

UNDER THE RESOURCE MANAGEMENT ACT 1991

IN THE MATTER OF an application
by Carol & Peter Johns to demolish
the dwelling at 33 Dublin Street,
Lyttelton.

Council File: RMA/2023/2046

Hearing Date: 24 April 2024

RESOURCE CONSENT APPLICATION RMA/2023/2046

33 DUBLIN STREET, LYTTELTON

DECISION OF COMMISSIONER O'CONNELL

RESOURCE MANAGEMENT ACT 1991

DECISION OF THE CHRISTCHURCH CITY COUNCIL ON A RESOURCE CONSENT APPLICATION

APPLICATION REFERENCE: RMA/2023/2046

APPLICANT: Carol and Peter Johns

SITE ADDRESS: 33 Dublin Street, Lyttelton

PROPOSAL: To demolish a dwelling

DISTRICT PLAN ZONING: Christchurch District Plan: Residential Banks Peninsula
Plan Change 14: Residential Banks Peninsula

OVERLAYS

Christchurch District Plan:
Character Area Overlay (Lyttelton); Remainder of Port Hills and Banks Peninsula Slope Instability Management Area; Banks Peninsula District Plan Coastal Hazards; Nga Turanga Tupuna.

Proposed Plan Change 13:
Contributory building within the Residential Heritage Area (HA7)

Proposed Plan Change 14:
Sunlight Access Qualifying Matter; Low Public Transport Accessibility Area Qualifying Matter; Residential Heritage Area Qualifying Matter; Sites of Cultural Significance Qualifying Matter

ACTIVITY STATUS: Restricted Discretionary

DATE OF HEARING: 24 April 2024

APPEARANCES:

Applicant

Ms Mona Neumann (Planning Consultant)

Mr Peter Johns (Applicant)

Mr Edward Hill (Structural Engineer)

Mr Shaun Halligan (Earthquake Commission)

Council Officers

Mr Andrew Long (Council Senior Planner)

Mr David Hattam (Council Urban Designer)

Mr Gareth Wright (Council Heritage Advice)

Submitters

Clifford Paul Mason - Alison Ross – Paula Weir – in opposition

James Allan Kay – in support

COMMISSIONER: Commissioner O’Connell

SUMMARY OF DECISION: That the application be **granted**, subject to conditions.

DATE OF DECISION: 10 June 2024

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INTRODUCTION

- 1.1 I have been appointed by the Christchurch City Council (Council) to hear and make the decision on the land use resource consent application by Carol and Peter Johns to demolish the dwelling at 33 Dublin Street, Lyttelton.
- 1.2 I am satisfied that I do not have any conflicts of interest and am able to objectively and fairly reach a view on the merits of the proposal and treat all parties evenly.
- 1.3 No problematic procedural or administrative issues were received or raised by either the Council, Submitters or the Applicant at the hearing.

2.0 THE APPLICATION

- 2.1 The Applicant seeks landuse resource consent to demolish the existing dwelling which is located within the Character Area Overlay (Lyttelton) and is identified as a Contributory Building within the proposed Residential Heritage Area (HA7 – Lyttelton) under Proposed Plan Change 13 & 14. The Applicant submits that the dwelling needs to be demolished due to earthquake damage and the cost of repairing the dwelling is uneconomical.
- 2.2 While I acknowledge the difficulty and inevitable stress the Earthquake Commission (EQC) process will have caused the Applicant, I record that the EQC process and the outcome¹ fall outside the scope of this resource consent process. To clarify, the agreement between the Applicant and EQC has no bearing on the outcome of this resource consent application.
- 2.3 For completeness, I record there are no matters of contention between Mr Long and Ms Neumann regarding the scope of the proposal.

3.0 WRITTEN APPROVALS / SUBMISSIONS

- 3.1 No written approvals were provided with the application.
- 3.2 Four submissions were received on this application (one in support, three in opposition). I was provided copies of all submissions prior to the hearing. While I do not intend to repeat the content of the submissions, suffice to say, I have read them and understand the views of each submitter. The following summary of each submission is taken from the s.42A report prepared by Mr Long.
- James Allan Kay is in support of the application on the basis that the demolition of the building would enable improved housing stock; and
 - Clifford Paul Mason, Alison Ross, and Paula Weir each oppose the application generally on the basis of effects on the heritage and character of the site and Lyttelton.

4.0 THE HEARING

- 4.1 The hearing commenced at 9:30am on Wednesday 24 April 2024 in Committee Room #2 at the Christchurch City Council, Te Hononga Civic Offices.
- 4.2 Those that attended the hearing are as follows:

¹ I understand the Earthquake Commission has required a covenant to be registered on the title stipulating that the dwelling must be demolished before settlement can proceed.

Applicant

Ms Mona Neumann (Planning Consultant)

Mr Peter Johns (Applicant)

Mr Edward Hill (Structural Engineer)

Mr Shaun Halligan (Earthquake Commission)

Council Officers

Mr Andrew Long (Council Senior Planner)

Mr David Hattam (Council Urban Designer)

Mr Gareth Wright (Council Heritage Advice)

Submitters

Clifford Paul Mason - opposed

Alison Ross – opposed

Observer

Ms Kim Seaton

- 4.3 Prior to the hearing, I reviewed the pre-circulated s.42A report prepared by Mr Long and the pre-circulated evidence prepared by Ms Neumann for the Applicant. I also reviewed the submissions. For completeness, I also read the application as lodged, the s.95 notification decision, along with the other documents contained in the Appendices supplied with the notice of hearing. I am satisfied I have been provided with all necessary information to make an informed decision.
- 4.4 During the hearing, I asked questions of each speaker regarding their evidence. These questions did not raise any matters of concern with the evidence. Within this context, the following is a *brief* record of the key points presented at the hearing:

The Applicant

- 4.5 Ms Neumann presented a short summary of her evidence before taking questions. Her summary confirmed that she supports and adopts the recommendation and conclusion of Mr Long, i.e., the proposal is acceptable, and consent should be granted. She summarised her view as:
- A build strategy was decided to best facilitate the recovery of the earthquake affected site.
 - Due to the cost and risks of the required repair, demolition is the most appropriate management strategy.
 - Taking into account the large number of intact buildings that make a ‘primary’ contribution to the character area in Lyttelton, the demolition of the building is not considered to undermine the collective character values of the township.
 - The proposal will not be inconsistent with the relevant provisions of the District Plan in an overall sense, particularly when viewed in the context of the strategic objectives in Chapter 3.
- 4.6 Ms Neumann then reaffirmed that the planning framework does not prohibit the demolition of a dwelling in the Lyttelton Character Area, and that she agrees with Mr Long that it is appropriate to assess the application, in terms of the Character Area, in the context the objectives in the Strategic Directions chapter of the District Plan. Ms Neumann then answered questions relating to the scope of her evidence, the planning framework, and the cost of repairing the dwelling. Mr Halligan provided information on how EQC calculated the repair cost and he explained what was, and was not, included in the settlement amount.

- 4.7 Next Mr Hill spoke to his pre-circulated evidence. He outlined his lengthy involvement with the project and explained the methodology of his engineering report. He confirmed the report is based on the damage that could be seen or reasonably assumed, and he spoke to the risks and uncertainties of a repair strategy. He acknowledged that all repair strategies have inherent risk and uncertainties but explained that this site has considerable constraints and risks and that his evidence was mostly limited to the visible superstructure.
- 4.8 Mr Johns, the dwelling owner, then spoke. He briefly provided additional details regarding the EQC settlement process. He explained how the dwelling was approximately 5 metres above the road which would make any repair very difficult. He also discussed how number 29 Dublin Street was going to be repaired but ultimately it was demolished once the repair costs began to escalate.

Submitters

- 4.9 Firstly, Ms Ross read a prepared statement explaining her lengthy involvement with environmental and conservation groups, particularly within the Lyttelton basin. I do not intend to repeat Ms Ross's written statement², however, she articulated her views clearly and I had a copy of her statement during my deliberations.
- 4.10 Next, Mr Mason presented a board submission recognising the legislative provisions, historical Lyttelton context, and a local/setting context. He spoke about the repair strategy presented by the Applicant and questioned the cost, he noted the strategy appears to replace every element of the dwelling to an 'as new' state. He suggested an alternative repair strategy.

Council

- 4.11 Mr Wright spoke first for Council. He presented a short summary of his evidence before taking questions. His summary detailed his opinion on each of the sub-matters of *Matter of Discretion* 9.3.6.5. He reaffirmed that an alternative repair strategy could be reasonable in scope, practical in implementation, and not unreasonable in cost. He reiterated his view that the demolition of the dwelling would not maintain or enhance the individual and collective heritage values of the proposed Lyttelton Residential Heritage Area.
- 4.12 Mr Hattam spoke next. He also presented a short summary of his evidence before taking questions. Mr Hattam reiterated his opinion that the dwelling contributes to the pattern and grain of buildings in the character area. He reaffirmed that the proposal would turn a site that makes a strong (primary) contribution into one with a neutral impact, and as such, he reiterated that the proposal will be detrimental to the character area.
- 4.13 Mr Long then spoke to his evidence contained in the s.42A report and answered questions. He confirmed he relied on the expert evidence from Mr Wirght and Mr Hattam when forming his conclusion, and he reiterated his evidence in terms of the planning framework, particularly the matters of discretion and relevant policies. He reaffirmed that in his opinion, the cost of repair is unreasonable, especially when the uncertainties and potential variables/unknowns are taken into account. He also clarified interpretative matters relating to a number of District Plan provisions. He advised the Hearing process for Plan Change 13 & 14 has commenced, with decision due later this year.

Right of Reply

- 4.14 Ms Neumann, on behalf of the Applicant, provided a written Right of Reply on 3 May 2024. The Right of Reply addressed five matters: landscaping; strategic directions; consideration of Chapter 9 provisions; cost and contingency of the rebuild; and significance of the effects. In summary, Ms Neumann volunteered a consent condition relating to the provision of a road boundary fence within two weeks of the demolition of the dwelling, and upon reflection she agreed that regard can be had to the provisions of Chapter 9. Similarly, she reiterated that in exceptional circumstances it is appropriate to seek guidance from the Strategic Objectives, and she reaffirmed her position that effects are minor.

² Ms Ross's statement is available on the property file held by Council.

Hearing Adjourned

- 4.15 After hearing from the Applicant, Council and Submitters, I adjourned the hearing. I undertook a second site visit on 10 May 2024.
- 4.16 I closed the hearing on Thursday 16 May 2024.

5.0 PLANNING FRAMEWORK

- 5.1 The planning framework is detailed in the s.42A report prepared by Mr Long; this description is adopted for the purpose of this decision. For completeness, I record there are no matters of contention between Mr Long and Ms Neumann in respect to the planning framework.
- 5.2 In summary, consent is required under the Christchurch District Plan for the demolition of a building in a Character Area Overlay (Lyttelton). Consent is also required under the provisions of Plan Change 13 & 14 for the demolition of a Contributory Building in a proposed Residential Heritage Area.
- 5.3 I record that I have a thorough understanding of the directly relevant rules, objectives and policies applicable to this proposal.

Activity Status

- 5.4 The application is a **restricted discretionary** activity under the Christchurch District Plan and Plan Change 13 & 14.

6.0 STATUTORY CONSIDERATIONS

- 6.1 In brief, the notification decision is made by following the Steps of s.95A, with reference to sections 95B-E. For the substantive decision, subject to Part 2 of the Act, I must have regard to any effects of allowing the activity, the relevant standards and provisions of relevant documents and any other matters that are relevant and reasonably necessary to determine the application.
- 6.2 As a restricted discretionary activity, the proposal is to be considered in terms of s.104 of the Act. Section 104C of the Act stipulates that only those matters specified in the plan or proposed plan to which it has restricted the exercise of its discretion can be considered when deciding to grant or refuse the application. Conditions of consent are subject to s.108 and s.108A of the Act.
- 6.3 Section 104 of the Act is subject to Part 2 of the Act, although whether or not an application requires formal consideration directly against Part 2 is a case-by-case matter. I will address Part 2 of the Act later in this decision.

7.0 EFFECTS ON THE ENVIRONMENT

- 7.1 As per the evidence before me, the key consenting matters relate to the effects of demolishing a dwelling in the Character Area Overlay (Lyttelton) and the proposed Residential Heritage Area. As is often the case, Mr Long and Ms Neumann agree that effects from the proposal will be acceptable, however, there is contention between the parties as to whether the potential effects will be more than minor (as concluded by Mr Long) or minor (as concluded by Ms Neumann).
- 7.2 First, in respect to the proposed Residential Heritage Area, while the objectives, policies and rules in Plan Change 13 & 14 have legal effect, I agree with Mr Long and Ms Neumann that there is a high degree of uncertainty in respect to these provisions given that the Hearing process has not concluded and given the scope of submissions. As such, I find the provisions of Plan Change 13 &

14 can be afford little weight at this stage. Nevertheless, for completeness I provide the following determination in respect to the loss of a dwelling which is classified as a Contributory Building.

- 7.3 All parties agree the proposal will result in the permanent loss of a Contributory Building within the Residential Heritage Area and the heritage values it represents. Mr Wright sets the sense in his evidence by articulating that the Residential Heritage Area seeks a *comprehensive, collective and integrated place* and accordingly a broader consideration of Contributory Buildings is warranted.
- 7.4 I record the Applicant has not provided evidence from a heritage advisor/planner, however, Ms Neumann provides an assessment regarding heritage values within her suite of evidence. Ms Neumann submits the building is not overly prominent when viewed from the street or wider township because of the narrow section, along with the elevated nature of the site above the road. Further, she considers the ‘contributing’ classification relates to the values of the area, rather than the building itself, and accordingly, in her opinion the proposal will not have a significant effect on the heritage values of Lyttelton nor the wider Residential Heritage Area.
- 7.5 In addition to Ms Neumann’s evidence, the Applicant relies heavily on the evidence from Mr Hill and Mr Halligan, which concludes the cost of repair will exceed the cost of a rebuild, and therefore it is uneconomical to repair the dwelling. To briefly summaries, Mr Hill concludes that a repair strategy would be complex and there would be significant risks and considerable variables that would not be known until work starts; including risks associated with adjacent retaining walls.
- 7.6 In the s.42A report prepared by Mr Long, he details how the cost of repair was initially \$525,000 whereas a rebuild would be \$703,000. However, prior to the hearing, the Applicant confirmed that in addition to the \$525,000, EQC adds a contingency amount to the repair cost, which in this case is \$315,000. I am advised that the limited site access and ‘unseen’ damage results in the need for a large contingency amount. Mr Wright submits the difference between a repair and rebuild is not significant (approximately \$70,000) and in his opinion the contingency amount is inordinate. Further, he questions whether an alternative ‘conservation’ repair model may reduce the repair costs, and this view is shared by the submitters in opposition who contend that many of the recommendations in the scope of repair may not be necessary, and that the repair could be undertaken in a less intrusive manner.
- 7.7 I record that no expert or technical evidence was presented that offered an alternative repair strategy or cost estimate to that submitted by the Applicant, nor was an independent peer review undertaken on the strategy and costings. When questioned at the hearing, I was advised that Council did not seek a peer review of the Applicant’s repair strategy/costs due to the level of uncertainty from the ‘unseen’ damage.
- 7.8 Based on the provisions of Plan Change 13 & 14, there is a clear planning pathway via *Matter of Discretion* 9.3.6.5(d)³ for the demolition of a Contributory Building where the cost of retaining the building (particularly, but not exclusively, as a result of damage) would be unreasonable.
- 7.9 Overall, I agree with Mr Wright that, in an overarching sense, the adverse effects from the loss of this Contributory Building on the individual heritage values of the site along with the collective heritage values of the Residential Heritage Area will be more than minor. However, the evidence before me in terms of the cost to repair the dwelling compared to a rebuild is compelling. Subsequently, I agree with Mr Long and Ms Neumann that the cost of retaining the dwelling is unreasonable.
- 7.10 Further, I agree with Mr Long and Ms Neumann that the avoidance of unreasonable costs is a considerable positive effect for the owners.

³ Matter of Discretion 9.3.6.5(d) – *whether the costs to retain the building on site would be unreasonable.*

- 7.11 Turning to the impacts from the proposal on the Character Area. I record the Applicant has not presented evidence from an urban designer, however, Ms. Neumann has evaluated the potential effects from the proposal on the Character Area. For context, I note that in contrast to the Residential Heritage Area, the matters of discretion for the Character Area do not take into account the cost of retaining a building, even if damaged.
- 7.12 Ms Neumann contends there is limited visibility of the dwelling and the loss of continuity and coherence will be offset by the location of the building on the top of a high retaining wall which in turn limits views of the building from the street. Similarly, she submits that when considering the wider context of the Lyttelton Character Area there are a number of intact primary buildings, and subsequently, the loss of this building will have only a minor effect on the collective values of the area.
- 7.13 For Council, Mr Hattam considers the dwelling along with the neighbouring properties present a reasonably consistent pattern, and form a coherent group of buildings which is visible from various points within Lyttelton; I agreed. Mr Hattam also submits the dwelling contributes to the pattern and grain of buildings in the character area and the proposal would interrupt the rhythm and pattern on top of the retaining wall. Overall, he considers the proposal would be detrimental to the Character Area and it would have moderate⁴ adverse effects. Mr Long relies on Mr Hattam's assessment and conclusion.
- 7.14 In respect to the policy framework relating to Character Areas, Mr Long and Ms Neumann note there is no guidance as to when the removal of a building in the Character Area would be appropriate, but they submit the removal of a building must be anticipated in some circumstances as it is not prohibited by the District Plan; I agree. However, the key direction set by the planning framework is to *maintain* or *enhance* the continuity and cohesion of the area, which all parties agree cannot be achieved by this proposal. Without a matter of discretion specifically or implicitly directing consideration of damaged buildings or buildings that are uneconomical to repair, I prefer Mr Hattam's evidence.
- 7.15 Lastly, I record that I have considered the above effects collectively and am satisfied that there are no likely cumulative effects of concern. Also, as part of my deliberations I have reviewed the draft conditions provided in the s.42A report prepared by Mr Long, I consider these to be acceptable, subject to the changes sought by Ms Neumann in her written evidence and Right of Reply.

Summary of Effects

- 7.16 While Mr Long and Ms Neumann have different opinions in terms of the scale of effects, they agree that effects from the proposal are acceptable. Based on the evidence before me, I find there is a clear planning pathway via *Matters of Discretion 9.3.6.5(d)* for the demolition of the dwelling in the proposed Residential Heritage Area, however, a similar pathway is not available for Character Areas. As such, I find that effects from the proposal on the Character Area Overlay (Lyttelton) are more than minor. Nevertheless, when the proposal is considered in the round and all relevant factors are taken into consideration, I agree with Mr Long and Ms Neumann that effects are acceptable.

8.0 RELEVANT OBJECTIVES AND POLICIES

- 8.1 I have thoroughly reviewed the evidence from Mr Long and Ms Neumann relating to the directly relevant Objectives and Policies of the Christchurch District Plan and the Proposed Plan Changes. I am directed, by Mr Long and Ms Neumann, to objectives and policies relating to the Residential

⁴ Mr Hattam confirmed at the hearing that he had used the term 'moderate' in the context of the Te Tangi a te Manu: Aotearoa New Zealand Landscape Assessment Guidelines

Heritage Area (Plan Change 13) and Residential Character Areas (Christchurch District Plan) as these are directly relevant to this proposal. Overall, Mr Long and Ms Neumann agree the proposal is inconsistent with, but not contrary to, the directly relevant objectives and policies.

8.2 Firstly, in respect to the Residential Heritage Area, Policy 9.3.2.2.8 is directly relevant:

9.3.2.2.8 Policy – Demolition of heritage items

- a. When considering the appropriateness of the demolition of a heritage item scheduled in Appendix 9.3.7.2 or a defining building or contributory building in a heritage area scheduled in Appendix 9.3.7.3, have regard to the following matters:
- i. whether there is a threat to life and/or property for which interim protection measures would not remove that threat;
 - ii. whether the extent of the work required to retain and/or repair the heritage item or building is of such a scale that the heritage values and integrity of the heritage item or building would be significantly compromised, and the heritage item would no longer meet the criteria for scheduling in Policy 9.3.2.2.1;
 - iii. whether the costs to retain the heritage item or building (particularly as a result of damage) would be unreasonable;
 - iv. the ability to retain the overall heritage values and significance of the heritage item or building through a reduced degree of demolition; and
 - v. the level of significance of the heritage item.

8.3 As noted earlier in this decision, given the scope of the submissions on Plan Change 13 & 14, I agree with Mr Long and Ms Neumann that little weight can be afforded to these provisions. Notwithstanding, as detailed above, I find the evidence in terms of the cost to repair the dwelling compared to building a new dwelling to be compelling, and as such, I record the proposal finds support through proposed Policy 9.3.2.2.8(iii) as the cost of retaining the dwelling is unreasonable.

8.4 For completeness, I record that sub-clauses i-v under proposed Policy 9.3.2.2.8 do not form a hierarchy. Similarly, not all of the sub-clauses need to be satisfied in order for a proposal to be consistent with the policy.

8.5 Turning to the Policy 14.2.4.7 of the Christchurch District Plan. This policy supports the implementation of Objective 14.2.4 *High Quality Residential Environments*, which seeks high quality, sustainable, residential neighbourhoods which are well designed, have a high level of amenity, enhance local character and reflect the Ngai Tahu heritage of Otautahi. Policy 14.2.4.7 is directly relevant as it relates to the Lyttelton Character Area Overlay. Policy 14.2.4.7 seeks:

1. *Maintain and enhance the identified special character values of residential areas arising from the following elements:*
 1. *the continuity or coherence of the character;*
 2. *the pattern of subdivision, open space, buildings and streetscape;*
 3. *the landforms or features that contribute to the qualities of the landscape and built form;*
 4. *the scale, form and architectural values of buildings and their landscape setting;*
 5. *the qualities of the streetscape; and*
2. *Within the Lyttelton and Akaroa Character Areas:*
 1. *maintains and enhances the relationship to historic heritage;*
 2. *retains buildings and settings of high character value;*

3. *retains important views from public places;*
4. *reflects the existing small scale of development and integration with the landscape*

8.6 In considering this policy, I find the following extracts from the evidence from Mr Long succinctly summaries his position; noting that Ms Neumann agrees with this approach:

It is clear that demolition would not ‘maintain’ or ‘enhance’, nor would it ‘retain buildings and settings of high character value’ (where Mr Hattam considers the subject building to be of high character value) and the proposal would not, therefore, be consistent with this policy. I note that there is not a clause in Policy 14.2.4.7 referring to unreasonable cost...

...while I (Mr Long) would generally expect objectives (he is referring to Objective 14.2.4) to be a high-level statement and not necessarily contain specific guidance, it is unhelpful in this instance given the policy doesn’t either and the objective inflexible in that it seeks only to enhance local character (which demolition would not achieve) despite consent being required (and not prohibited) for demolition

...Given the lack of guidance as to when demolition would be appropriate in Policy 14.2.4.7 (and Objective 14.2.4), I consider it appropriate and necessary to look for guidance elsewhere (or in other words to undertake a structural analysis). In that regard, the Strategic Directions chapter (e.g. at Objective [3.3.7] as below, noting there are no changes to the key clause ((a)(ii)) via PC14). While the Courts have opined on a number of occasions that Chapter 3 is too high level to be of value when assessing applications, I am of the view that doing so is appropriate in this circumstance given the above.

8.7 Mr Long then details how Objective 3.3.7⁵(a)(ii) seeks a high quality urban environment where special character and amenity values are ‘appropriately managed’:

(a) *A well-integrated pattern of development and infrastructure, a consolidated urban form, and a high quality urban environment that:*

(ii) *Has its areas of special character and amenity values identified and their specifically recognised values appropriately managed; and...*

8.8 After thoroughly reviewing the evidence before me, including reviewing relevant case law, I find the circumstances of this proposal to be sufficiently unique to warrant seeking guidance from the Strategic chapter of the District Plan, specifically Objective 3.3.7. I agree with Ms Nuemann that ‘*in exceptional circumstances where the assessment of the objectives and policies does not resolve conflict or the provision in lower-order chapters lack clarity, it is appropriate to refer to the Strategic Objectives of the plan*’.

8.9 To clarify, if a replacement dwelling was proposed, then seeking guidance from the Strategic objectives would not be warranted. Likewise, I do not consider it appropriate to have regard to Strategic Objectives 3.3.1 and 3.3.2 as submitted by Ms Neumann as these two objectives are very general and as per recent case law, applying them to an individual or site-specific application is not intended nor appropriate.

8.10 Based on the evidence before me, I record that the proposal is the most appropriate management option given the condition of the building, and when considered in an overall sense, I find the proposal to be inconsistent with, but not contrary to, the relevant objectives and policies.

⁵ This Objective is numbered 3.3.8 in proposed Plan Change 13

9.0 PART 2 OF THE ACT

- 9.1 The application of Part 2 of the RMA has been the subject of proceedings before the Courts, including recently in the findings of the Court of Appeal in RJ Davidson Family Trust versus Marlborough District Council. My understanding of the Appeal Court's findings is that if a plan has been competently prepared the consent authority may in many cases consider that an evaluation under Part 2 RMA is unnecessary.
- 9.2 The Christchurch District Plan is the mechanism by which the purpose and principles of the Act are given effect to in the Christchurch District. It was competently prepared via an independent hearing and decision-making process, in a manner that appropriately reflects the provisions of Part 2. Accordingly, I find no further assessment against Part 2 is necessary.

10.0 SECTION 104 DETERMINATION

- 10.1 The issues of adverse effects and the planning and policy framework have been considered above. This leaves me with any regional (Regional Policy Statement) policy issues, and any other relevant matters for consideration.
- 10.2 Mr Long provides evidence in respect to the National Policy Statement Urban Development (NPS-UD) in the s.42A report and concludes the proposal is not inconsistent with the NPS-UD. However, as per Mr Long's evidence these provisions do not have legal effect, consequently, I have not afforded them any weight.
- 10.3 For completeness, no party brought any other (regional) matter to my attention during the hearing or in their evidence.

11.0 CONSIDERATIONS

- 11.1 Overall and on balance, I find the proposal is sufficiently aligned to the outcomes sought by the District Plan, Proposed Plan Changes, and the Act that the promotion of sustainable management will be served by the granting of this consent.
- 11.2 My reasons for this decision are, in an overall sense: while effects on the environment will be more than minor, when considered in the round the effects are acceptable. Further, the proposal is inconsistent with, but not contrary to, the objectives and policies of the District Plan. Pursuant to s.104C of the Act, I have discretion to grant or refuse consent or grant consent subject to conditions.

12.0 DECISION

- 12.1 Having considered all relevant matters, I conclude the land-use resource consent by Carol and Peter Johns to demolish the dwelling at 33 Dublin Street, Lyttelton, **be granted** pursuant to sections 104 and 104C of the Act subject to the following conditions imposed under section 108 of the Act:



Nathan O'Connell
Hearings Commissioner
10 June 2024

Consent Conditions:

General

1. Except where required to meet other conditions below, the development shall proceed in accordance with the information and plans submitted for the application and saved into Council records as RMA/2023/2046 Approved Consent Document.
2. Prior to demolition of the dwelling at 33 Dublin Street (Lot 1 DP 470468), the consent holder will compile a digital photographic record of the building. This record will be lodged with the Heritage Team Leader, Christchurch City Council (or nominee, via rcmon@ccc.govt.nz) within three months of the completion of the demolition. Photographs must be of printable quality, at least 1440 pixels by 960 pixels for a 4"x 6" print at a minimum resolution of 240 PPI.

The photographic record should be comprised of images of both the exterior and the interior. Exterior images should record each elevation; interior images should record each room. Photographs should be labelled with location, date and photographer's name, and submitted with a plan showing photograph locations. They can be submitted to the nominated Heritage Team contact on a memory stick, or electronically by either email (noting that Council's email data transfer limit is 20MB per email) or file sharing service such as wetransfer.com or dropbox.com to rcmon@ccc.govt.nz.

Demolition Management Plan

3. All proposed works shall be carried out in accordance with an accepted Demolition Management Plan (DMP). The purpose of the DMP is to ensure that any potential effects arising from deconstruction activities on the site are effectively managed. The DMP shall be prepared by suitably qualified and experienced practitioners and shall include, but not be limited to the following:
 - a) Site description, topography, vegetation, soils and other reference information;
 - b) Details of proposed works including preparation of a deconstruction plan in accordance with the directions of a structural engineer to avoid collapse of weakened structures and ensure demolition occurs safely.
 - c) Roles and responsibilities, including contact details for the site manager appointed by the Consent Holder;
 - d) Site establishment;
 - e) Timing of works (including any staging required);
 - f) An Erosion and Soil Control Plan (ESCP), including drawings, specifications and locations of mitigation measures as necessary;
 - g) A Demolition Noise and Vibration Management Plan (DNVMP) demonstrating that noise and vibration nuisance will be minimised during demolition activities;
 - h) Storage of fuel and/or lubricants and any handling procedures;
 - i) Contingency plans (including use of spill kits);
 - j) Protocols for the discovery of archaeological material;
 - k) Construction traffic management measures, including measures to be adopted in accordance with the NZTA Code of Practice for Temporary Traffic Management; and demonstrating that vehicle and pedestrian movements will be controlled to keep the public safe;
 - l) Parking areas for construction staff;
 - m) Measures for identification and remediation of contaminated soil; and
 - n) Confirmation of approved disposal sites for waste;
 - o) Environmental compliance monitoring and reporting.

4. The consent holder shall submit the draft DMP, prepared in accordance with condition 3, to the Council, Attention: Team Leader Compliance and Investigations for certification via email to rcmon@ccc.govt.nz at least 20 working days prior to the commencement of demolition work associated with this consent. This DMP is to be certified by the Team Leader or their nominee as meeting the requirements of Condition 3 prior to the commencement of any demolition or earthworks and, once certified, the DMP will thereafter form part of the Approved Consent Document (as the certified DMP). NOTE: *The Team Leader (or their nominee) will either certify, or refuse to certify, the DMP within 10 working days of receipt. Should the Team Leader (or their nominee) refuse to certify the DMP, then they will provide a letter outlining why certification is refused based on the parameters contained in condition 3.*
5. Should the Team Leader (or their nominee) refuse to certify the DMP, the consent holder shall submit a revised DMP to the Resource Consents Manager for certification. The certification process shall follow the same procedure and requirements as outlined in condition 4.

Erosion control

6. The certified DMP may be amended at any time by the Consent Holder. Any amendments to the DMP shall be submitted by the Consent Holder to the Council for certification. Any amendments to the DMP shall be:
 - a) for the purposes of improving the measures outlined in the DMP for achieving the DMP purpose (see condition 3), and;
 - b) consistent with the conditions of this resource consent.If the amended DMP is certified, then it becomes the certified DMP for the purposes of condition 16 and will thereafter form part of the Approved Consent Document.
7. The consent holder must notify Christchurch City Council no less than three working days prior to works commencing, (via email to rcmon@ccc.govt.nz) of the earthworks start date and the name and contact details of the site supervisor. The consent holder shall at this time also provide confirmation of the installation of ESCP measures as per the certified DMP referred to in Condition 3 above.
8. Run-off must be controlled to prevent muddy water flowing, or earth slipping, onto neighbouring properties, legal road (including kerb and channel), or into a river, stream, drain or wetland. Sediment, earth or debris must not fall or collect on land beyond the site or enter the Council's stormwater system. All muddy water must be treated, using at a minimum the erosion and sediment control measures detailed in the site specific Erosion and Sediment Control Plan, prior to discharge to the Council's stormwater system. *Note: For the purpose of this condition muddy water is defined as water with a total suspended solid (TSS) content greater than 50mg/L.*
9. No earthworks shall commence until the ESCP has been implemented on site. The ESCP measures shall be maintained over the period of the deconstruction and earthworks phases, until the site is stabilised (i.e. no longer producing dust or water-borne sediment). The ESCP shall be improved if initial and/or standard measures are found to be inadequate. All disturbed surfaces shall be adequately topsoiled and vegetated or otherwise stabilised as soon as possible to limit sediment mobilisation.

10. Dust emissions shall be appropriately managed within the boundary of the property in compliance with the *Regional Air Plan*. Dust mitigation measures such as water carts, sprinklers or polymers shall be used on any exposed areas. The roads to and from the site, and the site entrance and exit, must remain tidy and free of dust and dirt at all times.
11. All works on site authorised by this consent shall be subject to a Traffic Management Plan (TMP) which must be prepared by a suitably qualified person and submitted for acceptance prior to the commencement of demolition. No demolition works are to commence until the TMP has been accepted and installed.

The TMP shall identify the nature and extent of temporary traffic management and how all road users will be managed by the use of temporary traffic management measures. It shall also identify the provision of parking for construction/demolition staff. Activities on any public road should be planned so as to cause as little disruption, peak traffic safety delay or inconvenience to road users as possible without compromising safety. The TMP must comply with the Waka Kotahi NZTA Code of Practice for Temporary Traffic Management (CoPTTM) and the relevant Road Controlling Authority's Local Operating Procedures.

The TMP shall be submitted to the relevant Road Controlling Authority via the web portal www.myworksites.co.nz. To submit a TMP a Corridor Access Request (CAR) must also be submitted. A copy of the accepted TMP and CAR shall be supplied to the Council's resource consent monitoring team (via email to rcmon@ccc.govt.nz) at least 3 working days prior to the commencement of works under this consent.

12. Any surplus or unsuitable material from the project works shall be removed from site and disposed at a facility authorised to receive such material.
13. Any backfilling in the area of the excavated foundations shall be with clean fill only.
14. All public roads and footpaths shall be kept clear of any tracked material from the demolition site.
15. Any public road, shared access, footpath, landscaped area or service structure that has been damaged, by the persons involved with the development or vehicles and machinery used in relation to the works under this consent, shall be reinstated as specified in the [Construction Standard Specifications](#) (CSS) at the expense of the consent holder and to the satisfaction of the Council.
16. Any change in ground levels shall not cause a ponding or drainage nuisance to neighbouring properties. All filled land shall be shaped to fall to the road boundary. Existing drainage paths from neighbouring properties shall be maintained.

Noise and vibration

17. The use of machinery in association with the demolition and earthworks shall be limited to between 7.30am – 6.00pm Monday to Saturday and truck movements limited to between 7.30am – 5.00pm Monday to Saturday. There shall be no works associated with the demolition on Sundays and public holidays except in cases of operational necessity where there has been prior approval of a Council Environmental Health Officer.

18. The maximum permitted vibrations outlined in the German Standard DIN 4150-3:1999 “Structural Vibration – Part 3: Effects of Vibrations on Structures” shall be adhered to during all deconstruction and excavation works.

Fencing

19. Within two weeks of the completion of the demolition, the existing picket-style fence, or a fence of a similar design, openness and height, shall be re-instated along the boundary of the site to Dublin Street. The fence shall be retained until such time as construction works for redevelopment of the site commence.

Advice notes:

- i) The Council will require payment of its administrative charges in relation to monitoring of conditions, as authorised by the provisions of section 36 of the Resource Management Act 1991. The current monitoring charges are:
- (a) An administration fee of \$107 to cover the cost of setting up the monitoring programme; and
 - (b) A monitoring fee of \$123 for the first monitoring inspection to ensure compliance with the conditions of this consent; and
 - (c) Time charged at an hourly rate if more than one inspection, or additional monitoring activities (including those relating to non-compliance with conditions), are required.

The monitoring programme administration fee and initial inspection fee / documentation fee / inspection fees will be charged to the applicant with the consent processing costs. Any additional monitoring time will be invoiced to the consent holder when the monitoring is carried out, at the hourly rate specified in the applicable Annual Plan Schedule of Fees and Charges.

- ii) This resource consent has been processed under the Resource Management Act 1991 and relates to planning matters only. You will also need to comply with the requirements of the Building Act 2004. Please contact a Building Consent Officer (ph: 941 8999) for advice on the building consent process.
- iii) There may be archaeology on this site as protected under the Heritage New Zealand Pouhere Taonga Act 2014. Archaeological sites are defined in the Act as any place where there is physical evidence of pre-1900 occupation, regardless of whether the site is known or recorded or not. Authority from Heritage New Zealand Pouhere Taonga (HNZPT) is required for any work that affects or may affect an archaeological site. Please contact the regional archaeologist at Heritage New Zealand Pouhere Taonga (HNZPT): archaeologistcw@heritage.org.nz or 03 363 1880 before commencing any work on the land. For more information visit <http://archaeology.nz>