

Before an Independent Hearings Panel
appointed by Christchurch City Council

under: the Resource Management Act 1991

in the matter of: the hearing of submissions on Plan Change 14 (Housing
and Business Choice) to the Christchurch District Plan

and: **Carter Group Limited**
Submitter 824

Supplementary Legal Submissions on behalf of Carter Group
Limited – Blue Cottage heritage item

Dated: 8 May 2024

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MAY IT PLEASE THE INDEPENDENT HEARINGS PANEL

INTRODUCTION

- 1 These brief supplementary legal submissions are filed for Carter Group Limited (*Carter Group*).
- 2 They address the expert conferencing (quantity surveying and planning) that occurred after the Qualifying Matters hearing in relation to Carter Group's submission seeking the delisting of the Blue Cottage heritage item and setting.
- 3 These submissions briefly address the conferencing outcomes, then outline Carter Group's updated position following the conferencing.
- 4 These submissions also briefly update the position of Daresbury Limited (Daresbury House) and Church Property Trustees (St James Church) with respect to matters arising from the planners' expert conferencing which are equally applicable to their position.

CONFERENCING OUTCOMES

- 5 From Carter Group's perspective, the conferencing was beneficial in bringing the positions of the respective experts somewhat closer together.
- 6 For the quantity surveyors, it is clear that they are largely in agreement in respect of measure and rates. Their remaining disagreement is in respect of the level of risk and contingencies that should be incorporated in their estimates, and the scope of works.
- 7 However, Carter Group points out that Council did not have any evidence as to what a reasonable landowner with a listed heritage building would be expected to do when faced with repair costs that, even on the Council's evidence, are uncertain as to contingencies to allow for the inherent unknowns with repair of heritage buildings.
- 8 Furthermore, Carter Group are probably the City's most significant and experienced land developer, including having a track record of previous repair of heritage buildings. When Mr Carter stated that he would prefer the repair costs given by Mr Chatterton to Mr Stanley, the Council could offer no evidence that Mr Carter's reliance on Mr Chatterton is not also the position that would be adopted by any other reasonable landowner.
- 9 In our submission, Mr Chatterton's scope of works is the appropriate approach because unlike Mr Stanley's it enables functional occupation of the building of a nature and standard sought by the market. The Council's "conservation minimum repair" scope of works will simply result in a building that is not necessarily fit for

purpose and which no reasonable landowner would accept without any ability to recoup the costs of repair either through leasing the building or selling it. In both cases, it is fanciful to suggest that a landowner would incur costs to repair a building that does meet the market for use or sale.

- 10 For the planners, while there remains disagreement on certain issues, it is significant that agreement was reached that:
- 10.1 The scope of repair work should be based on an end-use for education or residential purposes.
 - 10.2 The potential for adaptive re-use is uncertain because the alternative uses suggested by Council would be subject to resource consent requirements.
 - 10.3 The costs of repairing or rebuilding the Blue Cottage are broadly comparable to 471 Ferry Road.
 - 10.4 Repair-related considerations such as property valuation following repair are relevant "financial factors relating to the physical condition of the heritage item" as per clause (c)(iv) of Policy 9.3.2.2.1. In this respect:
 - (a) Ms Richmond acknowledges that Mr Stanley's estimate for the "functional occupation" approach is only "somewhat less" than the market valuation for the land with a repaired building.
 - (b) Mr Phillips notes that when the underlying land value is accounted for (which Ms Richmond has not done and has not explained why she hasn't), even Mr Stanley's "functional occupation" estimate, plus land value, would exceed the market valuation for the land with a repaired building.

CARTER GROUP'S POSITION

- 11 Following conferencing, Carter Group's position remains that in the context of PC14, the Blue Cottage heritage item and setting should be removed from the schedule.
- 12 Based on the remaining areas of disagreement, we make the following points in support of Carter Group's position to assist the IHP with its deliberations.
- 13 As indicated above, and in the context of Policy 9.3.2.2.1(c)(iv), Mr Chatterton's "functional occupation" scope of works is the appropriate approach. The Council's "conservation minimum repair" scope of works is somewhat of a false base. While the building itself

would be repaired, it would simply be a repaired building largely with interest only as a heritage curiosity but not open to members of the public as it is on private land.

- 14 Mr Stanley's scope of works would retain heritage values but would not meet the market's expectations as to use of the building as a tenant or as a potential purchaser. It is fanciful to suggest that there is a market amongst the private sector to develop heritage buildings for potential viewing by the general public and with no prospect of leasing or sale for residential or educational purposes.
- 15 The Council's position is therefore an artificial base from which to determine "reasonableness" in terms of Policy 9.3.2.2.1(c)(iv), because no reasonable landowner would spend a significant amount of money to generate an empty shell building that has heritage value but cannot be occupied.
- 16 Most private landowners are not heritage philanthropists and society cannot expect them to be regardless of how significant their individual financial resources are. Carter Group makes its own decisions and contributions around topics of philanthropic interest to it and this has included repair of other heritage buildings that are accessible to the general public.
- 17 It does not appear to be in dispute as between Carter Group and the Council that further works (beyond the "conservation minimum repair" approach) would be needed to enable the actual functional occupation of the building. Mr Carter's reliance on Mr Chatterton is therefore understandable and should be preferred.
- 18 There are also fundamental flaws in the position taken by Ms Richmond for the Council, even after conferencing, that mean that Mr Phillips' evidence should be preferred. These include:
 - 18.1 *An incorrect interpretation of Policy 9.3.2.2.1(c)(iv), as it relates to "financial factors"*. As was evident in her evidence, through cross examination at the hearing, and throughout the planning joint witness statement, a key (if not the primary) basis for Ms Richmond's position that the financial factors relating to the Blue Cottage do not meet the "unreasonable" test is that the development capacity of the wider site has the potential to offset the repair costs. But reasonableness is *not* a function of the financial resources of the landowner, as they relate to the property or elsewhere. Reasonableness is necessarily tied to the state of the building, because that is expressly what the policy says: "*financial factors related to the physical condition of the heritage item*". Reasonableness must necessarily be evaluated by reference to the repair costs, including how they compare to the post-repair market

valuation. The market valuation clearly outweighs the repair costs here.

- 18.2 *A failure to acknowledge the relevance of underlying land value in the post-repair market valuation. As was clearly set out by Mr Chatterton and Mr Carter (in reliance on Mr Shalders' valuation report), no reasonable landowner would ignore the underlying land value in their calculations.*
- 18.3 *An inconsistency of position, in that the "delisting" test is assessed to have been met for 471 Ferry Road and Harley Chambers, but not for the Blue Cottage, Daresbury House and St James Church. In our submission, this is an untenable position when the financial position for all five buildings is substantially the same. That is, the costs of repair do, or are likely to, outweigh the resulting valuation of the properties. The inconsistency in position appears to be solely based on the owners of the three latter buildings having more money or subdivision options to recoup their costs. In our submission, this approach is not available in the policy context.*
- 19 Picking up on this last point, the IHP is well aware of the concern that Mr Carter for Carter Group, Mr Milne (Daresbury House) and Mr Holley (St James Church) have with the answers given by Ms Richmond in cross examination that Council's attitude is coloured by the financial resources of the particular land owner which explains the difference in approach taken to these three buildings and 471 Ferry Rd and Harley Building.¹
- 20 While the test that the Council is applying is wrong, the subsequent evidence from Mr Milne for Daresbury Limited confirms that he does not have the financial resources to repair Daresbury House and nor would his bank support him. He has in fact already attempted to obtain some funding through subdivision and sale of other parts of the site but that process did not result in any profit. There are no options for further subdivision whilst Daresbury House remains.
- 21 For Church Property Trustees, Mr Holley gave a significant amount of information about the structure of the various Trusts and the fact that the relevant Parish has no funds for repair of St James Church, nor an ability to borrow as it has no income. Furthermore, the example given by Mr Holley of the valuation of the sale of the larger and more modern St Saviour's Church complex in Sydenham for significantly less than the repair costs of St James Church confirms

¹ See hearing recording of Ms Richmond's cross-examination, 28 November – Morning Session 1, around 51-53 minutes.

that no bank would lend money on a post-sale valuation less than the cost of repair.

- 22 Finally, the planning conferencing focused on the evaluation of Policy 9.3.2.2.1(c)(iv). In the PC14 context, that is neither the only, nor the primary, consideration. The fundamental purpose of PC14 is to implement the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 and the National Policy Statement on Urban Development 2020 (*NPS-UD*). The focus is necessarily on enabling housing and qualifying matters only to the extent appropriate. The retention of Blue Cottage does not achieve the purposes of the legislation and *NPS-UD*, and is not necessary or appropriate to protect heritage values based on a proper interpretation and application of the relevant policy.
- 23 This wider decision-making context is a critical part of assessing the relief sought by Carter Group. However, it has been seemingly ignored by the Council, whose focus has been solely on heritage matters. For this reason alone, as well as the other reasons outlined above and in the evidence and legal submissions for Carter Group, Carter Group's delisting relief should be granted.

Dated 8 May 2024



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