

## 8. CANTERBURY EARTHQUAKE HERITAGE BUILDING FUND



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### PURPOSE OF REPORT

1. The purpose of this report is for the Council to:
  - Endorse the proposed Canterbury Earthquake Heritage Building Fund (CEHBF) policy.
  - To appoint a Christchurch City Councillor to the Canterbury Earthquake Heritage Building Fund Trust Board, the governance body for that fund.
  - To consider the Christchurch City Council funds which will be allocated into the CEHBF

### EXECUTIVE SUMMARY

2. The 4 September 2010 earthquake caused significant damage to heritage and character buildings throughout the Canterbury region. In Christchurch City the best current estimate is that approximately 200 heritage buildings have been damaged by the quake. The cost of the repair and restoration will be considerable and the funding gap between insurance and repair costs will be beyond the \$763,684 annual budget from within the existing Council Heritage Incentive Grants Fund.

### The Canterbury Earthquake Heritage Building Fund (CEHBF)

3. On 17 September 2010 the Minister of Arts, Culture and Heritage announced that Government would contribute up to \$10 million in matched funding to assist with the repair, restoration and strengthening of damaged heritage and character buildings in Canterbury. Funding will be targeted at the gap between insurance cover and the actual cost of repairs and associated works, including conservation works, structural upgrading and building code works.
4. To identify the impact of the earthquake across Canterbury discussion with staff from District Councils across the region has occurred. Damage to heritage buildings has occurred in Timaru, Ashburton, Selwyn and Waimakariri Districts and Christchurch City. In Timaru and Ashburton Districts the number of buildings damaged by the quake is small, but there may be applications to the fund.
5. The funds available to distribute will consist of private donations, contributions from territorial authorities and the New Zealand Historic Places Trust (NZHPT), matched funding from the Government up to \$10 million and any interest accruing to the fund. Selwyn District Council has agreed to contribute \$49,500, Waimakariri District Council \$33,000 and the NZHPT \$250,000. Private donations received into the fund to date are approximately \$1 million. Once in place, the Trust could consider growing the fund through local, national and international initiatives.
6. The Minister for Arts, Culture and Heritage has indicated that the fund should be supported by a policy, which he would approve. Prior to his approval he is seeking agreement from Selwyn, Waimakariri and Christchurch City that the policy is acceptable. The Minister has also indicated that decisions on the fund allocation are to be made locally. The fund is also to be available to repair and restore heritage buildings across Canterbury. There may be reporting requirements to Minister of Arts, Culture and Heritage.
7. The Council considered the draft policy on 4 and 6 October 2010 and provided comments to staff. The background section of the report discusses how those comments have been considered in developing the policy, governance structure and guidelines. The final draft policy is attached for consideration and endorsement (**Attachment 1**).

8. Broadly the CEHBF policy covers off the following points:
- Purpose of the fund
  - Principles for fund operation
  - Funds available for distribution
  - Administration of the fund
  - Eligibility for Assistance
  - Winding up of the Fund.
9. The Fund will be supported by a set of operational guidelines. A draft of these guidelines is attached for information (**Attachment 2**). These guidelines will be approved by the Trust Board at their first meeting as part of their overall governance of the fund. The guidelines include more detailed eligibility criteria, criteria for application assessment, roles and accountabilities, conditions for receipt of funding and monitoring and reporting.

### **The Canterbury Earthquake Heritage Building Fund Trust Board**

10. A number of governance vehicles to allocate the fund were explored. A key criteria in establishing the appropriate governance structure was to enable donations to be tax deductible. After seeking legal advice a Trust was identified as the most suitable structure. Initial advice from the Inland Revenue Department (IRD) indicates that the Canterbury Earthquake Heritage Building Fund would achieve donee status, which means that donations would be tax deductible.
11. The proposal is that the Trust consist of seven Trustees; three of the Trustees would be appointed by Selwyn, Waimakariri and Christchurch City, one trustee from the NZHPT and a further three independent trustees. These independent Trustees would be appointed by the Territorial Authority and NZHPT representatives on the Trust.
12. The proposed Trust Deed is shown in **Attachment 3**.
13. The trust deed identifies that Christchurch City Council will provide secretarial support for the trust, and the cost of this to be agreed amongst the territorial parties. It is the intention that reports to the Trust would be reviewed and recommendations made to the Trust by the appropriate Council and the NZHPT.
14. The Trust is proposed to operate until 30 June 2015, or until the fund has been fully distributed, whichever is the earlier date.

### **Heritage Incentive Grant Funding**

15. The Council already operates the Heritage Incentive Grants Fund (HIG) which has an annual budget of \$763,684 in 2010/11. To date in 2010/11 \$308,998 has been committed in grant funding, leaving \$488,374 (including funds from lapsed grants) to be allocated up to 30 June 2011. There are currently applications in train (received prior to the earthquake) that have a potential value of \$105,000. With this deducted it is considered that the current year's uncommitted balance of \$383,000 in the HIG fund could be committed to the CEHBF.
16. As noted in paragraph 5 above, other members of the Trust are making contributions to the CEHBF. Should the Council wish to contribute there are a number of options:
- (a) Contribute all of the HIG fund to the CEHBF in 2010/11 and 2011/12 and review future funding is part of 2012 LTCCP.
  - (b) Contribute part of the HIG fund to the CEHBF in 2010/11 and 2011/12 and review future funding is part of 2012 LTCCP.
  - (c) Establish new funding for the CEHBF.
  - (d) Do not contribute to the fund.

17. An analysis of these funding options is shown in table 1 below:

Option	Advantages	Disadvantages
Contribute all of the HIG fund to the CEHBF	<ul style="list-style-type: none"> <li>• Contributes to the funding of earthquake recovery of heritage buildings</li> <li>• Is consistent with Selwyn and Waimakariri District Councils and NZHPT who are contributing to the fund.</li> </ul>	<ul style="list-style-type: none"> <li>• No additional funds would be available through the HIG fund.</li> <li>• Council would not be able to support other ongoing heritage grants to buildings in Christchurch not affected by the earthquake.</li> </ul> <p>Council contribution would be far in excess of other parties contributing to the fund.</p> <p>Any current applications would not be processed until future funding was re-established.</p>
Contribute part of the HIG fund to the CEHBF fund.	<ul style="list-style-type: none"> <li>• Contributes to the funding of earthquake recovery of heritage buildings.</li> <li>• Is consistent with Selwyn and Waimakariri District Councils and NZHPT who are contributing to the fund.</li> <li>• Enables Council to continue with a portion of its current heritage funding process.</li> </ul>	<ul style="list-style-type: none"> <li>• Applications receiving funding would be limited, which could mean some applicants would have to wait until 2011/12.</li> </ul>
Establish new funding for the CEHBF	<ul style="list-style-type: none"> <li>• Does not require any change in operational practice with the existing HIG fund</li> </ul>	<ul style="list-style-type: none"> <li>• Additional extraordinary funding would need to be approved by the Council</li> </ul>
Do not contribute to the fund.	<ul style="list-style-type: none"> <li>• Does not require any change in practice with the existing HIG fund</li> <li>• Will enable ongoing funding of non-earthquake related heritage funding.</li> </ul>	<ul style="list-style-type: none"> <li>• Inconsistent with other Councils who are contributing funding</li> <li>• Would not maximise the matched funding opportunity.</li> </ul>

18. It should be noted in respect of the trust that all decisions regarding allocation of the fund will lie with the Trust Board. Should the Council contribute to the fund there can be no guarantee about which buildings the fund will support nor can there be any guarantee that grants will reflect accurately the levels of individual Council contributions. The key benefit which offsets the more hands off approach of using a Trust is that any monies are effectively doubled by the government, that all private donations may also be applied across the whole of Canterbury, and that the governance structure of the Trust should ensure that it expends its funds equitably. Given that the city has by far the majority of the damaged heritage buildings in the region the fund, and the Trust, provide a way to maximize the benefit to Christchurch from the donations received, and the government's contribution.

#### FINANCIAL IMPLICATIONS

19. The financial implications relating to this fund and its administration are two-fold:
- (a) The secretarial support required to support the CEHBF Trust Board.
  - (b) Any financial commitment the Council agrees to make to the fund (which would be match funded by Central Government contributions).

20. The secretarial support required has been discussed with Democracy Services staff and will form part of the consideration of resources required as part of the new Council establishing the committee structure for this term. Trust Board meetings are likely to be monthly, papers will be required to be circulated and made available publicly (although this is not a requirement for Trust Board operation). Secretarial support is likely to cost approximately \$10,700 per annum. The Trust Deed does provide for the costs of secretarial, treasury and other administrative services to be met in agreed proportions by the Territorial Authorities, although no agreement has been discussed in setting up the Trust to date.
21. The options regarding the Council's financial commitment to fund are identified in paragraph 16 above.

**Do the Recommendations of this Report Align with 2009-19 LTCCP budgets?**

22. No, this fund and the secretarial support required lie outside of the 2009-19 LTCCP budgets, although those budgets do provide for supporting the Heritage Incentive Grants and the administration process for those. Section 101(2) of the Local Government Act 2002 requires the Council to make adequate and effective provision in its LTCCP to meet expenditure needs. However, the Canterbury Earthquake (Local Government Act 2002) Order 2010 exempts the Council from this obligations. The Order states that Section 101(2) is not to prevent the Council from doing anything inconsistent with its Annual Plan or LTCCP.

**LEGAL CONSIDERATIONS**

23. See below.

**Have you considered the legal implications of the issue under consideration?**

24. Legal advice has been sought throughout the process to develop the policy and establish the Trust Board. A primary consideration in establishing the trust board is to enable contributions to be tax deductible. Council staff is advised that the purpose of the trust is not charitable, so cannot be established as a charitable trust. However preliminary advice received from IRD indicates that the trust would achieve donee status, which would enable that tax deductible status.
25. It should be noted that under the Trust any monies remaining are to be returned to a nominated Final Beneficiary. This has been nominated as the NZHPT. While there may be some concern that final wash up monies may not be returned to individual contributors, the risk that any monies will be left at the end of the period is low, and that as three of the Trustees are local authority representatives there is sufficient governance oversight to ensure that the fund is fully expended during its term.

**ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

26. Heritage Protection is an activity within the current 2009-19 LTCCP.

**Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?**

27. Yes, see above.

**ALIGNMENT WITH STRATEGIES**

28. Yes, in relation to Heritage Protection. Having such a fund available post-earthquake also aligns with the Central City Revitalisation Strategy and the Objectives and Policies as they relate to heritage in the Christchurch City and Banks Peninsula District Plans.

**Do the recommendations align with the Council's strategies?**

29. Yes, see above.

### CONSULTATION FULFILMENT

30. Establishing the Canterbury Earthquake Heritage Building Fund has been an initiative developed in response to the 4 September 2010 earthquake and therefore covered by the provision of the Canterbury Earthquake Response and Recovery Act 2010. The Canterbury Earthquake (Local Government Act 2002) Order referred to earlier exempts the Council from decision-making requirements that might otherwise apply.
31. Discussions on the fund and development of the Trust Deed have been undertaken in partnership with the Ministry of Culture and Heritage, NZHPT, Selwyn District Council and Waimakariri District Council. Discussions have also been undertaken with other District Councils in Canterbury. Consultation with Ngāi Tahu is being undertaken by the Ministry of Arts and Culture and a verbal update will be provided at the Council meeting.

### STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Endorse the attached Canterbury Earthquake Heritage Building Fund Policy.
- (b) Approves the Canterbury Earthquake Heritage Building Fund Trust Deed and authorise the affixing of the Council seal to the Trust Deed in respect of the Canterbury Earthquake Heritage Building Fund in the form attached to this report subject to such amendments as may be required for the fund to be granted "donee" status by the Inland Revenue Department;
- (c) Appoint a Christchurch City Councillor to the Canterbury Earthquake Heritage Building Fund trust board.
- (d) Commit \$383,000 from the current 2010/11 Heritage Incentive Grant funding to the Canterbury Earthquake Heritage Building Fund, and agree to commit 50 per cent of the Heritage Incentive Grant fund in 2011/12 to the Canterbury Earthquake Heritage Building Fund.
- (e) Consider ongoing support of the Canterbury Earthquake Heritage Building Fund from its Heritage Incentive Fund, as part of the 2012/22 LTCCP process.
- (f) Approve the Council acting as secretarial support for the Canterbury Earthquake Heritage Building Fund.

## BACKGROUND (THE ISSUES)

32. The Council considered the draft CEBHF policy on 4 and 6 October 2010 and provided staff with comments on the draft policy. These comments are shown in the table below along with an indication of how the comment has been considered:

Council comment	Response
That the fund should have full charitable status for tax purposes for those giving donations	The fund and governance structure has been set up to allow donee status. The purpose of the fund does not allow charitable status to be achieved. See paragraph 9 of the report.
That the Christchurch City Council should have at least two Councillor representatives.	The number of Council representatives needs to be limited to less than 49% of the decision-makers to prevent the Trust from becoming a Council-controlled organisation. If that occurs, a Special Consultative Process and amendment to the LTCCP would be required. Staff consider the approach adopted to be the most expedient to ensure the Trust can begin allocating funding as soon as possible.
That consideration be given to funding allocations based on a precinct as well as a building by building basis.	Clause 1.1 (g) defines qualifying buildings and includes groups of buildings
That consideration be given to funding the retention of facades, ICOMOS charter notwithstanding. (One Councillor disagreed).	Façade retention can be funded but would be considered on a case-by-case basis.
That all affected Councils contribute financially to the fund.	Selwyn District Council is contributing \$49,500, Waimakariri District Council \$33,000.
That consideration be given to how the Council can apply in cases where it may need to purchase buildings to protect them from demolition.	The current HIG fund does not apply to Council-owned properties; staff consider the same criteria should apply in this case. Council staff are working through heritage assets with insurers.
That consideration be given for funding to be made available for retention of 'character housing' that has suffered as a result of the earthquake. (Two Councillors did not support such a broad approach)	Clause 1.1 (g) defines qualifying buildings and includes buildings that make a significant contribution to the visual character of communities.
That consideration be given to getting a comprehensive list of the buildings that may need funding assistance prior to any funding, so that the situation of "first come first served" granting of money does not arise. (The Council was divided on this issue)	This is problematic. Ongoing aftershocks and reassessment of structural integrity of buildings means that this list is still evolving. It is also anticipated that donations will continue to be made to the fund over time.
That with reference to clause 2.3 it be noted that the Christchurch City Council Earthquake Prone Buildings Policy now sets a target of strengthening buildings to 67 per cent of code.	Clause 5.2 of the Canterbury Earthquake Heritage Building Fund Policy refers to the 'relevant provisions of territorial authorities earthquake-prone, dangerous and insanitary buildings policy.

## THE OPTIONS

33. There are three options for the Council to consider in relation to contribution to the Canterbury Earthquake Heritage Building Fund:
- Contribute all of the HIG fund to the CEHBF.
  - Contribute part of the HIG fund to the CEHBF.
  - Establish new funding for the CEHBF.
  - Do not contribute to the fund.

## THE PREFERRED OPTION

34. The preferred option is to contribute the remainder of the HIG funding (\$385,740) to the Canterbury Earthquake Heritage Building Fund.