IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CIV-2024-485-836
[2025] NZHC 2522

UNDER	the Judicial Review Procedure Act 2016 and part 30 of the High Court Rules 2016
IN THE MATTER	of an application for judicial review
BETWEEN	WELLINGTON CIVIC TRUST Applicant
AND	WELLINGTON CITY COUNCIL Respondent

Hearing:	28 and 29 April 2025 Final submissions: 5 May 2025
Appearances:	T G H Smith and D Qiu for Applicant B R McKinnon and B E Marriner for Respondent
Judgment:	1 September 2025

JUDGMENT OF GRICE J
(Application for Judicial Review)

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Introduction

[1] The applicant, Wellington Civic Trust (the Trust), is an incorporated charitable trust board based in Wellington. Its stated aim is to "protect and enhance the unique character and natural features of Wellington city, including its skyline, harbour and civic centre". The respondent, Wellington City Council (the Council), made the decision to demolish the Wellington City to Sea Bridge (the Bridge) on 5 December 2024. The Trust challenges that decision by way of an application for judicial review.[1]

[2] The Trust contends that the Council's decision was the culmination of a flawed process carried out by the relevant decision-making committee, Kōrau Tūāpapa | Environment and Infrastructure Committee (the Committee),[2] and must therefore be set aside. The Council opposes this, and says that the process leading up to the

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1 The application was filed on 17 December 2024.
2 A committee of the whole Council with authority to make the decision regarding the Bridge.

decision, and the decision-making itself, met the statutory requirements under the Local Government Act 2002 (the LGA).

Background

[3] The Bridge is a large, (primarily) two-span, reinforced concrete pedestrian bridge of around 33 metres which crosses over Jervois Quay, a busy six-lane arterial road in Wellington. The Bridge connects the walkway at Whairepo Lagoon (at the Wellington waterfront) to Te Ngākau Civic Square. The Bridge is an irregular shape, splaying out to the abutments on the lagoon side. Extending off the Bridge is an upper plaza area, which is the roof of the former Capital E building. From the upper plaza, there are stairs which lead to the ground level of the Civic Square.

[4] The Bridge is also part of Te Ngākau Civic Precinct (the Precinct), which comprises the land and buildings in the Civic Square. Alongside Capital E, these buildings include Wellington Central Library | Te Matapihi Ki Te Ao Nui (Te Matapihi), the Wellington Town Hall, the Micheal Fowler Centre, the Civic Administration Building (CAB), and the Municipal Office Building (MOB). At present, apart from the Michael Fowler Centre, those buildings are all closed and unoccupied, as they need earthquake strengthening. Work is underway on some of the buildings, while others are awaiting decisions as to their future.

[5] A photograph of the Bridge depicting its relationship with the surrounding buildings in the Precinct appears below. The red line in the photograph indicates the threshold between the Bridge and the roof of the Capital E building. The second photograph shows the names of the buildings within the Precinct.

Figure 1: Photograph showing the whole architecture of the Bridge looking toward the waterfront.

Figure 2: Photograph showing the names of civic buildings within the Precinct.

[6] The Bridge is described by the Trust as "a Wellington icon". It is notable for its sculptures of taniwha, birds and fish built by Māori artist, Paratene Matchitt. The

Bridge and its artworks embody aspects of the Māui narrative of fishing up Te Ika-a-Māui (the North Island).

[7] Pending this judgment, the Council has agreed that no action will be taken to demolish the Bridge.[3]

Grounds of judicial review

[8] In its application for judicial review, the Trust contends that the decision to demolish the Bridge is invalid on several grounds. The grounds of review fall under three main headings, being that the Committee:

(a) Failed to identify and assess all reasonably practicable options for the strengthening of the Bridge (the first ground).

(b) Made a mistake of law and/or fact in the classification of the Bridge's importance level for seismic assessment purposes (the second and third grounds).

(c) Failed to comply with the principles of consultation under s 82 of the LGA (the fourth ground).

[9] The Trust notes that its fifth ground relating to a common law duty to consult is not separately pursued and is merged with the s 82 consultation claim.[4] Furthermore, it does not pursue its sixth ground of review, which alleged that the Council failed to conduct its business in an open, transparent and democratically accountable manner as required by s 14 of the LGA. The High Court has found that the s 14 principles are a guide to the Council's exercise of its powers and functions, and are not enforceable in their own right.[5] The Trust also abandoned its seventh ground of review alleging predetermination by a councillor.

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3 *Wellington Civic Trust v Wellington City Council* HC Wellington CIV-2024-485-836, 19 December 2024 (Minute of Boldt J) at [3].

4 The Trust reserved its ability to make arguments on this in the event of any appeal.

5 See, for instance, *All Aboard Aotearoa Inc v Auckland Transport* [2022] NZHC 1620 at [220]. The Trust reserved its position on this matter should there be an appeal.

[10] In addition, the Trust abandoned an application to adduce further evidence, namely an email, which the Council objected to on the basis that it was not relevant to the matters in the proceeding.[6] The Council filed two reply affidavits which are admitted by consent.

Legal framework

Judicial review

[11] Judicial review is a supervisory jurisdiction that enables courts to ensure that public powers are exercised in accordance with the law. In *Coromandel Watchdog of Hauraki (Inc) v Minister of Finance*, Simon France J adopted Wild J's observation that judicial review is "intended to be a comparatively simple process of testing that public powers have been exercised after a fair process, and in a manner which is both lawful and reasonable".[7] To identify the relevant powers and ascertain their limits, it is necessary to consider the applicable statute or regulation. The extent of the decision-making freedom allowed by particular powers ultimately depends on the legislative instrument that bestows them.[8]

[12] Recently, the Supreme Court reiterated the limitations of the judicial review process, emphasising that "it is a supervisory jurisdiction in which a court may afford the decision-maker a margin of appreciation when reviewing a decision for reasonableness".[9] These comments apply equally to local government decision-making.

Relevant provisions of the Local Government Act 2002

[13] The manner in which local authorities must approach their decisions is set out in the LGA. The LGA aims to provide democratic and effective local governance that

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6 The further affidavit also exhibited excerpts from the NZ Transport Agency Waka Kotahi [NZTA] Bridge Manual, a public document, to which there was no objection.

7 *Coromandel Watchdog of Hauraki (Inc) v Minister of Finance* [2020] NZHC 1012 at [13], citing *BNZ Investments Ltd v Commissioner of Inland Revenue* HC Wellington CIV-2006-485-697, 7 December 2006 at [15].

8 *Patterson v District Court, Hutt Valley* [2020] NZHC 259, [2020] NZAR 301 at [15].

9 *Chief of Defence Force v Four members of the Armed Forces* [2025] NZSC 34, [2025] 1 NZLR 21 at [105].

recognises the diversity of New Zealand communities.[10] It sets out the purposes of local government, which include enabling democratic decision-making, and promoting the social, economic, environmental, and cultural well-being of communities, both presently and in the future.[11]

[14] Section 14 of the LGA outlines high-level principles relating to local authorities, emphasising open and transparent governance, efficient use of resources, and prudent stewardship for future asset management. In particular, local authorities are required to conduct their business in an open, transparent, and democratically accountable manner,[12] ensuring they consider the views of their communities.[13] Section 101 requires local authorities to manage their financial dealings prudently to promote the current and future interests of the community.

[15] Part 6 of the LGA sets out the framework by which local authorities are to engage in effective planning and decision-making, while maintaining accountability. Section 76 requires that decisions are made in accordance with relevant provisions, including that local authorities: identify all reasonably practicable options;[14] consider community views;[15] identify inconsistent decisions;[16] provide opportunities for Māori to contribute to decision-making;[17] and engage in adequate consultation.[18]

[16] However, s 79 allows local authorities discretion to make judgments about how to achieve compliance with ss 77 and 78 (which relate to reasonably practicable options and community views respectively), in proportion to the significance of the matters affected by the decision.[19] In making such judgments, the authority must also take into account the principles set out in s 14, the available resources, and the scope for considering a range of options or views.[20]

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10 Local Government Act 2002 [LGA], s 3.
11 Section 10.
12 Section 14(1)(a)(i).
13 Section 14(1)(b)-(d).
14 Section 77.
15 Section 78.
16 Section 80.
17 Section 81.
18 Section 82.
19 Section 79(1).
20 Section 79(2).

[17] In this case, the Council classified the decision regarding the Bridge as one of "high significance" under its Significance and Engagement Policy, which the Trust submits necessitates a high level of compliance with the relevant LGA provisions.

Interpretation: Thorndon Quay Collective Inc v Wellington City Council

[18] As indicated above, s 77 of the LGA requires local authorities to seek to identify all reasonably practicable options to achieve the objective of a decision, and to assess the advantages and disadvantages of those options.

[19] In interpreting this requirement, Mr Smith, for the Trust, highlights the Court of Appeal's decision in *Thorndon Quay Collective Inc v Wellington City Council*, which was delivered on 15 July 2024.[21] The Court in that case made a declaration that the Council's decision-making processes did not comply with its obligations under s 77(1) of the LGA. This was on the basis that the relevant decision-making committee, the Planning Committee, had insufficient information on which to reach a properly informed view of the reasonably practicable options in relation to car parking on Thorndon Quay.

[20] The Court of Appeal emphasised in relation to ss 77 and 78 that "although compliance is mandatory, the local authority has a broad discretion as to how to best achieve compliance, relative to the significance of the decision in issue".[22]

[21] The Court concluded that, in that case, not all "reasonably practicable" options for parking on Thorndon Quay were put before the Planning Committee by Council staff.[23] The Planning Committee had only been presented with one option — to change the existing angled parking to parallel parking. The evidence in that case was that Mr Singh, the relevant council employee, had discarded a number of options, including changing the angles of the existing parking, installing mirrors, or installing another clearway.[24] The reason some of the more high-cost options had been discounted was that Mr Singh was concerned they might not align with final designs

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21 *Thorndon Quay Collective Inc v Wellington City Council* [2024] NZCA 316, [2024] 3 NZLR 361.
22 At [44].
23 At [65]–[66].
24 At [13].

(which were yet to be completed) for a larger project associated with Let's Get Wellington Moving, involving Thorndon Quay.[25] In the course of oral questioning from the Planning Committee, Mr Singh provided "some fairly limited information" in relation to some, but not all, of the other options considered by Council staff.[26]

[22] In the High Court, the Judge had determined that it was not necessary for the Planning Committee to itself undertake a full assessment of the options.[27] Rather, the decision-maker needed only to be "properly satisfied that Mr Singh and his team had undertaken an adequate analysis into whether all reasonably practicable alternatives had been considered, and assessment made of their advantages and disadvantages".[28]

[23] The Court of Appeal disagreed, and suggested that such an approach came "perilously close to an unlawful sub-delegation".[29] It held that the Planning Committee was required to identify all reasonably practicable options for achieving the objective of the decision, and assess those options in terms of their advantages and disadvantages.[30] It further noted that wherever "reasonable arguments can be made that a particular proposal is reasonably practicable", the option should be put before the decision-maker, "even if those arguments have failed to persuade the relevant Council employee".[31] In those situations, "a brief explanation as to why the Council employee does not view certain options as reasonably practicable in the circumstances" should also be provided.[32]

[24] The Court of Appeal noted that this did not mean the decision-maker was required to undertake all the legwork itself. However, in the case before it, while the Planning Committee was given some limited information about some other options,

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25 Let's Get Wellington Moving was a joint initiative between the Wellington City Council, the Greater Wellington Regional Council and NZTA to develop a transport system for Wellington that would reduce reliance on private vehicle travel: at [9].
26 At [65].
27 At [52].
28 At [54], citing *Thorndon Quay Collective Inc v Wellington City Council* [2022] NZHC 2356 at [103].
29 *Thorndon Quay Collective,* above n 21, at [63].
30 At [63].
31 At [64].
32 At [64].

its consideration of those options would have been hampered by the fact it had no advance notice of them, nor any written information on them, prior to the hearing.[33]

[25] The Court of Appeal recognised that it was inevitable, and "indeed desirable", that most of the detailed work and analysis that underpins council decisions will be undertaken by council staff.[34] However, the Planning Committee there had insufficient information upon which to reach a properly informed view of the reasonably practicable options or to assess their advantages and disadvantages. The Court observed that some degree of pragmatism was required. For instance, in the case of "clearly fanciful and unrealistic options", a degree of judgement may have to be exercised by the relevant council employees.[35]

[26] The Court of Appeal also discussed the discretion allowed under s 79 of the LGA, which gives the local authority the responsibility to make judgments about the extent to which different opportunities are to be identified and assessed, the degree to which benefits and costs are to be quantified, and the detail of the information to be considered. It noted that s 79 did not necessarily envisage a high level of formality from councils in making such judgments.[36] The substantive obligation under s 77(1)(a) is to "seek to identify all reasonably practicable options for the achievement of the objective of a decision", subject to s 79. The Court considered it could be inferred that the Planning Committee had made the judgments required of it to determine the process it followed would be appropriate in the circumstances.[37] Therefore, while the committee had failed to meet its substantive s 77 obligation, it did not err in relation to its procedural obligations under s 79.[38]

[27] The Court further noted, referring to the observations in *Wellington City Council v Minotaur Custodians Ltd*, that the practical constraints faced by local authorities, including limited time and resources, must be acknowledged.[39]

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33 At [65].
34 At [66].
35 At [64].
36 At [79].
37 At [81].
38 At [82].
39 At [82], citing *Wellington City Council v Minotaur Custodians Ltd* [2017] NZCA 302, [2017] 3 NZLR 464 at [59].

Exhaustive compliance with procedural details for every decision would be impracticable and burdensome. A flexible approach is required, allowing judgement to be exercised in a pragmatic way as the decision-making process progresses, "having regard to the context and significance of the decision".[40]

Principles and terminology in relation to seismic assessments

Earthquake-prone buildings

[28] As there was a focus on the engineering reports in this proceeding, it is useful to set out some technical definitions used in those reports, particularly in relation to the seismic assessments of the Bridge and associated buildings:[41]

Term	Definition
Importance level (eg. IL3)	In the New Zealand Building Code, building importance levels (IL1 to IL5) are determined by the risk to human life, the environment, economic cost, and other risk factors, with IL1 being the lowest and IL5 the highest importance. …
New Building Standard (NBS)	In the context of New Zealand's earthquake-prone building legislation, "NBS" refers to the "New Building Standard" and is used to express a building's seismic performance as a percentage, indicating its capacity compared to a new building built to current standards.
Ultimate Limit State (ULS)	A design limit state defined in New Zealand standards that represents a level of earthquake shaking in the context of seismic design. This is a 1/500 year earthquake for an IL2 structure or a 1/1000 year earthquake for an IL3 structure.
Lateral Spread	Lateral spread is the horizontal movement of sloping ground caused by earthquake induced liquefaction. This is commonly observed along riverbanks and shorelines.
Liquefaction	Liquefaction, in the context of earthquakes, is a phenomenon where saturated soil loses its strength and stiffness, behaving like a liquid during ground shaking.
Earthquake Prone	In New Zealand, an earthquake-prone building is one that, in a moderate earthquake, would be likely to collapse and cause injury, death, or damage to other property. This is determined by a percentage of the New Building Standard (NBS), with buildings scoring below 34% NBS considered earthquake-prone.

[40] *Thorndon Quay Collective*, above n 21, at [82].

[41] These definitions are set out in the evidence of Ms Tessa Beetham, an associate structural engineer at Aurecon with considerable experience in seismic engineering. She gave evidence as an expert witness for the Council.

Step Change	A Step Change is defined in the seismic assessment Guidelines as the point at which the behaviour of the structures, the ground or foundation is considered to abruptly deteriorate/reduce.

[29] The Building Act 2004 governs earthquake-prone buildings (EPBs).[42] A building is earthquake-prone if it would exceed its ultimate capacity in a moderate earthquake, and if its collapse would be likely to cause injury, death, or property damage.[43] Councils are responsible for identifying such buildings, requesting engineering assessments from owners, and determining earthquake-prone status using the EPB methodology.[44] If a building is deemed earthquake-prone, the Council must issue an EPB notice and record the details of the decision in the EPB register.[45] The notice must include the building's earthquake rating and deadlines for completing seismic work.[46] The deadlines vary based on seismic risk levels. At present, the relevant deadlines are: in low-risk areas, 35 years; in medium-risk areas, 12 years and six months for priority buildings and 25 years for any other building; and in high-risk areas, seven years and six months for priority buildings and 15 years for any other building.[47] Failure to complete seismic work by the deadline constitutes an offence.[48]

[30] In its regulatory assessment of EPBs, a local authority may require the owner of a building that is potentially earthquake-prone to provide a detailed assessment of the seismic performance of the building. The engineer carrying out the assessment must be appropriately qualified and follow the 1170.0:2002 Australian/New Zealand Standard for structural design actions (the NZ Standard).[49] This sets out the "general procedures and criteria for the structural design of a building or structure", with the aim of promoting compliance with the New Zealand Building Code. The NZ Standard does not define "building", however "structure" is defined as an "[o]rganized combination of connected structural elements designed to provide some measure of resistance".[50]

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42 Part 2, subpart 6A.
43 Building Act 2004, s 133AB(1).
44 Sections 133AB(2), 133AH, 133AK(1) and 133AV–133AW.
45 Section 133AK(3).
46 Section 133AL.
47 Section 133AMB.
48 Section 133AU(1).
49 Standards Australia and Standards New Zealand "Australian/New Zealand Standard: Structural design actions" (4 June 2002) AS/NZS 1170.0:2002 [NZ Standard].
50 It is common ground that buildings are covered by the NZ Standard.

[31] While a bridge is not a building,[51] it is generally accepted that the New Building Standard (NBS) for EPBs is appropriately applied to the assessment of bridges.

Importance levels

[32] One of the relevant factors in assessing whether a building is earthquake-prone is the building's importance level (IL). The Trust argues that the IL of the Bridge was incorrectly assessed in engineering reports relied on by the Council in this case. The NZ Standard sets out the applicable IL for various categories of buildings in accordance with their occupancy and use. It notes that for buildings not specifically mentioned, the designer will need to "exercise judgement in assigning the appropriate level". Structures with multiple uses must be assigned the highest IL that applies to any of the relevant uses. Also, where access to a structure is via another structure of a lower IL, the access structure must be designated the same IL categorisation as the structure itself. As this is a focus of the Trust's arguments, I set out the relevant categorisations from Table 3.2 of the NZ Standard below:

Importance Level	**Comment**	**Examples**
1	Structures presenting a low degree of hazard to life and other property	Structures with a total floor area of <30 m^2 Farm buildings, isolated structures, towers in rural situations Fences, masts, walls, in-ground swimming pools
2	Normal structures and structures not in other importance levels	Buildings not included in Importance Levels 1, 3 or 4 Single family dwellings Car parking buildings
3	Structures that as a whole may contain people in crowds or contents of high value to the community or pose risks to people in crowds	Buildings and facilities as follows: (a) Where more than 300 people can congregate in one area (b) Day care facilities with a capacity greater than 150 (c) Primary school or secondary school facilities with a capacity greater than 250 (d) Colleges or adult education facilities with a capacity greater than 500 (e) Health care facilities with a capacity of 50 or

[51] Building Act, s 133AA(1)(g).

		more resident patients but not having surgery or emergency treatment facilities (f) Airport terminals, principal railway stations with a capacity greater than 250 (g) Correctional institutions (h) Multi-occupancy residential, commercial (including shops), industrial, office and retailing buildings designed to accommodate more than 5000 people and with a gross area greater than 10 000 m^2 (i) Public assembly buildings, theatres and cinemas of greater than 1000 m^2 Emergency medical and other emergency facilities not designated as post-disaster Power-generating facilities, water treatment and waste water treatment facilities and other public utilities not designated as post-disaster Buildings and facilities not designated as post-disaster containing hazardous materials capable of causing hazardous conditions that do not extend beyond the property boundaries
4	Structures with special post-disaster functions	Buildings and facilities designated as essential facilities Buildings and facilities with special post-disaster function Medical emergency or surgical facilities Emergency service facilities such as fire, police stations and emergency vehicle garages Utilities or emergency supplies or installations required as backup for buildings and facilities of Importance Level 4 Designated emergency shelters, designated emergency centres and ancillary facilities Buildings and facilities containing hazardous materials capable of causing hazardous conditions that extend beyond the property boundaries
5	Special structures (outside the scope of this Standard—acceptable probability of failure to be determined by special study)	Structures that have special functions or whose failure poses catastrophic risk to a large area (e.g. 100 km^2) or a large number of people (e.g., 100 000) Major dams, extreme hazard facilities

[33] Also relevant is the New Zealand Transport Agency Waka Kotahi Bridge Manual (NZTA Bridge Manual), which provides further guidance for the seismic

assessments of bridges.[52] A "bridge" is defined as "[a] structure designed to carry a road or path over an obstacle by spanning it". The NZTA Bridge Manual "sets out the criteria for the design and evaluation of bridges … and the design of earthworks and retaining structures". It particularly relates to bridges designed to carry road and/or foot traffic. Table 2.1 of the NZTA Bridge Manual sets out the IL for different types of bridges, including bridges providing access to hospitals and bridges on highways, and states that the IL for "footbridges" is IL2.

[34] The assessment of an EPB also requires consideration of the "step change factor". The July 2017 Ministry of Business Innovation and Employment (MBIE) guidelines for Geotechnical Considerations deal with step change behaviour. A step change is the point at which the behaviour of a structure is considered to abruptly deteriorate or reduce — regardless of its importance level. It relates to the ground conditions and includes the risk of liquefaction. As a result, the NBS rating of an affected structure can become significantly lower. Step change behaviour is particularly relevant to this case as the foundations of the Bridge sit on the seawall, and therefore any seismic impacts on the seawall are likely to affect the Bridge.

The Bridge and Te Ngākau Civic Precinct: seismic assessments and work to-date

[35] The Bridge was constructed and opened in 1993. Following the Town Hall being declared earthquake prone in 2009, the first structural assessment of the Bridge was provided in a report to the Council by Spencer Holmes Ltd in March 2010. The Bridge was seismically strengthened in 2011 to an equivalent strength of 40–50 per cent of the then-current code requirements, after being assessed at a strength level of less than 33 per cent and therefore deemed earthquake-prone.[53]

[36] The Capital E building was declared earthquake-prone in 2012 and closed in 2013. The 2013 Seddon and 2016 Kaikoura earthquakes then prompted significant earthquake strengthening of buildings and structures across Wellington. This also led to the Council's adoption of the Wellington Resilience Strategy in March 2017. The

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52 New Zealand Transport Agency Waka Kotahi "Bridge manual" (3rd ed, May 2022) SP/M/022 [NZTA Bridge Manual].

53 This was before the publication of the NZTA Bridge Manual.

strategy highlights the importance of considering seismic events in decision-making to ensure that the city is well-prepared with appropriate services and facilities.

[37] In December 2018, the Wellington Regional Earthquake Plan was adopted by the Wellington Region Civil Defence Emergency Management Joint Committee.[54] It designates Jervois Quay as a priority one emergency transport route.

[38] Various other engineering and structural reports were commissioned on the Bridge in the period from 2018 to 2019. During that year, Te Matapihi was also closed for earthquake strengthening work.

[39] Between April and May 2020, the Council consulted on its 2021–2031 Long Term Plan (LTP). This included provision for resilience issues in the Precinct, particularly in relation to the CAB and MOB, and for the funding of that work. Following consultation, the Council decided to demolish the buildings and allocate $214 million in capital expenditure for resilience and improvement works in the Precinct.

[40] A draft version of the Te Ngākau Civic Precinct Framework (the Te Ngākau Framework) was prepared for the re-development of the Precinct, and went to public consultation between May and June 2021. 76 submissions were received, including one from the Trust opposing the framework.

[41] The Council adopted the Te Ngākau Framework on 30 September 2021. It sets out a number of guiding objectives in relation to the Precinct, as follows:

> (a) A place that is resilient, sustainable and enduring.
>
> (b) Integrated with the city and the waterfront.
>
> (c) Safe and easy access & integrated with wider transport network.
>
> (d) Respects and incorporates experiences of architecture, design and heritage balanced with enduring its functional role in the city.
>
> (f) Vibrant, welcoming & supports a range of uses to locate alongside its core civic role.

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[54] Wellington Region Civil Defence Emergency Management Group "Wellington Region Earthquake Plan" (14 December 2018).

(g) Expresses our culture & embeds mana whenua values into design.

(h) Safe, inclusive, comfortable and green.

[42] In relation to resilience, the Te Ngākau Framework records as its underlying priorities that:

(a) The Precinct must be a resilient anchor for the city and Council. In the event of a major earthquake, it must be able to remain operational both during and after the event occurs.

(b) A high degree of resilience must be designed into each of the Precinct's buildings, structures, and public spaces.

(c) Consideration must be given to the interdependencies of the wider infrastructure which supports the resilience of the Precinct.

[43] The Te Ngākau Framework identifies Capital E, the Bridge and Whairepo Lagoon seawall as requiring seismic strengthening, and notes that a decision needs to be made on those issues. It refers to the Precinct not being equipped to respond to resilience challenges, as it is located on reclaimed land that is vulnerable to liquefaction.

[44] On 30 June 2021, the Council adopted its Financial and Infrastructure Strategy as a decision-making framework for the Council to make "informed, prudent and sustainable investment decisions". It identified the seismic resilience of buildings as a key issue for capital budgets, and emphasised the need to ensure that emergency routes could withstand a high impact earthquake.

[45] By 2023, the costs associated with strengthening the Town Hall had increased to $329 million. One of the major impediments to progressing the works required in the Precinct was that the Town Hall remediation had been considered in isolation from the rest of the Precinct. The investigations into the Town Hall project, the Council submits, highlighted the inter-dependencies and cross-dependencies of all buildings in the Precinct. From then on, all works were treated as part of the broader Precinct

programme, and the Council began to identify all interdependencies and undertake scheduling for the required work.

[46] Further engineering and structural assessments were commissioned in relation to the Bridge in 2023. By November of that year, the Council's financial risk profile was deteriorating, and it needed to find significant costs savings. It proposed removing $230 million in funding from the Precinct projects in the 2024–2034 LTP, and instead allocating $65 million to investigate other options, including demolition. The plan was formally adopted, in line with that proposal, on 27 June 2024. The LTP also approved high rates increases for Wellington.

[47] In late 2023, the engineering firm Hoffcon provided a draft Detailed Seismic Assessment (DSA), assessing the Bridge at a seismic rating of 20 per cent of NBS on the basis of it having an IL of 3.[55]

[48] The Capital E basement was assessed at 20–25 per cent of NBS (IL3), and the building was therefore designated earthquake-prone, with a remediation deadline of January 2027. This deadline was subsequently extended by legislation to 2031. It was considered uneconomic to strengthen the Capital E building. Structural engineers Aurecon were engaged to review the feasibility of removing the upper two levels of the building (including the upper plaza area), while retaining the basement. Their report found that liquefaction and cyclic displacement (lateral ground lurch) in the basement were possible. In addition, it noted the current use of the Precinct as a place for public assembly. Its high importance and value to the public dictated the classification of the Capital E building as IL3.

[49] In summary, the Council says that the present state of play regarding the buildings in the Precinct is as follows:

(a) Wellington Town Hall: The building was closed in 2013. Strengthening work began in 2019 and project costs increased from a budget of $40 million estimated in 2013, to a current budget of

[55] The DSA remained in draft awaiting the provision of a finalised geotechnical specialist report from Tonkin + Taylor.

approximately $329 million, in large part due to the poor ground conditions in the Precinct. The estimated completion date is July 2026.

(b) Te Matapihi: The Council carried out a detailed analysis of different engineering schemes for earthquake remediation of this building, including seeking peer reviews and clarifying areas of agreement and disagreement between alternate engineering solutions. The estimated completion date of the remediation work is late 2025.

(c) The old CAB and MOB: The CAB was demolished in February 2025. The expected completion date for the demolition of the MOB is late 2025, which is intended to coincide with the reopening of Te Matapihi. The decision to demolish the buildings was made in part because the costs of strengthening were too onerous.

[50] In the period between February 2024 and when the decision to demolish the Bridge was made in December 2024, the Council obtained further reports and costings from engineers. In addition, it undertook a formal public consultation on the demolition of the Bridge and the Precinct project between 21 October 2024 and 13 November 2024.

Summary of the parties' positions

[51] The decision to demolish the Bridge was made at a meeting of the Committee on 5 December 2024. The Trust says that leading up to that decision, there was an improper narrowing of options for the remediation of the Bridge by Council officers. This meant the Committee was not presented with all reasonably practicable options and had insufficient information upon which to base its decision. The Trust submits that this was largely due to a number of incorrect assumptions made by Council officers, in particular the assumption that the Bridge should be classified as IL3 for the purpose of seismic assessment. It contends that, on an approach that takes into account the usual function of the Bridge as a footbridge, it could be classified as IL2. Also technically, the Bridge is not a "building" for seismic classification purposes. The Trust says the wrong classification of IL by the Council amounts to a mistake of fact and/or law.

[52] The Trust says the wrong IL classification makes a difference to the risk the Bridge poses in an earthquake, therefore impacting options for remediation and the costs of strengthening to manage that risk. It further submits that there was an incorrect assumption that the Bridge needed to be remediated to 100 per cent of NBS, and the information before the Committee on seismic risk was unduly conservative. Other, more creative options for strengthening, at lesser cost, could have been developed with more time and information.

[53] The Trust also contends that Council officers narrowed the options for strengthening on the basis of costs, without properly testing those costs. In addition, they failed to provide reports on the costs to Council members and others who sought them.

[54] The Trust submits that if the correct process had been followed and the Committee had the proper information before it, the decision would have been deferred to obtain further options for remediation of the Bridge. In particular, the Committee did not have information as to the current state of engineering thinking in relation to the Bridge, and officers were dismissive of the views of some engineers and consultants who suggested options short of demolition. The Trust says it had been signalled by those giving advice on solutions to remediate the Bridge that other, more creative, options might have been developed. Moreover, it says a solution was not immediately required and the significance of the decision dictated that further time should have been allowed.

[55] The Trust's first three grounds of review (failure to identify all reasonably practicable options; that the Council made a mistake of law by incorrectly classifying the Bridge as IL3 rather than IL2; and that the Council alternatively made a mistake of fact in determining that the Bridge was not capable of being appropriately classified and/or modified or managed so as to have an IL2 classification) all focus on the seismic assessments of the Bridge. The IL classification of the Bridge underpins the Trust's arguments.

[56] The Council's position is that all reasonably practicable options were put before the Committee. It says the officers properly carried out their function by

obtaining the relevant information and putting what was required before the Committee in order for it to make a decision. The process was thorough and met all the relevant legal requirements.

The engineering and consultancy reports

[57] The two main Council officers involved in the development of the Precinct are Mr Roberts and Dr Zamani. Dr Zamani is the Council programme manager for the Precinct. He has qualifications and extensive experience in urban design.[56] In his role, Dr Zamani leads the strategic direction of the Precinct, which involves managing the daily operations of the programme, integrating the views of mana whenua, preparing an architectural and spatial blueprint for the development of the Precinct, and coordinating different project managers, contractors, and stakeholders. Dr Zamani reports to Mr Roberts, who is employed by the Council as the senior responsible officer in relation to the Precinct redevelopment.

[58] The Council retained the following engineering and other consulting experts for advice on the Bridge and related structures:

(a) Hoffcon (structural engineers with expertise in bridges);

(b) Tonkin + Taylor (geotechnical experts);

(c) Beca (structural and geotechnical engineers);

(d) Kestrel Group (structural engineers with expertise in emergency management and business continuity);

(e) Holmes Consulting (structural engineers);

(f) Aurecon (structural engineers); and

(g) Dunning Thornton (structural engineers).

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[56] Dr Zamani has a PhD in Urban Design from the University of Auckland and a Master's degree in Architecture from the University of Nottingham.

[59] Additionally, RCP are the project managers of the Precinct who reviewed the consultants' work. Rider Levett Bucknall (RLB) are the Council's quantity surveyors, and provided estimates of costs for various options for the remediation of Capital E and the lagoon seawall, as well as estimates for concept designs in relation to the Bridge.

[60] The Council commissioned a number of engineering and consultancy reports, including DSAs, from the experts referred to above. The reports on the Bridge and Capital E building are summarised below, with particular reference to the IL.[57]

Spencer Holmes "Report on the Seismic Strengthening of the 'City to Sea Bridge' for Wellington City Council" (15 March 2010)

[61] Spencer Holmes prepared this report for the purposes of ascertaining the condition of the Bridge. Its assessment was carried out by reference to the NZ Standard, and on the basis that the Bridge was categorised as IL3. At the time, the Bridge was only 17 years old and was described as having an "unusual structural system for resisting seismic loads" and behaving "in a very torsional manner". The north abutment area was in "very poor condition" and required temporary remedial works to prevent collapse.

[62] The report noted that seismic requirements had become more onerous since the Bridge was constructed. It used the Building Act requirements as they relate to EPBs and assessed the Bridge at a strength level of less than 33 per cent of the current code. This placed it within the definition of an EPB. The report noted that the Bridge site was located in a "high" liquefaction potential zone. Spencer Holmes did not review the stability of the seawall with the abutment bearing foundations, but signalled that failure of the seawall in the event of an earthquake would result in considerable additional loads being placed on the Bridge's foundation structure.

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[57] The earlier engineering and geotechnical reports were referenced in the later reports.

Holmes Consulting Group "Capital E Building: Detailed Seismic Assessment"(23 October 2012)

[63] This report concluded that the Capital E building, assessed as IL3, was earthquake-prone. It noted that "potential localised vulnerabilities are expected to limit performance of the building but at levels greater than 25% DBE" (a benchmark when designing earthquake-resistant buildings). Those vulnerabilities could lead to collapse of parts of the structure, "creating a life safety risk for building occupants". Significant global improvements would be required to increase the building's seismic strength, however such improvements could have an adverse effect on the use of the building. The precast floor unit seating at the plaza level (the roof of Capital E that connects to the Bridge) was recorded as a potential collapse hazard and required immediate securing measures. The report further noted:[58]

> Current usage of the Capital E building involves gathering of people in crowds, predominantly groups of school children. Public facilities, Importance Level 3 (IL3) buildings, that may contain people in crowds are required to be designed for a higher level of seismic load compared to a normal use (e.g. office) buildings.
>
> Importance Level 3 buildings are required to be designed to a 1000 year return period seismic event at Ultimate Limit State, achieved through the use of a risk and/or an importance factor (R) which increases the seismic load the building is required to be designed for by 30% greater than that for normal buildings. At the time of the original design, the building would probably not have been regarded as a public building, due to definitions contained in NZS4203:1984.
>
> There is no expectation or requirement for this building to fulfil a post-disaster function and remain operational immediately following an earthquake. Neither is there a requirement for the building to provide any form of business continuity function following a design level earthquake.

Spencer Holmes "Structural Foundation Report" (August 2018)

[64] Spencer Holmes prepared this report for the Council as a structural foundation load assessment of the Bridge. Its purpose was to provide information to assist Tonkin + Taylor in producing their geotechnical seismic assessment. It categorised the Bridge as IL3, on the basis that it was a public building with crowd potential of less than 300.

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58 Citations omitted.

Holmes Consulting "Wellington City Council Capital E — Seismic Strategy" (24 October 2018)

[65] The Holmes Consulting report noted that when the Capital E building was still being used as a "performing venue for children", it was considered an IL3 structure. However, if it continued to be only used for storage purposes (as it was at that time), and if the Council limited crowd numbers on the roof plaza area to less than 300 people, it would be reasonable to categorise it as an IL2 structure. That said, the report concluded that even at IL2, the Capital E building "would likely fall below the 34% NBS". It also noted that an updated DSA for the whole building could be performed for IL2 level of loading. However, this would be of limited value as it was unlikely to increase the building's seismic rating and "[s]ignificant structural intervention may be required to address this aspect in order to increase the level of building seismic performance to above 34% NBS IL2".

[66] In addition, the report noted that the high-level geotechnical analysis by Tonkin + Taylor indicated that the pile foundation system did not have the capacity to take out nor transmit loads at the 34 per cent NBS (IL2) level. Liquefaction was predicted to occur at that site at approximately 55 per cent NBS (IL2). Furthermore, it noted that at the plaza level, the concrete diaphragm might not possess adequate capacity to exceed the 34 per cent NBS (IL2) threshold. The uppermost (plaza level) diaphragm appeared to be the most critical, as it was subject to the highest seismic demand. The report also observed that the 2012 assessment may have overstated the capacity of the diaphragm, and the actual capacity would likely fall below 34 per cent NBS (IL2). It concluded that significant structural intervention could be required to address that aspect, in order to increase the level of building seismic performance to above 34 per cent NBS (IL2). Structural solutions might involve removing existing surface finishes from the plaza level (including grass and paving) to reduce the seismic load of the building and works to strengthen the diaphragm, or partial demolition and replacement with a new abutment to access the Bridge.

Hoffcon "City to Sea Bridge Detailed Seismic Assessment": Draft (15 November 2023)

[67] The Hoffcon DSA was sent to Council officers in draft, pending Tonkin + Taylor's geotechnical seismic assessment for the Bridge. The draft DSA indicated that the Bridge would likely be assessed at 20 per cent NBS (IL3).

Aurecon "Te Ngākau — Capital E Building: Partial Demolition and Detailed Seismic Assessment" (16 February 2024)

[68] Aurecon were engaged to review the feasibility of removing the upper two levels of the Capital E building (including the plaza), while retaining the basement. This was following the DSA undertaken for Capital E by Holmes Consulting in 2012. The review noted that:

(a) The 2012 DSA rated Capital E at 20–25 per cent NBS (IL3), and the building was subsequently designated as earthquake-prone by the Council, with a remediation deadline of January 2027. It was considered uneconomic to strengthen the building.

(b) Liquefaction and cyclic displacement (lateral ground lurch) in the basement were possible in earthquake shaking above 34 per cent NBS (IL3). With the onset of liquefaction, the structure would be subjected to significant retaining pressures, resulting in large, uncontrolled vertical and lateral displacements of the basement.

(c) The basement achieved an earthquake rating of 20 per cent NBS (IL3).

(d) The use of the Civic Square as a place for public assembly and its high importance and value to the public dictated an IL3 classification for the structure.

Tonkin + Taylor "City to Sea Bridge, Wellington Desktop Geotechnical Seismic Assessment" (24 June 2024)

[69] Tonkin + Taylor's geotechnical seismic assessment was attached as Appendix B to the Hoffcon DSA. This was a highly technical report, its purpose being

"to assess the behaviour of the structure pre-liquification and after liquefaction is triggered". In particular, the post liquefaction assessment was required "to understand if a 'step change' occurs in accordance with the Assessment Guidelines, which could affect the % NBS rating".

Hoffcon "City to Sea Bridge Detailed Seismic Assessment" (26 June 2024)

[70] Following the receipt of the final Tonkin + Taylor geotechnical seismic assessment on 24 June 2024, which categorised the Bridge as IL3, the DSA confirmed its assessment of the Bridge at 20 per cent NBS (IL3). It noted that the governing factor was the step-change in the seismic response of the Bridge and the surrounding ground should liquefaction be triggered. However, even if liquefaction was not triggered, the Bridge would still be assessed at a rating of less than 34 per cent NBS due to other structural weaknesses. While the DSA adopted the IL3 categorisation, it noted:

> A case could be argued that the bridge need only consider a 1/500-year earthquake, taking a compliance pathway through the Waka Kotahi NZ Transport Agency Bridge Manual (NZTA Bridge Manual). This would result in a reduction in the design seismic load by 23%, and so an improvement in the assessment score by 30% (of the %NBS). However, the function of this bridge differs from a typical footbridge, and with the potential for more than 300 people to congregate on the bridge for events.

[71] The executive summary of the DSA read as follows:

> The findings of the completed detailed seismic assessment of the City to Sea Bridge indicates an earthquake rating of 20%NBS (IL3) to *Engineering Assessments*, dated July 2017 (Engineering Assessment Guidelines).
>
> The governing factor that has determined this rating is the step-change in the seismic response of the bridge and the surrounding ground when liquefaction is triggered. This includes phenomena such as lateral spreading and cyclic displacement of the ground, in addition to movement of the underlaying seawall. However, there are other structural weaknesses that would see a rating less than 34%NBS even if liquefaction was not triggered.
>
> Based on this outcome, the structure is a Grade D building following the Engineering Assessment Guidelines building grading scheme. Grade D buildings represent a life-safety risk to occupants comparable to 10-25 times that expected for a new building, indicating a high relative risk exposure.
>
> The New Building Standard requires an IL3 building to have a low probability of collapse in a 1 in 1000-year "design level" earthquake (i.e., an earthquake

> with a probability of exceedance of approximately 5% over the assumed 50-year design life of a building).
>
> A building with an earthquake rating less than 34%NBS fulfils one of the requirements for the Territorial Authority to consider it to be an Earthquake-prone Building (EPB) in terms of the Building Act 2004.
>
> The City to Sea Bridge is therefore considered as an Earthquake Risk Building and also fulfils one [of] the criteria that could categorise it as an Earthquake-prone Building by Wellington City Council.

Beca "City to Sea Bridge DSA Review" (16 April 2024)

[72] Beca were engaged by the Council to peer review the Hoffcon DSA. This involved reviewing both the Hoffcon and Tonkin + Taylor assessments, which were provided to Beca in draft form and finalised after Beca's review was completed. In regard to importance level, the review noted:

> We generally concur with the values T + T have adopted, while noting M7.1 is slightly conservative for the DSA when compared to the values provided in Module 1. This is not expected to have a significant impact on the assessment.
>
> The adoption of IL3 for the assessment might be a matter of discussion, since the bridge has been assessed for importance using the Bridge Manual, not AS/NZS1170.0:2002. The Bridge Manual assesses importance level based on the assigned route priority. In terms of life safety alone, the importance level could potentially be assessed as IL2. If this were considered, the PGA for the assessment would reduce to 0.45g.

[73] The Beca review concluded: "we therefore take no exceptions to the geotechnical assessment undertaken by T + T and the implications that follow to the Bridge, as documented by Hoffcon".

Dunning Thornton "City to Sea Bridge – High Level seismic risk and mitigation review" (4 December 2024)

[74] Dr Zamani also sought an independent review of the seismic risks associated with the Bridge and potential strengthening options from Dunning Thornton. The review challenged some of the underlying assumptions of previous engineers, including providing an alternative view on risk. It was originally provided in draft on 17 October 2024, but was not finalised until further discussions had taken place between Council staff and the project managers, as well as a meeting held with experts on 2 December 2024 regarding the IL of the Bridge. The final version, which was

four pages long with appendices setting out further detail, was released on 4 December 2024 and provided to councillors for their meeting on 5 December 2024. The review noted:

(a) Dunning Thornton is a firm of specialist structural engineers, but is not experienced in the highly analytical aspects of geotechnical engineering.

(b) The commentary in the review was based on Dunning Thornton's experience designing structures on and adjacent to the Wellington waterfront, with geotechnical engineering input.

(c) The review was based on access to existing documentation provided by other consultants. However, it questioned the assumptions and approaches taken by others.

(d) The review related only to the section of the Bridge over Jervois Quay, and the steps and seawall on the lagoon side. It did not include the building or pedestrian accessible roof of the Capital E building.

(e) Dunning Thornton expected that there would be differences in opinion when dealing with complex issues, which would require robust discussion to resolve. It noted that seismic engineering and risk management are complex concepts and subject to greater uncertainty than most everyday risks.

[75] In relation to the issue of importance level, Dunning Thornton commented:

> While the roof of Capital E appears to have been functionally designed to support assembly in the Civic Square (especially the amphitheatre type stairs) it is not clear from the information we have been provided that the City to Sea bridge (small section over Jervois quay and down to Lagoon) is used for assembly during these type of events. Its main purpose appears to be transitional (ie short time period footbridge type use).

[76] Dunning Thornton noted that by assigning an IL3 classification to the Bridge, the NBS rating was reduced and the perceived risk increased. It suggested a more

comprehensive review could be carried out on that issue. It also proposed potential mitigation strategies which could be carried out in the short, medium and long term, but provided no specific time periods for those strategies. In summary, these were:

(a) In the short term, to mark exclusion zones around the Bridge and install signs and/or motion-triggered warning lights to stop traffic in case of earthquake shaking.

(b) In the medium-term, to carry out minor superstructure repairs and insert ground level ties.

(c) In the long-term, to address the potential liquefaction/lateral spreading risk. That would involve partial infilling of the lagoon for seawall stability, ground improvement beneath the Bridge, and buttressing the existing seawall and eastern bridge foundations to improve seawall stability.

[77] The report noted that some of the proposed solutions were innovative. Furthermore, while each option had significant structural/geotechnical merit, they would involve significant traffic disruption, and loss of some amenity in the case of partial lagoon infilling.

[78] For the seawall strengthening options, the main risks related to construction complexities and resource consenting/environmental concerns, including potential contamination. Dunning Thornton suggested non-traditional procurement options.

Spencer Holmes "City to Sea Bridge, Jervois Quay, Wellington: Detailed Seismic Assessment Review" (4 December 2024)

[79] A two-page letter from Mr Jon Devine, on behalf of Spencer Holmes, to Wellington property developer Mr Richard Burrell, was also made available to the Committee. This letter, dated 4 December 2024, set out a review of the DSA prepared by Hoffcon, which Spencer Holmes had conducted at Mr Burrell's request. The letter noted that the Hoffcon DSA assessment of the Bridge relied on a 20 per cent NBS (IL3), with a step change factor of 0.5. However, Mr Devine suggested the Bridge

could be assessed at IL2 if its usage was controlled by the Council. By adjusting the importance level to IL2 and removing the step change adjustment, he calculated the rating of the Bridge at "[a]pprox. 50%NBS (IL2)". Therefore, he said, the Bridge did not meet the definition of an "earthquake prone building". The letter further noted that in the event of a major seismic event disruption, Jervois Quay would likely be affected by a failure of the seawall combined with liquefaction and lateral spread, which would occur regardless of the performance of the Bridge itself.

The decision-making process

Lead-up to the Committee meeting

[80] The Committee was given a number of opportunities to be briefed by both Council officers and engineering and geotechnical experts, as well as ask questions about and seek further information on the options for the Bridge and Capital E building. These opportunities, up until the 5 December 2024 meeting, included:

(a) A site visit to the Bridge, Town Hall loading dock, and Capital E building run by RCP and Aurecon on 22 October 2024. Councillor Brown, the chair of the Committee, notes that this visit enabled councillors to observe the interconnection of the structures and to question staff and experts on site. They were able to see how the roof of the Capital E building formed part of the footpath linking the causeway and the Bridge. Councillor Brown also comments on the poor condition of Capital E in his evidence.[59]

(b) A briefing session on 3 December 2024, run by Council officers, for councillors to consider the information and feedback received and ask questions. This was attended by representatives from RCP, Aurecon and Tonkin + Taylor. Councillor Brown comments that the open and frank discussion at that meeting allowed attendees to clarify their understanding of the "real earthquake risks, the cost of remediation

[59] Councillor Brown noted that several of the councillors had previously undertaken site visits to the Town Hall, which provided some context for the condition of the ground in the area and the difficulty of the remediation work.

options, and how what at times seemed to be inconsistent advice could be assessed and given context".

(c) An expert panel discussion was convened on 4 December 2024 for councillors to ask questions about engineering advice and seismic risk. The panel included representatives from RCP, Dunning Thornton, Aurecon, Tonkin + Taylor, Kestrel, Hoffcon and Beca. The meeting was called by Council officers at the request of a councillor. The invitation was sent to all councillors, four of whom attended. The discussion included the concept of risk and degree of risk, as well as ground conditions and the IL classification of the Bridge. The Dunning Thornton review had been provided on the same day, and representatives from that firm were on the panel, giving councillors the opportunity to ask questions about the review.

(d) The Council's "Q&A" process also operated in the week leading up to the 5 December 2024 meeting. This allowed the Committee to ask relevant questions of Council officers. A transcript of those questions and answers was provided to councillors on 4 December 2024.

[81] It is useful to outline the standard Council process for the provision of information to councillors and the public.[60] First, documents are provided via the online software system "Diligent" for councillors to access. In this case, various reports were made available on Diligent prior to the 5 December 2024 meeting, and an agenda was sent out. Agendas for meetings and supporting documents are made available to councillors in Diligent and to the public on the Council's website, seven days prior to each meeting. After that, any further documentation is provided by email, including "Q&A" documents. Councillors can submit questions to the Council (Democracy Services) throughout the week leading up to a meeting, and a document collating all questions and answers is provided to councillors the day before the meeting by email.

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[60] This information was contained in a memorandum filed after the hearing dated 2 May 2025 at my request.

[82] In addition, in respect of the Precinct project, there have been regular four-monthly briefings to keep the Council updated on the work being undertaken and to identify further decisions that the Council needs to make. These are informal, and therefore may not be accompanied by the formal documents which are provided in advance of "meetings", as defined under the Local Government Official Information and Meetings Act 1987.

The 5 December 2024 Committee meeting

[83] An agenda paper was prepared by council officers in advance of the meeting on 5 December 2024 (the Agenda Paper). Attached to the Agenda Paper was the Te Ngākau Development Plan; a summary of the consultation; the Tonkin + Taylor geotechnical assessment on the Bridge and seawall; the Hoffcon DSA of the Bridge; the Aurecon DSA of Capital E; the Beca peer review of the geotechnical assessment and DSA for the Bridge; a life safety assessment prepared by Kestrel; and a Rough Order of Cost prepared by RLB for the proposed options. In addition, the Dunning Thornton review of 4 December 2024 was provided to councillors on that date. Councillors also had a copy of Mr Devine's Spencer Holmes review of the Hoffcon DSE prepared for Mr Burrell dated 4 December 2024.

[84] The Agenda Paper outlined the previous relevant decisions made by the Council including: the adoption of the Te Ngākau Framework; funding decisions for the Precinct; the adoption of the LTP budget in June 2024 (which included $65 million for the Te Ngākau basement, Capital E and the Bridge); the September 2024 decision agreeing on the preferred option for Te Ngākau basement strengthening and plaza reinstatement, noting these would be completed in time for Te Matapihi and City Gallery reopening in 2026; and the decision concerning the community consultation on the Precinct development master plan and options to remediate the Bridge. The Agenda Paper noted that the Bridge decision was "rated high significance" in accordance with the Council's Significance and Engagement Policy.

[85] In addition, the Agenda Paper:

(a) Noted that the Town Hall loading dock strengthening formed part of the project. Demolition work on the Bridge would need to begin in

January 2025, with the project completed by the end of 2026, in time for the Town Hall completion.

(b) Outlined a summary of the Te Ngākau Framework, including the vision for the Precinct to be the "beating heart of the capital city".

(c) Outlined the Te Ngākau Development Plan, noting that decisions had already been made for some buildings in the area, including the Town Hall, the CAB and MOB, the Capital E basement under the plaza, the City Gallery, and Te Matapihi. The Bridge was referred to as a "near future decision", while the City Gallery extension, the lagoon seawall, and the Michael Fowler Centre were referred to as "future decisions".

(d) Noted the public consultation process (including the opportunity to make oral submissions), which occurred between 21 October and 13 November 2024. Generally, community feedback on the Bridge had been split, with 57.5 per cent of submissions supporting demolition of the Bridge/Capital E and its replacement with either an at-grade crossing (23 per cent) or a new bridge (34 per cent). 39 per cent did not support either of those options. The Agenda Paper noted that where respondents were asked to provide additional feedback or comments: "the most common feedback was that neither option was suitable and the existing bridge should be retained". The details of the consultation process are set out in full later in this judgment.

(e) Outlined the condition of the Bridge and Capital E based on the engineering and geotechnical assessment reports. It also pointed out that in making its decision, the Council had legal duties, including to take precautions for the general safety of the public, traffic, and relevant workers under the s 353 LGA. In addition, it referred to the Council's role under the Civil Defence Emergency Management Act 2002 as a lifeline utility, noting that Jervois Quay was a priority one

emergency transport route in the Wellington Region Earthquake Plan and that damage to the Bridge could prevent use of that route.

(f) Outlined the six options that officers had considered.

(g) Noted relevant considerations for decision-making including, for instance, alignment with the Council's strategies and policies, and the Māori Impact Statement, noting the Te Ngākau Development Plan had been developed in close partnership with mana whenua. In relation to the financial implications of the decision, it noted the funding for the demolition of the Bridge, Capital E, and replacement crossing was provided for in the current LTP. However, the cost of any replacement bridge would need to be funded in a future LTP.

(h) Listed next steps (subject to the Council's agreement to the recommendations in the paper to undertake the work), including to: procure a contractor to undertake demolition work; align the work with adjacent work in the Town Hall, its loading docks, and the Te Ngākau basement; work with appropriate representatives to confirm the relocation or decommission of the Bridge artworks; and finalise the Te Ngākau Development Plan for Council adoption in 2025.

[86] The Agenda Paper set out the following options for the Bridge/Capital E that had been considered by Council officers:

(a) Option 1 (short-term preferred): demolish the City to Sea Bridge/Capital E and replace with an at-grade crossing.

(b) Option 2 (long-term preferred): demolish the City to Sea Bridge/Capital E and replace with an at-grade crossing and a new bridge.

(c) Option 3 (not preferred): Full strengthening of the City to Sea Bridge/demolish Capital E, replace with abutment.

(d) Option 3a (not preferred): minimum strengthening of the City to Sea Bridge/Capital E/seawall.

(e) Option 3b (not preferred): demolish Capital E, replace with abutment/do nothing on the City to Sea Bridge and seawall.

(f) Option 4 (not preferred): Do nothing.

[87] The recommendation in the report was to proceed with option 1, and explore funding option 2 through the 2027–2037 LTP, subject to financial feasibility.

[88] The transcript of the Committee meeting indicates there was an understanding by the councillors of the relevant issues, including the engineering issues around IL2 and IL3. They knew they could delay matters to allow further information to be gathered and other options to be developed. Some councillors considered they needed more information and wanted to seek more options, while others felt they had enough information and wanted to proceed with making a decision.

Motion to delay the decision

[89] A motion to delay the vote on the Bridge was introduced as part of an amendment proposed and seconded by councillors. The amendment sought to defer the decision on the Bridge until 20 February 2025, to allow more time for discussions with designers, architects, and engineers, and to explore cost-effective solutions for strengthening the Bridge. The amendment also included provisions to decouple the strengthening of the Town Hall loading dock and the critical Capital E wall from the decision on the Bridge, so that those projects could proceed urgently.

[90] The councillor proposing the motion argued that delaying the decision would create space for further discussions and allow the Council to explore creative solutions. Supporting the motion, a councillor said that the decision to demolish the Bridge was being driven by issues relating to the Town Hall loading dock, which she described as "the tail wagging the dog". Various councillors spoke in support of the motion, including:

(i) Emphasising the importance of engaging with the community and experts to ensure the best possible outcome. The councillor expressed concern about the irrevocable nature of the decision and the need to reflect on the new information provided, including the Dunning Thornton report of 4 December 2024. This councillor highlighted the cultural and architectural significance of the Bridge,

describing it as a "magnificent procession route" and a vital connection between the city and the waterfront.

(ii) Arguing that the Council should not sacrifice the Bridge for the sake of the loading dock, and pointing to cost-effective solutions presented by engineers during the oral hearings.

(iii) Expressing concern about the speed of the decision-making process, that the community had not been given enough time to digest the new information, and that further discussions could help bridge the divide between differing opinions. The councillor emphasised the importance of respecting the views of architects, engineers, and the wider community, who had contributed significantly to the debate.

(iv) That the Council needed more time to reflect on the information provided and to ensure that the decision was well-informed. The councillor criticised the consultation process, arguing that it had been structured to suit the Council's timeline rather than to genuinely engage the public. They also expressed concern about the lack of transparency and the perception that the Council was rushing the decision.

(v) Highlighting the new information provided in the Dunning Thornton report, which suggested less impactful and potentially lower-cost options for strengthening the Bridge. The councillor argued that the Council had not fully explored these options and that further investigation was necessary to avoid making a decision that could later be regretted. This councillor also pointed out that judicial review could delay the entire project, making it prudent to decouple the strengthening of the Town Hall loading dock from the Bridge decision.

[91] Other councillors spoke against the motion. They commented that:

(a) The Council had already received extensive advice from multiple engineering firms, and delaying the decision would not yield new

insights. The councillor emphasised the moral obligation to prioritise public safety, citing the Bridge's seismic risk and the need to ensure the availability of emergency access routes after an earthquake. This councillor described the motion as an attempt to "dither longer", and criticised other councillors for failing to act decisively.

(b) The Council was operating in a "post truth environment", where objective facts were being ignored in favour of cherry-picked opinions. The councillor argued that delaying the decision would only escalate costs and that the Council had a responsibility to act in the best interests of ratepayers. They pointed out that the consultation process had been approved unanimously by councillors, and any shortcomings in the process were the responsibility of the councillors, not the staff.

(c) The Council had been elected to make difficult decisions and further delay would only prolong uncertainty. This councillor argued that the consultation process had been adequate, and that the Council needed to trust the advice provided by its staff and contracted experts. They emphasised the importance of moving forward with the Te Ngākau project to restore the area as a vibrant civic space.

(d) A delay would not result in new information or a different outcome. This councillor expressed confidence in the advice provided by staff and argued that the Council needed to make a decision to avoid further cost escalation. She highlighted the opportunity to create a more connected and vibrant green space in the Civic Square, which would be hindered by retaining the Bridge. While it was a human tendency to want to get more information, the councillor considered the staff had presented "incredibly detailed and competent assessments from a variety of professionals".

[92] The mayor commented that she had toyed with the idea of pausing until early 2025, but did not want to risk delaying completion of the project beyond 2027, in view of the progress being made on the other buildings in the Precinct. She said:

> Making hard decisions like this is our role. And I am confident that we have a strong understanding of the issue in front of us. Yes, we've been given a lot of information and a lot of views, but we need to make a call.

[93] Councillors voted separately on each part of the proposed amendment, with all components failing to gain majority support. The motion to defer the decision was lost by a majority vote of eight to ten.

The Committee votes to demolish the Bridge

[94] The discussion as it related to the substantive proposal, included:

(a) Discussion about the risk of liquefaction and its effect on Jervois Quay, with a comment being made that if that occurred, the land would likely slump into the lagoon irrespective of whether there was a bridge or not.

(b) Responses by Council officers that, in the case of lateral displacement close to the lagoon, cracks caused in the road could be remediated quickly to create a lane for emergency services. However, if the Bridge were compromised or at risk of collapsing, it would be harder to remediate after a major disaster.

(c) Concerns about the future direction of the buildings surrounding the Precinct, including the Michael Fowler Centre.

(d) Comments about the relevance of the costs and the effect on rates by putting further money into the Precinct.

(e) In response to a question regarding whether the officers had taken a "strong line" with the Bridge, Dr Zamani responded that they had not taken a specifically "strong or soft approach", but rather had taken advice and relied on that advice.

(f) Comments by various councillors about the Council being prone to delay things and needing to be conscious that money spent on the Bridge might also go towards other projects.

[95] Subsequently, the vote to demolish the Bridge passed with a majority vote of 11 to six. The Committee voted to adopt option 1 — demolition of the Bridge and replacement with an at-grade crossing, with the design of the crossing informed by the Te Ngākau Development Plan. It would then explore funding options regarding a replacement bridge (option 2) through the 2027–2037 LTP, subject to financial feasibility. The Committee noted that the Town Hall loading dock would be strengthened as part of the project, and that demolition would begin in January 2025, with the project completed by the end of 2026.

[96] I now turn to assess the grounds of review put forward by the Trust. Given that the issue of the Bridge's IL classification is also relevant to the question of whether all reasonably practicable options were properly assessed by the Committee, I deal with the grounds relating to IL first. I then consider whether the Committee had all necessary information before it in order to identify and assess the reasonably practicable options regarding the Bridge in the circumstances. I also address the relevance of assumptions made in relation to finance and costing. Finally, I assess whether the Committee engaged in adequate consultation as required under the LGA.

Mistake of law and/or fact: importance levels

Submissions

[97] Mr Smith submits that the IL rating of the Bridge is a central issue, because buildings classified as IL3 have lower NBS ratings than IL2 buildings. He says the practical consequence is that the lower the NBS rating for a structure, the more it will cost to strengthen. Here, cost was a relevant factor in the decision to demolish the Bridge.

[98] Mr Devine, who gave evidence for the Trust, agrees that the early reports commissioned by the Council from his firm, Spencer Holmes, had assessed the Bridge's importance level at 3, but says at that time there had been no relevant footbridge provisions in the NZTA Bridge Manual. However, since then, Spencer Holmes conducted its review of the Hoffcon DSA at the request of Mr Burrell, which concluded that the Bridge could be assessed at IL2.

[99] The Trust therefore submits that, taking into account creative engineering solutions, an active risk management approach would allow the Bridge's rating to be reduced to IL2. This would involve, for instance, ensuring no more than 300 people could congregate on the Bridge, through the use of signs, restricting access to parts of the Bridge, and/or using security guards. In any event, it says those numbers do not congregate in the area often. Relying on the approach in the Spencer Holmes review, and emphasising the relevance of the NZTA Bridge Manual classification of footbridges as IL2,[61] it says the Bridge could be assessed at 50 per cent NBS.

[100] Similarly, in his affidavit, Mr Devine refers to his comments in the letter that the reasoning behind the IL3 assumption is flawed, as congregation is not the "usual function" of the Bridge, and it is unlike the other examples of IL3 buildings (such as schools or theatres) listed in the NZ Standard. He says the use of the Bridge would only trigger the loading criteria less than a few times per annum, and therefore the Council's engineering assessment was conservative and misleading. Mr Smith submits the possibility of exploring an IL2 categorisation appears to have been considered by the Council officers, and that possibility was addressed in the reports prepared by Hoffcon and Beca. This issue was also the subject of discussions between the expert engineers and consultants at various meetings.

[101] As well as restricting numbers on the Bridge, Mr Smith suggests that the difficulty created by the earthquake-prone Capital E building might be solved if it changed its function and was no longer used as a building. For instance, it could function only as an adjunct to the Bridge. Then, it would not hold groups of people and so be categorised as IL2.

[102] The suggestion had been made by Mr Burrell in a Q&A forum that Capital E could be filled with sand. It would thereby be relieved of its building function and only operate to support the Bridge. Mr Burrell emailed the suggestion to Dr Zamani and the councillors on 12 November 2024, some days after the 6 November 2024 Q&A panel. Ultimately, the suggestion was not pursued. In any event, the difficulties surrounding that proposal were pointed out by Aurecon, including problems in

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[61] Although "footbridge" is not defined in the NZTA Bridge Manual, Mr Smith submits that its meaning is "a bridge for pedestrians".

sourcing the amount of sand required, and carting and dumping it, as well as the environmental effects of that operation.

[103] Mr Smith says the NZ Standard can be interpreted following usual statutory interpretation principles. He points to guidance issued by MBIE on seismic risk for buildings, which relevantly provides:

> Some buildings are built to withstand larger earthquakes than others. A building is given an importance level (1-5) based on occupancy, its post-disaster function and potential environmental consequences of failure. Buildings with higher importance levels are designed to withstand larger, less frequent earthquakes. Most buildings are importance level 2 (IL2). For all buildings, regardless of importance level, short-term occupancy decisions should be focus on life safety risk in the near term: that is considering earthquakes that are more frequent and hence smaller. Therefore, it is more appropriate for occupancy decisions for IL3 and IL4 buildings to be based on the design earthquake for an IL2 building, that is a 1 in 500-year event.

[104] Mr Smith also points to the approach in MBIE determinations on this issue, which are made as part of a process allowing owners to challenge an earthquake prone building status adopted by a local authority. The first MBIE determination, cited by Mr Devine in his affidavit, related to consents for buildings that were yet to be erected, and dealt with compliance with the NZ Standard.[62] The case involved two new hospital buildings. Following a process of discussions with experts and a review of the local emergency management plan, it was determined that only one of the buildings on the site would function as a post-disaster emergency facility. That building was classified as IL4, while the other was reduced to IL3.

[105] In more general terms, the determination discussed the assessment of importance levels for buildings in the context of seismic compliance, specifically referencing the NZ Standard. It noted that importance levels are determined based on the building's occupancy and use, and consideration of the function of the building following a major seismic event. It highlighted the need for judgement in assigning importance levels, particularly when a building serves multiple functions. In particular, as Mr Smith emphasises, the examples of building functions in the NZ Standard should not be relied on "in a strict and rigid manner without taking into

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62 Ministry of Business, Innovation and Employment *Determination 2015/059 Regarding the building importance level of two proposed buildings at Grey Base Hospital at 146 High Street, Greymouth* (30 September 2015).

account the intent and principles of the various importance levels; these principles are unfortunately not well articulated in AS/NZS 1170".[63]

[106] The second MBIE determination addressed a dispute regarding the importance level classification of the Waitakere District Court buildings for seismic strengthening work.[64] The classification was revised to IL2 under the NZ Standard from IL3. This was due to the function of the courthouse, and the fact that the building would never hold crowds and could not accommodate 300 people. It therefore did not fit the IL3 criteria. MBIE concluded that while the court serves an essential societal function, its operations could be relocated to temporary facilities post-disaster.[65]

[107] Mr Smith submits that the MBIE process for earthquake prone building determinations might have been engaged by the Council as the owner of the Capital E building. As the determination is not available for bridges, he suggests a voluntary process modelled on the MBIE building determination process could be undertaken for the Bridge. On one side would be the Council as owner, and on the other would be the Council with its regulatory "hat" on, the consenting division having told officers earlier that it considered the Bridge was IL3.

Analysis

[108] The record of the debate at the meeting of 5 December 2024 shows that the Committee engaged in extensive discussion and debate of various factors in assessing the reasonably practicable options, as well as considering the views of the public. Councillors debated the advantages and disadvantages of the options. Despite the Trust's submission to the contrary, the transcript suggests they were alive to the issue of whether the Bridge was IL3 or IL2. The Committee voted not to delay the decision for further information and options to be developed. In addition, it took into account the Council's budget and fiscal priorities, the risk of escalation, risks to the Jervois Quay emergency route, the impact of the decision on other works in the

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63 At [6.1.6].

64 Ministry of Business, Innovation and Employment *Determination 2019/065 Regarding the refusal to grant a building consent for alterations to District Court buildings because of a dispute about the importance level of the buildings at 9-11 Ratanui Road, Henderson, Auckland* (20 December 2019).

65 At [5.2.7].

Precinct, the level of seismic activity and safety risk the Council was willing to accept, the artworks on the Bridge, the earthquake-prone status of Capital E, the statutory deadline for remediation, and effects on public safety.

[109] The seismic risk posed by the Bridge and Capital E were matters on which the Committee properly relied on the advice of experts. The NZ Standard specifically provides that that "an engineer with relevant experience and skills in structural engineering is responsible for interpretation of the requirements". I note Mr Smith expressed less confidence in asserting that the seismic requirements were mere questions of legal interpretation when it came to applying the step change provisions than for ILs. They relate to uncertain and unpredictable risks caused by ground failure such as liquefaction. While the Trust argues that Hoffcon should not have applied a step change factor to the Bridge, this position was not supported by the geotechnical evidence from Tonkin + Taylor, who provided the only evidence in that regard.

[110] The IL was but one of numerous considerations. That is apparent from a review of the reports. Laypersons can readily understand the rationale behind the importance levels and their implications, as did the councillors in this case.

[111] The issue of whether the decision should have been deferred to undertake further investigations was put to a vote, which was lost eight to 10. This vote was an exercise of the Council's discretion under s 79 of the LGA. What is required is that the Committee turned its mind to and made a decision in light of its statutory obligations. I am satisfied that it did so, with adequate information on the relevant issues.

[112] The Committee made no mistake of law or mistake of fact in relying on the Agenda Paper, reports, and information it had before it, including as they related to IL and costings (which are discussed further below) in order to reach its decision on the Bridge. The Committee was seized of the issues concerning ILs and their relevance as well as other seismic information. It made no error as to interpretation and was aware of the debate on the IL issues. Moreover, to establish a mistake of fact it must be demonstrated that there was no evidence upon which the Committee could rely in reaching its conclusion. That is not the case here.

Reasonably practicable options

Did the Council officers fail to put all reasonably practicable options before the Committee?

[113] Mr Smith submits that, like in *Thorndon Quay Collective,* the Council officers here "funnelled" the options presented to the Committee, based on their own view of the preferred options. Therefore, not all "reasonably practicable options" were before the Committee.

[114] However, the decision and relevant factors to be considered were more complex than those in *Thorndon Quay Collective*. There, only one option was identified as reasonably practicable and placed before the Planning Committee. It had virtually no information from which to ascertain other available options. Other reasonably practicable options were available in the circumstances (such as installing mirrors), which were straightforward and readily implementable, but these had been discarded without the decision-maker knowing of their existence.

[115] In this case, six options were before the Committee in the Agenda Paper, which was provided to councillors in advance of the meeting on 5 December 2024. These included the Dunning Thornton long-term option (option 3(a)), which had been urgently costed with input from the Council's consultant engineers to enable it to be presented. The Agenda Paper's recommendations in relation to those options were supported by the following reasons:

> 53. In light of the costs of the strengthening options (3, 3a and 3b) relative to other options, including the risks of cost escalation, and Council's current financial constraints, and months of expected traffic disruption along Jervois Quay while work was undertaken, these are not considered to be reasonable practicable options. In the case of 3b, the risks to the road associated with a vulnerable bridge would also be left unaddressed.
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> 54. Option 4 is not considered a reasonably practicable option in light of the Council's earthquake prone building requirements for Capital E and other regulatory and life and city safety obligations related to the bridge.

[116] The Committee had the Dunning Thornton review of 4 December 2025 before it, and heard Mr Devine's views as set out in the Spencer Holmes letter to Mr Burrell. They also had copies of the Hoffcon DSA and Beca peer review, as well as the

Tonkin + Taylor geotechnical seismic assessment. The Committee was well aware that further future options might be developed, including the possibility of a reassessment of the Bridge's importance level and other options for remediation. Those options were yet to be developed, and would involve workshopping ideas with experts. That would require delaying the decision further. In addition, further engineering and seismic assessment information would be necessary before the options could be generated. These unknown options were yet to be developed and were not reasonably practicable options at the time the decision was made.

[117] The Committee was required to take into account multifactorial considerations in its decision regarding the Bridge. These included the background decisions concerning finance, the development of the Precinct, and the Council's adoption of a conservative approach to seismic risk. This is in contrast to the relatively simple decision in *Thorndon Quay Collective*.

[118] The purpose of the 5 December meeting was set out in the Agenda Paper, being to seek the Committee's agreement for the demolition of the Bridge and Capital E. The paper properly directed the attention of the Council to these other contextual matters, including that:

(a) Decisions concerning the Bridge were closely related to the realisation of the Te Ngākau Framework, which had been adopted by the Council in 2021. Progress was being made on the work required to achieve the objectives of that framework, including the demolition and remediation of the buildings in the Precinct. Furthermore, the Council and its experts had gained insights from the progression of those projects into the unique issues involved. The Agenda Paper noted that the decisions and work on the Bridge and Capital E represented "a major phase of the programme", and completion of this would substantially advance "the revitalisation of Te Ngākau and its restoration as the heart of the city".

(b) The Precinct had been significantly impacted by the Kaikoura earthquake, the changes to building and regulatory requirements, and

the "lessons learned as a result of that event". This included the closure of a number of civic buildings. To that end, experts' reports had been commissioned to provide the Council with "a robust view of the risks in the precinct and the work required in order to address those risks and deliver on the Council's vision". Related to this were legal considerations, including the fact that Wellington is a high seismic hazard area and there are resultant legal duties that apply concerning earthquake prone buildings. The Agenda Paper properly pointed out that in determining whether action is required, the appropriate standard is "what a reasonable and prudent local authority would do knowing the safety risks that have been identified". In this case, such determinations had to be made in view of the expert reports and the fact that Jervois Quay was a priority one emergency transport route.

(c) The Council was facing considerable financial constraints and had made decisions about funding the Precinct, including in its LTP.

(d) The Te Ngākau Development Plan had been developed in close partnership with mana whenua.

[119] In those circumstances, the six options provided the suite of reasonably practicable options available to the Council. While the two recommended options involved demolition, the other options involved strengthening or, in the case of option 4, doing nothing. Costs were provided for each of those options, based on advice from experts, including the option advanced as a creative long-term solution by Dunning Thornton. No options were taken off the table, albeit the officers' recommendations were made.

[120] The Trust suggests there might be more creative solutions developed, and more combinations and permutations developed by the engineers, given more time and more information. It called for the Council to be less conservative and risk averse, in particular when it came to managing seismic risk. The Committee was aware of those views and of the possibilities that existed for further work to be done. It had the reports

of its experts before it, and was able to ask questions of those experts, including seismic expert Dr Chin.

[121] In practical terms, the Trust is seeking that the Council delay its decision. As noted above, the councillors debated a proposed amendment deferring the decision on the Bridge, and ultimately voted against it. The Trust suggests that some of the councillors may have voted differently had they been at the expert panel on 4 December 2024, which had been attended by a number of councillors, some of whom had voted for delaying the decision (and against demolition). The meeting invitation to the expert panel had been sent to all councillors. In addition, many had attended other meetings with experts, including a site visit which was open to all councillors. There was ample time to ask questions, including through the Q&A forum before the meeting. Moreover, all councillors heard those in favour of the delay and against demolition speak at the meeting and give reasons for their position. They also heard from three speakers who made submissions against demolition at the beginning of the meeting. At the conclusion of the meeting, a convincing majority voted in favour of demolition.

[122] In conclusion, the issues raised in the Dunning Thornton report, in particular in relation to the importance level debate (which was also referred to in the other reports), were squarely before the Committee. It is apparent from the transcript of the debate that the councillors understood the relevant issues and their implications.

Adequacy of information before the Committee

[123] Mr Smith also suggests that there should have been additional information before the Committee at the 5 December meeting, so that it could properly identify whether the options before it were indeed all of the reasonably practicable options in the circumstances.

[124] The Trust suggests that the minutes of a meeting between the experts on 12 November 2024 should have been before the Committee. However, that meeting related to technical discussions between the experts, and the discussions were not

intended to be relied upon.[66] The group reached no overall consensus, and all the participants had prepared reports intended to be relied upon which were before the Committee on 5 December. The minutes were not a document that would have been appropriate to put before the Committee.

[125] Some criticism is also made of the fact that Dunning Thornton's 4 December report had been received in draft on 17 October 2024, but was not sent to councillors earlier. The background to the report and its genesis is of relevance.

[126] Dr Zamani had commissioned the Dunning Thornton review following suggestions from Mr Nevin and Mr Gray, members of a group known as "Save the Bridge".[67] As noted, the Dunning Thornton first draft review was provided shortly after on 17 October 2024. The final report was prepared following input from a workshop on 2 December 2024 between the engineers. The Council officers had asked them to work together to try and achieve a consensus. Dunning Thornton had then worked with Beca and Aurecon at the Council's request, to produce a concept design for the strengthening which Dunning Thornton suggested as a long-term remediation solution for the Bridge. This was costed at $53.3 million by RLB. That costing was included in the Agenda Paper and considered by the councillors at the 5 December 2024 meeting, as option 3(a). Option 3(a) was described in the Agenda Paper as follows:

> Option 3a is a reduced strengthening scheme to improve the performance of the bridge and Capital E to above 34% NBS (IL3). This scheme includes placing rocks in the Lagoon to mitigate the movement of the sea wall, additional foundation and bridge span ties, and strengthening Capital with roof bracing only. This scheme would improve the performance to above 34% NBS (IL3) and current estimates indicate the works would cost $53.3m…

[127] In any event, the provision of the Dunning Thornton report the day before the meeting allowed sufficient time for councillors to consider and understand it. To put this in context, the report was four pages long and was a review of all the other

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66 The meeting was attended by representatives of the Council's external engineering consultants, RCP, Dunning Thornton, Tonkin + Taylor, Beca, and Aurecon. No Council officers were present. The minutes record a discussion between the experts in an attempt to reach consensus on the relevant engineering issues.

67 Mr Nevin and Mr Gray, both of whom gave evidence in support of the Trust's application, are members of this group.

engineering and seismic reports already before the Committee. It also came on top of a series of briefings and meetings on the issue, including meetings with experts.

[128] A further point raised by the Trust relates to the Kestrel report. Kestrel prepared a seismic risk evaluation for the purpose of informing the Council's decision on allowing access to and use of the Bridge, and to identify short-term risk management measures while the broader plans were progressed. That report was dated September 2024, and was before the Committee. Kestrel prepared a further report in November 2024 which was not before the Committee at the 5 December meeting. The September 2024 Kestrel report went into detail on the risk evaluation framework. It contained sufficient information to inform the Council of the risk issues. That report concluded that under the 2021 BRANZ decision framework for managing earthquake prone buildings, the risk analysis supported use of the Bridge "for both pedestrian access over the bridge and pedestrian and vehicular thoroughfare beneath it during the period prior either to strengthening or demolition". It noted that the Bridge had not been damaged in the Kaikoura earthquake. It also commented that the framework did not include impacts of failure to the main transportation routes within the city.

[129] The November Kestrel report referred to the six options which were put before the Committee. It also included reference to the useability of the road in the event of modest, significant and major earthquakes. The report noted that recent engineering work had "highlighted the complexity of the interaction between the bridge foundations and the ground". It referred to the inherent uncertainty around the level of ground shaking at which liquefaction and lateral spreading occurs to Jervois Quay. It recommended further study to better quantify the liquefaction and lateral spread hazard and the seismic performance of the Bridge, to "provide greater understanding and confidence about the risks". The November report took its information on seismic risk from the Hoffcon DSA and the discussions with Tonkin + Taylor. Reports by those firms were before the Committee.

[130] Tonkin + Taylor is the only geotechnical engineering expert firm who provided a seismic assessment of the Bridge. Dr Chin, of that firm, was present at the 5 December meeting and therefore able to address that issue directly. It is clear from the debate that the councillors were aware that the safety issues largely related to the

effects of the Bridge collapsing, particularly on traffic and emergency services. The November Kestrel report would have added little, if anything, to the information already before the Committee.

[131] In addition, there was ample material before the Committee on the issue of the Bridge's IL assessment. It was mentioned not only in the Dunning Thornton review, but also in the Beca and Aurecon reports, and Mr Burrell's Spencer Holmes letter. The Hoffcon DSA also specifically mentioned the argument concerning the application of the Bridge Manual, although dismissed this on the basis that the Bridge did not function as a typical footbridge, as crowds did in fact congregate on it for events. The DSA was peer reviewed by Beca, which agreed with Hoffcon's conclusions.

[132] It is apparent from the transcript of the 5 December meeting that the councillors were aware of the argument concerning the IL classification. In the course of the discussion, Dr Chin responded to questions from councillors. He noted that the issue of whether the Bridge should be classified as IL2 based on the NZTA Bridge Manual's reference to footbridges was "a little bit grey", but confirmed the Tonkin + Taylor view, which favoured the IL3 classification based on the NZ Standard. As well as references to the Dunning Thornton report, there were a number of exchanges in which the Spencer Holmes letter of 4 December 2024 was discussed. There had also been questions at the 3 December 2024 Council briefing about whether or not the Bridge might be assessed as IL2 and the potential to limit its capacity.

[133] Dr Chin also responded to questions concerning the step change issue. In particular, a councillor pointed to a comment in the Dunning Thornton review saying that it "may be conservative for a step change to be applied to the structure without a more thorough assessment by a geotechnical engineer". In response, Dr Chin said:

> …we have a lot of information around the Civic Square. We have found a lot of investigation as part of Town Hall across the road and we have sufficient information to be confident around the risk of liquefaction of the ground. Assessment has also taken a fairly aggressive approach to assume that the sea wall is founded on good ground. So, I guess we have already made some pretty aggressive assumptions and the outcome has led to what it is today. So doing more investigations, I guess, could potentially indicate that the ground is worse than we thought and which could probably lead to a worse outcome than what it is today.

[134] It was apparent from the reports and from Dr Chin's responses to questions at the meeting that even if the Bridge was reclassified as IL2 by constraining or managing its use, the issue of the low seismic performance of the Bridge would remain. Ms Beetham, a consulting engineer with Aurecon who specialises in seismic assessment and design, pointed out in her evidence that based on the Tonkin + Taylor assessment, the liquefaction trigger if the Bridge was reclassified to IL2 only moved the assessment from 23 to 28 per cent NBS in any event (accounting for a step change factor of two).

[135] In conclusion, the officers put the reasonably practicable options before the Committee, and the Committee had sufficient information before it to adequately inform it of the material issues and what was reasonably practicable. It was aware of the technical debates on seismic issues and risks. In light of all that information, the Council rejected the proposal to delay its decision in order that further information be obtained, considered the advantages and disadvantages of the options before it, and ultimately made its decision to demolish the Bridge.

Finance and costing assumptions

[136] The Trust submits that the finance and cost assumptions were incorrect or inadequate. First, the Trust says the Council officers provided overblown cost estimates in the Agenda Paper, thus creating a false impression that costs of remediation short of demolition were prohibitive. In addition, the Trust suggests that the financial information on costs associated with the options for remediation of the Bridge were not sufficiently detailed and so not robust. Second, while not expressly articulated, the thrust of the submissions is an implication that the officers and some councillors put too much weight on financial constraints, or should not have considered the financial constraints on the remediation of the Bridge at all. There is no evidence supporting that contention.

[137] The Trust says that the costs of strengthening the Bridge were premised on incorrect assessments of the seismic performance and solutions available. This is based on the allegations that the engineering assessments were flawed (particularly the IL assessments upon which they were based), and so the costing information was

not robust. The Trust's allegations on that issue have been dealt with above, so I do not repeat those here.

[138] On 16 October 2024, the day before the meeting on 17 October 2024 when the Committee would decide the form of the public consultation, the Council's Democracy Services team provided answers to councillors' questions. This included indicating that the estimated cost of remediating the Bridge and Capital E would be "$90-$120 million". This is said by Mr Smith to have been misleading, as there was no discussion regarding the obvious point that the costs to remediate the Bridge and Capital E would depend entirely on what level of remediation was being done and to what standard. The unstated underlying assumption was obviously to remediate to 100%NBS (IL3) for both structures. In addition, no costings were provided for the Bridge and Capital E separately. He says the two were seismically separate, and Capital E could have adopted a "no building" function. Furthermore, there was no reference to the contingencies which were built into the suggested costs.

[139] The Council says the costings were carried out by a qualified quantity surveyor and were accurate for the purposes of the consultation and the Committee's decision making. The Council had commissioned the firm of quantity surveyors, RLB, to provide costings for the various works and options proposed for the Bridge. Mr Bevan Hartley, a principle of that firm and an experienced quantity surveyor, filed affidavit evidence qualifying himself as an expert. He notes that the firm had been involved in providing a range of construction "Rough Order of Cost Estimates" for the Bridge and Capital E to the Council since 2023.[68] Mr Hartley says that throughout 2024, RLB provided advice to the Council on various issues, including seawall upgrades and other strengthening options for the Bridge. In late September 2024, RCP presented a range of costings for various component parts of the Precinct, including strengthening and demolition options for Capital E and the Bridge, in various permutations. On 15 October 2024, RLB provided Rough Order of Cost Estimates for several concept designs produced by Beca and Aurecon for remediation of the Bridge to 100 per cent NBS (IL3).

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[68] A Rough Order of Cost Estimate is described by Mr Hartley as a preliminary cost estimate, which is the industry standard for cost estimates at early stages of design.

[140] Mr Hartley confirms that he gave the Council officers the figures that were used in the public consultation document. He advised that the cheapest option for remediating the Bridge alone would be just under $20 million, and a minimum of $69 million would be necessary for the Capital E remediation. This, together with $10 million for minimal seawall strengthening, amounted to a total cost in the vicinity of $100 million.[69] The officers were advised that figure could move up or down depending on remediation and design.

[141] Further work was done by RLB to produce the figures used in relation to each of the options contained in the Agenda Paper for the 5 December meeting. Each option in the paper referred to the projected costs for the work indicated. In relation to strengthening the Bridge, it was noted that the cost estimates ranged from $86-120 million, with further invasive ground testing required to refine the cost. The most cost-effective option was identified as option 3 (full strengthening of the Bridge, demolishing Capital E and replacing with a new abutment) at $85.6 million, however it said:

> A key driver of this cost is the significant foundation work that would be needed to deal with liquefaction and associated lateral spread. In light of the Council's experiences, including with the ground conditions, of the adjacent Town Hall, there is risk in pursuing any strengthening option that costs at the outset would underestimate costs to complete the work.

[142] The cheapest of the strengthening options was option 3(a) (the Dunning Thornton long-term option), which was costed at $53.3 million.

[143] The Agenda Paper noted:

> 53. In light of the costs of the strengthening options (3, 3a and 3b) relative to other options, including the risks of cost escalation, and Council's current financial constraints, and months of expected traffic disruption along Jervois Quay while work was undertaken, these are not considered to be reasonable practicable options. In the case of 3b, the risks to the road associated with a vulnerable bridge would also be left unaddressed.

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[69] RLB had provided a Rough Order of Cost Estimate of $69 million for demolishing Capital E and replacing it with an abutment, or $103 million for strengthening Capital E (September 2023). A costing for strengthening the seawall ranged from $56 million to $416 million (1 March 2024).

[144] The description of costs under each option referred to Appendix 8 of the Agenda Paper, which set out more detailed Rough Order of Cost Estimates which had been provided by the quantity surveyors in relation to each option.

[145] Mr Gray, a project manager and civil engineer, who provided affidavit evidence for the Trust, criticises the Council costings. He questions the appropriateness of using Rough Order of Cost Estimates for decision-making. Mr Gray argues that these estimates are "very preliminary", so lack sufficient detail, and include high contingency sums. He suggests that a more orthodox approach would have been to complete Rough Order estimates for agreed options, before completing a concept design for a few chosen options, based on which the quantity surveyor could prepare detailed estimates for each option.[70]

[146] For the Council, Mr Hartley provides detailed explanations as to the concept, methodology, and appropriateness of using Rough Order of Cost Estimates in construction projects. He notes that this is a standard industry practice, particularly in the early stages of project development when detailed designs are unavailable. These preliminary cost estimates are intended to assist clients in deciding whether to proceed with a project. They are based on limited information, such as a briefing document, and rely on the quantity surveyor's expertise, historical data, and professional judgement. Mr Hartley emphasises that reputable quantity surveyors can produce high-quality Rough Order of Cost Estimates for a wide range of projects, including seismic upgrades, infrastructure developments, and complex civil works, even with minimal design information.

[147] Mr Hartley rejects Mr Gray's contention that it is inappropriate to rely on a Rough Order of Cost Estimate for decision-making. He says that requiring concept designs for all decisions would significantly increase costs and delay decision-making processes. Such an approach is inconsistent with market practice, particularly when the decision relates to a variety of possible options. Mr Hartley further emphasises that Rough Order of Cost Estimates are routinely used to provide clients with an

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[70] Mr Gray also says he was not given detailed costings reports when he requested them, and as a result he had to pursue that request under the Official Information Act 1982. That issue is beyond the scope of this judicial review.

estimate of the final project cost, enabling them to make informed decisions before proceeding to detailed design phases. In his professional opinion, the Rough Order of Cost Estimates provided for the Bridge were appropriate and reflective of standard industry practice, and had the benefit of more detailed design information than usual.

[148] The Trust also points out that peer review of the Rough Order of Cost Estimate conducted by Rawlinsons on 28 November 2024 suggested lower cost estimates. However, Mr Hartley says Rawlinsons' peer review did not indicate any areas of significant disagreement with RLB's Rough Order of Cost Estimate, and merely adopted slightly different assumptions. These were particularly in relation to percentage allowances for main contractor preliminary and general costs, main contractor margin, and design development and construction contingencies. As a result, Rawlinsons arrived at a slightly lower estimate than RLB. Mr Hartley considers RLB appropriately adopted higher contingency allowances and other costs, based on their experience with construction projects at the Precinct. He explains that previous projects in the area have encountered cost escalations due to challenging ground conditions, among other factors, which justifies the higher allowances. He explains that a design contingency accounts for potential amplifications in design due to limited initial information, while a construction contingency addresses unknown factors that may arise during the construction process. These contingencies are distinct, and therefore Mr Hartley says Mr Gray is mistaken in his assumption that contingencies have been applied twice.

[149] The conservative approach taken in relation to contingencies is consistent with concerns expressed by councillors over cost escalation due to their experience with other building projects in the Precinct, particularly the Town Hall. In an exchange between a councillor seeking reassurance that the risk of escalation has been factored in to the costs, an officer responded:[71] "We have taken appropriate learnings from our previous projects to ensure that we have contingencies to manage those things."[72]

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71 The transcript refers to an "unknown person", but the context suggests that it is a Council officer.

72 Comments in the transcript of the meeting of 5 December 2024 suggest that Mr Hartley was present for this discussion.

[150] It is not the function of the Court in judicial review to enter into a review of the merits of a decision. The Council was entitled to rely on costings done by an expert. Mr Hartley is a quantity surveyor, with particular expertise in cost estimates for the Te Ngākau Precinct. The costings have been peer reviewed and confirmed by other experts. While Mr Hartley may have made some conservative assumptions in Mr Gray's view, it was open to him to make those assumptions. They were based on the engineering reports and design material commissioned by the Council, as well as Mr Hartley's own expertise and experience.

Consultation

[151] On 17 October 2024, the Council unanimously resolved to undertake public consultation on the two proposed options for demolition of the Bridge. The draft consultation document was before the Committee at the meeting to determine that issue. The consultation also covered the Te Ngākau Development Plan as a whole, which was discussed at the meeting.

[152] At the stage consultation was approved, the consistent engineering and expert advice had been that the seismic issues, particularly those related to the seawall and the reclaimed land on which the Precinct and the Bridge sat (including the likelihood of liquefaction), put the rating of the Bridge and Capital E at 20 per cent NBS.

[153] Following the meeting, the Council officers worked to finalise the consultation document, and public consultation commenced on 21 October 2024. The Hoffcon DSA and Te Ngākau Development Plan accompanied the consultation document. Additional documents were made available to the public online, including the Tonkin + Taylor's geotechnical seismic assessment, Beca's peer review, and Kestrel's seismic risk evaluation.[73]

Alleged defects in consultation process

[154] The main points emphasised by the Trust as defects in the consultation process are as follows:

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[73] A website address for further information was contained in the hardcopy documentation.

(a) the consultation period was insufficient, at three and a half weeks, given the significance of the decision and the highly technical matters involved;

(b) there was no clear purpose as to what was being consulted upon;

(c) only the two options involving demolition of the Bridge were consulted upon, so the public had no opportunity to state a preference for retention, and in any event may have considered it futile to do so; and

(d) there was not enough information provided in the public consultation.

[155] The Council denies these allegations, and says that the process undertaken was sufficient to meet its obligations under the LGA.

[156] I now consider the consultation process.

The consultation process

[157] The consultation period ran from 21 October 2024 to 13 November 2024.

[158] The consultation document said, in relation to the Bridge, that the final decision would be made by the end of that year (2024), and noted that the goals for the Precinct development were to:

- improve the connection between Te Ngākau precinct, the central city and the waterfront
- bring nature and biodiversity back to the precinct
- build resilience in the face of climate change and earthquake risk
- reinvigorate the precinct through a range of community, cultural and commercial activities
- support the vibrancy of the surrounding business and residential areas.

[159] The consultation document sought feedback in two key areas, which were framed as follows:

(a) "Part 1: The City to Sea Bridge — there are two options for you to provide feedback on."

(b) "Part 2: What to prioritise during the remaining development of the precinct — there are three example scenarios for you to provide feedback on."

[160] The document noted that the consultation provided an opportunity "for Wellingtonians to have their say on the City to Sea Bridge and the direction of future development in the precinct, which will be guided by the final Development Plan".

[161] Part 1 of the document began by providing some background information regarding the Bridge, noting it was the main connection between Te Ngākau Civic Square and the waterfront. It described the Bridge as consisting of the main area which crosses Jervois Quay, the sea wall on the Whairepo Lagoon, and the former Capital E building.

[162] The consultation document identified the Bridge as having a rating of 20 per cent NBS, being "very high-risk", according to MBIE guidance. It noted that this was mostly due to the likelihood of liquefaction, which could occur in a moderate earthquake, undermining stability of the Bridge. It further referred to the former Capital E building and the seawall as having low seismic ratings, and noted that the Bridge was built over Jervois Quay, which would act as a priority transport route for emergency services to move through the city after a seismic event. The failure of the Bridge would therefore have a significant impact on an emergency response effort. The document recorded the Council's belief that remedial action needed to be undertaken on the Bridge as soon as possible and that, "[f]or safety reasons, doing nothing is not an option".

[163] The consultation document went on to address why strengthening the Bridge was not considered a reasonably practicable option to address the risk, due to "the significant disruption to the city and high costs". It noted that the Bridge, Capital E, and the seawall were interconnected structures, and would all need strengthening for the Bridge to no longer be earthquake-prone. It said the most practical strengthening

solution would be to install large additional deep foundations, tied to the existing foundations, and install steel frames. That work would require closure of traffic lanes on Jervois Quay in stages for several months. Based on that solution, the estimated cost of strengthening the Bridge was $90–120 million, with further design and intrusive testing required to refine this cost with a greater level of accuracy.

[164] The consultation document sought input on two "reasonably practicable options to address the earthquake-prone status of the bridge". Both options involved demolition of the Bridge. The first referred to demolishing the Bridge and constructing a pedestrian crossing, with an estimated cost of $30 million (which was budgeted for within the existing 2024–2034 LTP). The second alternative was demolishing the Bridge and constructing a pedestrian crossing and a new bridge, with an estimated cost of $47 million. $30 million of that overall cost was budgeted in the existing LTP, and the further estimated $17 million would be required in a future LTP.

[165] Part 2 of the consultation document related to the remaining parts of the Precinct. It included a comment that "restoring the City to Sea Bridge has been deemed impractical". It also noted that with the removal of the Capital E building and the Bridge, Jack Ilott Green (a small green space in the Precinct) could be re-landscaped "to improve the way this space can be used and better connect it to the overall precinct".

[166] The narration on the submission form at the back of the document read:

> We want to hear your feedback on our draft plan for Te Ngākau Civic Precinct. …[T]his consultation is a chance for you to have your say on the City to Sea Bridge remediation and the direction of future development in the precinct.

[167] The submission form noted that the Bridge consists of three separate structures which are "functionally and geotechnically connected — the former Capital E building, the bridge itself and the Whairepo Lagoon sea wall". It noted that Capital E also shares a loading dock with the Town Hall, which meant that the issue needed to be fixed to complete the Town Hall. Further comment was made about the NBS of the building and the likelihood of the surrounding ground becoming unstable during a significant earthquake due to liquefaction. The narration continued that

"[u]nfortunately, because of these factors, the only reasonable practicable options to address the earthquake-prone status involve demolishing the City to Sea Bridge".

[168] The form specified that feedback was sought on the two options for demolition. In the tick box section, there was a place for submitters to tick their preferred City to Sea Bridge scenario: replacement with a new bridge and pedestrian crossing; or replacement with pedestrian crossing only. The form also provided tick boxes for "I have no strong opinion", "I do not support either option", or "I don't know". There was also space for submitters to provide written responses under the heading: "Do you have any other thoughts about the City to Sea Bridge or how people can move between Te Ngākau and the waterfront?".

Feedback

[169] On 22 and 25 November 2024, oral submissions were made to a Council panel. The Council received 1,273 written submissions, and 102 submitters made oral submissions. Those unable to provide oral submissions during the two days of public hearings were permitted to present to Council on 5 December before the vote took place. Those who spoke in favour of retaining the Bridge at the 5 December meeting included: Mr Bruce McLean (a civil engineer);[74] Ms Felicity Wong (on behalf of Historic Places Wellington); Mr Devine (of Spencer Holmes, who prepared the 4 December 2024 report for Mr Burrell and summarised its content for the meeting); and Ms Angela Foster (an architect and urban designer).

[170] The councillors were provided with copies of all written submissions and briefs on 3 December 2024. As noted in the Agenda Paper:

> In total, 57.5% of submitters supported the demolition of the bridge/Capital E and its replacement with either an at-grade crossing (23%) or a new bridge (34%).

[171] One-third of the submitters did not support either option. Where asked to provide additional feedback or comments, "[t]he most common feedback was that neither option was suitable and the existing bridge should be retained".

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[74] Mr McLean referred in his submission to the Dunning Thornton review report of 4 December 2024.

Principles of consultation

[172] While s 78 of the LGA obliges local authorities to consider the views and preferences of affected or interested persons, it does not mandate consultation unless the authority deems it necessary.[75] Local authorities have a discretion to determine the appropriate form of consultation,[76] but must consider the requirements of s 78 when exercising this discretion.[77]

[173] The principles of consultation under the LGA are set out in s 82, which provides:

> **82 Principles of consultation**
>
> (1) Consultation that a local authority undertakes in relation to any decision or other matter must be undertaken, subject to subsections (3) to (5), in accordance with the following principles:
>
> (a) that persons who will or may be affected by, or have an interest in, the decision or matter should be provided by the local authority with reasonable access to relevant information in a manner and format that is appropriate to the preferences and needs of those persons:
>
> (b) that persons who will or may be affected by, or have an interest in, the decision or matter should be encouraged by the local authority to present their views to the local authority:
>
> (c) that persons who are invited or encouraged to present their views to the local authority should be given clear information by the local authority concerning the purpose of the consultation and the scope of the decisions to be taken following the consideration of views presented:
>
> (d) that persons who wish to have their views on the decision or matter considered by the local authority should be provided by the local authority with a reasonable opportunity to present those views to the local authority in a manner and format that is appropriate to the preferences and needs of those persons:
>
> (e) that the views presented to the local authority should be received by the local authority with an open mind and should be given by the local authority, in making a decision, due consideration:
>
> (f) that persons who present views to the local authority should have access to a clear record or description of relevant

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75 Section 78(3).
76 Section 82(3).
77 Section 82(4).

> decisions made by the local authority and explanatory material relating to the decisions, which may include, for example, reports relating to the matter that were considered before the decisions were made.
>
> (2) A local authority must ensure that it has in place processes for consulting with Māori in accordance with subsection (1).
>
> (3) The principles set out in subsection (1) are, subject to subsections (4) and (5), to be observed by a local authority in such manner as the local authority considers, in its discretion, to be appropriate in any particular instance.
>
> (4) A local authority must, in exercising its discretion under subsection (3), have regard to—
>
> (a) the requirements of section 78; and
>
> (b) the extent to which the current views and preferences of persons who will or may be affected by, or have an interest in, the decision or matter are known to the local authority; and
>
> (c) the nature and significance of the decision or matter, including its likely impact from the perspective of the persons who will or may be affected by, or have an interest in, the decision or matter; and
>
> (d) the provisions of Part 1 of the Local Government Official Information and Meetings Act 1987 (which Part, among other things, sets out the circumstances in which there is good reason for withholding local authority information); and
>
> (e) the costs and benefits of any consultation process or procedure.
>
> (5) Where a local authority is authorised or required by this Act or any other enactment to undertake consultation in relation to any decision or matter and the procedure in respect of that consultation is prescribed by this Act or any other enactment, such of the provisions of the principles set out in subsection (1) as are inconsistent with specific requirements of the procedure so prescribed are not to be observed by the local authority in respect of that consultation.

[174] There is no obligation under s 82 for the Council to put every available option to the public for consultation. Nor is it necessary to reconsult when additional information or options come to hand. In the *Thorndon Quay Collective* decision, the Court of Appeal rejected the submission that local authorities must invariably identify and assess all reasonably practicable options prior to public consultation taking place.[78] In fact, consultation may identify additional options that should be

[78] *Thorndon Quay Collective*, above n 21, at [67].

considered. The Court of Appeal further noted that the "practicalities of local government necessitate some degree of procedural flexibility and pragmatism".[79] Consultation is only one of the ways to consider "the views and preferences of persons likely to be affected by, or to have an interest in, the matter under consideration".[80] It follows that public consultation is not required as a matter of course.

[175] As this Court noted in *Island Bay Residents' Association v Wellington City Council*, where it was argued that a particular option should have been consulted upon, "there is nothing in the LGA that entitles a submitter to be able to dictate to a Council the substantive content of options put out for consultation".[81]

[176] The Trust also refers to the English Supreme Court decision of *R (on the application of Moseley (in substitution of Stirling Deceased)) v London Borough of Haringey*.[82] That case involved consultation by a local authority (Haringey) concerning the effect of changes to the government's previous council tax benefit scheme.[83] The consultation carried out by Haringey was limited to options in which involved the reduction of the benefit to present recipients, without mentioning alternatives that would involve Haringey absorbing the loss of the benefit. The Court noted that "[f]airness is a protean concept, not susceptible of much generalised enlargement".[84] However, it observed that the requirements of fairness in the context of that case must be linked to the purposes of consultation. The demands of fairness are likely to be higher when an authority contemplates depriving someone of an existing benefit. This was particularly relevant in the case before the Court, where those to be consulted were the most economically disadvantaged of Haringey's residents, and the imposition of the tax liability was likely to cause real hardship, whilst sparing more prosperous residents from making any contribution to the shortfall

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79 At [67].
80 At [30]; and LGA, s 78(1).
81 *Island Bay Residents' Association v Wellington City Council* [2019] NZHC 1240, [2020] NZRMA 157 at [88].
82 *R (on the application of Moseley (in substitution of Stirling Deceased)) v London Borough of Haringey* [2014] UKSC 56.
83 At [2].
84 At [24].

in government funding.[85] Lord Reed noted that consultation documents "should be clear and understandable, and therefore should not be unduly complex or lengthy".[86]

Analysis

Consultation period

[177] As I have outlined above, the public consultation process involved not only written submissions, but also opportunities to make oral submissions at public hearings, as well as to meet with councillors. The response involved a substantial number of written submissions and over 100 oral submissions.

[178] The Trust suggests that, as the engineering issues were complex, more time should have been allowed for consultation. However, it was not the technical issues that were the subject of the consultation. The issues on which feedback was sought were relatively straightforward. Three and a half weeks was sufficient in those circumstances, particularly given the level of engagement by the Council with submitters and the various available methods for presenting feedback.

Options in public consultation

[179] The Trust contends that only two options were proposed, and the purpose of the public consultation was not clear. Ms Qiu, for the Trust, submitted that a high degree of compliance was required given the significance of the decision. She said there was not enough information presented to the public, nor was there conveyed a clear purpose for the consultation. In addition, the only two options being consulted upon related to demolition.

[180] It is for the Council to determine the options to be put forward to the public for consultation in relation to a decision. The Council did so in this case, voting unanimously to proceed to consultation on the basis of the two options for demolition of the Bridge (as well as in relation to the plans for the rest of the Precinct). At that stage, the strengthening option for the Bridge was to take it to 100 per cent NBS. The

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85 At [29].
86 At [41].

Council made no error in providing the costing range for that option in the consultation document. The document made it clear this was an estimate and indicated the nature of the work that had been proposed.

[181] I have set out the contents of the consultation document in some detail above. The document made it clear there was consultation primarily on the two options for demolishing the Bridge. It gave reasons for the Council's exclusion of other options, including cost and the earthquake risk to the Bridge, which in turn risked access to Jervois Quay if the Bridge failed. The Council had agreed unanimously to those options being consulted upon. It made no error in putting those two options out for consultation. It was entitled to select the options to be put forward, and in view of the evidence it had, those were the reasonably practicable options that it identified. Furthermore, the Council also explained why it did not consider remediation of the Bridge by strengthening it to be a reasonably practicable option, due to the seismic issues, costs of strengthening and financial constraints. In addition, none of the material in the public consultation document was misleading. The risk information was correct based on the expert reports before the Committee. The consistent advice the Council had been that the Bridge was IL3. The Council was entitled, as were Council officers, to rely on the reports in its public consultation.

[182] The invitation in the submission form allowed submitters to choose neither demolition scenario. That option was selected by a number of people. A space on the form also invited submitters to write their "thoughts" on the Bridge. Various suggestions were generated during the public consultation, including Mr Burrell's suggestion to fill Capital E with sand so it would act as a foundation for the Bridge, but not as a functional building.

[183] In summary, given the purpose of the consultation, the consultation documents were "clear and understandable", and the public were given ample opportunity and time to provide their feedback.

[184] The Dunning Thornton review was received in draft form on 17 October 2024, and there was no obligation on the Council in the circumstances to provide that document as part of the public consultation, as suggested by the Trust. The report was

in draft only and required further work. Nor was the Council in error by coupling the public consultation on the Bridge with the consultation on the Precinct. That provided context for the remediation of the Bridge and its relationship to the seawall and Capital E, which was part of the Council's vision.

[185] Some criticism is also made of the presentation of the results of the public consultation. In the Agenda Paper for the 5 December meeting, 57.5 per cent of submitters were described as supporting the demolition of the Bridge/Capital E, with one-third of the submitters not supporting either option. It is suggested that this was inaccurate, given that the consultation document did not ask whether supporters wanted the Bridge to be demolished in the first place. The Agenda Paper set out the split in the voting accurately, and commented that of the third of submitters who did not support either option, many noted in the additional feedback section that their preferred scenario was that the existing Bridge be retained.

[186] I consider the Committee were adequately informed of the results of public consultation by way of the summary in the Agenda Paper, which was not misleading. In addition, councillors had access to the written submissions made.

Adequacy of information

[187] The Trust says that the consultation did not meet the requirements of s 82 of the LGA insofar as it relates to providing sufficient explanatory material, including the "reports relating to the matter that were considered before the decisions were made".[87] It says further information concerning the costings should have been provided in support. Mr Gray, in his affidavit for the Trust, says that he tried to get access to the full costing reports, but no hard copy material was available. He was later referred by officers to the costing material attached to the Agenda Paper (at Appendix 8) for the 5 December meeting. Mr Gray says this was insufficient.

[188] The Council says the cost estimates for strengthening that it had available at the time included strengthening solutions estimated at between $90 and $120 million. The Trust alleges those figures are too high. I have earlier considered the Trust's

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87 Section 82(1)(f).

arguments concerning the correctness of the costings. I also note that the Dunning Thornton option and the cost of its long-term solution for strengthening was ultimately costed at $86.5 million. However, that information was not available at the time of the public consultation.

[189] As Lord Reed said in *Moseley*, subject to the statutory requirements, the consultation documents should be clear and understandable, and not unduly complex or lengthy.[88] The consultation document met this requirement. The information provided was based on expert advice received by the Council. The Council had approved the consultation on the relevant options.

[190] In view of the circumstances, the consultation, including the purpose and the options, based on the information available, was adequate. There was ample opportunity and encouragement for the public to present their views to the Council. The Council was not required to put every option to the public for consultation. It was for the Council to determine the appropriate scope and process for consultation, guided by the provisions of the LGA. Nor did the Council need to provide all available information to the public,[89] although it was required to provide reasonable access to relevant information in a manner appropriate to the preferences and needs of affected persons.[90] Whether adequate information has been provided must be considered in light of the context, purpose, and scope of the consultation. In view of the fact that the objective of the consultation was to understand public opinion on proposed demolition options for the Bridge and the views on the Precinct, the reports provided were sufficient for the consultation to be meaningful. A detailed report on the costings was not required to enable informed feedback on those options.

[191] This ground of review is not made out.

Merits

[192] An overarching theme of the Trust's submissions is that the Council is too conservative generally in its approach to seismic assessments, and if it were in the

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88 *Moseley*, above n 82, at [41].
89 *Island Bay Residents' Association*, above n 81, at [88].
90 LGA, s 82(a).

commercial world, it would be more flexible. Mr Smith notes that Wellington has been marked as particularly likely to experience seismic events and that New Zealand is referred to as the "Shakey Isles". In that context he submits that the Council needs to be more creative in its solutions, and cannot simply keep increasing rates to fund the management of seismic risk. Mr Smith says that reality must be factored in. For instance, he submits that if the seawall failed, any failure of the Bridge would be unlikely to be a prime factor affecting safety. The carriageway would likely be impassable, regardless of a bridge collapsing on it. Similarly, in a significant seismic event, many buildings on and around Jervois Quay would likely be damaged, so the debris on the road would limit vehicle access regardless. He submits that the Bridge would not be the "weakest link", in that its collapse is not likely to be the sole cause of blockage of the arterial route provided through Jervois Quay, although it is a designated emergency route.

[193] Dr Zamani, however, points out that the Council's Emergency Management team's view was that if the Bridge posed any risk to the emergency management response, instead of attending more urgent or life-saving matters, the Council's team would need to be mobilised to remove the Bridge as an obstacle before addressing those urgent risks. Therefore, the preferred approach was to deal with this risk before a disaster, rather than immediately after. Dr Zamani says this advice aligns with Kestrel's initial advice to remove the risk to the priority route completely, as the consequences of not doing so could be significant.

[194] The general debate on whether the Council is too conservative in its approach to seismic assessment and risk is a wider issue and unsuitable for challenge by way of judicial review. This is a complex matter, as illustrated by the fact that Mr Smith's argument about rising rates was one also deployed by the supports of the demolition of the Bridge. These are matters of policy and properly left to the Council.

Conclusion

[195] To bring the threads together, the Council officers identified and put before the Committee all "reasonably practicable options", both for the Bridge separately and in relation to Capital E. The Committee also had sufficient information to allow it to

identify that those were in fact the reasonably practicable options available. The advantages and disadvantages of the options were summarised in the Agenda Paper and debated by the Committee. Sufficient expert engineering and geotechnical reports were before the Committee to outline the relevant engineering issues. In addition, the councillors had the opportunity to engage in site visits, meetings with experts, and ask questions at the 5 December meeting (including of geotechnical expert, Dr Chin).

[196] The Committee also had the opportunity to delay its decision. The councillors engaged in a robust debate lasting several hours. The Committee decided, first, not to delay the decision, and second, to demolish the Bridge. It was the Committee's responsibility to make those decisions, and it determined at the 5 December meeting that it was the appropriate time to do so. As McGechan J noted in *CRA3 Association Industry Association Inc v Minister of Fisheries*, "[i]n principle, exhaustive information of course is desirable", but "[i]n practice, that happy state is rarely obtainable".[91]

[197] As the Court of Appeal noted in *Thorndon Quay Collective*, a degree of judgement must be exercised by officers in selecting the reasonably practicable options to put before the decision-maker. Some pragmatism is required, and "fanciful options" should be excluded. Council officers are generally required to do the legwork, as well as ensuring the options are accompanied by clear explanations and adequate information when put before the decision-maker. However, not every technical engineering detail must be before the decision-maker. It was not an error to exclude certain options on the basis that they were not reasonably practicable, such as treating the Bridge separately from Capital E by using it only as a foundational support for the Bridge.[92] Reasonably practicable options are context specific. They should be capable of implementation and reasonable in the circumstances. The Council made its decision based on the diversity of views before it, including those gathered in the public consultation.

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91 *CRA3 Association Industry Association Inc v Minister of Fisheries* HC Auckland CP317/99, 24 May 2000 at [60].

92 This had been debated, for instance in relation to Mr Burrell's suggestion that Capital E be filled with sand. However, that option was considered by Aurecon not to be reasonably practicable, due to the amount of sand which would need to be sourced and environmental concerns. It was not pursued further by Mr Burrell, despite an invitation by the Council.

[198] In conclusion, in this case, the Committee had the reasonably practicable options before it, as well as adequate information to enable it to understand the issues and risks involved and the factors it was required to take into account in making the decision. It also considered and rejected the option of delaying the decision to allow for the gathering of further information and development of other options.

[199] Turning to the formulation of the Trust's grounds of review, I conclude that:

(a) The Committee did not fail to identify and assess all reasonably practicable options in the circumstances.

(b) The Committee made no mistake of law in relying on reports categorising the Bridge as IL3. The Committee was aware of the debate on the issue and had been adequately informed on it. The importance level of the Bridge was a matter of professional opinion, on which experts differed, and the Council was aware of this.

(c) Nor did the Committee make any mistake of fact in relation to the importance level of the Bridge. The Committee relied on expert evidence which supported the IL3 categorisation and the relevant step change behaviour. It was aware of the debate on the importance level and its implications.

(d) The public consultation undertaken by the Committee met the statutory requirements under the LGA.

[200] Accordingly, I find that none of the Trust's grounds of review are made out in the circumstances.

[201] The application for judicial review is declined.

Costs

[202] At the end of the hearing both parties indicated that it was appropriate that costs on a 2B basis should be awarded to follow the event. However, the Trust

subsequently indicated that it reserved its position on costs and sought to make submissions following the release of the judgment. Costs are therefore reserved. Any memorandum seeking costs should be filed on or before 10 days following the date of this judgment, any response within a further 10 days, and any reply to that within a further five days.

Grice J

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