

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)

**STATEMENT OF EVIDENCE OF PAUL SZYBIAK
ON BEHALF OF FERN FITZGERALD LIMITED**

Dated 29 August 2023

Counsel Acting: Alanya Limmer
Bridgeside Chambers
P O Box 3180
Christchurch 8140

Email: alanya@bridgeside.co.nz
Telephone: 64 21 812 811

Introduction

1. My name is Paul Szybiak. I am a director of Fern Fitzgerald Limited (**FFL**) and I am authorised to give this evidence on its behalf. FFL is the owner of the land and building which is the subject of this application. I am also the managing director of Rosefern Limited, which is involved in the development of the wider site and other projects. Rosefern and the Applicant have common shareholders and directors. My role with the Applicant is varied. My main passion is in the design and construction side of the business.

FFL

2. We have been developing houses and other dwellings from scratch for approximately 3 years now. Prior to that, we were engaged in repairing and on-selling earthquake damaged housing. We completed over 200 projects all around the city.
3. We are a relatively small development company run by myself and 2 other directors. Our aim has been, and remains, to provide affordable, high-quality housing. We understand that townhouses as they have been developed are not to everyone's liking. We have aimed to be slightly different. For example, we build slightly larger units, always provide garaging or parking where possible, and finish to a higher standard. What we aim to do is to create small communities rather than squeezing the most units out of any given site.
4. My evidence relates to our application for resource consent to demolish the building at 187 Fitzgerald Ave (**187**). I reviewed the application for consent before it was filed. Since that time I have also read the Further Information response, the various submissions which have been filed, and the Officer's Report.

History of FFL's involvement with 187 Fitzgerald Avenue

5. We purchased the land including 187 in mid-2021. Prior to the purchase we had been working on resource consents and plans for the wider site since the beginning of 2021. Our idea was to build a development in keeping with the area that really championed the heritage building at 187 Fitzgerald Ave which is the subject of this Application. Our original plans were to build 16 units on the wider site focused around 187.
6. We had the idea of putting a new café/bar in the heritage building on 187 to try and create a community feel to the whole development. We didn't go for

maximum density on the site and went with garages and car parks to try to attract more live-in homeowners and less investors. We believed that would have given more of a community feel. That development was consented in 2022 and is currently the subject of a variation request. I discuss that further later in this evidence.

7. We were very keen to restore and use the heritage building in that way. While we have not been involved in heritage proposals before, I have a real interest in them. I was impressed with the Chambers building on Fitzgerald Ave and also the heritage building located at 324 Barbadoes Street, which houses the Beat Street Café downstairs, and, I understand, is tenanted upstairs. That is precisely the type of thing we were looking at doing.
8. Unfortunately, from the further investigations and works which we have commissioned since purchasing the building, and particularly when we have been looking at obtaining building consents, it has become clear that the state of the building, the scale of the repairs necessary, and the significant costs, mean that what we had intended is simply uneconomic and is not achievable for us.

State of building

9. I note that a number of submitters consider that we have effectively got a bargain when purchasing the property. Unfortunately, that is incorrect.
10. We undertook due diligence with a builder and engaged Centraus Structural Consultants to carry out a non-invasive inspection of the building. It was a non-invasive inspection of the easily accessible areas. We were given some rough estimates as to what the likely total costs of repair would be.
11. In my experience, it is always very difficult, at the early stage, and pre-purchase, to undertake a full assessment. The due diligence periods are short. Additionally, the due diligence process does not enable destructive investigations. At the time we entered into the agreement, we understood that the repairs would be circa \$1million at most.
12. In relation to the potential EQC and insurance payouts to the vendors, we believe that if they were insured, there would have been such. We were not provided with any information on this by the previous owners. As noted, we did speak to the previous owners in relation to the grant. We met them probably 15 times on site and the potential for a grant was discussed at some length as we understood that the vendors had also done a heritage restoration

in the area. They seemed to know all the people in the Council, and we never had any reason to doubt what they were saying.

13. The reality is that from our perspective what the vendors did or did not receive from EQC and/or insurers is really irrelevant. There was no discounting as such. We paid what, on the information available to us at that time, we considered appropriate.
14. The previous owners had informed us that there would be a significant Heritage grant available of between \$700,000 and \$1million.
15. We engaged in considerable correspondence with the Council in relation to a potential grant and I discuss that further in this evidence.

What FFL has done with 187 since purchasing it

16. I note that some of the submitters, particularly Mr Callaghan, seem to suggest that in essence we have invited squatters in to ensure that the building is degraded. That is simply not correct.
17. We have constantly, over the years, been trying to protect the building but have had continual break-ins. We had a timber fence installed and all the windows and doors were boarded up. This just did not work as there was always a way to get in due to the state of what we were fixing these to, the boards could always just be levered off. There were also locks placed on the doors and these were broken off too. It was a very frustrating time for us.
18. When we purchased the property, it had a temporary fence put up. This kept getting pushed over.
19. We then installed a more permanent fence. We received advice to leave an opening so that people could see in as that would discourage any break-ins. Approximately every 3-4 months we have had to replace the ply on the windows as that either gets stolen or damaged. The last time we boarded up the windows the ply was stolen within 3 days of it being put up. We have done substantially more than the previous owners did to protect the site. We absolutely refute that we have intentionally let the building deteriorate.
20. The reality is that when we purchased the building its condition had deteriorated considerably. As part of the earthquake assessment and emergency works, the chimney was removed. It appears that a good deal of damage resulted from that and the water ingress that removal allowed.

21. The building was unoccupied for at least 10 years prior to our purchase. I have a series of photographs taken in December 2020 which show the condition of the building at that time. I **attach** a screenshot of those photographs to this evidence as **Appendix 1**.
22. I also **attach** a screenshot of various photographs taken on 16 November 2021 as **Appendix 2**.
23. The apparent weather damage had occurred prior to our purchase and the initial structural assessment undertaken in February 2021 identified a number of issues including the structural and weather damage to the roof material, cracks and separation in the interior walls and ceilings, delamination, ground floor settlement, poor shape of weatherboard cladding, and cracks in the foundation rim beam. The report also identified dry rot and various decay.
24. We spent roughly 24 months obtaining resource consent for the site. This consent consisted of a 16 residential unit development and restoration of the heritage building at 187. The idea was to have all the units built in a mix of red brick and plaster to make the weatherboard heritage building really stand out. We were sold the site at 187 Fitzgerald with the 3 adjoining sites. One of the reasons for selling to us was the previous owners really liked our vision and passion we had about the heritage building.
25. We had full plans to turn the heritage building into a mix of hospitality and commercial uses. We even planned to move our offices there. We had also spoken to some local bar owners about them occupying the hospitality space downstairs. We have a scale model in our office and the heritage building is my screensaver on my laptop. This was a huge project for us and restoration then re-use of the heritage building became a real passion of mine in the design stage.
26. The approved units were released for pre-sale in the week after we obtained resource consent. At the same time, we started on the building consent process and that is when the engineers really started to look and plan in detail. The structural engineers had an in-depth look at the state of the building and what would be required to bring it up to building code requirements. On their first site visit the engineers actually refused to go into the building due to the state of it. While the engineers have provided a report, it is my understanding that the main issues identified were with the structural components starting at the foundation, and all of the structural walls.

27. The repair methodology they had suggested was a lot more complex and considerably more expensive than we had anticipated. For example, to try and get a new foundation under the building was going to be a very technical and very expensive process. After one site visit by the engineers, we knew that we had no choice but to re-evaluate the whole project, leading us to pull the units from sale before any were sold.
28. It was at the building consent stage we discovered the repair was a lot greater and more complicated and costly than first thought. These were outlined by the architect and engineer from the first site visit while we were starting our building consent plans.
29. Externally, and from my perspective, there was literally nothing of the original fabric that could be kept or restored. From the weatherboards, windows, to the roofing structure, it would all need to be replaced.
30. There were also great complexities with the structural side too. The whole foundation and a lot of the internal timbers would also need replacing, this added great cost to the repair.

Heritage Grant

31. We approached Council on a heritage grant but were told (on site) that for 2021 the fund had pretty much been exhausted and they were not likely to get a great deal topped up in 2022. It made it very hard to plan because we were informed that if we replaced everything that was needed to fix the building, the building would not constitute Heritage status anymore, we were pretty much building it from new but slowly and uneconomically rebuilding it around some old parts. All of these discussions were had on site with Council and heritage members.
32. We had a considerable amount of correspondence with Mr Brendan Smyth in relation to a potential grant. We appreciate Mr Smyth's frankness. The correspondence was chiefly in August of 2021. Mr Smyth advised that there had been a high number of queries inquiring about grants. His email of 9 August 2021 advised that he has had to make the situation clear so that expectations are not built up. That email advised that grant funds are extremely limited for this year and coming years. It advised that there was no new funding for heritage incentive grants in the recently approved LTP, and that he was still awaiting confirmation that this scheme would have any funds as "we are relying on carry over from previous years underspends ...". The

email advised further that it was unlikely there would be any large percentage based grants and more likely that a small contribution will be all that is possible. I **attach** a copy of that email as **Appendix 3**.

33. It became very clear to us that any significant grant was not going to be achievable.

What are FFL's options?

34. We have spent approximately \$750K on the project between holding costs and various consultants. These costs are across all of the planning for the development of the larger project. The realisation that the costs of the repair to the buildings was simply unmanageable, was very difficult. This was intended to be a flagship development for us. Unfortunately that is simply not now achievable.
35. Demolition is the only way we can see this moving forward. The cost of the repair was \$2,070,000 and valuation \$1,370,000 once fixed. For us it is just not financially viable to continue with the repair. If we did it is likely that we lose approximately \$2million on the development. That could easily lead to the company going bust. That is a real concern to us.
36. When I originally met with Council on site I suggested we re-build the building but a perfect replica, making a real icon of it. This was turned down instantly as it would mean the building would not constitute being heritage. I was surprised by this as it is literally the same outcome as the repair but I understood their argument.
37. If this consent is granted, we do not have any firm plans as to what would replace it. It would either be a commercial building, or potentially more units could be placed on this site.
38. If the demolition consent is not granted, then unfortunately we see no option other than selling either the Heritage building, if that is at all possible, or indeed, selling the whole site.

Consultation

39. We have always been willing to consider different views on what could be done with 187. We have offered to host people on the site. I note of course that the state of the building makes that somewhat problematic.

Response to submissions received

40. There are a number of matters raised in the submissions that we could traverse in this evidence. Some of the matters have been identified and discussed earlier in this evidence.

41. The reality is that I, and the other directors, share the same disappointment expressed by a number of submitters in relation to the loss of heritage. However, it is simply not economically feasible for us to undertake the works in accordance with the costs which have been estimated. It would be irresponsible of us to do so and it would lead to a real risk of the company failing.

Paul Szybiak

29 August 2023

Appendix 1: Screenshot of photos December 2020

8 Dec 2020

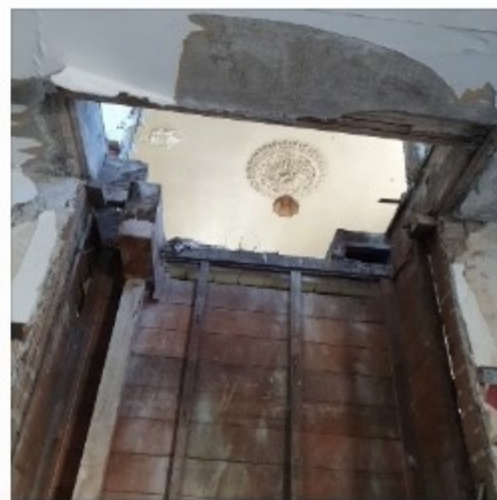
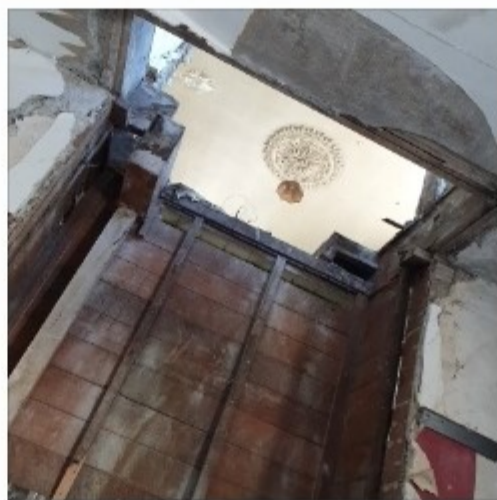
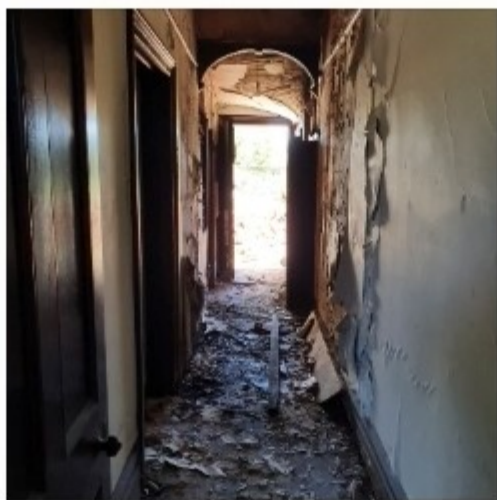
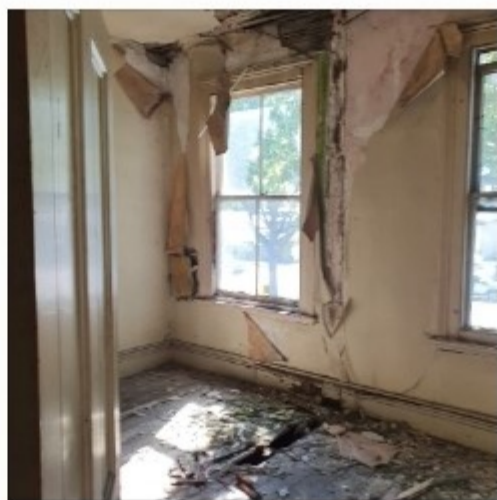
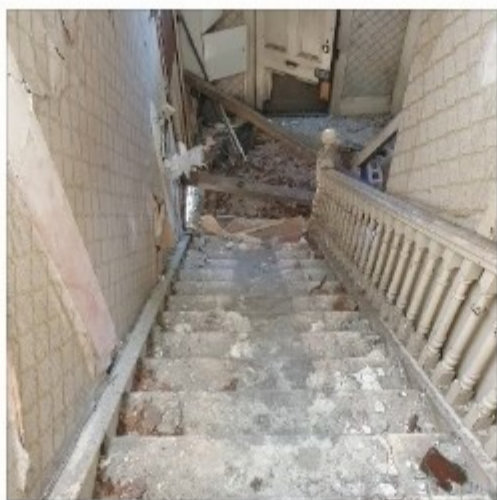
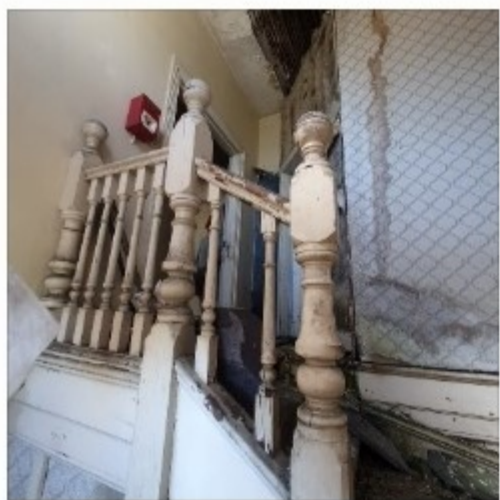
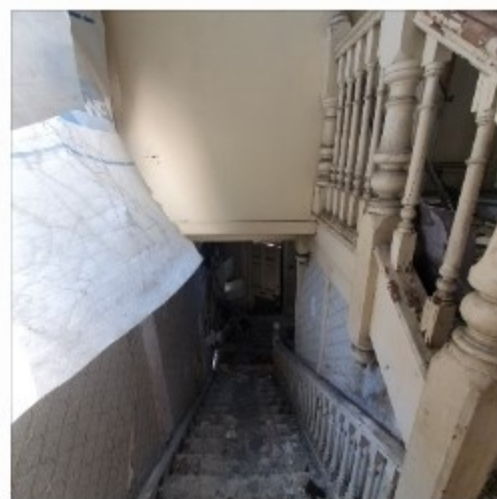
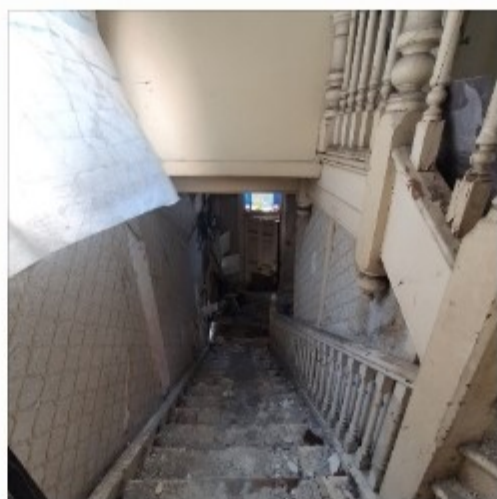
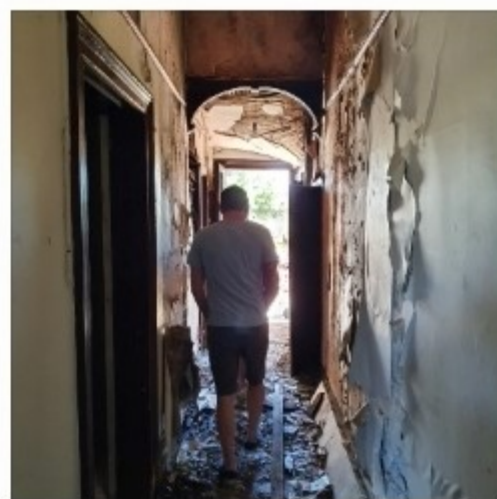
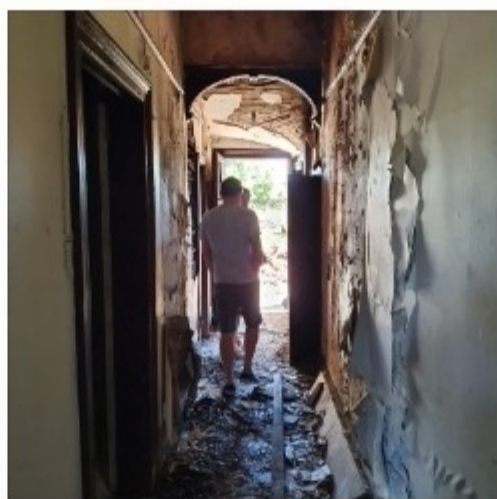
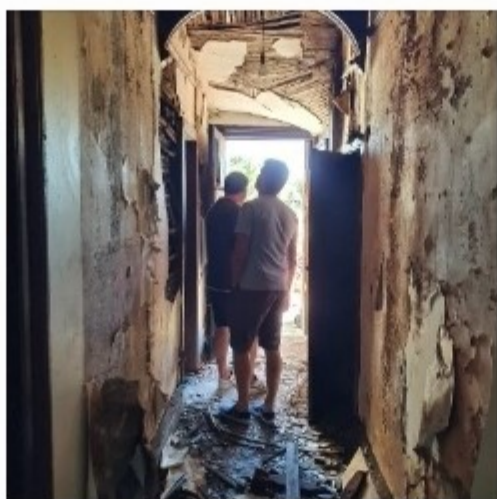
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Appendix 2: Screenshot of photos 16 November 2021

16 Nov 2021

Christchurch



Appendix 3: Brendan Smyth email 9 August 2021

Thank you for getting back to me so quickly and for the information below. Could you please confirm the deadline for applications for the September 09 Council meeting?

Thank you very much.

Kind regards

Natalie Gunn

Project Manager

Rosefern Developments

Arete Properties

118D Wordsworth Street

Christchurch 8023

M: +64 210 811 1733

E: gunn.nataliejane@gmail.com

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On Mon, Aug 9, 2021 at 2:20 PM Smyth, Brendan <Brendan.Smyth@ccc.govt.nz> wrote:

Hi Natalie,

The next Committee meeting for Heritage Grants is the September date given to you by Liz Ryley. I also enclose the 'Guidelines' document on the CCC website.

We have had a high number of queries recently enquiring about grants and I have had to make the situation clear so that expectations are not built up. Hence my comments below which I have already sent to Glen McConnell.

*Grant funds are extremely limited for this year and coming years. There was **no new funding** for Heritage Incentive Grants in the recently approved **LTP**. I am still awaiting confirmation that this scheme will have **any funds** as we are relying on carry over from previous years underspends. We will not know this until 26th August but we will certainly have a reduced total grant pool. It is unlikely that there will be any large percentage based grants and more*

likely that a small contribution will be all that is possible. All grant applications need to be approved by a Council Committee and applications can and have been declined.

Regards

Brendan

Brendan Smyth
Team Leader Heritage
Heritage Team

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