

27. 10. 2011

## 11. HERITAGE COVENANT CONSENT – WARNER’S HOTEL, 50 CATHEDRAL SQUARE, CHRISTCHURCH

<b>General Manager responsible:</b>	General Manager, Strategy and Planning Group, DDI 941-8281
<b>Officer responsible:</b>	Programme Manager, District Planning
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### PURPOSE OF REPORT

1. To obtain the Council’s approval to release the covenant following demolition of the building at 50 Cathedral Square (Warners Hotel) by order of the Canterbury Earthquake Recovery Authority (“CERA”).
2. This report also seeks that the General Manager Strategy Planning Group be granted the delegated authority to release heritage covenants generally where the relevant building has been demolished by order of the Canterbury Earthquake Recovery Authority under it’s statutory powers.

### EXECUTIVE SUMMARY

3. Warner’s Hotel at 50 Cathedral Square is a Group 3 commercial building and was completed in its current form in 1902. The building forms a substantial part of the north-east corner of Cathedral Square. Although it has undergone a number of alterations it is attributed largely to the architect Joseph Maddison. The Luttrell Brothers Architects added a fourth floor in 1910 and a major extension was added to the north side of the building, at 52 Cathedral Square, as recently as 2007/2008. A boundary readjustment was done after this extension between 50 and 52 Cathedral Square which resulted in 52 containing the newer portions of the building. The original portion of the building is formed from masonry and has plastered facades facing the Square with horizontal architectural mouldings and decorated window surrounds. **Attachment 1** provides a Statement of Heritage Significance.
4. The building is registered Category II by the New Zealand Historic Places Trust Pouhere Taonga (NZHPT).
5. The Joint Projects and Property and Environment Committees approved a heritage grant for renovation and extension work in July 2000 .As part of this funding approval, the applicant signed a heritage covenant which was registered on the property title in 2002. The works for which the heritage grant funding was given in the early 2000’s included the restoration, repair and repainting of the façades of the building as well as significant internal modifications, structural upgrade and fire system upgrades. The most noticeable visual effects of the works were the removal of external fire escapes, plumbing and other redundant services from the facades facing the Square. The grant given by the Council for the work was \$750,000 spread equally over five years. In return for that heritage grant funding the owner agreed to register a heritage covenant against the title to the land in 2002.
6. The 4 September 2010, the 22 February 2011 and the 13 June 2011 earthquakes, and associated aftershocks, resulted in substantial damage being caused to the building. This damage was particularly evident on the south façade to Cathedral Square where large diagonal cracking formed in the masonry. As a result CERA has required the demolition of the older portion of the building (defined as 50 Cathedral Square) under section 38 of the Canterbury Earthquake Recovery Act 2011. The demolition work required by CERA involves the full demolition of the southern original portion of the building, but excludes the modern extension to the hotel completed in 2007/2008 situated at 52 Cathedral Square.
7. No resource consent for demolition is required for heritage buildings approved for demolition by CERA.
8. In addition to Warner’s Hotel, it is envisaged that there will be a number of other buildings throughout the city that have, or will be demolished, by order of CERA following the earthquakes that will be subject to registered heritage covenants in favour of the Council. The demolition of such buildings by order of CERA is not a matter within the Council’s control, and such demolitions will effectively render any heritage covenants registered against the titles to such buildings irrelevant.

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9. The purpose of heritage covenants is to protect built heritage, however once it has been destroyed or demolished, then it is appropriate for any heritage covenant registered against the title to the relevant land to be removed.
10. In view of these circumstances, it is recommended that for reasons of administrative expediency that delegation should be given to General Manager Strategy & Planning to authorise the removal of heritage covenants from the titles of such properties where the building has been demolished by order of CERA under its statutory powers. This report therefore seeks the granting of delegated authority to the General Manager Strategy and Planning to agree the removal of heritage covenants from the titles of demolished heritage buildings without the need to report each application to the Council for approval which would otherwise be required.

**FINANCIAL CONSIDERATIONS**

11. There are no financial implications arising from a covenant consent.

**LEGAL CONSIDERATIONS**

12. In return for heritage grants the Council requires that grant recipients agree to the registration of a heritage covenant against the title to their land before the grant is made. In general terms the purpose of a heritage covenant is to provide a legal mechanism to ensure that the Council grant is only expended on the restoration of the building in question and to create a legal obligation on the part of the owner not to demolish that building for a fixed period (limited covenant) or in perpetuity (full covenant).
13. The Warner's Hotel building is subject to a heritage covenant registered in 2002. The terms of that covenant are slightly different from the current form of the Council's generic covenant. It provides that:
  - (a) any proposed demolition requires the prior written consent of the Council (in addition to any resource or building consents required under the Resource Management Act 1991 and the Building Act 2004); and
  - (b) if the building is destroyed or damaged from any cause whatsoever, and should the Council determine that it is not practical or desirable to repair, restore or reinstate the building, then the obligations of the parties under the covenant will cease and the covenant is to be removed from the title.
14. The latest generic version of the Council's heritage covenant firstly repeats the obligation on the owner not to demolish with the Council's consent. Secondly. It provides that should the Council determine that the building is completely destroyed or damaged, then the heritage covenant shall cease to have effect.
15. Whilst the power to manage and enforce the Council's powers under heritage covenants has been delegated to the Heritage and Arts Committee, the delegations to that Committee expressly exclude the power to approve a demolition.
16. Section 38 of the Canterbury Earthquake Recovery Act 2011 ("CER Act") empowers CERA to demolish buildings or to require the demolition of buildings. Demolitions under section 38 of the CER Act are empowered to occur irrespective of the rights of the owner or of any other person with a legal interest in the land (i.e. the Council under a heritage covenant). Under section 40 of the CER Act CERA is not required to pay any compensation if the building was classified as a dangerous building. CERA's demolition powers under the CER Act override the Council's powers under it's heritage covenants.

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17. Council staff have engaged in discussions with the Owner of the Warner's Hotel building and this report arises from those discussions. The Canterbury Earthquake (Local Government Act 2002) Order 2010 exempts the Council from compliance with some of the decision-making processes set out on the Local Government Act 2002. These include the requirement that the Council considers community views and preferences. The exceptions can be relied upon in this case because it is necessary for the purpose of ensuring that Christchurch, the Council, and its communities respond to and recover from the impacts of the Canterbury earthquakes. In any event, the general delegated powers proposed to be granted to staff are administrative in nature only.

**STAFF RECOMMENDATION**

It is recommended, that the Council resolves as follows:

- (a) Noting that the Warner's Hotel building at 50 Cathedral Square, Christchurch was destroyed or damaged as a result of the 4 September 2010 earthquake, and its associated aftershocks, and has been demolished pursuant to section 38 of the Canterbury Earthquake Recovery Act 2011, the Council resolves that it is not practical or desirable to repair, restore or reinstate the same so that the heritage covenant registered against the title to that property shall cease. Council staff are therefore authorised to provide a release of that covenant to the property owner.
- (b) That where the title to any building is subject to a registered heritage covenant in favour of the Council, and that building is demolished by any person pursuant to or following the issue of a notice under section 38 of the Canterbury Earthquake Recovery Act 2011 (or any other statutory instrument authorising the compulsory demolition of buildings), that the General Manager Strategy and Planning be delegated authority on behalf of the Council to:
- (i) determine whether the relevant circumstances (if any) described in the relevant heritage covenant have been satisfied to bring the covenant to an end; and:
  - (ii) to complete or authorise the completion of the necessary formal steps to remove the heritage covenant from the title to the building in question.