

IN THE MATTER OF section 71 of the Canterbury Earthquake Recovery Act 2011 and the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014

AND

IN THE MATTER OF proposals notified for incorporation into a Christchurch Replacement District Plan

Date of hearing: 18–25 January and 2–10 February 2016

Date of decision: 12 July 2016

Hearing Panel: Hon Sir John Hansen (Chair), Environment Judge John Hassan (Deputy Chair), Ms Sarah Dawson, Dr Phil Mitchell, Ms Jane Huria

DECISION 27

CHAPTER 9: NATURAL AND CULTURAL HERITAGE

Topic 9.3 — Historic Heritage

in relation to a submission by Tailorspace Property Limited

Outcome: Remove the former Public Trust Building (Heritage Item 414 and associated Setting 317) from Chapter 9.3 Historic Heritage Appendix 9.3.6.1.3

COUNSEL APPEARANCES

Mr M Conway and Mr Z Fargher	Christchurch City Council
Ms J Appleyard	Tailorspace Property Limited

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INTRODUCTION

Preliminary matters

[1] This decision follows our hearing of submissions and evidence on Chapter 9 Natural and Cultural Heritage.

[2] This decision, relating to a single submission filed on the Chapter 9 Natural and Cultural Heritage (Topic 9.3 Historic Heritage) proposal by Tailorspace Property Limited (3718, FS5054) (‘Tailorspace’), is released ahead of the full decision on the Chapter 9 Natural and Cultural Heritage (Topic 9.3 Historic Heritage) proposal (‘Principal Decision’) due to matters of commercial sensitivity. The Christchurch City Council (‘the Council/CCC’) agrees with Tailorspace that this decision can be released ahead of the full decision provided CCC’s closing submissions are considered. We have, of course, considered CCC’s closing legal submissions.

[3] In this decision, the phrase ‘Notified Version’ describes the version notified by the Council and to which, subsequent to consideration of submissions and conferencing, a number of changes were made. This was then ultimately produced in closing by the CCC as a red-line version (‘Revised Version’).¹

[4] This decision follows our hearing of submissions and evidence. Further background on the review process, pursuant to the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 (‘the OIC’/‘the Order’) is set out in the introduction to Decision 1, concerning Strategic Directions and Strategic Outcomes (and relevant definitions) (‘Strategic Directions decision’).²

Rights of appeal

[5] Under the OIC,³ any person who made a submission (and/or further submission) on the Notified Version, the Council and the Ministers⁴ may appeal our decision to the High Court (within the 20 working day time limit specified in the Order), but only on questions of law (and, for a submitter, only in relation to matters raised in the submission).

¹ Closing legal submissions of the Council, 17 June 2016, Appendix B.

² Strategic Directions and Strategic Outcomes (and relevant definitions), 26 February 2015.

³ Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014, cl 19.

⁴ The Minister for Canterbury Earthquake Recovery and the Minister for the Environment, acting jointly.

Identification of parts of existing district plans to be replaced

[6] The OIC requires that our decision also identifies the parts of the Existing Plan to be replaced by the Decision Version.⁵ For the purposes of this decision, the reference to the former Public Trust Building in the Christchurch District Plan Volume 3 Part 10, Appendix 1 is to be deleted.

Conflicts of interest

[7] We have posted notice of any potential conflicts of interest on the Independent Hearings Panel website.⁶ No party raised any issue.

Statutory framework and higher order documents

[8] The OIC directs that we hold hearings on submissions concerning proposals, and make decisions on those proposals.⁷ It sets out what we must and may consider in making that decision.⁸ It qualifies how the Resource Management Act 1991 ('RMA') is to apply and modifies some of the RMA's provisions, both as to our decision-making criteria and processes.⁹ It directs us to comply with s 23 of the Canterbury Earthquake Recovery Act 2011 ('CER Act').¹⁰ The OIC also specifies additional matters for our consideration.

[9] Our Strategic Directions decision, which was not appealed, summarised the statutory framework for that decision. As it is materially the same for this decision, we apply the analysis we gave of that framework in that decision as we address various issues in this decision.¹¹ On the requirements of ss 32 and 32AA RMA, we endorse and adopt [48]–[54] of our Natural Hazards decision.¹²

⁵ Known as the Christchurch City District Plan and Banks Peninsula District Plan.

⁶ The website address is www.chchplan.ihp.govt.nz.

⁷ OIC, cl 12(1).

⁸ OIC, cl 14(1).

⁹ OIC, cl 5.

¹⁰ Our decision does not set out the text of various statutory provisions it refers to, as this would significantly lengthen it. However, the electronic version of our decision includes hyperlinks to the New Zealand Legislation website. By clicking the hyperlink, you will be taken to the section referred to on that website. The repeal of the CER Act by the Greater Christchurch Regeneration Act 2016 ('GCRA') does not materially alter that position. That is because s 147 of the GCRA provides that the OIC continues in force. Further, Schedule 1 of the GCRA (setting out transitional, savings and related provisions) specifies, in cl 10, that nothing in that Part affects or limits the application of the Interpretation Act which, in turn, provides that the OIC continues in force under the now-repealed CER Act (s 20) and preserves our related duties (s 17).

¹¹ At [25]–[28] and [40]–[62].

¹² Natural Hazards (Part) (and relevant definitions and associated planning maps), 17 July 2015, pages 20-21.

Tailorspace submission

[10] Tailorspace is the owner of the commercial building at 152 Oxford Terrace, formerly known as the Public Trust building. The building and setting is listed in the Notified Version, Appendix 9.3.6.1.3 as a Group 1 ‘High Significance’ item. Demolition of the building is a non-complying activity.

[11] Tailorspace seeks that:

- (a) The building is removed from the list of historic heritage buildings in Appendix 9.3.6.1.3; and/or
- (b) The demolition of the building (and earthquake damaged heritage items more generally) is a controlled activity. If controlled activity status were to be accepted, Tailorspace seeks the removal of the ‘heritage setting’ overlay on planning maps, so that the matters for control are limited to the loss of the building; and/or
- (c) The demolition of the building is a restricted discretionary activity, with the assessment matters being limited to factors relevant to the demolition of the building and the extent of earthquake damage.

[12] Tailorspace also made a number of drafting suggestions to objectives and policies to address recovery, the extent of earthquake damage and engineering and financial costs associated with repair and maintenance of heritage buildings. This decision leaves determination of those matters aside.

[13] Following the hearing, the Panel took the unusual step of issuing a Minute recording its observations based on the tested evidence (the Minute).¹³ This was in response to an acknowledgement from Mr Matheson, Team Leader District Plan (Strategy and Planning), that this would assist parties to go away and draft the provisions in light of that indication. We recorded that those observations were by their nature preliminary, particularly in light of the fact we had not heard closing legal submissions. In relation to the Public Trust building we concluded on the tested evidence that:

¹³ Hearing Panel Minute Regarding Topics 9.1-9.5, 22 February 2016

The Panel's preliminary view on the evidence is that the proposed listing for the Public Trust building should be uplifted in its entirety.

[14] Throughout the hearing, the position of the Council regarding the listing of the building was not clear. Council witnesses Mr Andrew Marriott, a structural engineer, and Ms Jackie Gillies, a conservation architect,¹⁴ accepted that the listing of the whole building was not justified in light of the extent of earthquake damage and engineering considerations.¹⁵ Ms Jennifer May, an architectural historian,¹⁶ and Ms Caroline Rachlin, the Council's planning witness, maintained the view that the heritage significance of the building justified its listing.¹⁷ The Council's final position, confirmed in closing legal submissions, was that the façade should be listed, and that demolition of the façade should be a restricted discretionary activity. The Council maintained the position that recognition of the heritage setting should remain in place.

[15] In closing submissions Tailorspace opposed the listing of the façade on the basis that repair and retention of the façade was uneconomic and that such repairs would diminish any remaining heritage fabric to the extent listing was not appropriate. Tailorspace also sought an amendment to Policy 9.3.2.8 to include reference to whether demolition of the heritage item would enable and facilitate recovery from the impact of the Christchurch earthquakes. As noted, we leave aside matters relating to the final drafting of the provisions, until our Principal Decision.

[16] Following the filing of closing submissions, the Hearings Panel received a confidential memorandum from counsel for Tailorspace requesting that the Hearings Panel issue an early decision on the discrete matter of the listing of the building, in particular its façade.¹⁸ The reasons for confidentiality are set out in the memorandum. Tailorspace invited the Hearings Panel to consider whether or not the closing submissions from the Council have altered the Hearings Panel's preliminary view on the tested evidence that the building including the façade should not be listed.

¹⁴ Ms Gillies holds a BA in Architecture, a BArch and RIBA Part 3 from Liverpool University, and a Masters in Conservation Studies (Historic Buildings) from York University, both in the United Kingdom. She has 35 years' experience in architecture. Ms Gillies is a Registered Architect with the New Zealand Registered Architects' Board and a Fellow of the New Zealand Institute of Architects. Ms Gillies is a member of ICOMOS New Zealand.

¹⁵ Transcript, 1035, lines 6-14.

¹⁶ Ms May holds a BA and a BA (Hons First Class) from the University of Canterbury with a major in architectural history.

¹⁷ Transcript, page 785, lines 34-38 (May); and Transcript, page 975, lines 8-14 (Rachlin).

¹⁸ Memorandum of Counsel on behalf of Tailorspace Property Limited, 20 June 2016.

[17] The Council did not oppose the request for confidentiality or priority, but submitted that in order to make a determination on the issue of listing of the façade the Hearings Panel would need to specifically consider the appropriateness of the listing of the façade (rather than the whole building) in the context of the policy and rule framework that had been substantially amended since the Hearings Panel issued its Minute, in response to mediation that followed.¹⁹ The Council further submitted that a decision on the appropriateness of the scheduling of the façade will necessitate the Panel being in a position where it has considered the submissions of various submitters on the approach and wording of those provisions, including the Council's closing submissions on those matters at parts 4 to 7 in particular.

Confidentiality Order

[18] Pursuant to OIC, Schedule 3, cl 12(1)(b) and (2)(b), the Hearings Panel may make an order to prohibit or restrict the publication or communication of any information supplied to the Hearings Panel, in the course of the proceedings, on the basis that it is necessary to avoid unreasonable prejudice to the commercial position of the person supplying, or is subject of, the information. Before making an order, cl 12(3) requires that we are satisfied that in the circumstances of the particular case, the importance of avoiding prejudice outweighs the public interest in making that information available. Having considered the confidential memorandum and the Council's consent to its confidentiality, we are satisfied that the contents if made available, would unreasonably prejudice the commercial position of Tailorspace. We find the public interest in this matters is confined to the priority given to the Tailorspace, rather than the commercial information that is being requested to be protected. We are satisfied that in the circumstances outlined in the confidential memorandum that the importance of avoiding prejudice outweighs the public interest in making that information available. Accordingly we direct that the information contained in the confidential memorandum is to remain confidential until further Order of the Chair or Deputy Chair.

Listing of entire building

[19] We have determined on the evidence that the listing of the building, including the façade, as a Group 1 heritage building and setting, is not appropriate in the context of an evaluation

¹⁹ Memorandum on behalf of the Christchurch City Council — Response to confidential memorandum of counsel for Tailorspace Property Limited, 20 June 2016.

under s 32 of the RMA and the Higher Order Documents. We have considered the listing in the context of both the Notified Version and the Revised Version (as submitted in closing) of the pCRDP. We have not found it necessary to make a determination on the final wording of the objective, policies and rules in Chapter 9.3 before reaching that view, given our clear findings on the evidence before us. We will consider the provisions in more detail in our Principal Decision, including the remaining submission points raised by Tailorspace.

Heritage significance of the building

[20] It is not disputed that the former Public Trust building is of significant heritage value, both in terms of architectural heritage and social and cultural importance.²⁰ It is recognised in the Existing District Plan as a ‘Group 3’ listing²¹ and in the 1981 registration as a Category II classified building under the Historic Places Act 1993.²² The building was not afforded the highest level of protection prior to the earthquakes. Protection of the building was seen as important “where this can be reasonably achieved”.

[21] The building was opened in May 1925. It was designed by leading inter-war architect Cecil Wood, as commissioned for the Canterbury Branch of the Public Trust, an agency initially established in 1876 as associated with the colony’s financial and banking sector. The Public Trust vacated the building in 1987. The building underwent a substantial renovation including earthquake strengthening in 2009. Some heritage items were lost during that renovation. Most of the building (excluding the ground floor) was tenanted prior to the earthquakes.

[22] In the Notified Version the status of the building and setting was elevated to Group 1 ‘High Significance’. Demolition was a non-complying activity. In cross-examination it was revealed that the status of the building in the Notified Version was based on the recommendation of a Council Senior Heritage Planner, Ms Amanda Ohs,²³ who had overall

²⁰ Evidence in chief of Matt Bonis on behalf of Tailorspace at 12 and 32.

²¹ “Group 3 listed heritage items include buildings, places and objects which are of regional or metropolitan significance, the protection of which is seen as important where this can reasonably be achieved” — Christchurch District Plan, 3–10.1.1 Statement.

²² Heritage New Zealand Register. List number 3128. Category 1 historic places are of special or outstanding historical or cultural significance or value, Category 2 historic places are of historical or cultural significance or value. Section 65(4) Heritage New Zealand Pouhere Taonga Act 2014.

²³ Ms Ohs holds a BA with First Class Honours majoring in Art History from the University of Canterbury, and a Post Graduate Diploma in Cultural Heritage Management from Deakin University, Melbourne. Ms Ohs has 15 years’ experience in heritage conservation management and research. She is a member of ICOMOS New Zealand, and DOCOMOMO New Zealand.

responsibility for recommending the items for listing. Ms Ohs was not the author of the Statement of Significance. The author was not known. It is clear, however, that Ms Ohs did not consider the structural integrity of the building when making her recommendation, beyond the fact it was “still standing”, following the earthquakes.²⁴ At the time of notifying the pCRDP, the Council had not undertaken its own engineering assessment of the building following the earthquakes, did not request that information from Tailorspace, nor did it consider the costs of retaining the building, notwithstanding that CCC held a copy of the engineering report.²⁵ Further, the Council’s s 32 evaluation prepared for the Notified Version (original s 32 Report) did not address the individual building beyond the inclusion of a ‘Statement of Significance’ in Appendix 8.3 to that report. We addressed the inadequacies of the original s 32 Report in our Minute.²⁶

Damage caused by earthquakes

[23] The building suffered significant and widespread damage in the Canterbury earthquakes of 2010 and 2011. Tailorspace’s structural engineer, Mr Oldfield, gave evidence in relation to the extent of damage. He co-authored the building’s ‘Building Condition Risk Assessment Report’, prepared in November 2014, which assessed the condition of the building and addressed mitigation measures that were required to address the risk to public safety of the building in its post-earthquake condition.²⁷ His evidence was:²⁸

12.1 The building has been severely damaged by the Canterbury earthquake sequence. The damage includes extensive cracking to the masonry infill panels and concrete shear wall elements, shearing of spandrel beams and one column, cracking of the concrete diaphragm slabs, basement leaking, differential settlement of the North East section of the building and loss of water tightness.

12.2 The building is earthquake prone (in that it is less than 33% National Building Standard (NBS) and likely to collapse and / or partially collapse in a moderate earthquake). In fact the building has been assessed as being as low as 8% NBS (as associated with the longitudinal concrete shear walls).

12.3 The building is considered a dangerous building in that partial collapse / parts of the building can become dislodged and fall outside of a seismic event causing death and / or injury or damage to adjacent property.

²⁴ Transcript, page 816, lines 44–45.

²⁵ Transcript, pages 961–963.

²⁶ Minute 22 February 2016 at [13]–[19].

²⁷ Evidence in chief of Craig Oldfield on behalf of Tailorspace, Attachment A, ‘Building Condition Risk Assessment, 152 Oxford Terrace’, AECOM New Zealand Limited, 25 November 2014. Mr Oldfield also co-authored reports 152 Oxford Terrace Building Assessment – latest revision 1, issued on 16 December 2014, (Attachment B) and 152 Oxford Terrace – Façade Retention Investigation, (Attachment C).

²⁸ Evidence in chief of Mr Oldfield.

[24] Mr Oldfield explained that building's western façade is also significantly damaged:

26.1 Brickwork on front façade is severely damaged and I have recommended it be entirely removed and replaced;

26.2 Concrete columns show cracking, which is likely to be repairable;

26.3 Concrete beams have been severely damaged on all levels, with signs of complete or partial shear failures. The RC beams (which have suffered significant damage) act as both window lintels and transfer beams for the main floor slab these beams are visible as the decorative panels on the exterior frontage and require replacement;

26.4 Decorative external panels could be reinstated to match existing;

26.5 It may be prudent to partially deconstruct entire façade and remove the coat of arms and decorative wing columns to protect them from damage during demolition; and

26.6 Removal of infill brickwork and lintel beams would require significant propping for the remaining façade. The repair solutions are compatible with the proposed 34%, 67% and 100% NBS retrofit options. The brick infills would be replaced by lightweight alternatives.

[25] Two applications had been made by Tailorspace for a demolition order under s 38 of the CER Act, but these were declined. We understand the decision on the first application was said to be finely balanced and was declined due to insufficient information. The second application was declined in part due to heritage values, which the decision maker considered the proper place to test the need for demolition was through RMA processes.²⁹ Mr Oldfield accepted that the façade was repairable from an engineering perspective, however he was not able to comment on the heritage significance of the façade following the extensive repairs.³⁰

[26] The evidence of Mr Marriott, the Council's structural engineer, was:³¹

I agree that the existing structure with the exception of the street façade are damaged to a point where the heritage fabric would almost all be lost if the building was to be repaired. I therefore agree that demolishing and rebuilding the rear of the building (but not the façade) is an appropriate engineering solution.

[27] Ms Jenny May, the Council's independent architectural historian, who accepted the extent of earthquake damage, summarised the issue:³²

The question then arises, in terms of effects on heritage values, as to how this can be instated without destroying the level of integrity and authenticity in the building that

²⁹ Evidence in chief of Glenn Taylor on behalf of Tailorspace at 32-36.

³⁰ Evidence in chief of Mr Oldfield at 34.

³¹ Rebuttal evidence of Andrew Marriott on behalf of the Council at 3.2.

³² Evidence in chief of Jennifer May on behalf of the Council at 12.5.

would bring its heritage values below the thresholds for continued inclusion in the [proposed Replacement District Plan] list of heritage items.

[28] We would add, “and whether it is financially viable to do so”.

Costs of repair

[29] Mr Keeley Pomeroy, a quantity surveyor who gave evidence for Tailorspace, calculated the costs of the repair of the building to 34 per cent of the required New Building Standard (NBS) to be \$17.31 million; to 67 per cent, \$18.030 million; and to 100 per cent, \$19.7 million.³³ Mr Pomeroy also calculated the comparative ‘high level’ costs of constructing a modern equivalent building to be \$16.020 million and a heritage replica building to be \$19 million.³⁴ Mr Craig Armitage, an expert in commercial property finance, relying on Mr Pomeroy’s figures, undertook a calculation on a ‘gross realisation basis’, which took into account land value, holding costs and profit and risk outlay. Mr Armitage’s figures were for 67 per cent NBS, \$26.225 million; and repairs to 100 per cent, at \$28.35 million. On that basis Mr Armitage concluded that repairing the building to either 34, 67 or 100 per cent of NBS is uneconomic because it incurs a total cost which is greater than the consequential estimated market value of the building. Mr Armitage’s evidence was not challenged by the Council.

[30] Mr Scott Ansley, a registered valuer appearing for Tailorspace, confirmed Mr Armitage’s view that repairing the building was uneconomic. He also noted that even a new building on the site would likely be uneconomic, however, a development that incorporated additional sites owned by Tailorspace, along with possible amalgamation with other bare land within the block bounded by Oxford Terrace, Worcester Street and Hereford Street, would enable economies of scale and a more leasable proposition in the current market conditions. The Council’s valuation expert, Mr William Blake, did not disagree with Mr Ansley’s evidence. He confirmed that heritage listing would have at best a neutral effect on property values, but most likely a negative impact.³⁵

³³ Excluding GST, ‘soft strip costs’, asbestos removal and other costs. Evidence in chief of Keeley Pomeroy on behalf of Tailorspace at 10.

³⁴ Excluding GST, deep piling and other costs. Evidence in chief of Keeley Pomeroy at 14.

³⁵ Evidence in chief of William Blake on behalf of the Council, 2 December 2015.

Conclusion regarding listing of whole building

[31] We confirm our preliminary findings that the listing of the entire building is not supported by the tested and accepted evidence. We find that the repairs that would be necessary to reinstate the building would diminish the heritage values to such an extent that made delisting inevitable. We also find on the evidence that the required repairs to bring the building to 34, 67 or 100 per cent of NBS would be uneconomic.³⁶ We find that the inclusion of the building and setting as a Group 1 ‘High Significance’ item in the Notified Version failed to consider the integrity of the building post-earthquake, the required repairs to reinstate the building, and the costs of doing so.

[32] Ms Rachlin emphasised that the preparation of the pCRDP had been done under a short timeframe and that she had, since notification, considered submissions, submitter evidence and the outcome of mediation, and taken into account the engineering and costing aspects for each building. We find it difficult to reconcile that view with her evidence that, notwithstanding the uncontested engineering and financial factors, listing of the building was appropriate. We find that view was not supported by the weight of the Council’s own technical evidence, let alone an evaluation under s 32 or in terms of the Higher Order Documents. We reject Ms Rachlin’s evidence and confirm our preliminary view that the building should not be listed.

Listing of façade only

[33] Notwithstanding our preliminary findings, the Council’s position in closing was that the façade and setting should still be listed, but as a Group 2 heritage item, with demolition being categorised as a ‘restricted discretionary activity’. The Council relies on “expert heritage evidence” that the west façade of the building warrants scheduling.³⁷ The Council produced an updated Statement of Significance (updated Statement), the author of which is unknown, dated 13 April 2016, which was provided to the Panel on 20 April 2016.

[34] Following our Minute, and further mediation, the Council significantly modified the Revised Version of Chapter 9.3. Revised Policy 9.3.2.1 sets out how buildings are to be assessed for listing. In response to the concerns expressed in our Minute, the Council has accepted that the criteria for listing a heritage building ought to also include engineering and

³⁶ ‘Uneconomic’ is used in its plain and ordinary sense.

³⁷ Closing submissions for the Council — 9.3 Historic Heritage, 17 June 2015, at 6.67.

financial factors. The Council relies on the Revised Version as supporting the listing of the façade. Revised Objective 9.3.1 and Policy 9.3.2.1 provides:³⁸

9.3.1 Objective — Historic heritage

The contribution of historic heritage to the district's character and identity is maintained through the protection and conservation of significant historic heritage in a way which:

- a. Enables and supports the ongoing use and adaptive re-use of historic heritage; and
- b. Facilitates the retention, repair, and reconstruction of damaged heritage items; and
- c. Takes into account 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.

9.3.2.1 Policy — Identification and Assessment of Historic heritage places for Scheduling in the District Plan

- a. Identify historic heritage places which represent cultural and historic themes and activities of importance to the district, and assess them for significance according to the following:

- i. Historical and social value:

Historical and social values that demonstrate or are associated with: a particular person, group, organisation, institution, event, phase or activity; the continuity and/or change of a phase or activity; social, historical, traditional, economic, political or other patterns;

- ii. Cultural and spiritual value:

Cultural and spiritual values that demonstrate or are associated with the distinctive characteristics of a way of life, philosophy, tradition, religion, or other belief, including: the symbolic or commemorative value of the place; significance to Tangata Whenua; and/or associations with an identifiable group and esteemed by this group for its cultural values;

- iii. Architectural and aesthetic value:

Architectural and aesthetic values that demonstrate or are associated with: a particular style, period or designer, design values, form, scale, colour, texture and material of the place;

- iv. Technological and craftsmanship value:

Technological and craftsmanship values that demonstrate or are associated with: the nature and use of materials, finishes and/or technological or constructional methods which were innovative, or of notable quality for the period;

³⁸ This decision does not decide the final drafting of Objective 9.3.1 and the associated policies. These will be the subject of our Principal Decision in due course.

v. Contextual value:

Contextual values that demonstrate or are associated with: a relationship to the environment (constructed and natural), a landscape, setting, group, precinct or streetscape; a degree of consistency in terms of type, scale, form, materials, texture, colour, style and/or detail; recognised landmarks and landscape which are recognised and contribute to the unique identity of the environment; and

vi. Archaeological and scientific significance value;

Archaeological or scientific values that demonstrate or are associated with: the potential to provide information through physical or scientific evidence an understanding about social historical, cultural, spiritual, technological or other values of past events, activities, structures or people; and

b. Assess whether the historic heritage place has met a level of either ‘Significant’ or High Significance, through assessing it against the following:

i. To meet the level of Significant (Group 2) the historic heritage place must:

- A. Meet at least one of the values under Policy 9.3.2.1 (a)(i)-(vi) at a significant or high level; and
- B. Be of significance to the Christchurch District (and may also be of significance nationally or internationally), because it conveys aspects of the district’s contextual/thematic development, and thereby contributes to the district's sense of place and identity; and
- C. Have a moderate degree of authenticity (based on physical and documentary evidence) to justify that it is of significance to the district; and
- D. Have a moderate degree of integrity (based on how whole or intact it is) to clearly demonstrate that it is of significance to the district.

ii. To meet High Significance (Group 1) the historic heritage place must:

- A. Meet at least one criterion of the values under (a)(i)- (vi) above at a high level; and
- B. Be of significance to the Christchurch District (and may also be of significance nationally or internationally), because it conveys important aspects of the district's contextual/thematic development, and thereby makes a strong contribution to the district’s sense of place and identity, and
- C. Have a high degree of authenticity (based on physical and documentary evidence); and
- D. Have a high degree of integrity (particularly whole or intact heritage fabric and heritage values).

- c. Schedule significant historic heritage places as heritage items and heritage settings where:
- (i) The thresholds for Significant (Group 2) or High Significance (Group 1), are met as outlined in 9.3.2.1b; and
 - (ii) The physical condition of the heritage item, and any necessary retention, repairs or reinstatement work would not significantly compromise the heritage values and integrity of the heritage item to the extent that it would no longer retain its heritage significance; unless
 - (iii) Any engineering and financial factors are identified that would make it unreasonable to schedule the heritage item.
- d. Schedule the interiors of heritage items only to the extent that the interior heritage fabric of those heritage items contributes to the significance of the heritage item and has been clearly identified in the schedule. We return to our assessment of the listing of the façade as against the Revised Version below, following consideration of the evidence.

Heritage significance of the façade

[35] Ms May and Ms Gillies were of the view that whilst façade retention or “façadism” is not generally a preferred or accepted heritage conservation outcome, post the Christchurch earthquake this has become a more acceptable approach to retaining some heritage values. Ms May was of the opinion that:³⁹

In particular this retains the contextual values, a sense of place and enough tangible evidence through façadism to support an understanding of the intangible heritage values associated with the building.

[36] Ms May indicated she could support such an approach, however, she recommended that a careful reassessment would be required under the Council’s assessment of significance thresholds to establish if there was “enough heritage value remaining for the building in a new form that only retained the façade.” We understood Ms May’s evidence to favour listing of the entire building so as to enable the option of façade retention to be reassessed at resource consent stage. Ms May did not undertake reassessment of heritage significance of the façade as part of her evidence.

[37] In response to the updated statement, Ms Appleyard submitted that:⁴⁰

It states this assessment is based “on information available at the time of writing”. It does not state what the information is. The author of the document is not identified.

³⁹ Evidence in chief of Ms May at 12.8.

⁴⁰ Closing submissions for Tailorspace at 8.6.

No Council witness produced it nor been cross-examined on it and significant natural justice issues arise if the Panel is to place any weight on it at all.

[38] Although we share Ms Appleyard’s concern, we have compared the updated Statement with that prepared for the entire building.⁴¹ We observe that it restates those parts of the original Statement of Significance that related to the façade. The updated Statement has downgraded the significance from ‘high significance’ for the whole building to ‘significant’, for the façade. The updated Statement does not address engineering and financial factors. That is because the updated Statement only accounts for the identification of historic heritage and assessment of heritage significance, which is part of the first step to listing.⁴² There is nothing in the updated Statement that shows that it takes into account the physical condition of the façade post-earthquake, and whether any necessary retention, repairs or reinstatement work would compromise heritage values and integrity of the façade to the extent it would no longer retain its heritage significance. It is not prima facie the “careful reassessment” that Ms May indicated was required in order to determine if there was “enough heritage value remaining for the building in a new form that only retained the façade.”⁴³

[39] We do not know if Ms May has contributed to the Statement or its review. In short, the updated Statement is only part of the information that forms the basis of an assessment of whether the façade meets the thresholds for listing. Mr Conway responded to our criticism of the lack of accountability as to the preparation of the Statements of Significance in his closing, noting that they were a product of a collaborative effort of suitably qualified heritage experts.⁴⁴ We disagree with Mr Conway’s submission in that regard. In our view the approach adopted for the preparation and presentation of the Statements of Significance, in particular their collective ownership, in fact demonstrates a lack of proper application of expert input, inputs from those not necessarily responsible, and is not compliant with the Expert Code of Conduct. Where the Council is purporting to rely on ‘expert heritage evidence’ to support the listing of the façade, we would have expected that the relevant experts would have been identified. The weight to be given to the updated Statement is limited for the reasons stated by Ms Appleyard.

⁴¹ Section 32 Assessment, Appendix 8.3 July 2015.

⁴² See Revised Policy 9.3.2.1(a) and the Panel’s preliminary findings in the Minute at [23]–[30].

⁴³ Evidence in chief of Ms May at 12.9.

⁴⁴ Closing submissions for the Council at 11.1–11.7.

Engineering feasibility of façade retention

[40] Mr Oldfield gave evidence regarding engineering methods that would need to be applied to repair and retain the façade. These included substantial deconstruction and removal of heritage items to prevent their damage during the demolition of the structure behind the façade. Mr Oldfield noted that the feasibility for repair methods was still uncertain, given the risk that once deconstruction occurred, “...things may be very different to what you expect them to be, which requires a different engineering solution.”⁴⁵

[41] Mr Marriott was of the opinion that the degree of deconstruction proposed by Mr Oldfield would not be required. Mr Marriott’s view was that a number of heritage items, such as the decorative panels, coat of arms and decorative wind columns should not be removed because they could be damaged during removal. He was of the opinion they should be protected whilst remaining in place.⁴⁶

[42] We accept Mr Oldfield’s evidence that there is considerable risk that the heritage items may be damaged during demolition of the rear of the building and that there are additional costs involved in leaving the items in situ. We have also considered the risk of their damage during removal. We accept Mr Oldfield’s approach, given his more detailed knowledge of the state of the building. We consider it would be more appropriate that the risk of damage to those items is able to be mitigated through removal of those items during demolition, if the façade were to be retained.

Cost of retaining the façade

[43] Mr Keeley Pomeroy, a quantity surveyor who gave evidence for Tailorspace, estimated the cost of retaining the building’s façade, should the building be demolished and a new one constructed, to be \$2.35 million in addition to the cost of construction of a new building. That figure did not reflect the significant costs that would be added to the demolition of the existing building caused by having to work around the façade.⁴⁷ Mr Stanley, the Council’s quantity surveyor, generally concurred with Mr Pomeroy’s estimate, however he noted that it was not as simple as adding the cost of façade retention, as that did not take account of the cost of a

⁴⁵ Transcript, page 720, lines 4–14.

⁴⁶ Transcript, page 771, lines 12–15.

⁴⁷ Evidence in chief of Mr Pomeroy, 11 December 2015, at 17.

new façade in a development project. Mr Stanley estimated the cost of a new façade to be between \$445,000 and \$742,000, excluding GST.⁴⁸

[44] We accept on the evidence before us that the minimum estimated cost of retaining the façade is likely to be in the order of \$2.35 million. However, when estimating the cost of a new development, with or without retaining the façade, it is appropriate to take into account the ‘cost saving’ of not having to build a new façade. We find that there remains an estimated additional cost which is subject to considerable uncertainty. We have accepted for the purposes of our evaluation, taking into account the various uncertainties, the cost of retaining the façade could still be in the order of \$2 million, which is still significant.

[45] Ms Gillies said during cross-examination that there may be heritage funding available from the Council’s Central City Heritage Landmarks Grant programme, to assist with the retention of the façade and a sum in the order of one million dollars could be available ‘to close the gap’. It was later clarified that the availability of any grant would require a formal application.⁴⁹

[46] Mr Glenn Taylor, the General Manager of Tailorspace, addressed the viability of retaining the façade, including the functional considerations that arise through façade retention. Mr Taylor’s evidence was that the façade would need to be lowered to street level to provide a connection for hospitality use between Oxford Terrace and the building. Mr Taylor said that the lack of connectivity with the street was a key reason why the ground floor of the building had not been leased between 2009 and 2011. He was also emphatic that Tailorspace would not proceed with the construction of a new building on the site that includes a condition requiring façade retention.⁵⁰ Mr Taylor’s evidence was that demolition would better enable Tailorspace to work alongside the owners of adjoining bare land to achieve a collaborative development. Mr Taylor was of the view that this would enable a strong connection between the retail precinct and proposed convention centre adjoining the Avon River, which was consistent with the Central City Recovery Plan.

[47] Mr Taylor also indicated that Tailorspace was unlikely to apply for a heritage grant due to the likely restrictions affecting the development and use of the building, which would add

⁴⁸ Transcript, page 871, lines 6–26.

⁴⁹ Transcript, page 1133, line 22.

⁵⁰ Transcript, pages 1398-1399.

another constraint, and therefore cost, in addition to the functional difficulties arising from façade retention.

[48] We record that Ms Gillies offered an alternative ‘design’ to incorporate the façade, as part of her rebuttal evidence, to counter Mr Taylor’s concerns about the inability to lease the ground floor without lowering façade to street level. Ms Gillies, although holding architectural qualifications, had not sought the views of Mr Marriott regarding engineering feasibility, nor of Ms May in relation to impacts on heritage values, nor had she considered the cost of her proposal.⁵¹ We did not find her suggestions to be sufficiently developed to add value to our inquiry.

Section 32 and 32AA evaluation

[49] Mr Matthew Bonis, Tailorspace’s planning witness, was of the opinion that listing the façade is finely balanced.⁵² We disagree, the Hearings Panel does not share Mr Bonis’s view in that regard. We go on to reiterate that, on our view of the evidence, the matter is not finely balanced at all but overwhelming on the evidence, in favour of delisting. In Mr Bonis’s opinion the planning approach to establishing the heritage schedule does not stop where a heritage advisor identifies that a building, place or object had significance. We agree. The broader statutory framework of the RMA and OIC requires that we also consider matters of public safety, engineering feasibility, financial costs and the overall efficiency and effectiveness of provisions. We must also undertake our evaluation through the wider recovery ‘lens’ as required by the Higher Order Documents. Mr Bonis undertook that evaluation in his evidence and was of the opinion that a complete delisting is more appropriate.

[50] The Council’s planning witness, Ms Rachlin, maintained throughout the hearing that the whole building should be listed. This was notwithstanding the concessions of Mr Marriott and Ms Gillies that listing should apply only to the façade. Ms Rachlin was prepared to accept that the resource consent requirements for demolition of the building, excluding the retention of the façade, could be a ‘controlled activity’. She maintained that façade retention was “a viable solution” and demolition of the façade should remain a ‘non-complying activity’.⁵³ Ms Rachlin did not set out an evaluation of the listing of the façade as against the Higher Order Documents

⁵¹ Transcript, page 1037.

⁵² Evidence in chief of Mr Bonis at [103] and Transcript, pages 1422-1433.

⁵³ Rebuttal evidence of Caroline Rachlin on behalf of the Council at 15.25.

to support her opinion. Ms Rachlin appeared to have relied on the original s 32 Report, which, as we recorded in our Minute, suffered from a number of flaws.⁵⁴ We accept the planning evidence of Mr Bonis and not that of Ms Rachlin.

[51] In undertaking our evaluation for the purposes of s 32AA we have considered the Council's updated s 32 Report provided with closing legal submissions. The updated report includes changes to reflect the Revised Version. It does not include specific analysis of the listing of the façade, beyond the updated Statement. We will address the updated Report in our Principal Decision. We have undertaken our evaluation as against the settled Strategic Directions Objectives, and we have considered also the Revised Objective 9.3.1 on a preliminary basis, subject to final drafting. We are satisfied that the Revised Objective and Policies respond to our Minute and better reflect the obligations in ss 5 and 6(f) of the RMA, and give effect to Chapter 13 of the CRPS. Our evaluation of the appropriateness of the Revised Version will be addressed fully in our Principal Decision.

Alternatives

[52] Although the listing of the façade and a requirement for resource consent for demolition is an alternative method of achieving the Strategic Directions Objective 3.3.9 and Revised Heritage Objective 9.3.1, it is not the most appropriate method, having regard to the evidence before us. In this case we have clear evidence that engineering and financial factors would make retention of the façade uneconomic. A resource consent path in the circumstances would not achieve the Strategic Directions Objectives 3.3.1 and 3.3.2 which have pre-eminence.

Effectiveness and efficiency of achieving the objectives

[53] We have considered the extent to which the listing of the façade and the consequential consenting requirements are effective and efficient in achieving the Strategic Directions and the Revised Objective 9.3.1. In making our evaluation we have considered the benefits and costs as required by RMA s 32(2)(a)-(c).

[54] We find that a requirement to 're-test' the tested evidence or delay a decision to enable demolition to a resource consent process is both inefficient and ineffective. Given we have the

⁵⁴ Minute at [9]-[19].

necessary information before us, we are able to determine listing of the façade is not the most appropriate method of achieving the Strategic Directions Objectives.

Costs and benefits

[55] Mr Michael Copeland,⁵⁵ an economist called by Tailorspace, and Dr Douglas Fairgray,⁵⁶ an economist who gave evidence for the Council, agreed that the measurement and quantification of heritage benefits can be contentious and difficult.

[56] Mr Copeland was of the view that the financial implications set out in the evidence of Mr Taylor are indicative of the economic costs of retaining the façade. Mr Copeland cautioned that treating economic externalities from heritage preservation of the building as an ‘economic benefit’ could lead to a double-counting of the heritage protection benefits assessed by the non-economist witnesses. Mr Copeland’s evidence was that he was not aware of any specific analysis undertaken to estimate economic externality benefits in relation to the building, and as such he believed:⁵⁷

... it is necessary for the Panel to “trade off” the net economic benefits as indicated by the commercial analysis reported in the evidence of Glenn Taylor with the extent of any heritage protection benefits based on the evidence of non-economist witnesses. In the absence of reliable economic externality benefit data it is not possible to combine economic and non-economic effects in a single economic evaluation framework.

[57] Dr Fairgray’s evidence included reference to benefits of heritage protection, and some examples of where heritage protection derived ‘economic benefits’.⁵⁸ He did not produce any evidence that demonstrated that such benefits apply to the Public Trust building or its façade. Dr Fairgray identified the costs of heritage listing, including compliance costs, lost development opportunity costs and efficiency costs. We also heard evidence from Mr Brian Vincent, an adjoining land owner, of the additional cost and uncertainty imposed by the status quo to other land owners.⁵⁹ There is also no evidence before us to suggest that retaining the façade will result in increased business profits and more efficient use of labour and other resources as a consequence of increased business activity in Christchurch City.

⁵⁵ Mr Copeland holds a Bachelor of Science degree in mathematics and a Master of Commerce degree in economics

⁵⁶ Dr Fairgray has a PhD in geography from the University of Auckland, and is a principal of Market Economics Limited, an independent research consultancy..

⁵⁷ Evidence in chief of Michael Copeland on behalf of Tailorspace at 40.

⁵⁸ Evidence in chief of Douglas Fairgray on behalf of Tailorspace at 6.5.

⁵⁹ Evidence in chief of Brian Vincent on behalf of Tailorspace, 10 December 2015.

[58] We have considered the benefits of retaining the façade. The heritage experts agree that façade retention is not the optimum outcome from heritage protection perspective, but in the context of post-earthquake Christchurch, façade retention can be a small reminder of the past, albeit the extent of that benefit is subjective.⁶⁰ Ms Gillies also accepted that over time, future generations may have a different view as to the value of retaining the façade:⁶¹

JUDGE HASSAN: Subjectively do you not think it is possible that over time a quality building which paid respect to that identity in this area might be judged as more valuable to the community, than façade-ism of this kind?

MS GILLIES: It is possible. I think it would take a long time. I also fear that once -
- -

JUDGE HASSAN: The perspective we have of course is present and future generations, and this goes back some time into history, does it not?

MS GILLIES: Yes.

JUDGE HASSAN: So we do have and should see things in heritage terms over quite a period of time, should we not?

MS GILLIES: Yes.

JUDGE HASSAN: All right, so do you want to complete your answer. I suppose my subjective perspective is that a quality design in that area, perhaps paying respect to identity in some way in that area, might be a better outcome for the community than tokenism or façade-ism.

MS GILLIES: It might be. However, I go back to my statement about the huge loss of heritage in Christchurch, and that while a new building may gain the same status of good design for its time, in fact a lot of good design will have some kind of heritage listing in 20, 25, 50 years too. But this is slightly different in that it is not just identity it is memory, and I feel that there is potentially too much loss of those memories of what Christchurch used to be.

[59] In making our evaluation as to the efficiency and effectiveness of listing the façade and leaving demolition to a further resource consenting processes or delisting, we have considered the costs associated with retention, as outlined in the evidence of Mr Taylor, Mr Pomeroy, Mr Ansley and in the analysis of Mr Copeland. We have weighed the costs against the intangible ‘subjective’ benefits of heritage protection of the façade. In this instance we find the costs outweigh the benefits that the listing of the façade and consequential requirements for resource consent may bring, and that listing of the façade is an inefficient and ineffective method of achieving the Strategic Directions.

⁶⁰ Transcript, page 1036, lines 13–24.

⁶¹ Transcript, page 1050, lines 15–45.

Risk of acting or not acting on the basis of the information before us

[60] We have considered the risk of delisting now, and thereby enabling demolition without further resource consent, as against leaving a decision to demolish the façade to a later resource consent process. We find that we have sufficient information before us to conclude that listing is not warranted, and further that there would be a case for demolition if left to a resource consent process at a later stage. We have considered whether the availability of a Heritage Grant would alter that view. We accept the evidence of Mr Taylor that it is reasonable for the landowner not to pursue that option given the uncertainty that such a grant would be forthcoming and the constraints on redevelopment that would likely be imposed. We find that the costs of delay and uncertainty to Tailorspace and adjoining landowners, and the consequential impediment to recovery, outweigh any benefit that might accrue from listing the façade.

Revised Version

[61] In reaching our decision on the appropriateness of the listing of the façade we have also considered the Council’s Revised Proposal for Policies 9.3.2.1 and 9.3.2.8 and Assessment Matters 9.3.5.2(f)–(j) with the caveat noted. We acknowledge that not all matters have been resolved and that there are submissions, including from Tailorspace, seeking further refinement of those provisions which we will address in due course.

[62] Policy 9.3.2.1 now sets out the steps to including an item in the schedule and distinguishes between:

- (a) The identification and assessment of heritage significance;
- (b) The assessment of whether the significance is ‘high significance’ or ‘significant’;
- (c) An evaluation of whether scheduling is appropriate on the basis of meeting (b), taking into account the impacts of works for reinstatement, repair or retention on heritage significance and whether engineering and financial factors make it unreasonable to schedule an item.

[63] In closing, the Council submitted that the amendments to Policy 9.3.2.1(c) now provide at (i) that heritage items will only be scheduled where they meet the thresholds of significance, and recognises at (ii) and (iii) that engineering or financial factors may make it unreasonable to retain or reinstate the damaged item in a way that retains the heritage significance, and if that is the case, then the item will not be scheduled.⁶² Mr Conway submitted:

Policy 9.3.2.1(c)(i) and (ii) have been added to expressly identify that a value judgement is needed when determining whether scheduling of a particular heritage item is appropriate. Such value judgements were already signalled in the policies about ongoing use of heritage items and demolition of heritage items, and provided for in the rules, but had not been signalled in the policies about identification of significant heritage items. This has now been rectified.⁶³

[64] We agree that a decision for listing of a heritage item involves a value judgement. It is a judgement to be informed on the evidence. We have been provided with clear evidence that the engineering constraints and financial costs associated with retention of the façade make it uneconomic to incorporate the façade into a new development, particularly under current market conditions. We accept Mr Taylor’s evidence that retention of the façade will likely impede the co-ordinated development of adjoining bare land as anticipated in the Central City Recovery Plan. The differences of opinion between Mr Marriott and Mr Oldfield, and also between Mr Stanley and Mr Pomeroy are relatively small. But in any event, where differences exist we accept the evidence of Mr Oldfield and Mr Pomeroy for Tailorspace. The evidence as to the heritage values that remain following repair is limited for the reasons discussed above. On that basis we find on the evidence that listing the façade is unreasonable in the circumstances.

[65] We have also considered the Revised Version of Policy 9.3.2.8 (previously 9.3.2.9), which addresses the circumstances where demolition may be considered. The revised policy replaces the phrase ‘exceptional circumstances’ and now includes clauses addressing costs and the level of significance of the item. In closing legal submissions the Council noted that Policy 9.3.2.8 now includes references to whether the costs to retain the heritage item would be unreasonable. Mr Conway submitted:

This enables an assessment of whether these costs would be in proportion with the value of the property and the heritage values in question.

⁶² Closing submissions for the Council at 5.4.

⁶³ Ibid at 5.5.

[66] We find, on the evidence of Mr Oldfield, Mr Pomeroy, Mr Ansley, Mr Copeland and Mr Bonis that, if listed, the costs of retaining the façade would not be in proportion with the value of the property and the heritage values in question.

[67] We further note that if the façade were to be listed then demolition is proposed by the Council to be a Restricted Discretionary Activity (9.3.3.2.3 RD8). Amongst the matters for consideration are whether the engineering requirements and associated costs of incorporating or retaining the façade are excessive and whether the engineering and functional requirements of the new building would alter the heritage fabric and compromise the values of the façade to such an extent that retaining the façade would not justify the retention.

[68] We are satisfied the evidence of Mr Oldfield, Mr Pomeroy and Mr Taylor adequately addressed those matters and there is no overriding community benefit to be gained from delaying a decision in light of that evidence.

Overall evaluation and conclusions

[69] We are satisfied that however we finally determine the final form of the Chapter 9 objectives and policies, our decision here reflects what is most appropriate by reference to them. For instance, that is the view we reach having considered our findings on the evidence with regard to the relevant provisions of the Revised Proposal, particularly its proposed Objective 9.3.1 and Policy 9.3.2.1. As to the latter, the evidence satisfies us that:

- (a) the Council's processes of identification were materially unreliable;
- (b) there is insufficient significance in the building, including the façade, and
- (c) the impacts of trying to reconstruct and restore even the façade are entirely overwhelming.

However these provisions are finally formulated, ultimately to achieve the RMA's purpose, the position we have reached on the evidence is that our decision is the most appropriate.


[70] We have considered s 6(f) RMA. We are satisfied that this decision does not conflict with its obligations. First, that is because of our findings concerning historic heritage. In

addition, we are satisfied that demolition is not inappropriate use and development, given the dire state of this building and in light of our findings concerning historic heritage

[71] We find on the evidence before us that the listing of the façade is not the most appropriate means of achieving the Strategic Directions and would fail to give effect to the Statement of Expectations in terms of certainty for investment and minimising consenting requirements. Further listing of the façade would likely impede recovery in a manner that is inconsistent with the Higher Order Documents — in that regard we note the evidence of Mr Taylor that the removal of the façade will likely facilitate co-ordinated development of this prominent site with adjoining bare land. We find that granting the relief sought by Tailorspace is consistent with enabling people and communities to provide for economic wellbeing and for their health and safety.

[72] We grant the relief requested by Tailorspace to remove the building, façade and setting from the Schedule in Appendix 9.3.6.1.3.

For the Hearings Panel:



Hon Sir John Hansen
Chair



Environment Judge John Hassan
Deputy Chair



Dr Phil Mitchell
Panel Member



Ms Jane Huria
Panel Member



Ms Sarah Dawson
Panel Member