** is the District Property Secretary for the Waikato, Bay of Plenty Methodist Synod. He reiterated that the building was closed due to earthquake issues. It is for a combination of issues at the Methodist site that makes full redevelopment of the site the best option. He stated that the strengthening and upgrading of the St Paul's Building is a major barrier and that it is not feasible to upgrade the building.

He stated that planning for future use of the site is a difficult task while the church building remains on the site. The ideal use of the redeveloped site would provide at least one place of worship, Methodist Centre activities and commercial and residential activities. This would assist in the provision of funding for the Church's primary functions.

He stated that the District Plan supports the proposal to relocate the building in accordance with the Restoration Plan. Mr Short reiterated that it will allow people to continue to have a relationship with the building.

Mr Short outlined that since November 2014 the Church has tried to preserve the building, examining their own use, other use on the existing site and relocation within Hamilton City. This was their last attempt at preserving this part of their history. He stated that if resource consent was declined, the site will remain unmaintained and unused.

**Rev David Bush** is the General Secretary of the Methodist Church of New Zealand. Following the Christchurch earthquakes, the building was tested, and he helped make the decision to close the building as it would require strengthening to 70% NBS.

He stated that over many years their buildings have been repurposed for the benefit of the community and the retention of Methodist heritage. The decision has been made by the church as it was not financially viable. The cost in re-fitting out the interior to be fit for purpose and the strengthening was too expensive.

He reiterated that the Parish has diligently but unsuccessfully tried to retain the church on the site. He had initiated conversations with Council and elected members to discuss the options, but relocation is the most feasible.

He stated that there were no specific plans for the site, but that it will be re-developed and used by the Parish.

Mr Bush outlined that the resource consent process had cost the Parish \$54,000 to date and this had put a strain on their resources and disadvantaged their community. The relocation is a valuable opportunity to allow for re-use and restoration.

He outlined the impact of heritage restoration legislation and states that churches are specifically excluded from some of the funding streams available to secular organisations. He further questioned that if consent was declined, if there will be compensation for the reduced redevelopment potential of the site.

**Mr Barnes** is a shareholder of Te Kowhai Estates Limited which is also an applicant. He estimated the cost of strengthening and refurbishing of the building on its current site to be \$505,930 and annual average maintenance cost of \$13,000.

The building is to be moved and used as a café and gift shop located next to the company's Country Living subdivision.

The building will be taken to the site and refurbished sitting on new foundations in accordance with the Restoration Plan. He stated that the only features that may not be preserved are some of the features in the vestry as they may need to be covered, altered, or removed as part of the installation of the commercial kitchen and café. The only change to the exterior of the building will be the installation of a large doorway to enable access to an outdoor deck.

**Mr Neale** is a commercial Real Estate Agent with NAI Harcourts based in Hamilton. He was engaged to see if there were any parties interested in alternative uses of the building, including residential conversion. He concluded that the re-siting for residential was not viable because of private covenants, nor was residential use of the building in the current location. Neale approached the neighbour Fonterra, hospitality companies and the Hamilton Central Orchestra and none of the parties were interested due to it being cost prohibitive.

In conclusion, the only serious enquiry about reusing the building was the enquiry by Te Kowhai Estate. In his view he does not foresee any likelihood of a similar combination of factors coming together in such a beneficial way.

**Mr Silverton** is a registered Valuer and Director of Silverton Alexander Registered Valuers. In his opinion the indicative impairment to the value of the property by retaining the church building on the site is approximately 48%. In essence, the building was a barrier to developing the site to its full potential. The ultimate sale price could be achieved if the consent to remove the building was granted.

## 6.2 REBUTTAL EVIDENCE

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**Ms Feathers** provided rebuttal evidence in response to particular points raised by Ms Kellaway and Mr Wild.

She did not agree with Ms Kellaway that the Church and small lawn area provide rare public amenity as Hamilton City has numerous green spaces and the one on this site is proposed to be made larger with the redevelopment. Further, she stated that there is no need at this stage of the process to engage with an urban designer as no future building is being proposed. Ms Feathers offers conditions to ensure that the commemorative display is in place prior to the removal of the building.

Ms Feathers addressed the point raised that the District Plan outlines relocation to be 'necessary' as Ms Kellaway had interpreted this to mean 'essential'. In her view, the necessity for relocation has been well considered and reported on through the Church's early consideration of alternatives and in the evidence produced.

In her opinion, Ms Kellaway considered no positive effects the proposal could have, and the outcome of the relocation results in an acceptable outcome.

Ms Feathers outlined that there is a clear policy difference between an 'A' ranked building and a 'B' ranked building. Furthermore, the District Plan policies seek to re-use and adapt and avoid subdivision and development which has an adverse effect on heritage values. At this point in time, the public can only benefit visually as the building is closed. If relocated to Te Kowhai it will be available for public use and be of value to the wider community.

**Ms Stevens** provided a rebuttal in response to Ms Kellaway and Mr Wild's evidence. In summary, she used additional case law to support her statements. Also, she noted that there is subjectivity involved in assessing heritage values and accepts their differences in opinions in some cases.

She disagreed with Mr Wild's statement that sites being scheduled in the District Plan are a benchmark for measuring the value that the general public place on the building. She also stated cases where Mr Wild has expressed a difference of opinion. She supported the relocation as this is not a heritage building of great significance, however not all negative impact will be able to be mitigated. In summary, she believed because of Mr Wild's history of statements in previous cases it can only be assumed that, in his view, St Paul's currently has no functional value.

She addressed Ms Kellaway's statements and reiterated that she had acknowledged the value of the church to those people who have used it or their descendants. She retained her position

in that the alterations to the building should not be seen as significant heritage fabric. She agreed with Ms Kellaway that contextual values and the streetscape were important in this case. However, an examination of the approaches to the church from either direction along London Street demonstrates that St Paul's is dwarfed in comparison.

Ms Stevens reiterated that she is not saying that St Paul's and the other historic buildings in London Street have no contextual value, nor is she saying that they are not individually significant; merely that they do not, together, represent a particularly cohesive context. Her main concern is that if the building is retained on the site there is no future use being proposed and ultimately this could lead to demolition.

**Mr Neale** addressed the continued existence of the St. Paul's church building on the value of the London Street site or future use and development. Specifically, to understand the implications of requirements that this building must remain indefinitely.

He believed that the London Street site is more valuable than the Te Kowhai Street site specifically because of the zoning, surrounding development and overall income-producing potential. This makes the retention of a low versatility building depressing on the property value.

The church has a strong intention to retain the whole of the site and redevelop it as a more comprehensive Methodist Centre, including income-producing activities to fund the Church's primary mission.

**Mr Barnes** added additional reasons why there are positive effects on the applicant's proposal. This included the amenity at Te Kowhai as the church will be character and history. He did not think that those who oppose the project have looked at the positive benefits.

He stated that the area at Te Kowhai has just been rezoned for 'country living' and the growth area will benefit from the relocation of the building. Additionally, he stated that the profit on the café development is not the primary driver for the project.

**Mr Mudford** reiterated the applicant's intentions for the site and for the church to stay within the city. The relocation of the church is not to sell the site rather to redevelop it. The church does not lease and will not lease its sites to any alcohol or gambling-related activities. To provide funding, parts of the redevelopment that are not required to be used by the church, will be leased to retain profit for the group.

He stated that the Church's wish to redevelop the site should not be seen as a lack of interest in heritage values. Rather that location, value, potential uses and productivity of a site should be taken into account.

### 6.3 SUBMITTERS

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**Ms Williams** is a local resident and also a heritage consultant, researcher and writer with 36 years' experience.

In her opinion there would be significant adverse heritage impacts as it is the oldest church building in Hamilton City. The building should be retained on the original site as a tangible and visual reminder of the evolving history and development of the area. The connection would be lost when relocating the building to a new site and the heritage value will be adversely affected.

Ms Williams outlined the history of the Methodist Church on the site and summarised that the NZ Dairy Co-operative and the Methodist Church Building speaks to the changing use along the street. She believed that the replacement of the building with a church centre would not be adequate nor would a commemorative display.

In respect of section 7 of the RMA, Ms Williams stated that the St Paul's church forms part of the streetscape environment and removing it will detract from character and amenity values of the surrounding area.

NB: Ms Williams' statement was read by Ms Nichola Hammond.

**Mr Kellaway** is a Hamilton resident and has a Bachelor of Architecture and advised that throughout his career he specialised in conservation.

Mr Kellaway outlined that the various consultants gave differing but confirming views of the heritage value of St Paul's Church and recommended in their initial finding to retain the site. In his opinion there has been no plan or feasibility study for the development of the site. He recommended that no major action should take place until there is such plan.

In his opinion the options have been focused on the removal of the building rather than the refurbishment of the building on the site. He agreed with the Council officer that the relocation was unnecessary. Further, he stated that the issue of relocation is that the building will no longer relate to the Methodists, the London Street Church Centre or Hamilton generally. This will cause the heritage value to be adversely affected to a significant degree. He outlined that the building should not have to be removed offsite to be reinstated and used commercially when this could happen onsite.

In his view, the seismic concerns are the sole reason for relocation. Contrary, the HCC Policy Manual states that there is no likelihood of a major earthquake in Hamilton and therefore there is no urgent need for strengthening for up to 20 years. Furthermore, he outlined that timber

buildings are generally stronger and therefore St Paul's would not be difficult, or expensive, to strengthen.

The historic value of this building increases as there has been a demolition of the 1910 St John's Methodist Church in Hamilton East. He reiterated that St Paul's is too important to Hamilton and the continuing story of Methodism in Hamilton.

NB: Mr Kellaway's statement was read by Ms Nichola Hammond.

**Ms Kellaway** is a registered architect and a heritage consultant specialising in Waikato heritage. She noted that she has a family connection with Mr Kellaway.

In her opinion the heritage values of St Paul's within the Waikato context and the significance of the social values of the Primitive Methodist Church and Methodist Church have not been fully assessed. She believed that as St Paul's is now the oldest surviving church in Hamilton City and is significant because of its link to the region's religious history. Furthermore, she stated that even though it is not on the Heritage New Zealand list, it does not affect the heritage status nor diminish the values.

She outlined the history of the church and reiterated that historically the building was large for a small number of residents living in Hamilton in the 1900s. What should be valued is that the physical size demonstrated that in the Waikato this was the main Methodist Church and therefore has a wider historical value outside of Hamilton.

Ms Kellaway stated that contrary to Ms Stevens' evidence the street it is situated on is important. London Street is a historic main street linking Hamilton town and Frankton. The street has been of significance since the 1910s with the NZ Dairy Co-operative and Hamilton North Bank of New Zealand establishing adjacent to the church. Together they form a significant townscape element in London Street and provides rare public amenity. She noted that there are no supporting assessments for urban design, amenity or landscape impact assessments.

In respect of the RMA, Ms Kellaway focussed on section 5 being 'sustainable management' and as there have been an ongoing loss of heritage buildings, the loss has a cumulative effect. Additionally, re-strengthening and retaining the building would re-use the physical resource on site. In referring to section 7 she stated that the removal will detract from the amenity values and therefore impact on the quality of the local environment.

In her view, a heritage building embodies the social history and culture of its time and place and therefore a commemorative structure is not enough to acknowledge the inherent heritage values of St Paul's. Retaining the building and using it for a use other than the church is a better outcome than removal. Ms Kellaway was uncertain if the removal of the building to Te Kowhai



can be assured as a 'mitigating factor' as there are no protections over the building once removed off site.

In her opinion, the Hamilton District Plan establishes a high threshold test that needs to be satisfied to justify relocation. In terms of the Waikato Regional Policy Statement, the removal will mean a loss in heritage values as the building would become divorced from its local historic context.

She compared the state of the building in relation to the Building Act and states that it appears to be in reasonable condition. She referred to Mr Saunders' report and agrees that the cost to strengthen is reasonable and the building would be suitable for numerous different uses. Additionally, Heritage EQUIP, Council Historic Heritage Fund and other philanthropic funders provide avenues to pursue additional funds to undertake some of the work required to strengthen the building.

ICOMOS New Zealand is a non-statutory document to provide guidance on conserving historic places and curtilage. Relocation is discussed in this document and outlines that relocation is not a desirable outcome and is not a conservation process. Ms Kellaway stated in her opinion the information on the proposed commemorative display is insufficient.

Ms Kellaway reiterated that the proposal should be declined.

#### 6.4 COUNCIL

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**Ms Thomson's** section 42A report was taken as read. She highlighted various matters in the report. She subsequently provided a supplementary statement of evidence to address the points raised by additional evidence additional to the material presented at the hearing. She also addressed some technical errors in her report that had been highlighted by Ms Feathers.

Ms Thompson noted that the evidence of Ms Kellaway and Mr Wild pointed to the rarity and significance of the Church as one of the oldest surviving churches in Hamilton City. The significance of historic churches has potentially increased with the reduction in numbers since the assessment in 2012. The St John's Methodist Church which was recently demolished did not have heritage status under the District Plan. Their evidence led Ms Thomson to accept that if the church was re-assessed today, it is feasible the status may be raised to Category A. In her opinion she does not believe that there are any specific matters in the Heritage Plan that would add additional value to what is already in the District Plan.

Ms Thomson did not agree with Ms Feathers statement 'there is a lean in favour of the city development and revitalisation goals'. The District Plan does not rank the strategic objectives and policies in order of importance. The objectives and policies within the Heritage Chapter

apply city wide and in her view, these do not need to be repeated in the Central City Chapter to emphasise their importance alongside other zone-specific objectives and policies. Additionally, she noted that there had been no alternative proposed uses of the site which demonstrated that removal would result in revitalisation of the site.

In her view, it has been clearly identified that the removal of the Church will result in a loss of heritage values. The alternative options, cost and feasibility for remediation has not been adequately demonstrated. She reiterated that in her opinion the Plan applies a strong test for the consideration of the removal of a heritage building.

Ms Thomson stated the applicant's evidence including the information Mr Mudford and Mr Neale presented demonstrated that the focus has been on the removal of the building as opposed to re-use. Additionally, the cost of strengthening in her opinion are not a significant barrier to the building when considered against the costs identified to upgrade other heritage buildings.

Ms Thomson outlined that the consent conditions proposed for a 'pocket park' did not offset the adverse effects of the removal of the building and loss of its heritage value. She noted Thomson her concerns about the building removal conditions which appear to place an obligation on Council to enforce a contractual agreement between the consent holder and the purchaser of the building. Additionally, she did not consider it appropriate that a covenant be imposed on the title of land in Waikato District as it is outside the City's jurisdiction. In summary, she did not believe that the loss of heritage value can be compensated for or offset by the imposition of conditions.

She concluded, the opportunities, cost and feasibility for remediation are not so limited that removal is necessary. The removal will result in significant impacts of the heritage values associated with them and stated that her recommendation to decline the consent had not changed.

**Mr Wild** is a director of Archifact, an Auckland based architectural practice specialising in building conservation and heritage management. He is a registered architect and Fellow of the NZIA.

Mr Wild outlined that a heritage assessment is an objective evaluation of the heritage values of a place as found and importantly stands ahead of any determination for change to an historic place. In his opinion it established a baseline reference against an assessment of effects and can be measured as a separate exercise.

He noted that the timber framed building is generally rectifiable but is concerned with the costs indicated in the Detailed Earthquake Assessment as context should be given against the

benefits of undertaking that work and protecting the authenticity, integrity and context of St Paul's on its original site.

Mr Wild stated that the original 1906 St Paul's church building retains elements of the gothic revival style, while the alterations made represent Arts and Crafts elements typical of the 1910s. He agreed with Opus statement that the building is 'now the only historic Methodist Church building remaining on its original site' within Hamilton. However, he did not believe the receiving environment impacts negatively on the building. Rather, the building represented the evolving urban context which can often lend a city further value. The Opus report questions whether the 'group of people to whom the building would be expected to hold the greatest cultural significance now see a greater value in adapting the site for other uses'. Mr Wild did not agree with this statement as the District Plan noted that the audience concerned with the values of St Paul's is no longer limited to its congregation, but also the public.

Mr Wild stated that both the District Plan and ICOMOS NZ Charter have relevance in this case as he did not see evidence to compel any exceptional circumstance ahead of the protection afforded on this building. Additionally, he believed that the original Opus report was misleading to suggest that relocation is preferable to demolition when demolition is not the intention in the application sought.

The Opus AEE provided a table to summarising the effects of relocation. Mr Wild noted that only one of the ten criteria is assessed as a positive effect. He did not agree with the conclusion that relocation can be reasonably mitigated in this case. Mr Wild disagreed that there is a precedent to be found in a previous heritage item ranked B that has been demolished as heritage management should be considered on a case by case basis.

In respect of submissions, Mr Wild agreed that the proposal will result in adverse heritage impacts and St Paul's is an important historic heritage landmark. He also agreed that the proposed development of the St Paul's church site with a garden is inappropriate as it affords no protection to the recognised heritage values. Additionally, he concluded that the application is dismissive of alternative uses for St Paul's on its original site and is vague about the reasons that have led the applicant to seek consents.

Mr Wild provided a supplementary statement of evidence which focused on the following key issues; the historic heritage values of St Paul's Church are not limited to the building fabric, but include context, setting and townscape values; the exploration of alternatives to that promoted in the application; the relative cost of structural strengthening the church; the appropriateness of the application in terms of s6(f).

He stated that Ms Stevens appears to have prepared her evidence on a predetermined position.

On this basis he could not support the conclusion Ms Stevens arrived at. Further, he did not agree that this is the 'last resort' or the 'only way to save the building' as this has not been sufficiently tested or proven.

He noted that Ms Feathers evidence outlined that the search for alternative options has been 'fruitless'. In rebuttal, Mr Wild stated that should the building be seismically strengthened St Pauls would present a very different opportunity to the market. He further states that the timber framed structure lends itself to the simple and practical strengthening.

Mr Wild stated that Ms Stevens confused the intent of Policy 19.2.3g and conflates adaptive reuse with relocation. He believed that adaptive reuse with relocation on the subject site would retain greater value and better meet the spirit of the Policy.

He noted that Mr Mudford provided an estimate of \$600,000 for strengthening and refurbishment. Mr Barnes also provided an estimate of \$100,000 which in Mr Wild's experience was relatively low. In respect to these costs, Mr Wild did not accept that the strengthening of St Paul's was not feasible.

Mr Wild did not agree with Ms Feathers conclusion that the proposal is 'not inappropriate', nor does he concur with her assessment of objectives and policies. Mr Wild challenged this and reiterated that a city's heritage is often the anchoring and stabilising moment in a city's development and evolution to which investment is drawn and from which amenity values, distinctiveness and integration is managed together in an integrative way.

On historic heritage grounds Mr Wild did not support the application.

## 6.5 RIGHT OF REPLY

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**Mr Lang** outlined that the category B classification of the building in the District Plan indicated that the community values of St Paul's Church building are not at the high end to support a Category A classification. The low level of submissions in his opinion indicated a low level of community interest in the building. Further, he reiterated that the submissions do not reflect a good guide to the wider community's views on the building.

In regard to Section 7 of the RMA, he acknowledged that there were likely to be adverse effects on the historic heritage value and the location if the resource consent is declined. The objectives and policies of the District Plan promote intensification and revitalisation and the application is in line with this.

He reiterated that the earthquake performance and the cost of strengthening has been assessed properly. In respect of funding, he stated that the Hamilton City Council pool of funds

(\$100,000) set aside for heritage buildings can be split and allocated to any number of buildings. Notwithstanding this, even if the church was given \$50,000, this would not make a material difference as there would still be a \$450,000 deficit in making the building fit for purpose. If the heritage building was refurbished, it is no longer suitable as a place of worship and the church would not be able to keep up with the ongoing maintenance costs.

The category status of the building should not be contested as this is what it is listed in the District Plan and there are no plan changes in place. The opposition's assumption that the applicant had a primary focus on the removal of the building is incorrect.

Mr Lang noted that Mr Wild had stated during the hearing that the Commissioner 'cannot give any weight to what might happen if the consent is not granted'. He advised that this is incorrect legally and inappropriate in this case.

Mr Lang advised that the applicant did not propose conditions or an assurance that the building be maintained and used in a particular manner. This could not be guaranteed at any site including the London Street site. He was of the view that the proposed conditions were adequate to provide sufficient assurance of relocation and restoration.

The provision of a covenant in deed form by Te Kowhai Estates Limited would enable the Council to enforce the relocation and restoration commitments by To Kowhai Estates Limited in reliance on the deed. The use of the Deed of Covenant is to ensure compliance with obligations that would not otherwise be within the decision makers jurisdiction.

The St Paul's Church building had been unused since 2012 and is to remain unused and unmaintained. Mr Lang reiterated that I should consider the implications of non-maintenance of the building as part of the assessment. This approach has been taken by the Environment Court in similar applications.

Mr Lang concluded that after a serious search for viable re-use options, both on and off site the applicant had been presented with an opportunity for the building to be strengthened, restored and have a continued active life.

## **7. MAIN FINDINGS**

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The application, submissions and section 42A report and the evidence presented at the hearing identified a range of effects for consideration:

- Heritage values and context
- Structural condition, seismic strengthening and refurbishment of building

- Alternative use options and building retention
- Positive effects

## 7.1 DISTRICT PLAN

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The District Plan is the primary planning document in respect of heritage management in Hamilton City and provides guidance on heritage and character values.

The plan was made operative in part on 21 October 2016 except Plan Change 1 (formerly the Ruakura Variation to the Proposed District Plan). There are no outstanding appeals for Plan Change 1 and the subject site is also not within the Plan Change 1 Area.

I was advised that the criteria for listing heritage buildings were revisited as part of the latest District Plan review, with each heritage listed building being re-evaluated and ranked using the revised criteria. The provisions relating to heritage listed buildings were also reviewed with one change being the addition of a lesser activity status for earthquake strengthening than for general alterations and additions to the exterior of a heritage item.

As previously noted, the church building has a B ranking and removal off site of such a building is a discretionary activity.

Both Ms Feathers and Ms Thompson describe the objective, policy and rule framework of the District Plan. Having considered this framework, there are four policies of particular relevance to the consideration of the application being:

- a. *“Policy 2.2.10(d) Development provides for the protection of historic and cultural heritage from inappropriate subdivision, use and development;*
- b. *Policy 7.2.2d. Heritage resources are recognised and managed to contribute to local amenity values and anchor investment within the Central City;*
- c. *Policy 7.7.2.h Future development will be undertaken in a manner that protects and appropriately integrates heritage values into the Central City to enhance social and cultural values and the overall attractiveness of the City and*
- d. *Policy 19.2.3b Demolition or relocation of buildings and structures ranged B in Schedule 8A should be discouraged.”*

Discussion in respect of these policies is contained in section 8 of this decision.

- **Heritage Values and Context**

I was advised that the church building has been identified in Hamilton City's District Plan as a key heritage site since the 1980's where it was identified in the 1982 Hamilton District Scheme. During the 2010 District Plan review the criteria for listing heritage buildings was realigned to reflect the assessment criteria promoted by Heritage New Zealand. Each heritage listed building was re-evaluated and ranked using the revised criteria. I note that the outcome of the re-evaluation is contained within the Hamilton City Council Built Heritage Inventory Records – 2012 (Heritage Inventory), with each heritage item and site having an assessment report. The St Paul's Methodist Church retained its 'B' Ranking.

I was advised that there were no submissions lodged relating to this site or the heritage ranking of the building as part of the District Plan review process.

The church building has a 'B' Ranking under the District Plan, with 'A' Ranking buildings having a higher threshold of significance. The respective descriptions of the A and B rankings from the District Plan are as follows:

***Plan Ranking A:*** Historic places of highly significant heritage value include those assessed as being of outstanding or high value in relation to one or more of the criteria and are considered to be of outstanding or high heritage value locally, regionally or nationally.

***Plan Ranking B:*** Historic places of significant heritage value include those assessed as being of high or moderate value in relation to one or more of the heritage criteria and are considered to be of value locally or regionally.

The criteria used to assess the rankings are detailed in the District Plan (Appendix 8-1.2 and include:

- a) Historic Qualities
- b) Physical/Aesthetic/Architectural Qualities
- c) Context or Group Qualities
- d) Technological Qualities
- e) Archaeological Qualities
- f) Cultural Qualities
- g) Scientific Qualities

I was referred to the Heritage Inventory which identified that the Church is classified as 'high' under the a) historic qualities, b) physical/aesthetic/architectural qualities, c) context or group qualities and f) cultural qualities. The Heritage Inventory outlined that the Church is significant

for its architectural design and links to key designers of the time and that the Church also demonstrated the development of the Methodist Church community in Hamilton. The summary of the Heritage Inventory states:

*“St Paul’s Church is significant for its historic associations with the Methodist Church community in Hamilton and provides evidence of the amalgamation of the Primitive Methodist and Wesleyan Methodist Church communities in 1913. It has been a place of worship in central Hamilton for over one hundred years. The church is significant for its architectural design, incorporating the original Gothic 1904 church designed by Mr Burgess, with additions designed in Arts and Crafts and Gothic style by Daniell and Cray Architects in 1914, which included the main porch and entrance. The significance of the church is enhanced by elements of its setting including its setback from the street with central steps and gardens and the small park adjacent which marks the site of the first Methodist Church.”*

The heritage values were assessed by Ms Stevens and she recognised the historic and physical values of the Church and that it is *‘...now the only historic Methodist Church building remaining on its original site within the territorial authority boundaries of Hamilton City, and one of only two historic Methodist Churches remaining in the Waikato District...’*.

Ms Stevens considered that the contextual values are limited as the *‘...physical and visual character of the site of St Paul’s has changed significantly...’* and *‘...is negatively impacted by the proximity of neighbouring high-rise buildings, and the proximity of the Church to the southwest section boundary’*. I noted that Mr Wild had a different view of this and while he acknowledged that the area has a mix of diverse uses and building scales he was of the opinion that *‘...It is this variety that lends a certain character to the immediate context within which St Paul’s itself is a significant contributor and which is characteristic of many urban environments which include historic heritage assets.’*

In Ms Stevens’ opinion there are perceived cultural values but that consideration of these should be in the context of the current views of the Parish. Mr Wild did not agree with this opinion and considered that *‘the audience concerned with the values of St Paul’s is no longer its congregation, but is now the public which share the benefit of this rare landmark historic building in Hamilton’s CBD’*.

The submissions also identified the heritage values of the Church and its connection to the setting, including the London Streetscape. It is clear from the submissions that the submitters consider the Church to be a landmark building and not solely significant for the Methodist Parish. The submissions also identify the limited historic heritage resource and the importance of retention of this resource.



I concur that the church building has significance not solely for the Methodist congregation but for the wider public as a landmark building. It is clear that the Church provides a connection to the historic development of London Street and this is outlined in the section 42A report.

It is acknowledged by both planning and heritage witnesses that removal of the building from its current site will have adverse effects on heritage values of the church building. This situation is summarised by Ms Stevens in paragraph 2.10 of her evidence:

*“Removal of the building from the site will have a negative impact on many of the heritage values of St Pauls. In particular, relocation (off site) will:*

- a. Diminish its historic significance insofar that it is both associated with the Methodist Church and representative of historic patterns in the Hamilton CBD;*
- b. Substantially eliminate its contextual significance by separating the building from its setting and context;*
- c. Negatively impact on interpretation of its physical significance insofar as this is connected with its current site.”*

I note that the church is the oldest church on its original site in Hamilton and therefore a unique situation.

Relocation of the church building will remove its historic association with the locality and will take away the contextual significance by removing the building from its original site and setting. It is acknowledged that it will result in removing one of the last remaining churches from its original site.

Relocation cannot avoid this situation occurring and whilst regrettable, it will nevertheless result in the building being seismically strengthened and refurbished by a company prepared to undertake such an investment.

Relocation of the building will protect and preserve the physical values of the building. Ms Stevens in her evidence in paragraph 2.11 states:

*“As part of this process, the retention, restoration and maintenance of significant building fabric offers an opportunity to reduce the negative effects of relocation to a level which I consider reasonable... Conditions of consent are recommended to ensure that the physical/architectural features are restored where practical via the Restoration Plan.*

*The effects of the removal of the building off site on context cannot be avoided. Mitigation is offered by way of commemorative display which will provide a visual representation of the building and its association with the site.*

*I understand that the historic significance is such because the church is the oldest church on its original site in Hamilton and therefore a rare circumstance. The relocation off site therefore has effects on this historic association which cannot be avoided in this application. However the Church is no longer being used and will not be used in the future by the Methodist Church. The Methodist Church propose to maintain a presence on the site."*

The refurbished church building will have a continued presence in the region and this in my opinion can be considered a mitigating factor.

- **Structural condition, seismic strengthening and refurbishment of building**

Both the application documentation and the section 42A report discuss the structural condition and integrity of the building.

An earthquake assessment of the building had been undertaken in 2012 and that report gave an estimate of the buildings seismic strength to be at 28% of the current seismic code requirements. The report also contained proposals where strengthening work could be undertaken to increase the building above 67% of the current code standards.

It is noted that the assessment did not take into account any potential upgrading works that may be required under the building code.

The section 42A report also noted that the market has some influence on the level of strengthening required as potential tenants may wish to have a higher level of compliance than the minimum standard.

While the section 42A report notes that the costs of earthquake strengthening are not outlined by the applicant, I note that 2012 report by Kingston Quantity Surveyors estimated a cost of \$83,000 (excl GST) for seismic strengthening. Mr Barnes provided an updated estimate of \$99,600 in his evidence.

While the cost of seismic strengthening may appear modest to some parties, there are also the additional costs of refurbishing the building to be fit for purpose for an alternative use. These estimated costs are outlined in the following section of this report.

Given the potential costs of strengthening and refurbishment, the applicant is concerned that it would not result in a viable use for the building, therefore was not prepared to undertake such investment given the uncertainty of funding a suitable end user. In addition there would be restrictions on such end use that would be applied by the applicant, which include no activities involving the sale of liquor, gambling, or any other activities considered by the applicant to be harmful to people within the Hamilton community.

Notwithstanding the range of activity use permitted by the District Plan, relocation of the building to Te Kowhai with investment by Te Kowhai Estate Ltd would enable refurbishment, and having land use activities that would not be restricted as they would be, if the building remained on its current site.

- **Alternative use options and the Church building retention**

The application included a summary of alternatives considered by the applicant which included options that would enable the heritage building to remain on the subject site, such as restoration and re-use of the building for church use with a possibility of repositioning the building on the site. Consideration had been given to the restructure and re-purpose for another use via lease or sale of all or part of the subject site. The applicant advised through the evidence of its witnesses that these options were largely discounted, for reasons such as the Methodist Church not having any further use of the building as a place of worship; the building not lending itself to be a flexible space; a lack of interest in an alternative use; and the financial risk of undertaking refurbishment without any end user in place.

Ms Thompson highlighted in her section 42A report that no detailed estimates had been provided regarding the potential cost of a building upgrade and refurbishment for alternative uses.

Mr Barnes who noted that he had approximately 20 years experience in building and property development but with a full-time focus on such in the last 5 – 6 years, provided an estimate in his evidence on the cost of earthquake strengthening and the minimum work required to make the building suitable for a range of potential uses.

Whilst Mr Barnes caveats some of the estimated costs, he was of the opinion that they were realistic. He estimated costs totalling \$505,932.60 in respect of the building remaining on its current site. I note that a 2012 estimate by Kingstons (Quantity Surveyors) was for \$83,000 (excluding GST) for seismic strengthening.

Mr Barnes estimated that 20% could be added to this estimate to update it to approximate current construction costs, which would bring the estimated cost for seismic strengthening to \$99,600. He advised that such work did not include bring the building up to current Building Code requirements, levelling the floor to enable multi use of the building or improving access for disabled users or provision of toilets.

Mr Barnes also estimated that annual maintenance costs would be around \$13,000 annually.

The provision of the estimated costs of seismic strengthening and refurbishment addresses in my opinion concerns raised by Ms Thompson about a perceived lack of information on costs of

repurposing the building. Such cost estimates also even if not definitive outline the magnitude of likely funding required to strengthen and repurpose the building. This in my opinion reaffirms the applicant's concern that funding such costs is beyond its capacity, and particularly when there is no confirmed end user.

I note that Mr Kellaway in his statement said that timber buildings were generally stronger, and the church building would not be difficult or expensive to strengthen. However, he did not present any evidence to support that statement.

The applicant no longer considers the Church building to be suitable for its purposes, and options for reuse of the building on the site involve considerable cost. While the zoning of the site presents a range of potential use options which is not always the case for heritage buildings, the applicant does not consider that these are feasible or appropriate.

The applicant outlined in the evidence of Mr Short that it owned adjoining land to the church site. Given this situation the Methodist Church wishes to look at full redevelopment options of its total site which includes the Methodist Centre to the rear of the subject church building. This is considered by the applicant appropriate given the Methodist centre building has earthquake performance and substantial weather tightness issues.

The church as outlined in Mr Short's evidence is of the view that it is not feasible to strengthen and refurbish the church building, find a use for it that is affordable to the applicant and compatible with future redevelopment of the London Street and Victoria Street sites.

The church wishes to retain the site to enable it to provide community support services and facilities to support the Hamilton community.

### 7.3 POSITIVE EFFECTS

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There are positive effects arising from the granting of consent to the proposal. While relocation of the church building from its context in respect of the London Street site to Te Kowhai will occur, it will provide for the refurbishment and re-use of the building. This provides a greater certainty in terms of building refurbishment and use, than if the building remained on site and no action was taken to refurbish and reuse.

### 7.4 RECORDS AND COMMEMORATION

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The applicant is proposing in respect of some mitigation of effects through removal of the building, the establishment of a commemorative display which is to include a visual representation of the building and its association with the site. In addition, the applicant has also offered up a condition involving the establishment of a pocket park where the

commemorative signage is to be located and to provide a planted area and seating. While it is intended that the pocket park would remain in place until a resource consent for a new activity on the site is approved, any signage is to remain on the site in perpetuity.

The Methodist Church would be responsible for ongoing operation and maintenance of the park, and there would be no obligations on the Council in respect of this matter. For the sake of clarity the offering up of the provision of the pocket park has been considered as an *Augier* condition.

I note the evidence of Ms Stevens in paragraph 7.8 and 7.9 where she made a recommendation in respect of the commemorative display:

"c. *That signage or other appropriate type of interpretive and commemorative material be erected at the site of St Paul's to acknowledge the construction, history, and subsequent removal of the building from its site, and provides a description of its new location. This should include written explanations and images. This coincides with the proposal to establish a commemorative display which forms part of the Resource Consent application.*"

## **8. DISTRICT PLAN: OBJECTIVES & POLICIES**

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### **8.1 DISTRICT PLAN**

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The District Plan contains various provisions which are of direct relevance to the assessment of the application to remove the heritage building. These include:

- Objectives and Policies – Central City Zone
- Objectives and Policies – Heritage
- Assessment Criteria

The following objectives and policies are considered of relevance to the assessment of the proposal:

#### ***All Central City***

##### ***Objective***

7.2.2 *The form, scale and diversity of activities support and facilitate the role of the Central City as the Regional Centre.*

**Policies**

- 7.2.2d *Heritage resources are recognised and managed to contribute to local amenity values and anchor investment within the Central City.*
- 7.2.2h *Future development will be undertaken in a manner that protects and appropriately integrates heritage values into the Central City to enhance social and cultural values and the overall attractiveness of the city.*

These policies recognise the specific role that heritage buildings play in the amenity of the Central City.

In respect of the Historic Heritage Chapter of the District Plan, the following objectives and policies are outlined:

**All Historic Heritage****Objective**

- 19.2.1 *Significant buildings, structures, sites and items that define the City's historic heritage are identified and protected.*

**Policies**

- 19.2.1a *The City's historic heritage shall be protected from the adverse effects of subdivision, use and development.*
- 19.2.1b *Ensuring that where features have been destroyed or damaged, the historical heritage values of these sites are recorded and recognised to ensure the historical legibility of Hamilton City.*
- 19.2.1c *Subdivision and development shall adhere to the conservation principles of International Council on Monuments and Sites (ICOMOS) being the New Zealand Charter (2010) for the Conservation of Places of Cultural Heritage Value where applicable.*

**Objective**

- 19.2.2 *The heritage values of a diverse and representative range of natural, physical and cultural resources are protected.*

**Policies**

- 19.2.2a *Items of significant heritage value (buildings, objects, areas, trees and sites) shall be scheduled.*
- 19.2.2b *The loss of heritage values associated with scheduled items shall be avoided.*
- 19.2.2c *Outstanding examples of a particular type of site, or sites that are highly significant to the community shall be scheduled*

**Buildings and Structures**

**Objective**

- 19.2.3      *The heritage values of significant buildings, structures and their immediate surroundings are protected.*

**Policies**

- 19.2.3a      *Demolition or relocation of buildings and structures ranked A in Schedule 8A shall be avoided.*
- 19.2.3b      *Demolition or relocation of buildings and structures ranked B in Schedule 8A should be discouraged.*
- 19.2.3c      *Subdivision and development shall retain, protect and enhance the heritage values of any building or structure listed within Schedule 8A.*
- 19.2.3d      *Subdivision and development avoid any potential cumulative adverse effects on any building or structure listed in Schedule 8A*
- 19.2.3e      *Heritage buildings and structures shall be used in a manner that ensures essential heritage qualities are not damaged or destroyed.*
- 19.2.3f      *The design, materials and finish of any development shall be consistent with heritage values.*
- 19.2.3g      *The continued use or adaptive reuse of any building or structure of identified heritage value shall be encouraged.*
- 19.2.3h      *The site surrounding the heritage building or structure shall be protected to the extent that it contributes to the heritage value.*
- 19.2.3i      *Encourage the strengthening of buildings in Schedule 8A to increase their ability to withstand future earthquakes while minimising the significant loss of associated heritage values.*

In considering the objectives and policies related to heritage, there is a broad focus on the protection of heritage values. Within the objective and policy framework, there are also some specific policies that require consideration as part of the assessment of the proposal against the framework.

I note that several objectives and policies such as policies 7.2.2d, 7.2.2h and objectives 19.2.1, 19.2.2 and 19.2.3, promote the protection and ongoing use of buildings with historic heritage. In respect of Policy 19.2.2b, it states that the loss of heritage values associated with scheduled items shall be avoided and Policy 19.2.3c outlines that any subdivision and development should retain and protect the heritage values of scheduled buildings.

While there is a focus on identification and protection of heritage it is not an unfettered or absolute approach and that circumstances may arise where the objective and policy framework may not be appropriate. The District Plan provides direction in respect of heritage management and protection but does not deal with matters related to the funding of building refurbishment and strengthening. It is noted that Policy 19.2.2b that the loss of heritage values should be avoided, the policy framework also provides for a distinction between protection for A ranked and B ranked buildings.

Policy 19.2.3a and 19.2.3b provide some more specific direction particularly in respect of this distinction. Policy 19.2.3a states that demolition and relocation of A ranked buildings *shall be avoided*; whereas, for B ranked buildings Policy 19.2.3b states that demolition and relocation *shall be discouraged*. In my opinion Policy 19.2.3b adopts a less onerous position for B ranked buildings and does indicate that in certain cases there may be a loss of heritage buildings.

It is noted that while removal of a heritage building from its site will not result in a complete loss of heritage which would be the situation with demolition, it can result in significant impacts on the heritage values associated with the building. The relocation of the building while it will result in a loss of connection between the building and its context location, allows the building and its features to be retained albeit in a different location.

While the proposed removal of the Church building will result in a loss of heritage values through the separation of the building from its original and historic location, the overall heritage values of the building will be maintained through refurbishment in accord with the proposed Restoration Plan.

Policy 19.2.3b applies a less onerous test for the removal of B ranked buildings and it is my opinion that this policy, in consideration with the wider objective and policy framework, still seeks to ensure that the loss of heritage only occurs as a last resort. While the proposal is not consistent with some of the objectives and policies of the District Plan, the plan does envisage that not all heritage will be maintained in its current form. The proposal will result in restoration of the building and for its use and enjoyment by future generations. It provides for a more certain future than one of being unused and unmaintained leading to continued deterioration.

Policy 19.2.1c references consideration of the principles of the International Council on Monuments and Sites (ICOMOS). Article 10 of the Charter concludes that relocations “are not a desirable outcome and is not a conservation process”.

While relocations may not be a desirable outcome, in this situation it is a practical outcome given the financial limitations of the Methodist Church and is in my view preferable than to the alternative discussed earlier in this decision.

The relocation and refurbishment will involve the restoration of both the building exterior and interior as outlined in the proposed restoration plan, and while it is acknowledged as noted by Mr Wild that relocation is different from adaptive reuse on the current site, adaptive re-use will occur because of the relocation and therefore ongoing preservation of the church building.

Having regard to the overall policy and objective framework, I find that while the proposal will not result in maintaining heritage values of the building on its current site as the some of the



policies and objectives propose, it does avoid demolition, and will result in the building being strengthened and its heritage qualities are preserved and maintained. The somewhat unique situation is that this will occur in another planning jurisdiction to which the policies and objectives apply and takes a more holistic approach to heritage protection and management that traverses territorial authority boundaries.

## 8.2 DISTRICT PLAN ASSESSMENT CRITERIA

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As previously noted the application for relocation has Discretionary activity status and therefore all effects of the proposal require consideration. The District Plan includes specific assessment criteria for Heritage Values and Special Character. Many of the specific assessment criteria relate to proposals for alterations and additions to the heritage item or new buildings and structures on the site. However, there are some which are applicable to this application as detailed below.

### *Heritage Values and Special Character*

**E1** *the extent to which the proposal, development excavation or subdivision of a historic heritage site or place:*

- a) *Is compatible with the reasons for inclusion of the building, structure or site and its significance in Schedules 8A or 8B, of Appendix 8.*
- b) *Addresses cumulative effects on heritage values.*
- c) *Considers the irreversibility of an effect (e.g. the loss of unique features)*
- d) *Considers the opportunities for remediation and the costs and technical feasibility of remediation.*
- e) *Adheres to the conservation principles of International Council on Monuments and Sites (ICOMOS) New Zealand Charter (2010) for the Conservation of Places of Cultural Heritage Value, where applicable.*
- f) *Includes consultation with Heritage New Zealand Pouhere Taonga*
- g) *In the event of relocation, has adequately considered whether the relocation is necessary and whether appropriate measures are proposed to ensure any potential adverse effects on heritage values are avoided, remedied or mitigated.*

**E2** *The extent to which the heritage values of any buildings or places identified in Schedules 8A or 8B of Appendix 8 would be adversely affected by the proposal.*

The proposed building will retain the heritage values that were the reasons for its inclusion as a listed heritage building in the District Plan notwithstanding its relocation. While the proposed removal will result in adverse effects on the identified heritage values of the Church through its removal from its original site and the general London street locality it will not result in complete loss of heritage values. It is acknowledged that the building will lose its connection with its current location and therefore its overall heritage value and role will be decreased.

However, the relocation will not result in the loss of building heritage features and these will be restored as part of its relocation to the Te Kowhai site.

I have considered the costs of strengthening and refurbishment on its' current site and conclude that the feasibility of this is beyond the ability of the church to undertake, and also having regard to at some stage redevelopment of the site to enable the Methodist Church to carry out its mission of providing services to the Hamilton community.

I was advised that the applicant had consulted Heritage New Zealand Pouhere Taonga (HNZ) regarding the proposed removal of the Church building. The consultation sought comments regarding the value of the building based on the three broad alternatives of: retention, relocation off site, or demolition. HNZ identified that the subject building was not listed with HNZ and it had not made any heritage assessment of this building, however it was noted that it was part of the Hamilton City Council Heritage Schedule. In general retention and appropriate repair and adaptive reuse is supported by HNZ, with appropriate consideration to the impacts on the building and that relocation and demolition should be considered as a last resort, and that relocation is favoured over demolition.

Having regard to the proposal, policy and objective framework of the District Plan and the assessment criteria I conclude that relocation of the church building has been adequately considered and is necessary to ensure that the church building is preserved and maintained and that any effects on the heritage values of the building notwithstanding its relocation, are avoided, mitigated or remedied.

## **9. OTHER MATTERS**

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### **9.1 NATIONAL POLICY STATEMENTS & NATIONAL ENVIRONMENTAL STANDARDS**

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It is considered that there are no National Policy Statements which are of relevance to the consideration of the application.

The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ensure that land affected by contaminants in soil is appropriately assessed and made safe for human use.

The subject site is listed within the Council's Selected Land Use Register as a site where an activity or industry listed on the Hazardous Activities and Industries List (HAIL) is, has been, or might have been undertaken on. Council's Contaminated Land Officer is satisfied that the specific area of the site where the application relates is not associated with the HAIL land use. As such the NES does not apply and no further assessment or consideration by me is required.

## 9.2 REGIONAL POLICY STATEMENT AND PLANS

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The Waikato Regional Policy Statement (RPS) provides an overview of the resource management issues in the Waikato region and sets the direction and foundation of the regional and district plans which must give effect to the RPS.

The RPS includes the following objective and policy on heritage:

### **3.18 Historic and cultural heritage**

*Sites, structures, landscapes, areas or places of historic and cultural heritage are protected, maintained or enhanced in order to retain the identity and integrity of the Waikato region's and New Zealand's history and culture.*

### **Policy 10.1 Managing historic and cultural heritage**

*Provide for the collaborative, consistent and integrated management of historic and cultural heritage resources. Improve understanding, information sharing and cooperative planning to manage or protect heritage resources across the region.*

The RPS provides the broad regional level policy direction for the protection, maintenance and enhancement of heritage. The RPS also refers to a Regional Heritage Inventory however the preparation of this inventory has not commenced at this stage. As such it is the respective district plans and local communities that identify the heritage schedules and rule provisions for protecting and managing the effects of development on heritage within each district.

If granted, the application will enable a scheduled heritage building identified in the District Plan to be removed from its site. The RPS provides an overall direction regarding the protection, maintenance or enhancement of historic and cultural heritage. It anticipates that plans and the consenting process will provide for the protection, maintenance or enhancement of heritage, but does not define how this will be achieved.

In my view the RPS direction is more relevant to the District Plan review process than an individual resource consent application. In saying this, it is still an important consideration and it provides the overall direction that has led to the heritage provisions in the current District Plan. This emphasises that the protection, maintenance and enhancement of heritage is not solely a local matter and requires specific consideration.

I note that the relocation of the church building will result in its retention together with its associated building features and heritage values in the Waikato region.

### 9.3 COUNCIL STRATEGIES

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I was advised that the Council had a wide range of strategies in terms of social and economic growth as well as for the supply of services and provision of infrastructure. These strategies help to inform and shape the provisions of the District Plan which provides the direct planning framework and assessment of land use activities.

In my view the application does not raise any particular issues in respect of these strategies.

### 10. NO MAINTENANCE OBLIGATIONS; HERITAGE BUILDINGS

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Notwithstanding any ranking of heritage buildings contained in the District Plan, there are no obligations on landowners to maintain and use such buildings.

Mr Lang in his right of reply cited various Environment Court decisions that confirmed this situation. Given the lack of such obligations I have considered the potential for deterioration of the building if it remains in its current state.

The future of the building could be one of ongoing deterioration, which in my view would negatively impact on the amenity values of the area and would also constrain any redevelopment options in respect of the site.

The applicant has stated that at some stage redevelopment of the overall site will be considered.

### 11. RELOCATION AND RESTORATION OF ST PAUL'S CHURCH AT TE KOWHAI

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Mr Lang offered on behalf of the applicant that prior to removal of the church building the applicant would provide to the Council a legally binding covenant by Te Kowhai Estate, (as one of the applicants), in favour of the Council requiring relocation and timely restoration of the building at the Te Kowhai site. For the avoidance of doubt about any ability for me to impose such a consent condition, Mr Lang confirmed that the applicant offers the proposed condition on an *Augier* basis, being that it is voluntarily proposed by the applicant on the understanding that it cannot be challenged by any consent holder.

### 12. PART 2: RESOURCE MANAGEMENT ACT 1991

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- **Section 5 - Purpose**

Section 5 details the purpose of the Act which is to achieve sustainable management. Sustainable management is defined as '*... means managing the use, development, and*

*protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while - ...’.*

While the proposal does not result in the protection of a physical resource being the building on its current site it does provide for the sustainable management of resources through relocation of the church building, protection of the buildings fabric and its refurbishment. This will allow some heritage values to be retained. It will also allow ongoing use, enjoyment and appreciation of the building albeit in a different location.

I see this as a preferable alternative and achieving sustainable management of physical resources by refurbishment and adaptive reuse of the building to one of an uncertain future where the applicant does not wish to invest funds on seismic strengthening and refurbishment, and therefore the building remaining disused and continuing to deteriorate.

While relocation will not provide for the social and cultural well-being for the community in its current location, it will provide for the wellbeing of people and wider community in its proposed location at Te Kowhai. It will also allow at some stage redevelopment of the existing London Street site to enable the Methodist Church to provide for the social and cultural and economic well-being of the community it serves.

- **Section 6 - Matters of National Importance**

This section of the RMA outlines matters of national importance that should be recognised and provided for. This includes subsection 6(f) which outlines *“the protection of historic heritage from inappropriate subdivision, use and development.”*

This provision does not seek to protect historic heritage in all circumstances but requires a judgement call to be made in respect of what is “inappropriate development and use”. While the church building has a “B” ranking under the District Plan, it is not the highest ranking, and has a focus on heritage of local or regional significance. It is not listed as a heritage building or archaeological site by HNZ on the national register.

The applicant has in my view considered the strengthening and refurbishment of the building together with possible alternate uses.

The applicant wishes to retain the site for some future comprehensive redevelopment. Therefore, the historic and current association that the Methodist Church has in respect of the site will continue. Retention of the building in its current state, not being used and potential deterioration could be considered inappropriate use of the site.

The relocation of the church building will contribute to appropriate use and development, with funding available to provide for its seismic strengthening and refurbishment and alternative use.

Given that there is no proposal for redevelopment of the site, the issue is one of whether relocation of the building with the loss of heritage values through its disconnection with its current site, is an inappropriate use of the resource being the building. This is a relevant consideration regarding its retention on site and what this could then impose on the applicant in terms of potentially restricting a more efficient use of the site.

A building should be able to accommodate a viable and functional use taking into account an assessment of costs and the nature of any upgrade works to meet relevant building code requirements for health and safety.

Given the estimated costs for earthquake strengthening and refurbishment, and concerns expressed by the applicant's witnesses it is unlikely that a viable economic return could be achieved. If the building is left as it is it will deteriorate. Overall given the situation the Methodist Church of NZ finds itself in, that sustainable management in providing for its social, cultural and economic wellbeing is not able to be achieved. A future of leaving the building on site to deteriorate does not promote in my opinion section 5 of the RMA.

The loss of heritage values whilst regrettable through relocation of the building does at least provide for the building and its associated heritage values to be retained.

Mr Lang provided several Environment Court decisions which he referenced during the hearing and provided to me as attachments to his right of reply. Among these was a decision referenced as NZ Historic Places Trust / Pouhere Taonga and Manawatu District Council ( W081/2004).

It is noted in that decision that matters such as the cost of refurbishment and strengthening, lack of demand and commercial users and continued deterioration of a building if not refurbished were considered as matters as outweighing nationally important factors of preserving heritage values.

Overall, I do not consider the proposal to be inappropriate use and development.

- **Section 7 - Other Matters**

Section 7 outlines various matters that decision makers shall have particular regard to in order to achieve the purpose of the Act.

Two matters of relevance include "the efficient use and development of natural and physical resources;" and "the maintenance and enhancement of amenity values."

I note that both Ms Feathers and Ms Thompson reach different conclusions on this matter. Ms Feathers is of the opinion that the applicant has not been able to secure a viable re use of the building, and that the only option available to the applicant given it does not wish to expend considerable funds on the building when there is no confirmed end use for it, is to leave the building in its current vacant unmaintained state.

I concur with Ms Feathers that this is likely to have a negative effect on amenity values in the locality. In addition, it does not appear to me to be an efficient use of natural and physical resources. Relocation of the building will allow comprehensive redevelopment of the site by the applicant and an efficient use of the building through its relocation and reuse.

Ms Thompson was of an alternative view in that redevelopment of the building and site could provide a positive regeneration opportunity for the site and area. While I do not disagree with this potential opportunity, it is an opportunity that the applicant is not committed to funding, and does not wish to do so. Therefore, the proposal does present an opportunity for an efficient use of resources and would ensure amenity values are not negatively affected by an existing unused and deteriorating building.

- **Section 8 - Treaty of Waitangi**

This section requires those involved in exercising RMA functions and powers relating to managing the use, development and protection of natural and physical resources shall take into account the principles of the Treaty of Waitangi.

Ms Thompson noted in her section 42A report that the site was not identified as an archaeological site under the District Plan, although it is considered to be a pre-1900 site in accordance with the Pouhere Taonga Heritage New Zealand Act 2014. She further noted that should consent be granted for the removal of the church building, prior to any works occurring on the site, an authority from Heritage New Zealand may be needed. Ms Thompson recommended that should the application be approved conditions of consent regarding Accidental Discovery Protocol for earthworks be imposed.

Overall granting consent to the proposal will not in my opinion compromise the principles of the Treaty of Waitangi.

### **13. CONCLUSION**

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I have considered all matters placed before me including all application documentation, evidence, submissions and subsequent statements of evidence made by the parties at the hearing, the section 42A report and associated reports from Council staff, together with the relevant RMA and District Plan provisions.

The building has a B ranking as outlined in the District Plan. Given the plan has only been recently made operative it would seem that if the church building had such significant heritage values, that it may have had the higher A ranking.

The building has been unused for some time and requires significant investment in respect of earthquake strengthening and refurbishment.

The applicant advised that it does not have funding to undertake such work. Also, an applicant cannot be required to undertake such refurbishment.

The dilemma is that the applicant as owner of the site and building does not wish to invest in the current structure and wishes to at some later date consider its options in respect of a site that has been cleared of the existing building. This approach is one which an applicant is entitled to pursue.

One outcome is if consent was declined to remove the building, would be for the applicant not to undertake any refurbishment or maintenance of the building and to allow it to deteriorate. This could occur and there are no particular powers a Council has in respect of this situation, unless a building is deemed to be dangerous in terms of the Building Act.

Ms Kellaway did note that such an approach may still be desirable as the building is retained and then at some future date there may be an opportunity arise for the building to be refurbished and used for some appropriate purpose.

On balance having considered all relevant matters, I find that it would be appropriate to grant consent for removal of the building as sought. This will allow for retention and refurbishment of the building albeit in a different location. It would also be used as a café so will have purpose as opposed to deteriorating on its existing site.

While as noted by submitters and in the expert evidence of Ms Kellaway and other witnesses that the building would no longer have its historic and CBD context, the actual heritage building would not be lost to the Waikato region. This seems to me to be an appropriate way to see the building relocated and repurposed and its features being retained. Whilst this may not be regarded as an appropriate solution from the perspective of submitters, it does allow for retention of the building than being retained on its existing site being allowed to deteriorate and not being put to any particular use.

I note that Ms Kellaway and Mr Wild highlighted the loss of heritage buildings in Hamilton City over time. I acknowledge this concern but also acknowledge that funding for earthquake strengthening and refurbishment does not always equate to a viable economic use when such



is undertaken. Notwithstanding the planning framework contained in the District Plan such provisions do not necessarily provide for a funding framework. The situation has been arrived at where the applicant has found a willing investor being Mr Barnes who is prepared to relocate and repurpose the building albeit at Te Kowhai and not within Hamilton City. Whilst the original context for the building will no longer exist because of its relocation, retention and refurbishment of the church building will be achieved.

## **14. DECISION**

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***That pursuant to sections 104, 104B, 104C and 108 of the Resource Management Act 1991, the Hamilton City Council grants consent to the application of the Board of Administration of the Methodist Church of New Zealand and Te Kowhai Estate Ltd, to remove the St Paul's Methodist Church (B- ranked heritage item) and installation of a commemorative display in respect of land legally described as Lot 1 DPS 7437, Part Lot 3 DPS 7437, Lot 1 DPS 21340 and Lot 2 DP 441703, 62 London Street, Hamilton subject to the following conditions:***

### ***General***

1. *That the development be in general accordance with the information submitted with the application on 29 September 2016, and further information submitted on 27 March 2017 and 12 May 2017.*

### ***Historic Records and Commemoration***

2. *A full photographic record of the building be prepared by appropriately, qualified heritage building specialist prior to the relocation being carried out, along with reference drawings and the new location of the building documented. This information shall be compiled into an archive that is stored by at least two separate organisations, for example, by both Council and the Methodist Church.*
3. *That a Commemorative Plan be prepared for the site that details proposed signage or other appropriate interpretative material to be erected at 62 London Street to acknowledge the construction, history and subsequent removal of the building from its site and provide a description of its new location. This should include written explanation and images. The signage plan shall be submitted to Planning Guidance Unit Manager for certification as complying with this condition prior to the erection on the site.*

*The Commemorative Plan to be approved as per this condition shall be implemented within 6 months of the building being relocated off site, and thereafter maintained on an ongoing basis.*

4. *A pocket park on the subject site shall be established and made publicly available. A park plan shall be prepared by a suitably qualified and experienced person and submitted to the Planning Guidance Unit Manager for certification as complying with this condition prior to the commencement of any landscaping works on site. As a minimum, the park plan shall include:*
  - a) *A site plan showing an area of at least 200m<sup>2</sup> at the front of the site;*
  - b) *A planting and maintenance schedule;*
  - c) *Areas of public seating;*
  - d) *Location of the commemorative sign; and*
  - e) *Appropriate vegetative screening of the carpark.*

*Should any planting die or be removed, then it shall be replaced in the next planting season.*

5. *The pocket park shall remain in place and be publicly available until such time that Resource Consent for a new activity on the site has been approved by Council. Responsibility for operation and maintenance of the park shall lie with the Methodist Church.*

#### **Earthworks**

6. *The Consent holder shall ensure that all appropriate sediment and erosion control measures are adopted to minimise any sediment leaving the site and entering any water way. The measures should include: the erection of silt fences, stabilised entranceways, cut off drains and the connection of downpipes to the storm water system as necessary. These sediment control measures should be erected and maintained on site for the duration of the works.*

*Note: refer to Waikato Regional Council's "Erosion & Sediment Control, Guidelines for Soil Disturbing Activities" which can be found at <http://www.waikatoregion.govt.nz>.*

7. *No earthworks undertaken shall obstruct any stormwater overland flow path where shown on the Certificate of Title and/or formed on the site at the time of subdivision.*
8. *All public roads shall be kept clean and free from silt and sediment tracked from the site.*
9. *That the activity is conducted in such a manner so as to not create a dust nuisance. A dust nuisance will occur if:*

- *There is visible evidence of suspended solids in the air beyond the site boundary; and/or*
  - *There is visible evidence of suspended solids traceable from a dust source settling on the ground, building or structure on a neighbouring site or water.*
10. *All areas of bare earth shall be re-vegetated or re-grassed as soon as practicably possible and within one calendar month following the completion of earthworks. If this cannot be achieved the area shall be temporarily covered by a surface suitable to protect against soil erosion until such time as re-vegetation or re-grassing can occur.*

### ***Accidental Discovery Protocol***

11. *During earthworks on the site, in the event of any archaeological feature, artefact or human remains being discovered or suspected to have been discovered, the following protocol shall be followed:*
- I. *All work on the site will cease immediately. The contractor/works supervisor will shut down all equipment and activity.*
  - II. *The area shall be secured and the consent holder or proponent and Council must be advised of the discovery.*
  - III. *Heritage New Zealand Pouhere Taonga must be notified by the consent holder or proponent so that the appropriate consent procedure can be initiated.*
  - IV. *The consent holder or proponent must consult with a representative of the appropriate iwi to determine what further actions are appropriate to safeguard the site of its contents.*

*In the case where human remains have accidentally be discovered or are suspected to have been discovered the following will also be required:*

*The area must be immediately secured by the contractor in a way which ensures human remains are not further disturbed. The consent holder or proponent must be advised of the steps taken.*

- V. *The Police shall be notified of the suspected human remains as soon as practically possible after the remains have been disturbed. The consent holder or proponent shall notify the appropriate iwi, Heritage New Zealand Pouhere Taonga and Council within 12 hours of the suspected human remains being disturbed, or otherwise and soon as practically possible.*

- VI. *Excavation of the site shall not resume until the Policy, Heritage New Zealand Pouhere Taonga and the relevant iwi have each given the necessary approvals for excavation to proceed.*

### **Engineering**

12. *Any private pipes and connections not required as a result of the removal of the building shall be appropriately disconnected to the satisfaction of the General Manager, City Infrastructure. Removal of existing connections shall be done by Council at the consent holder's expense.*
13. *The footpath along the site frontage shall be kept clear of construction traffic and material unless an application for Temporary Use of the Road Corridor is approved by Council's City Transportation Unit.*
14. *All works within the road corridor shall be managed by contractor operating under a current CAR (Corridor Access Request, made through the [www.beforeudig.co.nz](http://www.beforeudig.co.nz) website) and appropriate traffic management.*
15. *On completion of site works any roadside damage shall be repaired and the kerb, berm and footpath be reinstated to match the surroundings. The reinstatement work shall not be carried out until all service trenching in the footpath has been completed and shall include the reinstatement of all trenches.*

### **Building Removal**

16. *Prior to removal of the building from 62 London Street, Hamilton the consent holder shall produce to the Planning Guidance Unit Manager a copy of a contract or other binding arrangement with the purchaser of the building, requiring the purchaser to deliver the building to the relocation site at 714 Te Kowhai Road within three days of removal from London Street, to position it and connect it to its new foundations within seven days after delivery and undertake the works required by the attached Restoration Plan (Attachment 1) within 12 months after delivery.*
17. *Within the period of two days prior to removal of the building from 62 London Street, Hamilton, the consent holder shall produce to the Planning Guidance Unit Manager confirmation from the building purchaser that the contract or other binding arrangement referred to in condition 16 is in effect and will be complied with on a specified relocation date or dates.*

18. *Prior to removal of the building from 62 London Street, Hamilton the Consent Holder shall produce to the Planning Guidance Unit Manager a duly executed Deed of Covenant by Te Kowhai Estates Limited (as one of the Consent Holders and owner of the relocation site at Te Kowhai) in the form attached (Attachment 2).*
19. *The building shall not be removed from 62 London Street, Hamilton until the Planning Guidance Unit Manager has confirmed in writing that conditions 16, 17 and 18 have been complied with.*
20. *A Temporary Protection Plan shall be prepared and produced to the Planning Guidance Unit Manager, detailing how the building is to be removed from 62 London Street, Hamilton and relocated to 714 Te Kowhai Road and how it will be protected during this process. The building shall not be removed from 62 London Street, Hamilton until the Planning Guidance Unit Manager has certified that the Temporary Protection Plan provides adequate protection for the building during relocation. The approved Temporary Protection Plan shall be complied with in removing the building and relocating it to 714 Te Kowhai Road.*

*The reasons for this decision are detailed in the preceding discussion but can be summarised as follows:*

1. *That the proposal is in general accordance with the matters outlined in Part 2 of the Act and will contribute to the sustainable management of natural and physical resources through the relocation of the building and its associated refurbishment and re-use.*
2. *That the applicant has shown through technical assessments and evidence that it is not economically viable to undertake re-development of the building for alternative uses. Therefore, relocation is a balanced response where all matters have been considered and the relocation outcome is appropriate and reasonable in the circumstances.*
3. *That with the imposition of conditions that some adverse effects can be sufficiently mitigated so they are no more than minor although noting that the effects of removal of the church building from its current site cannot be mitigated.*
4. *That the proposal is generally consistent with the relevant planning instruments that I am required to have regard to as set out in section 104 of the RMA.*
5. *The proposal is considered to be consistent with the purpose and principles of the Resource Management Act 1991.*

**William Wasley**

A handwritten signature in black ink, appearing to read 'W. Wasley', with a stylized flourish at the end.

**Commissioner**

**Date: 23 January 2018**

**ATTACHMENT 1**  
**RESTORATION PLAN**

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1. The following actions shall be undertaken following the removal of the St Paul's Church building ("the building") from its site at 62 London Street, Hamilton:-
  - (a) The building shall be delivered to 714 Te Kowhai Road, Te Kowhai, particularly Lot 27 shown on the attached subdivision plan ("the recipient site") within three days of removal from 62 London Street, Hamilton.
  - (b) The building shall be fixed to new foundations at the recipient site within seven days after delivery to the recipient site.
  - (c) Within 12 months after delivery to the recipient site, the building shall be restored as follows:-

Earthquake strengthening

The building shall be strengthened to an earthquake performance rating of at least 34% of New Building Standard.

External Walls

- (a) The complete exterior of the building shall be cleaned, sanded and repainted. The minimum painting standard shall be an undercoat and one top coat.
- (b) Any decayed, cracked or damaged exterior cladding shall be replaced or repaired.
- (c) Any damage to the building during the re-siting process is to be repaired in accordance with the New Zealand Building Code.
- (d) The steps, decks, deck roofs and baseboards shall be reinstated.
- (e) Any damaged windows or external doors shall be replaced or repaired.

Roof

- (f) All spouting and downpipes shall be reinstated and connected to the approved storm water system.
- (g) The roof shall be repainted or replaced and painted.

- (h) Any decayed fascia boards shall be replaced.

#### Interior

- (i) The floor shall be levelled, reusing the existing floorboards where they are in satisfactory condition for reuse. Replacement floorboards shall be installed where existing floorboards are not suitable for use.
- (j) The ceilings shall be cleaned, sanded and repainted.
- (k) Electrical wiring shall be replaced where necessary.
- (l) Scotias and skirting boards shall be refurbished as required.
- (m) The interior shall be re-plumbed.
- (n) Security alarms and security lights shall be installed.
- (o) Any damaged windows, doors or fittings shall be repaired.

#### Commemoration

Signage or other appropriate type of interpretative material shall be erected at the recipient site to acknowledge the building's original location, detail its history, and describe its relocation;

### **PRESERVATION REQUIREMENTS DURING RESTORATION OF THE BUILDING**

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2. All the actions described above shall be carried out in accordance with the following requirements:

#### Exterior

The following elements of the exterior of the building shall be retained unchanged, except for any necessary repairs, replacements and cosmetic upgrades:



*All exterior fabric of the building including metal roofing, timber doors and windows, timber barges and fascias, exposed rafter-ends, weatherboards, baseboards, shingles and decorative detailing.*

#### Interior

The following elements of the interior of the building shall be retained unchanged, except for any necessary repairs, replacements and cosmetic upgrades; and subject to the special provision for elements (d), (e) and (f) in the Vestry :

#### Main church hall

- (a) *Panelled ceiling including ceiling beams, mouldings, brackets, ventilators*
- (b) *Steel tie-rods*
- (c) *Wall linings above the dado, including moulded timber detailing*
- (d) *Timber frame pointed arch windows including timber architraves and leadlight*
- (e) *Timber frame toplight windows including architraves and leadlight glass*
- (f) *Timber floorboards*
- (g) *Organ pipes*
- (h) *The location of pendant light fittings shall remain unchanged, though the fittings themselves may be altered or replaced*

#### Vestibule

- (a) *Timber framed arched windows including leadlight glass*
- (b) *Exterior timber doors, excluding glazed aluminium-framed secondary doors*

#### Porch

- (a) *Timber weatherboards and TG&V ceiling and wall linings*
- (b) *Timber framed arched window including architraves and leadlight glass*
- (c) *Wall-mounted timber rails and iron coat hooks*

### Vestry

- (a) *Timber framed double-hung sash windows including moulded timber architraves*
- (b) *Timber floorboards*
- (c) *Wall-mounted timber rails and iron coat hooks*

Best endeavours shall be made to retain the following elements with a minimum of change. However, as the Vestry is to be converted into a commercial kitchen, it may be necessary to modify or remove these elements. All options for retention, including covering over these elements, will be exhausted before any fabric is removed. Where elements are removed, consideration will be given to their reuse within the building.

- (d) *Timber TG&V ceiling*
- (e) *Timber TG&V dado panelling including moulded timber dado rail*
- (f) *Timber TG&V panelled doors to organ room including moulded timber architraves*

3. Strict compliance with the preservation requirements set out above shall not be required in the following circumstances:

- (a) Where work is required to bring the building up to 34% of current New Building Standard for seismic performance, or such other seismic performance level as is required for the intended use of the building, and that work cannot be carried out in a manner that achieves full compliance with the requirements above.
- (b) If compliance with the New Zealand Building Code requires work to be done in a manner that does not achieve full compliance with the requirements above.

In such circumstances, any non-compliance with the requirements above shall be the minimum non-compliance that is necessary to achieve the required seismic building performance and/or compliance with the New Zealand Building Code.

**ATTACHMENT 2**  
**DEED OF COVENANT BY TE KOWHAI ESTATE LIMITED**

**COVENANTOR: TE KOWHAI ESTATES LIMITED**

**COVENANTEE: HAMILTON CITY COUNCIL**

**DEED OF COVENANT BY TE KOWHAI ESTATES LIMITED**

**Background**

- A. The Covenantor has made application to the Covenantee for a resource consent authorising the removal of the St Paul's Church building ("the building") from 62 London Street, Hamilton, so that it can be relocated to Lot 27 on the attached plan of subdivision at 714 Te Kowhai Road, Te Kowhai.
- B. In order to provide additional assurance to the Covenantee that the proposed relocation will be carried out as proposed, one of the conditions of the resource consent requires the Covenantor to enter into a Deed of Covenant that requires the relocation and restoration of the building to be carried out in a specific manner and within specific time frames. This Deed of Covenant is entered into by the Covenantor in order to provide that additional assurance of relocation and restoration of the building.

**Covenants**

- 1. The Covenantor hereby covenants with the Covenantee as follows:-
  - (a) The Covenantor shall ensure that the building is transported to the nominated recipient site at Lot 27 in the subdivision of 714 Te Kowhai Road, Te Kowhai, shown in the attached plan of subdivision ("the recipient site"), within three days after removal of the building from 62 London Street, Hamilton
  - (b) The building shall be secured to its new foundations at the recipient site within seven days after delivery to the recipient site.

- (c) The building shall be upgraded in accordance with the attached Restoration Plan within 12 months after delivery to the recipient site.

**(TO BE EXECUTED IN DEED FORM BY THE COVENANTOR)**