

Attachment M: Applicant Statement

18 December 2017

Attention Matt Bonis

Planz Consultants
PO Box 1845
CHRISTCHURCH 8140

matt@planzconsultants.co.nz

Dear Matt

**BACKGROUND TO APPLICANT'S INVOLVEMENT IN THE YORK HOUSE<
WORCESTER CHAMBERS AND HARLEY CHAMBERS SITES**

1. As requested, this letter outlines details in relation to the Applicant's involvement in the three properties comprising the site, including when each of the sites was purchased, the consequences of the Canterbury earthquake sequence for each of the buildings, the efforts that have been made since the earthquakes in relation to the Worcester Chambers and also Harley Chambers and some of the issues associated with retention of the heritage buildings generally.

Lee Pee Limited's background

2. Lee Pee Limited (and Monkey Business Limited – a related company) own a range of heritage buildings throughout New Zealand. Several of these buildings have been held by the company for a number of years and were specifically purchased because of the heritage attributes of the respective sites. Due to their love of heritage buildings, the owners have invested in the refurbishment of some of these buildings and it is their intention to hold the properties for the long term protecting their heritage values and to pass on to the next generation of their family. A list of buildings (including photographs) is attached to this paper in **Appendix A**.

Purchase and background of the sites

3. The development site comprises of three separate titles, one of which is cleared (formerly the York House site) and the other comprising of Worcester Chambers and Harley Chambers respectively.

York House

4. The York House site was purchased by Monkey Business Limited in February 1996. In October 2006, the title was transferred to Lee Pee Limited. Pre the earthquakes, York House was a 5 storey office building with a café at ground level. A tunnel beneath the building gave access to 19 open air car parks at the rear. This building was constructed 1972. York House was deemed repairable following the February 2011 earthquake, but subsequent earthquakes caused significant damage to the internal structural columns placing the building on a lean. A Section 38 notice was issued by CERA in June 2011. The building was demolished around August 2011.

Harley Chambers

5. The Harley Chambers site was purchased by the current owners Lee Pee Limited on 20 September 2001 with the intention of holding as a long term investment.
6. Prior to the earthquakes it was let to a range of tenancies including dentists, barristers, counsellors, beauticians and an office for Punting on the Avon
7. Details in relation to its historical background and heritage values are set out in the (Heritage Report) prepared by Mr John Gray (**Attachment D**).

Worcester Chambers

8. The Worcester Chambers site was purchased in September 2016.
9. Lee Pee Limited had approached the owner on several occasions prior to the earthquakes with an interest to purchase as this site lay between York House and Harley Chambers which were already owned by Lee Pee Limited. The owner would not sell to Lee Pee Limited at a fair market rate. In September 2015, the Gough family purchased the property with the intention of restoring the interior of the building. However, that did not eventuate and the building remained vacant for 12 months until Lee Pee Limited purchased the building from the Goughs on 30 September 2016.
10. Details in relation to its historical background and heritage values are set out in the Heritage Report (**Attachment D**).

Consequences of the Canterbury earthquake sequence for the buildings

York House

11. York House was extensively damaged following the Canterbury earthquake sequence.
12. As set out above, it was demolished in August 2011 due to the damage pursuant to a section 38 notice issued by the Canterbury Earthquake Recovery Authority.

Harley Chambers

13. The Harley Chambers building has not been occupied since 22 February 2011 when all tenants were forced to vacate due to the earthquake damage. Detailed information regarding the extent of damage is outlined in detail in the engineering report prepared by Ms Gilmore (**Attachment H**).
14. Progressing matters and reaching a decision about the future of the building has been hampered by:
 - a. the long delay in settling the insurance claim (which was not settled until January 2016);
 - b. limited access, initially due to the cordon in the central city and damage to the neighbouring building; and
 - c. limited access due to building damage and health issues in regards to flooded basement (since 22 February 2011).
15. These issues have allowed for the ingress of weather, vagrants, vandals and pigeons causing further degradation.
16. As set out above, the acquisition of the Worcester Chambers site, between the two existing sites owned by Lee Pee Limited, did not occur until late 2016, which also delayed some decision making, given the desire to develop all three sites together.

17. A general summary of events associated with Harley since September 2010 is attached as **Appendix B**.

Worcester Chambers

18. As set out above, Worcester Chambers was only purchased by Lee Pee Limited in 2016. At the time it was purchased earthquake strengthening had been carried out.
19. While the building does not have the same challenges as Harley Chambers in relation to the extent of damage, it has still proved to be a difficult property to let. The report prepared by CBRE outlines that the efforts by the previous owners, the Gough Family, to obtain a tenant, were ultimately not successful.
20. Since purchasing the site, Lee Pee Limited has held onto the site, with the view to developing the three sites together, as is now proposed.

Holding costs

21. There are a range of holding costs for each of the sites. While some income is being derived from the York House site due to its current use as a car-park, no income is currently being derived from the Worcester or Harley sites. Mr Ansley's report (**Attachment J**) outlines the implications for the valuation under the various options further. The holding costs for these sites, and particularly Harley Chambers, have been significant.
22. These include rates, security, repairs from vandals etc.
23. Annual rates alone for the Harley site have ranged from \$28,665.40 to \$34,538.19 for the 2011/12 to 2016/17 rating years.

Heritage grant

24. The company has also considered obtaining a heritage grant from the City Council, as it is aware that such grants have been used on a number of buildings.
25. Lee Pee Limited understands that \$763,000 is available each year under the Council's Long Term Plan (although this is being reviewed as part of the next Long Term Plan and is proposed to be reduced to \$697,000). Up to 50% of the costs of eligible works (which includes structural and seismic engineering works) are eligible to receive a grant.
26. Amounts paid out include:
- a. Christchurch Club (\$1.7m). It is understood this was paid from the Landmark Heritage funding pool, which the Council is not proposing to continue from 2018/19.
 - b. 236 Tuam, McKenzie and Willis Building Façade (\$240,000).
 - c. 279 Montreal West Avon Flats (Repair and seismic upgrade) (\$800,000).
27. We understand that moving forward grants in the region of \$200,000 will be unusual, with most grants expected to be smaller than this. If a grant was made, based on the amounts granted recently, and given the estimated costs for repairing Harley to 100% NBS, or even 67% NBS there will be a significant shortfall of the estimated costs for reinstating the building (\$18,790,000 and \$17,070,000 respectively), or even of retaining the façade of the Harley building (\$537,000 for restoration works alone, but with significant other retainment work \$3,929,000 required to facilitate this option)
28. Further, all grants over \$100,000 must be approved by full Council and conservation covenant is to be applied for any works over \$15,000 (with a full conservation

covenant being required for grants of more than \$150,000). The covenant is a legally binding agreement between two parties, in this case the building owner and the Council. The agreement is usually not to undertake alteration works to the building in future without the agreement of the other party, and specifically not to demolish or partially demolish the building or to undertake significant alterations. The covenant is registered on the title and remains if the building is sold.

Conclusion

29. Lee Pee Limited has considered a range of options for developing the three sites that would enable Harley Chambers to be retained, either in whole or part
30. However, due to the extent of damage, the heritage values and the limitations associated with the use of the building configuration (all of which are outlined in the reports accompanying the application), the company has decided to pursue an application to demolish the building, along with the demolition of part of Worcester Chambers in order to enable the redevelopment of all three sites.
31. Ultimately if a consent to demolish Harley Chambers and part of Worcester Chambers in order to undertake the development proposed is not obtained, then the alternative for Lee Pee will be to land-bank the site, along with the Worcester Chambers site and the York House site.

Yours faithfully



Rosie Hobbs B Com (VPM)

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Appendix A – Photographs of Heritage Buildings owned by Lee Pee and Monkey Business

Heritage Properties Owned by Lee Pee Ltd & Monkey Business

31 & 33 New Regent Street, Christchurch



NZ Historic Places Trust Category 1 (Built circa 1932)

Purchased June and November 1997

Refurbished and earthquake upgrade 2012/2013

Currently leased to "The Final Word"

Kinross White Building, 7 Tennyson Street, Napier



NZ Historic Places Trust Category 2 (Built circa 1932)

Purchased March 2001

Substantial internal and external refurbishment 2012

2012 Won Resene Supreme Award for interior and exterior refurbishment.

Currently leased to "The Art Deco Trust"

Heritage Properties Owned by Lee Pee Ltd & Monkey Business

Axiom House, 109E Cambridge Terrace, Christchurch



old District Plan Group 2 (Built circa 1894)

Purchased September 2009

Occupied by owner as legal chambers until earthquake sequence caused severe damage

CERA ordered demolition 2011– Christchurch Heritage notified, viewed and signed off prior to demolition

603 George Street, Dunedin



NZ Historic Places Trust Category 2

Purchased September 2012

Leased to University of Otago

Heritage Properties Owned by Lee Pee Ltd & Monkey Business

Blackstone Chambers, 14 Wyndham Street, Auckland



Heritage Listing: Category B, Auckland City Council (Built circa 1870)

Purchased October 2013

Full refurbishment, internal and external plus earthquake strengthening
2014/2016

NZ Commercial Project Awards 2017 – Silver Award for Heritage/Restoration
(Isaac Theatre Royal won Gold at the same awards)

Currently leased to a group of Barristers

Appendix B – Harley Chambers timeline of events

4 Sept 10	Earthquake – mainly cosmetic damage, cracked windows. However, major concern is the parapet split between the north and south wings.
30 Sept 10	Fit plate across parapet above main door
26 Dec 10	Boxing Day earthquake – floor moved causing dips and rises in several places, existing cracks opened up further and new cracks appeared throughout building, tiles on stairwell have become loose, further cracks in lift shaft.
21 Feb 11	Letter to all tenants advising 68 x window repairs would commence on 24 February 2011 – expected to be completed by 6 March. Due to the earthquake on 22 February, the repairs were not carried out.
22 Feb 11	Earthquake – Harley damaged – building inside CBD Red Zone – access not permitted – has been vacant since
2 Mar 11	Harley fully assessed by Engineer – no access to building permitted due to dangers posed by damaged lift shaft tower – Engineer noticed panels on Old HSBC, 141 Cambridge Terrace (“141”), appear to be very damaged – contacted Property Manager, Colliers International
6 Mar 11	CBD Red Zone parameters shifted back – Harley no longer inside cordon – no access to building permitted until damaged lift shaft tower removed
24 Mar 11	Lift shaft tower removal complete – Engineer confirms limited and controlled access to the building permitted.
25 Mar 11	Programme of tenant access for retrieval of contents begins under controlled access
28 Mar 11	Engineer unable to begin full report on Harley as still giving priority to emergency make-safe work in the CBD
11 May 11	Panels on south wall of 141 Cambridge Tce still do not appear to have been actioned and looking worse – Colliers International contacted again – BECA, engineers for 141, also contacted – BECA said their last inspection of building was 27 February and that it appears to them the owners are dragging the chain in permitting BECA to re-inspect the building
26 May 11	Contacted BECA Engineers again re 141 – owners still not given permission for BECA to undertake further inspections – contacted CERA – CERA sent out engineer to 141 – CERA to force action by owners of 141 – CERA confirmed to stay out of Harley north wing and back courtyard
9 Jun 11	Mainzeal to undertake further investigations of 141 – confirmed to stay out of Harley north wing and back courtyard
10 Jun 11	Mainzeal work on 141 begins
13 Jun 11	Large aftershocks – work halted on 141 in order to re-assess building before work can continue
20 Jun 11	Work resumes on 141
9 Aug 11	Make safe work on 141 complete – report from BMC Engineers received – can now access north wing of Harley
10 Aug 11	Builder begins work on taking Harley levels for Structex
8 Nov 11	Structex report on Harley completed
21 Dec 11	Structex notices further cracking to parapets in Harley’s west parapets – recommends limited use of accessway and courtyards off Worcester Boulevard

23 Dec 11	Large aftershocks – use of access-way and courtyards off Worcester Boulevard limited further
5 Jan 12	Builder views panels on south wall of 141 – Structex/CERA/Worcester Chambers owners and tenants notified that it appears repairs to panels on 141 Cambridge Tce have failed
25 Jan 12	CERA verbally advised access to northern wing restricted as 141 Cambridge Tce to be demolished
12 Mar 12	Demolition starts on 141 Cambridge Tce
19 Jun 12	CERA advise that demolition of 141 Cambridge Terrace is expected to be completed by late this week.
3 Oct 12	Insurers advise they want a full peer review on the engineers report and costs. They are attempting to find someone that can complete this in a reasonable time frame.
8 Nov 12	Insurers advise that an independent engineer and QS have agreed to complete the review of the engineers report and will also arrange for a price to reinstate.
27 May 13	Insurers send through their Engineer's report and advise an estimate of cost of repairs will be carried out based on that report
19 Jun 13	Insurers confirm engineering report and costing have been sent to London.
13 Aug 13	Meeting with representatives from neighbours at 141 Cambridge Terrace showing their building plans and advising it is their intention to commence construction on 1 November 2013. They do not believe the parapets of Harley Chambers are secure and want make safe work completed or building demolished before they begin construction.
27 Aug 13	Insurer offers to settle claim at a sum insufficient to repair building
Oct 2013 to Jan 2016	Legal assistance to settle insurance claim including fresh rounds of consultants reports and costings on behalf of owner and insurer – during this period, increasing squatters, vandalism and theft
20 Oct 14	Ceased to pay monthly hire of tarpaulin over chimney shaft as the tarpaulin has deteriorated with wind and rain and no longer provides protection – monthly hire of tarpaulin has well exceeded its value so builder wrote-off but left in place.
Dec 2015	Vandalism, graffiti increases. Side fence, and possible entry windows boarded up. Prior to construction of 141 Cambridge Terrace, the buildings were close together and pedestrian access was not possible, however with new building, the seismic gap created a space for vandal's entry.
Jan 2016	Insurer settles claim
July - Sept 2016	Vandalism, graffiti intensifies further. Side fence between 141 and Harley pulled down by vandals. Theft of brass fittings including window latches meaning majority of window latches from the building can no longer be secured. Neighbour at 69 Worcester Chambers puts up fence with barbed wire on top between 141 Cambridge and rear of his property as this appears to be the new entry point for vandals/squatters. The fence between Harley and 141 Cambridge replaced with a higher fence with barbed wire on top.
13 Dec 16	Engineer carries out further inspection of Harley Chambers and recommends fencing on Cambridge Terrace due to possible plaster fall.
	Ongoing issues with Downers who are carrying out roadworks on Cambridge Terrace and move safety fences close to building where they provide no public safety
26 Jan 17	Met with Richard Gant (Engineer,CCC) concerned about public safety and façade –

	showed Richard through Harley Chambers together with Brett Gilmore
March 17	Owner engages consultants to advise on future of Harley Chambers
28 March 17	Letter received from CCC advising the building is earthquake prone and a sticker to be placed on doors to advise the public – strengthening to be completed within 30 years
17 May 2017	Owner receives CCC “Dirty 30” letter
25 July 2017	Following meeting, send letter and Email to CCC Graffiti – no response
Ongoing	Council advises of public complaints re blocked footpath and ugliness of building

11 December 2017

Attention Rosie Hobbs

Lee Pee Limited
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West End
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Dear Rosie

**LEGAL ASSESSMENT RELATING TO RESOURCE CONSENT APPLICATION BY LEE
PEE LIMITED**

1. Lee Pee Limited (**Lee Pee**) owns three properties on Worcester Boulevard, known as Harley Chambers, Worcester Chambers, and a vacant site, formerly occupied by York House.
2. Lee Pee is seeking resource consent to demolish Harley Chambers, partially demolish Worcester Chambers, and to construct a new 5 star hotel development across the three sites. The application represents a hugely exciting recovery project, on a landmark site in Christchurch.
3. This letter is provided as part of the application for resource consent and assessment of environmental effects in order to set out the legal framework applying to the application. This letter should be read alongside Mr Bonis' assessment which describes the application in further detail and provides an assessment of the effects (**AEE**) for the proposal.

Planning framework

4. Before addressing the matters specifically relating to the legal framework, it is necessary to briefly summarise the planning framework applicable to the application.
5. The planning framework that the application is to be assessed against is set out in detail in the AEE.

Activity status

6. Harley Chambers is a Group 2 building in the Christchurch District Plan (**District Plan**). Demolition of Group 2 buildings is a discretionary activity.
7. Worcester Chambers is a Group 1 building. Alteration (which includes partial demolition) of a Group 1 building is a discretionary activity. Demolition of a Group 1 building is a non-complying activity.

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8. While Worcester Chambers is not been fully demolished (and arguably falls within the definition of an 'alteration') the Applicant has decided to take a cautious approach and assess the activity as a demolition,¹ rather than a partial demolition.²
9. Overall, the application is to be considered as a non-complying activity under Rule 9.3.4.5.3 of the District Plan.
10. The construction of the new hotel triggers a range of rules with the District Plan as set out in Section 4.3 of the AEE.

The legal framework

11. As set out above, the application falls to be considered as a non-complying activity overall. This means that the application must be assessed under section 104D and section 104 of the Resource Management Act 1991 (**RMA or Act**).

Section 104D

12. Under section 104D of the RMA, the Council can only grant consent for a non-complying activity if it is satisfied that either:
 - a. the adverse effects of the activity on the environment will be minor; or
 - b. the activity will not be contrary to the objectives and policies of the District Plan.
13. The gateway test in section 104D(1)(a) is concerned with the adverse effects of a proposal (rather than the positive effects).³
14. The Courts have held "minor" in the context of the section 104D gateways, requires a consideration of whether the adverse effects as proposed to be remedied and/or mitigated and taken as a whole (for each adverse effect) are more than minor.⁴
15. In relation to the objectives and policies assessment for the gateway test, it is only the objectives and policies of the District Plan that are relevant (rather than the objectives and policies in other planning instruments such as the Regional Policy Statement).
16. The Courts have held that "contrary to" contemplates being opposed to in nature; different; opposite to.⁵
17. In *Akaroa Civic Trust v Christchurch City Council* the Environment Court endorsed the definition of the word "contrary" adopted in *NZ Rail Ltd v Marlborough District Council*, adding that "a proposal which simply fails to satisfy, or meet a policy is not necessarily contrary to it."⁶ Further, the Court acknowledged that given most plans contain a "plethora of objectives and policies" it is hard to apply the second gateway test of s 104D(1)(b).⁷

¹ **Demolition** in relation to a heritage item, means permanent destruction, in whole or of a substantial part, which results in the complete or significant loss of the heritage fabric and form.

² **Partial demolition** means 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.

³ *Logan Limited v Auckland City Council* A124/2008 at [77].

⁴ *Director General of Conservation Nelson Marlborough Conservancy v Marlborough District Council* [2010] NZEnvC 403; *Stokes v Christchurch City Council* [1999] NZRMA 409 at 434.

⁵ *NZ Rail Ltd v Marlborough District Council* [1994] NZRMA 70 (HC)

⁶ *Akaroa Civic Trust v Christchurch City Council* [2010] NZEnvC 110 at [73].

⁷ *Akaroa Civic Trust v Christchurch City Council* [2010] NZEnvC 110 at [74].

We consider that if a proposal is to be stopped at the second gateway it must be contrary to the relevant objectives and policies as a whole. We accept immediately that this is not a numbers game: at the extremes it is conceivable that a proposal may achieve only one policy in the district plan and be contrary to many others. But the proposal may be so strong in terms of that policy that it outweighs all the others if that is the intent of the plan as a whole. Conversely, a proposal may be consistent with and achieve all but one of the relevant objectives and policies in a district plan. But if it is contrary to a policy which is, when the plan is read as a whole, very important and central to the proposal before the consent authority, it may be open to the consent authority to find the proposal is contrary to the objectives and policies under section 104D... The usual position is that there are sets of objectives and policies either way, and only if there is an important set to which the application is contrary can the local authority rightly conclude that the second gateway is not passed.

18. Whilst the assessment must be carried out against the objectives and policies as a whole, the Court of Appeal noted in *Arrigato Investments Ltd v Auckland Regional Council*, "Such an activity [being a non-complying activity] is, by reason of its nature, unlikely to find direct support from any specific provision of the plan."⁸
19. Accordingly, it is considered that it is appropriate to adopt an holistic approach when determining whether the Proposal is contrary to the objectives and policies of the relevant plans, however, more specific and directive objectives and policies will be given more weight.
20. Mr Bonis' assessment is that the application is not contrary to the objectives and policies of the District Plan. Accordingly, the section 104D gateway is passed.

Section 104

21. In addition to the section 104D matters, in reaching a decision under section 104 and 104B, a consent authority must, subject to Part 2, have regard to any actual and potential effects on the environment of allowing the activity (section 104(1)(a)), any relevant provisions of the statutory documents listed in section 104(1)(b) and any other matter that the Court considers relevant and reasonably necessary to determine the application (section 104(1)(c)).⁹
22. The phrase "have regard" to requires genuine thought and attention be given to the matters, with weight applied to the matters as the consent authority sees fit.
23. A detailed assessment of the effects and also of objectives and policies of the relevant planning instruments is provided in the AEE, accordingly, this letter focusses on the application of Part 2 to the Council's consideration of this application, along with specific consideration of the objectives and policies of the District Plan.

Application of Part 2

24. The role of Part 2 and how "subject to Part 2" is to be applied in a section 104 assessment has been the subject of significant recent case law.
25. Following the Supreme Court decision of *King Salmon*¹⁰ (which applied in a plan change context and held that unless there is invalidity, incomplete coverage or uncertainty in meaning of a plan or any later statutory documents there is no need to look to Part 2 matters when determining whether a planning document or plan

⁸ *Arrigato Investments Ltd v Auckland Regional Council* [2002] 1 NZLR 323; (2001) 7 ELRNZ 193; [2001] NZRMA 481 at [17].

⁹ It is noted in terms of section 104(2) that there is no permitted baselined as such in relation to this application.

¹⁰ *Environmental Defence Society v NZ King Salmon Ltd* [2014] NZSC 38, [2014] 1 NZLR 593.

change gives effect to higher order documents) there have been a range of different approaches taken by the Courts in relation to the application of *King Salmon* to resource consent applications.

26. The High Court in *R J Davidson Family Trust v Marlborough District Council*¹¹ (**Davidson**) has confirmed that the rationale in *King Salmon* also applies to a consent authority's consideration of resource consent applications under section 104 of the RMA. Accordingly, absent incompleteness, ambiguity, or illegality in the relevant planning documents, there is no need to separately resort to Part 2 of the RMA in determining a resource consent application.
27. However, this decision is currently under appeal and was recently heard in the Court of Appeal (with the decision not yet released). We note that a different approach was taken by the High Court in the context of a designation in *New Zealand Transport Agency v Architectural Centre Incorporated & Ors*¹² (the relevant statutory provisions use similar language to section 104).
28. There remains some uncertainty regarding the matter, with the Environment Court recently considering a proposal in terms of both *Davidson* and under Part 2 because of the uncertainty.¹³ Recently, the Environment Court in *Blueskin* held that "direct" recourse to Part 2 is not required where policy direction is provided for in the planning instruments (absent invalidity, uncertainty or incomplete coverage), but that Part 2 considerations may assist in determining the weight to be given to the matters in section 104(1)(b), thus informing the exercise of the Court's discretion, or "judgment", as to whether to grant consent.¹⁴
29. This is the approach that we consider should be taken to the Council's assessment of this application.

Section 6(f)

30. The Supreme Court's decision in *King Salmon* is also relevant to the interpretation of the section 6 component of Part 2.
31. Section 6 provides (relevantly):

6 Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

[(f) the protection of historic heritage from inappropriate subdivision, use, and development.]

32. The Supreme Court in *King Salmon* considered the meaning and application of section 6. The following points are relevant:
 - a. The Court held that section 6 does not give primacy to protection. Rather, section 6 means that provision must be made for protection as part of the

¹¹ *R J Davidson Family Trust v Marlborough District Council* [2016] NZEnvC 81. Although noting a different approach taken by the High Court in the context of a designation in *New Zealand Transport Agency v Architectural Centre Incorporated & Ors* [2015] NZHC 1991.

¹² *New Zealand Transport Agency v Architectural Centre Incorporated & Ors* [2015] NZHC 1991.

¹³ *Pierau v Auckland Council* [2017] NZEnvC 90.

¹⁴ *Blueskin Energy Limited v Dunedin City Council* [2017] NZEnvC 150.

concept of sustainable management and the importance of protection in any given instance will be informed by the relevant planning provisions.¹⁵

- b. The Court considered the meaning of the phrase “inappropriate subdivision, use, and development”¹⁶ and held that protection against ‘inappropriate’ subdivision, use or development allows for the possibility of some forms of ‘appropriate’ subdivision, use and development.¹⁷ The inappropriateness of any subdivision, use or development should be assessed on a case by case basis, by reference to what is sought to be protected.¹⁸

33. As the High Court stated in *Aro Valley Community Council Inc v Wellington City Council*:¹⁹

The Act envisages the formulation and promulgation of a cascade of planning documents, each intended to ultimately give effect to pt 2, including s 6. A decision under the relevant District Plan provisions is at the bottom of that cascade. The decision maker must apply the relevant provisions, prepared in conformity with s 6(f). Independent reference by the decision maker to s 6(f) is not a mandatory consideration.

34. While this was in the context of a notification decision, applying the approach in *King Salmon* it is equally applicable in this situation. In summary, it is clear from case law that the provisions of the relevant planning documents inform the extent of protection that should be given to historic heritage and how to assess the balance between the (potentially) conflicting values in Part 2.

35. Before considering the planning provisions, it also helpful to consider the position in relation to alternatives to demolition when considering matters affected by section 6(f). While there is no statutory obligation to consider alternatives in relation to a consent application, the consideration of alternatives may be a relevant matter in determining whether the proposal recognises and provides for the protection of historic heritage from inappropriate use and development (under section 6). In *Lambton Quay Properties Nominee Ltd v Wellington City Council*, Collins J held:²⁰

[74] Section 6 of the Resource Management Act does not mean a consent authority is required to “exhaustively and convincingly exclude” alternatives to demolition before granting resource consent to demolish a heritage building. The statutory requirement for a consent authority to recognise and provide for the protection of historic heritage is a less onerous obligation than the Environment Court’s “exhaustively and convincingly” test for excluding alternatives to demolition of a heritage building. In my assessment the Environment Court overstated the effect of s 6 of the Resource Management Act....

36. Notably the Court’s findings in that case turned on the specific requirements of the Wellington District Plan. In this case, the Applicant has considered alternatives for both the Harley demolition and extent of demolition of Worcester Chambers, particularly in relation to the matters in Policy 9.3.2.2.8.

¹⁵ *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 at [149].

¹⁶ *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 at [30].

¹⁷ *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 at [29].

¹⁸ *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 at [101].

¹⁹ *Aro Valley Community Council Inc v Wellington City Council* [2015] NZHC 532.

²⁰ *Lambton Quay Properties Nominee Ltd v Wellington City Council* [2014] NZRMA 257 at 276.

37. The Panel addressed the application of *Lambton Quay* in the context of post-earthquake Christchurch in Decision 45:

*[14] In Lambton Quay, Collins J held that the consequences of a building owner doing nothing, and not strengthening a building, was an important consideration because it required a careful analysis of the risks to public safety and surrounding buildings. The risk the building posed to people and other places in the case of a moderate earthquake needed to be taken into account in the context of the balancing exercise required. The findings in Lambton Quay are particularly apposite when considering appropriate protection of historic heritage in Christchurch following the devastating effects of the Canterbury earthquakes. **We agree with the Crown's closing submission that s 6 does not seek to protect historic heritage at all cost but allows a more flexible approach where the Council can make an election on what is to be protected.***

[15] We interpret s 6(f) as enabling the Council (and in this case the Hearings Panel performing its functions under the OIC) to make a choice, subject to a s 32 evaluation, as to what historic heritage is to be protected, and the method of protection from inappropriate subdivision, use and development. What is inappropriate subdivision, use and development, as we discuss below, is to be considered in the context of the evidence and submissions we heard. We also find, as we discuss next, that recognition of that choice and flexibility of methods for protection are appropriately given effect to in Chapter 13 of the CRPS.

(Footnotes omitted. Emphasis added.)

38. The Independent Hearings Panel went on to state that:

[99] We find that there is no statutory presumption that 'demolition' will be inappropriate, or that it requires avoidance in an absolute sense. In the Christchurch recovery context, there is a need for overall flexibility in the appropriate management of historic heritage. Policy 9.3.2.9 does not sit alone. It is one of the matters that sits under Policy 9.3.2.4. We find that the list of matters in Policy 9.3.2.9, are relevant considerations for ensuring whether demolition is appropriate. On the evidence we find the listing of these matters is particularly important for the proper consideration of applications for complex restoration or rebuilding projects involving historic heritage... In the Christchurch context, we find that there should be no presumption that 'demolition' is inappropriate or that it must be avoided, or only allowed in limited circumstances.

39. Given all of the above, of particular note in this case is the fact that the District Plan provisions have so recently been made operative. It must be assumed that these do implement Part 2, including section 6(f), so significant weight should be placed on the planning provisions. These are considered further as follows specifically in relation to historic heritage.

The objective and policy framework

40. The District Plan contains a hierarchy of planning provisions, beginning with the strategic directions set out in Chapter 3.
41. The strategic directions establish the recovery context for Christchurch. In particular Objective 3.3.1 seeks to enable an expedited recovery and future enhancement of Christchurch as a dynamic, prosperous and internationally competitive city. Strategic objectives must be expressed and achieved in a manner consistent with this objective, along with Objective 3.3.2. All other objectives and policies in the District Plan are to be expressed and achieved in a manner consistent with the objectives of the Strategic Objectives.
42. Mr Bonis' AEE provides a comprehensive assessment of the chapter specific objectives and policies and this is not repeated. Given that a critical component of

the application involves historic heritage, it is important to pay particular attention to the objectives and policies in Chapter 9.3 (Historic Heritage).

43. There are two aspects of the objective and policy framework which are particularly pertinent in this case.
44. First, Objective 9.3.2.1.1 has been framed to acknowledge that demolition may be appropriate in some circumstances (bearing in mind the recovery context and the matters outlined above). Objective 9.3.2.1.1 provides:

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 them; and*
- iii. **acknowledges that in some situations demolition may be justified by reference to the matters in Policy 9.3.2.2.8.***

(our emphasis)

45. As set out above, it is clear that there is no statutory bar to demolition.
46. Secondly, the cascade within the policy framework recognises that it is important to consider the significance of the heritage item. At the consenting stage, this is not matter which is simply set by the statement of significance for the two buildings, particularly given the limitations identified with the listing process. As was set out in a Preliminary Minute dated 22 February 2016, following the adjournment of the hearing on Topics 9.1-9.5 the Independent Hearing Panel critiqued the inconsistencies in the listing process:

[17] In addition, the Council's s 32 evaluation did not involve any structured or formal evaluation, in consultation with landowners, of engineering feasibility and/or financial or economic viability issues. As we shortly, address, the evidence we have heard on those matters for various submitters has informed our view that several listings should be deleted or modified. However, we have only had insight into the small sample of listings brought to our attention by submitters. Given the various considerations we have noted, this significant weakness in the listings in the Notified Proposal needs to be addressed in both policies and rules so as to ensure all landowners (whether or not submitters) will have a fair capacity for relief. We return to this matter shortly.

[18] Those problems have their consequences for the Notified Proposal. One consequence concerns the reliability or otherwise of the heritage list in the Notified Proposal, given the quality control matters we have identified. In addition to the unreliability of the foundation evaluation work, our impression is that there was also an invalid assumption that what HSOS [Heritage Statements of Significance] identified as being of heritage value must be identified in the CRDP and regulated in order to satisfy requisite RMA obligations. The combined result is that restrictions on land use and development imposed through the Notified Proposal are not properly targeted, and are uncertain and disproportionate.

47. In summary, the listing of the buildings in the District Plan does not automatically accord the protection under all circumstances, it simply means that the buildings are

of significance.²¹ Mr Gray's very thorough analysis of the significance of the heritage items (including their individual components) is highly relevant to the Council's assessment.

48. Policy 9.3.2.2.8 then specifies the particular matters to be considered by the Council when considering the appropriateness of the demolition of listed heritage item. These matters include the threat to life and/or property, the extent of the works required, the costs of retention, and the significance of the item, including the ability to retain significant heritage through a reduced degree of demolition.
49. Mr Bonis, relying on the expert heritage, engineering, costing and valuation reports, has provided a comprehensive assessment of these matters in relation to both Worcester Chambers and Harley Chambers, which is not repeated here.
50. Of relevance to the consideration of whether demolition of Harley Chambers is appropriate is:
 - a. The extent of structural strengthening needed;
 - b. The costs of refurbishment;
 - c. The intrusive nature of the repairs needed and its impact on the heritage values; and
 - d. Lack of demand, and therefore commercial return, for such a refurbished building.
51. In relation to Harley Chambers, it is also relevant for the Council to consider the continued deterioration of the building if consent is not granted and the building is not repaired. The Environment Court decision in *NZ Historic Places Trust v Manawatu District Council* [2005] NZRMA 431 stated:

[33] Nor would it provide for sustainable management in the sense of providing for the cultural well-being of the community by refusing consent and thus condemning this building to a slow and sad deterioration to the point where, quite feasibly, it would have to be demolished as a safety risk. In coming to an overall assessment under s5, the loss of the heritage value of this building, while regrettable, is outweighed by the other factors we have outlined. One might have hoped that, to retain it for the sake of its heritage value to the community, sufficient funding from some public source might have been available to make up the shortfall of what the building can of itself sustain and what could reasonably be expected of its owners. In this case, that has not been so. For those reasons, the decision of the Council is confirmed and the resource consent is granted.
52. In relation to Worcester Chambers, the applicant has gone through a robust process to consider what extent of demolition of Worcester Chambers is appropriate, bearing in mind the significance of the front 6.5m of the building. This will be retained (and showcased through the Warren & Mahoney design).
53. It is also relevant to note in relation to both of the heritage buildings that the matter of ongoing use is of considerable importance in the post earthquake sequence statutory environment. This is recognised in revised Policy 9.3.2.6.

Precedent effect

54. Mr Bonis' assessment sets out a range of section 104(1)(c) matters. These are not repeated for the purposes of this letter. However, given the proposal is for a non-

²¹ *New Zealand Historic Places Trust v Manawatu District Council* [2005] NZRMA 431 (EnvC).

complying activity, I comment briefly on the precedent and plan integrity matters. The Court in *Rodney District Council v Gould* made the following findings:²²

The Resource Management Act itself makes no reference to the integrity of planning instruments. Neither does it refer to coherence, public confidence in the administration of the district plan or precedent. Those are all concepts which have been supplied by Court decisions endeavouring to articulate a principled approach to the consideration of district plan objectives and policies whether under s104(1)(d) or s105(2A)(b) and their predecessors. No doubt the concepts are useful for that purpose but their absence from the statute strongly suggests that their application in any given case is not mandatory. In my view, a reasoned decision which held that a particular non-complying activity proposal was not contrary to district plan objectives and policies could not be criticised for legal error simply on the basis that it had omitted reference to district plan coherence, integrity, public confidence in the plan's administration, or even precedent.

55. The Court went on to conclude that concerns regarding precedent, coherence, and like cases being treated alike were all legitimate matters that could be taken into account. However, if a case was truly exceptional, and could properly be said to be not contrary to the objectives and policies of the district plan, such concerns might be mitigated or might not exist.²³
56. In this case, the District Plan clearly contemplates and acknowledges that demolition of Group 1 buildings might be appropriate in some circumstances. Given this, it is considered that no issue arises in relation to precedent or plan integrity.

Conclusion

57. The project which Lee Pee Limited is seeking consent for represents a hugely exciting opportunity for a high profile site in Christchurch.
58. While the application will have to be assessed by the Council, it is considered in the recovery context, and considering the historic heritage provisions in the District Plan, that consent should be granted.

Yours faithfully
Wynn Williams



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²² *Rodney District Council v Gould* (2004) 11 ELRNZ 165, [2006] NZRMA 217 at [99].

²³ *Rodney District Council v Gould* (2004) 11 ELRNZ 165, [2006] NZRMA 217 at [102].