

Before an Independent Hearings Panel  
appointed by Christchurch City Council

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*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:* **Church Property Trustees**  
Submitter 825

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Legal Submissions on behalf of Church Property Trustees –  
Heritage Qualifying Matters

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Dated: 12 April 2024

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## **MAY IT PLEASE THE INDEPENDENT HEARINGS PANEL**

### **INTRODUCTION**

- 1 These legal submissions are presented on behalf of Church Property Trustees (*CPT*) in relation to the Qualifying Matters hearing for proposed Plan Change 14 (Housing and Business Choice) (*PC14*) to the Christchurch District Plan (*District Plan*).
- 2 The focus of this hearing will be St James Church, located on Riccarton Road. CPT's submission seeks the removal of the St James Church heritage item and setting from the Schedule of Significant Historic Heritage in Appendix 9.3.7.2 of the District Plan (the *Schedule*).
- 3 The evidence from a CPT representative will outline the lengthy background, detailed consideration of options and attempts at both obtaining sufficient funding to repair St James Church and trying unsuccessfully to sell it in its current condition.
- 4 In short, all attempts have failed and CPT is now left with no option but to pursue the delisting of the building and setting.
- 5 The alternative is leaving the building unused to deteriorate further as CPT has no mandate, and nor can it be required to expend trust funds on repair. As the CPT representative will explain, all properties owned by CPT are held on trust for ecclesiastical purposes. The trustees are not able to apply funds (if any were available) to reinstate and strengthen a church that is of no use to a parish. This deterioration outcome, with the building remaining unused, would have broader implications for the City given the large potential development site in a key Riccarton location.
- 6 CPT's requested relief is supported by expert engineering, quantity surveying and planning evidence. The expert witnesses for CPT have carefully and thoroughly considered the relevant statutory and planning requirements. Based on their evidence, it is clear that:
  - 6.1 St James Church is in a poor physical condition.
  - 6.2 Significant engineering and other repair and upgrade work is necessary to make the building able to be occupied and used.
  - 6.3 The associated financial factors similarly make it unreasonable or inappropriate for the building to remain scheduled.
  - 6.4 The restrictive outcomes of the continued scheduling of the St James Church heritage item and setting do not align with the requirements of the District Plan, Resource Management

(Enabling Housing Supply) Amendment Act 2021 (*Amendment Act*) and Resource Management Act 1991 (*RMA*), particularly when the relevant evaluation report requirements are considered.

- 7 In our submission, CPT's position should be preferred over the position taken by the Council's witnesses, who oppose the delisting.

## **EVIDENCE**

- 8 Evidence has been provided for CPT by:
  - 8.1 **Mr Peter Carney** (engineering);
  - 8.2 **Mr Peter Eggleton** (quantity surveying); and
  - 8.3 **Mr Jonathan Clease** (planning).
- 9 These witnesses will present summary statements at the hearing.
- 10 A CPT representative, either **Mr Gavin Holley** or **Ms Celia Quinnell** will also present evidence at the hearing.

## **STRUCTURE OF SUBMISSIONS**

- 11 Chapman Tripp has three clients seeking delistings of heritage items and settings, namely Carter Group Limited (*Carter Group*) (Blue Cottage), Daresbury Limited (Daresbury House) and CPT (St James Church).
- 12 As our first hearing presentation was for Carter Group, our legal submissions for Carter Group contained detailed sections addressing the issue of scope (paragraphs 13-18) and the statutory and planning framework for delistings (paragraphs 19-27). Those sections are adopted for the purposes of these legal submissions for CPT and we place equal emphasis on the key points made previously, particularly that:
  - 12.1 Scheduling (or delisting) is not determined by heritage values alone. A building or setting may meet the requisite level of "Significant" or "Highly Significant", but other factors (such as those set out in Policy 9.3.2.2.1(c)(iii) and (iv) of the District Plan) may mean it is not appropriate for the building or setting to be included in the Schedule.
  - 12.2 The evidence and position taken by the Council focuses too strongly on the heritage values of St James Church and does not properly take into account the matters in Policy 9.3.2.2.1(c)(iii) and (iv), as well as the broader District Plan and statutory framework. These matters cannot be

overlooked or downplayed in the overall consideration of the delisting request.

- 13 The remainder of these legal submissions address CPT's relevant submission points as follows:
  - 13.1 assessment against the planning framework; and
  - 13.2 other heritage-related matters.
- 14 Throughout these submissions, we address the position taken in the relevant section 42A reports and evidence provided for Council. We do wish to note at the outset our concerns with some of the reports and evidence provided for Council. While the witnesses for Council outline their respective roles and expertise, when their evidence is read in detail, it is clear that certain parts of the evidence goes beyond the witnesses' areas of expertise. For example, both the engineering and architecture evidence comments on potential alternative uses for the building, which is properly a planning matter. We note this for the Panel's benefit when weighing the competing evidence in this case.

### **ASSESSMENT AGAINST POLICY 9.3.2.2.1**

- Heritage values**
  - 15 The first part of Policy 9.3.2.2.1 requires consideration of the heritage values of St James Church (as set out in Appendix 9.3.7.1 of the District Plan), its significance to the Christchurch District, and its authenticity and integrity.
  - 16 The Council's section 42A reports and evidence assert that the building and setting meet the requirements of the first part of Policy 9.3.2.2.1. CPT has not called evidence from a heritage expert to address the Council's position in this respect, so we proceed on the basis that the building continues to hold heritage values and significance.
  - 17 However, as outlined in detail in our legal submissions for Carter Group, that is not the end of the story. Detailed and equal consideration is required of the matters in Policy 9.3.2.2.1(c)(iii) and (iv) and of the broader statutory and planning framework.
- Physical condition of the building**
  - 18 The evidence of **Mr Eggleton** addresses the physical condition of St James Church.
  - 19 **Mr Eggleton** states, based on his interior and exterior site visit on 11 September 2023, that the building has suffered considerable damage from the earthquakes and dilapidation due to lack of maintenance.

- 20      **Mr Eggleton** is the only witness who has undertaken a site visit of both the interior and exterior of the building.
- 21      The Council's witnesses, who have not inspected the interior of the building, either:
- 21.1 properly acknowledge that the building is at least earthquake damaged, but without reference to any subsequent deterioration (Ms Ohs); or
  - 21.2 rely on 2015 building condition reports (Ms Caponi); or
  - 21.3 suggest that the building is in "remarkably sound condition overall" (Ms Stevens).
- 22      The basis for, and accuracy of, Ms Stevens' assessment of the current building condition is unclear and, in our submission, fanciful.
- 23      By contrast, the evidence of **Mr Eggleton** and **Mr Carney** clearly describes the *current state* of the interior and exterior of the building. As outlined in our legal submissions for Carter Group, it is the current physical condition of the building that is the relevant starting point for Policy 9.3.2.2.1. It is not the 2015 condition or a hypothetical position based on a brief exterior inspection.
- 24      In our submission, the CPT expert assessment as to the current building condition should clearly be preferred.
- 25      This has implications for the necessary scope of restoration, reconstruction, repair and upgrade work, as we discuss below.
- Restoration, reconstruction, repair and upgrade work**
- 26      It is clear that substantial work is required to enable St James Church to be occupied and used. It is acknowledged that the building is capable of repair. However, this will require substantial work and resource/cost.
- 27      The first exemption from scheduling under Policy 9.3.2.2.1(c) is clause (iii), which states that "*the physical condition of the heritage item, and any restoration, reconstruction, maintenance, repair or upgrade work would result in the heritage values and integrity of the heritage item being compromised to the extent that it would no longer retain its heritage significance*".
- 28      We acknowledge that CPT has not called evidence to establish the level of compromise to the heritage values and integrity of St James Church following the necessary repair works.
- 29      We therefore focus on the second exemption under clause (iv), which is that "*there are engineering and financial factors related to*

*the physical condition of the heritage item that would make it unreasonable or inappropriate to schedule the heritage item".*

- 30 To address this second exemption, in the following sections we consider:
  - 30.1 What work is required to the building to enable it to be occupied and used?
  - 30.2 How much will that work cost?
  - 30.3 Is that cost "reasonable" and "appropriate"?
- Necessary works to the building**
- 31 **Mr Carney** (for CPT) has addressed the structural engineering requirements for repairing and strengthening the building. As noted in his evidence, in the time available he was only able to conduct a review of the previous (2011) repair and strengthening scheme prepared by Aurecon and Ms Caponi's evidence.
- 32 **Mr Carney's** evidence outlines the additional engineering work (strengthening of the roof diaphragm and its connections to perimeter walls) he considers necessary to the Aurecon scheme to achieve a seismic capacity of 67% NBS. In addition, he notes that the Aurecon scheme does not account for foundation performance. If foundation performance issues were encountered, this would result in a substantially increased scope of work and resulting costs.
- 33 In respect of Ms Caponi's evidence, **Mr Carney** notes that their position is not dissimilar in that they both agree there are viable engineering options available for repair and strengthening of the building. However, **Mr Carney** has identified two crucial areas (roof connections and foundation performance) where the necessary scope of engineering works would likely increase.
- 34 In addition, **Mr Carney** has identified that in the case of a change of use, the structural performance requirements under the Building Act 2004 may necessitate strengthening to achieve a seismic capacity of 100% NBS. This would result in a significant change to the scope of works and associated costs. This has implications for the repeated suggestions from Council that adaptive re-use (i.e. a change in use) is appropriate in these circumstances.
- 35 Applying this evidence to the requirements of Policy 9.3.2.2.1(c)(iv), it is clear that there are "engineering factors" related to the physical condition of the building that make continued scheduling unreasonable or inappropriate. While there is an engineering solution, the level of work required to implement that solution is significant, i.e. unreasonable and inappropriate.

**Cost of works**

- 36 Based on the necessary repair and strengthening works, **Mr Eggleton** has provided an estimate of costs of \$5,889,000 plus GST.
- 37 This contrasts with Mr Griffiths' (for Council) cost estimate of \$5,274,000 plus GST.
- 38 In his evidence, **Mr Eggleton** explains the \$615,000 difference in the two costs estimates as being attributable to the current condition of the building, which is not properly recognised by Mr Griffiths on account of his lack of site visit. The difference may also be attributed to the additional scope outlined by **Mr Carney**, noting the "roof connections" line item of \$425,000 in **Mr Eggleton's** estimate.
- 39 In our submission, **Mr Eggleton's** costs estimate should be preferred as it properly accounts for the current condition of the building and the full scope of repair and strengthening works required.
- 40 We also note **Mr Eggleton's** comments in his evidence that if strengthening to 100% NBS was required, the costs would substantially increase. As outlined above, this has implications for the feasibility of Council's suggestions in relation to adaptive re-use.

**Are the costs reasonable and appropriate?**

- 41 As we outlined in our legal submissions for Carter Group, the "financial factors" test in Policy 9.3.2.2.1(c)(iv) must be applied as an objective test in light of the context of the particular building. In other words, what would a reasonable landowner do in the particular circumstances?
- 42 The evidence to be given by a CPT representative will outline CPT's mandate and functions and where St James Church fits within the structure of its parishes and facilities. In short, that evidence will outline that the building and site are surplus to its requirements and not necessary to service the needs of its parishioners.
- 43 On this basis, in the period that the building has sat unoccupied and unused since the Christchurch earthquakes, CPT has explored many options for either repairing the building for sale or another use, or simply selling the property on an "as is where is" basis.
- 44 In terms of repairing the building, the substantial costs have been outlined above. Regardless of whether CPT or Council cost estimate is used, significant funding is required. As the CPT evidence will outline, CPT simply does not have the means or money available to meet these significant costs, either through earthquake insurance funds or otherwise. Nor is CPT able, as a trust, to apply funds (if

any were available) to reinstate and strengthen a church that is of no use to a parish. The CPT representative evidence includes advice from Parry Field Lawyers regarding CPT's trustee obligations in connection with St James Church.

- 45 The Council's witnesses have repeatedly referred to funding options available. The basis for their assessment in relation to funding options is unclear. It is well known that there is a limited pool of funding available for heritage restoration works in Christchurch and New Zealand more widely. The CPT representative evidence outlines the very limited funding options available and the low likelihood that much, if any, funding would be available in this case. Certainly, funding to the tune of \$5+ million would simply not be able to be found.
- 46 In this respect, a comparison must be drawn between the 471 Ferry Road situation and St James Church. In that case, the reason for the Council's support for the delisting of 471 Ferry Road is that the owner had advised there was a \$500,000 cost shortfall in their own ability to carry out the necessary repairs, meaning it would be unreasonable for the particular owner to be expected to do so. In this case, there is a \$5+ million shortfall, which is substantially greater. The Council's position on the two delisting requests is therefore entirely inconsistent.
- 47 The situation is also comparable with Harley Chambers, where the reason for the Council's support of the delisting is that the investment required to reinstate the building would exceed the valuation of the repaired building by a significant margin.
- 48 The Council has suggested that a reasonable approach for a heritage property owner to take, when faced with a significant repair bill, is to sell the building to someone else who would buy and repair it. As we noted in our legal submissions for Carter Group on this point, the suggestion is fanciful as it implies that a purchaser would be willing to sustain a financial loss. In this case, CPT can actually provide evidence of having tried to sell the building unsuccessfully. The CPT representative evidence outlines the process of trying to sell the property and the reasons why a potential sale fell through and why prospective buyers were put off the property.
- 49 The only plausible counterfactual in these circumstances is the status quo. That is, the building remains unused, inaccessible and left to deteriorate further, all the while having a significant impact on the development of the remainder of the site, a key development site for Riccarton. This outcome is not the outcome anticipated under the Amendment Act nor the National Policy Statement on Urban Development 2020 (*NPS-UD*).

- 50 Even if CPT were, very much hypothetically, able to meet the costs and somehow pay for the necessary repair and strengthening work, this would leave them with a repaired church building that is still surplus to their requirements. There is equally no guarantee that they would be able to sell the building in a repaired state, given the heritage listing would remain and the use case would remain for a church.
- 51 The Council's witnesses have repeatedly referred to the potential for adaptive re-use. This is entirely theoretical as it requires a change in the scope of works to enable a fit out for a different use, which does not appear to have been taken into account in the costs estimates. As noted by **Mr Carney**, it may also have significant implications from an engineering (and resulting cost) perspective. For these reasons, we consider the suggestion by Council as hypothetical and not properly considered and verges on fanciful given the cost figures in the evidence do not factor in the additional works to fit out a church to be useable for another purpose.
- 52 In addition, Ms Stevens (notably a heritage architect not a planner) referred to a number of examples of historical churches being repurposed for residential and commercial uses. But all of her examples were of lightweight wooden buildings. None of the examples would have required the engineering improvements necessary in this case. In our submission, her examples were simply not relevant in this context and her evidence actually supports CPT's case.
- 53 The Council's own quantity surveying witness, Mr Griffiths, included in his evidence a cost estimate for replacement of the building with a modern devotional building of \$1,465,000. We consider this an important element of the evidence for the Council and a factor that is, in fact, hugely supportive of CPT's position. When faced with either:
- 53.1 a repair bill of \$5+ million; versus
- 53.2 a replacement bill of \$1,465,000;
- we do not see how any reasonable landowner in CPT's shoes would ever opt for the repair approach. Spending \$3.5m additional than what would be required for a modern devotional building would be irresponsible, let alone unreasonable and inappropriate.
- 54 We note Mr Griffiths was also asked to give cost estimates for a replacement like for like and a replacement replica. The basis for the Council requesting those estimates is unclear, particularly given a replacement building would be unlikely to retain the necessary heritage values for scheduling. In our submission, those estimates

should simply be disregarded as irrelevant to the Panel's consideration of the issues.

- 55 Finally, none of the Council witnesses appeared to consider the wider issue of costs in an "opportunity costs" sense. If the heritage item and setting were removed from the Schedule, this would enable the overall property to be developed for other purposes. The development of a large property in this prominent location on Riccarton Road, close to Riccarton Mall, would result in good economic and social (i.e. housing and urban design) outcomes for the City in a manner consistent with the Amendment Act and the NPS-UD.

### **OVERALL ASSESSMENT AND COMMENTS ON ST JAMES CHURCH**

- 56 The evidence for CPT establishes that St James Church is in a poor condition, significant work is necessary to enable it to be occupied and used, and the associated financial factors overwhelmingly make it unreasonable or inappropriate for the building to remain scheduled.
- 57 Taking a broader view, as per **Mr Clease's** evidence, the delisting request must be considered in the context of the full statutory framework, namely the RMA, Amendment Act and District Plan in its entirety. It is clear that in these particular circumstances, the statutory purpose of enablement of development, combined with the financial implications of retaining the heritage listing, favour the removal of the heritage item and setting from the Schedule.

### **OTHER HERITAGE-RELATED MATTERS**

- 58 **Mr Clease's** evidence addresses the specifics of the St James Church delisting request as well as giving detailed consideration to the amendments proposed by Council to various heritage-related provisions. We do not address the detail of his evidence on these provisions, leaving this for him to speak to at the hearing.

### **CONCLUSION**

- 59 The evidence for CPT establishes that there is no justification for the St James Church heritage item and setting to remain in the Schedule. This is in the specific context of Policy 9.3.2.2.1 (specifically clause (3)(c)(iv)) of the District Plan, as well the broader statutory and planning framework of the Amendment Act, RMA and the District Plan in its entirety.

60 In our submission, CPT's relief should accordingly be accepted.

Dated 12 April 2024

A handwritten signature in blue ink, appearing to read "Appleyard".

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J Appleyard / A Hawkins  
Counsel for Church Property Trustees