

## 8. RECOMMENDED CHANGES TO DELEGATED AUTHORITY OF THE HERITAGE COVENANT OFFICER SUBCOMMITTEE

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### PURPOSE OF REPORT

1. The purpose of this report is to propose changes to the delegations of the Heritage Covenant Officer Subcommittee.

### EXECUTIVE SUMMARY

#### Proposed Changes to the Delegations of the Heritage Covenant Officer Subcommittee

2. The Heritage Covenant Officer Subcommittee has reviewed the terms and conditions relating to its delegations to provide a more effective approach to the administration of the heritage conservation covenants. These proposed changes would require some delegations to be amended and updated (see background notes).
3. It has been found that conservation agreements (attached) have not been as effective in protecting heritage properties as was originally envisaged (see reason in background notes, introductory paragraph). Limited conservation covenants subject to non-demolition only would overcome the difficulty encountered with conservation agreements. The Subcommittee takes the view that limited conservation covenants should be entered into for grants of lesser amounts than the requirements for a full conservation covenant.
4. It is proposed that limited heritage conservation covenants, registered against the titles of properties, be entered into with heritage building owners who are the recipients of heritage incentive grant funding to provide for the protection of the heritage items from demolition for a specified period of time. It is therefore proposed that this delegation is amended to reflect the intent of the subcommittee.
5. A further change is recommended with regard to the breach clause in both the full and limited conservation covenants. The amended delegation proposal would provide for the subcommittee to exercise its discretion in relation to the repayment of any grant monies in the event of a breach through default by the owner on the terms and conditions of a covenant.
6. The delegations would therefore read (new wording underlined and previous wording struck through):
  1. To enter into conservation covenants under section 77 of the Reserves Act 1977 or other appropriate legal instruments for the protection of ~~listed~~ heritage buildings, places or objects listed in the City Plan or the Banks Peninsula District Plan on such terms and conditions as the subcommittee thinks fit from time to time.
  2. To enter into conservation covenants under section 77 of the Reserves Act 1977 or other appropriate legal instruments ~~or restrictive covenants~~ for the protection of buildings, places and objects which have community and heritage values consistent with the policy for covenants on non-heritage properties and on such terms and conditions as the subcommittee thinks ~~sees~~ fit from time to time.
  3. The Heritage Covenant Officer Subcommittee be delegated the power to approve or decline any application made pursuant to a conservation covenant ~~between the landowner and the Council~~ or other legal instrument entered into for heritage purposes (excluding an application for consent for full demolition).
  4. The Heritage Covenant Officer Subcommittee be delegated the power to approve or decline a conservation plan ~~made prepared~~ pursuant to a conservation covenant or other legal instrument ~~between the landowner and the Council~~ entered into for heritage purposes.
  5. The Heritage Covenant Officer Subcommittee be delegated:
    - (a) the power to exercise any discretion of the Council given by any conservation covenant or other legal instrument entered into for heritage purposes to enforce the terms of any such conservation covenant or other legal

~~instrument or to require any act or thing on the part of the landowner or person giving such conservation covenant or other legal instrument following any breach of its terms and conditions. - enter into heritage grant agreements as approved pursuant to a Council resolution of 26 September 2002 and the power to vary such heritage grant agreements from time to time as the Heritage Covenant Officers Subcommittee considers appropriate.~~

- ~~(b) The power to institute enforcement proceedings where the terms and conditions of any conservation covenant or other legal instrument entered into for heritage purposes have been breached by the landowner or the person giving such conservation covenant or other legal instrument.~~
- ~~(c) The power to issue a dispute notice and to refer any dispute or difference arising with a party to a conservation covenant or other legal instrument entered into by the Council for heritage purposes to mediation or arbitration in terms of such conservation covenant or other legal instrument and the power to negotiate a resolution to such dispute on behalf of the Council.~~

#### **FINANCIAL AND LEGAL CONSIDERATIONS**

- 7. Repayment of a heritage incentive grant, in part or in whole, would be returned to the Heritage Grant Retention Incentive fund for the protection of other heritage buildings.
- 8. The proposed changes recommended in this report have been the subject of legal advice and are consistent with that advice. The proposed changes are made pursuant to the Local Government Act 2002, Clause 32, 7<sup>th</sup> Schedule.

#### **STAFF RECOMMENDATIONS**

It is recommended that the Council grant the revised delegations set out below to the Heritage Covenant Officers Subcommittee:

- (1) The power to enter into conservation covenants under section 77 of the Reserves Act 1977 or other appropriate legal instruments for the protection of heritage buildings, places or objects listed in the City Plan or the Banks Peninsula District Plan on such terms and conditions as the subcommittee thinks fit from time to time.
- (2) The power to enter into conservation covenants under section 77 of the Reserves Act 1977 or other appropriate legal instruments for the protection of buildings, places and objects which have community and heritage values consistent with the policy for covenants on non-heritage properties and on such terms and conditions as the subcommittee thinks fit from time to time.
- (3) The power to approve or decline any application made pursuant to a conservation covenant or other legal instrument entered into for heritage purposes (excluding an application for consent for demolition).
- (4) The power to approve or decline a conservation plan prepared pursuant to a conservation covenant or other legal instrument entered into for heritage purposes.
- (5) The power to exercise any discretion of the Council given by any conservation covenant or other legal instrument entered into for heritage purposes to enforce the terms of any such conservation covenant or other legal instrument or to require any act or thing on the part of the landowner or person giving such conservation covenant or other legal instrument following any breach of its terms and conditions.
- (6) The power to institute enforcement proceedings where the terms and conditions of any conservation covenant or instrument entered into for heritage purposes have been breached by the landowner or the person giving such conservation covenant or instrument.
- (7) The power to issue a dispute notice and to refer any dispute or difference arising with a party to a conservation covenant or other legal instrument entered into by the Council for heritage purposes to mediation or arbitration in terms of such conservation covenant or other legal instrument and the power to negotiate a resolution to such dispute on behalf of the Council.

## **BACKGROUND ON CURRENT DELEGATIONS TO THE HERITAGE COVENANT OFFICER SUBCOMMITTEE**

9. It has been found that conservation agreements have not been as effective in protecting buildings as was originally envisaged. This became evident in a recent instance whereby knowledge of an existing heritage grant agreement was not notified to a new owner. A condition of the agreement, clause 1(b), was that the "grantee will make any agreement to sell the property conditional on the purchaser entering into an agreement with the grantor on similar terms and conditions to this agreement (including the requirement contained in this clause 1(b) to bind any subsequent purchasers) for the remainder of the term of this agreement, and will ensure that such condition is fulfilled prior to ownership being transferred to the purchaser". With the new owner being unaware of such previous heritage incentive grant history, his application for heritage incentive grant funding became unnecessarily complicated.
10. The Council currently has heritage grant agreements with 15 property owners, the non-demolition periods ranging from five to 15 years. The last agreement expiry date will be 2020. Some of these properties are expected to change hands within this time. Information regarding agreements, which has recently been put into GEMS, does not clearly show the agreement details in the LIM report with regard to the property's non-demolition period. Clients are directed to contact the Heritage Grants Administrator for further details.
11. With agreements not being able to be registered against property titles there is no way of ensuring knowledge of an agreement's terms and conditions when a property changes hands. The conclusion, after legal advice was sought, was to change requirements for recipients of heritage incentive grant funding to agreeing to limited conservation covenants, which can be registered against property titles, thus clarifying the term for non-demolition. This would apply for grants of \$5,000 or more.
12. The current full conservation covenant has been found to fulfil its intended purposes. These are required for recipients of larger grants. Properties with full conservation covenants require conservation plans and other conditions to be met and can apply to setting as well as the heritage item. These further conditions are not required under limited conservation covenants.
13. Below is the full wording of the existing delegations that have been found inadequate:

### **Current Delegations to the Heritage Covenant Officer Subcommittee**

1. To enter into conservation covenants for the protection of listed heritage buildings, places or objects on such terms and conditions as the subcommittee thinks fit. (26 April 2001)
2. To enter into conservation covenants under s.77 of the Reserves Act or restrictive covenants for buildings, places and objects which have community and heritage values consistent with the policy for covenants on non-heritage properties and on such terms and conditions as the subcommittee sees fit. (27 June 2002)
3. The Heritage Covenant Officer Subcommittee be delegated the power to approve or decline any applications made pursuant to a conservation covenant between the landowner and the Council (excluding full demolition). (12 December 2002)
4. The Heritage Covenant Officer Subcommittee be delegated the power to approve or decline conservation plans made pursuant to a conservation covenant between the landowner and the Council. (12 December 2002)
5. The Heritage Covenant Officer Subcommittee be delegated the power to enter into heritage grant agreements as approved pursuant to a Council resolution of 26 September 2002 and the power to vary such heritage grant agreements from time to time as the Heritage Covenant Officer Subcommittee considers appropriate. (12 December 2002)

## OPTIONS

14. The options available to the Council are relatively limited. The Council can choose to retain the status quo and live with the uncertainty of planning mechanisms through the District Plan being less effective. Alternatively the Council can choose to endorse the proposed changes for limited covenants, which would provide greater certainty of retention and protection of the city's heritage stock receiving grant assistance.
15. While heritage grant agreements have been relatively effective in protecting the city's heritage stock, to stay with the status quo may result in further instances of new property owners claiming no knowledge of previous agreements with the Council, their not realising the import of the agreement and not ensuring that the agreement was a condition of a sale and purchase agreement. This may result in some properties not being maintained or their losing the protection of the agreement.
16. Having a limited covenant registered against the title of a property automatically transfers the covenant and its conditions to new owners, the covenant is known about before purchase so that the person buys the property with knowledge of the covenant and its conditions. The property owner is aware from the outset that the property is highly regarded and that he/she has a social responsibility towards maintaining and retaining the item for the benefit of the whole community.
17. Breach Clause. The preference of the Heritage Covenant Officer Subcommittee to retrieve some or all of previous heritage incentive grant assistance via a breach clause, in the event of the building being demolished, is intended to give greater protection to heritage items receiving heritage incentive grant assistance.