

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: **Daresbury Limited**
Submitter 874

Legal Submissions on behalf of Daresbury Limited – Heritage
Qualifying Matters

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INTRODUCTION

- 1 These legal submissions are presented on behalf of Daresbury Limited (*Daresbury*) 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 Daresbury House, located on Harakeke Street. Daresbury's submission seeks the removal of the Daresbury House heritage item and setting from the Schedule of Significant Historic Heritage in Appendix 9.3.7.2 of the District Plan (the *Schedule*).
- 3 **Mr Milne's** evidence will set out the background to his ownership of the Daresbury property and the lengthy and detailed consideration he has undertaken of options for repairing the severely damaged building. Due to the scale of works required and the associated significant financial implications, he is now in a position where he has exhausted all repair-related options. This has left him to take the current approach, seeking delisting of the heritage item and setting through the PC14 process.
- 4 **Mr Milne** has been assisted by a range of experienced consultants who have advised him throughout on repair works and costs, and who have now prepared evidence in support of the requested relief on PC14. These experts have carefully and thoroughly considered all relevant requirements. Based on their evidence, it is clear that:
 - 4.1 Daresbury House is in extremely poor physical condition.
 - 4.2 Significant reconstruction, repair and upgrade work is necessary to make the building able to be occupied and used.
 - 4.3 Many aspects of the structural engineering and other work required to the building will result in the creation of replica elements, which brings into question the resulting heritage value and significance of the repaired building.
 - 4.4 The substantial costs of the repair works far outweigh the resulting valuation of the property. The associated financial factors accordingly make it unreasonable or inappropriate for the building to remain scheduled.
 - 4.5 The restrictive outcomes of the continued scheduling of the Daresbury House heritage item and setting do not align with the broader 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.

- 4.6 The PC14 “enabling housing supply” context is particularly important and differentiates this process from a regular plan change or plan review process or, for example, an application for consent to demolish a heritage building. Concerningly, this context does not appear to have been properly taken into account by the Council’s witnesses on a number of PC14 delisting requests.¹
- 5 In our submission, Daresbury’s position should be preferred over the position taken by the Council’s witnesses. This is particularly due to the similarity of the circumstances with other delistings the Council has agreed to.

EVIDENCE

- 6 Evidence relevant has been provided for Daresbury by:
- 6.1 **Mr David Pearson** (heritage architecture);
- 6.2 **Mr Brett Gilmore** (engineering);
- 6.3 **Mr Stewart Harrison** (quantity surveying);
- 6.4 **Mr Mark Shalders** (valuation); and
- 6.5 **Mr Jonathan Cleese** (planning).
- 7 These witnesses will present summary statements at the hearing.
- 8 As indicated above, **Mr Milne** will also provide evidence at the hearing.

STRUCTURE OF SUBMISSIONS

- 9 Chapman Tripp has three clients seeking delistings of heritage items and settings, namely Carter Group Limited (*Carter Group*) (Blue Cottage), Daresbury (Daresbury House) and Church Property Trustees (St James Church).
- 10 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

¹ While in the Wellington IPI context, we refer to a recent media article addressing a similar delisting proposal which may be of interest to the Panel: <https://www.stuff.co.nz/nz-news/350234781/has-law-change-sealed-fate-contentious-heritage-flats>.

sections are adopted for the purposes of these legal submissions for Daresbury and we place equal emphasis on the key points made previously, particularly that:

- 10.1 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.
- 10.2 The evidence and position taken by the Council focuses too strongly on the heritage values of Daresbury House 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.
- 11 The remainder of legal submissions address Daresbury's relevant submission points as follows:
 - 11.1 assessment against the planning framework;
 - 11.2 other heritage-related matters; and
 - 11.3 other qualifying matters.

ASSESSMENT AGAINST POLICY 9.3.2.2.1

Heritage values

- 12 The first part of Policy 9.3.2.2.1 requires consideration of the heritage values of Daresbury House (as set out in Appendix 9.3.7.1 of the District Plan), its significance to the Christchurch District, and its authenticity and integrity.
- 13 **Mr Pearson's** evidence for Daresbury addresses the heritage values and significance of Daresbury House. His view is that the building in its damaged form retains significance under each of the Appendix 9.3.7.1 criteria, but that the heritage values in some categories have been eroded and will be further compromised if the necessary repair and strengthening works are carried out. In particular, he considers that the necessary works will impact the integrity and authenticity of the building as the upper levels will largely become a replica.
- 14 Mr Fulton for the Council also addresses the heritage values and **Mr Pearson** has responded to his evidence where relevant.

- 15 On the basis of **Mr Pearson's** evidence, the building and setting meet the requirements of the first part of Policy 9.3.2.2.1, albeit there is some doubt about the impact of the necessary extensive repair and strengthening works on heritage values and significance.
- 16 However, even if the heritage values and significance are considered sufficient to warrant continued scheduling, 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.
- 17 As outlined above, the PC14 context, i.e. the purpose and imperatives of the Amendment Act, is particularly important and directive in relation to the overall assessment of Daresbury's requested relief.

Physical condition of the building

- 18 The evidence of **Mr Gilmore** and **Mr Pearson** describes the physical condition of Daresbury House.
- 19 **Mr Gilmore's** evidence refers to substantial structural related damage, concluding that "*[t]he building is current in a very poor structural condition, with some sections susceptible to collapse.*" He also outlines the assessed percentage of NBS for the main structural elements, all of which are well below the minimum target level of 67% NBS likely to be required by the Council for this type and size of building and for the large extent of repairs required.
- 20 **Mr Pearson's** evidence similarly refers to substantial earthquake damage as well as continued deterioration due to weathertightness issues.
- 21 The Council witnesses (Mr Fulton, Mr Hogg and Ms Ohs) do not appear to disagree with the position taken by the Daresbury witnesses. It appears to be common ground that the building is in an extremely poor physical condition.
- 22 It is unclear how much the Council witnesses are basing their position simply on earthquake damage to the property, or whether they have also taken into account the continued deterioration post-earthquakes, as outlined by **Mr Pearson**. As set out in our legal submissions for Carter Group, it is the current physical condition of the heritage item that is the relevant starting point for consideration of Policy 9.3.2.2.1, not the state in which it was last considered in a planning context.

Restoration, reconstruction, repair and upgrade work

- 23 It is clear that substantial work is required to enable Daresbury House to be occupied once again for residential use. It is

acknowledged that the building is capable of repair. However, this will require substantial work and cost and, importantly, many of the elements of the building will be full new replacements such that they will constitute a replica with little to no heritage value.

- 24 **Mr Gilmore's** evidence sets out the structural repairs required to reinstate the building back to its pre-earthquake structural condition, and to satisfy a minimum strength of 67% NBS. As he outlines, his approach specifically focuses on reinstating the appearance of the building's aesthetics and features while maintaining the existing layout of walls and achieving seismic strengthening to 67% NBS. In other words, the approach is as respectful of the heritage components as possible in the circumstances. However, to achieve seismic strengthening, substantial and intrusive repairs are necessary across a significant portion of the building's structure and features.
- 25 **Mr Pearson's** evidence outlines the necessary work to restore and structurally upgrade Daresbury House. He outlines that it will be "*highly invasive*" and "*will result in large areas of the building being a replica of its original form*".
- 26 The evidence provided for the Council by Mr Hogg and Mr Fulton does not appear to disagree with the proposed repair and strengthening work. Again, it is common ground that substantial work is required to make the building habitable.
- 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 The evidence on this point is as follows:
- 28.1 **Mr Gilmore's** evidence is clear as to the intrusiveness of the necessary repair works and the large proportion of parts of the building that will need to be replaced, resulting in many replica elements.
- 28.2 Mr Hogg's evidence is similarly that the structural engineering required to reinstate the building to a habitable state will result in a substantial loss of the original exterior and interior heritage fabric. While these elements can in part be salvaged, his description of the process is that they will be "*used to create a replica*".
- 28.3 Ms Ohs' evidence refers to "*pushing the boundaries of traditional heritage conservation approaches*" (in terms of the

amount of deconstruction and reconstruction required). She seeks to justify this approach as acceptable in post-earthquake Christchurch, and considers that in this context, acceptable heritage outcomes can be achieved even with very extensive works.

- 28.4 **Mr Pearson** and Mr Fulton refer to a loss of integrity and authenticity but consider that the building would still retain some heritage values.
- 29 In our submission, the evidence is inconclusive as to whether the necessary structural and other works to Daresbury House will 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.
- 30 We consider the evidence of the two engineers to be compelling in this respect. We urge caution with Ms Ohs' approach of "pushing the boundaries" in this particular scenario. In our submission, her position is untenable given it is well-established that plan provisions must be applied objectively and consistently. There should not be a different set of rules for Daresbury simply because of the nature and circumstances of this building.
- 31 Ultimately, in our submission it would be entirely open for the Panel, on the evidence before it, to make the finding that the Policy 9.3.2.2.1(c)(iii) exemption applies in this case, meaning ongoing scheduling of Daresbury House is not warranted.
- 32 The second exemption is clause (iv) of Policy 9.3.2.2.1(c), 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"*.
- 33 To address this second exemption, in the following sections we consider:
- 33.1 Are the engineering aspects of the work required to make Daresbury House habitable "reasonable" and "appropriate"?
- 33.2 How much will the necessary work cost?
- 33.3 Is that cost "reasonable" and "appropriate"?
- Engineering works**
- 34 The engineering requirements are discussed above and addressed in detail in the evidence of **Mr Gilmore** and Mr Hogg, who are not in dispute as to the substantial structural repairs necessary.

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. It touches on all aspects of the building and is hugely extensive and highly complicated. In no other circumstances would such engineering work be considered feasible or pragmatic by any reasonable property owner. In our submission, this clearly tips it into the unreasonable and inappropriate category.

Cost of works

36 Based on the necessary repair and strengthening works, **Mr Harrison** has provided an estimate of costs for a reduced repair option of \$8,127,788 plus GST.

37 This contrasts with Mr Stanley’s (for Council) cost estimate of \$6,875,781 plus GST.

38 In his evidence, **Mr Harrison** carefully traverses Mr Stanley’s approach and outlines the various reasons for the difference in the two cost estimates. Significant factors include a discrepancy in Gross Floor Area calculation, margins and contingencies, and inflation increase.

39 In our submission, **Mr Harrison’s** costs estimate should be preferred as it properly accounts for the condition of the building and the full scope of repair and strengthening works required.

Are the costs reasonable and appropriate

40 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?

41 In our submission, when the various cost implications are considered, there is no doubt that a reasonable landowner would do exactly what **Mr Milne** is seeking to do, i.e. pursue this delisting.

42 The only plausible alternative approach is that he leaves the building as it is, to deteriorate further. This has wider implications than simply for **Mr Milne**, given this is a large, well-located site for residential development in a central suburban location.

43 In terms of repairing Daresbury House, the substantial costs have been outlined above. Regardless of whether the Daresbury or Council cost estimate is used, significant funding is required.

- 44 **Mr Shalder's** evidence provides a valuation of the property under various scenarios. Critically, his Scenario 1 assesses the value of Daresbury House assuming it is fully repaired in its current layout and retained on the total land area to the south west of the Waimari Stream. His assessment is that the bare land value (vacant site, not subject to any heritage protection) would be between \$8,550,000 and \$9,150,000. The added value of the dwelling improvements after repair works have been completed (and without any heritage protection) would be between \$2,700,000 and \$3,250,000. However, **Mr Shalders** notes that heritage protected dwellings often offer a negative value compared to the underlying land value instead of enhancing the value of the underlying land. He also notes that there is a known market resistance to heritage protected properties in Christchurch.
- 45 Applying either **Mr Harrison's** (\$8,127,788 plus GST) or Mr Stanley's (\$6,875,781 plus GST) costs estimate for repair of the building, the resulting equation is:
- 45.1 Repair costs = between \$6,875,781 and \$8,127,788.
- 45.2 Added value of dwelling improvements (even on a "without heritage protection" basis) = less \$2,700,000 and \$3,250,000.
- 45.3 Shortfall = in excess of (approximately) \$4,000,000 to \$6,000,000.
- 46 As **Mr Milne's** evidence will outline, as the landowner who intended to one day live with his family at Daresbury House, it is simply not realistic to expect him to spend that amount of money to repair the building. Nor would a prudent property developer (also **Mr Milne**) take on a project with such a significant resulting shortfall.
- 47 In this respect, a comparison must be drawn between the Harley Chambers situation, 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. This is precisely the situation here, in fact the margin is potentially even more significant, as confirmed by **Mr Shalders**.
- 48 The Council's witnesses do not, in this case, appear to have referred to the use of external funding options for the necessary repair and strengthening works. Presumably this is because this is a private residential property for which limited, if any at all, external funding sources would be available particularly given the valuation outcome that would result. **Mr Milne's** evidence confirms this aspect.
- 49 We note Mr Stanley was asked to give cost estimates for a replacement replica and a replacement modern high-end multi-level

house. His estimates for those two propositions are substantially greater than his repair estimate. On this basis, Ms Ohs concludes that the approach of repair and strengthening is “*comparatively more affordable*”.

- 50 Notwithstanding **Mr Harrison’s** detailed scrutiny of the accuracy of the figures put forward under these alternative approaches (his figures for all three approaches are much closer), the basis for the Council requesting those estimates is unclear. A replacement replica certainly would not retain the necessary heritage values for scheduling. As explained by **Mr Milne**, development of a modern high-end, multi-level house of the scale of Daresbury House simply would not be pursued in the circumstances. In our submission, those estimates should simply be disregarded as irrelevant to the Panel’s consideration of the issues, they are not the correct comparison.
- 51 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. Development of this well-located property for residential purposes would result in good economic and social (i.e. housing) outcomes for the City and would be consistent with the direction in the Amendment Act and the National Policy Statement on Urban Development 2020.
- 52 Yet instead of recognising that cost, Ms Richmond, under cross-examination, suggested that the costs of repairing Daresbury House could be “recouped” through the development of the rest of the site.² The basis for asserting that Council can determine how a landowner ought to spend their own money was unclear. On Ms Richmond’s approach, it could be suggested that any heritage property owner would be required to recoup their repair costs through completely unrelated development. More importantly, it is an incorrect reading of Policy 9.3.2.2.1(c)(iv), which refers to “*financial factors related to the physical condition of the heritage item*”. **Mr Milne’s** evidence provides a response to this point from a reasonable landowner/developer perspective.
- 53 In our submission, these financial factors are significant and provide a clear exemption for the ongoing listing of the Daresbury House heritage item and setting.

OVERALL ASSESSMENT AND COMMENTS ON DARESBURY HOUSE

- 54 The evidence for Daresbury clearly establishes that Daresbury is in an extremely poor condition, significant reconstruction, repair and

² See hearing recording, 28 November – Morning Session 1, at around 44 minutes.

upgrade 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.

- 55 The Council has taken an inconsistent position with respect to other delisting requests and, in our submission, Daresbury's position should clearly be preferred.
- 56 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

- 57 **Mr Clease's** evidence addresses the specifics of the Daresbury House 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.

TREE-RELATED MATTERS

Scheduled Trees

- 58 Specific to the Daresbury site, there are several listed significant trees already listed in Appendix 9.4.7.1 to the District Plan, which are proposed to be classified as qualifying matter trees.
- 59 As outlined in Daresbury's submission, the District Plan already provides a comprehensive suite of provisions for managing development in the vicinity of scheduled trees, which are appropriate, effective and efficient.
- 60 Similar to the heritage item/setting scheduling, continued scheduling of these trees is opposed by Daresbury given the lack of supporting evidence and insufficiency of the Council's section 32 analysis on this matter.

Tree canopy and financial contributions

- 61 Daresbury's submission sought the deletion of the proposed PC14 tree canopy and financial contributions provisions. In our submission, the proposed provisions are:
- 61.1 uncertain and unworkable and will be difficult to enforce; and
- 61.2 unreasonable and will have significant implications from an economic perspective that are not justified.

62 On this basis, the proposed provisions should be deleted.

CONCLUSION

63 The evidence for Daresbury establishes that there is no justification for the Daresbury House heritage item and setting to remain in the Schedule. This is in the specific context of Policy 9.3.2.2.1 (specifically clauses (3)(c)(iii) and (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.

64 In our submission, Daresbury's relief should accordingly be accepted.

Dated 12 April 2024



J Appleyard / A Hawkins
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