

5 December 2011

Mark Zarifeh

E-mail Only

mark.zarifeh@royalcommission.govt.nz

192 MADRAS STREET

Following our discussion, I **attach** copies of correspondence and reports from my file for 192 Madras Street.

I think that the letters and reports will portray something of the frustration that we encountered in trying to have the Council order demolition of the building, that our client's two engineers considered was critically dangerous.

The building apparently collapsed in the 22 February earthquake, with debris flying over the top of the container barriers into Madras Street. Fortunately, no-one was injured or killed by the collapsing building.

I mentioned to you one of Mr John Hare's comments, and that comment is contained in the final paragraph on page 3 of his report dated 15 February 2011. The sentence commencing "This assumes that,".

At the meeting on 17 February between Chris Kerr, Brent Pizzey and one other officer from the Council, my client John Phillips, and another client of mine, Richard Peebles, I made the comment that I considered that the threshold that the Council was imposing for issue of section 129 warrants was unnecessarily high. I commented that if 100 people had died in the earthquake (referring to the September earthquake) the Council would be taking a very different view of ordering demolition of buildings, and would be ordering demolition of many buildings throughout the city. I suggested to the Council that the safety of people should be the paramount consideration.

I am more than happy to discuss issues relating to 192 Madras Street, and you might also be interested in discussing with me issues relating to Manchester Courts, as I also acted for the owners of Manchester Courts in relation to the issuing of a warrant by the Council pursuant to section 129 of the Building Act for demolition of that building.

Regards.



J E Leggat
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James Leggat

From: Kerr, Chris [Chris.Kerr@ccc.govt.nz]
Sent: Friday, 18 February 2011 11:46 a.m.
To: James Leggat
Cc: Pizzey, Brent
Subject: Update on 192 Madras Street

Hi James - would you mind passing this on to John and Richard please.

Opus Engineering have reviewed the written engineering reports and made initial contact with Warren Lewis and John Hare. As John is on leave today they will not be able to provide a final report back to us until later Monday so it is probably realistic to expect that we will be able to get back together on Tuesday to update progress and discuss the way forward.

I have specifically requested Opus to ensure that the report that comes back to us covers off all the different engineering views and provides a single agreed piece of advice. I have also indicated that if they cannot reach agreement I will meet with them to facilitate the outcome.

Regards, Chris

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Christchurch City Council
<http://www.ccc.govt.nz>



17 February 2011

Acting Unit Manager
EQ Building Services Unit
Christchurch City Council
Christchurch

E-mail Only:
chris.kerr@ccc.govt.nz

Attention: Chris Kerr

NURSE MAUDE BUILDING – 192 MADRAS STREET

1. Thank you for meeting with us this morning. We discussed a number of matters in relation to the building, and it was agreed that you would ask Opus to contact Warren Lewis of Lewis & Barrow Limited for discussions in relation to the building. We think that it would also be useful for Opus to contact Warwick Weber of Gridline, an engineer who has also prepared a report for the building and has inspected the building. We provided you with copies of all of our client's engineers' reports, and you will provide them to Opus, and you will discuss with Opus if its report and conclusions contained in the reports can be adjusted or modified.
2. You acknowledged that the Holmes Consulting Group report was largely commissioned for the purpose of heritage considerations in the event of an application for resource consent for demolition. You are relying on the Opus report in relation to the request for issue of a section 129 warrant. You confirmed that any resource consent application for demolition of this building would be processed on a notified basis. Notwithstanding that there have been other examples of demolition of heritage classified buildings on a non-notified basis, the Council would not proceed on this basis in relation to 192 Madras Street.
3. We expressed our disappointment that the Council CEO will not issue a section 129 warrant at this stage. We noted that in our view, this building satisfies the threshold requirements for the Council in issuing a warrant. We noted that the Council's actions in relation to Manchester Courts were fully vindicated in the High Court.
4. We confirm that, provided that the Council and Opus progress the matter with urgency (we would expect an update on the Council's position by 5.00 p.m. tomorrow, 18 February) and failing any further significant deterioration of the building, our client will agree not to commence demolition without advising the Council of its intention to demolish, and inviting the Council to discuss the matter further. We will reassess that position if we have not heard from the Council by 5.00 p.m. tomorrow.

Yours faithfully
WHITE FOX & JONES

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Partner
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James Leggat

From: Peters, Fiona [Fiona.Peters@ccc.govt.nz]
Sent: Wednesday, 16 February 2011 3:23 p.m.
To: James Leggat
Cc: Kerr, Chris; Pizzey, Brent; McCarthy, Steve
Subject: Condition of Nurse Maude Building: 192 Madras Street
Attachments: Letter to White Fox Jones re 192 Madras St.pdf; ATT137403.txt

SENT ON BEHALF OF CHRIS KERR - ACTING EQ BUILDING SERVICES UNIT MANAGER

Dear Mr Leggat,

Please find attached our response to your letters dated 7th & 11th February 2011, as well as reports from Holmes Consulting Group and Opus respectively.

Kind regards

Fiona Peters

Secretary
Legal Services Unit

DDI 03 941-8962
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Email fiona.peters@ccc.govt.nz
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16 February 2011

Our Ref No:LEX9759

Mr J.E. Leggat
White Fox & Jones
PO Box 1353
CHRISTCHURCH 8140

BY EMAIL

Dear Mr Leggat

CONDITION OF NURSE MAUDE BUILDING: 192 MADRAS STREET

I refer to your letters dated 7th and 11th February 2011 for the attention of Steve McCarthy.

I am the Council officer now managing matters concerning this building.

The Council has not "assumed responsibility" for ensuring the safety of people and property. The Council has always been, and still is, diligently exercising its statutory responsibilities. Your client must also comply with his legal duties.

We appreciated you again bringing your client's safety concerns to the attention of the Council. We have given those concerns immediate attention. As a result, the Council has made the following changes to measures to protect people and property around the building:

- (a) The barricades have been extended to 12 metres from the building on Madras Street, as recommended in the report attached to your letter of 7th February.
- (b) The Council served notice on the Polytech limiting access to the neighbouring building.

The Council also commissioned new expert assessments of the risk posed by the building and of its remaining heritage values. Those reports, by Opus dated 15th February and Holmes Consulting Group dated 15th February, are attached.

The Opus report concludes that the building is not in imminent risk of collapse, but some aspects of the building pose a high risk of collapse and that all external areas around the building are unsafe for public access.

As a result of the Opus Report, the Chief Executive of the Council has decided that there is no basis to exercise section 129 Building Act 2004 power to require demolition of the building, and the Council has further limited public access around the building and increased the areas around the building from which the public are excluded.

With regard to your client's intended unlawful demolition of the building and reliance on section 341 of the Resource Management Act 1991 as a defence to prosecution, the information in the Opus report, coupled with the changes made by the Council to measures to protect people and property around the building, render demolition by your client unreasonable and unnecessary for the purposes of saving or protecting life or health, or

preventing serious damage to property, or avoiding an actual or likely adverse effect on the environment.

The Holmes report expresses the opinion that strength can be restored to the façade of the building, but that temporary shoring needs to be installed as soon as possible.

As a result, the Council must now serve notice under section 124 of the Building Act 2004 requiring work to shore up the Madras Street façade. We will serve that notice immediately. If the building owner does not act in accordance with the Notice, the Council will undertake the necessary work.

The Council is also investigating the use of containers as a barrier on the Madras Street façade so that the area of Madras Street from which the public are excluded can be reduced.

The Council's heritage assessment, in reliance on the Holmes Report, is that the building retains significant heritage value but that the costs of repair have increased. The resource consent process under the RMA is the avenue by which the appropriateness of demolition must be assessed.

Your letter of 11th February 2011 states that your client intends to unlawfully demolish the building if the Council does not issue a section 129 Building Act notice by 18th February. As you have placed the Council on notice that your client intends to breach the RMA by demolishing a protected heritage building, the Council has little option but to urgently apply to the Environment Court for an enforcement order, and interim enforcement order, preventing that breach of the RMA. Moreover, the Council will enforce any use of the road that does not have traffic management approval.

We would prefer not having to expend time and money on those enforcement proceedings. Please confirm an undertaking from your client by midday on Thursday 17th February that unlawful demolition will not be commenced. In the absence of that undertaking, the Council may file enforcement proceedings.

I would appreciate an urgent meeting with you to discuss matters. Please call me as soon as possible.

Yours faithfully



Chris Kerr
Acting Unit Manager
EQ Building Services Unit

Encl



REPORT

CCC Heritage Reviews

192 Madras Street

PREPARED FOR

Christchurch City Council

15/2/11

Introduction

Holmes Consulting Group has been engaged by Christchurch City Council Heritage to review the further damage to the Nurse Maude building at 192 Madras Street following the Boxing Day earthquake.

The purpose of our review is to comment on the further damage that may have occurred to the building since our initial report of 27 September 2010.

The Boxing Day aftershock measured 4.9 on the Richter Scale and was centred close to the CBD. By contrast to the earlier events, it produced a sharp east-west shaking, predominantly in the short period range (compared to a longer period north-south action from the September 4 event). Although the magnitude was considerably less than the September 4 earthquake, the lack of attenuation resulting from the close proximity caused considerable damage to low-rise unreinforced masonry buildings, which are vulnerable to high accelerations.

The building owner has not made either the interior of the building or the general site area available for view, citing safety concerns. Consequently this review has comprised a photographic survey from the cordon perimeter, and comparison with previous records.

Scope of Work

The scope of work for this project included the following:-

1. Revisit the building and photograph the visible damage.
2. Compare to prior observations.
3. Report on our findings and recommendations.

Christchurch

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Limitations

Findings presented as a part of this project are for the sole use of the Christchurch City Council in its evaluation of the subject property. The findings are not intended for use by other parties, and may not contain sufficient information for the purposes of other parties or other uses.

Our inspections have been visual only and neither calculations nor other analyses have been performed. Our inspections have been restricted to structural aspects only. Waterproofing elements, electrical and mechanical equipment, service connections, water supplies and sanitary fittings have not been inspected or reviewed, and secondary elements such as windows and fittings have not generally been reviewed. Our professional services are performed using a degree of care and skill normally exercised, under similar circumstances, by reputable consultants practicing in this field at this time. No other warranty, expressed or implied, is made as to the professional advice presented in this report.

Building Evaluation

The following are our observations and our conclusions in respect of the further damage that has occurred.

Previous review

Our report of 27 September concluded that the building was extensively damaged, but that most of the damage was light apart from the west facade on Madras Street. It was our opinion that the building was readily repairable, albeit that the overall economics of repair versus replacement needed to be considered. We did not concur with the cost estimates presented for the repair.

Subsequent damage

Since the September 4 earthquake, the building has been cordoned off, and has remained empty. No shoring has been implemented. More recently, the access to the south (to the adjacent student accommodation) has been cut off.

A number of pictures are appended, contrasting the observations of 15 February with the prior records from 6 September and 15 November.

Since the first earthquake and immediate aftershocks, there has been a progressive deterioration of the facade and the north wall at the parapets either side of the facade. This is apparent from Figures 1,2&3, which are essentially the same view of the upper part of the west facade on those three separate dates. There has been some further dropping of sill bricks from the first floor side windows, and the cornice and lettering of the parapet.



Figures 9 and 10 show the west facade on February 14. It is notable that there is now an out-of-plane offset in the cracks that was not previously evident and is difficult to detect from directly in front. This is reflective of the sharp east-west motion of the Boxing Day earthquake. This offset appeared to be in the region of 20mm in the worst case, but it is not discernable whether this is over the full width of the wall or only the outer course.

In Figure 8, it can be seen that although there have been no further bricks dropped from the north wall parapet, there is a section of veneer that has separated from the inner wythe and is in imminent danger of falling – this could be removed to make the area safe. It appears that there is now a similar trend in movement at the south face, with some further cracking, but no out-of-plane movement was noted.

In the prior report, it was noted that the heaviest apparent damage away from the west facade and adjacent side walls was in the east wall of the lightwell adjacent to the first floor window. It appeared that the return shear from the heavy penthouse had kicked out the back of the wall. Figure 7 shows this area – although the quality of the photographs is not great, there appeared to be little further movement in this crack.

Conclusions

Continued seismic activity has caused a continuation of the movement and subsequent deterioration in the building. As previously, this is concentrated in the west facade and adjacent sections of side wall. Although the interior walls were not able to be viewed, the lack of significant further movement at the lightwell suggests that the additional damage internally will not be as pronounced as for the west facade.

It is noted however that there was water damage previously inside the building and this will have deteriorated further also.

Although it is possible that the building could still be saved, there is no doubt that the cost will have increased due to the additional movement and lack of protective measures implemented.

Subsequent work done at other sites around the city that have suffered similar orders of damage suggests that there are suitable methods available to restore strength to the facade, but it is considered that temporary shoring would need to be installed as soon as possible, as elements of the facade are approaching failure. This assumes that, from a heritage perspective, repair insitu is the preferred option and that the residual movement will be locked in, preserving in effect the earthquake as part of the heritage fabric of the building.



Recommendations

We recommend that if the facade is to be restored, it must be shored as soon as possible. It is still considered that the building could be saved, but costs would need to be reviewed. Nevertheless, our estimation of the cost of repair is that it would not be significantly more than the cost of full replacement.

Report Prepared by:-

John Hare
DIRECTOR

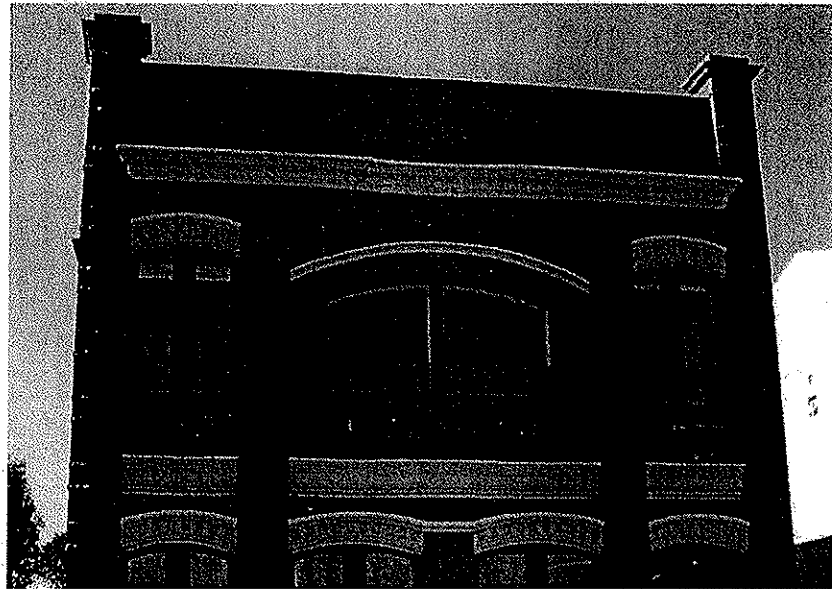


Figure 1: 6 September 2010



Figure 2: 15 November 2010

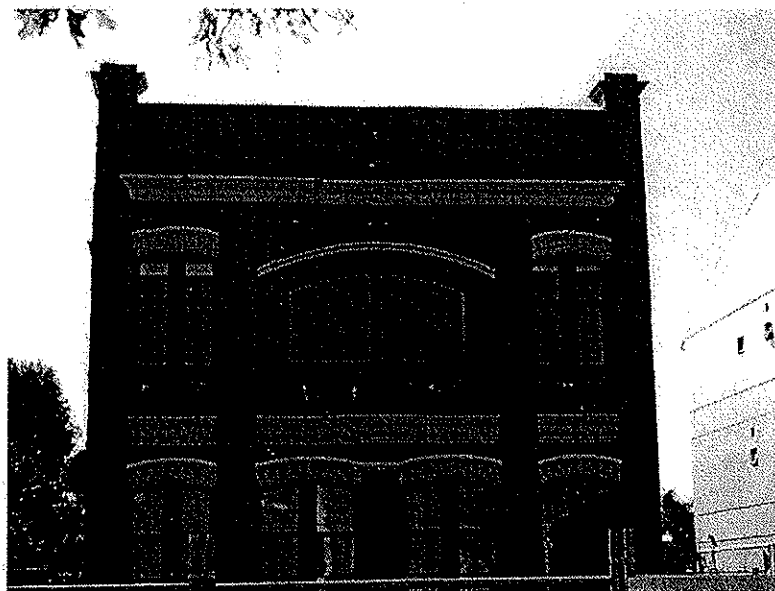


Figure 3: 15 February 2011



Figure 4: Comparison of south top corner, 6Sept vs 15 Feb

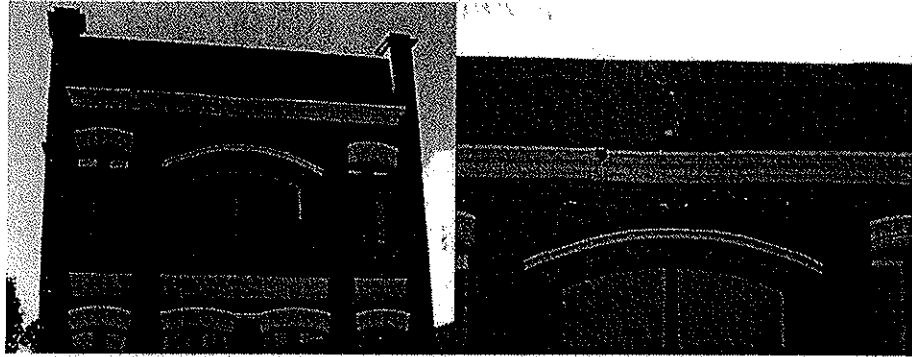


Figure 5: comparison of central lintel, 6 Sept vs 15 Feb



Figure 6: Comparison of south first floor lintel, 6 Sept vs 15 Feb

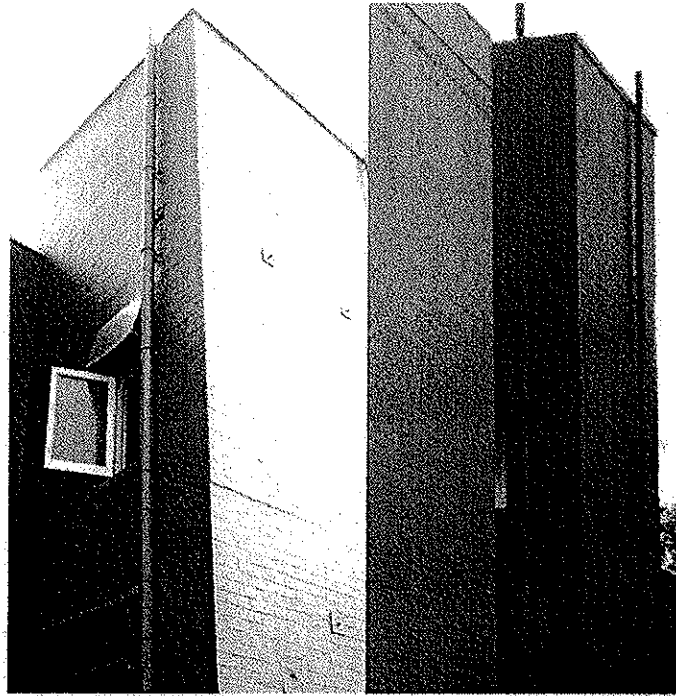


Figure 7: South lightwell, 6 Sept to 15 Feb



Figure 8: North wall 15 Nov to 15 Feb - note out-of-plane offset of veneer at upper level



Figure 9: West Facade 15 Feb - note out-of-plane offset of near lintel

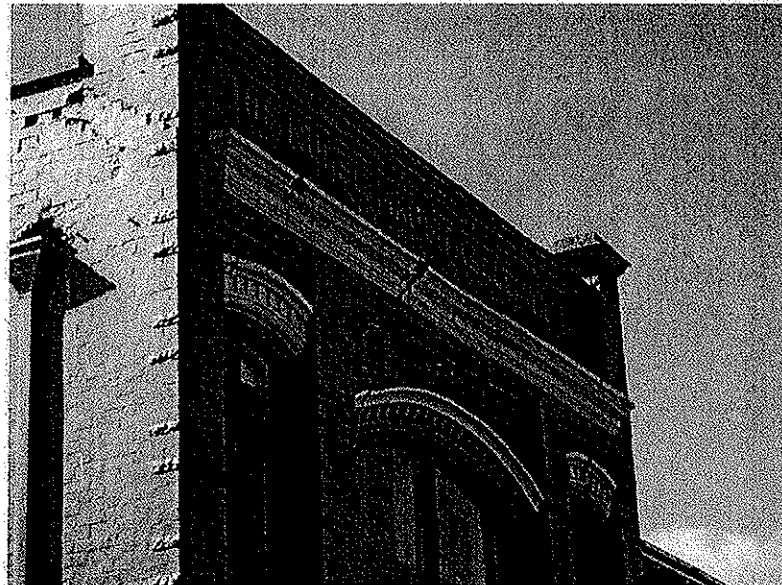


Figure 10: West facade 15 Feb - not out-of-plane offset of central lintel

15 February 2011

Neville Higgs
Engineering Support Coordinator
Christchurch City Council
PO Box 73014
Christchurch



6-QUCC1.00

Dear Neville

192 Madras Street - Former Nurse Maude District Nursing Building Review of Structural Damage Reports

Opus International Consultants Ltd has been engaged by Christchurch City Council (CCC) to review the structural reports prepared for the former Nurse Maude District Nursing Building at 192 Madras. Structural reports have been prepared by Lewis & Barrow, Christchurch City Council, and Powell Fenwick addressing the earthquake damage.

The Lewis & Barrow report is a one page report, dated 4 February, documenting their conclusions from an inspection of the building on 2 February. Their report states that a "...significant aftershock would have the potential to collapse this building. Even very strong winds could cause a collapse". They have also concluded that the building is not safe to approach, nor work on. Therefore, it is not possible to secure this building and demolition is the only safe option.

The CCC report notes that there is significant damage to the Madras Street façade and recommended that barriers be installed on Madras Street

The Powell Fenwick report, which is more detailed, predates the Boxing Day earthquake. This report notes extensive damage, and whilst it identifies the Madras Street façade as being at risk of collapse, it does not recommend demolition of the building.

Limitations

This report is based on an inspection of the building, which was carried out by the undersigned on 14 February 2011. Our inspection was limited to the exterior of the building, with only partial observation of the east wall possible, as access to this area, and the interior of the building could not be gained at the time of our inspection. Our report is limited to the structural damage resulting from the recent earthquake series.

Our inspections have been visual and non-intrusive. Neither calculations nor other analyses have been performed. Our professional services are performed using a degree of care and skill normally exercised, under similar circumstances, by reputable consultants practicing in this field at this time.

This report is prepared for CCC to assist in their evaluation of the risks posed by this building. It is not intended for any other party or purpose.

Building Description

The former Nurse Maude District Nursing Building, located at 192 Madras, was built in 1919. The building is listed as a Group 3 heritage building in the CCC City Plan and appears to have no classification with the New Zealand Historic Places Trust.

The building is a two storey structure with a single storey wing on the eastern end.

The external walls consist of unreinforced cavity brick construction (i.e. two brick walls with a cavity between them). It appears that the external veneer is one wythe thick, and the structural inner wall is also one whythe thick from 1st floor up to the parapet. We would assume that the inner structural walls are two whythes thick between ground and 1st floor.

The exterior masonry appears to be in poor condition, with negligible mortar strength, and poor connection between the external veneer and inner structural walls.

We understand that some seismic strengthening of the building was installed in 1998¹. This has appears to have focused on tying in the north, south and east walls to the diaphragm at floor and ceiling level, but there is no evidence that the west wall (Madras Street façade) has been similarly treated.

Site Observations

Madras Street Façade – West Wall

The façade as sustained severe damage (refer appended photographs). This wall appears to have rotated outwards towards Madras Street from 1st floor level. The lateral in-plane loads on this wall appear to be resisted by the relatively flexible piers, and the resulting displacements of these piers have forced the upper level of the north and south wall outwards, allowing the window arches to spread and become unstable.

The façade veneer is poorly secured to the structural wall behind and large blocks of this veneer are unstable and at risk of collapse in a moderate earthquake. The cornice and spandrel above the main 1st floor arched window is of particular concern because of the size of this block of masonry and the lack of any tenable load path under face loading.

Diagonal shear cracks extend from the intersection between the top west corner of the side walls and the masonry columns at the ends of the façade indicating probable rocking of the parapet block out of plane.

South Wall

The south wall has suffered moderate to severe damage to the veneer, and we assume this mirrors the damage to the structural wall behind. As noted above, the west end of this wall has rotated outwards at the upper level due to loading from the Madras Street façade.

Diagonal shear cracking was observed in a spandrel in this wall at 1st floor level. Shear failure is also occurring through the base of a 1st floor window pier, with horizontal out-of-plane displacement of approximately 20mm observed in this wall.

¹ Dizhur, Dmytro; Ismail, Najif; Knox, Charlotte et al. (2010), "Performance of Unreinforced and Retrofitted Masonry Buildings During the 2010 Darfiel Earthquake", New Zealand Society for Earthquake Engineering Bulletin, Vol 43, No. 4, December 2010.

Distress and the initial stages of pull through failure of a number of the diaphragm ties was observed along this wall, particularly at parapet level.

North Wall

The north wall parapet has partially collapsed, with approximately three courses over a three metre length falling outwards.

Again, distress and the initial stages of pull through failure of some of the diaphragm ties was observed along this wall.

This wall has generally sustained moderate damage and is in the best condition of the four external walls.

East Wall

The east wall parapet has partially collapsed at the upper level and there is cracking in the parapet at the lower level.

Conclusions

The building has sustained severe damage as result of the recent earthquakes, consequently, the strength of the building is severely degraded. We conclude that:

1. Whilst the strength of the building is severely degraded, the recent strengthening, which included tying floor and ceiling elements to the north, east and south walls, has provided the building with some toughness. Hence, we consider that the whole building is not in imminent risk of collapse.
2. Some elements of the building are severely damaged, and are either not well connected to the main structure, or no longer have a reliable load path to resist seismic forces. These elements include:
 - the Madras Street façade;
 - the south parapet;
 - the southeast corner of the south wall;
 - the north and east wall parapets.

These elements present a high risk of collapse in a less than moderate earthquake.

3. Due to the collapse risk of the elements identified in (2) above, all external areas around the building are unsafe for public access. However, we consider that repairs could be safely undertaken.
4. In our opinion, the Madras Street façade and part of the south wall are too severely damaged to repair. If the building were to be salvaged, then these walls would need to be deconstructed and rebuilt. Significant temporary propping and shoring of the remaining walls would be required to provide support while the north and south walls were rebuilt. Additionally, substantial repairs and strengthening would be required for the remainder of the building.

Therefore, while repair would be technically feasible, it is our view that the heritage value of the building would be significantly affected by this work and, the cost of repair and strengthening would be not be commercially viable.

5. Demolition of the building is the most practicable and commercially viable solution.

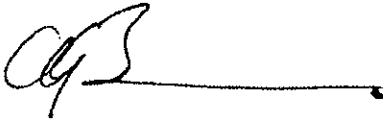
Recommendations

We recommend that:

1. The barriers around the building remain in place to protect public safety.
2. The building be demolished, as it is our opinion that repair will not be commercially viable.
3. If the decision is taken to demolish the building, then demolition should commence as soon as practicable to remove the public safety risk.

Please contact the undersigned if you wish to discuss any aspect of this report.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'AB', followed by a horizontal line extending to the right.

Andrew Brown
Senior Civil/Structural Engineer
CPEng 1006712

James Leggat

From: James Leggat
Sent: Tuesday, 15 February 2011 4:42 p.m.
To: 'steve.mccarthy@ccc.govt.nz'
Cc: 'John Phillips'
Subject: 192 Madras Street
Steve

You asked for some information. I am advised as follows;

1. Demolition company can start this Thursday.
2. Madras Street can be back to 2 lanes by Saturday.
3. Week to 10 days to demolish.
4. Archaeological site noted.
5. I think that new build cost was \$1.5million, and as at October Warren Lewis estimated \$2.5million to refurbish existing. He advises that it is no longer possible to refurbish due to damage.

Let me know if you have any further questions.

Regards.

James Leggat
Partner
jel@whitefox.co.nz
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James Leggat

From: James Leggat
Sent: Tuesday, 15 February 2011 3:35 p.m.
To: 'John Phillips'
Cc: Richard Peebles
Subject: 192 Madras Street
John

I left a message for you to call. I spoke to Steve McCarthy, and he indicated very strongly that the CEO will issue a section 129 Warrant to demolish. OPUS is the engineering company that is assessing. John Hare might consider OPUS' report but has been sidelined.

Steve asked for various info - see below my response that I will send to him when I have spoken to you.

Regards.

James

Steve

You asked for some information;

1. Demolition company can start this Thursday.
2. Madras Street can be back to 2 lanes by Saturday.
3. Week to 10 days to demolish.
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5. I think that new build cost was \$1.5million, and as at October Warren Lewis estimated \$2.5million to refurbish existing. He advises that it is no longer possible to refurbish due to damage.

Let me know if you have any further questions.

Regards.

James Leggat
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22 Moorhouse Avenue Christchurch

11 February 2011



Christchurch City Council
P O Box 73 013
Christchurch 8154

E-mail:
steve.mccarthy@ccc.govt.nz

Attention: Steve McCarthy

Dear Sir

192 MADRAS STREET

Thank you for your letter dated 11 February.

1. Our client considers that the building is dangerously unstable and is deteriorating, and as recorded in our letter dated 7 February, considers that it has no choice but to commence demolition. The Council has advised that it will seek enforcement action preventing demolition. We record that as a result of the Council's position, the Council has assumed responsibility for ensuring public safety and protection of neighbouring properties.
2. We have considered the provisions of section 341 of the Resource Management Act 1991, and consider that section 341 would provide a defence to our client for a prosecution for breach of the Resource Management Act.
3. We reject your suggestion that "adequate time is available to apply for and be granted a resource consent in this case". As noted in our letter dated 7 February 2011, we understand that any resource consent application for the demolition of this building would require notification.
4. Provided that this matter is progressed with urgency by the Christchurch City Council, and that a section 129 Warrant is issued within a short timeframe, and subject to further deterioration to the building, our client will agree not to commence demolition without first advising the Council of its intention to demolish, and inviting the Council to discuss the matter further. We consider that a timeframe for issue of the section 129 Warrant on or before midday, Friday 18 February 2011, to be appropriate.

Yours faithfully
WHITE FOX & JONES



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James Leggat

From: Smith, Leanne [Leanne.Smith@ccc.govt.nz]
Sent: Friday, 11 February 2011 11:43 a.m.
To: James Leggat
Subject: RE: 192 Madras Street
Attachments: 192 Madras - Response - Demolition of Nurse Maude Building.pdf; ATT63367.txt

Hi James,

Please find attached a copy of the response to your 7 February letter. I have also put this in the post today.

Kind regards,

Leanne Smith

Personal Assistant to the EPA Unit Manager
Environmental Policy & Approvals Unit

DDI 03 941 8428

Fax 03 941 8788

Web www.ccc.govt.nz

Christchurch City Council

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PO Box 73013, Christchurch, 8154



Please consider the environment before printing this email

From: James Leggat [mailto:jel@whitefox.co.nz]
Sent: Thursday, 10 February 2011 3:40 pm
To: McCarthy, Steve
Subject: 192 Madras Street

Hi Steve

Can you please confirm that you received my email of 7 February.

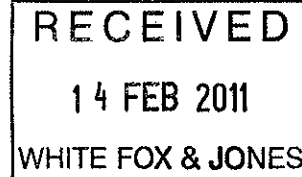
Regards.

James Leggat

The information contained in this message is confidential and may be legally privileged. If the reader of this message is not the intended recipient you are hereby notified that any use, dissemination or reproduction of this message is prohibited. If you have received this message in error please notify us immediately and return the original message to us.

11 February 2011

Mr J.E. Leggat
White Fox & Jones
PO Box 1353
Christchurch 8140



Dear Mr Leggat

Demolition of Nurse Maude Building - 192 Madras Street

I refer to your letter dated 7th February 2011.

Your letter states that the building is an immediate danger to the safety of people and property, including to a neighbouring occupied building. Your letter further states that your client is now going to demolish the building without resource consent and you seek discussions regarding site management and traffic management.

Council officers are currently re-evaluating the condition of the building in relation to the CEO's discretion under section 129 of the Building Act. If cordons must be widened or other practical steps taken so as to mitigate danger, then this will be done in the interim. This action does not however limit the building owner's responsibility to ensure that the state of 192 Madras Street does not affect public safety or the neighbouring properties. If the building remains an immediate danger, Council officers will be recommending that the CEO consider acting under section 129 of the Building Act, at a cost to the owner of 192 Madras Street.

If as a result of this new information the CEO decides that demolition or some other action is necessary under section 129 of the Building Act, then the Council will issue a section 129 notice requiring that action to be taken.

If as a result of these further investigations Council officers are satisfied that there is no immediate danger and that safety measures are appropriate, the building cannot lawfully be demolished without resource consent.

Your letter rightly notes that section 341 of the Resource Management Act 1991 (RMA) provides a limited defence to a prosecution for breach of the RMA. It does not provide lawful authority to act. Given their national, regional and district importance, it is highly likely that the Council will prosecute unlawful demolition of a heritage building.

I have considerable doubt that your client could prove the elements of a section 341 defence. I am informed that the High Court has held that the timescale, and the ability to have applied for resource consent, are relevant. Demolition without resource consent is not "necessary" if adequate time was available to apply for and be granted resource consent. That is the case here.

I will ensure that you are informed the result of the current engineering investigations as to the adequacy of the cordons, the danger posed by the building and recommendations to the CEO. I expect that Council officers will be making those recommendations early next week. It is likely that Council officers will be recommending to the CEO that he act under section 129 of the Building Act.

If Council officers recommend demolition or some other action to the CEO, there is likely to be a Council meeting to inform the Council of that situation before the CEO makes his decision. That meeting may take a further week to convene.

In the meantime, as you have placed the Council on notice that your client intends to breach the RMA by demolishing a protected heritage building, the Council has little option but to urgently apply to the Environment Court for an enforcement order, and interim enforcement order, preventing that breach of the RMA. Moreover, the Council will enforce any use of the road that does not have traffic management approval.

I would appreciate an urgent reply from you in which your client provides an undertaking that he will not start demolition. In the absence of that undertaking, the Council is likely to be seeking enforcement orders pending its current reconsideration of the danger posed by the building.

Chris Kerr is the Council manager looking after this matter. Please do not hesitate to contact him if you have any queries.

Yours sincerely



Steve McCarthy
Environmental Policy & Approvals Manager

7 February 2011

Christchurch City Council
P O Box 237
Christchurch

E-mail: steve.mccarthy@ccc.govt.nz

Attention: Steve McCarthy

Dear Sir

192 MADRAS STREET

We refer to correspondence, discussions and meetings late last year in relation to the earthquake damaged building at 192 Madras Street.

Our client's position was clearly set out in letters dated 7 October 2010, 21 October 2010, and during various meetings and discussions. Our client's engineers were at that time adamant that the building was seriously damaged, deteriorating, and was an immediate danger to the safety of people. The Council refused to issue a section 129 warrant for demolition of the building.

Since that time the building has deteriorated further, and continues to deteriorate. We expressed the concern in our letters to the Council, and during our meetings and discussions, that the building could collapse at any time without warning. The implications of collapse would be disastrous for the Council. According to the advice of our client's engineers, the forces that would operate at the point of collapse would be "unlimited".

The aftershocks of 26 December and [20 January] have accelerated the deterioration. A copy of the latest opinion from Lewis and Barrow, engineers, is **attached** for your information.

There has been further fencing erected around the building. That fencing does not, in the opinion of Lewis and Barrow Limited, extend far enough into Madras Street, nor does it protect the adjacent Polytechnic accommodation building. We are aware, and the Council will also be aware, that fencing of this type does not prevent entry and occupation by unauthorised persons. The building continues to be an immediate threat to property and to the safety of people.

The situation remains critical and we have investigated alternatives to a section 129 warrant following the Council's refusal to issue a Warrant.

1. Resource Consent – our client has been working with the planning department at the Council. We understand that any resource consent application for the demolition of a heritage building requires notification. That process will leave the building in an unstable and unsafe state for a period estimated to be 18 months to two years. Our client is simply not able to accept that position.
2. Demolition without consent:
 - (a) In terms of clause (ke) of Schedule One to the Building Act 2004 (as inserted by the Canterbury Earthquake (Building Act) Order 2010), the demolition of all or part of a detached building less than three storeys high can be undertaken without building consent.

3955011\LP6-JEL:JEL

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- (b) Demolition of a heritage classified building requires a resource consent. However section 341 of the Resource Management Act 1991 provides a defence to prosecution for an offence contravening section 9 of the Resource Management Act if the defendant proves that the three requirements contained in section 341(2)(a) are satisfied.
- (c) We have considered the requirements contained in sections 341(2)(a)(i), (ii) and (iii), and on the basis of the reports by our client's engineers as to the damage to the building and the continuing deterioration to the condition of the building, the requirements contained in the sections can be proved.

Our client has been left with no option, due to the dangerous state and continuing deterioration of the building, and the failure by the Council to act on this matter, but to immediately demolish the building. We accordingly put the Council on notice that our client will now make arrangements to do so. Please contact the writer to initiate discussions relating to site management and traffic control during demolition.

Yours faithfully
WHITE FOX & JONES



J E Leggat
Partner
Email: jel@whitefox.co.nz
Fax: (03) 353 0651
Direct Dial: (03) 353 0661

Warren R. Lewis BE (Hons) MIPENZ CPEng. ANZIM
Stephen W. Barrow BE (Hons) MIPENZ



LEWIS & BARROW LTD
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4 February, 2011

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John Phillips
johnp@powerboatcentre.co.nz

File No. 18476

Dear Sir

Re: Earthquake Damage to Building at 192 Madras Street

Further to instructions, I reinspected the above building on the 2nd of February and took the attached photos. These show that the Boxing Day aftershock further damaged the building as follows:

1. The rear top storey room has lost 30% of its parapet and the east wall has moved towards the east. (See the unpainted portion behind the downpipe).
2. The north wall parapet has lost 4 layers of bricks. (See fallen bricks inside the gate).
3. The zig zag and cross shaped cracks on each wall have opened up.
4. The frontage has deteriorated. (Cill bricks have fallen out and cracks have widened).

Due to the extensive damage to all walls, this building will continue to deteriorate simply due to time. Any future significant aftershock would have the potential to collapse this building. Even very strong winds could cause a collapse.

The building is not safe to approach. People should be kept at least 12m clear of the building.

As the building is not safe to approach, let alone work on, it is not possible to secure this building. The only safe option is to demolish the building.

The present street fencing still allows people to walk behind the fencing and up to the building. The fencing is also too close to the building to protect the public in Madras Street.

Yours faithfully,

Warren R Lewis
Engineer

Enc.

24 November 2010



E-MAILED

John Phillips

By E-mail Only: johnp@powerboatcentre.co.nz

Dear John

192 MADRAS STREET

I have spoken to Peter Harrow and to Steve McCarthy.

Peter Harrow's input was very disappointing. He did speak to Warren on 15 November, but says that his comment was only in relation to the method of strengthening and the cost of strengthening, and that he did not discuss with Warren if the building is stable or unstable, predictable or not. He has no view or comment on that point, merely on the method of strengthening. He said that there are two engineers with differing views and a third would probably also have a different view re safety. When I asked what the purpose of his involvement was at the meeting in the rain, he said to provide advice to Steve McCarthy. When asked what advice he has given to Steve McCarthy, he was unable to provide a response. He has had no discussions with John Hare. He mentioned that there comes a time when the Council secures the building and places a charge against the title.

I spoke to Steve McCarthy on Monday morning. His comments are as follows:

1. There is no chance that the Council will issue a 129 Warrant. That is not surprising in light of John Hare's report.
2. His view is that the best course of action is to apply for a resource consent. Consideration on notification and non-notification will be made. He referred to Murray Lapworth's building in Colombo Street that has been pulled down, but when pushed on this point, conceded that that building is a very different building from the Nurse Maude building with regard to notified or non-notified consent. I noted that Fiona had said to you that in light of John Hare's report being unwavering in its view that the building is not an immediate danger to safety, it would be very difficult for the Council to issue a non-notified consent.
3. Steve said that they are very much in the hands of the Heritage people. It is beyond me why the Heritage people have so much power. Heritage people are assessing what is required to support and stabilise the building. I will talk to Warren Lewis about what he thinks is needed to support or secure the building. The line that the Council is running is that they want to have a resource consent application lodged, and in the meantime to secure the building.
4. I made it clear that in our view John Hare is the sticking point. The Council should not have used a heritage-aligned engineer, and should obtain an objective, independent view.

I have had a brief review of the powers under Section 124 of the Building Act. The Council can order work to be carried out on the building to reduce or remove the danger, and in accordance with Sections 330 and 330A of the Reserve Management Act, a resource consent may not be required prior to work being undertaken (I would need to consider this more closely if this becomes an issue).

3955011LP4-JEL:JVA

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I have copied this letter to Richard, and perhaps we can have a discussion. As discussed, I am not charging you any more following the account that you will have received.

Give me a call when you get a chance.

Regards.

Yours faithfully
WHITE FOX & JONES



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James Leggat

From: James Leggat
Sent: Wednesday, 27 October 2010 5:23 p.m.
To: 'John Phillips'; 'warren@lewisandbarrow.co.nz'
Cc: 'Richard Peebles'
Subject: 192 Madras Street

Hi John and Warren

Steve McCarthy returned my call today. I had asked him to respond re our request for a meeting, and re the barriers and re the demand for 129 warrant.

1. 129 warrant first - he says that he has inspected the building and the reports and is comfortable that there is no immediate danger.
2. The "barriers are adequate to protect the public."
3. He is happy to meet with Council engineer and our engineer and owner on Monday after 10 am. Are you both available?

Can you let me know asap - I know that you have a lot of site meetings Warren, but is important that we have a meeting.

The key if we are ever going to get a 129 notice, if Council did come around to Warren's view that the building is an immediate danger, is that people are intruding into the area - do you have any evidence of information? Perhaps could check with service station.

As I have said before, I think Council is mad - they can sort this now by issuing a notice, and avoid danger to people (should be the priority) and disruption for 18 months or so while getting resource consent.

Please come back to me re meeting.

James

27/10/2010

21 October 2010

The Chief Executive
Christchurch City Council
P O Box 237
Christchurch

E-mail: tony.marryatt@ccc.govt.nz

Attention: Tony Marryatt

Dear Sir

192 MADRAS STREET

I refer to Steve McCarthy's telephone message on Thursday 14 October 2010 in which he advised that the Christchurch City Council, through its Chief Executive, will not issue a warrant under section 129 of the Building Act 2004. We have not received this advice in writing.

We are extremely disappointed with the Council's decision, and consider, for the reasons set out in our letter of 7 October 2010, that the Council is fully justified in issuing a section 129 Warrant, and that in view of the state of the building at 192 Madras Street and the close proximity of student accommodation that the decision not to issue the Warrant imposes a significant threat to the safety of the people of Christchurch, and opens the Council to criticism of making decisions for reasons other than the protection of people's safety. The Council, in our client's and its engineer's opinions, runs the very real risk that the building will collapse with the very real possibility of injury or death resulting.

The building is dangerous and is deteriorating. The barriers are inadequate and the adjacent student accommodation is occupied. This in our view is a situation where the Council must exercise its authority to order the demolition of the building to remove the danger. Our client wishes to meet representatives of the Council, and the Council's engineer, on site urgently, to inspect the building and for the Council and its engineers to discuss the state of the building with our client and its engineer.

Mr McCarthy has advised that the Council considers the danger may be controlled by the erection of further safety barriers. We do not agree. Our client's engineer has advised that in order to secure the site to a reasonable level, the shipping containers would need to be moved 2.5 meters to the west (towards the petrol station), the entire building and the driveway to the south of the building must be secured by high barbed wire topped fencing at both ends, and the southern end of the student accommodation building must be evacuated. Notwithstanding barriers that may be erected, there will remain an immediate danger to the safety of people. Tenants of this building have, despite the barriers and red notice and our client's advice, entered the building. We have seen in other parts of the city where barbed wire topped fencing has been erected that some people will still enter restricted areas.

It has been suggested by Mr McCarthy that our client should adjust and extend the barriers, and that our client's engineer should prepare a safety barrier report. The Council has undertaken responsibility for the erection of protective barriers throughout the CBD, and it is the Council and not our client that has responsibility to alter the barriers in line with its recommendation that the barriers be upgraded.

Although not relevant in the Council's consideration of the issue of a section 129 Warrant, the disruption to the City, of Madras Street being reduced to a single line during a resource consent process, will be unappealing to the Council. Councillor Wells was quoted in The Press on 4 October

395501\MLP1-JEL:JEL

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2010 as suggesting that a resource consent process for Manchester Courts may have extended to 18 months. Presumably the same timeframe for resource consent would be possible for this building.

Mr McCarthy suggested in his telephone message, that if a section 129 Warrant was issued for 192 Madras Street, the Council "... *would have to do the same for many, many other buildings.*" He noted that the Madras Street "*situation is not majorly different from 50 or 100 other buildings.*" Whilst we consider this suggestion to be incorrect, we note that the existence of other buildings that may qualify for a section 129 Warrant is irrelevant to the Chief Executive's consideration of the section 129 Warrant in relation to 192 Madras Street. The only consideration must be the immediate danger to the safety of people in relation to this building.

We urge that the Council reconsiders its position in relation to section 129, and in the meantime immediately properly secures the property by moving the containers 2.5 meters to the west of their present position and erecting appropriate security fencing.

Yours faithfully
WHITE FOX & JONES

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14-10

Steve McCarthy

① S129 - no

② 50 50 ~~or~~ 100 other buildings③ ~~Her~~ Reserve Consent - we need to apply④ Heritage team to ~~truncate~~ expedite this.⑤ Talking to ~~contractor~~ Govt - order in Council
to truncate process⑥ Alternative to demolition = further banner.
Work with us on that. etc⑦ "We would have to do for many many other.
50-100 other buildings"

⑧ Spoken to P. Mitchell - structural engineer -

main

sit

mainly

diff

50-100

other

buildings -

7 October 2010

The Acting Chief Executive
Christchurch City Council
P O Box 237
Christchurch.

Attention: P Mitchell

Dear Sir

192 MADRAS STREET

We act for Aqua Enterprises Limited, the owner of the property at 192 Madras Street.

We refer to the Council report dated 6 October 2010 entitled "Exercise of Powers Under Section 129 of the Building Act 2004 (Immediate Danger) and Other Options" and to the Council meeting of 6 October 2010. We also refer to the discussions between the writer and Messrs Mitchell and McCarthy and Ms Chyne following the Council meeting on 6 October.

As discussed following the meeting, we missed the opportunity to provide further information to the Council in relation to 192 Madras Street that we consider brings the property within the scope of section 129 of the Building Act 2004.

We have carefully considered the report, and have compared the assessments of each of the commercial buildings (excluding Ohinetahi Homestead) contained in pages 8 and 9 of the report, and the recommendations also contained in pages 8 and 9 of the report.

We agree with the assessments and the recommendations, and the Council resolution to adopt the recommendations as they relate to the properties at 160 Manchester Street and 461A-469A Colombo Street, but we disagree with the assessment and the recommendation in relation to 192 Madras Street. The assessment should conclude that the building at 192 Madras Street poses an immediate danger and not merely a danger, and that the immediate danger is to the safety of people in terms of section 129 of the Building Act.

Lewis & Barrow Limited, in its report dated 30 September 2010 that was presented to the Council 4 October meeting, concludes on page 4:

- The present situation is most unsafe. If the building collapses in times of heavy traffic there could be loss of life and multiple injuries.
- The tenants of the building to the south should vacate all units that face the 192 Madras Street building.
- The building could collapse **at any time** without warning due to the spreading of the arches and the low strength of the mortar. (emphasis added).

The clear and unequivocal conclusion drawn by Mr Lewis in his report, and as presented by Mr Lewis at the Council meeting on 4 October, is that the building is seriously damaged, and could collapse at any time without warning. A further brief report from Mr Lewis date 6 October 2010 is **attached** reinforcing the severe damage to the building and the deterioration in the building's condition.

FirmData\LP1-JEL.JEL

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Our client and its engineers (three engineers have been contracted) have no doubt that the danger is immediate.

With regard to the requirement of section 129 that the immediate danger be to "the safety of people", we advise the following:

1. The existing barriers to the south of the building are 1 metre high plastic Hirequip barriers, with a gap at one end, the barrier being such that people can easily climb over or through to reach the building.
2. There is a driveway to the south of the building, between the building and the adjoining Polytechnic student accommodation that is regularly used by occupants and visitors of the student accommodation, gaining access past the Hirequip barriers and passing immediately next to the southern wall of the building.
3. The student accommodation itself is within 6 metres of the southern wall of the building. The student accommodation is fully occupied, with no restriction on use.
4. Mr Lewis in his report dated 30 September 2010 notes that a building collapse in times of heavy traffic could cause loss of life and multiple injuries.
5. The Lewis & Barrow Limited report dated 6 October 2010 (referred to above) records in detail the factors that cause immediate danger to the safety of people.

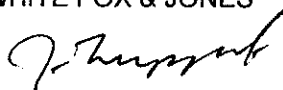
The requirements for the Chief Executive to issue a warrant under section 129 have been satisfied. There is without doubt an immediate danger to the safety of people, as is required by section 129.

The Council's report dated 6 October 2010 referred to two relevant cases, Rua Developments and Thompson. The Court in Rua held that "*the danger is such that it may occasion injury to persons on other property at any time from that point on.*", and that a high degree of certainty is not required, as that might defeat the whole purpose of the provision. The busy arterial route on which the property stood was considered by the Court to be relevant. Thompson focussed on the external conditions that existed – in that case high winds, in this case earthquake aftershocks – and concluded that the issue of the warrant was justified. Both of these decisions support our assertion that a warrant should be issued for the demolition of the building at 192 Madras Street.

As was noted by a submitter in relation to the property at 580 Ferry Road on 4 October, there appears to be a level of complacency that exists due to the fact that there were no fatalities in the earthquake. The submitter suggested that the situation would be very different if there had been, as there could easily have been, many deaths. One death would be too many.

Can you please consider this information in the light of the requirements of section 129 and the recommendation that was made to the Council for the meeting on 6 October, and we would ask that you reconsider the recommendation and prepare an amended recommendation to the Council in relation to 192 Madras Street, recommending that the Council endorse the issue by the Chief Executive of a warrant under section 129 for the demolition of the building.

Yours faithfully
WHITE FOX & JONES



J E Leggat
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cc: Judith Chyne
cc: Steve McCarthy



6 October, 2010

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James Leggett
 Jel@whitefox.co.nz

File No. 18476

Dear James

Re: 192 Madras Street

I received your news that 192 Madras Street is not an immediate danger to people with some surprise for the following reasons.

1. People are not prevented from walking around the severely damaged west front wall or alongside the south wall. The owners locked gate prevents all but the keen from walking near the north and east walls.
2. The building is continuing to deteriorate with each aftershock.
3. The building was an earthquake prone building before the Darfield earthquake and is much more so now.
4. The front facade was only relatively safe while the arches over the windows were an arch slope. These arches have flattened out somewhat with the recent earthquake activity. As these arches flatten the spreading forces increase which could not only cause the failure of the front facade but could also cause the front part of the side walls to collapse. Such a collapse would damage the adjacent buildings.
5. The building has shear cracks on all walls and has very low strength mortar. Hence, the strength of this structure has zero reliable strength to resist wind and seismic loads. It is not possible to calculate how strong such a building is, let alone when it would fail.
6. A design wind exerts a face load of 0.68KPa. This can be compared with the Darfield earthquake which exerted a face load of 1.58KPa and aftershocks exerting up to 0.40KPa. Hence it can be seen that this building is liable to further damage and possibly collapse even from wind loads.
7. Each time there is a strong aftershock, more bricks fall out of the front facade and other areas of brick walls move. I have recorded this by photos on 27/9, 30/9, and 5/10. These can also be compared to the Webber photos to illustrate deterioration since the main shock. These are enclosed.

The immediate danger is due to the state of the building and is liable to cause injury or death in the following circumstances.

- A. Anyone going inside the building to assess the building when an aftershock occurs.
- B. Vandals who have already been able to gain access, if inside the building or close to the building when an aftershock occurs.

- C. CPIT students who live in the apartments that face this building, when a collapse occurs.
- D. Traffic that use Madras Street, as even a partial collapse of the front is going to cause drivers to swerve away from the building. A worst case scenario is a vehicle collision that results in a vehicle crashing through the pumps of the Mobil services station opposite.
- E. A rotation failure of the frontage will throw bricks over the containers on to the road beyond. These could impact cars, cyclists or other vehicles.
- F. People walking along the footpath, as the present barriers can be walked around or stepped over. Anyone walking close to the building could have a brick fall on them from the west wall at any time as the whole facade is very loose.

If this building is not regarded as dangerous by the Christchurch City Council then it will be extremely hard for them to close a building as dangerous in the future.

Yours faithfully



Warren R Lewis
Engineer