

## 1. LEINSTER HOUSE - HERITAGE PROTECTION ISSUES

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The purpose of this report is to identify the principal heritage and legal issues associated with options for the protection of Leinster House at 158 Leinster Road. The property options are addressed in the report of Angus Smith, Property Consultancy Manager, which should be considered in conjunction with this heritage report.

### INTRODUCTION

The following sections of the report deal with heritage under the Resource Management Act, heritage values and assessment procedures, the heritage significance of Leinster House, heritage conservation policies, Christchurch City Plan heritage issues and Heritage Order provisions in relation to the protection of Leinster House at 158 Leinster Road.

### RESOURCE MANAGEMENT ACT 1991

Historic heritage is identified in the Resource Management Act in Part II section 6 of the Act as a matter of national importance. Considerations of sustainable management under section 5 must therefore provide for heritage with a weighting reflecting this status of national importance.

The definition of historic heritage in the Resource Management Act:

*"historic heritage -*

(a) *means those natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from any of the following qualities:*

- (i) *archaeological;*
- (ii) *architectural;*
- (iii) *cultural;*
- (iv) *historic;*
- (v) *scientific;*
- (vi) *technological; and*

(b) *includes -*

- (i) *historic sites, structures, places, and areas; and*
- (ii) *archaeological sites; and*
- (iii) *sites of significance to Maori, including wahi tapu; and*
- (iv) *surroundings associated with the natural and physical resources".*

This definition and the inclusion of historic heritage in section 6 as a matter of national importance were introduced through the Resource Management Act Amendment Act 2003.

### HERITAGE AND THE CITY PLAN ASSESSMENT PROCESS

The heritage assessment process used in the assessment of the heritage significance of Leinster House is set out in Volume 2, Policy 4.3.1 'Explanation and reasons'. The criteria and definitions are set out in this section. The criteria, which have a clear correspondence to those of ICOMOS and the Resource Management Act are -

- Social and Historical,
- Spiritual and Cultural,
- Architectural and Artistic,
- Group and Setting,
- Landmark,
- Archaeological,
- Craftsmanship and Technological.

These have for each building, place or object, been given a value representing the assessed significance for that criterion. The first three criteria have been assessed as being twice the value of the other criteria. The heritage value of each building, place or object represents cumulatively the assessed heritage value, or significance of all the criteria of the heritage item. These criteria are applied over the whole building, place or object.

The assessment process has been developed to provide a rigorous, transparent, defensible and systematic approach to heritage evaluation insofar as a degree of subjectivism, albeit professional, will always be evident:

- The criteria must be comprehensive in addressing the principal aspects of heritage significance.
- The criteria should not overlap so that matters of significance are double counted in the assessment process.
- Where criteria cannot be readily separated, then the criteria are combined.
- All criteria are not regarded as being equal. Criteria are weighted to reflect that some criteria are of more importance than others in determining the overall value of any heritage item.

## **HERITAGE SIGNIFICANCE**

The evaluation of heritage significance based on the City Plan criteria and the assessment process has met with public acceptance through the City Plan notification process. However, the individual assessments recorded in the Plan were made for all the approximately 590 heritage buildings, places and objects listed during the period 1993-1994, before publication notification of the City Plan in 1995. In addition, the assessments reflected the amount of heritage research and information which were available at this time for each building, place or object considered. Limited research information resulted in justification being only for a lower level of heritage significance, not necessarily for the significance which may have been appropriate with more information. In some cases buildings, places or objects were not included in the listing as a minimum standard of heritage significance was required for inclusion.

Heritage research has continued in the intervening period, particularly in the case of buildings subject to public submission through the City Plan notification and Reference stages of the process. Nevertheless, there are a number of heritage items which are listed in heritage groups in the City Plan which subsequent research has shown to be relatively undervalued in relation to the notified status of other items on the heritage list. Leinster House is considered to be such a case.

Leinster House was identified in the proposed City Plan (1995) as a Group 4 heritage property.

The results of additional research on Leinster House up to 2004 included in the detailed heritage assessment tabled, have been evaluated as confirming that Leinster House warrants listing as a Group 3 heritage building.

## **THE HERITAGE ORDER PROVISIONS OF THE RESOURCE MANAGEMENT ACT**

The process for obtaining Heritage Orders is set out in Part VIII (sections 187-198) of the Act.

### **Heritage Orders**

A Heritage Order is a form of protection under the Act for any place of historic interest, special interest, character, intrinsic or amenity value, visual appeal as detailed above. No person may, without the written approval of the heritage protection authority, undertake any activity (including demolition or alteration) that would in any way reduce the effectiveness of the Heritage Order. This restriction applies from the time that the notice of requirement for the Heritage Order is notified (section 194). The Heritage Order may be withdrawn by written notice from the heritage protection authority. A Heritage Order is required to be included in a district plan.

### **Heritage Protection Authority**

Only a heritage protection authority can apply for a Heritage Order. A district council, as a local authority, is automatically granted the status of a heritage protection authority under section 187 of the Act. In giving consideration to the need for a Heritage Order the Heritage Protection Authority should consult with parties likely to be affected, and detail this consultation in the Notice of Requirement.

## **Heritage Order Procedures**

The Council as a heritage protection authority can under s189 give notice of the requirement for a Heritage Order to the territorial authority, if it considers that a Heritage Order would have the purpose of protecting:

*“Any place of special interest, character, intrinsic or amenity value or visual appeal, or of special significance to the tangata whenua for spiritual, cultural, or historic reasons”;* and

Section 189(1)(b) *“Such area of land (if any) surrounding that place as is reasonably necessary for the purpose of ensuring the protection and reasonable enjoyment of that place.”*

The Act defines a place of ‘special interest’ as having: -

Section 189(2) *“special cultural, architectural, historical, scientific, ecological, or other interest.”*

The Council, as a territorial authority, may publicly notify a requirement for a Heritage Order under section 189A of the Act. The procedure from this point on is very similar to that for a Resource Consent application. Following notification, the public may view the application and lodge submissions. The Council as territorial authority conducts a hearing before notifying its decision (section 190).

In reaching its decision, the territorial authority shall have particular regard to:

1. Whether the place merits protection.
2. Whether the requirement is reasonably necessary.
3. Whether the inclusion of any land surrounding the place is also necessary to ensure protection.

(Section 191).

As part of its decision, the territorial authority can recommend that the requirement be confirmed or modified or withdrawn. It can also impose a condition that the heritage protection authority reimburses the owner of the place for any additional costs of upkeep required as a result of the making of the Heritage Order (section 191(3)). The territorial authority’s decision can be appealed to the Environment Court.

If there are no appeals against a decision confirming a requirement or this decision is upheld by the Environment Court on appeal, the Heritage Order is then included in the district plan (see section 193).

### **Financial implications of applying for a Heritage Order**

If the Council applies for a Heritage Order, it may incur the following types of costs in its capacity as the heritage protection authority:

1. The costs of applying for the order (eg legal, planning and other professional costs and any process costs that may be involved).
2. Any additional costs incurred by the owner of the property as a result of the order, if a condition of this kind is imposed.
3. The cost of purchasing the property from the owner if the Environment Court orders the land to be taken by the heritage protection authority (see below).

### **Orders for land to be taken**

It will be apparent from the summary above that the inclusion of a Heritage Order over a property may constrain the rights of the property owner. In these circumstances, the property owner may request consent from the heritage protection authority to use the property in a manner that would otherwise be lawful but for the Heritage Order. If this consent is refused, the property owner may appeal to the Environment Court.

Alternatively, the Council can purchase the property by negotiation, or compulsory acquisition through the provisions of the Public Works Act (1981) (Resource Management Act section 197), or the property owner may apply to the Environment Court for an order that the Council (as heritage protection authority) either withdraw the Heritage Order or purchase the property. This requires the Environment Court to be satisfied that the owner has been unable to sell the land and the Heritage Order renders it incapable of reasonable use.

The Legal Services Unit has advised that when considering whether to give notice of a requirement for a Heritage Order, it is prudent to recognise that the Heritage Order if appealed to the Environment Court may result in a requirement from the Environment Court for the Council to purchase the building or to withdraw the Heritage Order. The Environment Court in exercising its discretion as to compulsory purchase will have regard to the following matters in S198(1):

- (a) That the applicant was the owner (or owner's spouse) of the property when the requirement was made or included in a district plan.
- (b) That the owner had tried but not been able to enter into an agreement to sell the land at a price not less than the market value of the property as if it were not subject to the Heritage Order.
- (c) The Heritage Order renders or would render the land incapable of reasonable use.

The Court may direct the owner to take further action to try and sell the property (S198 (2)).

In the event of a decision by the Environment Court for compulsory acquisition, the value of the property is assessed at market (willing buyer/willing seller) rate and without regard to the Heritage Order in accordance with the provisions of the Public Works Act (1981).

#### **NOTICE OF REQUIREMENT FOR A HERITAGE ORDER - LEINSTER HOUSE**

Having regard to the criteria for a notice of requirement for a Heritage Order by a heritage protection authority expressed in section 189(1) and (2) of the Resource Management Act, and the assessment of heritage significance, then Leinster House could be regarded as a place of special interest for the purposes of a Notice of Requirement for a Heritage Order.

Section 189(1)(b) requires that the area of land (if any) surrounding the place, which is reasonably necessary for the protection and reasonable enjoyment of that place, should also be identified.

Leinster House has not retained its original setting and garden to Papanui Road. While there could be a re-establishment of the original setting, which would provide a greater appreciation and enjoyment of the residence, it would involve acquisition of the subdivided and developed properties to the east. This opportunity has been discussed, as a possible longer-term outcome, which would increase the appreciation of the heritage values of Leinster House. However, it would appear to be more realistic to accept that the views of the house from Leinster Road are necessary to be maintained, including the whole of the present site Lot 5 DP16196 for the appreciation of the whole form of the house. A reasonable access rights would need to be provided to the rear sites.

#### **COUNCIL HERITAGE CONSERVATION POLICIES**

The Council approved a 'Heritage Conservation Policy' in February 1999 which included Policy 5.2.

*"To give Notice of Requirements for Heritage Orders, in accordance with the Resource Management Act 1991, as a last resort to protect buildings, places and objects listed in groups 1 and 2 and in exceptional circumstances group 3".*

The explanation for this Policy notes that:

*"The Council prefers to achieve heritage protection by working with owners and developers. Accordingly, all other options will be explored before a requirement for a Heritage Order is notified, and the Council will only make application for Heritage Orders for buildings, places and objects of considerable heritage value as recognised by listing in Groups 1 and 2 (and sometimes 3) in the City Plan."*

The reference to the use of the Heritage Order provisions of the Act "...as a last resort...", after all other options have been explored, has not been shown to be an effective direction when protection has also been the subject of the Resource Consent process. For example, with the Park Terrace houses, 138 -148 Park Terrace it was considered that at the conclusion of a Resource Consent process, it was not appropriate for the Council to use its statutory rights as a heritage protection authority for a notice of requirement for a Heritage Order.

Leinster House was listed as a Group 4 heritage item in the proposed City Plan in 1995. As noted above, subsequent in-depth research has been evaluated and is consistent with a Group 3 listing based on the City Plan assessment process for heritage significance. This could justify the use of a notice of requirement of a Heritage Order in this instance, when regard is also given to the City Plan.

The Christchurch City Plan has a statement on the Council's use of the Heritage Order provisions in the Heritage and amenities section Vol 3, page 10/4, 1.1 Statement which says: -

*"The Council may use the Heritage Order provisions under the Act from time to time to protect buildings, features or objects where this is considered to be necessary to secure protection."*

The City Plan Vol 2, Objective: Heritage protection, page 4/18, Implementation, Other methods, provides for: -

*"Heritage Orders giving effect to requirements made under section 189 of the Resource Management Act 1991"*

Neither city plan statement provides for restrictions on the use of the heritage order provisions of the Resource Management Act for heritage protection.

The proposed Christchurch City Plan has been subject to the Resource Management Act statutory public notification and submission procedures. There are no outstanding submissions or references to the heritage provisions of the City Plan.

#### **HERITAGE CONSERVATION COVENANTS**

An alternative form of heritage protection which could be considered is through the mechanism of a Conservation Covenant.

The use of a Conservation Covenant between the City Council and a heritage property owner provides for the full protection of the heritage item rather than the limited level of protection provided under the Christchurch City Plan Rules. This protection from a potential loss of heritage values through demolition, alteration or removal is increasingly a requirement by the City Council, in return for financial assistance to heritage property owners.

The Heritage Conservation Policy of the City Council provides Policy 5.3 *"To promote the use of covenants to protect listed heritage buildings, places and objects."* This Policy recognises the additional protection which can be provided by registering a covenant on the Certificate of Title of any heritage property. Any protection measures included in a covenant remain with the property and are not limited to a specific owner.

A Conservation Covenant is a legal document prepared under Section 77 of the Reserves Act (1977). The covenant is a voluntary deed between the property owners and (in this instance), the Christchurch City Council. A covenant identifies matters affecting the conservation of a heritage property where the Council retains the right to ensure that there will not be a loss of heritage values. The owners retain their discretion to use the property in a manner which will not cause any loss of heritage values. The covenant requires City Council consent to any changes to the property, as a party to the covenant. These rights are held in perpetuity.

#### **PREVIOUS DEMOLITION APPLICATIONS - LEINSTER HOUSE**

The City Plan regulatory heritage provisions were altered significantly through the City Plan submission process on 8 May 1999. At the time of notification in 1995, demolition of a Group 4 heritage building such as Leinster House required 3 months notice, but no Resource Consent. Subsequently, in 1999, demolition of a Group 4 building became a full discretionary activity requiring a resource consent.

The first notice of demolition of Leinster House was received on 14 September 1998, and permission to demolish was given on 14 December 1998, following 3 month public notice. The only City Plan requirement was for a photographic record.

The second proposal for demolition and a two storey medical center with carparking, RC982642 was lodged on the 30 September 1998, and granted on the 2 December 1998. This application was granted for three years.

An extension for the former application RC982642 was applied for on 26 October 2001. This was placed on hold pending further information and fees. Ongoing correspondence continued until 5 March 2003 with no decision then having been made.

## HERITAGE CONCLUSIONS

The heritage significance of Leinster House is noteworthy in particular for historical, social, architectural, group, landmark and craftsmanship values as identified in the tabled assessment of the heritage significance of Leinster House.

The heritage values identified and detailed in the tabled heritage assessment would justify a Group 3 listing for Leinster House on the basis of further heritage research and knowledge in 2004 compared with the information available for the notified City Plan listing of 1995.

The statutory criteria for a notice of requirement for a Heritage Order would be met, in my opinion, by the assessed heritage values of Leinster House as a "...*place of special interest...*". The additional area of land reasonably necessary for the protection and enjoyment of the place is Lot 5 DP 16196 (CT 6C/700) of approximately 1095 square metres. Reasonable access rights would need to be provided for the sites to the south - Lot 1 and Lot 2 DP80693.

While the Council Heritage Conservation Policy and the City Plan have some inconsistencies with regard to the use of Heritage Orders as a protective mechanism, the Resource Management Act statutory provision applies with the overarching purpose of sustainable management for the protection of heritage as a matter of national importance. However, consideration of the use of a Notice of Requirement for a Heritage Order for Leinster House, with the current heritage assessment of significance being applied, is not in conflict with the Resource Management Act or of Council policies.

Demolition of a Group 4 heritage building was effectively a permitted activity with regard to Resource Consent requirements prior to May 1999, when the earlier approvals for demolition of Leinster House had been approved. The present resource consent requirement for removal is as a restricted discretionary activity under the current proposed City Plan, with the Council's discretion limited to the effect on heritage values.

Consideration may be given to the use of a conservation covenant under section 77 of the Reserves Act on the property as a means of providing additional protection in addition to the regulatory provisions of the City Plan.

There have been significant changes to the status of heritage since the proposed City Plan was notified in 1995, and the Heritage Conservation Policy in February 1999.

- Heritage is now a matter of national importance through the Resource Management Act Amendment Act (2003).
- Additional weight has been given to many of the City Plan Heritage Resource Consent provisions since May 1999 due to decisions of the Council through the City Plan process. This applies in particular to Groups 3 and 4. For example, demolition of a Group 4 building is a full discretionary activity not a permitted activity. Removal of a Group 4 building is now a restricted discretionary activity, not a controlled activity.
- Additional research on the heritage of Leinster House since 1995, as tabled, provides the basis for a re-assessment of heritage significance for Leinster House to a value equivalent to that of a Group 3 heritage building.

These new circumstances need to be given due consideration in assessing the appropriateness of additional protection measures for the retention of Leinster House on its present site.

## STAFF CONCLUSIONS

1. In my professional opinion the heritage value of Leinster House justifies additional protection measures to be considered by the Committee for the continuing retention of the house.
2. The additional protection can be achieved by purchase, by a Conservation Covenant under the Reserves Act 1977, or by the Heritage Order provisions of the Resource Management Act.
3. The heritage significance of Leinster House would in my professional opinion, meet the statutory criteria in Section 189 (1) (a) of the Resource Management Act 1991 and could justify the Council publicly notifying a requirement for a Heritage Order.
4. Should the Council resolve to issue a Notice of Requirement for a Heritage Order, that the notice incorporate the land as assessed in this report as reasonably necessary for the protection and reasonable enjoyment of the building ie the existing Lot 5 DP 16196 (CT 6C/700) of approximately 1,095 square metres, with reasonable access rights provided for the sites to the south - Lot 1 and Lot 2 DP80693.
5. That the information contained within this report be taken in conjunction with the report of the Property Consultancy Manager, Leinster House contained within the public excluded section of the agenda.

### Committee's

#### Recommendation:

That the Council issue a Notice of Requirement for a Heritage Order under the provisions of section 189A(1) of the Resource Management Act 1991 on Leinster House on its existing Merivale site, Lot 5 DP16126, Certificate of Title 6C/700.