

BEFORE THE CHRISTCHURCH CITY COUNCIL

IN THE MATTER OF of the Resource Management Act 1991 (“the Act”)

AND

IN THE MATTER OF of Resource Consent Application RMA/2020/2852 for the Canterbury Museum Trust Board for a comprehensive redevelopment of the Canterbury Museum complex including the Robert McDougall Gallery

BETWEEN **THE CANTERBURY MUSEUM TRUST BOARD**
Applicant

AND **CHRISTCHURCH CITY COUNCIL**
Local Authority

LEGAL SUBMISSIONS IN REPLY ON BEHALF OF THE CANTERBURY MUSEUM TRUST BOARD

Dated: 25 June 2021

Adderley Head

Acting Solicitor: Chris Fowler
PO Box 1751, Christchurch 8140
Tel: 021 311 784
Email: Chris.Fowler@adderleyhead.co.nz

MAY IT PLEASE THE COMMISSIONER

INTRODUCTION

- 1 These submissions in reply are presented on behalf of the Canterbury Museum Trust Board (the Board). They respond to matters raised during the course of the hearing.
- 2 The issues to be addressed in these submissions are as follows:
 - (a) what matters can be considered if the proposal is assessed as a restricted discretionary activity?
 - (b) are the changes to the Duff Wing façade and the Centennial Wing façade acceptable?
 - (c) proposed use of the RMG building – response to legal submissions and evidence for Mr Seay;
 - (d) proposed underground storage of the collection – response to evidence for Christchurch Civic Trust and Mr Seay; and
 - (e) proposed conditions of consent.

WHAT MATTERS CAN BE CONSIDERED IF THE PROPOSAL IS ASSESSED AS A RESTRICTED DISCRETIONARY ACTIVITY?

- 3 The Applicant's case is that the proposal should be assessed as a restricted discretionary activity. This is disputed by Council reporting officer, Ms White, who has assessed the proposal as a discretionary activity.
- 4 This is a matter that the Commissioner will need to determine based on the relevant plan provisions and the evidence presented at the hearing.
- 5 If the Commissioner determines that the proposal is a restricted discretionary activity, then:
 - (a) under s87A (3)(a), "the consent authority's power to decline a consent, or to grant a consent and to impose conditions on the consent, is restricted to the matters over which discretion is restricted"; and
 - (b) under s104C(1), "the consent authority must consider only those matters over which... (b) it has restricted the exercise of its discretion in plan or proposed plan." The section goes on to clarify that the consent authority may grant or refuse the application, and if it grants the application, it may impose conditions under section 108 only for those matters over which it has restricted the exercise of its discretion in its plan or proposed plan.

- 6 Several questions emerged at the hearing regarding the scope of the matters available to be considered by the Commissioner in the context of a restricted discretionary activity, as follows:
- (a) what role do objectives and policies have when deciding an application for a restricted discretionary activity?
 - (b) can positive effects be considered?
 - (c) do precedent issues have a bearing on restricted discretionary activity applications?

7 Each of these matters is discussed in the following sections.

What role do objectives and policies have when deciding an application for a restricted discretionary activity?

- 8 During the resource consent hearing, the Commissioner asked Counsel to provide comment by way of reply on whether the Commissioner could have regard to the objectives and policies of the Christchurch District Plan in order to inform the application of the relevant matters of discretion.
- 9 The answer is “yes”, a decision maker on a resource consent application can and should consider the objectives and policies that are relevant to the restricted matters of discretion on the basis that such objectives and policies will inform interpretation and understanding of the matters of discretion.
- 10 The Court in *Edens v Thames-Coromandel District Council* stated that (emphasis added):¹

*It might be argued that the listing of matters to which discretion has been restricted and the assessment criteria applicable to such matters provides all the guidance needed to make an assessment of an application for a restricted discretionary activity. Even if those provisions were drafted sufficiently well to achieve that standard, that cannot remove the requirement for proper consideration of relevant objectives and policies: the objectives are part of the plan as the most appropriate way to achieve the purpose of the RMA and the policies are the most appropriate way to achieve the objectives. **There can be no proper understanding of the matters of discretion and associated assessment criteria in a plan unless there is an understanding of the plan's objectives and policies in relation to those matters.***

- 11 In this case the relevant objective is Objective 9.3.2.1.1, which is to maintain the overall contribution of historic heritage to the Christchurch District’s character and identity through the protection and conservation of significant historic heritage **in a way** which enables and supports (relevantly) the **ongoing retention, use and adaptive re-use** of historic heritage.

¹ *Edens v Thames-Coromandel District Council* [2020] NZEnvC 13 at [119] and [120]

- 12 It is clear from the structure and words used in this Objective that protection of historic heritage is not an end in itself. Instead, such protection is to be achieved “in a way” that enables ongoing retention and use of historic heritage.
- 13 The relevant policy is Policy 9.3.2.2.3 – Management of scheduled historic heritage. Sub clause a. of this policy (relevantly) seeks to manage the effects of use and development on heritage items in a way that (emphasis added):
- i. provides for the **ongoing use and adaptive reuse** of scheduled historic heritage in a manner that is sensitive to their heritage values while recognising the need for works to be undertaken to **accommodate their long term retention, use and sensitive modernisation** and the associated engineering and financial factors;*
 - ii. recognises the **need for a flexible approach** to heritage management ...and*
 - iii. **subject to i. and ii.**, protects their particular heritage values from inappropriate subdivision, use and development.*
- 14 Sub-clause b. guides the work contemplated by sub-clause a. by (among other matters) seeking to focus any changes on those parts of heritage items that have more potential to accommodate change.
- 15 Policy 9.3.2.2.3a.i. specifically recognises that to secure ongoing use of historic heritage there will be situations where it is necessary for works to be undertaken to secure the long term retention and sensitive modernisation of historic heritage. Sub-clause a.ii recognises the need for a flexible approach to heritage management, as opposed to a fixed, rigid or inflexible approach.
- 16 Further, although Policy 9.3.2.2.3a.iii seeks to protect heritage values from inappropriate use and development, it is noteworthy that this sub-clause is “subject to” sub-clauses i. and ii.
- 17 The phrase “subject to” is used when an exception from a rule or provision contained in a different clause of a planning instrument needs to be introduced. In the case of Policy 9.3.2.2.3a., sub-clauses i. and ii. take priority over sub-clause iii. by introducing an exception to the requirement contained in sub-clause iii.
- 18 The effect of these words is to make protection of heritage values at sub-clause iii conditional or dependent upon achieving the matters at sub-clause i. and sub-clause ii. What this means in practice is that the District Plan deliberately seeks a management approach to historic heritage that gives priority to retention, on-going use, sensitive modernisation and need for flexibility, over protection of heritage values.
- 19 This approach reflects the practical reality that heritage buildings by definition are old buildings and their retention is often dependent on ongoing use and adaptive reuse. Further, proposals for redevelopment and modernisation of heritage buildings

can trigger much needed investment in seismic strengthening and upgrade works to meet modern building code requirements, which in turn secure the heritage values of protected heritage items for future generations. This approach to management of heritage buildings helps to maintain the identify and character of Christchurch, which is a key heritage objective in the District Plan. Conversely, a narrow and inflexible management approach to protection of historic heritage can preclude these outcomes.

- 20 In my submission these matters are relevant to understanding and application of the restricted discretionary activity criteria at Rule 9.3.6.1 of the District Plan, particularly in relation to weighing evidence relating to positive heritage effects against evidence regarding negative heritage effects of the redevelopment proposal.

Can positive effects be considered under Rule 9.3.6.1?

- 21 The Commissioner's power to decline a consent, or to grant a consent and to impose conditions on the consent, is restricted to the matters over which discretion is restricted at Rule 9.3.6.1.
- 22 It is submitted that the following criteria from Rule 9.3.6.1 are particularly relevant to the determination of the redevelopment proposal. Emphasis has been added to the criteria that enable consideration of positive effects of the proposal:

- c. Whether the proposal will provide for **ongoing and viable uses**, including adaptive reuse, of the heritage item.*
- d. Whether the proposal, including the form, materials and methodologies are **consistent with maintaining the heritage values** of heritage items and heritage settings, and whether the proposal will **enhance heritage values**, particularly in the case of Highly Significant (Group 1) heritage items and heritage settings and in particular have regard to:
 - i. the form, scale, mass materials, colour, design (including the ratio of solid to void), detailing (including the appearance and profile of materials used), and location of the heritage item;*
 - ii. the use of existing heritage fabric;*
 - iii. the extent of earthworks necessary as part of the proposal;*
 - iv. the necessity of the removal or transplanting of mature trees;*
 - v. the impact on public places; and*
 - vi. within a heritage setting, the relationship between elements, such as layout and orientation, form and materials.**
- e. The extent to which the works are in accordance with the principles in Policy 9.3.2.2.3(b), and whether the proposal:
 - i. is supported by a conservation plan or expert heritage report; and*
 - ii. the extent to which it is consistent with the Heritage Statement of Significance and Conservation Plan and the ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value (ICOMOS New Zealand Charter 2010).**
- f. Whether the proposed work will have a temporary or permanent adverse effect on heritage fabric, layout, form or heritage values and the scale of that effect, and **any positive effects on heritage fabric, fabric, form or values.***
- g.*
- h. Whether Heritage New Zealand Pouhere Taonga has been consulted and the outcome of that consultation.*

- i. *Whether the site has cultural or spiritual significance to Tangata Whenua and the outcome of any consultation undertaken with Te Rūnanga o Ngāi Tahu and Papatipu Rūnanga.*

23 In summary:

- (a) ongoing use of a heritage building is a positive effect that can be considered (under criteria c.);
- (b) maintenance and enhancement of heritage values is a positive effect that can be considered (under criteria d.);
- (c) positive effects on heritage fabric, heritage form and heritage values can be considered (under criteria f.);and
- (d) positive effects on cultural and spiritual values of importance to Tangata Whenua can also be considered (under criteria i.).

24 Several of the above criteria refer to "heritage values". This term is defined in the District Plan to mean:

"the following tangible and intangible attributes which contribute to the significance of a heritage item and its heritage setting:

- a. *historical and social values;*
- b. *cultural and spiritual values;*
- c. *architectural and aesthetic values;*
- d. *contextual values;*
- e. *technological and craftsmanship values; and*
- f. *archaeological and scientific values.*

25 The attributes at a. - f. above are used to inform the Heritage Assessment – Statement of Significance (**HSS**) for heritage items and settings scheduled in the District Plan, including those prepared for the protected Museum buildings and the RMG.

26 Accordingly, to better understand the heritage values of significance to the protected buildings that are the subject of this proposal, it is necessary to consider the HSS for each of these buildings.

27 It is noteworthy that the HSS for each of the Museum buildings records under "Historical and Social Significance" that the Canterbury Museum is highly significant "...as one of the oldest purpose-built museums in New Zealand to have been **in continuous use** since it was opened..."

28 And under "Cultural and Spiritual Significance" that the Museum is highly significant due to the collections it houses which are "...of major cultural significance to the region..." and because "...the Museum reflects the changing cultural function of museums and the **importance of this institution** to the broader community".

- 29 Regarding the RMG building, the HSS records under “Cultural and Spiritual Significance” that “[t]he building is of high cultural significance **for its use** as Christchurch’s public art gallery for 70 years...”.
- 30 The emphasis above highlights the important point that use of these buildings is a significant heritage value that needs to be considered as part of the exercise of discretion under Rule 9.3.6.1.
- 31 This point was highlighted in evidence from Mr Gard’ner who noted in answer to questions from the Commissioner that the redevelopment proposal allows continued use of this very important public facility that has significant social and cultural values for Christchurch and visitors. Mr Gard’ner’s view is that the positive effects of continued use can be offset against potential adverse heritage effects of the proposal, noting that the use of heritage buildings is an important heritage value.
- 32 Ms Wykes appeared for Heritage New Zealand Pouhere Taonga (HNZ). In answer to questions from the Commissioner Ms Wykes also gave evidence that use of the Museum is a key cultural value.
- 33 Further, Ms Wykes aptly summarised the positive features of the proposal as follows:
- (a) secure storage of the Museum’s collection;
 - (b) improvements to protected heritage buildings;
 - (c) reactivation of the RMG building as a public art gallery; and
 - (d) immeasurable improvement to visitor experience.
- 34 To these matters, Counsel would add the following positive feature:
- (e) the increased recognition of a cultural narrative within the built form of the Museum and with respect to exhibitions and the storytelling function of the Museum.
- 35 In my view the range of positive effects available to be considered under the above criteria is broad and the scope of the Commissioner’s discretion is sufficient to allow consideration of all the evidence presented at the hearing regarding the above-mentioned positive features of the proposal.
- 36 In this regard, the evidence from iwi stakeholders is universally supportive of the proposal. Further, in my view the overwhelming weight of evidence presented at the

hearing², and a compelling number of submissions from the public and stakeholder organisations³, supports the proposal.

Do precedent issues have a bearing on restricted discretionary activity applications?

- 37 Another question that arose during the hearing is whether the Commissioner can consider precedent effects of allowing the proposal, when deciding whether to grant or decline the resource consent application. The question arose in the context of two issues: the proposed height exceedance by some of the new buildings, and the effects of the redevelopment on the Roger Duff Wing.
- 38 Precedent issues are generally considered to be irrelevant when deciding a restricted discretionary application.⁴ The exception to this is where the restricted matters of discretion give rise to the consideration of precedent issues.⁵
- 39 In the current circumstances, the relevant matters of discretion do not contain any explicit or oblique reference to precedent effects.⁶ Notably, there are other Matters of Discretion rules in the Christchurch District Plan that do explicitly require precedent effects to be considered.⁷
- 40 Therefore it is considered that the Commissioner need not consider the potential precedent effects arising from the grant of resource consent to the redevelopment proposal.

ARE THE CHANGES TO THE DUFF WING FAÇADE AND THE CENTENNIAL WING FAÇADE ACCEPTABLE?

- 41 There is a dispute between heritage experts in relation to proposed changes to the Duff Wing façade and the Centennial Wing façade. The heritage assessment completed by Ms Ohs for the Council (the heritage assessment) does not support the proposal and Ms Ohs confirmed this view in her evidence at the hearing.

Shortcomings in the Council heritage assessment regarding proposed changes

² The following experts support the proposal:

- Applicant's experts of Trevor Watt (architecture), Jim Gardner (heritage architecture), Alan Titchener (landscape architecture), Puamiria Parata-Goodhall (cultural), Graham Taylor (planning);
- Council's experts of Jeremy Head (landscape architecture), and Nicola Williams (urban design);
- Heritage New Zealand Pouhere Taonga expert Fiona Wykes.

³ See for example submission lodged by the following persons and stakeholder organisations: Dr Ian Lochhead and Dr Lynne Lochhead, and Dame Anna Crighton, Heritage New Zealand Pouhere Taonga.

⁴ *Campbell v Napier CC EnvC W067/05* at [59], [63] – [65]

⁵ *Kirton v Napier City Council* [2013] NZEnvC 66 at [77] and *Campbell v Napier CC EnvC W067/05* at [65]

⁶ For example at Rule 9.3.6.1.

⁷ For example at Rule 6.8.5.1

- 42 Counsel maintains the view expressed in opening submissions for the Applicant that the Ms Ohs adopts an unduly conservative assessment of the proposal that appears to be out-of-step with the approach to heritage management expressed in the District Plan. The District Plan approach, in my view, is an approach that is realistic about the condition of heritage buildings, supportive of their retention and continued use, and enabling of sensitive modernisation.
- 43 Further, although Ms Ohs identifies various positive features of the proposal, she appears to give little weight to them in her assessment. For example, Ms Ohs notes that “[o]ngoing uses for heritage places are usually vital to their retention...”⁸ However the relative importance of this positive effect on heritage values arising from the redevelopment proposal is not reflected in Ms Ohs’ overall impact assessment.⁹
- 44 In addition, Mr Ohs gives little or no regard to the positive effects on cultural and spiritual heritage values arising from the cultural narrative included in the proposal.
- 45 Further, Mr Ohs places considerable weight on her view that the proposal will cause adverse effects on contextual values of the Duff Wing and the Centennial Wing due to changes to their respective façades. In my view, Ms Ohs’ view is strikingly at odds with all the other expert witnesses that gave evidence at the hearing (including heritage and urban design evidence from other Council officers) who firmly support changes to these facades in terms on account of the positive visual and contextual effects on adjacent heritage settings.
- 46 Overall the fundamental flaw in Ms Ohs’ assessment is that it places undue importance on the loss of heritage fabric, and does not give appropriate weight to those aspects of the proposal that make a positive contribution to heritage values of the Museum and the RMG. In my submission, Ms Ohs has focussed almost entirely on architectural significance, which is only one of the attributes contributing toward the heritage values of these buildings.

Proposed changes to the Centennial Wing façade

- 47 The applicant’s case is that revealing the north façade of the 1877 Mountfort building is a positive outcome for this high significant heritage building.
- 48 Ms Ohs acknowledged in questioning from the Commissioner other benefits of the “slice”, namely cultural heritage benefits and benefits to the adjacent Mountfort building the proposed slice will avoid need for alteration to heritage fabric of that building.

⁸ Ms Ohs’ assessment at paragraph 31

⁹ Supra at paragraphs 119 - 130

49 Ms Ohs states that these benefits do not outweigh the removal of what is a small part of the Centennial Wing façade. Mr Ohs downplays the benefits and considers the Mountfort northern façades "...modest appearance, detailing and position on the site, indicate that further northward extension at this point may have been anticipated".¹⁰

50 With respect, no evidence is provided by Ms Ohs is to substantiate this claim. The historic photographs show that the north wall of the 1877 Mountfort building is not modest in detailing or appearance¹¹ – it may not have had windows, but the stone detailing is not that different from the visible eastern façade of the 1877 building. The presence of a buttress on the northern face (now removed) appears to be inconsistent with Ms Ohs' view. Further, Dr Ian Lochhead, a recognised expert in Mountfort and New Zealand architectural history supports the "slice" and open separation to the Mountfort building in his submission on the proposal.

Proposed changes to the Duff Wing façade

51 When considering changes to the Duff Wing façade, it is important in my view to understand where the Duff Wing sits in relation to the rest of the Museum complex of buildings. For the reasons explained in the evidence of Mr Watt (and discussed by Counsel at the close of the hearing), the only realistic place to locate the new café within a redeveloped Museum is in the Duff Wing.

52 The question then becomes: how best to design the café in a manner that is sensitive to heritage values of the protected Duff Wing façade?

53 Mr Watt and other members of the Applicant's design team have given considerable attention to this issue because of the competing considerations in play.

54 In this regard, the following matters are relevant to assessment of heritage impacts of the proposed changes to the Duff Wing façade:

- (a) the heritage significance of the Duff Wing façade is more than just the physical heritage fabric;
- (b) even so, Mr Gardner's evidence is that key compositional elements of the façade will be retained;
- (c) the Duff Wing is categorised as having a secondary historical significance, in contrast to the primary significance of the adjacent Mountfort buildings;

¹⁰ Ms Ohs' Summary of evidence at paragraph 16

¹¹ See the Concept Design Report at page 8, and page 49, for an image of the north end of the 1877 Mountfort building

- (d) the Duff Wing has been described in evidence for the Council as “back of house” in both location and physical appearance¹²;
- (e) the Duff Wing is the only area of the total Museum complex façades where change can be accommodated to address the multiple functional, urban design and aesthetic requirements of the redevelopment proposal; and
- (f) these practical and positive features of the proposal in the round need to be weighed against the impacts of the proposed changes on the heritage values of the Duff Wing façade.

55 The Museum engaged with many stakeholders on the project, particularly regarding the Duff Wing changes, due to the level of alteration proposed to occur to this heritage building.

56 With the exception of Ms Ohs for the Council, all stakeholders engaged by the Museum support the design solution for the Duff Wing developed by the Applicant.¹³

57 Overall, the weight of evidence before the Commissioner is that the Duff Wing and associated café design is an acceptable one in heritage terms.

PROPOSED USE OF THE RMG BUILDING – RESPONSE TO LEGAL SUBMISSIONS AND EVIDENCE OF MR SEAY

58 Mr Seay’s legal counsel promoted the inclusion of a condition of consent regarding use of the RMG building in accordance with Christchurch City Council (Robert McDougall Gallery) Land Act 2003 (the RMG Land Act).

59 The Applicant does not support this approach because use of the RMG is not an RMA matter. In the alternative, an advice could be used. However the evidence for the Applicant is that it has agreed to lease the RMG from the Council on terms that require the Board to comply with the requirements of the RMG Land Act, including the limitations on use of the RMG. Further the Board is fully cognisant for the requirements of the RMG Land Act and in my view this should be sufficient to avoid need for an advice note.

60 It is clear from Mr Seay’s evidence that he is very passionate about use of the RMG building, which Mr Seay refers to as his “campaign”. The difficulty for Mr Seay is that his preferred use of the RMG is narrower than what the RMG Land Act actually contemplates.

¹² See the evidence of Jeremy Head, landscape architect for the Council

¹³ These stakeholders included architects and heritage experts, all of whom thought that the proposed design had successfully navigated the issues in play

61 Mr Seay wants the Museum to be used exclusively for the display of two dimensional art – however the RMG Land Act specifically notes that the gallery is for “the purpose of a public gallery for the display of art and decorative arts and crafts and ancillary activities.”¹⁴

62 Further, Mr Seay is incorrect when he stated at the hearing that the Museum has given him a written commitment to limit use of the RMG to the display of two dimensional art.

63 The commitment to which Mr Seay appears to be referring to the letter sent to him by the Board dated 14 August 2020 which is appended to Mr Wright’s evidence as Attachment A. It states:

We are committed to honouring [your grandfather’s] wishes and believe that the Museum offers the best opportunity for the gallery to be reopened and maintained for public use for the display of works from the cities heritage art collections – both on loan from the Christchurch Art Gallery as well as from the Museum’s own collection.

64 The evidence shows that the Board, throughout its dealings with Mr Seay, has been consistent in its commitment to comply with the requirements of the RMG Land Act.

PROPOSED UNDERGROUND STORAGE OF THE COLLECTION – RESPONSE TO CIVIC TRUST EVIDENCE AND MR SEAY’S EVIDENCE

65 Submissions for the Christchurch Civic Trust (the Trust) and Mr Seay expressed concern about the proposed underground storage of the Museum’s collection and the risk of inundation and damage to the collection.

66 At the hearing, Professor Chris Kissling for the Trust appeared to accept the evidence of Mr Watt regarding how this risk can be address and mitigated through multiple redundancies in the basement design.

67 Mr Seay was not convinced by Mr Watt’s evidence. However Mr Seay does not have any geotechnical, hydrological, architectural or structural engineering expertise. Therefore his concerns, whilst genuinely held, should be considered with considerable care and in my view given little weight.

68 The Board is very aware of the need to manage risk to the Museum’s collection. It has an obligation under its Empowering Act (the Canterbury Museum Trust Board Act 1993) to conserve the collection.¹⁵

69 Further, the Board has also considered the alternative of an off-site facility to store the collection. This option is not realistically available primarily for two reasons. First, it’s not available under the Museum’s Empowering Act.¹⁶

¹⁴ RMG Land Act at section 6(1)

¹⁵ Canterbury Museum Trust Board Act 1993 at section 9(1)(c)

- 70 Secondly, off-site storage of the collection is not feasible financially. Simply put, the cost of a split-site solution is too great compared to on-site storage due to the need to purchase additional property and the loss of operational efficiencies that are currently available to the Museum operating from one site.

PROPOSED CONDITIONS OF CONSENT

Final version of consent conditions agreed between the applicant and the reporting officer

- 71 Amended conditions of consent including changes requested by HNZ and changes as proposed by Mr Taylor were attached to Ms White's summary of evidence (the amended consent conditions).¹⁷
- 72 Ms White's summary hasn't been uploaded to the Council web page so a copy of the amended consent conditions is attached as **Appendix A** to these submissions (the highlighting is Ms White's and indicates text that incorporates changes).
- 73 The amended consent conditions are supported by the Applicant.

Certification of works by a heritage expert

- 74 During the presentation of Mr Taylor's evidence the Commissioner enquired about how the certification condition in the consent conditions would work in practice.
- 75 Mr Taylor explained that this condition mirrors the District Plan approach of ensuring that there is an expert consultant overseeing works on a heritage building. The Commissioner requested that the Applicant's reply address this matter further.
- 76 The certification condition is included in the amended consent conditions at condition 15 (the certification condition). It reads as follows:

Methodologies, scope of works, specifications and plans

The consent holder shall provide detailed documentation from the appropriate specialists (and with a statement in support from the consent holder's Heritage Professional), which shall include methodologies, scope of works, specifications and plans where relevant, to be submitted by email to RCmon@ccc.govt.nz for certification by the Head of Resource Consents (or their nominee) at least 10 working days prior to works commencing on the following areas:...

- 77 Consent condition 17 provides a similar certification provision regarding the construction management plan that is required to be prepared by a suitably qualified and experienced practitioner.

¹⁶ Refer to the decision of Fogarty J in *Re Canterbury Museum Trust Board* HC Christchurch CIV-2005-409-1425, at para [73]

¹⁷ . Ms White also made some minor corrections to conditions 7 and 15 where they should refer to "scheduled" items rather than "listed" items as proposed by Mr Taylor.

78 The District Plan contains permitted activity standards for various works on heritage items at Rule 9.3.4.1.1. Permitted activity standards P1, P2, and P3 permit works where these are undertaken “in accordance with the design and/or supervision of a heritage professional”.

79 The District Plan defines a “heritage professional” as follows:

in relation to Rule 9.3.4 Historic heritage, Appendix 9.3.7.5 Heritage works plan and Appendix 9.3.7.6 Certification of non-heritage fabric, means:

- a. a registered architect with a recognised post-graduate qualification in a field related to heritage conservation or management and at least three years of experience, including experience on at least three projects where he/she has acted as the principal heritage advisor for works involving a heritage building listed by Heritage New Zealand and/or in a district plan; and/or*
- b. a person with a degree or with a recognised post-graduate qualification in a field related to heritage conservation or management and at least five years of experience in heritage conservation or management, including experience on at least five projects where he/she has acted as a principal heritage advisor for works involving a heritage building listed by Heritage New Zealand and/or in a district plan*

80 Permitted activity standards P10 and P11 permit heritage upgrade works and reconstruction or restoration (respectively) where the works are undertaken in accordance with “the certified heritage works plan prepared, and certified by the Council, in accordance with Appendix 9.3.7.5.

81 Appendix 9.3.7.5 provides for a heritage works plan and is set out in full in **Appendix B** to these submissions.

82 Mr Taylor’s evidence is that the above-mentioned certification consent conditions are well understood by the professionals and have been applied without undue difficulty on other heritage projects within the City.

Dated 25th June 2021



Chris Fowler

Counsel for the Canterbury Museum Trust Board