

In the matter of the Commissions of Inquiry Act 1908

And

In the matter of the Canterbury Earthquakes Royal Commission

**Submissions of Holmes Consulting Group Limited relating to 593
Colombo Street**

Date: 27 January 2012



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MAY IT PLEASE THE COMMISSION

Summary of submissions

- 1 These submissions focus on the likely issues raised by Mr Zarifeh in his opening, and the recommendations made by Mr Peter Smith in his report of November 2011 relating to this building.
- 2 Counsel for the Commission provided a summary¹ of the background to this case. That summary identified that following the September earthquake the building sustained some damage, particularly on the St Asaph frontage (187 St Asaph Street) which was yellow placarded while the Colombo frontage (593A and 593B Colombo) was green placarded.
- 3 On the instructions of NAI Harcourts, Holmes Consulting Group (**HCG**) inspected 593 Colombo Street on a number of occasions between 24 September 2010 and 29 November 2010.
- 4 HCG's evidence is that 593 Colombo Street was from the outset of HCG's inspections a yellow placarded building, and at no time were its personnel aware that it had been green placarded. HCG was therefore at all times operating under the misconception that the Council and all others involved in the building, knew it only to be yellow, not green.
- 5 Mr Peter Smith recommends² that RAPID Assessment - Level 2 be the minimum requirement for URM buildings, presumably by or on behalf of the Council. HCG supports that view. Its own RAPID Assessment - Level 2 undertaken for NAI Harcourts on behalf of the owner on 24 September 2010 confirmed the yellow placarding status of the building on the basis the existing yellow placard applied to the whole building. It is

¹ BUI.COL593.0044.2

² BUI.COL593.0045.8

inferred that a Level 2 assessment by the Council would have led to a yellow designation overall and no green placard for Southern Ink.

- 6 There would then have been no misapprehension on the part of the tenant as to the status of Southern Ink's premises as occurred from it initially being green placarded.
- 7 Further, the Council would have followed up on ensuring compliance with the yellow designation, as it did in January 2011 in relation to the south west part of the building at 187 St Asaph Street.
- 8 HCG also supports Mr Smith's recommendation that in the interests of public safety, it is important that the owners and owners' agents notify the Council if the condition of the building differs from the placard assigned by the Council to the building.
- 9 Unless there was to be a change in designation of the building from green to either yellow or red and so a change in the assessment of safety to occupy the building, HCG's retainer on behalf of the building owner required it to report only to NAI Harcourts. Given its retainer by NAI Harcourts distinct from the enforcement role of the Council, HCG is of the view this remains the appropriate trigger for disclosure of information/reports to third parties.
- 10 Mr Smith also recommends that in light of the 22 February earthquake the Council needed to erect barriers to isolate public access to the full extent of the fall zone on unstrengthened URM buildings. HCG makes no submission in this respect given that the placement of barriers is a matter for the Council as the enforcement agency.
- 11 At all times HCG operated upon the reasonable premise that the whole building was yellow stickered, and that all relevant parties were aware of that fact. The evidence is consistent with HCG properly believing NAI Harcourts to be aware of the yellow placard status of the building and that the Southern Ink premises ought not to have been occupied. Given the circumstances HCG does not believe it was in error not to tell the tenants of Southern Ink directly that they should not have been in

occupation. HCG did what was reasonably to be expected of it in the circumstances of this case.

12 Counsel for the Commission identified at the outset a number of likely issues to be addressed, namely:

12.1 Application of the Council's earthquake-prone policy to the building.

12.2 The assessment process of the building after the September earthquake including the separate placarding of tenancies of the same building.

12.3 Should the owner/engineer have communicated findings in relation to the structure of the building to others eg tenants, Council?

12.4 Were the cordons in front of the building sufficient?

13 Save as set out in the summary of submissions above, HCG makes no submission in relation to the first or last issues but comments as follows on the others.

The assessment process of the building after the September earthquake

14 The Council process for placarded buildings was not to follow up on those with green placards on the basis they were safe to occupy, but to actively follow up on compliance with yellow and red placarded buildings.

15 The evidence of Mr Ryburn, engineer, then seconded to the Council, was that in January 2011 on behalf of the Council he was undertaking re-inspection of yellow placarded buildings. He inspected 187 St Asaph Street, but had no instruction to inspect 593 Colombo Street, nor could he recall whether he did so incidental to his inspection of Asaph Street (though the same building).

- 16 HCG supports the recommendation of Peter Smith at page 8 of his report³ that the risk of collapse of unreinforced masonry buildings in whole or in part from a significant aftershock justifies a greater level of inspection and assessment prior to re-occupancy or public access near a URM building following a significant earthquake, and the minimum level of assessment ought to be Rapid Assessment Level 2.
- 17 HCG also supports Mr Smith's recommendation that in the interests of public safety, it is important that the owners and owners' agents notify the Council if the condition of the building differs from the placard assigned by the Council to the building.
- 18 Mr Smith's recommendations are made upon the premises that:
- 18.1 The Council has the responsibility for enforcement of the placard system, which is plainly correct;
- 18.2 That HCG assigned a yellow placard to 593 Colombo Street and so should have notified that change to the Council.
- 19 Unfortunately in this case, HCG only ever saw a yellow placard on 593 Columbo Street, rather than a green placard. Consistent with practice at the time, and not having changed the placard colour, HCG did not notify the Council of its inspections. The relevant evidence is that:
- 19.1 Mr Wall, engineer, who volunteered his services on 5 September 2010 to undertake many RAPID Level 1 assessments, assessed 593 Columbo Street as green and 187 St Asaph Street as yellow.
- 19.2 Mr Matthew Parkin, owner of Southern Ink Tattoo confirmed that following the 4 September 2010 earthquake the front door to Southern Ink had initially had a green placard, but at some

³ BUI.COL.593.0045.8

stage the green placard had been removed. It was not in the photograph of 4 October 2010. He confirmed that from the outset after the 4 September 2010 earthquake the placard on the central door of 593 Colombo was a yellow placard but was vague as to the precise timing (TRANS.20111213.49/50).

- 19.3 HCG was first requested to inspect 593 Colombo Street on or around Friday 24th September 2010 and an inspection was carried out by Mr Alistair Boys of HCG at approximately 3pm that day.
- 19.4 Mr Boys confirmed that the yellow placard he had seen on 24 September 2010 was that in the central doorway to the building and there was no other placard on 593 Colombo Street, including Southern Ink (TRANS.20111212.140).
- 19.5 Mr Boys met Mr Chapman of NAI Harcourts later that day and says he told Mr Chapman of the yellow placard status of the building. Mr Chapman does not recall that, and identifies that the copy handwritten notes of Mr Boys produced by Mr Chapman do not specifically record it.
- 19.6 Mr Boys' records of the inspection were his hand written site notes, a RAPID Assessment - Level 2 form confirming the existing yellow placard status, and a typed site visit report stating that the building already had an existing yellow placard and was not safe to occupy (BUI.COL593.007E.1/F.1/G.1/G.2). During the hearing Mr Boys could not confirm how and when these documents had been sent to Mr Chapman.
- 19.7 Subsequently HCG has traced the email by which these reports were sent to Mr Chapman. The RAPID Assessment - Level 2 form and typed site report were sent on 29 September 2010 by HCG administration to Mr Chapman and Mr Buchanan at NAI Harcourts by email, along with many other similar reports: see statutory declaration of Ryan Leslie McCarvill, system

administrator confirming that he has checked that email left HCG server and no 'bounce back' notification was received.

19.8 Regrettably any photographs taken by Mr Wall on 5 September are no longer available. After the 4 September 2010 earthquake the first available photograph of the frontage to 593 Colombo Street was taken by Mr Roberts of HCG on 4 October 2010 and is at BUI.COL593.0007A.4A. A photograph of the frontage after the 22 February 2011 earthquake is at BUI.COL593.0051.3. While it is understood from the Commission that it had been acknowledged in other cases that placards had faded in colour over time, it is submitted that the placard visible in the photographs is yellow. There is no placard of any colour at the entrance to Southern Ink.

20 So it appears that although Mr Wall's records are that 593 Colombo Street was green placarded, at some stage prior to Mr Boys' inspection on 24 September, a yellow placard was placed on the central doorway.

21 Mr Boys' recollection is clear and is supported by his records that at his first inspection on 24 September 2010 the central doorway of 593 Colombo Street was yellow placarded, and there was no placard on the ground floor tenancy of Southern Ink.

22 The evidence does not resolve how the central door on 593 Colombo Street became yellow placarded before Mr Boys' inspection of 24 September 2010.

23 However, neither of these issues need finally to be resolved in order to accept Mr Peter Smith's recommendation that a RAPID Assessment - Level 2 by the Council be the minimum requirement for URM buildings. HCG submits that if that had been the process after the 4 September 2010 earthquake, that would more likely than not have resulted in a yellow placard designation for the whole building including Southern Ink, and so ensured appropriate enforcement and follow up.

Should the owner/engineer have communicated findings in relation to the structure of the building to others eg tenants, Council?

- 24 At all times HCG operated upon the premise that the building was yellow stickered, and that all relevant parties were aware of that fact. HCG staff only ever saw a yellow placard on the building, so understood:
- 24.1 the Council to know that, and the Council was responsible for enforcement.
- 24.2 Mr Chapman at NAI Harcourts to know that.
- 24.3 Southern Ink to know that.
- 25 On that basis HCG says that having been retained by NAI Harcourts on behalf of the building owner and in the absence of HCG changing the placard status of the building, it had no reason to notify the Council.
- 26 Mr Boys of HCG had seen nobody at the building on 24 September 2010 (TRANS.20111212.141).
- 27 Mr Seville of HCG inspected 593 Colombo Street on 4 October 2010 and in the course of doing so saw people in Southern Ink.
- 28 As to whether HCG should have told the tenants of Southern Ink directly they should not be in occupation, HCG submits that the circumstances known to its staff did not justify that intervention.
- 28.1 There was one yellow placard on the building.
- 28.2 Enforcement of existing yellow and red placards was a matter for the Council, not HCG.
- 28.3 There was no green placard on Southern Ink at any time HCG attended the property.
- 28.4 It is clear from Matthew Parkin's evidence that he knew the central door to 593 Colombo Street was yellow placarded and

also understood what the notice meant, but his premises had initially been green placarded. In a series of emails he had sought clarification from NAI Harcourts as to the safety of occupying the premises.

28.5 HCG was unaware that Southern Ink had earlier had a green placard or that they may have been under a misconception as to the safety of their premises and was not a party to the exchanges between NAI Harcourts and Southern Ink.

28.6 Mr Boys had told Mr Chapman on 24 September 2010 of the yellow placard (though Mr Chapman does not recall that: TRANS.20111212.110)).

28.7 Mr Boys' typed site report of 24 September 2010 sent to Mr Chapman was clear in stating the yellow status of the building and that it should not be occupied.

28.8 When Mr Seville saw people in Southern Ink on or about 4 October 2010 as the building had a yellow placard it was his view that they should not be in occupation, but he did not believe there was an immediate safety issue. He said he spoke to Mr Chapman on or about 4 October 2010 and advised him that it was a yellow placarded building and the tenants should not be in there (TRANS.20111213.6). Mr Seville accepted in cross-examination by Mr Chapman's counsel that he had the opportunity to record that information in both his report of 4 October and email of 6 October but had not, and in hindsight he ought to have taken that opportunity. But he remained confident he had that conversation.

29 Mr Chapman denies he knew that 593 Colombo Street had a yellow placard as he says that if he had he would have told the tenants at Southern Ink to vacate the property.

30 Mr Chapman agreed that he was interested in knowing the particular status of Harcourts' buildings (TRANS.20111212.118). Mr Chapman

properly expected HCG to report its findings on inspection, which would have included the placarded status of the building.

- 31 HCG properly believed it had done so by Mr Boys' typed site report of 24 September referring to the existing yellow placard and that the building should not be occupied. Unfortunately Mr Chapman says he never received HCG's email of 29 September 2010 including the typed report of 24 September 2010 and the RAPID Assessment - Level 2 report, so it appears that email technology has failed its purpose in this case.
- 32 Mr Seville's report of 4 October 2010 does not in terms refer to the yellow status of the building, likely because in preparing it he had seen Mr Boys' report of 24 September which had already notified Mr Chapman. The scope of further work by HCG was sufficient to justify a further contract to be signed by the owners. Mr Chapman said the issue for owners was whether to repair or demolish the building from a financial perspective so it was self-evident the scope of work was extensive. That understanding reflects Mr Chapman's conversation with the Council as late as 16 February 2011 (see Council file note WIT.MCC.0003.13).
- 33 On being recalled following Mr Seville's evidence, Mr Chapman stated he had no recollection of a call from Mr Seville on or about 4 October 2010 about 593 Colombo Street. He produced one page from his diary for that date (copy attached) and referred to his note on the middle right hand side of the page at 1.31pm which refers to a voice message from Mr Richard Seville regarding 124 Lichfield Street. He said that had he received a call about 593 Colombo Street he would have made a note. But there is a note on that page referring to 593 Colombo Street which could be read as a note to return a call about this building. It is above the note relied on by Mr Chapman.

593 Colombo St

- 34 Within days of Mr Seville's inspection and the telephone conversation on or about 4 October that Mr Seville recalls but Mr Chapman does not, Mr

Chapman sent an email to Matthew Parkin at Southern Ink dated 8 October 2010 stating:

Hi Matt

We have been awaiting the structural engineers survey and recommendations to enable us to be in a position to establish what works are required to make the building re-tenantable and to gauge a timeframe those work [sic] are likely to take so we can advise those tenants and owners alike.

From the structural engineers report I received the other day it may be some time before the building will be able to be tenanted legally.

Can you please provide me with a copy of your lease so I can establish what we need to do next regarding that lease.

Regards

Chris

35 In cross-examination Mr Chapman initially explained he was referring to the vacant space being re-tenantable rather than Southern Ink's space (TRANS.20111212.124).

36 But as the Commission put to Mr Chapman, why was that a relevant thing to say to Mr Parkin and why ask him for a copy of the lease? (TRANS.20111212.132) Mr Chapman refers to 'the building' not the vacant parts of the building.

37 It is submitted that the email between Mr Chapman and Mr Parkin is consistent with Mr Seville having told Mr Chapman that the premises had a yellow placard and should not be occupied, and by this email Mr Chapman was conveying that position, but was not direct in doing so.

38 Mr Chapman acknowledged that when he attended on 24 November 2010 he walked through the central door of 593 Colombo Street (TRANS.20111212.125). Mr Chapman cannot recall the placard, notwithstanding he accepted that he was concerned about the placard status of all Harcourts' managed buildings.

39 On 11 February 2011, Mr Seville sent Mr Chapman an email attaching drawings for repairs to 593 Colombo Street, and stating:

I've attached mark-ups showing the general concept for strengthening of this building. It has been split into what is required to be done now (for occupancy) and what is required to aim for 67%.

40 The drawings state:

1 Required repairs prior to resumption of occupancy. Damaged structure must be restored to its original strength. Damaged non-structural portions shall be removed or replaced.

A) These items are marked in RED

B) Alternative options for these items are marked in GREEN.

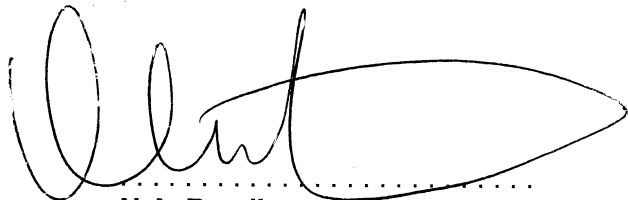
2 Required seismic upgrade to 67% or as nearly practicable to 67% by September 2013. These items are marked as Blue on the plans.

41 HCG was not aware that Southern Ink was still in occupation of the premises, the last time HCG staff having been at the premises was on 24 November (when Mr Chapman also attended) and 29 November.

42 HCG deeply regrets the fact that there was injury and death at the building on 22 February 2011.

43 But the evidence is consistent with HCG properly believing NAI Harcourts to be aware of the yellow placard status of the building and that the Southern Ink premises ought not to have been occupied. Given that HCG had not changed the placard status of the building, that NAI Harcourts had retained them and to all outward appearances were managing the property, HCG did what was reasonably to be expected of it in the circumstances of this case.

Date: 27 January 2012



N.A. Beadle
Counsel for HCG

Monday 4th October 2010

CGA - 1008

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22

AN 14

Marshland Road -

window glass
louvre glass
window sill

1st thing

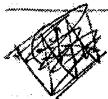
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2010-1050 Byron - front door lock

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593 Colombo St

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Jennifer Dawson
267 Madras St
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13/12/2011