

**BEFORE THE CHRISTCHURCH CITY COUNCIL**

**IN THE MATTER** of the Resource Management Act  
1991

**AND**

**IN THE MATTER** of an application by Fern Fitzgerald  
Limited to demolish a Group 2  
heritage listed building located at 187  
Fitzgerald Avenue, Christchurch and  
to carry out associated earthworks

(RMA/2023/325)

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**STATEMENT OF EVIDENCE OF SALLY ELIZABETH ELFORD  
ON BEHALF OF FERN FITZGERALD LIMITED**

**Dated 29 August 2023**

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## **Introduction**

1. My name is Sally Elizabeth Elford, I am a Senior Planner and Associate with Baseline Group CLS Limited (Baseline Group), a multi-disciplinary consultancy specialising in land development throughout New Zealand, primarily Canterbury. I have been employed at Baseline Group since August 2016.
2. I hold a Masters of Resource and Regional Planning and a Bachelor of Arts majoring in Geography (Social) from Otago University. I am an Intermediate Member of the New Zealand Planning Institute (NZPI).
3. I have been practicing as a consultant planner since 2006 (17 years). My experience consists of preparation of resource consent applications and assessment of environmental effects for residential, rural and commercial land development. I have also prepared zoning bylaws and high-level policy documents for the long-term development of communities.
4. My experience as a planning consultant includes working in rural and urban New Zealand as well British Columbia, Canada. I was formerly recognised as a Full Member of the Planning Institute of British Columbia and a Registered Practicing Planner.
5. I have read the Code of Conduct for Expert Witness in the Environment Court Practice Note (2023). I agree to comply with this code of conduct. Except where I am relying on evidence of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

## **Scope of evidence**

6. My evidence relates to an application by Fern Fitzgerald Limited (**FFL**) for resource consent to demolish the building at 187 Fitzgerald Ave (**187**). In preparing this evidence I have reviewed:
  - (a) The application, including the Heritage Impact Assessment prepared by Mr. Vincent, inclusive of the Tetrad Structural Report (dated 19 January 2023) and the LogicGroup Repair Estimate (January 2023);
  - (b) Responses to Council's further information requests;
  - (c) Submissions on the application;

- (d) The Officers section 42A report;
- (e) The evidence of other witnesses for FFL, Mr. Szybiak the applicant; Mr. Loye Structural Engineer and Mr. Vincent.

### **Summary**

- 7. I prepared the resource consent application for the demolition of the building at 187 Fitzgerald Avenue.
- 8. I have visited the site on two occasions, the first time with Mr. Gregg, Mr. Wright and Mr. Vincent on the 12 December 2022. The second with submitters on 15 August 2023.
- 9. In this evidence I cover:
  - (a) Site context and proposal;
  - (b) Consent process;
  - (c) Consents required and application status;
  - (d) Section 104(1)(a) – actual and potential effects;
  - (e) Sections 104(1)(b)(v) and (vi) – Christchurch District Plan (the District Plan);
  - (f) Other relevant Section 104 considerations;
  - (g) Response to submissions;
  - (h) Part 2 Matters.

### **Site context and proposal**

- 10. Resource consent is sought for the demolition of a Group 2 heritage building located at 187 Fitzgerald Avenue (subject site), inclusive of earthworks for the removal of the foundation.
- 11. The background to this application in terms of the consent process to this point is summarized at paragraph 6 of Mr. Gregg's evidence and I agree with this summary.
- 12. The summary provided by Mr. Gregg of the resource consent approved for the surrounding site (wider site) is also correct with the exception that the s127 variation (RMA/2023/870) referred to in paragraph 7 has been requested to be

placed on hold by the applicant, until the outcome of this process (the demolition application) is determined.

13. It is noted the s127 variation as submitted for the wider site seeks changes to the internal layout of the previously approved units, one additional unit and a revised parking area layout with access from Gloucester Street rather than Fitzgerald Avenue. I note the plans associated with this variation still show the existing heritage building as there is currently no right to demolish it.
14. The s127 variation was submitted 13 April 2023, after the demolition application had been made but before public notification. The applicant has made the decision to proceed with the demolition application once a new architect was brought on board and they were looking to prepare building consent for the consented units.
15. My understanding is there were some issues with the building as originally designed and the new architect sought to remedy and improve on the originally consented design for the purposes of building consent, which was the impetus for the s127 variation.
16. A separate building consent is required for the repair of the heritage building (prepared by the same architect). The development of the wider site and the repair of the heritage building are intrinsically linked, the consenting for the wider site sought to retain and repair the heritage building however this is only the first step in the consenting process. Land use consent is sought first to allow for the use of the land and the number of dwellings and building consent is where the finer details and true costs of construction come to light.
17. In my experience it is common for developers to vary land use consents based on different requirements or triggers associated with building consent than the land use. The land use consent is the overall concept, but the building consent is the detail. In this case starting to look at preparing the building consent documentation for the wider site was the catalyst for considering demolition, when the detail and the extent of repairs became more evident.

### **Consent required and application status**

18. The activity status of the application and the District Plan rules breached requiring consent are identified in paragraph 18 of Mr. Gregg's evidence and I concur with his assessment. The application for the demolition of the subject building and associated earthworks is a discretionary activity.

## **Actual and potential effects on the environment (s104(1)(a.))**

19. As a discretionary activity, Council's discretion is not restricted and all effects associated with the proposal, including positive effects, must be considered.
20. I prepared the assessment of environmental effects in the application, based on the Heritage Impact Assessment, inclusive of the Tetrad Structural Report (dated 19 January 2023) and the LogicGroup Repair Estimate (January 2023). I also prepared the response to the Request for Further Information to Christchurch District Council dated 23/03/2023.
21. At paragraph 40 of his evidence, Mr. Gregg has stated there is no permitted baseline relevant to the proposal<sup>1</sup>. While I agree with this, consideration must also be given to the fate of the building and the approved development, should demolition consent not be approved (i.e. the do nothing approach). This is not a fanciful comparison, given the estimated costs of repair and the evidence of Mr Szybiak and Mr Vincent.
22. As stated in the resource consent application the proposed demolition of the building will result in the physical loss of a heritage item and associated earthworks. My assessment concluded the adverse effects of this would be minor and the applicant agrees with the proposed condition to record the building prior to any demolition works taking place.
23. While the recording of the building does not fully mitigate the loss of the building it will be recorded for posterity, I consider this a positive outcome under the circumstances.
24. The proposal represents a regrettable loss of heritage values with the removal of the building. Mr. Gregg has summarized the estimated costs for the repair at paragraphs 43 and 44 his report and I agree with Mr. Gregg's assessment that the financial burden to repair and maintain the heritage building outweighs the potential value of the building and its future earnings.
25. I note Mr. Gregg has addressed a range of options put forward by submitters to seek alternative forms of funding to support the \$2.4 million restoration of the building, and agree with his assessment the options are either insufficient

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<sup>1</sup> it is noted under Rule 9.3.4.1.1(P8) demolition, partial demolition or deconstruction of a heritage item is provided for as a permitted activity subject to the works being carried out under section 38 of the Canterbury Earthquake Recovery Act 2011. While the CERA legislation has now been repealed it is noted under Plan Change 13 demolition is still provided for as a permitted activity, in response to a natural disaster. Therefore, there is still provision for the demolition of a heritage building as a permitted activity in certain extreme circumstances, although it is acknowledged these circumstances do not apply in this case.

in the amount they could reasonably offer, or are out of scope for this application.

26. Demolition will result in the generation of waste material, including unsalvageable building components and the removal of the foundation. It is noted much of the interior fabric of the building and the foundations would require removal if the building were to be repaired. These effects for the most part would be temporary (earthworks and traffic movements) and similar to the demolition of any other building. It is noted the building at 335 Gloucester Street is not heritage listed building and would likely be demolished at the same time.
27. Mr. Gregg further notes in paragraph 14, it is only the exterior fabric of the building which is protected. It is important to note whatever the path forward for this building the interior of the building will likely need to be completely removed. I understand there are elements which could potentially be salvaged, but not the majority of materials.
28. In terms of positive effects, the demolition of the building will allow for the overall development of the site as previously consented to be financially viable and proceed, making use of land close to the Central City for its zoned purpose, being residential use.

#### **Christchurch District Plan**

29. The introduction of chapter 9.3 Historic Heritage of the District Plan (9.3.1.c) states:

*The objective, policies, rules, standards and matters of discretion in this sub-chapter are intended to provide for the protection of significant historic heritage, while also recognising the impact of the Canterbury earthquakes on heritage items and the effect of engineering and financial factors on the ability to retain, restore, and continue using them.*

30. While this introduction comes with the caveat at 9.3.1.a. “*this introduction is to assist the lay reader to understand how this chapter works and what it applies to. It is not an aid to interpretation in a legal sense*” – it clearly outlines engineering and financial factors are a real consideration when it comes to the retention, restoration and continued use of heritage buildings.

31. In this case, it is noted in the evidence of Mr. Wright the earthquake damage was assessed as 'moderate'<sup>2</sup>, the evidence of Mr. Szybiak and Mr. Loye notes the damage as evident today. This includes foundation damage and exposure of the timber structure to water damage as a direct consequence of the removal of the external and internal chimney structures. The bricks from the removal of the chimneys are evident on the site.
32. The objectives and policies relevant to the proposed demolition of a heritage item are identified and discussed in paragraphs 71-80 of Mr. Gregg's evidence and I agree these are the relevant considerations for the proposal.
33. I concur with the summary provided in the s42A report Paragraph 12 with respect to the zoning of the site. However, while Mr. Gregg has indicated the zoning is not of particular importance to this application, it is noted the site's zoning does not as of right provide for commercial use (i.e., the original use of the building for live/work), unless it is less than 40 m<sup>2</sup> in floor area, which the ground floor footprint of the building exceeds. The Residential Central City zone is primarily a residential zone. The commercial component of the approved resource consent for the wider site relied on the heritage building and the provisions which encourage adaptive reuse of heritage items. To establish similar commercial activity on this site today in this zone would require consent as a non-complying activity (if in excess of 40 m<sup>2</sup>).
34. At Paragraph 13 of the section 42A report, Mr. Gregg has identified the key features of Group 2 listed heritage buildings as identified in Policy 9.3.2.2.1 - Identification and assessment of historic heritage for scheduling in the District Plan. In order to be a Group 2 historic heritage ('Significant' rather than 'Highly Significant') only one of the heritage values in Appendix 9.3.7.1 shall be met at a significant or highly significant level.
35. The criteria of Appendix 9.3.7.1 for the subject building have been assessed in the Heritage Assessment dated 7 February 2015<sup>3</sup>. While each of the criteria for the site have been assessed as having significance none have been assessed as highly significant.
36. In addition to only having to meet one of the criteria of Appendix 9.3.7.1, to be categorised as a Significant Group 2 heritage item, matters A-D of Policy

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<sup>2</sup> RMA/2023/325: Demolition of Commercial Building, 335 Gloucester Street/187 Fitzgerald Avenue, Christchurch - Heritage Assessment: paragraph 2.1.

<sup>3</sup><https://districtplan.ccc.govt.nz/Images/DistrictPlanImages/Statement%20of%20Significance/Central%20City/HID%200641.pdf>

9.3.2.2.1b.i. all have to be met, and these are identified in Paragraph 13 of Mr. Greggs evidence.

37. As matters stand today the building is listed as significant to Christchurch for the reasons described in the Heritage Assessment. This includes conveying aspects of cultural heritage and activities and a sense of place and identity, being its former use for residential and commercial use and its prominent location on the corner of Fitzgerald Ave and Gloucester Street. However, whether the building will retain the necessary degree of authenticity and integrity is uncertain when considering the extent of the work required to make the building functional and safe. This is expanded upon in the evidence of Mr. Vincent.
38. Policy 9.3.2.2.1c. requires heritage items to be schedule if the thresholds outlined in Policy 9.3.2.2.1b(i) or(ii) are met, unless:
  - iii. *the physical condition of the heritage item, and any restoration, reconstruction, maintenance, repair or upgrade work would result in the heritage values and integrity of the heritage item being compromised to the extent that it would no longer retain its heritage significance; and/or*
  - iv. *there are engineering and financial factors related to the physical condition of the heritage item that would make it unreasonable or inappropriate to schedule the heritage item.*
39. In this case the physical condition of the heritage item and the extent of repairs required, in particular the proportion of materials which would need to be replaced may compromise the integrity of the heritage item, Mr. Wright has suggested it would still meet the criteria for listing with the repair works completed. However, there is an and/or at the end of this policy which allow the engineering and financial factors related to the physical condition of the heritage item to be considered where it would make it unreasonable or inappropriate to schedule. Given the extent of structural repair works required and the financial burden associated with this I would consider the “unless” clause of this policy applies and the building should no longer be listed.
40. In addition to the detail provided in paragraph’s 43 and 44 of Mr, Gregg’s evidence the costs are not materially contested by the Council peer review and, as per Mr. Szybiak’s evidence, the costs far exceed what was originally anticipated when the property was purchased.
41. Objective 9.3.2.1.1.a.ii and iii are of critical importance to the proposal with respect to recognizing demolition of a heritage item is not precluded nor is it a



given. This objective allows the condition of the building and the effect of engineering and financial factors, on the ability to retain and continue using a building, to be considered. While this policy has the addition of “*particularly those that have suffered earthquake damage*” the use of the word particularly in my opinion does not restrict this consideration to only earthquake damage. I consider it is a specific example, but by no means exclusive. This objective allows consideration of the current condition of the building and does not require particular consideration of how the damage occurred. In any event, the reason for the building condition today can be clearly linked to what happened to it during the earthquakes.

42. Policy 9.3.2.2.8 is detailed in paragraph 75 of Mr. Gregg’s evidence and his assessment of the proposal against these policies in paragraphs 76 and 77. For the most part I concur with this assessment.
43. As it stands the building in its current state is a risk to both people and property. Despite the attempts of the applicant to secure the building, illegal occupation has occurred and the building in its current state is not fit for use.
44. The crucial policy under consideration at this time is 9.3.2.2.8.a. iii, with respect to whether the costs to retain the heritage item would be unreasonable. As Mr. Szybiak has stated, originally \$1 million dollars was budgeted for the repair of the building. The estimated costs now are over \$2 million dollars (plus GST), double what was originally anticipated. I would consider this cost of repair unreasonable, particularly as this cost would be borne solely by the developer as there are no other funds or grants available at this time.
45. Based on an assessment of the relevant objectives and policies of the Christchurch District Plan and where applicable Plan Change 13, I consider the proposal to be consistent with these provisions, primarily due to the unreasonable costs for the repair of the heritage building, which means it may be excluded from being listed and or meets the demolition criteria.

### **Submissions**

46. There were 15 submissions in support of the proposed demolition. A summary of these is provided in Mr. Gregg’s evidence at paragraph 30 and I agree with this summary.

47. Mr. Gregg has also summarized the 22 submissions in opposition at paragraph 31 of his evidence. I agree with the summary and add the following points:
- (a) Some submissions requested more support from Council for the protection and restoration of heritage items. This has been explored at length by the applicant prior to the submission of the application for demolition and as part of the RFI response.
  - (b) There were questions as to whether what would replace the building has been considered. I understand no firm plans have been made yet and are not likely to be considered before the conclusion of this process.
  - (c) One submitter indicated units in place of the heritage building had been listed for sale. I note (as per the statement of Mr Szybiak) all planned the units have been pulled from the market and when they were briefly available (after the resource consent for the wider site was approved) it did not include any units in place of the heritage building.
  - (d) The same submitter stated the building was only listed in 2015, the date of the latest heritage statement. However, I note the building was originally listed under the previous City Plan<sup>4</sup> and so is not a new listing.
  - (e) Submitter CCT refers to the earthquake damage as 'very light', however it is not clear what this assessment is based on and that does not accord with the evidence I have read.
  - (f) This Submitter CCT has also picked up an error on the demolition consent application form. While the application report and the supporting documentation dates from January 2023 the application form has the same date for submission 14<sup>th</sup> of February but 2022 instead of 2023. This was simply a clerical error on my part and in no part because there was intention to demolish the building earlier than the application to Council was made.
48. Some submitters have also queried why the profits from the wider development could not go toward the restoration of the heritage building. While one submitter has suggested the total sale price could cover the costs, this is without consideration of the construction costs associated with the

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<sup>4</sup> <https://ccc.govt.nz/assets/Documents/The-Council/Plans-Strategies-Policies-Bylaws/Plans/City-plan/16-V3-Part-10.pdf>

development and holding costs of the land, some of which have been detailed in the statement of Mr. Szybiak (Paragraph 34).

49. Some submitters raise concerns with the “demolition by neglect” scenario. As noted earlier in my evidence, the condition of the building today is directly related to the fact it sustained damage in the earthquakes and the consequences of that. The Plan does not require earthquake damage and the fact remains that, as it stands today, the costs to repair this building are significant, no matter how the damage occurred.
50. I agree with Mr. Gregg (paragraph 55) that the pathway through which the building has become damaged is not a matter for consideration under the planning framework in question, and sits outside the scope of this case. I also concur with his conclusions in Paragraph 58 that in this case unreasonable costs are the key relevant matter and demolition is appropriate in this case.

#### **Other relevant Statutory documents and Part II Matters**

51. Mr. Gregg has provided an apt summary of both of these considerations within his s42a report at paragraphs 81 to 86 and I concur there are no other relevant statutory considerations and Part II of the act has been appropriately considered through the assessment of the District Plan policies throughout this evidence.

#### **Conclusion**

52. Consistent with the assessment undertaken by Mr. Gregg in his s42A report, overall, I consider the adverse effects of the proposal will be minor. I acknowledge there will be complete loss of the heritage item and associated values and this is regrettable.
53. I note there is little difference between the final effect of the demolition and the effect of simply leaving things as they are, the longer the building is left, the less likely it is to be repaired as the damage will worsen and the associated costs will increase.
54. In my opinion the estimated costs of repair are unreasonable and meet the appropriate policy threshold of the District Plan to allow demolition.
55. The mitigation measures proposed to record the building do not remedy the loss of the building, however given the current state of the building and costs

of repair, they assist to reduce the effects of demolition. The applicant agrees to the conditions proposed in the s42A report.

56. Any other adverse effects associated with the demolition process and removal of the foundations will be temporary in nature and can be adequately managed through appropriate conditions of consent.

**Sally Elford**

29 August 2023