

**UNDER THE COMMISSIONS OF INQUIRY ACT 1908**

**IN THE MATTER OF ROYAL COMMISSION OF INQUIRY INTO BUILDING  
FAILURE CAUSED BY CANTERBURY EARTHQUAKES**

**KOMIHANA A TE KARAUNA HEI TIROTIRO I NGĀ  
WHARE I HORO I NGĀ RŪWHENUA O WAITAHA**

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**STATEMENT OF EVIDENCE OF JOHN RICHARD HIGGINS IN RELATION TO 603 –  
615 COLOMBO STREET**

**DATE OF HEARING: WEEK BEGINNING 30 JANUARY 2012**

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## INTRODUCTION

1. My name is John Richard Higgins. I am the Resource Consents Manager at the Christchurch City Council (**Council**). I have worked for the Council since 2001. During the State of Emergency following the earthquake of 4<sup>th</sup> September 2010, I was involved with urgent demolitions and latterly assisted in setting up a Council Building Recovery Office.
2. I have 11 years of experience working in planning and resource management, including 4 years in management positions dealing with resource consents and approvals under the Resource Management Act 1991 (**RMA**). I hold a Bachelor of Resource Studies (Environmental Policy and Planning) and have completed a number of postgraduate papers also in the field of resource management.
3. I was also seconded to CERA in April 2011 for a period of three months working as a policy advisor.
4. I have been asked to provide evidence to the Royal Commission relating to specific aspects of the Council's approach to resource consent issues for the demolition of listed heritage buildings after the earthquake of 4<sup>th</sup> September 2010 and prior to the 22<sup>nd</sup> February 2011 earthquake.

## SCOPE OF EVIDENCE

5. My evidence relates and responds primarily to issues raised in evidence of Marton David Sinclair and Matthew J Bushnell. While their evidence is specific to buildings at 603 – 615 Colombo Street and meetings that they had with Council officers regarding those buildings, they also make more general statements about what they understood to be the Council's policy relating to resource consents required for the demolition of heritage buildings, including notification of such consents and the likely timeframe for obtaining consents.
6. I was not present at the meetings with those gentlemen regarding those buildings, and any necessary responses about what was in fact said at those meetings will be addressed by other Council officers.
7. My evidence will however address the following matters:

- (a) the statements made in the evidence of Messrs Bushnell and Sinclair about the Council's policy and approach to resource consents for demolition of earthquake damaged heritage buildings;
- (b) the requirements of the Council's City Plan regarding demolition of listed heritage buildings;
- (c) the Council's practice regarding notification of resource consents for alteration, repair and demolition of listed heritage buildings prior to the 4<sup>th</sup> September 2010 earthquake;
- (d) the Council's approach to resource consenting requirements for demolition of listed heritage buildings which were damaged by the 4<sup>th</sup> September 2010 earthquake and aftershocks;
- (e) the Council's policy for notification of resource consents relating to demolition of listed heritage buildings following the 4<sup>th</sup> September 2010 earthquake (and likely timeframes for the process to be completed); and
- (f) examples of how the Council's approach to resource consent requirements for demolition of listed heritage buildings following the 4<sup>th</sup> September 2010 earthquake was applied.

#### **STATEMENTS OF MESSRS SINCLAIR AND BUSHNELL**

8. Mr Bushnell states at page 3 of his evidence that Council officers advised:

- (a) it was Council policy was that no work could be done on damaged heritage buildings without a resource consent;
- (b) a resource consent would be notified because this was Council policy;
- (c) notification (presumably of resource consents) could not be accelerated;
- (d) an outline of information required to accompany resource consents applications was provided and a pre-application meeting to prevent delays in processing was recommended; and

- (e) the Council advised that it would probably take a minimum of 6 months to obtain a resource consent permitting demolition of heritage buildings.
9. Mr Bushnell also claims at page 3 that, prior to the 22<sup>nd</sup> February 2011 earthquake, the Council had begun serving notices on owners of heritage buildings under section 124 of the Building Act to prop the facades of those buildings. His evidence states that the owners of buildings served with these notices requiring propping of their buildings would have been forced to waste money doing this to allow the resource consent process to run its course so that consent for demolition could be obtained.
10. At page 4 of his statement, Mr Bushnell's evidence states his view that Council intransigence meant that many other heritage buildings that required demolition were in a damaged state, but could not be demolished because of the refusal of the Council to fast-track resource consents required for demolition. He also states that his understanding of the insistence of the need for a resource consent for demolition of heritage buildings and the requirement for such consents to be notified resulted from a policy decision of the elected Council.
11. Mr Sinclair's statement (at paragraph 14) outlines his understanding of the heritage status of the building at 626 Colombo Street.
12. At paragraph 17 of his statement, Mr Sinclair states his recollection of a meeting with Council officers on 1<sup>st</sup> February 2011 regarding the resource consent requirements for heritage buildings. He states that he was advised by staff that it was Council policy that a resource consent was required before a demolition consent could be applied for and that such an application would be notified. He states that his recollection was that a timeframe for the granting of a notified resource consent was up to 6 months.
13. He expresses the opinion at paragraph 21 of his statement that the process of dealing with dangerous buildings had become far too complex and time consuming, which was a result of the Council decision on notification of resource consents. He states that this "decision" effectively prevented urgent decision making and action on dangerous buildings.

14. With regard to the building at 626 Colombo Street, Mr Sinclair expresses the view at paragraph 22 of his evidence that demolition was the only practical and economic outcome, and that the resource consent process was only delaying an inevitable outcome.

**THE REQUIREMENTS OF THE COUNCIL'S CITY PLAN REGARDING CONSENT REQUIREMENTS FOR HERITAGE BUILDINGS (paragraphs 7(b) and (c) above)**

15. Listed historic buildings, places, and objects, are divided into four groups under the Christchurch City Plan, being Groups 1, 2, 3 and 4 heritage items. Group 1 heritage items have the highest level of protection. A description of the groups and their importance is attached at **Appendix 1**.
16. The buildings at 603 – 615 Colombo Street (Corner of Tuam and Colombo Streets) also known as the 'Austral Buildings' were listed in the City Plan as Group 4 Buildings. The City Plan explains that a Group 4 heritage item *"...include those which are of metropolitan significance and/or involve a contribution to the heritage of the city, the protection of which is seen as desirable by the Council."*
17. Rule 1.3.2 states that alterations to a Group 4 heritage building require a controlled activity status resource consent. The rule also states that demolition of a Group 4 heritage building requires a discretionary activity status resource consent. A copy of the Volume 3 rules and associated definitions is provided at **Appendix 2**.
18. Prior to the September 2010 earthquake, it is my view that notification of resource consent applications for demolition of heritage buildings would have been highly likely in most instances, particularly given the RMA's statutory tests and the provisions of the City Plan that the Council was obliged to apply.

**COUNCIL PRACTICE FOR DEMOLITION OF HERITAGE BUILDINGS AFTER 4 SEPTEMBER 2010 (paragraphs 7(d) and (e) above)**

19. Following the 4<sup>th</sup> September 2010 earthquake, there was no change to the regulatory framework which was in place regarding resource consents for heritage buildings. The City Plan was not changed and, apart from one matter dealt with by Order in Council which I will discuss later in my evidence, there

was no relaxation of the RMA or City Plan requirements. The Council still had the same regulatory framework and the same legal tests to apply, albeit that the circumstances for a number of heritage buildings had changed significantly due to earthquake damage. The Council therefore had to try and adjust its practice for resource consents for demolition of heritage buildings to respond to the change in circumstances.

- 20.** It was well recognised at the time that safety was paramount. As noted earlier, the City Plan rules provided that alterations to Group 4 heritage buildings required consent as a controlled activity. Given the need for damaged buildings to be made safe and secure pending decisions as to the future of damaged heritage buildings, the Council was facilitating the stabilisation of heritage buildings with the requirement of lodging a retrospective resource consent application when the repair or demolition of the building was determined. This included propping, bracing and removing parts of the building such as an unstable parapet. It was a requirement for the work to be designed or advised by a suitably qualified engineer and in consultation with the Council Heritage team to ensure the works were being carried out in a way that was as sympathetic as practicable to the heritage fabric of the building.
- 21.** Where demolition was being proposed, a resource consent was required as it triggered the rule outlined earlier in my evidence. That in turn triggered a need for a resource consent application to be made and as part of that process an assessment of the proposal was required under both the RMA's notification and merits provisions, guided by the provisions of the City Plan.
- 22.** Both prior to and following the September 2010 earthquake, for the proposed demolition of a Group 4 building such as the Austral Buildings, notification of an application would not have been automatic. An assessment of the building in terms of the adverse effects on heritage values as a result of the demolition would have been necessary. This required expert opinion and largely depended on why the building was listed, the level of damage and the ability for the heritage values to be retained through the retention of the building.
- 23.** For Group 1 to 3 buildings, the notification position was not dissimilar. It was largely dependent upon the level of adverse effects on the heritage values of the building. An important difference, however, was the heritage significance of the building. The higher the listing, the more heritage significance the building is

deemed to have and therefore the greater the likelihood of adverse effects as a consequence of demolition.

- 24.** It was not inconceivable that a resource consent application for demolition of the Austral Buildings could have been processed without notification. Having said that, given the RMA's statutory tests and the provisions of the City Plan that the Council was obliged to apply, my experience was that notification was a strong possibility and in the Austral Buildings' case I understand that this position was accordingly advised. No in depth heritage assessment had been carried out in the Austral Buildings case, and so Council was only in a position to advise in general terms. In any event, while it was my understanding that the buildings' owners indicated through their agents that they wished to demolish the buildings, no resource consent application for demolition was ever lodged with the Council.
- 25.** Notification under the RMA is a process which can take between 3 to 6 months. There are legislated timeframes in the RMA which result in a minimum possible timeframe of around 3 months between notification and a decision. However, often it takes between 4 to 6 calendar months due to information requirements being satisfied. As I noted earlier, the Council was still operating under the same regime post-earthquake as it had done prior to that event. The September 2010 earthquake had however given rise to an unprecedented situation, and so Council was mindful of the need to expedite the processing of applications as much as it could within the legal constraints.
- 26.** Notification is also a fairly narrow assessment, primarily focused on the adverse effects of a proposal. When deciding whether or not to grant or decline a resource consent application, a wider range of factors are able to be taken into account such as the cost of repair work. While an application may be required to be publicly notified for demolition of a heritage building, that application may well be granted.
- 27.** The Council's interpretation of the notification provisions was subject to guidance from legal advice. It was recognised that the Council was facing a unique situation under the RMA with respect to listed heritage buildings and damage caused by an earthquake. The Council was also well aware that there was a high level of public interest associated with heritage buildings, so it needed to ensure the decisions being made were legally robust.

28. The Council's approach was not only guided by expert opinion and legal advice, but also guided by previous decisions on notification. These decisions were usually made by a Hearings Panel which included an experienced planning commissioner, and elected representatives. Examples of notification decisions regarding heritage buildings are provided in the section below.

*Canterbury Earthquake (Resource Management Act) Order 2010*

29. As I noted earlier in my evidence, there had been an Order in Council made shortly after the September 2010 earthquake on 16 September 2010, which was the Canterbury Earthquake (Resource Management Act) Order 2010. This provided for the relaxation of certain RMA requirements as they apply to local authorities, including extensions of certain timeframes under the RMA, a relaxation of the duty of local authorities to keep records and observe and enforce planning documents, modification of the exercise of the RMA's emergency works powers, and the exemption from the need to obtain resource consents if a local authority exercised its powers under section 129 of the Building Act 2004.
30. Section 129 of the Building Act provides powers for dealing with a dangerous building where immediate danger to the safety of people is likely, including the potential for such buildings to be demolished to remove that danger. The effect of the Order in Council was that where such buildings were demolished under that power, there was no need for a resource consent. This provision was particularly relevant to listed heritage buildings as, in general, they were the only buildings which required a resource consent for demolition.
31. Because the section 129 powers are broad and potentially draconian, they were likely to be exercised sparingly by the Council. Two examples where these powers were utilised were utilised for full demolition were the Manchester Courts building (160 Manchester Street) and 461 – 469 Colombo Street, Sydenham where Council approved their demolition under section 129 of the Building Act. The powers were also used to give a notice to fix the insanitary conditions at the building at 31 Teddington Road, Governors Bay, known as 'Ohinetahi' in order to ensure provision against moisture penetration. The minutes of an extraordinary meeting of the full Council on 4 and 6 October 2010 regarding the exercise of these powers are attached as **Appendix 3**.



*Other matters being considered by the Council*

32. Due to the RMA and City Plan requirements that the Council was acting under regarding demolition of heritage buildings, and concerns expressed by building owners about the process, it was recognised that some stream-lining of the resource consent process may be desirable.
33. Accordingly, discussions were initiated between Council officers and officials from the Ministry for the Environment (**MFE**) about the possibility of having Orders in Council made under the Canterbury Earthquake Response and Recovery Act 2010 which would provide for relaxation of the RMA's requirements relating to resource consents for the demolition of heritage buildings in Christchurch. These discussions were ongoing and progressed to the point where further progress towards an Order in Council was awaiting a decision from the Council's Regulatory & Planning Committee.
34. The Regulatory & Planning Committee considered a report dated 2<sup>nd</sup> February 2011 for a proposed Order In Council to streamline the demolition of heritage buildings under the RMA. The report is attached as **Appendix 4**, and a supplementary report dated 18<sup>th</sup> February 2011 is attached as **Appendix 5**. These reports were ultimately considered by the Regulatory & Planning Committee who concluded that there was no need at that time to accept the recommendations in the reports that an Order in Council be pursued. That recommendation is recorded in the supplementary report and was to go to the 23<sup>rd</sup> February 2011 Council meeting. The Council meeting never took place due to the 22<sup>nd</sup> February 2011 earthquake.

**EXAMPLES OF COUNCIL'S APPROACH TO RESOURCE CONSENTS FOLLOWING 4 SEPTMEBER 2010 EARTHQUAKE AND AFTERSHOCKS (paragraph 7(f) above)**

35. I consider that it is useful to respond to the statement at paragraph 21 of Mr Sinclair's evidence that the process of dealing with dangerous buildings had become far too complex and time consuming, which was a result of the Council decision on notification of resource consents. He states that this "decision" effectively prevented urgent decision making and action on dangerous buildings.

36. The first point is that there was no "decision" that the Council made regarding notification of consent application to demolish heritage buildings. As I explained earlier, the legal situation post the 4 September event was largely unchanged and the Council, through its officers, sought to work practically through that framework given the change in circumstances. The second point is that, as I consider some of the examples I describe below show, the Council and its officers were doing a number of things to make the process as simple and efficient as it could be in the circumstances.
37. Following the 4<sup>th</sup> September 2010 and Boxing Day earthquakes, Council planning, building, and heritage staff, met or corresponded with a number of heritage building owners and their engineers in relation to stabilisation and demolition proposals.
38. **Appendix 6** contains a typical example of correspondence sent to owners/engineers where Council gave approval for stabilisation works to occur prior to a resource consent application. The attached letter relates to 88 Cashel Street (the former Zetland Hotel), a Group 3 heritage building following the Boxing Day event. In this instance, the building owner engaged an engineer to assess and design propping for the building - the proposal was received by Council on 18<sup>th</sup> January 2011. The Council responded to the building owner on 26<sup>th</sup> January 2011 in relation to the temporary propping giving approval to propping works, to be supervised by the owner's engineer. Further to this, an email was sent on 31 January 2011 giving the owners advice about the resource consent process.
39. For larger "make safe" proposals (such as significant deconstruction of high value heritage buildings) several urgent resource consents were processed rather than giving approval in principle for the works prior to consent being lodged. An example of this kind of consent was the removal of the turret off College Hall at the Arts Centre. In this case, a meeting identified that the structure was a collapse hazard, and several days later a draft consent application was lodged on 15<sup>th</sup> November 2010. Further information was provided by the building owner on 19<sup>th</sup> November 2010 when the engineering methodology was more comprehensively developed, and approval to start preparation works for removal was given on 24<sup>th</sup> November, with consent being granted on 30<sup>th</sup> November 2010. A copy of the consent is attached as **Appendix 7**.

40. In relation to demolition proposals, owners were advised of the need for resource consent and of the information requirements for submitting applications for resource consent. Apart from the decisions made under the September State of Emergency and Section 129 of the Building Act, no approvals were given to demolition prior to resource consent being granted. Owners were encouraged to make buildings safe in the interim, while the consent for demolition was being pursued. An example of the advice given is attached at **Appendix 8**. The example relates to 208 Hereford Street, the Occidental Hotel, where the applicant wanted to demolish the building prior to obtaining any engineering assessment.
41. During the period 4<sup>th</sup> September 2010 to 22<sup>nd</sup> February 2011, the Council had processed and granted one non-notified consent for the full demolition of a building. This related to 456 Colombo Street. A copy of the consent is attached at **Appendix 9**. The consent was applied for on 12<sup>th</sup> October 2010 and contained a full engineering assessment. The consent was processed on a non-notified basis as the effects on heritage values were assessed as being minor. Consent for demolition was granted by a Commissioner on 5<sup>th</sup> November 2010. During this period two consents were processed for partial demolitions at 68 Manchester Street and 232 Tuam Street. Both of these applications were processed non-notified and granted by Hearings Panels.
42. Decisions to publicly notify three applications for full demolition had been made by Hearings Panels before the 22<sup>nd</sup> of February 2011. These related to residential heritage buildings at 121 Papanui Road and 112 and 116 Centaurus Roads, where demolition was considered to have more than minor adverse effects. As at 22<sup>nd</sup> February 2011, no decisions under Section 104 of the RMA had been made relating to these properties. As stated above, the notification to decision process takes a minimum of 3 months where all the relevant information has been provided by the applicants. In these instances, the applications all required further information and the process would have taken longer than 3 months had it been completed.
43. As I noted earlier, paragraph 21 of Mr Sinclair's statement says "*the process of dealing with dangerous buildings had become far too complex and time consuming*" and this "*effectively prevented urgent decision making and action on dangerous buildings*". I agree with Mr Sinclair that the demolition of heritage

buildings was a complex and time consuming process. However, I consider that the Council was being very pragmatic by offering building owners assistance and actively facilitating the stabilisation of heritage buildings in order to make them safe.

44. Council officers were conscious of the safety issues presented by unstable heritage buildings. There were also other ways in which a dangerous building could be managed such as cordoning off an area around the building. Finally, there was also the Section 129 process under the Building Act where a dangerous building (including a heritage building) could be demolished without the need for a resource consent while the criteria in that section were satisfied. This was seen as a final and relatively rarely used option, but nevertheless was a potential option where other options were not seen as being sufficient to address an immediate safety issue.

Dated: 21<sup>st</sup> DECEMBER 2011

Signed by:



Name: John Richard Higgins  
Position: Resource Consents Manager

" 1 "

**APPENDIX 1: City Plan Group Descriptions**

**Group 1** listed heritage items include those of international or national significance, the protection of which is considered essential.

**Group 2** listed heritage items include those which are of national or regional importance, the protection of which is seen as very important where this can be reasonably achieved.

**Group 3** listed heritage items include those which are of regional or metropolitan significance, the protection of which is seen as important where this can be reasonably achieved.

**Group 4** listed heritage items include those which are of metropolitan significance and/or involve a contribution to the heritage of the city, the protection of which is seen as desirable by the Council.

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## **APPENDIX 2 : City Plan Definitions and Rules**

**Additional buildings means:** in relation to protected buildings, places or objects, means any additional structure, whether temporary or permanent, movable or immovable, but does not include alterations as defined below.

**Alterations means:** in relation to a protected building, place or object, means any work by way of construction, modification (including the fixing and installation of outdoor advertisements), or partial demolition which may have the effect of altering the heritage fabric of that protected building (both internally or externally), place or object; and maintenance using materials or techniques that are detrimental to the materials or finish of the heritage item; but excludes repainting existing painted surfaces and cleaning or washing with materials or techniques not detrimental to the heritage fabric. External alterations to buildings adjoining an important public open space means any work by way of construction or modification which may have the effect of altering the exterior fabric of the building, but excludes any maintenance, cleaning or repainting.

**Demolition means:** in relation to a protected building, place or object, means its destruction in whole but not in part.

**Removal means:** in relation to protected buildings, places or objects means the relocation of the listed building, place or object to another site, or to another position on the same site and does not include demolition.

### **Rule: 1.2.11 Non-notification**

An application for:

- (a) any alteration to, or erection of any additional building(s) on a site containing a Group 3 or Group 4 building, place or object; or
- (b) any internal alterations to a Group 1 or 2 building, place or object,

will not require the written consent of other persons for notification, and shall be non-notified. However, the Council shall consult with the NZ Historic Places Trust in respect to any consent required under these clauses.

### **Rule: 1.3.1 Group 1 and Group 2 Buildings, places and objects (Listed in Appendix 1)**

(a) Development standard

Any alteration or removal of a Group 1 or Group 2 building, place or object, or the erection of any additional building(s) on a site containing a Group 1 or Group 2 building, place or object, shall be a **discretionary activity**, with the exercise of the Council's discretion limited to matters concerning the heritage values of the protected building, place or object.

(b) Critical standard

Any demolition of a Group 1 or Group 2 building, place or object shall be a **non complying activity**.

### **Rule: 1.3.2 Group 3 and Group 4 Buildings, places and objects (Listed in Appendix 1)**

((a) Community standard

Any demolition of a Group 3 or Group 4 building, place or object shall be a discretionary activity.

(b) Development standard

Any alteration or removal of a Group 3 building, place or object, or any removal of a Group 4 building, place or object shall be a discretionary activity, with the exercise of the Council's discretion limited to matters concerning the heritage values of a protected building, place or object.

(c) Development standard

Any alteration of a Group 4 building, place or object, or the erection of any additional building(s) on a site containing a Group 3 or Group 4 building, place or object shall be a controlled activity, with the exercise of the Council's discretion limited to matters concerning the heritage values of a protected building, place or object.

" 3 "

## MINUTES

**MINUTES OF AN EXTRAORDINARY MEETING OF THE CHRISTCHURCH CITY COUNCIL  
HELD AT 9.30AM ON MONDAY 4 OCTOBER AND WEDNESDAY 6 OCTOBER 2010**

**PRESENT:** The Mayor, Bob Parker (Chairperson).  
Councillors Helen Broughton, Sally Buck, Ngaire Button, Barry Corbett, David Cox,  
Yani Johanson, Claudia Reid, Gail Sheriff, Mike Wall, Sue Wells, Chrissie Williams and  
Norm Withers.

Peter Mitchell, General Manager, Regulation and Democracy Services, briefed the Council on the procedure and legal processes for demolition consents and heritage funding following the 4 September 2010 Christchurch Earthquake.

## 1. APOLOGIES

An apology for absence was received from Councillor Shearing for Monday 4 October 2010 and Wednesday 6 October 2010.

An apology for absence was received from Councillor Button for Wednesday 6 October 2010.

It was **resolved** on the motion of the Mayor, seconded by Councillor Withers, that the apologies be accepted.

Councillor Withers was absent between 9.46am to 10.25am.

## 2. DEPUTATIONS BY APPOINTMENT

- 2.1 Phil Stanley, Chris Meyer and Emily Branthwaite and Angela Hunt (Businesses within the cordon in the vicinity of 160 Manchester Street) in respect of item 4 – Proposed demolition of 160 Manchester Street.
- 2.2 Richard Peebles and Richard Leggatt in respect of item 4 – Proposed demolition of 160 Manchester Street.
- 2.3 Neil Roberts (Christchurch Civic Trust) in respect of item 4 – Proposed demolition of 160 Manchester Street.
- 2.4 Warren Lewis (Lewis and Barrow Engineers) and Richard Leggatt in respect of item 5 – Proposed demolition of 192 Madras Street.
- 2.5 Robert and Jeanene Marchand in respect of item 6 – Proposed demolition of 461a-469a Colombo Street.
- 2.6 Murray Lapworth and Richard Leggatt in respect of item 7 – Proposed demolition of 456 Colombo Street.
- 2.7 Dorothy Haywood (Sydenham Heritage Trust) in respect of items 6 and 7 – Proposed demolition of 456 and 461-469 Colombo Street.
- 2.8 Gavin Ryan in respect of item 8 – Proposed demolition of 580 Ferry Road.
- 2.9 Sir Miles Warren and John Hare (Holmes Consultants Group) in respect of item 9 – Proposed demolition of Ohinetahi Governors Bay.

The Council **resolved** on the motion of the Mayor, seconded by Councillor Withers that the meeting stand adjourned at 1.10pm, to reconvene at 9.30am Wednesday 6 October 2010.

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**11. RESOLUTION TO BE PASSED – SUPPLEMENTARY REPORT**

This item was taken at this stage of the meeting.

It was **resolved** on the motion of the Mayor, seconded by Councillor Withers, that the Council receive and consider the report Exercise of Powers under Section 129 of the Building Act 2004 (immediate danger) and Other Options, at the meeting of the Council on Wednesday 6 September 2010.

Councillor Wall joined the meeting at 9.46am.

**2. DEPUTATIONS BY APPOINTMENT (CONTINUED)**

2.10 Anna Crichton in respect of item 11 - Exercise of Powers under Section 129 of the Building Act 2004 (Immediate Danger) and Other Options.

2.11 Trev Barnett in respect of item 11 - Exercise of Powers under Section 129 of the Building Act 2004 (Immediate Danger) and Other Options.

**12. EXERCISE OF POWERS UNDER SECTION 129 OF THE BUILDING ACT 2004 (IMMEDIATE DANGER) AND OTHER OPTIONS**

This item was taken at this stage of the meeting.

The Mayor moved:

(aa) *That any warrant for 160 Manchester Street only provide for demolition to the first two storeys of the building.*

*That the Council:*

(a) *Endorse the acting Chief Executive's opinion that the following buildings are an immediate danger and that he will issue a warrant under section 129 of the Building Act 2004 for the demolition of these buildings:*

- (i) 160 Manchester Street.*
- (ii) 461A-469A Colombo Street.*

(b) *Endorse the acting Chief Executive's opinion that the following buildings are not an immediate danger under section 129 of the Building Act 2004 and that no warrant be issued on this ground be issued:*

- (i) 192 Madras Street.*
- (ii) 456 Colombo Street.*
- (iii) 580 Ferry Road.*
- (iv) Ohinetahi Homestead.*

(c) *Endorse the acting Chief Executive's opinion that with regard to the Ohinetahi Homestead it is necessary to fix the insanitary conditions by requiring the owners of Ohinetahi to take all steps necessary to ensure provision against moisture penetration which may cause dampness in the building*

(d) *Approve that officers work with the relevant government departments to seek discuss an Order in Council from the Government to address the streamlining of the resource consent process for heritage buildings, as outlined in paragraph 46 of this report as a starting point for discussion.*

(e) *That officers report back to the Council with the outcome of discussions resulting from recommendation (d) before a final recommendation is made to the Canterbury Earthquake Recovery Commission.*



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(f) *Note that any order in Council only apply to resource consent applications for change to heritage buildings resulting from earthquake damage.*

The motion was seconded by Councillor Wells, and on being put to the meeting:

Recommendation (aa) was declared **lost**.

Recommendation (a)(i) was declared **carried** on Division No. 1 by 10 votes to 2, the voting being as follows:

**For (10):** Councillors Broughton, Buck, Corbett, Cox, Reid, Sheriff, Wall, Wells, Withers and the Mayor.

**Against (2):** Councillors Johanson and Williams.

Recommendation (a) (ii) was declared **carried**.

Recommendation (b) (i) was declared **carried** on Division No. 2 by 10 votes to 2, the voting being as follows:

**For (10):** Councillors Broughton, Buck, Corbett, Cox, Reid, Sheriff, Wall, Wells, Williams and the Mayor.

**Against (2):** Councillors Johanson and Withers.

Recommendation (b) (ii) was declared **carried** on Division No. 3 by 11 votes to 1, the voting being as follows:

**For (11):** Councillors Broughton, Buck, Corbett, Cox, Reid, Sheriff, Wall, Wells, Williams, Withers and the Mayor.

**Against (1):** Councillor Johanson.

Recommendation (b) (iii) was declared **carried** on Division No. 4 by 10 votes to 2, the voting being as follows:

**For (10):** Councillors Broughton, Buck, Corbett, Johanson, Reid, Sheriff, Wells, Williams, Withers and the Mayor.

**Against (2):** Councillors Cox and Wall.

Recommendation (b) (iv) was declared **carried**.

Recommendation (c) was declared **carried**.

Recommendation (d) was declared **carried** on Division No. 5 by 10 votes to 2, the voting being as follows:

**For (10):** Councillors Buck, Corbett, Cox, Johanson, Reid, Sheriff, Wall, Wells, Withers and the Mayor.

**Against (2):** Councillors Broughton and Williams.

Recommendations (e) and (f) were declared **carried**.

The Council agreed that paragraph 46.1 of the staff report should be amended to read:

*Enabling the Council to establish an independent panel of experts/Councillors/Commissioners to decide all matters concerning resource consent applications for change to heritage buildings resulting from earthquake damage.*

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**10. CANTERBURY EARTHQUAKE HERITAGE AND CHARACTER BUILDING FUND POLICY**

This item was taken at this stage of the meeting.

The Mayor moved:

*That the Council:*

- (a) *Endorse the draft policy for submission to and approval of the Minister of Arts, Culture and Heritage; and*
- (b) *Note that staff will report to the Council in the new term on the final policy, guidelines and fund management.*
- (c) *Agree the following be considered in discussions on the draft policy (with any dissenting Councillor opinion noted):*
  - (i) *That the fund should have full charitable status for tax purposes for those giving donations.*
  - (ii) *That the Christchurch City Council should have at least two Councillor representatives.*
  - (iii) *That consideration be given to funding allocations based on a precinct as well as a building by building basis.*
  - (iv) *That consideration be given to funding the retention of facades, ICOMOS charter notwithstanding. (One Councillor disagreed).*
  - (v) *That all affected Councils contribute financially to the fund. (One Councillor favoured a pro-rata approach).*
  - (vi) *That consideration be given to how the Council can apply in cases where it may need to purchase buildings to protect them from demolition.*
  - (vii) *That consideration be given for funding to be made available for retention of 'character housing' that has suffered as a result of the earthquake. (Two Councillors did not support such a broad approach)*
  - (viii) *That consideration be given to getting a comprehensive list of the buildings that may need funding assistance prior to any funding, so that the situation of "first come first served" granting of money does not arise. (The Council was divided on this issue)*
  - (ix) *That with reference to clause 2.3 it be noted that the Christchurch City Council Earthquake Prone Buildings Policy now sets a target of strengthening buildings to 67 per cent of code.*

The motion was seconded by Councillor Withers, and on being put to the meeting was declared **carried**.

**3. PRESENTATION OF PETITIONS**

Nil.

**4. PROPOSED DEMOLITION OF 160 MANCHESTER STREET**

It was **resolved** on the motion of the Mayor, seconded by Councillor Withers, that this item lie on the table until the new Council term.

4. 10. 2010

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**5. PROPOSED DEMOLITION OF 192 MADRAS STREET**

It was **resolved** on the motion of the Mayor, seconded by Councillor Withers, that this item lie on the table until the new Council term.

**6. PROPOSED DEMOLITION OF 461-469 COLOMBO STREET**

It was **resolved** on the motion of the Mayor, seconded by Councillor Withers, that this item lie on the table until the new Council term.

**7. PROPOSED DEMOLITION OF 456 COLOMBO STREET**

It was **resolved** on the motion of the Mayor, seconded by Councillor Withers, that this item lie on the table until the new Council term.

**8. PROPOSED DEMOLITION OF 580 FERRY ROAD**

It was **resolved** on the motion of the Mayor, seconded by Councillor Withers, that this item lie on the table until the new Council term.

**9. PROPOSED PARTIAL DEMOLITION OF "OHINETAHI" GOVERNORS BAY**

It was **resolved** on the motion of the Mayor, seconded by Councillor Withers, that this item lie on the table until the new Council term.

**13. CONCLUSION**

The meeting concluded at 12.31pm.

**SIGNED BY THE MAYOR AND CHIEF EXECUTIVE OFFICER PURSUANT TO STANDING ORDER  
3.18.2**

**MAYOR**

**CHIEF EXECUTIVE OFFICER**

" 4 "

### 13. PROPOSED DRAFT FOR AN ORDER IN COUNCIL FOR HERITAGE

<b>General Manager responsible:</b>	Mike Theelen General Manager
<b>Officer responsible:</b>	Carolyn Ingles, Liveable City Manager
<b>Author:</b>	Neil Carrie, Principal Advisor Heritage

#### PURPOSE OF REPORT

1. The purpose of this report is to provide a summary of proposed changes to the Resource Management Act, through an Order in Council for Heritage, consistent with the Canterbury Earthquake Response and Recovery Act (2010).

#### EXECUTIVE SUMMARY

2. Based on the assessments undertaken by Christchurch City Council approximately 400 heritage buildings are estimated to have damage of some form within Christchurch City and Banks Peninsula. Recent aftershocks have continued to cause damage to heritage buildings. Selwyn District Council have identified approximately 45 damaged heritage buildings, and Waimakariri District Council approximately 62 heritage buildings. The majority of these will require resource consents for repair, alteration or demolition.
3. A number of the current statutory processes under the Resource Management Act 1991 (RMA) do not adequately recognise the circumstances resulting from the Canterbury earthquake event. In response the Council resolved at the meeting of 6 October 2010 to:

*"Approve that officers work with the relevant government departments to seek an Order in Council from the Government to address the streamlining of the resource consent process for heritage buildings, as outlined in paragraph 46 of this report" with one further detailed amendment outlined in the Background section of this report.*

4. A more timely and effective response is required for the processing of resource consents for listed/scheduled heritage buildings which are a result of the earthquake on 4 September 2010 and subsequent aftershocks. It is crucial that local Districts and communities affected by the earthquake and subsequent aftershocks recover quickly economically and socially. The streamlining of planning processes will support recovery, while still ensuring equitable and appropriate outcomes for the affected communities.
5. The proposed Order in Council (OIC) for Heritage ) has focussed on the outcomes anticipated by the Canterbury Earthquake Response and Recovery Act 2010 (CERRA) which can be achieved through specific changes to the RMA. Internal and non-regulatory approaches to achieve improved processes do need to be considered as well as statutory and regulatory planning consent processes. The Council report of 6 October 2010 introduced measures achievable through both approaches. Where internal or existing powers may be appropriately used, it is proposed that these be dealt with outside the provisions of an OIC for Heritage. External measures include taking a pro-active approach with building owners for heritage retention, and consideration for Grant Funding assistance from the Canterbury Earthquake Heritage Fund. Internal measures could include the streamlining of consent procedures which are within the existing scope of Council authority.
6. An OIC for Heritage provides a statutory regulation consistent with the purpose of CERRA. An OIC for Heritage applies for a fixed period of time, applies only to affected Councils and may relate only to issues which arise in this instance because of the Canterbury earthquake.
7. The Territorial Authorities to which this OIC for Heritage would apply are the Christchurch City, Selwyn District and Waimakariri District Councils. In this instance the OIC for Heritage would apply to heritage buildings which are listed or scheduled in District Plans in the afore mentioned districts that have been affected by the earthquake of 4 September 2010 and the subsequent aftershocks. The time period that this proposed OIC for Heritage will be in force is until 1 April 2012.
8. The following changes to the RMA are proposed for an OIC for Heritage under CERRA in response to the Council resolution of 6 October 2010,

9. When the Council passed the resolution on 6 October 2010 a list of possible OIC provisions were noted. Discussions with staff from the relevant ministry, legal counsel, and further reflection by Council staff, has led to a smaller list being recommended for incorporation into an OIC and are noted in paragraph 10. The reasons for not including some previously identified provisions is outlined in the Background section of this report.
10. The proposed changes to the RMA provisions through an OIC for Heritage are summarised as follows:
  - (a) Rights of Appeal: appeals to be limited to the High Court on matters or points of law.
  - (b) Assessment of the effects on the environment for decisions on public notification; recognition of the adverse effects resulting from the earthquake and aftershocks.
  - (c) Planning Activity Standards for heritage: removal of controlled activities from heritage District Plan provisions and replacement with a restricted discretionary activity status.
  - (d) Scope of Discretion for Restricted Discretionary Activities: increase the scope of discretion to include recognition of the effects of the Canterbury earthquake.

Consultation has continued with the MfE, and Selwyn District and Waimakariri District Councils and broad agreement has been reached on the proposed scope of the draft OIC for Heritage. Consultation has been carried out with the NZHPT in relation to an earlier draft OIC proposal. The proposal before Council now addresses the major points raised by the NZHPT in relation to earlier draft proposals.

#### Explanation of proposed changes

11. The benefits of the proposed changes sought through the proposed OIC for Heritage include a range of more specific provisions than are currently provided for in the RMA. Whilst robust internal processes for assessing applications could deal with the matters identified in (b) and (d) the risk of appeal is greatly increased in these circumstances through the lack of testing through the Courts. The specific inclusion of statutory provisions through an OIC for Heritage will therefore increase the certainty and significantly reduce the risk of appeals, which may otherwise extend the time for planning processes. The matters identified in (c) and (d) could be addressed through changes to district plan provisions, however this would require a plan change by each local authority and would follow first schedule RMA processes for district plan changes and would not be certain or quick.

#### (a) Rights of Appeal

Appeals on publicly notified decisions will be limited to Declarations or Appeals to the High Court. These appeals will therefore be on points of law or legal process. Other RMA processes on notified heritage planning consent applications will be maintained including submissions on notified applications which will recognise and provide for the continuing opportunity for public input to notified planning processes.

Appeals to the Environment Court on substantive planning decisions can extend decision time frames to two years or more. It is considered that this aspect of the planning process may not facilitate or achieve optimal planning outcomes where effective and timely planning decisions are essential for meeting community and financial needs. The risk of legal challenge and any consequential extension of time frames for decisions is anticipated to be significantly reduced.

The proposed OIC for Heritage could achieve this through an amendment to Part 11 of the RMA which provides for Environment Court proceedings.

#### (b) Assessment of the Environment for decisions on public notification

The RMA assessment for adverse effects should recognise the change to the state of the environment as a consequence of the Canterbury earthquake. The RMA provides for public notification of an application if an assessment of the adverse effects of the activity are more than minor. The RMA through this process does not provide for assessments where there has been a substantive adverse effect on the environment other than those which may have been anticipated by a District Plan. The earthquake event of 4 September 2010 and subsequent aftershocks has in some cases damaged buildings to the extent that they are so compromised that the building would no longer have the heritage values that would support continued listing in the district plan. In these circumstances the assessment of adverse effects on the environment with respect to damaged heritage buildings is the additional adverse effects of demolition on heritage fabric and values.

It is not intended that adverse effects on heritage buildings should be exempted from notification where heritage fabric and values are largely recoverable, or where loss of fabric may be from other causes.

Public notification is a more extended planning process where decisions can be of 70 days working days or more in comparison with the 20 working days for non-notified applications. The earthquake and aftershocks have created circumstances where heritage buildings may be deemed to be unrecoverable to the extent that there may not be any continuing relevance in their inclusion in District Plan heritage listings and planning provisions. Where this circumstance arises these additional adverse effects should be regarded as minor or less than minor. The test for whether the adverse effects are not more than minor should recognise the consequence of the earthquake and aftershocks on heritage buildings in weighing up any lack of public and individual benefit from a notified planning process.

The proposed OIC for Heritage could achieve this through recognition in sections 95A – 95E RMA of the consequential adverse effects of the Canterbury earthquake on heritage buildings.

(c) Planning Activity Standards for Heritage

Heritage is a Matter of National Importance under section 6 of the RMA and controlled planning activity status could be removed through the OIC for Heritage and replaced with a restricted discretionary status to more appropriately reflect the recognition provided for heritage by the RMA.

The RMA when initially promulgated recognised heritage as “Matters to have regard” under s7 of Part II of the Act. Subsequently the status of heritage was recognised through the Resource Management Amendment Act (2003) as a section 6(f) “Matters of National Importance”.

Planning consent applications for controlled activities cannot be declined, but may only have conditions applied. District Plan Objectives, Policies and Rules for heritage retention do not anticipate the substantial scale of adverse effects on heritage buildings where these may be as severely compromised as a result of the Canterbury earthquake. Given the potential scale of adverse effects it is not considered appropriate that provision should be made for controlled heritage planning activities.

The Christchurch City Plan currently has a controlled activity status for alterations and partial demolition of Group 4 listed buildings.

The proposed OIC for Heritage could achieve the removal of controlled activities, in relation to heritage activities arising from the Canterbury earthquake, through an amendment to section 77A of the RMA. Controlled activities could then be dealt with as restricted discretionary activities under the provisions of the RMA.

(d) Scope of Discretion for Restricted Discretionary Activities

It is proposed to increase the scope of discretion to include recognition of the effects of the Canterbury earthquake when assessing restricted discretionary activities.



The scope of discretion provided through rules in District Plans relating to heritage does explicitly acknowledge the consequences of an event such as the Canterbury earthquake on heritage buildings. There is a need to make specific reference through the RMA to a wider discretion than may otherwise have effect through the District Plan rules to recognise the adverse effects of the earthquake on heritage buildings. Such a reference will provide greater certainty when assessing applications and consequently reduce the risk of legal challenge.

The proposed OIC for Heritage could achieve this through an amendment to section 77B of the RMA.

#### **FINANCIAL IMPLICATIONS**

12. There are no direct financial implications arising from the adoption of a OIC for Heritage. The resources necessary to deal with the consequences of the earthquake, which will include an increase in resource consent applications, are anticipated to be reduced overall if streamlined and improved processes are achieved.

#### **Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?**

13. The Canterbury Earthquake was not anticipated by the 2009-19 LTCCP, however, there are no direct financial impacts from this proposed OIC for Heritage. Staff time in preparing and consulting on the OIC for Heritage proposal will be within existing LTCCP budgets.

#### **LEGAL CONSIDERATIONS**

14. The CERRA enables the Governor-General, by Order in Council made on the recommendation of the Minister, to make any legislative change to the listed statutes as is reasonably necessary or expedient for the purpose of CERRA. The purpose of CERRA includes to facilitate the response to the Canterbury earthquake, and relaxing or suspending statutory provisions that are not reasonably capable of being complied with, or complied with fully, owing to circumstances resulting from the Canterbury earthquake. It is for the Minister to decide whether to promulgate an OIC for Heritage..

Officers consider that the request for an OIC for Heritage to streamline the process for resource consent applications for listed/scheduled heritage buildings damaged as a result of the earthquake and aftershocks is consistent with the purposes of CERRA.

The options for the changes to the legislative framework to seek in an OIC for Heritage are numerous. The OIC for Heritage process is one in which the legislative change result from a process including Canterbury Earthquake Recovery Commission input, Ministry for the Environment (MfE) officer input, Parliamentary Counsel Office drafting and Ministerial views, and may be quite different from the OIC for Heritage sought by the Council. The full details of the OIC for Heritage drafting will be the responsibility of the Parliamentary Counsel Office acting under the guidance of the MfE, and are not discussed in this report

#### **Have you considered the legal implications of the issue under consideration?**

15. Yes.

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

16. The earthquake was not anticipated and therefore there is no specific provision for this initiative. Related Community Outcomes are 'An attractive and well-designed City' (LTCCP 2009-19, page 50). 'Community Outcome 9. Development' provides for, among other things, ensuring "our lifestyles and heritage are enhanced by our urban environment" (page 54). One of the success measure is that "Our heritage is protected for future generations" (page 54). "Progress will be measured using these headline indicators ... number of heritage buildings, sites and objects." (page 54). Within the 'Activities and Services' section of the LTCCP, is 'City planning and development' which aims to help improve Christchurch's urban environment, among other things. One of the activities included in 'City planning and development' is 'Heritage protection'. "A city's heritage helps to sustain a sense of community identity, provides links to the past, and helps to attract visitors. The Council is committed to protecting the heritage of our city and works with developers, landowners and other stakeholders to conserve heritage buildings, areas and other items" (page 187).

**Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?**

17. No.

**ALIGNMENT WITH STRATEGIES**

18. The proposed OIC for Heritage to the extent that this achieves heritage protection, is aligned with the following strategies and policies:
- Heritage Conservation Policy, which in turn is relevant to:
  - Greater Christchurch Urban Development Strategy (UDS)
  - Central City Revitalisation Strategy
  - New Zealand Urban Design Protocol

**Do the recommendations align with the Council's strategies?**

19. Yes, see above.

**CONSULTATION FULFILMENT**

20. Consultation with regard to the draft OIC for Heritage has been carried out the with other affected Local Authorities (Selwyn and Waimakariri District Councils). These Councils are supportive of the scope of the proposed OIC for Heritage.

Consultation with Central Government agencies has been continuing principally with the MfE as lead agency. The MfE are in general agreement with the approach proposed for the OIC for Heritage and wish to progress the provisions of this OIC.

The New Zealand Historic Places Trust (NZHPT) were also consulted with on a previous draft OIC for Heritage which covered:

1. Amending the RMA to consider exceptional circumstances
2. New Assessment Matter for District Plans which considers the effect of the earthquake
3. Improved protection for Group 4 buildings
4. Reduced time periods for processing notified consent applications
5. Reduced appeal rights

The NZHPT provided detailed comments. Their concerns were that the scale of the problem did not necessarily justify an OIC for Heritage, and that in their view OIC's should focus on changes to legislation, in this case the RMA rather than District Plan Changes. The NZHPT's comments have been reviewed and the present draft OIC for Heritage provisions addresses items 1, 2, and 4. Further discussion is continuing with regard to items 3 and 5.



Following consideration by this Council the proposal will be used as the basis for drafting the OIC for Heritage which the Canterbury Earthquake Commission will be formally requested to advise on. Cabinet and the Executive will be required to recommend the OIC for Heritage to the Governor General for approval and gazettal.

Consultation has also occurred regarding the OIC for Heritage with Council's legal external advisors Simpson Grierson, Legal Services and the MfE's Senior Legal Advisor.

#### **STAFF RECOMMENDATION**

That the Committee recommend to the Council that it:

- (a) Endorses this report as the basis for pursuing a Order in Council for Heritage to facilitate the processing of resource consents for earthquake related activities on listed/scheduled heritage buildings through amendments to the Resource Management Act.
- (b) Instructs Council staff to:
  - (i) forward this report to the Ministry of the Environment so that the process of developing an Order in Council for Heritage can progress, and;
  - (ii) contribute advice and coordinate a timely response to the Ministry of the Environment as requested once the Order in Council for Heritage has been drafted by Parliamentary Counsel Office and is available for comment.
- (c) Consider the draft OIC once completed prior to making any recommendation on it to the Canterbury Earthquake Recovery Commission.

## BACKGROUND

### Scale of Impact

21. The Canterbury earthquake is regarded as the largest natural disaster in recent New Zealand history. This has resulted in significant and widespread damage throughout the region, including ground, infrastructure and building damage. This damage has had a significant negative impact on the functioning and well-being of local communities in the Canterbury region and in particular for greater Christchurch.
22. The Christchurch City Council has undertaken assessments of both heritage and other buildings in the commercial zones and assigned red, yellow, and green placards which indicate the scale of the damage. The placards were applied during an initial visual assessment on buildings within the City. Buildings assessed focussed on the central city and the main city thoroughfares and did not include all buildings potentially affected by the earthquake.
23. There are approximately 916 heritage items listed in the Christchurch City Plan and the Banks Peninsula District Plan. Based on the assessments undertaken approximately 400 heritage buildings were estimated to have damage of some form, approximately 40% of listed buildings. Additional damage continues to arise with frequent aftershocks. The majority of these will require resource consents for repair, alteration or demolition. Selwyn District Council have identified approximately 45 damaged heritage buildings, and Waimakariri District Council approximately 62 heritage buildings. However, it is not just the numbers of potential affected buildings but also the adverse effects on the heritage values of listed heritage buildings which need to be taken into account. It is considered that the 40% or greater of damaged heritage buildings in Christchurch constitutes a major threat to the heritage resource of the City.
24. Where buildings are considered to be an "immediate danger" to public safety a demolition warrant can be issued under section 129 of the Building Act for immediate demolition without resource consent. Only two such warrants have been issued to date by Christchurch City Council. The Councils have been mindful of not acting in haste where heritage buildings may have been substantially damaged, and applying section 129 of the Building Act only in exceptional circumstances for specific buildings. Where a damaged heritage building does not meet section 129 criteria a standard resource consent process would be required for any demolition, partial demolition or alteration.
25. Five listed heritage buildings have been demolished since 4 September 2010 (two were issued section 129 warrants due to the immediate danger they presented, one resource consent granted for demolition, and two demolished immediately following the earthquake). No other listed heritage buildings currently have consent for demolition although staff are currently processing consent applications. A number of character buildings have been demolished and these contribute to our sense of built 'heritage' although they have no protection through the Christchurch City Plan or Banks Peninsula District Plan.
26. To date the Christchurch City Council has received 24 applications for resource consents for heritage buildings related to demolition/partial demolition or alteration. These represent a very small proportion of expected applications based on the damage sustained and the number of pre-application discussions with building owners. It is expected that resource consent applications due to earthquake damage will be spread over a considerable time period and are expected to peak over the coming three to six months as owners work with their insurers and assessors to resolve claims.

### Council Resolution of 6 October 2010

27. As noted above the Council considered a report on 6.10.2010 with respect to pursuing an OIC for Heritage.

The Staff Recommendation for this meeting requested:-

*"... Council approval for seeking an OIC in accordance with the following broad framework:*

1. *Enabling the Council to establish an independent panel of experts to decide all matters concerning resource consent applications for change to heritage buildings resulting from earthquake damage.*
2. *If the Panel decides to notify an application, the submission period is considerably shortened from the current minimum 20 working days required by the RMA.*
3. *Only the applicant has a right of appeal. The Canterbury Earthquake (Historic Places Act) Order (2010) provided that the right of appeal against a decision concerning disturbance of an archaeological site is restricted to the applicant. This Order in Council would seek a similar provision.*
4. *For demolition of Group 1 or 2 heritage buildings listed in the City Plan that cannot feasibly be saved, alter the activity status from non-complying to discretionary. Reason: the non-complying activity threshold test in the RMA may mean that resource consent for demolition cannot be granted.*
5. *For restoration and reinstatement of Group 1-3 heritage buildings listed in the City Plan, alter the activity status from discretionary to controlled.*
6. *Insert new assessment criteria in the relevant parts of the City Plan so that the decision making criteria include the impact of the earthquake on heritage buildings.*

These recommendations were approved but in addition the Council agreed that paragraph 46.1 of the staff report should be amended to read:

*"Enabling the Council to establish an independent panel of experts/Councillors/Commissioners to decide all matters concerning resource consent applications for change to heritage buildings resulting from earthquake damage".*

28. The following points have been considered in relation to this broad framework proposed in the report and the Council recommendations.

1. *Enabling the Council to establish an independent panel of experts to decide all matters concerning resource consent applications for change to heritage buildings resulting from earthquake damage.*

The Council already has the power to appoint appropriate Commissioners, and/or Hearings Panels for this purpose and no further statutory authority is required to respond to these requirements through an OIC for Heritage.

2. *If the Panel decides to notify an application, the submission period is considerably shortened from the current minimum 20 working days required by the RMA*

There are current limits in the RMA on time periods for planning decision processes. Consideration of these individual time periods reflect a minimum workable time frame to adequately address information requests, assessments, submission periods, reporting and decision making. It is therefore not proposed to further limit the existing times periods as further restrictions would have very limited overall benefits and significant dis-benefits in ensuring appropriate planning outcomes.

3. *Only the applicant has a right of appeal. The Canterbury Earthquake (Historic Places Act) Order 2010 provided that the right of appeal against a decision concerning disturbance of an archaeological site is restricted to the applicant. This Order in Council would seek a similar provision.*

The rights of appeal have been extensively discussed with the MfE Senior Legal Advisor, LSU and the NZHPT. The consensus is that there should be no rights of appeal to the Environment Court on substantive matters. There is a statutory right for appeal to the High Court, which is proposed to remain.

4. *For demolition of Group 1 or 2 heritage buildings listed in the City Plan that cannot feasibly be saved, alter the activity status from non-complying to discretionary. Reason: the non-complying activity threshold test in the RMA may mean that resource consent for demolition cannot be granted*

Non-complying activities may in particular circumstances be contemplated for approval as established through current case law. These circumstances are:

- that approval would not constitute an undermining of the Objectives and Policies of the Plan
- that there would not be a wider precedent created by the approval

It is considered that a non-complying activities are otherwise an appropriate status reflecting the intent of the Plan. It is not considered that these circumstance will generally arise.

5. *For restoration and reinstatement of Group 1-3 heritage buildings listed in the City Plan, alter the activity status from discretionary to controlled.*

Restoration and re-instatement are matters which require to be consistent with good heritage conservation practice such as promoted through the ICOMOS (NZ) Charter which is the nationally recognised Heritage Conservation Charter. Controlled activities are those which cannot be declined and are therefore contemplated as acceptable to a District Plan. Heritage retention as a Matter of National Importance under the RMA is seen to be inconsistent with this planning activity status if the application is inconsistent with good conservation practice. Further definitions would be required in District Plans and would still pose difficulties for appropriate management of controlled activities. Both 4) and 5) are also not recommended by the NZHPT.

6. *Insert new assessment criteria in the relevant parts of the City Plan so that the decision making criteria include the impact of the earthquake on heritage buildings.*

The provision of an assessment matter relating specifically to the effects of the Canterbury earthquake for heritage activities is proposed for the OIC for Heritage.

#### **Process for Developing an Order in Council**

29. Once the Council have endorsed this report outlining the components of an OIC for Heritage this will be forward to the Ministry of the Environment who are the lead central government agency on this matter. The Ministry for the Environment will the have the responsibility of briefing the Minister for the Environment who will consider whether the proposal requires Cabinet approval for the drafting of the OIC. The OIC for Heritage will be drafted by the Parliamentary Counsel Office (PCO) acting upon drafting instructions issued by the Ministry for the Environment.
30. Once a drafted OIC is available, there will be an opportunity for affected local authorities to comment on the draft and then advice will be formally sought from the Canterbury Earthquake Recovery Commission consistent with s. 10(a)(i) CERRA.

31. The draft OIC, a regulatory impact statement and accompanying Cabinet Paper will be considered by the Officials Cabinet Committee, before being endorsed by the Ad-hoc Committee for the Earthquake who authorise the item for consideration by Cabinet.
32. The Minister for the Environment recommends the OIC to Cabinet/Executive Counsel who in turn advise and consent that the Governor General act in accordance with the recommendation. The Governor General then formally makes the OIC and has it gazetted (which appears in the Gazette 28 days later). In practise the Governor General actions occur at the same time as the meeting of Cabinet/Executive Counsel.

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23. 2. 2011

**REGULATORY AND PLANNING COMMITTEE  
18 FEBRUARY 2011  
(RECONVENED FROM 2 FEBRUARY 2011)**

**A meeting of the Regulatory and Planning Committee  
was held in Committee Room 2, 53 Hereford Street, Civic Offices  
on Friday 18 February 2011 at 10.30am.**

**PRESENT:** Councillor Sue Wells (Chairperson),  
Councillors Helen Broughton, Sally Buck, Tim Carter, Jimmy Chen, Jamie Gough,  
Yani Johanson, Glenn Livingstone and Chrissie Williams.

**APOLOGIES:** An apology for absence was received and accepted from Councillor Reid.

An Apology for lateness was received and accepted from Councillor Carter who arrived at 11.19am and was absent for part of item 2 and all of item 3.

The Committee reports that:

**PART A - MATTERS REQUIRING A COUNCIL DECISION**

**1. SUPPLEMENTARY REPORT ON SEEKING AN ORDER IN COUNCIL FOR HERITAGE**

<b>General Manager responsible:</b>	General Manager Strategy and Planning Group, DDI 941 8281
<b>Officer responsible:</b>	Programme Manager, Liveable City
<b>Author:</b>	Neil Carrie, Principal Advisor Heritage

**PURPOSE OF REPORT**

1. The purpose of this report is to provide supplementary advice to the Council to assist in deliberations on the proposal to ask the Ministry for the Environment (MfE) to draft an Order in Council for Heritage.

*Note: Staff clarified that MfE would prepare a report to present to the Minister for the Environment who would direct the Parliamentary Counsel Office to draft the Order in Council.*

**EXECUTIVE SUMMARY**

**BACKGROUND**

2. At the 2 February 2011 meeting of the Regulatory and Planning Committee, the Committee received a report on seeking an Order in Council (OIC) for Heritage. Deputations were heard from Christchurch Civic Trust and the New Zealand Historic Places Trust (NZHPT) on this matter. A number of clarifying questions were asked of staff. A record of those questions and answers is attached in **Appendix 1**.
3. Consideration of the agenda item was then deferred to 18 February 2011 to ensure that sufficient time be available for the Committee to deliberate on the proposal, and to give staff the opportunity to further liaise with the NZHPT on the matters raised in their deputation, and to resolve matters of divergence where possible.
4. The proposed contents to be sought for an OIC for Heritage have been developed in response to a resolution of the Council on 6 October 2010 to "Approve that officers work with the relevant government departments to seek an Order in Council from the Government to address the streamlining of the resource consent process for heritage buildings, as outlined in paragraph 46 of this report".



23. 2. 2011

## Regulatory and Planning Committee 18.2.2011 (Reconvened)

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## 1 Cont'd

5. At the meeting of 6 October 2010 the Council further resolved that *"any Order in Council only apply to resource consent applications for change to heritage buildings resulting from the earthquake damage"*. Council sought advice on options to stream line the resource consent process through an OIC given the scale of the number of listed heritage buildings damaged by the earthquake, and the consequential time and financial costs that may occur as a result of a protracted resource consent process.
6. At the time of the October 2010 report, the process for requesting Orders in Council was via the Canterbury Earthquake Recovery Commission. Since that time the process has evolved and the advice received from the Ministry, is to work through the appropriate government department, in this case the Ministry for the Environment.

**Current situation/Issues**

7. Based on the sample of 414 heritage buildings initially assessed in Christchurch City in September 2010, 181 buildings (43 per cent) suffered moderate to severe damage and could be expected to require repairs and, in the more severe cases, partial or full demolition. Selwyn District Council (SDC) has identified approximately 45 damaged heritage buildings, and Waimakariri District Council (WDC) approximately 62 Heritage buildings.
8. Since 4 September 2010 there have been over 3,200 aftershocks. On 26 December 2010 there was a further aftershock, which due to its magnitude and depth resulted in ground shaking of a similar intensity in central Christchurch to that of the initial 4 September 2010 earthquake. The aftershocks, in particular that on Boxing Day, have caused additional damage in a number of cases and therefore the assessments indicated above are subject to change and regular review. There were over 40 additional heritage buildings in central Christchurch reassessed as a danger to public safety due to the Boxing Day event.
9. Given the number of heritage buildings damaged there have been a limited number of resource consent applications received to date. Many building owners are still working with their structural engineers and insurers to determine the best course of action. This is particularly the case for buildings more recently damaged, for example, commercial buildings in the Central City damaged as a result of the Boxing Day earthquake. As at February 2011, 40 resource consent applications for work to earthquake damaged listed heritage buildings have been received, six of these for demolition and 34 for repair and/or stabilisation work. Of the 34 applications for repair/stabilisation, 22 have been approved and were non notified. Of the six applications for demolition, a decision has been made to notify two of these, one consent for demolition has been granted, two will be non notified and two are still being processed. Only two of the six applications for demolition, received are for commercial buildings, however the majority of pre application discussions that staff are having with building owners now are for commercial buildings.
10. As a consequence of the damage, resource consent applications are being, and will have to be, sought to either repair or demolish affected buildings. Based on experiences to date, applications to repair a building are generally able to be processed as a non notified application on the basis that the heritage values of the building will not be (further) diminished or destroyed as a result of the repair. Resource consents for repair are in most cases able to be processed within statutory timeframes, although this is dependent on full applications being submitted. An OIC is therefore not needed to streamline the processing of these applications.
11. Where an application is received for demolition of a building notification will usually be required because the effect on heritage values is likely to be more than minor. Even when the structural integrity of the building is so compromised as to be beyond reasonable repair, the intangible values associated with that building may still mean that it remains of historic significance to the City, thus requiring a notified process. Opportunities to streamline resource consent processes though an OIC for Heritage are therefore more relevant for listed heritage buildings where demolition is sought.

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12. The issues associated with damage to heritage buildings are not confined to the scale of the damage itself but extend to the community effects arising from the consequential consent processes that are then initiated to manage repair or demolition. While consents to manage repairs to damaged buildings appear to be progressing smoothly under the current statutory regime, demolition consents are considerably more complicated. The costs (both financial and time) for progressing notified consents impacts both applicants and Council. There is some uncertainty regarding outcome for applicants, Council and interested parties from these processes. Timeframes and costs may also be considerably extended through appeals. Protracted content processes may also impact directly on neighbouring/adjoining buildings contained within safety cordons. The general public are also restricted in their ability to access, and transition through, the city where footpaths or roads are encroached upon by cordons. The financial costs of consent processes extend beyond the consenting fees and time considerations to include economic impacts of business disruption/cessation, transport congestion, and opportunity costs.
13. In seeking to address these issues, the outcomes sought are a reduction in or minimisation of the ongoing costs, delays and disruption that has occurred to businesses and the community in general as a result of the earthquake damage to heritage buildings while ensuring that as far as possible transparent robust decisions are taken that do not undermine heritage values.

**Benefits and Risks of streamlining resource consent processes**

14. A key benefit of streamlining resource consent processes is reducing the financial and time costs to applicants, Council and in some cases adjoining/neighbouring businesses, through a shorter resource consent process. This includes less time/resources in preparation and processing applications, reduced disruption to the business community and the public. In addition, the recovery of the city in general may also be promoted, for example through the earlier removal of cordons allowing public access to, and movement through the city. Streamlining the resource consent process thereby facilitates the City's response and recovery from the Canterbury earthquake. Depending on the specific mechanisms advanced, an OIC for Heritage may also give enhanced certainty to applicants and Council of an outcome.
15. The risks associated with streamlining the consent process are a perceived or actual loss of transparency and a reduction in the opportunity for the community to participate in the resource consent process. This may increase the risk of legal challenge, both in terms of process (judicial review) and of the substantive decision. Depending on the nature of the OIC for Heritage there may also be perverse or unintended outcomes potentially resulting in an increased loss of heritage values.

**Mechanisms to streamline resource consent processes**

16. Paragraph 46 of the report to Council on 6 October 2010 outlined a broad framework of options for consideration in developing an OIC:
  1. *Enabling the Council to establish an independent panel of experts/Councillors/Commissioners to decide all matters concerning resource consent applications for change to heritage buildings resulting from earthquake damage.*
  2. *If the Panel decides to notify an application, the submission period is considerably shortened from the current minimum 20 working days required by the RMA.*
  3. *Only the applicant has a right of appeal. The Canterbury Earthquake (Historic Places Act) Order 2010 provided that the right of appeal against a decision concerning disturbance of an archaeological site is restricted to the applicant. This Order in Council would seek a similar provision.*
  4. *For demolition of Group 1 or 2 heritage buildings listed in the City Plan that cannot feasibly be saved, alter the activity status from non-complying to discretionary [note that the Council authorised further officer work on this for Group 2 buildings only]. Reason: the non-complying activity threshold test in the RMA may mean that resource consent for demolition cannot be granted.*



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5. For restoration and reinstatement of Group 1-3 heritage buildings listed in the City Plan, alter the activity status from discretionary to controlled.
6. Insert new assessment criteria in the relevant parts of the City Plan so that the decision making criteria include the impact of the earthquake in heritage buildings
17. This broad framework was evaluated and informed the recommendations for the content to be sought in an OIC presented to the Regulatory and Planning Committee on 2 February. In summary, these were:
- (a) Rights of Appeal: appeals to be limited to appeals to the High Court on points of law. The notification process and opportunity for public participation in the notified planning process would be unchanged.
- (b) Assessment of the effects on the environment for decisions on public notification: Specific provision introduced to enable recognition of the adverse effects resulting from the earthquake and aftershocks.
- (c) Activity status in the RMA for resource consent applications for heritage: For "alteration" (which by definition includes "partial demolition") of Group 4 earthquake damaged heritage buildings, a change in the activity status from controlled to restricted discretionary to reflect the amendment status of heritage as a matter of national importance in the Resource Management Act (RMA)
- (d) Scope of Discretion for Restricted Discretionary Activities: increase the scope of discretion to include recognition of the effects of the Canterbury earthquake.
18. The following is a brief summary of the advantages and disadvantages of each of these possible statutory changes listed above and the rationale why they may be advanced as part of a request for an OIC with respect to address issues of costs, time, certainty, transparency and good decision making:

Option	Advantage	Disadvantage	Rationale
Expert panel of highly qualified respected specialists (RMA, heritage, engineering)	Able to be established without OIC, but if required by statute may provide greater comfort to interested parties. Enhances the decision making process	Some costs associated with this	Transparency and robust decision making.  Note: the establishment of an expert panel can be achieved via a Council resolution; no OIC is needed.
Shortened notification submission period	Reduces time of consent process to some extent	May impact on public participation	Reduced time in consent process
Limit appeals to the applicant	Reduces the timeframes for planning process	Limits public participation. Substantial departure from standard processes	Reduced costs Increased certainty
Discretionary status for demolition of Group 2 building (from non-complying)	Enhances ability to approve demolition of severely damaged building in this category	Diminished protection of heritage values May see perverse outcomes	Non-complying activity threshold test may mean that resource consent for demolition cannot be granted
Controlled activity status for repair and reinstatement of	Promotes repair of listed heritage buildings	Resource consents for repair are already progressing well	Good heritage outcome facilitated

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Group 1-3 heritage buildings listed in the City Plan (from discretionary)		under current provisions. Therefore no statutory change is considered necessary to address this.	
Insert new assessment criteria in the relevant parts of the City Plan so that the decision making criteria include the impact of the earthquake on heritage buildings	Improves ability to take the earthquake into account, in particular for notification decisions, which could assist in speeding up the process. Increased certainty for applicants on the outcomes of consent process. Reduced costs	May already be able to undertake in accordance with the RMA provisions (see below) Reduced public participation through a reduction in notification	Increased certainty Reduced costs
Right of Appeal: appeals to be limited to the High Court on matters or point of law	Reduces the timeframes for consent processes	Limits public participation. Substantial departure from standard processes.	Reduced costs Increased certainty
Assessment of the effects on the environment for decisions on public notification	Improves ability to take the earthquake into account, in particular for notification decisions, which could assist in speeding up the process, and Increased certainty for applicants on the outcomes of consent process Reduced costs	Reduced public participation through a reduction in notification	Increased certainty Reduced costs
Restricted discretionary activity status for alterations and partial demolition of Group 4 listed buildings (from controlled)	Ensures the plan reflects RMA amendments. Reduces the risk or unintended loss of heritage values arising from a streamlined process for earthquake recovery.	Increases requirements for some building owners	Aligns the plan with RMA recognition of "national importance" of heritage

**Other Agency and Stakeholders views*****Christchurch Civic Trust***

19. In a deputation to the Regulatory and Planning Committee the Christchurch Civic Trust expressed a general opposition to the Proposed Draft OIC for Heritage on the basis that limitation on appeal rights are considered 'undemocratic', and limiting notified applications prevents public participation. The Trust also sought increased protection for unlisted buildings and the development of a heritage recovery plan.

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***New Zealand Historic Places Trust***

20. In deputations to the Regulatory and Planning Committee the NZHPT expressed a general opposition to the Proposed Draft OIC for Heritage on the basis that it was an unjustified (over the top) approach and that a standard plan change approach would be a preferable way of achieving many of the outcomes sought. NZHPT considered that the Proposed Draft OIC for Heritage raised issues of transparency of decision making. NZHPT was of the view that the consideration of the effects of the earthquake in the assessment criteria for notification and the scope of discretion for restricted discretionary activities is already provided for in the RMA. They reiterated their concerns regarding the reduction in public participation in the resource consent process if non-notification became the norm. NZHPT also recommended that the Ministry of Justice could be requested to provide for an increased capacity or level of priority at the Courts to facilitate timely consideration of appeals on decisions related to earthquake damaged listed heritage buildings.
21. Officers have made enquiries of the Manager of the Environment Court in Christchurch. He has sought comment from Principal Environment Court Judge Thompson. No formal response has been received. However, it appears unlikely that the Environment Court will be able to guarantee extra judicial time to speed up the appeal process.
22. Following the Committee meeting NZHPT met with staff and discussed the alternative to an OIC for Heritage and reviewed the issues needing to be addresses through an OIC for Heritage. The results of that discussion have provided a basis for the preparation of this report.

***Ministry for the Environment***

23. Following the Committee meeting of the 2 February, staff have sought clarification from officers of the Ministry for the Environment on their views on the Proposal Draft OIC for Heritage. Recent communication clarifies that while those officers are supportive of an OIC for Heritage in principle, they wish to further consider the details of the proposed statutory changes. The Ministry officers do not support a change of activity status (as described in 17 (c) above) as they consider that it is not consistent with the Canterbury Earthquake Response and Recovery Act 2010 (CERRA). Their opinion is also that an amendment to the Act to address the public notification matter (outlined in 17 (b) above) is also not appropriate as this matter that has arisen due to the drafting of the Christchurch City Plan.
24. Recent correspondence from MfE indicates the Ministry is still considering the appropriateness of limiting appeal rights to appeals on points of law to the High Court. However they also indicate that the Ministry's legal view of this may change as further advice and clarification is available.

***Evaluation of Options***

25. Consistent with the resolution of 6 October 2010 staff have provided advice on an order in Council specifically. A number of other mechanisms may be employed to resolve issues and achieve that stated objective that Council may wish to also consider either as an alternative to an OIC or alongside an OIC, for example
  - (a) Actively make information regarding consents available to interested parties via the CCC website (enhanced transparency)
  - (b) Establish an Independent Hearing Panel of highly respected specialists with RMA, heritage and engineering expertise (including one councillor) (promote good decision making), linked to the panel having binding decision making powers and limited appeal rights against their decisions
  - (c) Flat fee structure for applicants (reduced costs to applicants through costs transferred to ratepayers)

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- (d) A change to the City Plan for assessment matters and the activity status for applications. (utilises standard processes, provides for public input though there are delays in achieving desired outcomes)
- (e) Seek prioritised Environment Court consideration of any appeal and enhanced timeframes for decisions from the Court.
- (f) The status quo. No statutory change through an OIC.

**Conclusions**

- 26. In evaluating the options for the components of an OIC for Heritage, consideration should also be given to the other mechanisms (see paragraph 25) that may contribute to reducing the impact of damaged heritage buildings. In addition where MfE officers have recommended against a particular mechanism for the OIC for heritage, staff would recommend that this option not be progressed any further. In summary, a recommended request to the MfE for an OIC for Heritage would be limited to seeking statutory change to the rights of appeal. That OIC would be supported through Council initiated mechanisms that are able to be implemented without the need for an OIC to enact them. NZHPT were not in support of limiting rights of appeal and advocated instead for the Environment Court in Christchurch to give priority to these appeals. The Environment Court has not yet indicated whether this is possible.
- 27. Given the recent consultation with the MfE and NZHPT there appear to be difficulties with each of the four options proposed for the OIC for Heritage in the report considered by the Regulatory and Planning Committee on the 2 February 2011. Based on feedback from MfE, the proposals for changes to the assessment of effects on the environment for public notification, the change in planning activity status and the scope of discretion for restricted discretionary activities should not be further advanced as central government will not support them. Not progressing these aspects of the Proposed Draft OIC for Heritage would be supported by NZHPT who have also raised concerns with these proposals though for difference reasons.
- 28. Staff are investigating whether additional capacity could be provided at the Environment Court so that earthquake related appeals may be heard as a priority, or progressed in a more timely manner. While no formal response has been received from the Court, this seems an unlikely option, leaving the alternative to seek curtailment of appeal rights to some degree to manage this aspect of the process. This is not supported by the NZHPT, though a complement of non OIC mechanisms may allay some concerns regarding transparency of the decision making process and achieving good heritage outcomes for example, establishing a panel of experts linked to such limited appeal rights.

**FINANCIAL IMPLICATIONS**

- 29. There are no direct financial implications arising from requesting an OIC for Heritage. The resources necessary to deal with the consequences of the earthquake, which will include an increase in resource consent applications, are anticipated to be reduced overall if streamlined and improved processes are achieved.
- 30. Should Council consider the establishment of an expert panel of highly qualified respected specialists (RMA, heritage, engineering), there will be additional, unbudgeted costs associated with retaining and utilising these experts. If a flat fee option was introduced this would have some cost to Council, in terms of revenue foregone. (it is noted that the issue of fees in general around earthquake recovery is being separately addressed by the GM Regulation and Democracy.

**Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?**

- 31. The Canterbury Earthquake was not anticipated by the 2009-19 LTCCP, however, there are no direct financial impacts from this proposed OIC for Heritage. Staff time in preparing and consulting on the OIC for Heritage proposal is within existing LTCCP budgets.

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**LEGAL CONSIDERATIONS**

32. The CERRA enables the Governor-General, by Order in Council made on the recommendation of the Minister, to make any legislative change to the listed statutes as is reasonably necessary or expedient for the purpose of CERRA. The purpose of CERRA includes to facilitate the response to the Canterbury earthquake, and relaxing or suspending statutory provisions that are not reasonably capable of being complied with, or complied with fully, owing to circumstances resulting from the Canterbury earthquake. It is for the Minister to decide whether to promulgate an OIC for Heritage.
33. An OIC for Heritage to streamline the process for resource consent applications for listed/scheduled heritage buildings damaged as a result of the earthquake and aftershocks is consistent with the purposes of CERRA.
34. The OIC for Heritage process is one in which the legislative change results from a process including Canterbury Earthquake Recovery Commission input, Ministry for the Environment (MfE) officer input, Parliamentary Counsel Office drafting and Ministerial views. Drafting the OIC for Heritage will be the responsibility of the Parliamentary Counsel Office acting under the guidance of the MfE, and are not discussed in this report. If the Council wishes to progress that process, the next step is for the Council to ask the MfE to start its work on drafting recommendations to the Minister.

**Have you considered the legal implications of the issue under consideration?**

35. Yes.

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

36. The earthquake was not anticipated and therefore there is no specific provision for this initiative.

**Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?**

37. No.

**ALIGNMENT WITH STRATEGIES**

38. The proposed OIC for Heritage to the extent that this achieves heritage protection, is aligned with the following strategies and policies:
- Heritage Conservation Policy, which in turn is relevant to:
  - Greater Christchurch Urban Development Strategy (UDS)
  - Central City Revitalisation Strategy
  - New Zealand Urban Design Protocol

**Do the recommendations align with the Council's strategies?**

39. Yes, see above.

**CONSULTATION FULFILMENT**

40. Consultation with regard to seeking an OIC for Heritage has been carried out the with other affected Local Authorities (Selwyn and Waimakariri District Councils). At the time of writing this report the amended scope of the OIC for Heritage proposed in this Supplementary Committee Report has been discussed verbally with Waimakariri District Council who indicated that they are relaxed about scope of the OIC.. Selwyn District Council and the NZHPT have been contacted with an update but feedback has not yet been received.



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41. Consultation with Central Government agencies has been continuing principally with the MfE as lead agency. The MfE are not in agreement with the approach proposed for the OIC for Heritage in the 2 February report and in correspondence on 14 March they state that they have not reached a consensus about the proposed limitation on the rights of appeal.
42. The New Zealand Historic Places Trust (NZHPT) were also consulted with on the previous draft OIC for Heritage as reported to the Committee on 2 February 2011 which covered:
  1. Amending the RMA to consider exceptional circumstances
  2. New Assessment Matter for District Plans which considers the effect of the earthquake
  3. Improved protection for Group 4 buildings
  4. Reduced time periods for processing notified consent applications
  5. Reduced appeal rights
43. The NZHPT provided detailed comments. The NZHPT did not support the terms of the OIC for Heritage. Their concerns were that the scale of the problem did not necessarily justify an OIC for Heritage, and that in their view OIC's should focus on changes to District Plan Changes.
44. One of the options under consideration for streamlining the resource consent process, as noted in paragraph 27 above, is to investigate whether additional capacity could be provided at the Environment Court so that earthquake related appeals may be heard as a priority, or progressed in a more timely manner. Although no formal response has been received, informal approaches to the Manager of the Environment Court in Christchurch indicates it is highly unlikely additional capacity would be provided to speed up the Environment Court appeal process and there would be a high risk for Council to rely on this occurring.

**STAFF RECOMMENDATION**

That the Council:

- (a) Note the contents of this report in deliberating whether to request an Order in Council for Heritage.
- (b) Direct staff to request the Ministry for the Environment to recommend to the Minister, and draft an Order in Council for heritage confined to limiting appeal rights.
- (c) Establish an expert panel of highly qualified specialists with Resource Management Act, Heritage and Engineering expertise to consider resource consent applications for demolition or partial demolition of heritage buildings, and recommend the composition of such a panel and a terms of reference for such a panel back to Council for its final determination.

and /or

- (d) Request the Ministry of Justice to establish a faster appeal process, for appeals on consents regarding heritage buildings arising from the earthquake and report their response to the Council and to the Ministry for the Environment.

**COMMITTEE RECOMMENDATION**

The Committee recommends to the Council:

- (a) That having reviewed this report, it can see no need for an Order in Council at this time, so no Order in Council be requested.
- (b) That it note that current processes allow for the appointment of Commissioners to hearings panels where appropriate, so that no "expert" panel is required.
- (c) That it requests the Ministry of Justice establishes a faster appeal process for appeals on consents regarding heritage buildings arising from the earthquake, and reports its response to the Council.

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**PART B – REPORTS FOR INFORMATION**

**2. DEPUTATIONS BY APPOINTMENT**

- 2.1 Nicola Jackson – National Policy Adviser, New Zealand Historic Places Trust in regard to item 1.
- 2.2 Neil Roberts, Vice Chair of the Civic Trust in regard to item 1.

**PART C - DELEGATED DECISIONS**

**3. RESOLUTION TO BE PASSED - SUPPLEMENTARY REPORT**

It was **resolved** that the Committee receive and consider the report on the Submission on the Proposed Draft Order in Council for Heritage at its 18 February 2011 meeting.

The meeting concluded at 11.57am.

**CONSIDERED THIS 23RD DAY OF FEBRUARY 2011**

**MAYOR**

"6"

26 January 2011

Nam Yee Family Trust No 3  
32 Hereford Street  
**CHRISTCHURCH 8013**

Dear Sir / Madam

**APPLICATION FOR RESOURCE CONSENT PURSUANT TO THE RESOURCE MANAGEMENT ACT 1991**

**ADDRESS: 88 CASHEL STREET - FORMER ZETLAND HOTEL BUILDING**

Council is in receipt of a set of sketch drawings prepared by John Hare of Holmes Consulting detailing works required as "interim repairs" to stabilize the building following damage caused by recent aftershocks (including the "Boxing Day aftershocks").

It has generally been accepted by Council's Heritage Team that the making safe works detailed in the drawings may continue under Mr Hare's supervision.

Please note that any work to make the building safe in the interim (to comply with the s124 notice) or to repair (or demolish) the building will require resource consent.

**Consent for Making Safe Works**

For earthquake damaged heritage buildings the Council have been allowing some works insofar as they are required for making the building safe (for immediate danger to persons and property) to occur before consent is granted. The requirement to obtain a resource consent still remains but in some cases it may be applied for retrospectively if this is agreed to prior to the works commencing.

The works required to make the building safe are to be the minimum required and the least damaging to the heritage fabric of the building. The Council will generally require the following to be submitted if you wish to undertake urgent work to make the building safe: a plan and details of the proposed works prepared by a qualified engineer, photographs of the damage, a plan for the storage of any materials removed from the building and a plan to prevent any further damage to the building while the making safe works are undertaken. Council approval is required before any physical works are undertaken and a reasonable timeframe for a consent being lodged retrospectively will be specified.

Once you are in a position to do so, the Council is happy to discuss specific detail around emergency/make safe works. Any additional details for temporary works can be emailed to me. The Council will consider make safe works with urgency and provide you with a response as soon as practicable.

**Consent for Substantive Repair Works**

As noted above resource consent will be required for the substantive repair works. Council will accept the application for the making safe works as a retrospective section of the substantive repair consent application providing that an application is made prior to March 31 2011. Should this not be the case, a retrospective consent for the making safe works may be required separately from the substantive consent.

Please contact me directly (or Council's Heritage Team) to discuss the requirements of the application for the substantive works. Heritage input will obviously be required.

**NZHPT Requirements**

The property is also situated in the CBD archaeological area and is listed with the New Zealand Historic Places Trust as a Category 2 Building. The site will be subject to specific procedures and



consents under the Historic Places Act 1993 which protects all archaeological sites and requires that no work be undertaken on a site until an archaeological authority to destroy, damage, or modify the site has been granted by the NZHPT in accordance with the Act. I suggest you make contact with the NZHPT to start this archaeological process as soon as possible and to consult with them about the proposed works. You can contact Dave Margetts, Heritage Advisor on 377- 3996 or [dmargetts@historic.org.nz](mailto:dmargetts@historic.org.nz) .

**Section 124 Notice**

The deadline for the Section 124 notice to make the building safe (31 January 2011) is imminent. As explained above with Council agreement, make safe works can be undertaken prior to determination of a resource consent in order that building owners are able to meet the deadline at the end of this month.

In the meantime, please do not hesitate to contact me if you have any questions.

Please contact me if you have any enquiries regarding this letter or your application.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Sean Ward', with a long horizontal stroke extending to the right.

**Sean Ward**  
Senior Planner  
Environmental Policy & Approvals Unit  
Email: [sean.ward@ccc.govt.nz](mailto:sean.ward@ccc.govt.nz)  
Direct Dial: 941-8759

"7"

Resource Management Act 1991

**Christchurch**  
**City Council**


## Report / Decision

### on a Non-notified Resource Consent Application

(Sections 95A / 95B and 104 / 104C)

**Application Number:** RMA92017250  
**Applicant:** The Arts Centre of Christchurch Trust Board  
**Site address:** The Arts Centre - 2 Worcester Boulevard  
**Legal Description:** SEC 419-440  
**City Plan Zoning:** Cultural 1 Zone  
**Activity Status:** Restricted Discretionary

**Description of Application:** The temporary removal and securing of the College Hall Turret that was damaged in the 4 September Earthquake and aftershocks.

#### Introduction

The College Hall turret was significantly damaged in the 4 September Earthquake and subsequent aftershocks. The top section of the turret has been displaced laterally and rotationally on horizontal planes at the top and bottom of the upper window mullions. The north east internal brick pier has separated from the external stonework by approximately 50mm. The movement of the turret has also caused damage to the south gable of the Hall. Following the earthquake the applicant and their engineers have undertaken temporary bracing to secure the turret as far as possible. The south bound lane of Rolleston Avenue remains closed to traffic due to the potential risk posed by the turret collapsing into the street.

The Arts Centre Trust Board now seek consent for the temporary removal of the top of the College Hall turret and to secure the turret making it weather tight. The application documents contain a detailed description of how the top portion of the turret will be removed and how the lower portion will be secured and made weather tight. Following removal the turret will be stored on a concert pad in a secure location on the Arts Centre site adjoining the 'Former West Block Lecture Theatre'.

The temporary removal of the turret will reduce the risk of the turret's collapse onto the roof of the building causing further more significant damage, and reduce the forces on the southern gable in the event of further aftershocks. Following these temporary works College Hall and Rolleston Avenue will be able to re-open for public use.

This application is for the temporary removal work only. Once the top portion of the turret is removed the applicant and their engineers can then undertake further investigations into the best long term strengthening and repair solution for the turret and the wider College Hall building. Due to the timeframes involved with designing a solution and commitments that the Arts Centre has to being open to the public for events next year the turret may be removed from the building for a period of up to two years. The applicant is aware that repair and strengthening works at a later date will require a separate resource consent.

#### Planning Framework

The Christchurch City Plan became operative in part on the 21<sup>st</sup> of November 2005. All rules applicable to this application are operative and therefore assessment is only required under the City Plan.

The site is zoned Cultural 1 under the City Plan and the proposal is to be assessed as a restricted discretionary activity. The zone description explains that this zone comprises areas outside the Central City Zone containing significant heritage buildings and their surrounds and a range of associated and compatible activities.

The Former College Hall Building is listed in the City Plan as a Group 1 Heritage item. Group 1 listed heritage items include "buildings, places and objects of international or national significance, the protection of which is considered essential".

This proposal fails to comply with the following provisions of the City Plan:

- Development Standard 10 - 1.3.1 (a) Any alteration of a Group 1 building shall be a discretionary activity, with the exercise of the Council's discretion limited to matters concerning the heritage values of the protected building. Consent is required as the proposed removal of the College Hall turret is considered an alteration under the City Plan.

### **New Zealand Historic Places Trust**

The Council has consulted with the New Zealand Historic Places Trust (NZHPT or the Trust) in respect to this consent application. A consultation letter was sent to the Trust on 16 November 2010. The application has subsequently been discussed with Mr. Margetts, NZHPT's Heritage Advisor at a meeting on 17 November, where he confirmed that he was comfortable with the application and the methodologies proposed.

Mr. Margetts from the Trust has also attended regular meetings with Arts Centre representatives and Council planning and heritage staff where earthquake repairs including this application have been discussed.

### **The existing environment**

The local environment is characterised by a number of historic buildings and objects that make up the historic Arts Centre complex, bound by Rolleston Avenue, Worcester Boulevard, Montreal Street and Hereford Street.

The College hall building designed and constructed in 1881 is located on the western portion of the site fronting on to Rolleston Avenue. The exterior of the building is constructed in stone (Hoon Hay and Oamaru Stone), slate and brick and has a rectangular floor plan. Other prominent features of the building include: gabled roofs, a turret on south west corner, a 13 metre high interior with barrel-vaulted ceiling, stained glass windows, rimu and kauri panelling and fireplace. College Hall is adjoined to the east by the Clock Tower building and to the south by the Classics Room.

### **Has the applicant requested that the application be publicly notified? [Section 95A(2)(b)]**

No

### **Pursuant to Sections 95A and 104(1), what are the adverse effects of the activity on the environment, and will they be minor? Pursuant to section 95B, who is adversely affected?**

#### Heritage Values

The building is listed as a heritage building of national or international significance in the City Plan (Group 1). The City Plan requires that any alteration to a Group 1 heritage building, whether temporary or not, shall be a restricted discretionary activity. The reason for this rule is to protect buildings identified as having heritage significance for the City. The relevant assessment matters are contained in Clause 10 - 1.4.1 of the City Plan and require consideration of:

- Any immediate or cumulative effects of the loss, alteration or removal of the listed building on the range, number, and quality of heritage features in the vicinity and the city as a whole.
- Whether any irreversible effects of alterations would cause a significant loss of heritage fabric or form.
- Whether heritage items will be conserved to the fullest extent practicable under options available for alterations of listed items, including the nature of work proposed and the type of materials.
- Whether the alterations proposed will maintain or enhance the integrity of the original heritage items and design.
- Whether recognised heritage research and conservation advice has been obtained from NZHPT or any other professionally recognised party in heritage conservation; any conservation plan and/or heritage inventory; and the conservation principles contained within the ICOMOS New Zealand Charter for the conservation of places of cultural or heritage value.

The application contains a structural assessment from Holmes Consulting, the applicant's engineer's which includes a detailed lifting methodology for the turret and a temporary protection plan (TTP). The applicant's assessment has been reviewed by Ms. Joanne Easterbrook in the Council's Urban Design and Heritage Team. Ms. Easterbrook has provided an memorandum (attached as **appendix 1**) outlining her general agreement with the applicant's assessment. Conditions of consent have also been discussed with and agreed to by the applicant.

Given the comprehensive nature of the applicant's assessment and the level of agreement between Council Staff assessing the application, NZHPT representatives and the applicant, only a summary of the works proposed and effects will be repeated here.

The turret is a key architectural feature of the College Hall and the Rolleston Avenue streetscape. In relation to the first assessment matter above, the removal of the turret will result in an immediate effect, reducing the number of heritage features present on the College Hall building and the wider Arts Centre site. However, as the proposed works are temporary in nature Ms. Easterbrook and myself consider that the adverse effects of the temporary removal are insignificant. The temporary removal is to ensure stabilisation work can be undertaken to the tower and allow Rolleston Avenue to be fully opened to the public. The turret will be reinstated within a two year timeframe, and its reinstatement will be subject to an additional resource consent application.

With regard to any irreversible effects on heritage form or features of the College Hall building, I again note that the purpose of this work is to ensure the turret's structural integrity and that it remains as a key architectural feature of College Hall. The work will also remove the current risk of further damage should the turret collapse. Although the turret will be removed from the building, which will change the form of the building and streetscape, this is only a temporary measure and it is the applicants intention that it will be reinstated in its original form, with seismic strengthening in place.

To ensure that the removal is carried out in a way that causes as little damage to heritage fabric as possible the applicant has submitted a TTP and a 'lifting methodology' for the works and adherence to these documents is recommended as a consent condition. Ms. Easterbrook has also suggested several consent conditions relating to the proximity of cranes and heavy vehicles to the building, protection layers between weight bearing elements and protection of the adjoining stain glass windows. The applicant is happy to accommodate Ms. Easterbrook's suggestions. Once removed the turret will be stored in a secure location on the site behind security fencing to prevent public access and prevent further damage. The tower from which the turret is removed will be made watertight with a temporary roof. For these reasons any adverse effects are considered by Ms. Easterbrook and myself to be insignificant.

The proposed temporary removal works are a necessary interim step if the turret is to be reinstated to its previous form. The end result is the overall conservation of the turret. Ms. Easterbrook considers that the turret's removal *"will ensure it is conserved to the fullest extent possible and maintain and enhance the integrity of the College Hall (great hall)"*. Thus it is not considered that the proposal will result in any adverse effects relating to this assessment matter.

In relation to any recognised heritage research and conservation advice obtained, as discussed above consultation has been undertaken by the applicant and Council with Mr. Dave Margetts of the NZHPT and he is supportive of this proposed work. The applicant also has a Conservation Plan for the Arts Centre site which will be followed and work will be undertaken using the conservation principles of the ICOMOS NZ charter. It is also proposed that the turret's removal will be overseen by the applicant's engineers (Holmes Consulting) and a heritage architect (Jeremy Salmon), and that all work will be carried out by experienced and qualified trades people who have experience with heritage buildings.

Subject to the imposition of the conditions disused in the preceding paragraphs, and agreed to by the applicant, I am satisfied that any adverse effects of the proposed works on the heritage fabric and values of the building will be **insignificant** (or less than minor). Pursuant to Section 95E(1) of the Act a person is not deemed affected by an activity where the adverse effects are less than minor, hence written approval is not required from any persons in this instance.

In addition to the above, I note that under section 104 positive effects are also a relevant consideration. In this instance I consider the proposal results in positive effects as the removal of the turret will prevent further damage to the building, eliminate safety risks for the public and enable College Hall and Rolleston Avenue to re-open to the public. The turret's removal will also enable its eventual repair and strengthening, ultimately securing the long term future of the building. These positive effects in my opinion are of such a nature as to outweigh any of the adverse effects that have been discussed above.

**Despite the above, do any special circumstances exist in relation to this application which would lead you to conclude that the application should be publicly notified? If the answer is yes, why? [Section 95A(4)]**

No

**Who is considered to be adversely affected by the granting of this application? Identify the properties on the attached plan. [Section 95E(1)]**

For the reasons outline above no parties are considered adversely affected.

**Has written approval been obtained from every person who is considered to be adversely affected by the activity? [Section 95E(3)]**

Not Applicable.

**If the answer to the above question is no, is it unreasonable in the circumstances to seek the persons written approval? [Section 95E(3)(b)]**

Not Applicable.

**How do any relevant objectives, policies, rules or other provisions of the City/District Plan relate to the proposal?**

It is considered that this proposal is consistent with the objectives and policies of the Plan. The Plan seeks to protect and maintain buildings identified as having heritage significance to the City. I consider that the work proposed in this application is necessary to ensure the long term retention and restoration of the building.

The assessment earlier in this report demonstrated that the proposal will not compromise the site's heritage values and that the proposal will only have less than minor adverse effects on the heritage values or fabric of the building and the amenity and historic values of the area. Accordingly, I do not consider that the proposal will compromise the outcomes sought by the relevant objectives and policies of the City Plan.

**Is the application consistent with Part II of the Act, and are there any other matters which are relevant and reasonably necessary to determine the application? [Section 104]**

Part II

The proposal is considered to be consistent with Part II matters in that the proposal will maintain the amenity of the surrounding environment, in accordance with Section 7c and 7f of the Resource Management Act 1991.

The proposal also recognises and provides for the protection of historic heritage, in accordance with section 6f (matters of national importance).

**Are there any matters that have arisen in the assessment of this application that would indicate the application should have been publicly notified [Section 104(3)(d)]**

No

**Recommendation:**

- A. That the application be processed on a **non-notified** basis in accordance with Sections 95A - 95F of the Resource Management Act 1991.
- B. That for the above reasons the application **be granted** pursuant to Sections 104, 104C and 108 of the Resource Management Act 1991, subject to the following conditions:
  1. The development shall proceed in accordance with the information and plans submitted with the application. The Approved Consent Documentation has been entered into Council records as RMA9207250 (27 pages) and includes the stamped approved plans RMA9207250 pages 1 to 16.
  2. That photographic records of the removal of the top section of the turret, as per the matters outlined in the City Plan, Volume 3, Section 10, Clauses 1.3.5 - Photographic records (Group 1-4 heritage



items) shall be undertaken prior to commencement of any work and at intervals during the removal process in accordance with the requirements specified in the City Plan.

3. That the photographic records required by condition 2 shall be provided to the Team Leader of the Urban Design and Heritage Unit of Christchurch City Council (or nominee) within 3 months of the work being completed.
4. Except as modified by any conditions below the 'Temporary Protection Plan' (TPP) lodged and entered into Council's records as pages 6, 7 and 8 of the Approved Consent Document and the 'College Hall Turret Lifting Methodology' lodged and entered into Council's records as pages 25, 26 and 27, shall be followed by all of the trades people working on the site. A copy of the TPP and 'lifting methodology' shall be available on site at all times for the duration of the work.
5. All the proposed works shall be overseen and monitored by a suitably qualified registered engineer and heritage architect.
6. All stonework in the turret shall have a layer of protection between the weight bearing elements, to ensure the lifting pressure does not damage the stonework. This work is to be undertaken under supervision by a professional stonemason.
7. Prior to works associated with the turret's removal commencing, scaffolding with a protective plywood roof shall be erected to provide protection for the College Hall stained glass window that directly adjoins the turret. The scaffolding shall remain in place during the removal process and may be removed once the turret is placed in the temporary concrete pad.
8. All scaffolding shall be erected by a professional scaffolding company. No scaffolding shall be erected on the site in a manner which requires drilling or bolting to the exterior or interior of the protected building. In addition protective materials shall be placed between the poles, beams and board works of the scaffolding and any masonry or wooden surfaces of the protected building where necessary to ensure that all decorative elements are protected from the possibility of the scaffolding knocking or rubbing against the building.
9. No heavy vehicles/machinery shall be driven or placed closer than 5 metres from the College Hall building for the duration of the work.
10. The duration of this consent for the temporary removal of the turret shall be limited to two years.

#### Advice Notes:

- The Council will require payment of its administrative charges in relation to monitoring, as authorised by the provisions of section 36 of the Resource Management Act 1991. At present the monitoring charges include:
  - (i) A monitoring fee of \$132.90 to cover the cost of setting up a monitoring programme and carrying out two site inspection(s) to ensure compliance with the conditions of this consent; and
  - (ii) Time charged at an hourly rate where additional monitoring is required.
- This resource consent only covers the temporary removal of the turret from the tower. A separate resource consent will be required for strengthening works and for the turret to be re-instated.
- This resource consent has been processed under the Resource Management Act 1991 and relates to planning matters only. You will also need to comply with the requirements of the Building Act 2004. Please contact a Building Consent Officer (941-8999) for advice on the building consent process.
- In relation to condition 3, I note that the current Team Leader of Christchurch City Council's Urban Design and Heritage Unit is Ceciel DelaRue. Ms DelaRue can be contacted by phone on (03) 941 5237.
- The consent holder shall cease work if there are any changes proposed to the submitted information and approved plans and methodology. Sufficient notice of any changes must be submitted to and approved by the nominee of the Principal Advisor, Urban Design and Heritage, Christchurch City Council, before further work shall be undertaken, to ensure that the proposed amendments can be considered within the scope of

this consent, or whether a new resource consent will be required. I note that the current contact for such approval is Joanne Easterbrook.

- The consent holder is advised to liaise with the nominee of the Principal Advisor, Urban Design and Heritage, Christchurch City Council if further clarification is required in respect of satisfying conditions 2 to 19. The current contact for such advice is Joanne Easterbrook.
- That all work shall be undertaken with consideration to the conservation principles contained within the ICOMOS New Zealand Charter for the conservation of places of cultural or heritage value.

**Reported and Recommended by:** Clare Revell – Senior Planner      **Date:** 29 November 2010

<b>Decision</b>
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That the above recommendation be adopted for the reasons outlined in the report.

**Commissioner:**

Name: JONATHAN CLEAVE

Signature: 

Date: 30/11/2010

## Appendix 1 – Heritage Assessment

### Memorandum

**To:** Clare Revell, Senior Planner  
**From:** Joanne Easterbrook, Heritage Conservation Planner  
**cc:** Ceciel DelaRue, Team Leader Urban Design and Heritage  
**Date:** November 19, 2010

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### Application for Land Use Consent RMA92017250

#### Arts Centre Temporary removal and securing of the College Hall turret top section 2 Worcester Boulevard, Christchurch

#### Heritage Assessment

##### 1. Introduction:

1.1 As a result of structural damage sustained to the College Hall (Great Hall) turret and tower as a result of the 4<sup>th</sup> September 2010 earthquake and subsequent aftershocks, the application proposes temporary removal and securing of the College Hall turret top section. Securing of the tower will be undertaken under a separate resource consent application. The Arts Centre is identified as a heritage site containing multiple listed buildings in Appendix 2, Part 10 Heritage and Amenities and the College Hall is listed as a Group 1 heritage item in Appendix 1, Part 10 Heritage and Amenities. Group 1 items "... include buildings, places and objects of international or national significance, the protection of which is considered essential.

This consent includes a Temporary Protection Plan from Holmes Consulting Group and a lifting methodology. The lifting methodology discusses details of fixing the lifting cradle and construction of temporary concrete foundation and moving turret onto pad, securing and weatherproofing the tower. Details in the application state that the turret suffered significant damage in the September 4<sup>th</sup> earthquake and subsequent aftershocks. The top of the turret has displaced horizontally and rotationally at the top and bottom of the upper stone window mullions. The actions of the turret and tower have also caused damage to the south gable of the Great Hall. Currently the tower has been stabilised with timber framing to prevent further damage.

1.2. The heritage matters of the application are considered under Rule 1.3.1 (a) (Development Standard), Vol. III, Section 10 of the City Plan, Heritage: any alteration or removal of a Group 1 building, place or object ... shall be a *discretionary activity* with the exercise of the Council's discretion limited to matters concerning the heritage values of the protected item.

1.3. The Arts Centre is registered as a Category I historic place by the New Zealand Historic Places Trust Pouhere Taonga (NZHPT). The Council is obliged to consult with the NZHPT as per the requirements of the City Plan Vol 3, Section 10, 1.2.11.

1.4. Clare Revell and myself met with Dave Margetts Heritage Advisor, Architecture & Conservation on 17 November to discuss this proposal. Dave indicated he had no concerns with the proposed temporary removal and stabilisation of the College Hall turret.

1.6. I am familiar with the site and undertook a site visit on 18 November 2010.

##### 1.7. History:

The original Canterbury College Hall building was built to the design of Benjamin Mountfort in 1881-82 as one of the earliest and the most grand of structures erected as part of the Canterbury College (later Canterbury University College and now the Arts Centre of Christchurch). Funding restrictions meant that only the hall and the turret, and not the class and professors room, could be erected in the first instance. The subsequent erection of the Classics Lecture Room with Library were erected 1887-8 as a separate component of the College but clearly integrated and related to Mountfort's earlier designs associated with the Hall.



As well as graduation ceremonies, the Hall was used for public lectures and other formal occasions. After World War II, its usage increased, as it became a regular lecture theatre.

### 3. City Plan Assessment matters:

3.1. I have considered the information supplied in the application and have assessed the application under the following City Plan assessment matters as outlined in Vol.3, Section 10, 1.4.1, *Assessment Matters – demolition, removal or alteration of any protected buildings, places or objects*.

#### 3.2.

- (a) *Any immediate or cumulative effect of the loss, alteration or removal of the listed building, place or object on the range, number and quality of heritage features in the vicinity and the city as a whole; and*
- (b) *The relative impact on the city's heritage values of loss, alteration or removal of the listed item with regard to the reasons for the listing (as contained in the criteria in the Statement of Objective and Policies) and in particular the historic/social, cultural/spiritual, and architectural/artistic criteria; and the registration (if applicable) under the NZ Historic Place Act 1993.*

The temporary removal and securing of the College Hall turret top section, which has been damaged by the earthquake, will have a minor effect on the cumulative effect on the range, number and quality of heritage features in the vicinity and the city as a whole. The proposed works are temporary in nature and are for the long term benefits of the structural integrity of the turret and associated tower. The removal is temporary only, to ensure stabilisation work can be undertaken to the tower and allow Rolleston Avenue to be fully opened to the public. The turret is likely to be reinstated within a 2 year timeframe, and this will be subject to an additional resource consent application. The turret is a key architectural feature of the college hall and the Rolleston Avenue streetscape.

#### 3.3.

- (c) *The extent to which alterations have an irreversible effect on heritage form or heritage feature of the building, place or object; and*

The proposed temporary removal of the college hall turret will not have any irreversible effect on heritage form or features of the building. The purpose of this work is to undertake work to the turret to ensure its structural integrity and ensure it remains as a key architectural feature for the Great Hall. Although the turret will be removed from the building, which will change the form of the building and streetscape, this is only a temporary measure and it will be reinstated in its original form.

*e) Whether heritage items will be conserved to the fullest extent practicable under options available for alterations of listed items, including the nature of work proposed and the type of materials*

*f) Whether alterations proposed will maintain or enhance the integrity of the original heritage items and design.*

The purpose of the proposed works is to reinstate the original turret in its original form. The removal is the turret is needed to ensure safety of the building and public safety and enable the structural stabilisation work to be undertaken to the turret. The end result is the overall conservation of the turret, which will ensure it is conserved to the fullest extent possible and maintain and enhance the integrity of the college hall (great hall).

#### 3.5.

- (i) *Whether recognised heritage research and conservation advice has been obtained from the New Zealand Historic Places Trust or any other professionally recognised party in heritage conservation; any conservation plan and /or heritage inventory; and the conservation principles contained within the ICOMOS New Zealand Charter for the conservation of places of cultural or heritage value.*

Consultation has been undertaken with Dave Margetts of the NZHPT Southern Regional office and he is supportive of this proposed work. A conservation plan was prepared in October 2006 by Opus Consultants and work will be undertaken using the conservation principles of the ICOMOS NZ charter.

#### 4. Conclusion:

Given the dangerous situation that the turret poses of potential damage to this significant heritage building and the surrounding environment due to structural failure, this consent will ensure that public safety and safety of this significant heritage building is maintained. Given the extreme circumstances under which this consent has been lodged, and noting the discussion above, we believe the adverse effects from this proposed application for temporary removal of the college hall turret can therefore be deemed no more than minor.

I have reached this conclusion having given due consideration to the submitted resource consent application which includes a Temporary Protection Plan and a lifting methodology for the cradle. An assessment by Homes Consulting indicated that the College Hall turret was at 95% seismic load which would cause failure, as a result of the earthquake. This indicates that it would not have taken much more for the turret to have failed completely and indicates the sense of urgency for this temporary removal.

We recommend that approval (with respect to heritage matters only), be given to undertake the temporary removal and securing of the College Hall turret top section as submitted in the application dated 15 November 2010, with the following conditions:

- That a photographic record of the removal of the top section of the turret is undertaken, as per the matters outlined in Vol. 3, Section 10, matter 1.3.5, *Photographic records (Group 1-4 heritage items)* be undertaken prior to commencement of any work, at intervals during the removal process. This is to be lodged with the Heritage Unit of the Council for their records within three months of the completion of the work;
- That all work by shall be undertaken with a strict adherence to a Temporary Protection Plan (TPP) (to protect the college hall building) submitted with the application and that a copy of the TPP shall be available on site at all times for the duration of the work; I recommend the following specific heritage matters are included in the TPP.
  - Potential of physical contact with heritage fabric by machinery or vehicles. No vehicles or machinery shall be drive or placed closer than 5 metres from the College Hall building.
  - Possible damage to building fabric from erection, dismantling of scaffolding (internal only). All scaffolding shall be erected by a professional scaffolding company. No scaffolding shall be fixed to any heritage fabric. In particular no fixings will be made that involve penetrations of the building fabric. Any clamps shall be protected by a soft protection barrier and where any scaffolding is in contact with building fabric, the fabric will also be protected by a soft protection barrier.
  - Possible damage of stonework as a result of the weight bearing nature of the proposed cradle. All stonework has a layer of protection between the weight bearing elements, to ensure the lifting pressure does not damage the stonework. This is to be undertaken under supervision from a professional stonemason.
  - Possible damage to building fabric from falling material, equipment. All contractors shall take care to prevent material or equipment falling. Place plywood protective sheets over the adjacent slate roof of College Hall and windows in the south end bay of the east wall of College Hall and windows on the classics building running the full length up to the location of the temporary pad for the turret.
  - A structural engineer is present during the entire removal process
- Temporary signage is placed at the temporary turret foundation to notify the public on the temporary removal process and likely timeframes.
- The applicant shall not commence work or shall cease work if there are any changes proposed to the submitted and approved plans. Sufficient notice must be given of this to allow any changes to be discussed and agreed upon between the Council and applicant before further work is undertaken.

#### Advice notices:

- That all work should be undertaken with consideration to principles contained within the ICOMOS New Zealand Charter for the conservation of places of cultural or heritage value;

- That the applicant be advised that should any groundwork be required there may be a need to have consideration of the HPA with respect to Archaeological matters as per Sections 9-19 *Archaeological Sites* of the Historic Places Act. Under the Canterbury Earthquake Response and Recovery Act 2010 a simplified and streamlined process has been set up to quickly consider work that affects archaeological sites to be undertaken.
- **RECORDS**  
Records of the research and conservation of places of cultural heritage value should be placed in an appropriate archive and made available to all affected people. Some knowledge of places of indigenous heritage value is not a matter of public record, but is entrusted to guardians within the indigenous community.

"8"

**Revell, Clare**

**From:** Revell, Clare  
**Sent:** Monday, 17 January 2011 12:37 pm  
**To:** 'russell@cityforesight.co.nz'  
**Subject:** FW: 208 Hereford Street  
**Importance:** High  
**Attachments:** P001ResourceConsentLandUseAppFrm9-docs.doc

<b>Tracking:</b>	<b>Recipient</b>	<b>Delivery</b>
	'russell@cityforesight.co.nz'	
	Clayton, Fiona	Delivered: 17/01/2011 12:38 pm
	DelaRue, Ceciel	Delivered: 17/01/2011 12:38 pm
	'Dave Margetts'	
	Billante, Vincie	Delivered: 17/01/2011 12:38 pm

Dear Russell,

Further to my phone call on Friday afternoon I am emailing to reiterate our conversation in relation to the resource consent requirements for the demolition of the Occidental Hotel at 208 Hereford Street (a group 3 listed heritage building) and to follow up on the possibility of the Council assisting with a structural assessment of the building. I understand that it is your intention to demolish the building.

As I explained, any work to make the building safe in the interim (to comply with the s124 notice) or to demolish the building requires resource consent. For this reason the Council is not able to give you approval to 'demolish immediately' as requested in your email below.

Before you undertake any works either to make the building safe or demolish, you will need to apply for resource consent or you will be in breach of the Resource Management Act, a prosecutable offence. I understand that you have also discussed the proposed demolition with a Council Building Consent Officer who has explained the Building Act requirements.

**Resource Consent for Demolition**

Your resource consent application for the demolition of the building will need to include the following as a minimum:

- A completed resource consent application form (copy of form attached) and \$2,500 deposit fee.
- An assessment of the building undertaken by a qualified structural engineer. The assessment will also need to cover any alternative options to demolition such as repair or reinstatement, and an estimate of the costs for this work.
- If the building is able to be repaired, evidence as to why it is not financially feasible to repair the building.
- Photographs of the damage to the building.
- A demolition plan that includes any required traffic management (eg: traffic cordons) and that ensures any temporary effects such as noise, dust, damage to adjoining buildings and visual amenity (eg: how will the site be left) are mitigated.

The Council is not able to make a resource consent application on your behalf, it is our job to assess the application that you make. I can also now advise, that the Council is not able to engage a structural engineer to undertake an assessment of the building on your behalf, you will need to engage your own engineer and submit this report in support of your application. The Council will then peer review that report as part of the consent process.

I understand that you do not wish to lodge any consent application until the Council can give you an indication as to the likely consent process and timeframes. Once you have obtained a structural assessment of the building the Council is happy to have pre-application discussions to advise on timeframes, process and costs and assist with an application where we can. However, this is not possible

9/12/2011

until you have taken the first step of engaging your own engineer to assess the building.

### **Consent for Making Safe Works**

For earthquake damaged heritage buildings the Council have been allowing some works insofar as they are required for making the building safe (for immediate danger to persons and property) to occur before consent is granted. The requirement to obtain a resource consent still remains but in some cases it can be applied for retrospectively if this is agreed to prior to the works commencing.

The works required to make the building safe are to be the minimum required and the least damaging to the heritage fabric of the building. The Council will require the following to be submitted if you wish to undertake urgent work to make the building safe: a plan and details of the proposed works prepared by a qualified engineer, photo's of the damage, a plan for the storage of any materials removed from the building and a plan to prevent any further damage to the building while the making safe works are undertaken. Council approval is required before any physical works are undertaken and a reasonable timeframe for a consent being lodged retrospectively will be specified.

Once you are in a position to do so, the Council is happy to discuss specific detail around emergency/ make safe works. Any details for temporary works can be emailed to me. The Council will consider make safe works with urgency and provide you with a response as soon as practicable.

### **NZHPT Requirements**

The property is also situated in the CBD archaeological area and is listed with the New Zealand Historic Places Trust as a Category 2 Building. The site will be subject to specific procedures and consents under the Historic Places Act 1993 which protects all archaeological sites and requires that no work be undertaken on a site until an archaeological authority to destroy, damage, or modify the site has been granted by the NZHPT in accordance with the Act. I suggest you make contact with the NZHPT to start this archaeological process as soon as possible and to consult with them about the proposed demolition. You can contact Dave Margetts, Heritage Advisor on 377- 3996 or [dmargetts@historic.org.nz](mailto:dmargetts@historic.org.nz) .

### **Section 124 Notice**

I encourage you to engage a structural engineer with some urgency, as the deadline for the Section 124 notice to make the building safe (31 January 2011) is imminent. As explained above with Council approval, make safe works can be undertaken prior to determination of a resource consent to meet the deadline at the end of this month. Failure to comply with the section 124 notice may result in an instant \$1000.00 infringement fine, or a maximum \$200,000 fine should the Christchurch City Council need to prosecute for a failure to comply with the Building Act.

In the meantime, please do not hesitate to contact me if you have any questions.

Regards

Clare

**Clare Revell**

**Senior Planner**

Environmental Policy and Approvals Unit

**DDI:** 03 941-8824

**Email:** [clare.revell@ccc.govt.nz](mailto:clare.revell@ccc.govt.nz)

**Web:** [www.ccc.govt.nz](http://www.ccc.govt.nz)

**Christchurch City Council**

Civic Offices, 53 Hereford Street, Christchurch

PO Box 73013, Christchurch, 8154

Please consider the environment before printing this email

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**From:** Russell Glynn [<mailto:russell@cityforesight.co.nz>]

**Sent:** Friday, 14 January 2011 10:18 am

**To:** BuildingRecoveryOffice

**Subject:** 208 Hereford Street

9/12/2011

ATTN JAMES CLARKE

RE Notice under the BUILDING ACT 2004

I left a message on your phone last week and have not had a reply.

The building is beyond repair.

As stated in the notice it is dangerous to the public and immediate action should take place.

Clause F on the notice states approval from Council is required.

All services are disconnected except for the sewer which will be cut and sealed.

I hereby ask for approval to demolish immediately.

Russell Glynn

Cell 021 661 416

City Foresight Ltd



" 9 "

Resource Management Act 1991

**Christchurch**  
 City Council 

## Report / Decision determining whether an Application for Resource Consent should be processed as publicly notified, limited notified, or non-notified

(Sections 95A / 95B)

<b>Application Number:</b>	<b>RMA92017057</b>
<b>Applicant:</b>	<b>Hope Investment Property Limited</b>
<b>Site address:</b>	<b>456 Colombo Street, Sydenham</b>
<b>Legal Description:</b>	<b>Part Lot 1 DP8868</b>
<b>City Plan Zoning:</b>	<b>Business 2 (District Centre)</b>
<b>Activity Status:</b>	<b>Discretionary</b>

**Description of Application:** Demolition of a Group 4 Heritage Building (The Frame Workshop) Following the Canterbury Earthquake and aftershocks.

### Introduction

#### The Application

This application for resource consent seeks the demolition of the two storey building at 456 Colombo Street (located in the block between Byron Street to the north and Lawson Street to the south), known as 'The Frame Workshop'. Canterbury was struck by a 7.1 magnitude earthquake on Saturday 4 September 2010. The building has sustained damage from the earthquake and aftershocks.

Subsequent to the earthquake and aftershocks the building has been assessed as 'unsafe' by two structural engineers. The owner of the building has provided the Council with several structural engineer's reports from P J Patterson of Powell Fenwick since the 4 September earthquake, the latest being dated 8 October 2010. This most recent report now forms the basis of this resource consent application. It recommends that the building be demolished due to the danger posed by the buildings collapse into adjoining buildings. Photographs of some of the damage to the building are shown below.



Figure 1: View of ornate parapet that has been damaged.



Figure 2: Damage to brickwork.



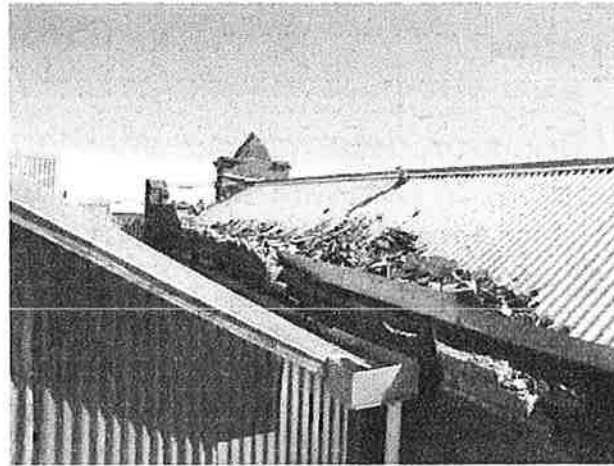


Figure 3: Damage to firewall.

The owner's structural reports find that the building has suffered significant structural damage and that the aftershocks are observed to have caused further deterioration to the building's stability. The damage to the building is described by the engineer as follows: *"both red brick return wall parapets have collapsed, damaging neighbouring roofs, spouting and downpipes. The north brick wall has deflected below seismic straps and bows out over 50mm and curves back at top. The front portion of the northern boundary wall has separated with loose bricks and the south wall is unstable. The street front ornamental parapet has fallen through the verandah onto the road, and through the neighbour's roof. The front parapet has detached, and is leaning forward towards Colombo Street and the roof has sagged"*.

A proposed demolition plan has also been lodged with the Council as part of a building act exemption application (BAE 35001994) and these documents also contain relevant information on traffic management and the protection of adjoining buildings that inform the resource consent process.

Like many buildings in Sydenham a cordon barrier has been set up around the building and adjoining buildings following the earthquake and these remain in place today. Colombo Street is reduced to a single lane through Sydenham with one way traffic flow in a northerly direction. The street is closed to heavy traffic and buses to reduce vehicle vibrations.

### Assessment By Council

A structural assessment of the building undertaken on behalf of the Council was received from Endel Lust, Civil Engineer Ltd on 29 September 2010. This is based on an inspection undertaken on 28 September 2010. The assessment states that the building has undergone significant damage, and the earthquake and subsequent aftershocks have resulted in a collapse of the chimney, collapse of parts of the parapets to the north & south walls with the remaining sections being relatively precarious. It notes the decorative elements to the front parapet have virtually all fallen off with the central pediment to this parapet leaning forward. The report considers underpinning and restoring this structure would be difficult given the unsafe elements, and would require a virtual rebuild of the entire front wall and canopy. The conclusion of the assessment is that the building is 'damaged beyond repair' and it would not be an economic alternative to restore and strengthen the existing structure.

The consent application received by the Council does not contain an assessment of heritage effects associated with the buildings demolition. However, Joanne Easterbrook of the Council's Heritage Team with assistance from heritage consultant, Jenny May of Heritage Management Services has carried out a heritage assessment of this application.

The Council has also obtained legal advice from Duncan Laing, Solicitor at Simpson Grierson, in relation to Section 95 notification issues surrounding the demolition of listed heritage buildings, affected persons and special circumstances. A copy of the advice has been made available for the Commissioner. The advice will be discussed in later sections of this report.

## Council Meetings 4 and 6 October 2010

Extraordinary meetings of the Christchurch City Council were held on Monday 4 and Wednesday 6 October 2010 for the Council to consider the demolition or partial demolition of six listed heritage buildings<sup>1</sup>. Agendas and minutes for these meetings are available on the Council's website. In summary, consideration was firstly given to whether there was Council funding available to try and aid in the retention of any of the buildings. Then secondly, following legal advice, at the Wednesday meeting, attention was turned to the Council's powers under Section 129 of the Building Act 2004 (BA04).

If the situation presented by a particular dangerous, earthquake prone or insanitary building is considered to constitute an *"immediate danger"*<sup>2</sup>, the Council, through its Chief Executive issuing a warrant, can take action under Section 129 of the BA04. This action can include the demolition, partial demolition or repair of the building. If a warrant is issued no building consent or resource consent is required to be obtained.

At the meeting the Council endorsed the Chief Executive issuing a warrant under Section 129 of the BA04 for the demolition of the buildings at 160 Manchester Street and 461A to 469A Colombo Street and the partial demolition of the building at 31 Teddington Road. A warrant was not issued for the building at 456 Colombo Street, as while dangerous it was not an immediate danger and had been appropriately cordoned off. This means the owner of the building must apply for a building consent (or exemption) for any demolition or repairs and a resource consent under the Resource Management Act 1991.

Also of relevance to this application was a deputation to the 4 October meeting by Dorothy Haywood of the Sydenham Heritage Trust in respect of the proposed demolitions of 456 and 461A - 469A Colombo Street. The Trust is the owner of Sydenham Heritage Church at 343 Colombo Street, however also has a wider interest in the heritage values of Sydenham. On behalf of the Trust Ms Haywood raised concerns about the loss of heritage in Sydenham and in particular, given the number of buildings on the section of Colombo Street between Brougham Street and Moorhouse Avenue that have been badly damaged in the earthquake, the cumulative effects on the character of Sydenham. She also expressed that the Trust had concern over the quality of any replacement buildings erected in Sydenham and emphasised the need for these to be in keeping with and respect their heritage surroundings.

The reports presented to the Council on 4 and 6 October incorrectly stated that any resource consent required for the demolition of the building at 456 Colombo Street will be non-notified as specified in the City Plan: *"As this building is listed in the City Plan a resource consent for demolition is required. For this building the City Plan provides any resource consent applications must be dealt with on a non-notified basis"*. A later amendment sent to Council explained that a non-notification clause is not provided for in the City Plan for the demolition of a Group 4 building and a notification decision is required under section 95 of the RMA.

## Consultation

Although the building is not listed with the New Zealand Historic Places Trust (NZHPT) in their register, the Council has sent NZHPT a letter advising of the applications lodged on 14 October 2010. At the date of completion of this report no formal written response has been received from NZHPT. However, Ms Easterbrook in the Council's Heritage Team has discussed the consent with Mr Dave Margetts at the NZHPT.

## Building History

The building at 456 Colombo Street is a small Edwardian two storey commercial building constructed of brick and cement. The date of construction appears to be 1905 with the building being designed in the Commercial Classical idiom characteristic of the period. The building is relatively small at approximately 4.5m wide x 11m long. There are brick firewalls with parapets to the north and south boundaries. The shop front is open to the west with a brick façade and parapet.

The building has architectural and aesthetic significance for the architectural pretension of its parapet, which with its rococo balustrade, urns and pediment, is particularly ornate. The building has been attributed to

<sup>1</sup> 160 Manchester Street (Manchester Courts), 192 Madras Street (The Nurse Maud Building), 461A – 469A Colombo Street (The Angus Donaldson Building), 456 Colombo Street (The Frame Workshop), 580 Ferry Road (Former Nugget Polish Factory) and 31 Teddington Road (Ohinetahi).

<sup>2</sup> *'Immediate danger'* requires that there be something about the building that takes it beyond being a "simple" dangerous, earthquake-prone or insanitary building. The test for immediate danger to the safety of people requires that the risk of the building causing injury or death to people must be "a reasonable consequence" or "something which could well happen". For an "immediate danger" to arise the situation must have become particularly urgent and immediate.

prominent architect Samuel Hurst Seager. The building is located on the major thoroughfare of Colombo Street and has a contextual relationship with its immediate neighbour at 454 Colombo Street.

The building was built as an investment by prominent painter and decorator Thomas Davies, who occupied the adjacent premises at 454 Colombo Street. Davies decorated many of the city's leading residences, the most prominent of these was commercial baker Ernest Adams Ltd, who maintained a retail outlet on the site from c1930 – 1960.

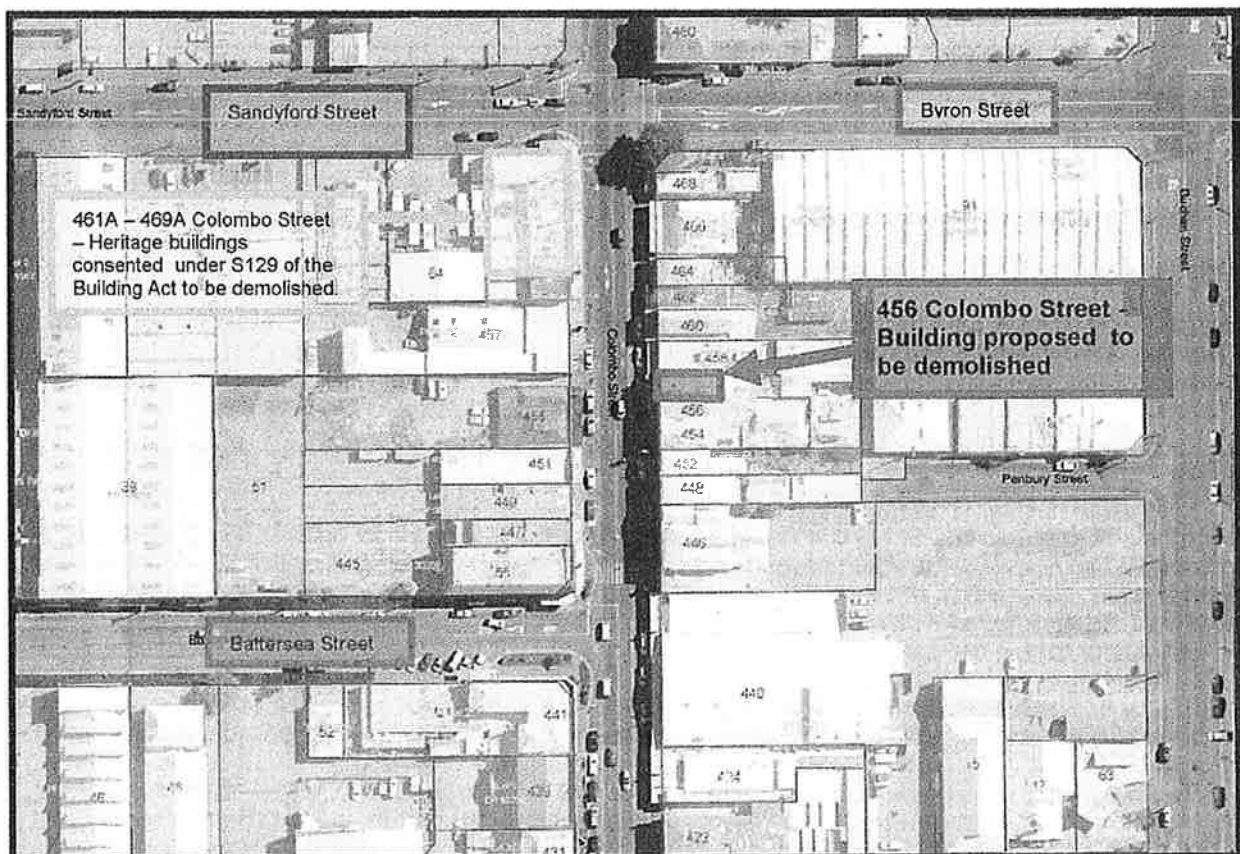
Some alterations were undertaken to the building's rear wall on the ground floor to open it up into the adjoining building and to close off a connection at first floor level in the late 1980's. Limited strengthening works were also undertaken at this time.

### Existing Environment

The site is positioned on the eastern side of Colombo Street in the block between Byron Street to the north and Lawson Street to the south. The sites adjoining the Colombo Street road frontage are all zoned Business 2 (District Centre) and form typical strip shopping (retailing and commercial services) with on-street parking along an arterial route into the City.

The Frame Workshop building is immediately adjoined on its internal boundaries by other buildings, however these are not supported by a party wall between the buildings, with each building having its own exterior wall.

Sites in the vicinity contain a variety of building forms generally one or two storeys in height, including some listed heritage buildings (of note is the Angus Donaldson building on the opposite side of Colombo Street) and more recent modern buildings and additions. The wider Sydenham shopping area contains a number of listed heritage buildings, generally located to the south of the application site. The character of the area is mixed although there is a pronounced heritage component that is greater than that typically found in other of the City's Business 2 zones.



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**Figure 4:** Aerial photograph showing the location of the application site and surrounding environment.



## Planning Framework

### The City Plan

The Christchurch City Plan became operative in part on the 21<sup>st</sup> of November 2005. All rules applicable to this application are operative and therefore assessment is only required under the City Plan.

The site is zoned Business 2 (District Centre) under the City Plan and the proposal is to be assessed as a discretionary activity.

The Plan anticipates that the Business 2 zone will provide for building development of a significant scale and intensity, appropriate to the function of larger district centres and to the amenities of any living environment adjoining the zone. The zone identifies the core of business activity within a district centre as retailing. In addition these centres usually contain important community facilities, whether in public or private ownership. Development of significant retail space is also required to ensure reasonable co-ordination of development within the zone, and attention to co-ordination of development, landscaping and access matters.

The building is listed in the City Plan as a Group 4 heritage building. Group 4 listed heritage items include: *"buildings, places and objects which are of metropolitan significance and/or involve a contribution to the heritage of the city, the protection of which is seen as desirable by the Council" (emphasis added).*

In summary the environmental results anticipated by the Plan for listed heritage items that are of particular relevance to this application include:

- The enhancement of the heritage qualities of the city's built environment.
- A progressive increase in the number of heritage items whose protection is permanently secured, both through the implementation of these rules, and incentives to landowners.
- The maintenance of heritage buildings, places and objects representative of a variety of factors including:
  - historic and social significance;
  - cultural and spiritual significance;
  - architectural and artistic significance;
  - group significance and setting;
  - landmark significance;
  - archaeological significance;
  - technological significance and craftsmanship.
- In conjunction with the Historic Places Trust, the ongoing protection of heritage buildings, places and objects, archaeological sites and waahi tapu.

This proposal fails to comply with the following provision of the City Plan:

- Community Standard 10 - 1.3.2 - Group 3 and Group 4 Buildings, places and objects - Any demolition<sup>3</sup> of a Group 4 building, place or object shall be a discretionary activity.

### New Zealand Historic Places Act 1993

I note again that the existing buildings on the site are not heritage listed with NZHPT.

The building itself is not likely to be of archaeological value as it was constructed later than 1900. However, any below ground works may involve work to an archaeological site under the Historic Places Act 1993. An archaeological site is any place in New Zealand that was associated with human activity that occurred before 1900, and is or may be able through investigation by archaeological methods to provide evidence relating to the history of New Zealand.

The applicant may need to obtain an archaeological authority from NZHPT in relation to any below ground works and the redevelopment of the site including any earthworks.

<sup>3</sup> Demolition means "In relation to a protected building, place or object, means its destruction in whole but not in part".

## Earthquake Legislation

No specific legislation has been passed by the Government at this point in time to assist the Council in streamlining resource consent applications for heritage listed buildings with earthquake related damage and the standard RMA provisions still apply.

**Has the applicant requested that the application be publicly notified? [Section 95A(2)(b)]**

No.

**Pursuant to Section 95A, will the adverse effects of the activity on the environment be more than minor, or are they likely to be more than minor?**

As a discretionary activity the Council's assessment is unrestricted and all actual and potential effects of this demolition may be considered. Relevant guidance as to the effects that require consideration is contained in the reasons for the rules breached and the relevant assessment matters.

Having regard to this planning framework, I consider that the adverse effects of the proposal on the environment relate to the loss of heritage values, management of demolition activities and visual amenity.

## Heritage Effects

The building is listed as a heritage building of metropolitan significance which contributes to the heritage of the city in the City Plan (Group 4). At the time of listing in the City Plan the Council's assessment sheet for the building shows that the building had high historical social and architectural value. These values relate to the building being designed by Samuel Hurst Seager as an investment for prominent painter and decorator Thomas Davies and the elaborate treatment of the buildings front façade. The building had lesser values in relation to its group, landmark, archaeological and technological heritage. The building is not registered under the Historic Places Act 1993.

The applicant seeks to demolish the building, given the significant damage caused by the 7.1 magnitude earthquake and aftershocks. As explained above, the application is supported by an assessment from a structural engineer (Powell Fenwick) engaged by the applicant. The Council has also commissioned its own structural engineer (Ende! Lust – Studio 21) to prepare an assessment to the building.

Ms Joanne Easterbrook, Heritage Conservation Planner at the City Council and Ms Jenny May, heritage consultant from Heritage Management Services have also prepared an assessment of the effects of the demolition on heritage values. Their assessment is attached as **Appendix 1** to this report.

The reasons for the heritage rules in Clause 10 – 1.5 of the Plan seek to protect buildings identified as having heritage significance for the City. The four groups of heritage items identified in the City Plan have different levels of significance and the strength of the rules have been devised accordingly. In relation to Group 4 items, the protection of these is seen as "desirable". Further, where demolition is proposed, the reasons for rules also state that *"it is necessary to record the details of the heritage fabric of the building for the city's heritage records, so that some tangible element remains if retention cannot be achieved. In order to ensure that these records are of sufficient archival quality, specialised rules have to be promulgated to ensure this is achieved"*.

While the council's discretion is unrestricted in this instance, the assessment matters that form a guide to assist in the assessment of this application are found in clause 10 - 1.4.1 of the City Plan. The relevant matters are summarised as follows:

- Any immediate or cumulative effects of the loss of the listed building, on the range, number, and quality of heritage features in the vicinity and the city as a whole.
- The relative impact on the city's heritage values of loss, of the listed item, with regard to the reasons for listing (as contained in the criteria in the Statement of Objectives and Policies) and in particular the historic/social, cultural/spiritual, and architectural/artistic criteria.
- The extent to which alterations have an irreversible effect on heritage form or heritage features of the building, place or object.
- Whether recognised heritage research and conservation advice has been obtained from the New Zealand Historic Places Trust or any other professionally recognised party in heritage conservation; any

conservation plan and/or heritage inventory; and the conservation principles contained within the ICOMOS New Zealand Charter for the conservation of places of cultural or heritage value.

- The ability of the applicant to economically develop the site without demolition of the protected building, with regard to opportunities otherwise permitted on the site.
- Whether the retention of the heritage features or form of the protected building causes significant additional costs, or reduction in its range of potential uses.
- The availability and suitability of incentives or other options, including the weight given to development or community standards when considering a resource consent, where the retention of a protected building, place or object would be secured by the applicant's proposal.
- The importance of, and the cost of, upgrading the building to current seismic standards and for adequate fire protection where this is required; and the effect of such work on the heritage fabric of the building.

The heritage assessment matters have been considered by Ms Easterbrook and Ms May in their reports and the conclusions they reach will be discussed below. Their conclusions also take into account the opinions of the two structural engineers, and therefore the structural state of the building is a logical starting point for this assessment.

The building has been assessed as 'unsafe' and 'an imminent risk' by two independent structural engineers. A full description of the damage to the structure is contained in the introduction section to this report above and in the engineers reports submitted with the application. The damage sustained in the earthquake and aftershocks is considered by both engineers to have significantly compromised the structural integrity of the building to a point where it is now a danger to adjoining buildings and the public and at risk of failure/ collapse. Mr Lust for the Council concludes, that in his opinion the building is 'damaged beyond repair' and Mr Paterson for the applicant has recommended demolition as the only available option.

In relation to the repair of the building Mr Lust considers that "*underpinning and restoring this structure will be difficult to access with the unsafe elements over and would require a virtual rebuild of the entire front wall and canopy*". Further Mr Lust is of the opinion that the total cost of making the structure safe, even without bringing the building up to current earthquake strengthen code would not be viable in an economic sense for this building due to its small size.

The above structural matters resulting from the earthquake are relevant to the assessment of the heritage values of this building. Ms Easterbrook, Ms May and myself all consider that the starting point for the assessment of the buildings significance and the potential effects of its loss due to demolition is its post earthquake damaged state, as the damage caused can not be undone. Further, one of the prominent heritage values of this building was its architecture and in particular its ornate rococo balustrade and urn parapet. This feature of the building has been significantly damaged by the earthquake such that the original fabric of the building can not be repaired. Thus the heritage values of the building have been diminished since its listing in the Plan.

Turning to the assessment matters, the two heritage experts have the following additional comments about the cumulative effects of the loss of the listed building and the impact on the city's heritage values of loss of the listed item, with regard to the reasons for listing:

*"The proposed demolition of this heritage building due to earthquake damage, which has compromised its structural integrity, will have an immediate and cumulative effect on the range, number and quality of heritage features in the vicinity and the city as a whole in particular given the potential loss due to earthquake damage to other heritage and character buildings in the immediate vicinity. The proposed demolition will result in the loss not only of heritage fabric but the associated values of the building as per the assessment criteria outlined in the City Plan, Policy 4.3.1: Heritage items, which is used for the evaluation of listing buildings. The state of the building as a result of the earthquake now compromises the physical/tangible values as assessed for its original listing in the City Plan, in particular architectural and urban setting values. The level of compromise now apparent is such that it would in our opinion affect the reasons for the listing and the level it was assigned within the original assessment process that resulted in its inclusion in S.10 Vol. 3 of the City Plan as a listed heritage item. A copy of the Council's assessment sheet that was undertaken at the time the building was listed in the City Plan is attached as Appendix 2.*

It is also relevant to note based on the structural engineers assessment that the heritage experts consider retention of the building would not result in an acceptable heritage outcome. This is because a significant rebuild and essentially a replica building would be the result. Ms Easterbrook and Ms May consider "This may



*after the reasons for its original listing in the City Plan to such a degree that, as noted above, it may not reach the threshold for listing'.*

When considering cumulative effects of the demolition I am also mindful that the proposed demolition is not the only demolition of heritage that will take place in Colombo Street, Sydenham. The Council has already issued a warrant under Section 129 of the BA04 for the demolition of the Angus Donaldson building at 461A – 469A Colombo Street, opposite the application site<sup>4</sup>. There is also another cluster of Group 4 listed heritage buildings located further to the south of the application site on the corner of Colombo and Wordsworth Street that have sustained earthquake damage, although no resource consent application(s) have been received in relation to either the repair or demolition of these buildings. Sydenham also contains a number of older buildings that are not listed in the City Plan that make a strong contribution to its character, that have also sustained damage.

While the demolition of 456 Colombo Street will be the second to take place in the area, having regard to the earthquake damage and the reduced heritage values of the building, I do not consider that the cumulative effects of this demolition reach a threshold level where the character and heritage values of Sydenham will be significantly compromised or eroded. There will still be a number of the buildings in this strip of Colombo Street that will continue contribute to the heritage identity of Sydenham. This threshold will need to be re-assessed in relation to any future consents that may be lodged in relation to other buildings having regard to their unique heritage values.

Another heritage matter that requires assessment is the irreversible nature of demolition. The proposed demolition is undoubtedly irreversible in a physical sense, however the building has more intangible values that have and can be recorded and not entirely lost through demolition. On this issue Ms Easterbrook and Ms May have the following comments:

*"The demolition of this building will have an irreversible effect. The structural reports submitted with the application notes that the building has been so badly damaged by the earthquake and following aftershocks that any potential for reconstruction would essentially result in a 'replica' of the heritage building which would severely compromise the original physical heritage values. It is noted in the engineers report by Endel Lust that such an action is also not considered an economic alternative, however it must be stressed that this statement is not qualified by any economical assessment report with regard to this matter. Thus, although demolition is not a desirable outcome, in this circumstance it is deemed to be the only viable option in terms of public health and safety matters and the severe loss of heritage values any possible form of retention would have. Thus retaining and rebuilding the structure is seen to result in the same or similar irreversible adverse effects as its demolition".*

The heritage experts also consider that in the event that the demolition be approved the "other values of a more intangible nature associated with this building such as historic, social cultural and archaeological values" can be retained through documentation and the loss to some degree mitigated through on-site interpretation. Such interpretation and documentation can be secured as a condition of consent. The keeping of photographic records and on-site interpretation have been discussed with the applicant as part of the consent process.

Whether recognised heritage research and conservation advice has been obtained from the New Zealand Historic Places Trust or any other professionally recognised party in heritage conservation is another matter for consideration. As noted above Ms Easterbrook has had discussions NZHPT, a summary of the discussion follows:

*"Consultation has been undertaken with Dave Margetts of the NZHPT Southern Regional office. His comments request the applicant consider retention of the frontage as a key heritage element and provide a breakdown of costs to clarify options around retention versus demolition".*

Following this discussion Ms Easterbrook and Ms May have considered the NZHPT requests in light of the reports from the two structural engineers assessments "that the building has sustained significant structural damage as a result of the earthquake and is damaged beyond repair". They have concluded that façade retention would not result in a constructive heritage outcome in this instance for the following reasons:

*"Given the extent of damage to the building any redevelopment would constitute a significant rebuild which would compromise the integrity of the heritage values of the building. Additionally, façade retention in this instance, when so much of the façade has been damaged and missing, in our opinion would not be a positive heritage outcome. For these reasons the Council is not supportive of NZHPT suggestion of façade retention."*

<sup>4</sup> The demolition of 461A – 469A Colombo Street is the only confirmed heritage demolition in Sydenham to date.

The final group of matters for assessment relate to the economic realities of demolition versus retention of the building, the additional costs of upgrading the building to current strengthening standards and any heritage incentives or funding that may be available to the applicant. In this instance given that two structural engineers are of the opinion that the building is beyond repair and that the building has a Group 4 listing, full costing for repair have not been undertaken. However, Mr Lust has commented that he considers that it is not economically viable to restore the building. This is even without taking into account the significant costs of bringing the building up to current earthquake strengthening policies.

Following the earthquake the Council has established the Canterbury Earthquake Heritage Building Fund to assist in the repair and retention of heritage buildings. The Council has decided at its 6 October meeting not to provide funding to assist with the retention of this building.

Having considered all of the above the final conclusions of Ms Easterbrook and Ms May are as follows:

*"In our opinion, given the extreme circumstances under which this consent has been lodged, and noting the discussion above, we believe the adverse effects from this proposed application for demolition of a listed heritage building can therefore be deemed to be no more than minor. We have reached this conclusion having given due consideration to the submitted structural reports which assess the damage the recent major earthquake has had on this Group 4 heritage building. The City Plan states that protection is desirable for Group 4 items and while this may well be so in this case the practical reality and professional external opinion is that the reality of attempting to retain this building in some form would severely reduce and compromise its heritage significance and values to a degree that would compromise the reasons for its listing Appendix, 1, Section 10 Vol. 3 of the City Plan".*

While it is unfortunate that the building will be lost with demolition, having taken into account all of the relevant matters including the assessments of the two structural engineers, the reasons for the building being listed in the City Plan, the guiding assessment matters and the opinions of two heritage experts (Ms Easterbrook and Ms May), I reach the conclusion that any adverse effects of the loss of the building on heritage values will be less than minor. Therefore, no parties are considered adversely affected by the loss and pursuant to Section 95E(1) of the Act written approval are not required from any persons in respect to this matter.

Before completing an assessment heritage effects of the demolition there is one final matter that needs to be addressed in relation to the legal advice from Simpson Grierson on notification matters. In their advice they express reservations about whether any consent for the demolition of a heritage listed building in the City Plan will be able to be processed on a non-notified basis as the effects of the loss will likely be more than minor. However, they have qualified this judgment by stating that this will be a matter of expert opinion and may be influenced by factors such as the building being beyond reasonable repair. The following quote is from their advice:

*"In general terms, there is, in our view, considerable doubt whether the Council could reasonably consider the overall effects of demolition of listed heritage buildings to be minor, given heritage values that would be lost are likely to be of considerable significance and have been recognised by listing in either the City Plan or District Plan.*

*There is a possible countervailing argument that if a building is damaged and cannot realistically be restored, this will be relevant to the weight to be attributed to the loss of heritage values when making a notification decision. While this is more probably a matter of expert opinion, we have considerable reservations about whether the damaged condition of a listed building could have relevance to its intrinsic heritage values even if the buildings have been assessed as being not realistically capable of restoration following earthquake damage".*

The legal advice was not written with this particular consent application in mind and accordingly the advice needs to be applied to the particular circumstances of each application the Council receives.

I have considered the advice carefully when preparing the above assessment. However, as the assessment of effects has demonstrated in this particular instance, it is the experts overall conclusion that the effects of the demolition will be less than minor in relation to heritage values. This is because the prominent heritage value of this building was its architecture and in particular its ornate rococo balustrade and urn parapet. This feature of the building has been significantly damaged by the earthquake, such that the original fabric of the building can not be repaired. Thus the experts are satisfied that the intrinsic value of the building has been affected by the earthquake. I am therefore comfortable with the advice that has been received from the heritage experts and stand by the above assessment that the adverse effects are less than minor. I acknowledge that this may not be the case for other earthquake damaged buildings where there are also strong cultural, spiritual, landmark,

archaeological and technological values associate with the buildings listing that will not have been affected by the earthquake.

## Other Effects

### Demolition Management

At this stage in the demolition planning process the applicant believes that it will take no more than 2 weeks (probably less) to demolish the building. The demolition process will result in a number of temporary effects that are relevant to consider as part of this consent process. Such effects include nuisance dust and debris, noise effects, damage to adjacent buildings and roads and potential traffic safety and management effects. These effects and potential mitigation measures have been discussed with Council's Building Consent and Transport and Operations staff. Following these discussions and in the event consent is granted, I consider that all of these temporary demolition effects can be managed by the demolition plan provided by the applicant with their building act exemption application and appropriate consent conditions (and advice notes). Conditions have been drafted by Council staff and provided to the applicant for their approval as part of this consent process. The conditions cover the following matters:

- Mitigation of any dust effects caused during the demolition so that they are not a nuisance to near by properties.
- Restricting demolition activities to the City Plan daytime noise hours of 7am – 10pm so as not to cause noise nuisance for residents at night.
- Services to the site remaining disconnected throughout demolition for safety reasons.
- Provision to keep roads that remain open to traffic clear of dust and debris during the demolition process.
- The provision of a traffic management plan for Council certification, to ensure traffic and pedestrian safety through out the process.
- The protection of adjoining buildings during demolition.
- The repair of any damage caused during demolition to adjoining roads and footpaths.

The only parties I consider effected by the demolition in a minor way are the two adjoining properties (owners and occupiers) left without an adjoining, neighbouring, front building. While there is no party/shared walls between the buildings, they are located in very close proximity to one another and will be left with an exposed wall on either their northern or southern elevation where this hasn't been the case previously. The condition of these walls is not known at present. Further these are the only parties who will have temporary protection works undertaken to their buildings and that may experience further damage to their buildings during the demolition process. I note that the owners and occupiers of the adjoining sites/buildings at 454 and 458 Colombo Street have given their approval to the demolition, therefore pursuant to section 95E(3)(a) they are not affected persons.

The Council already has traffic cordons setup in Sydenham along the length of Colombo Street between Brougham Street to the south and Moorhouse Avenue to the north. The applicant does not anticipate the need to extend the current cordons to allow for the demolition. Any required closure of Colombo Street is also considered unlikely, however can be managed if it becomes necessary. For this reason, I do not considered that any businesses/properties in the area will be adversely affected by any traffic cordons required for the demolition and note that the cordons are required regardless of whether the building is demolished or not. The demolition will eventually result in the cordons being removed and traffic flow returning to normal.

In conclusion, any demolition effects are of a temporary nature and when properly managed in accordance with the demolition plan and the types of consent conditions discussed above any effects on the wider environment will be less than minor, such that no additional parties other than the two properties discussed above are considered effected pursuant to Section 95E(1) of the Act.

### Visual

The character of the Sydenham Business 2 area is largely attributed to its heritage buildings and a strong sense of street containment, with all buildings, including the more modern ones being built to the street boundary. Following the demolition of the building the appearance of the vacant site has the potential to have adverse visual effects on the character of Sydenham. The vacant site created will break up the continuous building façade currently along the Colombo Street frontage and could detract from the dominant built form on this side of the street. Such effects are only likely to be temporary until such time as a new building occupies the site. The building being demolished is small and only has a 4.5m wide frontage to Colombo Street. The narrow nature of the site will reduce any visual effects created by the gap in the block. Further, while not a

permitted baseline for this site, I note that non-heritage buildings in the Business 2 zone can be demolished leaving a vacant site as a permitted activity. Therefore a vacant site of this nature is not unanticipated in this area.

When considering an application for heritage building demolition the Council would also normally be considering a new building on the site at the same time as part of an effects assessment. In this instance given the event of the earthquake and that two structural engineers are in agreement about the need to remove the building quickly for health and safety reasons, this is not possible. The applicant has not yet had the opportunity to consider and design a new building for the site. There is currently no time frame around establishing a new building on the site and the site could remain vacant in the immediate future.

The vacant site if not left and maintained in a tidy and safe state, free of demolition material will detract temporarily from the visual amenity of the street scene. Vacant sites also often become dumping grounds for litter and waste and are prone to vandalism and graffiti. These adverse effects can be avoided by the imposition of consent conditions requiring the site to be cleaned up and fenced off from public access within a reasonable timeframe following the completion of demolition. Conditions of this nature have been discussed with and agreed to by the applicant and their contractors.

Overall when considering the adverse visual effects of the proposal on the character and amenity of Colombo Street, I consider such effects will be less than minor. This is due to the narrow nature of the site, the likely temporary nature of such effects, that vacant sites could occur as permitted activities on other nearby properties and that conditions of consent can require the site to be left in a tidy manner until such time that it is re-developed. Pursuant to Section 95E(1) of the Act a person is not deemed affected by an activity where the adverse effects are less than minor, hence written approval is not required from any persons.

#### **Overall Conclusion on Effects**

As the preceding discussion has demonstrated I consider that any adverse effects associated with the demolition of the Group 4 building at 456 Colombo Street to be no more than minor and restricted to the adjoining property owners and occupiers at 454 and 458 Colombo Street.

#### **Pursuant to Section 95A(1), should the application be publicly notified?**

Notwithstanding the above effects discussion, a general discretion is required to be exercised by Council whether to publicly notify an application. There is little guidance in the Act as to how this discretion should be exercised and because it is a relatively new provision introduced in the RMAA 2009 it has not been tested in the Courts.

Council has received legal advice as to the interpretation and effect of the provision. This legal advice notes the intention was to remove the presumption of notification from the Act. It goes on to say if notification is not a mandatory requirement, good reasons will otherwise be required for the Council to exercise its discretion to notify where adverse effects are assessed as being minor or less than minor.

In this particular case, I do not consider there to be any sufficiently robust reasons to publicly notify the application particularly in light of the assessment of effects above and the event of the earthquake.

#### **Despite the above, do any special circumstances exist in relation to this application which would lead you to conclude that the application should be publicly notified? If the answer is yes, why? [Section 95A(4)]**

In addition to Section 95A(1) above, Section 95A(4) permits a consent authority to invoke the public notification of an application if it considers '*special circumstances*' exist in relation to any such application. Special circumstances are also considered in the legal advice recently provided by Simpson Grierson on Section 95 notification issues following the earthquake.

I understand that special circumstances are those that are "*outside the normal run of things*" and which are "*unusual, abnormal or exceptional but may be less than extraordinary or unique*"<sup>5</sup>.

<sup>5</sup> Peninsula Watchdog Group Inc v Minister of Energy



The purpose of Section 95A(4) is to bring consideration of the application beyond the Plan itself<sup>6</sup>. Case law suggests that special circumstances will generally only exist where the types of effects, site specific considerations or other specific factors were not considered during the preparation of the District Plan (either by novelty of the proposal or the evolution of land use or circumstances) and would not otherwise be publicly ventilated if notification did not occur under Section 95A(4). Even in the event that such circumstances are considered to exist, the Council still has a discretion to decide whether or not those circumstances merit public notification.

A range of factors should be taken into account when considering if special circumstances exist:

- The degree of deviation from the Plan.
- The potential for adverse effects to arise from the proposed activity.
- The existence of a live submission or reference.
- The contentiousness of a proposal (while not sufficient alone), may be a contributing factor.

In considering the first point above I note that the proposed demolition does deviate from the general thrust of the City Plan which is to recognise and provide for the protection of heritage in the City. However, the demolition fails to comply with a community standard and as a full discretionary activity the demolition is anticipated by the Plan in some circumstances. As I have explained above the circumstances surrounding this case are very specific and the heritage and engineering assessments have shown that demolition is the only option available in this instance. It is therefore my opinion, that the proposed demolition does not deviate significantly from the Plan given the circumstances of this case and that public notification is desirable.

The adverse effects of the proposed activity have already been covered in detail in the assessment of adverse effects above. I reiterate here, that the adverse effects of the proposed activity have been assessed as being less than minor and that for this reason, adverse effects are not grounds to warrant public notification in this instance.

The Heritage and Business 2 zone provisions of the Plan are all operative and as such there are no live submissions or references that are relevant to consider in deciding whether special circumstances exist.

The final point requires consideration of whether the proposal is likely to be publicly contentious. Given the high profile nature of heritage issues following the earthquake and the media coverage of the Council meetings and decision that considered the six buildings and whether they should be demolished under Section 129 of the BA04, I have no doubt that this application will attract a level of public interest. This is already evident from the involvement of nearby business and property owners as well as heritage interest groups in Council processes. However, the case law suggests that public interest alone does not give rise to special circumstances. Further, as none of the other three points discussed above are considered to be "*unusual, abnormal or exceptional*" then public interest is also not a contributing factor to special circumstances arising in this instance.

The event of the Canterbury 7.1 magnitude earthquake on 4 September 2010 may be considered by some to be a special circumstance in its own right as is was "*unusual, abnormal or exceptional*". However in the RMA context I don't consider that this the case as the earthquake does not relate to the consent required in the context of the planning framework or any of the four points discussed above. If anything the event of the earthquake is a reason not to notify the application (rather than to notify), as the demolition of the building is likely to be more acceptable given the earthquake damage and in this situation is the only sensible outcome.

For the reasons outlined above, it is my view that **special circumstances do not exist in this case** and that public notification of this application under S95A(4) is not desirable.

### **Other Considerations**

Before making a decision on whether special circumstances exist or exercising the Council's general discretion requiring notification or non-notification there are several further matters to consider in coming to a conclusion. These are:

- What purpose notification would serve?

<sup>6</sup> Murray v Whakatane District Council

- Whether the process of notification will elicit further information which is relevant to the areas over which the Council can exercise its discretion.
- Whether special circumstances would be considered consistent with good practice.
- Consequences for the Council.

Firstly, I consider that the public notification of the application would not air any further legitimate RMA concerns in the form of submissions from interested parties about the effects on heritage values, the structural stability of the building, traffic and demolition management or the amenity of the site once it is cleared, that have not already been considered by the Council in this report, or that have not already been expressed in the public arena of Council meetings or the media. Two independent structural engineers have inspected the building on more than one occasion and have both reached the same conclusion that the building requires demolition. In addition the City Council's heritage team have fully considered the heritage values of the building and NZHPT have been consulted. Secondly, these matters are within the Council's discretion to consider (i.e. they related directly to the assessment matters) and I am confident that the Commissioner has enough information before him to be able to later make a decision under Section 104 of the RMA.

Thirdly, the Commissioner needs to consider whether a decision to notify on the grounds of special circumstances is good practice. I note that in relation to resource consents the presumption for public notification in the Act has recently been removed and replaced with a more neutral starting position. Section 95A(4) must be assessed in light of this general starting point and for this reason I have reservations about whether notification would be good practice given the circumstances in this case. If the Council were to notify the application it could be seen as causing delay and public safety issues, when it has received advice from two independent engineers that the building is beyond repair.

Lastly, the Council often comes under pressure from the public to notify an application on the grounds that a proposal is contentious, and that there are a number of parties that wish to make submissions. I note that the public contentiousness of an application is not in itself reason to invoke the special circumstances provisions of the Act according to the caselaw. However, if a decision is made to notify the application on the basis of special circumstances there needs to be very clear reasons for doing this, so that the Council does not come under future pressure to do so where the special circumstances involved are not the same as in this case. As outlined above I do not consider that there are any good reasons to notify the application.

#### **Recommendation S95A**

That, for the reasons outlined above, the application **need not be publicly notified** in accordance with Section 95A of the Resource Management Act 1991.

#### **Who is considered to be adversely affected by the activity? [Section 95E(1)]**

For the reasons outlined above the only parties considered to be adversely affected by the demolition of the building are those immediately adjoining the building that are likely to be physically affected due to their proximity during demolition activities. This includes:

- The owners and occupiers of 454 Colombo Street (note: this building is also owned by the applicant and also has other separate tenants); and
- The owners and occupiers of 458 Colombo Street.

As stated above the applicant has obtained the written approvals of these persons and any effects on them must be disregarded.

I have also considered whether any other parties are adversely affected by the buildings demolition including NZHPT and The Sydenham Heritage Trust who have an interest in the heritage values of the building. I have concluded that they are not affected.

In this regard Simpson Grierson have provided a summary of the case law surrounding whether parties that are not property owners and occupiers in the immediate area and that are not affected in an 'environmental sense' can be considered adversely affected parties. A copy of the advice has been provided to the Commissioner for his information.

Firstly with regard to the NZHPT, Simpson Grierson's conclusion is that the Trust are not affected persons under the RMA as the organisation is *"not affected in a physical sense even if a building is registered by the Trust, and is not itself suffering specific adverse effects from the externalities of the activity in question. Rather*



*it appears to have an "interest" in the building purely because of its advocacy of the heritage values as identified by City Plan listing and registration under its own Act".*

Secondly Simpson Grierson have considered the position of non-statutory interest groups such as the Sydenham Heritage Trust, who may wish to advocate for the retention of heritage buildings. They state: "We would conclude however that a heritage advocacy organisation of the kind described to us, would not be an affected person in relation to a resource consent application for the demolition of a heritage building. It would not have an "application specific interest".

**Has written approval been obtained from every person who is considered to be adversely affected by the activity? [Section 95E(3)]**

Yes.

**Recommendation S95A – 95F**

That the application be processed on a **non-notified** basis in accordance with Sections 95A – 95F of the Resource Management Act 1991.

**Reported and Recommended by:** Clare Revell – Senior Planner **Date:** 3 November 2010

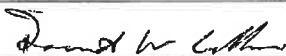
**Report Reviewed by:** John Gibson – Planning Administration Manager **Date:** 3 November 2010

**Decision**

That the above recommendation be adopted for the reasons outlined in the report.

**Commissioner:**

Name: David Collins

Signature: 

Date: 5 November 2010

Resource Management Act 1991

**Christchurch**  
 City Council 

## Report / Decision on Non-notified Resource Consent Application

(Sections 104 and 104B)

**Application Number:** RMA92017057  
**Applicant:** Hope Investment Property Limited  
**Site address:** 456 Colombo Street, Sydenham  
**Legal Description:** Part Lot 1 DP8868  
**City Plan Zoning:** Business 2 (District Centre)  
**Activity Status:** Discretionary

**Description of Application:** Demolition of a Group 4 Heritage Building (The Frame Workshop) Following the Canterbury Earthquake and aftershocks.

### Introduction

#### The Application

This application for resource consent seeks the demolition of the two storey building at 456 Colombo Street (located in the block between Byron Street to the north and Lawson Street to the south), known as 'The Frame Workshop'. Canterbury was struck by a 7.1 magnitude earthquake on Saturday 4 September 2010. The building has sustained damage from the earthquake and aftershocks.

Subsequent to the earthquake and aftershocks the building has been assessed as 'unsafe' by two structural engineers. The owner of the building has provided the Council with several structural engineer's reports from P J Patterson of Powell Fenwick since the 4 September earthquake, the latest being dated 8 October 2010. This most recent report now forms the basis of this resource consent application. It recommends that the building be demolished due to the danger posed by the buildings collapse into adjoining buildings. Photographs of some of the damage to the building are shown below.



Figure 1: View of ornate parapet that has been damaged.



Figure 2: Damage to brickwork.

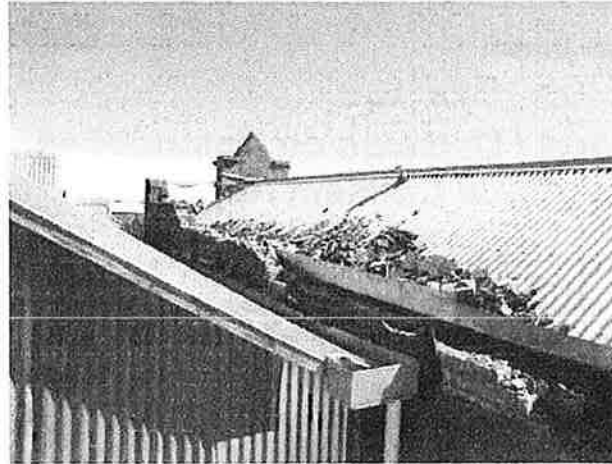


Figure 3: Damage to firewall.

The owner's structural reports find that the building has suffered significant structural damage and that the aftershocks are observed to have caused further deterioration to the building's stability. The damage to the building is described by the engineer as follows: *"both red brick return wall parapets have collapsed, damaging neighbouring roofs, spouting and downpipes. The north brick wall has deflected below seismic straps and bows out over 50mm and curves back at top. The front portion of the northern boundary wall has separated with loose bricks and the south wall is unstable. The street front ornamental parapet has fallen through the verandah onto the road, and through the neighbour's roof. The front parapet has detached, and is leaning forward towards Colombo Street and the roof has sagged"*.

A proposed demolition plan has also been lodged with the Council as part of a building act exemption application (BAE 35001994) and these documents also contain relevant information on traffic management and the protection of adjoining buildings that inform the resource consent process.

Like many buildings in Sydenham a cordon barrier has been set up around the building and adjoining buildings following the earthquake and these remain in place today. Colombo Street is reduced to a single lane through Sydenham with one way traffic flow in a northerly direction. The street is closed to heavy traffic and buses to reduce vehicle vibrations.

### Assessment By Council

A structural assessment of the building undertaken on behalf of the Council was received from Endel Lust, Civil Engineer Ltd on 29 September 2010. This is based on an inspection undertaken on 28 September 2010. The assessment states that the building has undergone significant damage, and the earthquake and subsequent aftershocks have resulted in a collapse of the chimney, collapse of parts of the parapets to the north & south walls with the remaining sections being relatively precarious. It notes the decorative elements to the front parapet have virtually all fallen off with the central pediment to this parapet leaning forward. The report considers underpinning and restoring this structure would be difficult given the unsafe elements, and would require a virtual rebuild of the entire front wall and canopy. The conclusion of the assessment is that the building is 'damaged beyond repair' and it would not be an economic alternative to restore and strengthen the existing structure.

The consent application received by the Council does not contain an assessment of heritage effects associated with the buildings demolition. However, Joanne Easterbrook of the Council's Heritage Team with assistance from heritage consultant, Jenny May of Heritage Management Services has carried out a heritage assessment of this application.

The Council has also obtained legal advice from Duncan Laing, Solicitor at Simpson Grierson, in relation to Section 95 notification issues surrounding the demolition of listed heritage buildings, affected persons and special circumstances. A copy of the advice has been made available for the Commissioner. The advice will be discussed in later sections of this report.

## Council Meetings 4 and 6 October 2010

Extraordinary meetings of the Christchurch City Council were held on Monday 4 and Wednesday 6 October 2010 for the Council to consider the demolition or partial demolition of six listed heritage buildings<sup>7</sup>. Agendas and minutes for these meetings are available on the Council's website. In summary, consideration was firstly given to whether there was Council funding available to try and aid in the retention of any of the buildings. Then secondly, following legal advice, at the Wednesday meeting, attention was turned to the Council's powers under Section 129 of the Building Act 2004 (BA04).

If the situation presented by a particular dangerous, earthquake prone or insanitary building is considered to constitute an "immediate danger"<sup>8</sup>, the Council, through its Chief Executive issuing a warrant, can take action under Section 129 of the BA04. This action can include the demolition, partial demolition or repair of the building. If a warrant is issued no building consent or resource consent is required to be obtained.

At the meeting the Council endorsed the Chief Executive issuing a warrant under Section 129 of the BA04 for the demolition of the buildings at 160 Manchester Street and 461A to 469A Colombo Street and the partial demolition of the building at 31 Teddington Road. A warrant was not issued for the building at 456 Colombo Street, as while dangerous it was not an immediate danger and had been appropriately cordoned off. This means the owner of the building must apply for a building consent (or exemption) for any demolition or repairs and a resource consent under the Resource Management Act 1991.

Also of relevance to this application was a deputation to the 4 October meeting by Dorothy Haywood of the Sydenham Heritage Trust in respect of the proposed demolitions of 456 and 461A - 469A Colombo Street. The Trust is the owner of Sydenham Heritage Church at 343 Colombo Street, however also has a wider interest in the heritage values of Sydenham. On behalf of the Trust Ms Haywood raised concerns about the loss of heritage in Sydenham and in particular, given the number of buildings on the section of Colombo Street between Brougham Street and Moorhouse Avenue that have been badly damaged in the earthquake, the cumulative effects on the character of Sydenham. She also expressed that the Trust had concern over the quality of any replacement buildings erected in Sydenham and emphasised the need for these to be in keeping with and respect their heritage surroundings.

The reports presented to the Council on 4 and 6 October incorrectly stated that any resource consent required for the demolition of the building at 456 Colombo Street will be non-notified as specified in the City Plan: "As this building is listed in the City Plan a resource consent for demolition is required. For this building the City Plan provides any resource consent applications must be dealt with on a non-notified basis". A later amendment sent to Council explained that a non-notification clause is not provided for in the City Plan for the demolition of a Group 4 building and a notification decision is required under section 95 of the RMA.

## Consultation

Although the building is not listed with the New Zealand Historic Places Trust (NZHPT) in their register, the Council has sent NZHPT a letter advising of the applications lodgement on 14 October 2010. At the date of completion of this report no formal written response has been received from NZHPT. However, Ms Easterbrook in the Council's Heritage Team has discussed the consent with Mr Dave Margetts at the NZHPT.

## Building History

The building at 456 Colombo Street is a small Edwardian two storey commercial building constructed of brick and cement. The date of construction appears to be 1905 with the building being designed in the Commercial Classical idiom characteristic of the period. The building is relatively small at approximately 4.5m wide x 11m long. There are brick firewalls with parapets to the north and south boundaries. The shop front is open to the west with a brick façade and parapet.

The building has architectural and aesthetic significance for the architectural pretension of its parapet, which with its rococo balustrade, urns and pediment, is particularly ornate. The building has been attributed to

<sup>7</sup> 160 Manchester Street (Manchester Courts), 192 Madras Street (The Nurse Maud Building), 461A – 469A Colombo Street (The Angus Donaldson Building), 456 Colombo Street (The Frame Workshop), 580 Ferry Road (Former Nugget Polish Factory) and 31 Teddington Road (Ohinetahi).

<sup>8</sup> 'Immediate danger' requires that there be something about the building that takes it beyond being a "simple" dangerous, earthquake-prone or insanitary building. The test for immediate danger to the safety of people requires that the risk of the building causing injury or death to people must be "a reasonable consequence" or "something which could well happen". For an "immediate danger" to arise the situation must have become particularly urgent and immediate.



prominent architect Samuel Hurst Seager. The building is located on the major thoroughfare of Colombo Street and has a contextual relationship with its immediate neighbour at 454 Colombo Street.

The building was built as an investment by prominent painter and decorator Thomas Davies, who occupied the adjacent premises at 454 Colombo Street. Davies decorated many of the city's leading residences, the most prominent of these was commercial baker Ernest Adams Ltd, who maintained a retail outlet on the site from c1930 – 1960.

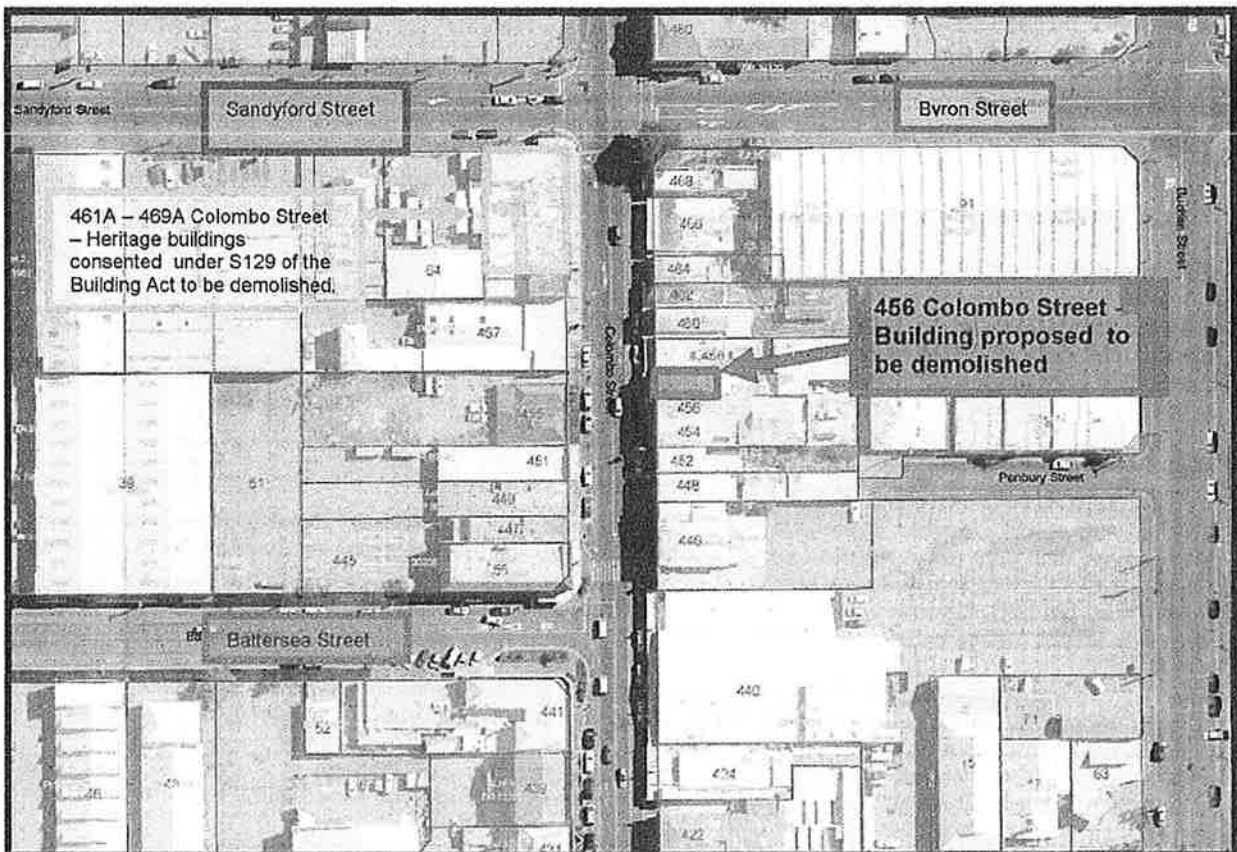
Some alterations were undertaken to the building's rear wall on the ground floor to open it up into the adjoining building and to close off a connection at first floor level in the late 1980's. Limited strengthening works were also undertaken at this time.

### Existing Environment

The site is positioned on the eastern side of Colombo Street in the block between Byron Street to the north and Lawson Street to the south. The sites adjoining the Colombo Street road frontage are all zoned Business 2 (District Centre) and form typical strip shopping (retailing and commercial services) with on-street parking along an arterial route into the City.

The Frame Workshop building is immediately adjoined on its internal boundaries by other buildings, however these are not supported by a party wall between the buildings, with each building having its own exterior wall.

Sites in the vicinity contain a variety of building forms generally one or two storeys in height, including some listed heritage buildings (of note is the Angus Donaldson building on the opposite side of Colombo Street) and more recent modern buildings and additions. The wider Sydenham shopping area contains a number of listed heritage buildings, generally located to the south of the application site. The character of the area is mixed although there is a pronounced heritage component that is greater than that typically found in other of the City's Business 2 zones.



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**Figure 4:** Aerial photograph showing the location of the application site and surrounding environment.

## Planning Framework

### The City Plan

The Christchurch City Plan became operative in part on the 21<sup>st</sup> of November 2005. All rules applicable to this application are operative and therefore assessment is only required under the City Plan.

The site is zoned Business 2 (District Centre) under the City Plan and the proposal is to be assessed as a discretionary activity.

The Plan anticipates that the Business 2 zone will provide for building development of a significant scale and intensity, appropriate to the function of larger district centres and to the amenities of any living environment adjoining the zone. The zone identifies the core of business activity within a district centre as retailing. In addition these centres usually contain important community facilities, whether in public or private ownership. Development of significant retail space is also required to ensure reasonable co-ordination of development within the zone, and attention to co-ordination of development, landscaping and access matters.

The building is listed in the City Plan as a Group 4 heritage building. Group 4 listed heritage items include: *"buildings, places and objects which are of metropolitan significance and/or involve a contribution to the heritage of the city, the protection of which is seen as desirable by the Council" (emphasis added).*

In summary the environmental results anticipated by the Plan for listed heritage items that are of particular relevance to this application include:

- The enhancement of the heritage qualities of the city's built environment.
- A progressive increase in the number of heritage items whose protection is permanently secured, both through the implementation of these rules, and incentives to landowners.
- The maintenance of heritage buildings, places and objects representative of a variety of factors including:
  - historic and social significance;
  - cultural and spiritual significance;
  - architectural and artistic significance;
  - group significance and setting;
  - landmark significance;
  - archaeological significance;
  - technological significance and craftsmanship.
- In conjunction with the Historic Places Trust, the ongoing protection of heritage buildings, places and objects, archaeological sites and waahi tapu.

This proposal fails to comply with the following provision of the City Plan:

- Community Standard 10 - 1.3.2 - Group 3 and Group 4 Buildings, places and objects - Any demolition<sup>9</sup> of a Group 4 building, place or object shall be a discretionary activity.

### New Zealand Historic Places Act 1993

I note again that the existing buildings on the site are not heritage listed with NZHPT.

The building itself is not likely to be of archaeological value as it was constructed later than 1900. However, any below ground works may involve work to an archaeological site under the Historic Places Act 1993. An archaeological site is any place in New Zealand that was associated with human activity that occurred before 1900, and is or may be able through investigation by archaeological methods to provide evidence relating to the history of New Zealand.

The applicant may need to obtain an archaeological authority from NZHPT in relation to any below ground works and the redevelopment of the site including any earthworks.

<sup>9</sup> **Demolition** means "In relation to a protected building, place or object, means its destruction in whole but not in part".



## Earthquake Legislation

No specific legislation has been passed by the Government at this point in time to assist the Council in streamlining resource consent applications for heritage listed buildings with earthquake related damage and the standard RMA provisions still apply.

**When considering an application for a resource consent, the consent authority shall have regard to Section 104(1) of the Resource Management Act 1991. What are the actual and potential effects on the environment of allowing the activity?**

As a discretionary activity the Council's assessment is unrestricted and all actual and potential effects of this demolition may be considered. Relevant guidance as to the effects that require consideration is contained in the reasons for the rules breached and the relevant assessment matters.

Having regard to this planning framework, I consider that the adverse effects of the proposal on the environment relate to the loss of heritage values, management of demolition activities and visual amenity.

## Heritage Effects

The building is listed as a heritage building of metropolitan significance which contributes to the heritage of the city in the City Plan (Group 4). At the time of listing in the City Plan the Council's assessment sheet for the building shows that the building had high historical social and architectural value. These values relate to the building being designed by Samuel Hurst Seager as an investment for prominent painter and decorator Thomas Davies and the elaborate treatment of the buildings front façade. The building had lesser values in relation to its group, landmark, archaeological and technological heritage. The building is not registered under the Historic Places Act 1993.

The applicant seeks to demolish the building, given the significant damage caused by the 7.1 magnitude earthquake and aftershocks. As explained above, the application is supported by an assessment from a structural engineer (Powell Fenwick) engaged by the applicant. The Council has also commissioned its own structural engineer (Endel Lust – Studio 21) to prepare an assessment to the building.

Ms Joanne Easterbrook, Heritage Conservation Planner at the City Council and Ms Jenny May, heritage consultant from Heritage Management Services have also prepared an assessment of the effects of the demolition on heritage values. Their assessment is attached as **Appendix 1** to this report.

The reasons for the heritage rules in Clause 10 – 1.5 of the Plan seek to protect buildings identified as having heritage significance for the City. The four groups of heritage items identified in the City Plan have different levels of significance and the strength of the rules have been devised accordingly. In relation to Group 4 items, the protection of these is seen as "desirable". Further, where demolition is proposed, the reasons for rules also state that *"it is necessary to record the details of the heritage fabric of the building for the city's heritage records, so that some tangible element remains if retention cannot be achieved. In order to ensure that these records are of sufficient archival quality, specialised rules have to be promulgated to ensure this is achieved"*.

While the council's discretion is unrestricted in this instance, the assessment matters that form a guide to assist in the assessment of this application are found in clause 10 - 1.4.1 of the City Plan. The relevant matters are summarised as follows:

- Any immediate or cumulative effects of the loss of the listed building, on the range, number, and quality of heritage features in the vicinity and the city as a whole.
- The relative impact on the city's heritage values of loss, of the listed item, with regard to the reasons for listing (as contained in the criteria in the Statement of Objectives and Policies) and in particular the historic/social, cultural/spiritual, and architectural/artistic criteria.
- The extent to which alterations have an irreversible effect on heritage form or heritage features of the building, place or object.
- Whether recognised heritage research and conservation advice has been obtained from the New Zealand Historic Places Trust or any other professionally recognised party in heritage conservation; any conservation plan and/or heritage inventory; and the conservation principles contained within the ICOMOS New Zealand Charter for the conservation of places of cultural or heritage value.

- The ability of the applicant to economically develop the site without demolition of the protected building, with regard to opportunities otherwise permitted on the site.
- Whether the retention of the heritage features or form of the protected building causes significant additional costs, or reduction in its range of potential uses.
- The availability and suitability of incentives or other options, including the weight given to development or community standards when considering a resource consent, where the retention of a protected building, place or object would be secured by the applicant's proposal.
- The importance of, and the cost of, upgrading the building to current seismic standards and for adequate fire protection where this is required; and the effect of such work on the heritage fabric of the building.

The heritage assessment matters have been considered by Ms Easterbrook and Ms May in their reports and the conclusions they reach will be discussed below. Their conclusions also take into account the opinions of the two structural engineers, and therefore the structural state of the building is a logical starting point for this assessment.

The building has been assessed as 'unsafe' and 'an imminent risk' by two independent structural engineers. A full description of the damage to the structure is contained in the introduction section to this report above and in the engineers reports submitted with the application. The damage sustained in the earthquake and aftershocks is considered by both engineers to have significantly compromised the structural integrity of the building to a point where it is now a danger to adjoining buildings and the public and at risk of failure/ collapse. Mr Lust for the Council concludes, that in his opinion the building is 'damaged beyond repair' and Mr Paterson for the applicant has recommended demolition as the only available option.

In relation to the repair of the building Mr Lust considers that "underpinning and restoring this structure will be difficult to access with the unsafe elements over and would require a virtual rebuild of the entire front wall and canopy". Further Mr Lust is of the opinion that the total cost of making the structure safe, even without bringing the building up to current earthquake strengthen code would not be viable in an economic sense for this building due to its small size.

The above structural matters resulting from the earthquake are relevant to the assessment of the heritage values of this building. Ms Easterbrook, Ms May and myself all consider that the starting point for the assessment of the buildings significance and the potential effects of its loss due to demolition is its post earthquake damaged state, as the damage caused can not be undone. Further, one of the prominent heritage values of this building was its architecture and in particular its ornate rococo balustrade and urn parapet. This feature of the building has been significantly damaged by the earthquake such that the original fabric of the building can not be repaired. Thus the heritage values of the building have been diminished since its listing in the Plan.

Turning to the assessment matters, the two heritage experts have the following additional comments about the cumulative effects of the loss of the listed building and the impact on the city's heritage values of loss of the listed item, with regard to the reasons for listing:

*"The proposed demolition of this heritage building due to earthquake damage, which has compromised its structural integrity, will have an immediate and cumulative effect on the range, number and quality of heritage features in the vicinity and the city as a whole in particular given the potential loss due to earthquake damage to other heritage and character buildings in the immediate vicinity. The proposed demolition will result in the loss not only of heritage fabric but the associated values of the building as per the assessment criteria outlined in the City Plan, Policy 4.3.1: Heritage items, which is used for the evaluation of listing buildings. The state of the building as a result of the earthquake now compromises the physical/tangible values as assessed for its original listing in the City Plan, in particular architectural and urban setting values. The level of compromise now apparent is such that it would in our opinion affect the reasons for the listing and the level it was assigned within the original assessment process that resulted in its inclusion in S.10 Vol. 3 of the City Plan as a listed heritage item. A copy of the Council's assessment sheet that was undertaken at the time the building was listed in the City Plan is attached as Appendix 2.*

It is also relevant to note based on the structural engineers assessment that the heritage experts consider retention of the building would not result in an acceptable heritage outcome. This is because a significant rebuild and essentially a replica building would be the result. Ms Easterbrook and Ms May consider "This may alter the reasons for its original listing in the City Plan to such a degree that, as noted above, it may not reach the threshold for listing'.

When considering cumulative effects of the demolition I am also mindful that the proposed demolition is not the only demolition of heritage that will take place in Colombo Street, Sydenham. The Council has already issued a warrant under Section 129 of the BA04 for the demolition of the Angus Donaldson building at 461A – 469A Colombo Street, opposite the application site<sup>10</sup>. There is also another cluster of Group 4 listed heritage buildings located further to the south of the application site on the corner of Colombo and Wordsworth Street that have sustained earthquake damage, although no resource consent application(s) have been received in relation to either the repair or demolition of these buildings. Sydenham also contains a number of older buildings that are not listed in the City Plan that make a strong contribution to its character, that have also sustained damage.

While the demolition of 456 Colombo Street will be the second to take place in the area, having regard to the earthquake damage and the reduced heritage values of the building, I do not consider that the cumulative effects of this demolition reach a threshold level where the character and heritage values of Sydenham will be significantly compromised or eroded. There will still be a number of the buildings in this strip of Colombo Street that will continue contribute to the heritage identity of Sydenham. This threshold will need to be re-assessed in relation to any future consents that may be lodged in relation to other buildings having regard to their unique heritage values.

Another heritage matter that requires assessment is the irreversible nature of demolition. The proposed demolition is undoubtedly irreversible in a physical sense, however the building has more intangible values that have and can be recorded and not entirely lost through demolition. On this issue Ms Easterbrook and Ms May have the following comments:

*"The demolition of this building will have an irreversible effect. The structural reports submitted with the application notes that the building has been so badly damaged by the earthquake and following aftershocks that any potential for reconstruction would essentially result in a 'replica' of the heritage building which would severely compromise the original physical heritage values. It is noted in the engineers report by Endel Lust that such an action is also not considered an economic alternative, however it must be stressed that this statement is not qualified by any economical assessment report with regard to this matter. Thus, although demolition is not a desirable outcome, in this circumstance it is deemed to be the only viable option in terms of public health and safety matters and the severe loss of heritage values any possible form of retention would have. Thus retaining and rebuilding the structure is seen to result in the same or similar irreversible adverse effects as its demolition".*

The heritage experts also consider that in the event that the demolition be approved the "other values of a more intangible nature associated with this building such as historic, social cultural and archaeological values" can be retained through documentation and the loss to some degree mitigated through on-site interpretation. Such interpretation and documentation can be secured as a condition of consent. The keeping of photographic records and on-site interpretation have been discussed with the applicant as part of the consent process.

Whether recognised heritage research and conservation advice has been obtained from the New Zealand Historic Places Trust or any other professionally recognised party in heritage conservation is another matter for consideration. As noted above Ms Easterbrook has had discussions NZHPT, a summary of the discussion follows:

*"Consultation has been undertaken with Dave Margetts of the NZHPT Southern Regional office. His comments request the applicant consider retention of the frontage as a key heritage element and provide a breakdown of costs to clarify options around retention versus demolition".*

Following this discussion Ms Easterbrook and Ms May have considered the NZHPT requests in light of the reports from the two structural engineers assessments "that the building has sustained significant structural damage as a result of the earthquake and is damaged beyond repair". They have concluded that façade retention would not result in a constructive heritage outcome in this instance for the following reasons:

*"Given the extent of damage to the building any redevelopment would constitute a significant rebuild which would compromise the integrity of the heritage values of the building. Additionally, façade retention in this instance, when so much of the façade has been damaged and missing, in our opinion would not be a positive heritage outcome. For these reasons the Council is not supportive of NZHPT suggestion of façade retention."*

The final group of matters for assessment relate to the economic realities of demolition versus retention of the building, the additional costs of upgrading the building to current strengthening standards and any heritage

<sup>10</sup> The demolition of 461A – 469A Colombo Street is the only confirmed heritage demolition in Sydenham to date.



incentives or funding that may be available to the applicant. In this instance given that two structural engineers are of the opinion that the building is beyond repair and that the building has a Group 4 listing, full costing for repair have not been undertaken. However, Mr Lust has commented that he considers that it is not economically viable to restore the building. This is even without taking into account the significant costs of bringing the building up to current earthquake strengthening policies.

Following the earthquake the Council has established the Canterbury Earthquake Heritage Building Fund to assist in the repair and retention of heritage buildings. The Council has decided at its 6 October meeting not to provide funding to assist with the retention of this building.

Having considered all of the above the final conclusions of Ms Easterbrook and Ms May are as follows:

*"In our opinion, given the extreme circumstances under which this consent has been lodged, and noting the discussion above, we believe the adverse effects from this proposed application for demolition of a listed heritage building can therefore be deemed to be no more than minor. We have reached this conclusion having given due consideration to the submitted structural reports which assess the damage the recent major earthquake has had on this Group 4 heritage building. The City Plan states that protection is desirable for Group 4 items and while this may well be so in this case the practical reality and professional external opinion is that the reality of attempting to retain this building in some form would severely reduce and compromise its heritage significance and values to a degree that would compromise the reasons for its listing Appendix, 1, Section 10 Vol. 3 of the City Plan".*

While it is unfortunate that the building will be lost with demolition, having taken into account all of the relevant matters including the assessments of the two structural engineers, the reasons for the building being listed in the City Plan, the guiding assessment matters and the opinions of two heritage experts (Ms Easterbrook and Ms May), I reach the conclusion that any adverse effects of the loss of the building on heritage values will be less than minor and thus acceptable to grant consent.

## **Other Effects**

### Demolition Management

At this stage in the demolition planning process the applicant believes that it will take no more than 2 weeks (probably less) to demolish the building. The demolition process will result in a number of temporary effects that are relevant to consider as part of this consent process. Such effects include nuisance dust and debris, noise effects, damage to adjacent buildings and roads and potential traffic safety and management effects. These effects and potential mitigation measures have been discussed with Council's Building Consent and Transport and Operations staff. Following these discussions and in the event consent is granted, I consider that all of these temporary demolition effects can be managed by the demolition plan provided by the applicant with their building act exemption application and appropriate consent conditions (and advice notes). Conditions have been drafted by Council staff and provided to the applicant for their approval as part of this consent process. The conditions cover the following matters:

- Mitigation of any dust effects caused during the demolition so that they are not a nuisance to near by properties.
- Restricting demolition activities to the City Plan daytime noise hours of 7am – 10pm so as not to cause noise nuisance for residents at night.
- Services to the site remaining disconnected throughout demolition for safety reasons.
- Provision to keep roads that remain open to traffic clear of dust and debris during the demolition process.
- The provision of a traffic management plan for Council certification, to ensure traffic and pedestrian safety through out the process.
- The protection of adjoining buildings during demolition.
- The repair of any damage caused during demolition to adjoining roads and footpaths.

The only parties I consider effected by the demolition in a minor way are the two adjoining properties (owners and occupiers) left without an adjoining, neighbouring, front building. While there is no party/shared walls between the buildings, they are located in very close proximity to one another and will be left with an exposed wall on either their northern or southern elevation where this hasn't been the case previously. The condition of these walls is not known at present. Further these are the only parties who will have temporary protection works undertaken to their buildings and that may experience further damage to their buildings during the demolition process. I note that the owners and occupiers of the adjoining sites/buildings at 454 and 458

Colombo Street have given their approval to the demolition, therefore pursuant to Section 104(3)(a)(ii) the Council must not have regard to any effects on these persons.

The Council already has traffic cordons setup in Sydenham along the length of Colombo Street between Brougham Street to the south and Moorhouse Avenue to the north. The applicant does not anticipate the need to extend the current cordons to allow for the demolition. Any required closure of Colombo Street is also considered unlikely, however can be managed if it becomes necessary. For this reason, I do not consider that any businesses/properties in the area will be adversely affected by any traffic cordons required for the demolition and note that the cordons are required regardless of whether the building is demolished or not. The demolition will eventually result in the cordons being removed and traffic flow returning to normal.

In conclusion, any demolition effects are of a temporary nature and when properly managed in accordance with the demolition plan and the types of consent conditions discussed above any effects on the environment will be kept to an acceptable.

### Visual

The character of the Sydenham Business 2 area is largely attributed to its heritage buildings and a strong sense of street containment, with all buildings, including the more modern ones being built to the street boundary. Following the demolition of the building the appearance of the vacant site has the potential to have adverse visual effects on the character of Sydenham. The vacant site created will break up the continuous building façade currently along the Colombo Street frontage and could detract from the dominant built form on this side of the street. Such effects are only likely to be temporary until such time as a new building occupies the site. The building being demolished is small and only has a 4.5m wide frontage to Colombo Street. The narrow nature of the site will reduce any visual effects created by the gap in the block. Further, while not a permitted baseline for this site, I note that non-heritage buildings in the Business 2 zone can be demolished leaving a vacant site as a permitted activity. Therefore a vacant site of this nature is not unanticipated in this area.

When considering an application for heritage building demolition the Council would also normally be considering a new building on the site at the same time as part of an effects assessment. In this instance given the event of the earthquake and that two structural engineers are in agreement about the need to remove the building quickly for health and safety reasons, this is not possible. The applicant has not yet had the opportunity to consider and design a new building for the site. There is currently no time frame around establishing a new building on the site and the site could remain vacant in the immediate future.

The vacant site if not left and maintained in a tidy and safe state, free of demolition material will detract temporarily from the visual amenity of the street scene. Vacant sites also often become dumping grounds for litter and waste and are prone to vandalism and graffiti. These adverse effects can be avoided by the imposition of consent conditions requiring the site to be cleaned up and fenced off from public access within a reasonable timeframe following the completion of demolition. Conditions of this nature have been discussed with and agreed to by the applicant and their contractors.

Overall when considering the adverse visual effects of the proposal on the character and amenity of Colombo Street, I consider such effects will be acceptable. This is due to the narrow nature of the site, the likely temporary nature of such effects, that vacant sites could occur as permitted activities on other nearby properties and that conditions of consent can require the site to be left in a tidy manner until such time that it is re-developed.

### Positive Effects

The demolition of the building will also have some positive effects which are a relevant consideration under Section 104 of the Act. In this instance the positive effects relate to social and economic benefits for the applicant and surrounding businesses in Sydenham that have been affected by the earthquake, that currently remain closed due to safety issues associated with this building. The demolition of the building will enable these parties to try and return to business as usual, as the cordons are removed, traffic starts flowing on Colombo Street again and buildings are made safe for people to return to. This will enable those people and their employees to provide for their social and economic wellbeing.

### **Overall Conclusion on Effects**

As the preceding discussion has demonstrated I consider that any adverse effects associated with the demolition of the Group 4 building at 456 Colombo Street to be acceptable.

**How do any relevant objectives, policies, rules or other provisions of the City/District Plan relate to the proposal? [Section 104(1)(b)(vi)]**

City Identity Objective 4.3 (Heritage Protection) seeks "*the conservation and restoration of heritage items and values.*" Policy 4.3.1 aims to "*identify and provide for the protection of heritage items having regard to their significance.*" This objective and policy recognise that much of Christchurch's distinctive character is derived from its buildings and a number of these have architectural and historical importance which are reminders of the city's past. The Plan recognises the benefits for the community of protecting such buildings while taking into account the costs of conservation and restoration and the need to secure viable activities to occupy them.

I consider the proposal is inconsistent with, but not contrary to, these objectives and policies. Although there will be loss of heritage values due to the demolition of the building, the event of the earthquake means that the architectural values (the most significant values at the time the building was listed in the Plan) of the building have already been irreversibly altered, even without the proposed demolition, to a point where they have little value.

**Are there any relevant provisions of a National Environmental Standard, National Policy Statement, Regional Plan, Regional Policy Statement or Coastal Policy Statement? [Section 104(1)(b)]**

No.

**Are there any provisions of any relevant non-statutory documents? [Section 104(1)(b)]**

No.

**Is the application consistent with Part II of the Act, and are there any other matters which are relevant and reasonably necessary to determine the application? [Section 104(1)]**

**Part II**

The purpose of the Act is to promote the sustainable management of natural and physical resources. Section 5 imposes a duty on consent authorities to promote sustainable management while avoiding, remedying or mitigating adverse effects of activities on the environment. Having regard to the conclusions I have reached above, I consider that the proposed demolition is consistent with the Acts intentions. In addition Section 5 also contains an enabling component, seeking the sustainable management of resources in "*a way that enables people and communities to provide for their social (and) economic...wellbeing..*".

While the retention of the building (rather than the proposed demolition) may have social benefits for the community, in particular those with an interest in heritage, in this instance the demolition of the building will also enable effected business owners in close proximity to the building to start to return to their premises and return to business as usual. Enabling this group of people affected by the earthquake to again provide for their social and economic wellbeing. The demolition will also remove a risk to public safety. I do not consider that the positive social elements associated with heritage retention outweigh the consideration of wider social and economic effects for business owners in Sydenham, and the safety of the public. Therefore, overall I consider that the demolition will enable people and communities to provide for their social and economic wellbeing.

Section 6(f) requires the Council to recognise and provide for the protection of historic heritage from inappropriate subdivision, use and development. The proposal is inconsistent with this in that historic heritage is not protected, however the demolition is appropriate given the circumstances.

The proposal is considered to be consistent with Part II matters in that the proposal will maintain the amenity of the surrounding environment, in accordance with Section 7(c) and 7(f) of the Resource Management Act 1991.

**If the application is for a non complying activity, does it meet at least one of the provisions of Section 104D (1)?**

Not applicable, this application is for a discretionary activity.



Are there any matters that have arisen in the assessment of this application that would indicate the application should have been publicly notified? [Section 104(3)(d)].

No.

#### Recommendation

That for the above reasons the application **be granted** pursuant to Sections 104, 104B and 108 of the Resource Management Act 1991, subject to the following conditions:

1. The demolition shall proceed in general accordance with the information and plans submitted with the resource consent application and the demolition plan submitted as part of the building act exemption application BAE35001994. The Approved Consent Documentation has been entered into Council records as RMA92017057 pages 1 to 14.

#### Demolition

2. Demolition activities are to be planned and managed in accordance with demolition plan submitted and now labeled as page 3 of the approved consent document and the relevant legislation, including Clause F5 (Construction and Demolition Hazards) of the New Zealand Building Code. Best practicable options are to be employed at all times to manage the adverse effects of demolition, including best practice principles/guidelines and industry standards for demolition.
3. Any departure from the demolition plan specified in condition 2 above will require prior approval from the Environmental Policy and Approvals Manager.
4. The demolition of the building shall commence within one month of the date of this consent decision, and be completed within 3 months of the date of this decision.
5. Hours of operation for demolition are restricted to Monday to Sunday between the hours of 7:00am and 10.00pm. Demolition works outside of this are to be for emergency purposes only.
6. All services (gas, power, telephone/ internet, water/plumbing, sewer and stormwater) to the site are to remain disconnected throughout the demolition.
7. The Consent Holder shall take measures to prevent silt-contaminated stormwater entering the Council stormwater system at all times during demolition.
8. The Consent Holder shall employ dust mitigation measures during demolition to ensure that dust is confined to the cordoned area to minimise any nuisance to neighbouring property. Mitigation measures may include:
  - (i) Watering the site.
  - (ii) Minimising and controlling internal traffic movements and the location of rubble storage areas.
  - (iii) Ceasing site works when winds of such magnitude to create a dust hazard.
9. The roads to and from the site outside of the cordoned area are to remain tidy and free of dust and debris at all times. Measures must be taken to prevent dust and debris migrating from the site. Roads will need to be regularly monitored and swept during the day if necessary.
10. Demolition of the building shall not commence until such time as a traffic management plan (TMP) that covers the demolition period has been submitted to the Council by the Consent Holder or their representative and certified by the Traffic Management Coordinator in Council's Transport Engineering Team. The traffic management plan shall be in accordance with the Code of Practice for Temporary Traffic Management and contain the following as a minimum:

- (i) The type and location of temporary traffic management required to maintain protection and guidance through the site.
  - (ii) The location of cordons required to be in place to protect the safety of persons during demolition (if this varies from those the Council currently has in place then this needs to be clearly identified on the TMP).
  - (iii) The procedure to be followed in the event that Colombo Street needs to be closed to enable the demolition to occur safely, and the provision of an alternative detour route. *(Note: this needs to be avoided and will only be approved as the last resort).*
  - (iv) The proposed route to and from the site for any heavy vehicle traffic (vehicles more than 3000 kg) involved in the demolition.
  - (v) The location of where contractors vehicles and trucks will park while waiting to remove material.
  - (vi) On completion of demolition, the process to be followed to have the Council cordons removed.
11. When the demolition works do not, in the opinion of a registered engineer present a danger to public using the legal road the cordons should be removed or reduced, in consultation with the Council.
12. Following the completion of demolition, damage caused to legal road including the footpath shall be made good within one month, at the Consent Holders expense, unless otherwise agreed with Council. Any repairs or reinstatement shall be undertaken in consultation with the Transport and Engineering Team Leader in the Council's Contract & Operations Team (or his nominee).
13. On completion of the demolition the site shall be left in tidy and level/flat state free of any rubbish or building rubble. The site is to be maintained in this manner until such time as it is re-developed, this will need to be regular monitored and tidied if necessary.
14. On completion of the demolition the site shall be fenced with a transparent fence along the Colombo Street road boundary to a minimum height of 1.8m to prevent public access onto and through the site.

#### **Heritage**

15. A photographic record of the building prior to demolition, at intervals during the demolition process and at the completion of the demolition shall be made as per the matters outlined in Volume 3, Section 10, Clause 1.3.5 as follows:
- (a) Photographs are required to cover all unique areas and features of the original heritage environment identified within the Plan or by associated records or identification, in an accurate photographic representation.
  - (b) Photographic views will be required to show both the affected building, setting, place or object and the relationship between objects, buildings and places.
  - (c) Detailed photographs will be required of specific features of particular heritage importance. It will be at the discretion of the Council to determine the subject, and scope of photographs which will be dependant on the heritage value of the environment and the degree of associated loss of heritage fabric and value.
16. The photographic records required by condition 15 shall be undertaken and provided to the Team Leader of the Urban Design and Heritage Team of Christchurch City Council (or nominee) within three months of the completion of the demolition work.
17. That the applicant undertake on-site interpretation to reflect the historic values of the building at this location. This interpretation should be undertaken in consultation with the City Council Heritage Team within three months of the completion of any replacement building or activity on the site.

#### **Advice Notes:**

- The Council will require payment of its administrative charges in relation to monitoring, as authorised by the provisions of section 36 of the Resource Management Act 1991. At present the monitoring charges include:
  - (i) A monitoring fee of \$102.22 to cover the cost of setting up a monitoring programme and carrying out a/two site inspection(s) to ensure compliance with the conditions of this consent; and
  - (ii) Time charged at an hourly rate where additional monitoring is required.

- This resource consent has been processed under the Resource Management Act 1991 and relates to planning matters only. You will also need to comply with the requirements of the Building Act 2004. Please contact a Building Consent Officer (ph 941-8995) for advice on the building consent process.
- The applicant is reminded of their responsibilities under Section 4(2)(j) of the BA04, that being; *"the need to provide for the protection of other property from physical damage resulting from the construction, use, and demolition of a building"*.
- In relation to condition 3 above the current Environmental Policy and Approvals Manager is Mr Steve McCarthy, he can be contacted on ph 941-8651 or ph 027 4530548.
- In relation to conditions 10 and 12 above the current Team Leader of the Transport and Engineering Team is Mr Steffan Thomas, he can be contacted on ph: 941-8075 or ph: 027-2941970, and the Traffic Management Co-ordinator can be emailed at [tmc@ccc.govt.nz](mailto:tmc@ccc.govt.nz).
- In relation to condition 16, I note that the current Team Leader of Christchurch City Council's Urban Design and Heritage Team is Ceciel DelaRue. Ms DelaRue can be contacted by phone on ph 941 5237.
- The consent holder is advised to liaise with the nominee of the Principal Advisor, Urban Design and Heritage, Christchurch City Council if further clarification is required in respect of satisfying condition 17. The current contact for such advice is Neil Carrie. Mr Carrie can be contacted on ph 941 8643.
- Following the demolition of the building the vacant site is not to be used for car parking.
- This may be an archaeological site as specified in the Historic Places Act 1993. An archaeological site is any place in New Zealand that was associated with human activity that occurred before 1900, and is or may be able through investigation by archaeological methods to provide evidence relating to the history of New Zealand. Sections 10 to 20 of the Historic Places Act apply, and any destruction, damage, or modification of any part of the site must first be authorised by the Historic Places Trust. **Please contact the Historic Places Trust on 3652897 before commencing work on the land.**
- **Christchurch City Council Urban Design Panel** - When the site is re-developed at some point in the future, the nature of the development means that it will need to be referred to the Urban Design Panel for consideration and feedback. The Panel has an advisory role to the Council and provides free pre-application advice and input on urban design matters in relation to the resource consent process. Early consultation with Council staff about this process before the design if the building is finalised is advised. For further information please view [www.ccc.govt.nz/urbandesign](http://www.ccc.govt.nz/urbandesign) or contact one of the members of the Urban Design team in the Strategy and Planning Group on (03) 941-8999.
- Council recommends that the consent holder obtain any necessary insurance approvals prior to initiating the demolition.
- **Removal of material to Burwood Landfill** - Any waste being transported to Burwood Landfill will require a permit to be approved by Council. Removal and transportation of material from the site are to be in accordance with the conditions of the permit. No material is allowed to be transported to Burwood until such time a permit is approved by Council.

**Reported and Recommended by:** Clare Revell – Senior Planner      **Date:** 3 November 2010

**Report Reviewed by:** John Gibson – Planning Administration Manager      **Date:** 3 November 2010

**Decision**

That the above recommendation be adopted for the reasons outlined in the report.

**Commissioner:**

Name: David Collins

Signature: *David W Collins*

Date: 5 November 2010