

**BEFORE INDEPENDENT HEARING COMMISSIONERS
IN CHRISTCHURCH**

TE MAHERE Ā-ROHE I TŪTOHUA MŌ TE TĀONE O ŌTAUTAHI

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the hearing of submissions on Plan Change 14 (Housing and Business Choice) to the Christchurch District Plan

**LEGAL SUBMISSIONS FOR THE CHRISTCHURCH CITY COUNCIL ON
PROPOSED PLAN CHANGE 14:**

HERITAGE ITEMS QUALIFYING MATTER

Dated: 16 November 2023

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MAY IT PLEASE THE PANEL:

1. INTRODUCTION

- 1.1 These legal submissions on behalf of the Christchurch City Council (**Council**) have been prepared for the hearing, commencing on 23 November, on the heritage items¹ qualifying matter (**QM**).
- 1.2 The relevant provisions are primarily set out in sub-chapter 9.3 of the District Plan. The heritage items are listed in Appendix 9.3.7.2 Schedule of Significant Historic Heritage Items (**Schedule**).
- 1.3 For completeness, these submissions do not address the following matters (which have been or will be addressed in other hearing weeks):
 - (a) Residential heritage areas QM;
 - (b) Central city heritage matters – the Arts Centre, New Regent Street, Cathedral Square and Victoria Street height overlays and interfaces; zone rules affecting central city heritage sites and precincts; and
 - (c) Heritage trees.
- 1.4 In these submissions, we provide an overview of the legal and planning framework and the Council's overall approach relating to heritage items and the heritage items QM. We also address:
 - (a) the key issues arising from submissions and evidence; and
 - (b) the Council's position, updated as relevant, in respect of the QM.

2. WITNESSES FOR THE COUNCIL

- 2.1 The heritage items QM is addressed in the section 42A report prepared by Suzanne Richmond. Ms Richmond also prepared rebuttal evidence.
- 2.2 The following technical experts address heritage items and will also give evidence at this hearing (in order of scheduled appearance):
 - (a) William Fulton (conservation architect);
 - (b) David Pearson (conservation architect);

¹ For the purpose of the submissions and where applicable, the term 'heritage items' also refers to associated heritage settings.

- (c) Gareth Wright (heritage items);
- (d) Marcus Langman (Planning, Council Submission);
- (e) Amanda Ohs (heritage items);
- (f) Dr Ann McEwan (heritage items);
- (g) Matthew Stobbart (arboriculture);
- (h) Clara Caponi (heritage engineering);
- (i) Stephen Hogg (structural engineering);
- (j) Tim Holmes (conservation architect);
- (k) Chessa Stevens (conservation architect);
- (l) Gavin Stanley (quantity surveyor); and
- (m) Phil Griffiths (quantity surveyor).

3. LEGAL AND PLANNING FRAMEWORK

3.1 The statutory provisions relevant to consideration of an Intensification Planning Instrument (**IPI**) including PC14, are set out in the Council's Strategic Overview legal submissions dated 3 October 2023.² The Strategic Overview legal submissions and the s42A report of Sarah Oliver describe the use of QMs by the Council in PC14.³

3.2 Those submissions are not repeated here: instead, we focus specifically on the key aspects of the framework as it applies to the heritage items QM. In summary:

- (a) Sections 77K and 77Q provide an alternative evaluation process for the evaluation of 'existing QMs' that:
 - (i) are operative in the District Plan at notification; and
 - (ii) relate to a matter that is specifically listed in sections 77I and 77O. Of relevance to this hearing, this includes the protection of

² <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/00-Opening-Legal-Submissions-for-CCC.pdf>.

³ Opening legal submissions for Christchurch City Council – Strategic Overview Hearing dated 3 October 2023, paragraph 3.33 to 3.39; s42A report of Sarah Oliver, paragraphs 6.16 to 6.23, and 8.11 available at <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/01-Sarah-Oliver-Section-42A-report-final.PDF> and a corrected version at <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/01-Sarah-Oliver-Section-42A-report-With-corrections-10-October-2023.pdf>.

historic heritage from inappropriate subdivision, use, and development which is a matter of national importance that decision makers are required to recognise and provide for under section 6(f).

- (b) The heritage items and provisions that were operative in the District Plan at notification are therefore an existing QM.
- (c) In relation to additional heritage items proposed through PC14, while it is arguable as to whether or not these are not an 'existing QM' for the purposes of sections 77K(3) and 77Q(3),⁴ this is ultimately inconsequential because the more fulsome requirements of sections 77J(3) and 77P(3) are met in relation to these sites in any event.

Relationship between PC13 and PC14

3.3 The relationship between PC13 and PC14 was outlined in paragraphs 51 to 62 of the memorandum of counsel for the Council dated 28 July 2023. As noted in that memorandum, the heritage provisions of PC13 are largely duplicated in PC14, due to:

- (a) the need to provide for various heritage matters to 'qualify' MDRS and other development otherwise enabled through PC14 (and the requirement in section 80E for PC14 to give effect to policy 4 of the NPS-UD);
- (b) the Council's ability, again under section 80E, to include in PC14 related provisions that are consequential on the MDRS or Policies 3 and 4 of the NPS-UD;
- (c) the Council's preference for the bulk of the proposed amendments to the heritage provisions to be considered by this Panel in an integrated way, because of the risks to the heritage fabric of Christchurch that could arise if significant intensification were being considered without heritage matters being appropriately central in the process; and
- (d) the current uncertainty regarding the permissible scope of IPIs under section 80E, in light of the recent decision of *Waikanae Land Company Limited v Heritage New Zealand Pouhere Tāonga*⁵ (Waikanae

⁴ Sections 77K(3) and 77Q(3) refer to a 'qualifying matter... that is operative'. It is silent on whether or not the specific provisions relating to that QM can be amended or extended.

⁵ [2023] NZEnvC 56.

decision), as addressed in paragraphs 2.57 to 2.76 of the Strategic Overview legal submissions.

- 3.4 The amendments to heritage items provisions notified in PC14 (and duplicated in PC13) are within the allowable scope of an IPI as, either:
- (a) they are directly related to the heritage items qualifying matter because:
 - (i) they are changes to the heritage items listed in the Schedule. The listing of items in the Schedule is the key determinant in whether the QM applies to a site or not; or
 - (ii) they relate to the mechanics of how the qualifying matter works to be less enabling of development (e.g. those provisions that control alterations, relocations, and demolitions); or
 - (b) alternatively, they are related provisions which "support or are consequential" on the MDRS and policies 3 and 4 of the NPS-UD, in terms of section 80E(1)(b)(iii).
- 3.5 If the Panel considers that any heritage provisions in PC14 are outside the scope of an IPI, then the Council intends that those heritage provisions would be considered later as part of PC13.

4. PROPOSED AMENDMENTS TO THE SCHEDULE

- 4.1 There are 17 new items proposed to be added to the Schedule,⁶ along with 26 additional interiors.⁷ These were identified as part of an ongoing programme of work to better represent the extent of the city's heritage in the District Plan.⁸
- 4.2 In each case, the item has been assessed as meeting the criteria for scheduling, and the owners wish to have the item protected.⁹ The additional items include a number of Council owned assets.
- 4.3 It is also proposed to correct certain entries in the Schedule where circumstances have changed. This includes the deletion of items that have been demolished, amendments to the extents of settings, and instances of the level of significance of an item being corrected/upgraded.¹⁰

⁶ This excludes items notified in PC13 that are in zones outside of the scope of PC14, including the 25 baches at Taylors Mistake, a site in Yaldhurst, and a site in Akaroa.

⁷ 10 of these additional interiors are for proposed new items.

⁸ Section 42A report of Suzanne Richmond dates 11 August 2023 at [6.1.3].

⁹ Section 42A report of Suzanne Richmond dates 11 August 2023 at [6.1.3].

¹⁰ Section 42A report of Suzanne Richmond dates 11 August 2023 at [6.1.5] to [6.1.6].

4.4 There are also a handful of requests from submitters for additional listings. Of these:

- (a) Ms Ohs has considered requests by submitters to add the Barnett Avenue Pensioner cottages, the Upper Riccarton War Memorial Library, Princess Margaret Hospital, the former High Court, a house at 111 Hackthorne Road, the war memorial plaque in Jane Deans Close.¹¹ For various reasons set out in her evidence, Ms Ohs does not consider these items meet the criteria for scheduling in Policy 9.3.2.2.1.
- (b) In its submission, the Council (#751) seeks to add Spreydon Lodge, 2 Monsaraz Boulevard (and features of its interior) to the Schedule. This was also supported in a submission by Danne Mora Limited (#903). A Statement of Significance for the item is attached to the evidence of Ms Ohs. Ms Ohs and Mr Langman support the addition of this item to the Schedule.¹²

5. PROPOSED AMENDMENTS TO HERITAGE PROVISIONS

5.1 The Council also proposes to make certain amendments to the existing heritage provisions in order to simplify and clarify the provisions and improve workability, both for applicants and for Council. There is also some minor strengthening of rules proposed, such as changing the activity status of some activities (namely, Heritage Building Code works, reconstruction, restoration) from controlled to restricted discretionary where the activity standard for a permitted activity is not met.¹³

5.2 As outlined earlier in these legal submissions, these amendments are within the scope of an IPI because they:

- (a) relate to the mechanics of how the qualifying matter works to be less enabling of development; and/or
- (b) are related provisions which "support or are consequential" on the MDRS and policies 3 and 4 of the NPS-UD, in terms of section 80E(1)(b)(iii).

¹¹ Evidence of Amanda Ohs dated 11 August 2023 at [64]-[100].

¹² Evidence of Amanda Ohs dated 11 August 2023 at [63]; Evidence of Marcus Langman dated 20 September 2023 at [82].

¹³ Section 42A report of Suzanne Richmond dated 11 August 2023 at [6.1.7] to [6.1.19].

- 5.3 The consideration of these amendments in the context of the heritage items qualifying matter enables the panel to consider the heritage provisions as an integrated whole.
- 5.4 The matters in contention in respect of these provisions relate, in particular, to where submitters consider the proposed amendments to be less enabling than the status quo.

6. REQUESTS TO REMOVE SCHEDULED HERITAGE ITEMS

- 6.1 There are seven heritage items that submitters have requested are removed from the Schedule. The vast majority of the evidence before the Panel as relevant to this hearing topic relates to these requests. Below we address scope and the relevant planning framework in respect of these requests. We then summarise the Council's substantive position on each of the relevant heritage items.

Scope

- 6.2 There is a potential scope issue relating to these requests, in a *Clearwater / Motor Machinists*¹⁴ sense, in that:
- (a) the submissions do not address a change in the status quo advanced by PC14. That is because the relevant items subject to removal requests are currently scheduled and PC14 as notified proposed they remain scheduled; and
 - (b) it is possible that persons who might have submitted on the proposed removal of heritage items will be denied an effective opportunity to submit on the requests. That is, persons may not have reasonably envisaged that the removal of scheduled items were a potential outcome of PC14.
- 6.3 However, the Council considers that there are factors which weigh in favour of such requests being within the scope of PC14 in this context, namely that:
- (a) submitters are entitled to argue that a qualifying matter should not apply to a particular site. The only effective way to do that in respect of the heritage items QM is to submit that the site should not be listed in the Schedule;

¹⁴ *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290 at [90]; *Clearwater Resort Limited v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003, as summarised in the Opening legal submissions for Christchurch City Council – Strategic Overview Hearing dated 3 October 2023, paragraph 2.82.

- (b) there are contextual matters that mean there is a decreased risk that directly affected persons would be denied an effective opportunity to submit on the requests for removals from the Schedule in PC14, namely because:
 - (i) the Council itself has proposed a range of changes to the Schedule through PC14 including removal of items and, as such, updates to the Schedule are part of the purpose of PC14;
 - (ii) submissions on PC13 have been treated as also being on PC14¹⁵ and submissions seeking removals from the Schedule are more likely to be envisaged where a plan change is more clearly centred on heritage matters, such as for PC13; and
 - (iii) persons potentially affected had an opportunity to make a further submission and a range of further submissions were made on the requests for removals from the Schedule, including from parties such as Heritage New Zealand Pouhere Taonga and the Christchurch Civic Trust.

6.4 The Council therefore considers requests to remove items from the Schedule are within the scope of PC14. Accordingly, the Council has brought evidence going to the merits of the requests for removal from the Schedule.

Relevant policy framework

6.5 Consideration of the merits of these requests is centred on Policy 9.3.2.2.1 of the District Plan, which relates to the identification and assessment of historic heritage for scheduling in the District Plan. In particular, this consideration focuses on:

- (a) whether the heritage item continues to meet the significance threshold for scheduling (under Policy 9.3.2.2.1.b); and, if so,
- (b) whether the heritage item should nevertheless be removed in light of:
 - (i) the physical condition of the heritage item and the potential effect of repair work on heritage significance (Policy 9.3.2.2.1.c.iii); and

¹⁵ Where the submitter has consented to this being the case and where the submission is within the scope of PC14 (e.g. excluding submissions or aspects therein relating to Banks Peninsula).

- (ii) whether there are other engineering and financial factors going to the reasonableness of the scheduling (Policy 9.3.2.2.1.c.iv).

137 Cambridge Terrace (Harley Chambers)

- 6.6 The owner of this site, Cambridge 137 Limited (#1092) seeks that the heritage item at 137 Cambridge Terrace (known as Harley Chambers) is removed from the Schedule.
- 6.7 The Council has brought technical evidence assessing the merits of this request from Mr Pearson, Mr Hogg, Mr Stanley, and Ms Ohs. That evidence is, in turn, summarised and considered in light of Policy 9.3.2.2.1 by Ms Richmond.
- 6.8 Relying on the technical witnesses for the Council, and taking into account the evidence brought by the submitter, Ms Richmond considers that:¹⁶
 - (a) Harley Chambers continues to meet the threshold for scheduling, but
 - (b) in light of the quantum of the repair costs and the very low probability of finding an alternative owner able or willing to take on a repair project of this cost and scale, there are financial factors related to the physical condition of the heritage item that could make it unreasonable or inappropriate to schedule the heritage item.
- 6.9 Accordingly, the Council does not oppose the removal request by Cambridge 137 Limited.

9 Daresbury Lane (Daresbury)

- 6.10 Daresbury Limited (#874), the owner of the property, seeks removal of this heritage item from the Schedule. It was damaged by the 2010/2011 Canterbury earthquakes and has been vacant since that time.
- 6.11 The building and setting are scheduled as 'Highly Significant' and Daresbury is also listed as a Category 1 Historic Place by Heritage New Zealand Pouhere Taonga.¹⁷ The removal is strongly opposed by NZHPT and the Christchurch Civic Trust.¹⁸

¹⁶ Rebuttal evidence of Suzanne Richmond dated 9 October 2023 at [10] – [16].

¹⁷ Section 42A report of Suzanne Richmond dated 11 August 2023 at [8.1.44] to [8.1.47].

¹⁸ #835 and #1089.

6.12 The Council has brought technical evidence on this request from Mr Hogg, Mr Fulton and Mr Stanley, and Ms Ohs, along with planning evidence from Ms Richmond. In summary:

- (a) Mr Fulton has identified that there are opportunities for repair and reuse of the building.¹⁹
- (b) Mr Hogg disagrees with the submitters' engineers on the extent of deconstruction likely to be required for a conservation-based repair methodology.²⁰
- (c) Mr Stanley's updated cost estimate in his rebuttal evidence for Council for repair of Daresbury is \$7.6 million, which compares with the submitter's quantity surveyor, Stewart Harrison's cost estimate for the submitter of \$8.128 million.²¹
- (d) Mr Stanley agrees with Mr Harrison's estimate for a replacement modern high end multi-level house of between \$7.6 and \$10.89 million.²²

6.13 Ms Ohs and Ms Richmond do not consider there is sufficient evidence to justify the removal of Daresbury from the Schedule. In particular, Ms Richmond notes that while the repair cost has been estimated at more than the submitter's valuation estimate for the building (excluding land value), it is nevertheless similar to an equivalent new build.²³ She therefore does not consider that it is "unreasonable" to retain this building on the schedule in relation to financial factors.²⁴

65 Riccarton Road (St James' Church)

6.14 The owner of St James' Church, Church Property Trustees (#825), requests the removal of this heritage item from the Schedule. The building and setting are scheduled as 'Highly Significant'. The building suffered damage in the Canterbury Earthquakes and is not currently in use.

6.15 The Council has brought technical evidence assessing the merits of this request from Ms Ohs, Ms Caponi, Ms Stevens, Dr McEwan, and Mr Griffiths

¹⁹ Evidence of William Fulton dated 11 August 2023 at [62] – [63].

²⁰ Evidence of Stephen Hogg dated 11 August 2023 at [30].

²¹ Rebuttal evidence of Gavin Stanley dated 9 October 2023 at [18(c)].

²² Rebuttal evidence of Gavin Stanley dated 9 October 2023 at [18(b)].

²³ Rebuttal evidence of Suzanne Richmond dated 9 October 2023 at [21].

²⁴ Rebuttal evidence of Suzanne Richmond dated 9 October 2023 at [24].

That evidence is, in turn, summarised and considered in light of Policy 9.3.2.2.1 by Ms Richmond.

- 6.16 Based on the technical evidence, Ms Richmond considers that the church continues to meet the significance threshold for a heritage item “at least at a Significant level”, and that it could continue to meet the significance threshold following repair and strengthening.²⁵
- 6.17 Ms Richmond considers the scale of investment required may not be considered financially “unreasonable” by a potential purchaser who sees an opportunity to recuperate the investment via an adaptive reuse project.²⁶ Both Ms Caponi and Ms Stevens outline the potential for sympathetic adaptation to reuse of the building for a range of activities.²⁷
- 6.18 Accordingly, the Council is opposed to the removal request by Church Property Trustees.

32 Armagh Street (Blue Cottage)

- 6.19 Carter Group Limited (#814) (the owner), as well as the Catholic Diocese of Christchurch (#823), requested the deletion of this heritage item from the Schedule, noting the poor state of repair.
- 6.20 The Blue Cottage is scheduled as ‘Significant’ and Ms Richmond, relying on the evidence of Ms Ohs, Mr Stanley and Ms Caponi, considers that the property continues to meet the significance threshold.²⁸
- 6.21 In terms of repair and reinstatement estimates, Tim Chatterton for Carter Group Limited produced a cost estimate of \$1.452 million, compared to \$259,000 from Mr Stanley for the Council.²⁹
- 6.22 Mr Chatterton’s cost estimate is based on a worst-case scenario with full replacement of materials, whilst the Council has adopted a conservation minimum intervention approach, as discussed by Mr Holmes.³⁰ As noted in the rebuttal evidence of Mr Stanley, the conservation minimum intervention approach is supported by Mr William Fulton (Conservation Architect) for the

²⁵ Section 42A report of Suzanne Richmond dated 11 August 2023 at [8.1.41].

²⁶ Rebuttal evidence of Suzanne Richmond dated 9 October 2023 at [26].

²⁷ Evidence of Clara Caponi dated 11 August 2023 at [63]; Evidence of Chessa Stevens dated 11 August 2023 at [59].

²⁸ Section 42A report of Suzanne Richmond dated 11 August 2023 at [8.1.36].

²⁹ Rebuttal evidence of Gavin Stanley dated 9 October 2023 at [41] and Appendix D.

³⁰ Rebuttal evidence of Tim Holmes dated 9 October 2023 at [10].

submitter.³¹ Ms Richmond considers, relying on the evidence of Ms Caponi, that a reduced level of replacement is warranted.³²

6.23 Ms Richmond considers that the financial component of the scheduling exemption is not met, and that the heritage item should be retained. However she considers the heritage setting should be reduced, based on the evidence from Ms Ohs of the historic extent of the landscaped grounds of the cottage.³³

40 Norwich Quay, Lyttelton (Mitre Hotel)

6.24 In its submission, the owner, Mitre Hotel Holdings Limited (#1056) requested the removal of this heritage item from the Schedule.

6.25 Ms Richmond noted in her s42A report that the owner elected to demolish the heritage item in response to Dangerous and Insanitary Building notices issued under the Building Act 2004.³⁴

6.26 As Ms Ohs and Ms Richmond will explain, the building has since been demolished in its entirety. Accordingly, the Council does not oppose the removal request by Mitre Hotel Holdings Limited.

265 Riccarton Road (Former Holy Name Seminary, known as Antonio Hall)

6.27 Antonio Hall is scheduled as 'Highly Significant' and consists of a former homestead, homestead additions, chapel, motor house, accommodation block and setting. A third party submitter, Justin Avi (#1037) seeks the removal of Antonio Hall from the Schedule. There is no expert evidence in support of the submission.

6.28 As Ms Ohs evidence explains, all parts of the complex, but in particular the original homestead, suffered damage in the 2010 and 2011 earthquakes and the entire complex has been unoccupied since this time.³⁵ Parts of the heritage item are also badly fire damaged from two events in April 2019 and November 2021.

6.29 Relying on the evidence of Ms Ohs and Mr Hogg, Ms Richmond considers the heritage item should be retained in the Schedule, but that its mapping should be amended to reduce the extent of the item, particularly to reflect

³¹ Rebuttal evidence of Gavin Stanley dated 9 October 2023 at [26].

³² Rebuttal evidence of Suzanne Richmond dated 9 October 2023 at [76].

³³ Section 42A report of Suzanne Richmond dated 11 August 2023 at [8.1.40].

³⁴ Section 42A report of Suzanne Richmond dated 11 August 2023 at [8.1.48] to [8.1.50].

³⁵ Evidence of Amanda Ohs dated 11 August 2023 at [164].

that the former homestead and homestead additions are beyond repair due to fire and earthquake damage.³⁶

471 Ferry Road

- 6.30 The former dwelling and setting, 471 Ferry Road, is a 'Significant' heritage item in the Schedule. It sustained substantial damage in the 2010 / 2011 Canterbury earthquakes.
- 6.31 A neighbour to the property, Cameron Parsonson (#1043), has requested the removal of this heritage item from the Schedule. The property was also the subject of further submissions.³⁷
- 6.32 The Council has brought technical evidence assessing the merits of this request from Mr Wright, Mr Holmes, Ms Caponi, and Mr Stanley. The owner of the heritage item did not make a submission, but Mr Wright has discussed the property with the owner on a number of occasions since the earthquakes.³⁸
- 6.33 While, in its current condition, the heritage item is considered by Mr Wright to meet the necessary threshold to remain on the schedule, Mr Wright and Ms Richmond nevertheless consider that financial factors may be considered to make the continued scheduling of this building unreasonable or inappropriate.³⁹ Accordingly, the Council does not oppose the removal request by Mr Parsonson.

DATED 16 November 2023



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³⁶ Section 42A report of Suzanne Richmond dated 11 August 2023 at [8.1.40].

³⁷ Further submissions #2025.1 Chris Smith and #2051.97 Heritage New Zealand Pouhere Taonga.

³⁸ Evidence of Gareth Wright dated 11 August 2023 at [23].

³⁹ Section 42A report of Suzanne Richmond dated 11 August 2023 at [8.1.61].