

Before an Independent Hearings Panel
Appointed by Christchurch City Council

under: the Resource Management Act 1991

in the matter of: proposed Plan Change 13 and 14 to the Christchurch
District Plan

and: **Daresbury Limited**
(Submitter 874); and

Church Property Trustees (Submitter 825)

Statement of evidence of Jonathan Clease (planning) on behalf of
Daresbury Limited and Church Property Trustees

Dated: 20 September 2023

Reference: Jo Appleyard (jo.appleyard@chapmantripp.com)
Annabel Hawkins (Annabel.hawkinsr@chapmantripp.com)

chapmantripp.com
T +64 3 353 4130
F +64 4 472 7111

PO Box 2510
Christchurch 8140
New Zealand

Auckland
Wellington
Christchurch



STATEMENT OF EVIDENCE OF JONATHAN CLEASE ON BEHALF OF DARESURY LIMITED AND CHURCH PROPERTY TRUSTEES

INTRODUCTION

- 1 My full name is Jonathan Guy Clease.
- 2 I am a Partner in the planning and resource management consulting firm Planz Consultants Limited.
- 3 I hold a Bachelor of Science (Geography), a Master of Regional and Resource Planning, and a Master of Urban Design. I am a Full member of the New Zealand Planning Institute (*NZPI*) and currently sit on the NZPI Board.
- 4 I have some twenty-five years' experience working as a planner, with this work including a wide range of resource consent preparation and policy development, providing section 42A reports on plan changes and associated section 32 reports. I have worked in both the private and public sectors, in both the United Kingdom and New Zealand.
- 5 I have been involved with the preparation or processing of numerous resource consents for a wide range of works to heritage buildings, including a number that experienced significant damage during the Canterbury Earthquake sequence. As such I have a detailed understanding of the challenges associated with heritage building restoration and reuse and conversely the narrow circumstances where demolition of damaged and/ or derelict buildings is not inappropriate.

CODE OF CONDUCT

- 6 Although this is not an Environment Court hearing, in preparing my evidence I have reviewed the Code of Conduct for Expert Witnesses contained in Part 9 of the Environment Court Practice Note 2023. I have complied with it in preparing my evidence. I confirm that the issues addressed in this statement of evidence are within my area of expertise, except where I state that I am relying on the opinion or evidence of other witnesses. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

SCOPE OF EVIDENCE

- 7 My evidence will address:
 - 7.1 The current state of both Daresbury House and St James Church and their heritage significance;
 - 7.2 The engineering evidence on the extent of the works necessary to bring them up to an acceptable percentage of

Building Code and the quantity surveying evidence of the likely costs of these works;

- 7.3 Whether the ongoing listing of the two properties in question remains an efficient and effective tool where the benefits of regulation clearly outweigh the costs in the light of the extent of damage and the level and costs of the intervention that is necessary; and
 - 7.4 The amendments to the heritage policy and rule framework sought by Daresbury Ltd and Church Property Trustees, including the alternative relief sought by Ceres (submitter #150) which Daresbury and CPT lodged further submissions in support of (FS 2053 and 2043, respectively).
- 8 In preparing my evidence, I have reviewed:
- 8.1 the submission and further submission by Daresbury Limited (*Daresbury*);
 - 8.2 The submission and further submission by Church Property Trustees (*CPT*);
 - 8.3 The relevant parts of the Council's Section 42A Reports by Ms Suzanne Richmond (planning), Mr Hogg (engineering), Ms Ohs (heritage), and Mr Fulton (heritage) which address the Daresbury and CPT submissions;
 - 8.4 The draft evidence of **Mr Brett Gilmore** (engineering), **Mr Stewart Harrison** (quantity surveying) and **Mr David Pearson** (heritage) for Daresbury, noting that Mr James Milne (owner) will also provide a statement at the hearing;
 - 8.5 The draft evidence of **Mr Peter Carney** (engineering) and **Mr Peter Eggleton** (quantity surveying) for CPT, noting that Mr Gavin Holley or Ms Celia Quinnell (CPT representatives) will also provide a statement at the hearing;
 - 8.6 The Resource Management (Enabling Housing Supply and Other Matters) Amendment Act (*the Enabling Act*); and
 - 8.7 The National Policy Statement on Urban Development 2020 (*NPS-UD*).

SUMMARY OF EVIDENCE

- 9 I assess the merit of continuing to include Daresbury House and St James Church in the District Plan list of heritage items.
- 10 In undertaking this assessment I consider: the heritage value of the items, the extent of damage experienced, the extent of the works

necessary for repair and restoration, the costs of these works, the value of the resultant building, the provision of insurance payouts heritage grants, and the prospects of alternative reuse.

- 11 I conclude that for these two buildings the costs of retention outweigh the benefits by a wide margin and that de-listing is appropriate.
- 12 I consider the various amendments sought to the heritage provisions by these two submitters and I recommend a number of amendments having considered the Council Officer responses.
- 13 I consider an alternative approach to managing the discrete number of known heritage buildings that remain vacant and badly damaged a decade after the earthquakes. I recommend that there is merit in the proposed approach sought by submitters which in my view enables the District Plan to more appropriately respond to known 'on-the-ground' conditions and thereby better meet the section 32, Resource Management Act 1991 (*RMA*) tests than the status quo provisions.

AMENDMENTS TO THE HERITAGE POLICIES AND RULES PROPOSED IN PC13 (NOW COVERED IN PC14)

- 14 This evidence addresses two sites containing listed heritage buildings, namely Daresbury House (9 Harakeke Street) and St James Church (65 Riccarton Road).

DARESBUY SUBMISSION

- 15 As outlined in its submission, Daresbury owns land at 9 Harakeke Street. Daresbury House is listed as a 'Highly Significant' heritage item (#185), within a heritage setting (#602) in the Christchurch District Plan (*District Plan*).
- 16 Under Proposed Plan Change 14 to the District Plan (*PC14*), the site is subject to corresponding heritage item and heritage setting Qualifying Matters.
- 17 Daresbury's submission seeks the removal of the heritage item and heritage setting from the item and the site.
- 18 **Figure 1** shows the heritage item and setting for Daresbury House.

Figure 1. Daresbury House - item #185 and setting #602



CHURCH PROPERTY TRUSTEES SUBMISSION

- 19 CPT holds and administers the property and investments of the Anglican Diocese of Christchurch (*the Diocese*) in accordance with the Anglican (Diocese of Christchurch) Church Property Trust Act 2003.
- 20 The evidence of **Mr Holley** or **Ms Quinnell** for CPT (to be provided for CPT's hearing presentation) will outline CPT's role and the parameters of its functions in detail.
- 21 As outlined in its submission, CPT owns land at 65 Riccarton Road on behalf of the Diocese. St James Church is located at the site and is listed as a 'Highly Significant' heritage item (#465), within a heritage setting (#220) in the District Plan.
- 22 Under PC14, the site is subject to corresponding heritage item and heritage setting Qualifying Matters.

- 23 CPT's submission seeks the removal of the heritage item and heritage setting from St James Church and the site. **Figure 2** shows the District Plan listing for St James Church.

Figure 2. St James Church – item #465 and setting #220



- 24 The core issue raised in both submissions is whether the degree of damage sustained by these buildings makes retention implausible from a cost perspective and that as such retaining their listing as a heritage item in the District Plan simply imposes significant regulatory costs for little benefit.
- 25 As this is a plan change, the tests for ongoing listing are those contained in section 32 RMA. It is important to emphasise that these are different tests to those that are in play for resource consents to demolition heritage items where section 104D thresholds regarding the effects being more than minor and contrariness (or not) with policies are in play, along with the more general tests set out in section 104(1).
- 26 The starting point is the assessment of heritage values. Both buildings are already listed, so presumably at the time of listing their heritage values met the necessary criteria/ thresholds. On that basis I accept that both buildings are historically significant.
- 27 The engineering evidence for both buildings is that plausible repair strategies must necessarily result in significant loss and replacement of original heritage fabric. The evidence of **Mr Gilmore** is that Daresbury House is earthquake prone and requires effective

deconstruction and rebuilding such that the resultant building will be largely a replica. This does not mean that the buildings do not have heritage value, either in their current damaged state, or in what would be a highly modified state following repair and restoration (if such works were economically feasible). The heritage value of both buildings must however be less than it was prior to their being damaged. This is self-evident – applications to undertake unsympathetic alterations are invariably declined by Council on the grounds that they result in a loss of heritage values. The earthquake damage is in essence little different from unsympathetic alterations that have led to a marked degradation in the quality and intactness of heritage fabric. I note **Mr Pearson's** conclusions in this respect in relation to Daresbury House, where he considers that after repair, the building would be considered Significant rather than Highly Significant in terms of heritage values.

- 28 It is important to emphasise that in terms of section 32, demonstration of heritage value (even in a degraded state) is not in itself sufficient to warrant ongoing listing. The section 32 tests are not a 'heritage value trumps all other assessments' process. Listing is a tool for protecting heritage values as listed buildings are subject to rules controlling demolition and additions/alterations and works in the setting surrounding the items. The assessment for justifying the listing must therefore necessarily wrestle with the efficiency and effectiveness of the listing as a tool for maintaining heritage values, and also the costs and benefits of the regulation on both the building owner and the wider community.
- 29 The owners of both buildings have obtained engineering reports that review the buildings' condition, the extent of damage and the shortfall in the percentage of New Building Standard (% *NBS*) that is achieved, and the extent of works necessary to bring the buildings up to code. The extent of both damage and the resultant works to restore the buildings to functional use are substantial.
- 30 The owners of both buildings have obtained quantity surveying estimates of the cost of undertaking the necessary repair works. The costs of these works are in turn significant, reflecting both the degree of damage and the complexity with retrofitting new structure into old buildings. I note that from my experience assisting on other heritage restoration projects, initial cost estimates for heritage repairs and restorations invariably end up being exceeded by the time the project is completed.
- 31 Perhaps more important than the overall cost is an assessment of the value of the building once the works have been undertaken. No responsible building owner embarks on a project that costs say \$5m to end up with a building that is only worth \$3m.
- 32 The significant repair costs, combined with the significant gap between the end value of the repaired buildings and what they are

worth, mean that there is a very low likelihood of the works ever being undertaken.

- 33 **Mr Harrison** and **Mr Shalders** address this question for Daresbury House.
- 34 The evidence of **Mr Holley** or **Ms Quinnell** for CPT will outline that as responsible trustees they must act in accordance with their purpose, which is to promote Christian mission and social support. It is not to fund heritage projects where the resultant building is not needed for the delivery of the core mission.
- 35 CPT have confirmed that they have no need for the church. The Riccarton Parish already has an alternative 'home' in St Martin's Church at 50-60 Lincoln Road. This church readily meets their functional requirements. CPT have offered St James Church to other faith communities and no interest has been forthcoming. Alternative non-faith uses are possible, however a 'change of use' is likely to trigger the need for the necessary building code upgrades and the resultant costs mean that uses such as an office or retail/ café do not deliver a rate of return that would make alternatives plausible. For Daresbury House, the site's location with no public road frontage/ profile and surrounded by residential neighbours significantly limits the range of alternative uses that are possible to those that are residential in nature and where the rate of return is again unlikely to come close to justifying the significant costs involved.
- 36 The lack of economic feasibility of alternative uses is also in part confirmed by the fact that some 13 years have now elapsed since the earthquakes. If reuse options were economically attractive then the market is very adept at identifying such opportunities and making approaches to the owners in question. My understanding is that no such expressions of interest have been forthcoming for either building.
- 37 I also understand that there are no insurance proceeds available for either item. Daresbury House was purchased by the submitter on an 'as is where is' basis with the original homeowner being the recipient of any insurance proceeds. As will be outlined by **Mr Holley** or **Ms Quinnell**, CPT obtained a global settlement for earthquake damage across their property portfolio. These funds were then distributed to the affected parishes. The Riccarton Parish has used their share of the payout on mission and community support projects such that the distributed funds have since been spent on fulfilling their core mission.
- 38 There is minimal likelihood of any heritage grant funding being available. **Mr Pearson's** evidence addresses this matter in respect of Daresbury House. Daresbury House is a private home that is not publicly accessible. As such there are a limited number of grant

programmes that are available. The Council's heritage fund is over subscribed and is insufficient to bridge the gap between cost and end value even if it were wholly allocated to this single project for many years. The owner has had a number of informal discussions with the Council heritage team on this building over the past decade and there has never been any indication that a significant Council heritage grant would be made available.

- 39 As will be outlined in the statement of **Mr Holley** or **Ms Quinnell**, CPT nationally administer a large portfolio of buildings, of which 70 are heritage listed churches and halls. CPT is therefore very aware of the heritage funding sources that are available and regularly seek to access these alternative funding sources where appropriate. In making funding applications, CPT is well aware of the demands on these funds. CPT must therefore be strategic in which projects it prioritises for funding applications in order to not 'water down' the prospects of a successful application. As St James Church is a building that has no functional use for CPT, it will necessarily sit towards the bottom of the priority list for seeking heritage grants.
- 40 In summary, both buildings:
- 40.1 Contained heritage value at the time they were listed;
 - 40.2 Are likely to still retain heritage values, albeit degraded as a result of damage to fabric;
 - 40.3 The engineering assessments for both buildings are that the extent of damage is substantial and that the works necessary to repair and achieve acceptable levels of %NBS are significant. This is particularly the case for Daresbury House which in essence involves a near-complete deconstruction and rebuilding;
 - 40.4 The costs of these works are substantial, and will exceed the end value of both buildings once repaired by a significant margin;
 - 40.5 No insurance proceeds are available;
 - 40.6 No heritage grants are likely; and
 - 40.7 No reuse options are plausible in terms of locational sensitivity (Daresbury House) and the very low rate of return on investment given the very high costs of repair.
- 41 As such there is minimal prospect of either building being restored. Given this context, the section 32 test then becomes one of assessing the effectiveness of maintaining the listing as a tool for enabling the restoration of the buildings to actually occur. Listing in itself cannot proactively oblige the works to be undertaken. All it can

do is to preserve the opportunity. This 'where there's life there's hope' approach does have a degree of validity in the sense that for as long as the building remains extant there is the prospect (however remote) that a well-funded philanthropist will 'fall in love' with the building and will be willing to undertake the necessary repairs despite such being uneconomic. This 'future hope' benefit has to be balanced against the costs to the building owners.

- 42 In my view there is negligible prospect of the buildings being repaired and therefore ongoing listing simply subjects the owners to three unpalatable choices, namely:
- 42.1 Retain the building in a derelict state, with the attendant loss of use of the site and the ongoing holding costs along with the need to secure the building to reduce vagrancy;
 - 42.2 Apply for a non-complying resource consent to remove the building. In my experience such an application is certain to be publicly notified. A notified consent process will examine much the same evidence as what is currently before the Panel, with similar opportunities for public participation via submission (or in this case further submissions). In my experience notified consents to demolish heritage buildings routinely cost in excess of \$100k and take around a year to process from start to finish;
 - 42.3 Seek to sell the property in its damaged state. In my experience such buildings are seen as a liability rather than an asset, with the listing devaluing the property. The lack of any unsolicited market in interest for either property, combined with the complete lack of interest from other faith groups in CPT's offer to sell the building, mean that the prospects of a successful sale occurring are remote.
- 43 These costs are very real. They are direct costs to the submitters that run into hundreds of thousands of dollars. There is no evidence in the Council section 42A reports that assess these costs. Wider costs to the community include the ongoing presence of a damaged and vacant building sitting unused for the foreseeable future with associated loss of both amenity values and the functional use of both sites to deliver modern housing and the associated activation and use of the sites.
- 44 There are no benefits to the landowners in ongoing listing. Benefits to the community of retaining a badly damaged building with residential heritage values are limited to a small 'future hope' component that a retention solution, however unlikely, might some day be forthcoming.

- 45 In my view the degree of costs to both the building owners and the community clearly outweigh the very limited benefits delivered by listing and associated regulatory restrictions on demolition.
- 46 As such I consider that the section 32 tests for ongoing listing are not made out and that accordingly the buildings should be delisted.

AMENDMENTS TO THE HERITAGE POLICIES AND RULES PROPOSED IN PC13

- 47 In addition to seeking delisting, the submissions by Daresbury and CPT both sought a number of amendments to the heritage objectives, policies, definitions, and rules. I discuss these in turn, followed by examination of an alternative approach to delisting sought by Ceres Ltd (submitter #150) who Daresbury and CPT further submitted in support of.

Objectives and Policies

- 48 **Policy 9.3.2.2.3 – Management of scheduled historic heritage:** The submissions opposed the deletion of the phrase “*recognising that heritage settings and Significant (Group 2) heritage items are potentially capable of accommodating a greater degree of change than Highly Significant (Group 1) heritage items*” from Policy 9.3.2.2.3.
- 49 Ms Richmond recommends this relief be rejected for the following reason¹:
- This statement in the policy is a generalisation and does not recognise that the ability of an item to accommodate change varies by building as much as by level of significance. Substantial change to a Significant status heritage item can undermine its heritage values.*
- 50 I note that the overarching purpose of the policy is to manage the effects on heritage items, heritage settings and heritage areas. Any proposed works are therefore considered on a case-by-case basis, so the policy still provides for consideration of change to a Significant status heritage item and in the event that change to a Significant item was considered to undermine its heritage values then the works could still be considered inconsistent with this policy.
- 51 Similarly, the wording also directs change to those parts of the heritage item or setting which have more potential to accommodate change regardless of the significance of the heritage item. I therefore do not agree with Ms Richmond’s findings.

¹ Ms Richmond, para. 8.1.123

- 52 I consider that the benefit in the retention of the wording is that it serves to acknowledge that there is a difference between the ability of Significant and Highly Significant buildings to accommodate change. I also consider that the inclusion of the reference to Significant buildings in subclause (ii) provides weight to the wording of sub-clause (iii), which seeks to:

conserve, and wherever possible enhance, the authenticity and integrity of heritage items and heritage settings, and heritage area, particularly in the case of Highly Significant heritage items and heritage settings.

- 53 I consider that by differentiating between the ability of Significant and Highly Significant buildings to accommodate change, you also recognise that there is a greater desire to protect the authenticity and integrity of Highly Significant heritage items and heritage settings from potential change.

- 54 **Policy 9.3.2.2.8 - Demolition of heritage items:** The submissions opposed the following PC13 amendment to clause (a)(ii):

Whether the extent of the work required to retain and/or repair the heritage item or building is of such a scale that the heritage values and integrity of the heritage item or building would be significantly compromised, and the heritage item would no longer meet the criteria for scheduling in Policy 9.3.2.2.1".

- 55 The submitters considered that the amendment clearly introduces a new test to Policy 9.3.2.2.8 that is highly unlikely to be able to be met. In considering this point, Ms Richmond states²:

In my view, based on current interpretation of this policy by Council Heritage staff, this is not a new test, as this test is already implied but is unclear in the operative text in the words: "significantly compromised". The additional wording intends to clarify the existing test used in assessing heritage demolition consent applications by Council Heritage Advisors. That is: a building is "significantly compromised" if it would no longer retain significant heritage values - it would no longer retain its significance which enables it to meet the threshold for scheduling, if the repair works (under operative subclause ii) were undertaken. Staff do not have a readily available alternative test for "significantly compromised" to the one already in use. Where there is a repair strategy that would retain the significant heritage values of the building for which it is scheduled, then the test of "significantly compromised" is not met.

² Ibid, para. 8.1.126, underlining my emphasis

- 56 I consider that there is a disconnect between this statement and the statement of Ms Richmond in paragraph 8.1.28 that:

The scheduling policy is intended to apply to buildings being assessed for inclusion on the schedule of heritage items for the first time, whereas the demolition policy is used to assess applications for resource consent to demolish.

- 57 I agree that the different policies relate to different stages in the planning process. Policy 9.3.2.2.1 provides guidance to plan changes and associated listing considerations, whereas Policy 9.3.2.2.1 is the key policy for informing decisions on applications to demolish. Both policies are required to give effect to Objective 9.3.2.1.1, which states:

9.3.2.1.1 Objective – Historic heritage

a. The overall contribution of historic heritage to the Christchurch District's character and identity is maintained through the protection and conservation of significant historic heritage across the Christchurch District in a way which:

i. enables and supports:

A. the ongoing retention, use and adaptive re-use; and

B. the maintenance, repair, upgrade, restoration and reconstruction; of historic heritage; and

ii. recognises the condition of buildings, particularly those that have suffered earthquake damage, and the effect of engineering and financial factors on the ability to retain, restore, and continue using them³; and

iii. acknowledges that in some situations demolition may be justified by reference to the matters in Policy 9.3.2.2.8.

- 58 In considering whether an activity is consistent with Policy 9.3.2.2.8, the reference to "significantly compromised" does not in my view therefore reflect whether or not the item meets the threshold for scheduling in Policy 9.3.2.2.1, but rather whether the condition of the heritage item and the effect of engineering and financial factors on the ability to retain, restore, and continue using them means the item is 'significantly compromised'. It should be considered in terms of whether it gives effect to Objective 9.3.2.1.1 not Policy 9.3.2.2.1.

³ My emphasis added

- 59 I therefore agree with the submitters that the additional wording proposed by PC13 introduces a new 'test' at resource consent stage that presents an unreasonable and inappropriate threshold that materially changes and undermines the policy.
- 60 The assessments undertaken on behalf of Council Officers in relation to the submission seeking the delisting of Daresbury House provide a useful case study of the implications of the proposed change in wording and Council's interpretation. As summarised by Ms Richmond⁴:
- I consider that it could be repaired and strengthened, despite the need for substantial intervention, and that the scheduling exemption in scheduling policy 9.3.2.2.1 c.iii. is not met, nor is the engineering component of the c.iv. scheduling exemption.*
- 61 From my review of Council evidence, it appears that the position taken by Council Officers is that if a building can be repaired then it does not meet Policy 9.3.2.2.1 c. iv. Of note in considering the Daresbury House example, Mr Hogg provides a detailed summary of the existing damage to Daresbury House and notes⁵:
- "The structural engineering required to reinstate Daresbury Homestead free of damage and to a habitable state will result in the substantial loss of original exterior and interior heritage fabric. However, this can in part can be salvaged and used to create a replica.."*
- 62 As noted by Ms Richmond, Mr Fulton and Ms Ohs in their respective evidence, despite these engineering factors Daresbury would still meet the criteria for scheduling. In short, even where there is clear engineering evidence, accepted by Council's own engineer, that the degree of works required will result in what is essentially a replica building, Council's planning and heritage Officers still consider a listing threshold to be met. It is therefore challenging to envisage a situation where demolition would ever be deemed to be consistent with this policy as amended by PC13 (now PC14) and as interpreted by Officers.
- 63 Demolition of Highly Significant heritage buildings, such as Daresbury House, is a non-complying activity. The Panel will be well aware of the 'gateway tests' of section 104D of the RMA. Given that the complete loss of heritage fabric invariably generates an at least 'minor' effect, and given Council Officers' above interpretation of Policy 9.3.2.2.1, if the PC13 (now PC14) amendment is in place it

⁴ Ms Richmond, para. 8.1.44

⁵ Mr Hogg, para.43

makes it extremely challenging for any application to pass through section 104D.

- 64 Perhaps as importantly, such an outcome is inconsistent with the Objective which appropriately recognises the unique heritage planning context of Christchurch following the earthquakes and accordingly correctly provides a plausible consenting pathway for assessing badly damaged buildings.
- 65 I therefore recommend that the District Plan wording of Policy 9.3.2.2.1 be retained and the amendment sought in PC13 (now PC14) rejected.

Definitions

- 66 The submissions supported the retention of the following definitions:
- 66.1 'Heritage Building Code Works'
- 66.2 'Reconstruction'
- 66.3 'Repairs'
- 66.4 'Restoration'
- 67 Ms Richmond accepts these submission points and no further evidence is presented in relation to these definitions.
- 68 I address each of the other respective definitions opposed in the submissions of Daresbury and CPT below.
- 69 **'Alterations'**: In relation to the definition of 'Alteration', the submissions considered that the amendments sought through PC13 (now PC14) has the effect of meaning that any change, modification or addition to a heritage item, heritage setting or heritage fabric, or a building in a heritage area will constitute an 'alteration' and would trigger corresponding rules and consent requirements, irrespective of whether it impacts on heritage fabric. This will create unnecessary, costly, and inefficient consent requirements, and provide no benefits in respect of heritage values.
- 70 In response, Ms Richmond notes that⁶:

⁶ Ms Richmond, para. 8.1.116

In relation to concerns about the changes to the Alteration definition, changes such as additions which do not always involve change to heritage fabric often have adverse effects on heritage form and values. Additions are already subject to the definition, so the intention of the change is not to increase the types of change covered by the definition, but to more accurately represent the nature of the works which have potential effects on heritage values.

- 71 The drafting of the heritage definitions received careful consideration during the post-quake IHP process. Care was taken to minimise costs as much as possible for heritage building owners, whilst ensuring adequate protection of heritage values was in place. It was a conscious drafting decision to only capture 'alterations' that affect heritage fabric. This was to enable the replacement of non-heritage fixtures and fittings such as bathroom plumbing, electrical cabling and more modern additions without the need for resource consent. In my view this makes sense as capturing the routine updating of non-heritage fabric is a key tool for ensuring heritage buildings are able to continue to meet the needs of occupants, and thereby ensure that a viable use for these building is retained. If the key issue that Council is seeking to control is the effect on heritage values caused by new additions, then in my view this could be readily addressed through a more focussed amendment to clause (c): "permanent addition of fabric to the exterior or interior that affects existing fabric (whether heritage fabric or not)".
- 72 The amendment proposed in PC13 (now PC14) therefore appears to add considerable costs for little benefit and as such I agree with the submitters that it should either be deleted, or its application be better focussed through the amendment to clause (c) suggested above.
- 73 **Demolition:** The submissions considered that the change in the definition of 'Demolition' has the effect of meaning that any destruction of a non-substantial part of a building constitutes 'demolition' and triggers corresponding rules and consent requirements. To assist, the amended wording proposed in PC13 is as follows:
- Demolition in relation to a heritage item, heritage setting, or a building in heritage area, means permanent destruction, in whole or ~~of a substantial part~~, which results in the complete or significant loss of the heritage fabric ~~and~~ or form.*
- 74 In response, Ms Richmond states that⁷:
- the test or threshold in the demolition definition remains the same: "results in the complete or significant loss of heritage fabric or*

⁷ Ms Richmond, para. 8.1.117

form". The intention is to retain the current distinction between alteration and demolition definitions. The change is to more accurately reflect that the effect is not derived from the scale of the material lost but from the heritage values of the material lost.

75 If this is the intent of the amendment then in my view the PC13 (now PC14) wording does not achieve the outcome that Council is seeking. The amended wording makes no reference to effects on heritage *values*, rather it retains the existing reference to *fabric*. The loss of a small piece of fabric that has significant heritage value continues to be exempt from the definition (but would still be captured by the definition of 'partial demolition' which is a sub-set of 'alteration'⁸).

76 As it stands, the amendment proposed in PC13 (now PC14) simply blurs what are currently clear lines between the definitions for 'demolition', 'partial demolition', and 'alteration'. These terms were intentionally separated out through the IHP process to avoid exactly the sort of confusion the proposed amendment will create.

77 For completeness, I note that the definition of 'partial demolition' is not proposed to be amended. This remains:

"in relation to a heritage item, means the permanent destruction of part of the heritage item which does not result in the complete or significant loss of the heritage fabric and form which makes the heritage item significant".

78 The 'partial demolition' definition correctly captures the 'small fabric/ big value' scenario identified by Ms Richmond.

79 **'Heritage Setting'**: The amended definition sought in PC13 (now PC14) removes the wording that a setting *'together with the associated heritage item, has met the significance threshold'* and instead states that *'Heritage settings have not been assessed as meeting the significance threshold for scheduling'*. The submitters consider that heritage settings that do not meet the significance threshold for scheduling should not be listed.

80 In response Ms Richmond states that⁹:

The change to the definition is intended to clarify the status of heritage settings which do not meet the threshold for scheduling in their own right, but contribute to the heritage values of the heritage item which does meet the threshold. I do not anticipate any impact on consenting as a result of the proposed amendment.

⁸ Clause (b) of the alteration definition includes 'partial demolition of a heritage item'

⁹ Ibid, para. 8.1.118

- 81 Having reviewed the submissions and Ms Richmond's response it appears to me that all parties are seeking the same outcome, namely that the definition of a heritage setting is clear that the setting does not in itself form part of the listed item. Considering the explanation above, I consider that more clear and concise wording would simply be:

Heritage setting - means an area surrounding a heritage item, and shown on the Heritage Aerial Map for that item, which is integral to its contextual heritage values to its function, meaning and relationships. Heritage settings are not in themselves part of the listed item. Heritage settings may include...

- 82 For completeness, I support the related statement in the definition sought through PC13 (now PC14) that "*heritage settings exclude entries in Appendix 9.3.7.2 Schedule of significant historic heritage where the associated heritage item has been demolished or relocated from the setting*". Including this wording in the definition is a neat solution to the situation where the item is demolished yet the setting (and associated now redundant regulatory effect) remains shown in the District Plan (and as such can only be removed following a first Schedule RMA process).
- 83 **'Relocation'**: The submitters oppose the deletion of the exclusions in (a) and (b) that otherwise exclude temporary relocation or realignment works.
- 84 In response Ms Richmond has advised that the change is aimed at simplifying the definition¹⁰. She notes "*(t)his does not have the effect of including these works as they are already subject to the Building Code Works definition. There is no change to consenting requirements as a result of the amended wording*".
- 85 I could not find a definition of 'building code works' in the PC13 (now PC14) provisions as shown on the IHP website. If these matters are separately exempt through other legislation then there is no harm in making that explicit in the definition – removal of the clauses simply appears to introduce ambiguity where the operative provision provides clarity. I therefore agree with the submitters that the operative definition should be retained.

Rules

- 86 **8.9 Rules – earthworks**: In relation to 8.9 Rules – earthworks, I am supportive of the proposed revision to the activity standard recommended by Officers for earthworks within 5m of a heritage

¹⁰ Ibid, para. 8.1.119

item and consider that this is a more effective and efficient way of managing earthworks within 5m of a heritage item.

- 87 **9.3.4.1.1 P8 and P9 Permitted Activities:** Having considered Ms Richmond's explanation¹¹, I agree that alteration, relocation, or demolition of buildings in heritage settings, which are not individually protected as heritage items, do not require consent under the operative district plan heritage rules, or by the addition of proposed rule 9.3.4.1.1 P8.

Matters of discretion

- 88 **9.3.6.1(a):** The submitters oppose the deletion of clause (a), given that damage incurred as a result of the Canterbury earthquakes of 2010 and 2011 including the costs of repair and reconstruction, should remain a relevant matter for consideration.

- 89 For ease of reference, the original matter of discretion was:

The nature and extent of damage incurred as a result of the Canterbury earthquakes of 2010 and 2011 including the costs of repair and reconstruction.

- 90 The submissions identify that there are a number of heritage buildings in Christchurch which are still in a state of disrepair and are significantly damaged as a result of the Canterbury earthquakes. The submissions consider that it is premature to remove this matter of discretion which sensibly provides specific guidance for heritage buildings that have been earthquake-damaged. For the reasons discussed below, I agree with the submitter's concerns.

- 91 In considering this submission point, Ms Richmond notes¹² "*12 years on it is considered more relevant to take earthquake damage (from previous and future earthquakes) into account in the context of damage caused by natural events in matter f*".

- 92 The proposed replacement wording referenced by Ms Richmond is:

f. The extent to which the heritage fabric or heritage values have been damaged by natural events, weather and environmental factors and the necessity and practicality of work to prevent further deterioration.

- 93 She goes on to identify that:

There are approximately 32 scheduled heritage buildings on Christchurch City Council's Earthquake Prone Buildings register of

¹¹ Ibid, para. 8.1.102

¹² Ibid, para. 8.1.103

the 679 scheduled heritage items in the operative district plan. This represents 5% of the heritage schedule in Appendix 9.3.7.2 at 1 July 2023, noting that a number of protected heritage items are not buildings, a small number of buildings have been demolished or are due to be demolished, and this does not include the unrepaired buildings that are not classified as earthquake prone.

- 94 I have been unable to identify any reference in Council evidence to the number of earthquake damaged items that are not classified as earthquake prone to understand if this matter of discretion truly 'remains relevant for a small number of unrepaired buildings'. Notwithstanding the above, the Strategic Directions set out in Section 3.2 of the District Plan specifically references the impact of the Canterbury earthquakes, as does the heritage Objective and the Policy on demolition discussed above. I therefore consider it remains appropriate to retain the operative matter of discretion 9.3.6.1(a), particularly in light of the fact no evidence on the potentially affected number of properties appears to be available.
- 95 I consider that the operative matter of discretion 9.3.6.1(a) and the proposed matter of discretion 9.3.6.1(f) could both be incorporated without conflict, and that this approach would more appropriately provide for the relevant discretion to be applied to both owners of heritage items damaged in the Canterbury earthquakes, and for potential future scenarios where heritage items have been damaged by natural events, weather and environmental factors.

An alternative approach to de-listing badly damaged buildings

- 96 Daresbury was a further submitter in support of the submission of Ceres New Zealand (#150.16), which requested that the listed building schedule be amended to identify significantly damaged heritage items which face substantial challenges to their ongoing restoration and economic reuse. In short, an additional column could be added to the schedule of listed items to identify those items that have sustained significant earthquake damage. This proposed approach simply enables the District Plan to appropriately recognise that the City has experienced a significant earthquake event with the consequence that a 'status quo' approach to scheduling is not appropriate for a discrete number of heritage items are not intact but instead are in a precarious condition that it is completely artificial to ignore or not acknowledge.
- 97 The Ceres submission also sought associated policy recognition for this situation along with a Restricted Discretionary demolition rule, and customised matters of discretion. My colleagues at Planz Consultants assisted in the preparation of the Ceres submission. While Ceres New Zealand has chosen not to produce evidence, I consider that the proposed amended schedule and associated policy

and rule package is a more appropriate way to achieve the purpose of the RMA than the status quo option preferred by Ms Richmond.

- 98 I note that my evidence focuses on providing an appropriate set of provisions for the demolition of the heritage items identified in the revised schedule. I consider that the operative provisions provide an appropriate consenting pathway for the assessment of any resource consent application to repair and reuse these items and a separate rule is not required.
- 99 In preparing the schedule and identifying those items that should be included on it, I acknowledge Ms Richmond comments that¹³ *“Council’s Heritage team is aware of the buildings which remain unrepaired and/or are included on the Council’s Earthquake Prone Buildings register”*. An associated footnote references approximately 32 scheduled heritage buildings on Council’s Earthquake Prone Buildings list.
- 100 At the time the IHP process was undertaken, many heritage buildings were still subject to insurance processes and had yet to have detailed engineering assessments undertaken due to the heavy demand on structural engineering firms in the years immediately following the earthquakes. The Operative Plan was therefore drafted in an environment where the extent of damage to many buildings was unknown and where aftershocks were an ongoing occurrence with the extent of damage continually changing.
- 101 With the benefit of time we now have a much-improved knowledge base of which buildings remain in a damaged and vacant state. The proposed amended schedule can therefore be specifically targeted to the discrete number of known buildings on Council’s list.
- 102 Ms Richmond considers¹⁴ *“that a separate schedule and rules for these significantly damaged buildings is not required, and such a schedule would become out of date, particularly in the event of a future earthquake”*. I disagree with this statement and note that existing heritage items, trees etc are already scheduled in the District Plan. These schedules are equally as exposed to changes in circumstances for specific items that could see them become out of date, especially were another large earthquake to occur. I therefore do not follow Ms Richmond’s logic on this point.
- 103 I have set out above my concerns with how the current policy and rule package functions, especially with the amendments proposed though PC13 (now PC14). Whilst the current provisions make reference to consideration of earthquake damage, this is not the same as now being in the position where a more considered

¹³ Ibid, para. 8.1.106

¹⁴ Ibid, para. 8.1.106

assessment of the heritage schedule, and appropriate acknowledgement of known significant damage to a discrete list of buildings can be undertaken.

- 104 I consider that a specific schedule, policy and associated rule, which focuses on a discrete and known number of heritage items that have remained in a state of disrepair since the Canterbury earthquakes would better give effect to Objective 9.3.2.1.1, which *"recognises the condition of buildings, particularly those that have suffered earthquake damage, and the effect of engineering and financial factors on the ability to retain, restore, and continue using them"*, and the overarching Strategic Directions in Chapter 3.
- 105 In considering an appropriate activity status, Ms Richmond states that¹⁵ *"Discretionary and Non-Complying activity status appropriate to allow the broadest possible assessment of relevant heritage and non-heritage factors specific to each building..."*. I am unclear what 'non-heritage' factors are relevant for a proposal to remove a significantly damaged heritage building. The District Plan already provides a restricted discretionary activity status for the demolition of the Christ Church Cathedral, which reflects the known factors associated with this building. The proposed schedule simply seeks to adopt a similar approach for other scheduled heritage items on Council's Earthquake Prone Buildings list.
- 106 If a restricted discretionary activity status was accepted, I note that care needs to be taken in specifying the matters over which the council restricts its discretion. I consider that 12 years on from the Canterbury earthquakes, the relevant matters of discretion when considering the effects of works to significantly damaged heritage items, are well understood. The recommended matters of discretion below also reflect those matters of discretion that would apply to a resource consent to demolish the Christ Church Cathedral. I further note that an application for a restricted discretionary activity can be notified or non-notified and can be declined or granted (with or without conditions).
- 107 If the Panel were minded to accept my recommendation on the new schedule and associated provisions, but considered Discretionary activity status was more appropriate then this could be easily provided for and would still, in my opinion, better achieve the intent of Objective 9.3.2.1.1 and the Strategic Directions contained in Chapter 3 that the option proposed by Council.
- 108 Ms Richmond concluded that *"a customised rule or matters of discretion are necessary for demolition of significantly damaged buildings, as the current provisions framework already adequately provides for this assessment"*. I consider that the section 32 test

¹⁵ Ibid, para.8.1.108

focuses on the most appropriate way to achieve the purpose of the RMA. When considered against the section 32 tests, I consider that the proposed amended schedule provides the most appropriate mechanism for responding to the specific circumstances of those known heritage items that have been significantly damaged by the Canterbury earthquakes and which remain in a state of disrepair. For the District Plan to ignore this reality and in effect treat all listed items as if they are all wholly intact is to design a Plan that simply does not reflect on-the-ground reality.

- 109 I provide an amended suite of provisions on this matter in **Appendix 1.**

CONCLUSION

- 110 Listing is a tool to achieve the District Plan's objectives. It is likewise a tool where the costs and benefits of the regulation must be clearly justified.
- 111 It is accepted that both Daresbury House and St James Church contained heritage value at the time they were listed.
- 112 Both buildings sustained significant damage in the Canterbury earthquake sequence and have been vacant ever since. It is accepted that whilst this damage must necessarily have reduced heritage values, the values that remain are likely to still meet the criteria for listing.
- 113 Section 32 does not however start and end with a 'tick box' exercise that heritage values are present. It instead requires a careful assessment of the effectiveness, efficiency, costs and benefits of the listing and associated regulation being clearly demonstrated.
- 114 The engineering reports identify significant repair work is required.
- 115 The quantity surveying reports identify that the costs of these works is substantial and that the end value of the buildings is markedly less than the costs of undertaking the repair works. Any restoration project must therefore result in a significant capital loss for the building owners.
- 116 There is no insurance money available for either building.
- 117 The likelihood of any grant funding being sufficient to make up the value shortfall for either building is remote.
- 118 For St James Church the building (even if restored) is of no functional use to CPT. Expenditure of significant funds on a heritage building that does not contribute to the core mission is not something that a responsible trustee would entertain.

- 119 The prospects of an alternative use that generates sufficient revenue to justify the restoration works is remote. There has been no interest in either building from third parties in the decade since the earthquakes.
- 120 The costs associated with retaining the listing on both buildings is significant. Council Officers appear to have largely disregarded these costs in their assessment.
- 121 There is no benefit in the listing for the owners. There is little benefit in the listing for the community given the remote prospect of restoration.
- 122 I therefore conclude that ongoing listing does not meet the tests of section 32.
- 123 In addition to seeking de-listing, the submitters have sought a series of amendments to the heritage policy and rule framework. In the main the amendments sought simply seek retention of the status quo provisions. I have identified where I agree with the relief sought in the submissions as a being a more effective and efficient means of achieving both the heritage Objective and ultimately the purpose of the RMA.
- 124 I have assessed as an alternative to complete de-listing a tailored response to ensuring that the listed schedule appropriately reflects the on-the-ground reality that there are a discrete number of known badly damaged heritage buildings. It is artificial for this current state to not be reflected in the District Plan provisions. Given that these buildings have remained derelict for over a decade, the restoration prospects of many of them must be slim. A restricted discretionary consenting pathway for assessing demolition is considered to be more appropriate than the status quo provisions which were drafted during a time of significant uncertainty as to the condition of individual buildings.
- 125 I therefore recommend that the relief sought by Daresbury and CPT, as amended through the above discussion, be accepted.

Jonathan Cleese

20 September 2023

Appendix 1. Recommended text amendments (shown in red)

Proposed Provisions

9.3.2.2.8 Policy – Demolition of heritage items

- a. When considering the appropriateness of the demolition of a heritage item scheduled in Appendix 9.3.7.2, or Appendix 9.3.7.2a or a defining building or contributory building in a heritage area scheduled in Appendix 9.3.7.3, have regard to the following matters:
 - i. whether there is a threat to life and/or property for which interim protection measures would not remove that threat;
 - ii. whether the extent of the work required to retain and/or repair the heritage item or building is of such a scale that the heritage values and integrity of the heritage item or building would be significantly compromised, ~~and the heritage item would no longer meet the criteria for scheduling in Policy 9.3.2.2.1;~~
 - iii. whether the costs to retain the heritage item or building (particularly as a result of damage) would be unreasonable;
 - iv. the ability to retain the overall heritage values and significance of the heritage item or building through a reduced degree of demolition; ~~and~~
 - v. the level of significance of the heritage item; and
 - vi. whether the heritage item is scheduled in Appendix 9.3.7.2a.

9.3.4.1.3 Restricted discretionary activities

RD9 Demolition of a heritage item scheduled in Appendix 9.3.7.2a.

The Council's discretion shall be limited to the following matters:

- a. Matters of discretion for demolition of items scheduled in Appendix 9.3.7.2a

9.3.6.7 Demolition of items scheduled in Appendix 9.3.7.2a

- a. Whether the engineering requirements and associated costs of retaining the heritage item in whole or in part are unreasonable.
- b. Whether there is a threat to life and/or property as a result of the condition of the building.
- c. Where demolition of the whole or a substantial part of building is proposed, whether resource consent has been applied for and/or has been granted for a replacement building.
- d. The methodology for demolition including the phasing of the works, heritage fabric to be retained, and how any heritage fabric to be retained is to be stored.

Any mitigation measures, such as installation of interpretative panels on the site that identify the history and significance of the heritage item, and may include. photographs, text and architectural plans of the building.