

COUNCIL 22 3 2012

HERITAGE AND ARTS COMMITTEE 7 MARCH 2012

A meeting of the Heritage and Arts Committee was held in
Committee Room 1, Civic Offices, 53 Hereford Street
on Wednesday 7 March 2012 at 9am.

PRESENT: Councillor Helen Broughton (Chair),
Councillors Sally Buck, Barry Corbett, Yani Johanson, Glenn Livingstone.

The Committee reports that:

PART A - MATTERS REQUIRING A COUNCIL DECISION

1. REQUEST FOR AMENDMENT TO CONSERVATION COVENANTS FOR HERITAGE INCENTIVE GRANTS

General Manager responsible:	General Manager, Strategy and Planning Group
Officer responsible:	Programme Manager, District Planning
Author:	Brendan Smyth, Architecture, Heritage & Urban Design

PURPOSE OF REPORT

1. The purpose of this report is to consider changes to the current form of heritage conservation covenants that are associated with the Council's Heritage Incentive Grant scheme. The report has arisen out of concerns of the Heritage & Arts Committee that Council grant funds appear to be unable to be recovered if the building is demolished without the Council's consent (i.e., CERA processes) and where insurance funds have been paid out to the building owner for the full value of the building and have not been used to repair the building.

EXECUTIVE SUMMARY

Background

2. The 4 September 2010, the 22 February 2011 and the 13 June 2011 earthquakes, and associated aftershocks, resulted in many heritage buildings in Christchurch being damaged and demolished. Some of these building's owners have been the recipient of a Heritage Incentive Grant and a conservation covenant had been registered on the Certificate of Title as is the normal process.
3. The existing covenant form allows no ability for the Council to ask for repayment of a grant from insurance proceeds received by a landowner as a consequence of the demolition of a building due to a force majeure event such as an earthquake. The existing covenant permits the Council to recover a grant where a landowner has demolished the covenanted building in breach of his/her obligations under the covenant, but not in circumstances of demolition through no fault of the landowner. Therefore, the proposal to recover grants from insurance proceeds could not apply to existing covenants, and could only apply to new covenants.
4. The primary purpose of heritage incentive grants is to fund restoration works, and in return for financial support the recipient grants a covenant in favour of the Council not to demolish, either for a specified period or in perpetuity. If those works are completed and the building retained by the landowner, then the Council's requirements are met. A covenant does not create an interest in the land or transfer a share of the property to the Council.
5. The options available to the Council are to either leave the current covenant provisions unaltered, or to alter those provisions to require repayment in certain circumstances.

1 Cont'd

Analysis of Seeking Grant Refunds after a Force Majeure Event

6. Under the current form of covenant, the occurrence of a force majeure type event which totally destroys the building will bring the obligations of the parties under the covenant to an end (Conservation Covenant Fourth Schedule clause 6), and whilst the heritage values might be totally lost, the existing covenant does not require repayment of the grant. The covenant recognises that the heritage values have been lost and provides that the arrangement should therefore come to an end. This is the basis upon which heritage incentive grants have been made for some years.
7. Alternatively, it is possible to amend the standard form of covenant to apply to future grants to provide that repayment is required, and this may potentially release funds for further heritage works on other buildings. If this approach was considered appropriate, then the process for recovering the funds in the event of a refusal to repay would also need to be considered. The Council could include provisions that one would typically see in a mortgage instrument, including a 'power of sale', which could be used to empower the Council to sell the underlying land to recover the grant if that was required. Council could sue for recovery of the debt and state it's clear intention to do so in the document. However, this may result in the need to undertake costly legal processes and potentially negative publicity if given effect to. While this may result in returned funds to benefit other heritage projects, there remains the potential that potential recipients may be less likely to accept funding on these terms. Inserting the above clauses would subtly shift funding from a grant based funding to more of a loan/mortgage based funding and may have an unintended negative effect.
8. The points below show that such changes may lead to a number of adverse outcomes for the owners of heritage buildings. These outcomes could also result in a reluctance on the behalf of owners to enter into any such agreement with Council and hence to own, retain and maintain heritage buildings.
9. Not all heritage buildings will have full replacement insurance cover, some, possibly many, may only have indemnity cover. If indemnity cover applies, then the insurance proceeds may be a relatively small sum and may be insufficient to fund the grant repayment to Council.
10. One intention of insurance is to enable the building to be repaired or replaced if necessary. Any deduction from those insurance proceeds could negatively impact on the ability of the landowner to rebuild (or repair) the building in an appropriate manner. Heritage buildings tend to have high build costs due to the generally high level of craftsmanship; high cost or rare materials such as stone and native timbers; and complex architectural detail. This can be an onerous responsibility with substantial financial implications for the owner. If similar high quality buildings are desired to replace those lost in events such as earthquakes then seeking grant repayment will be likely to act as a disincentive and encourage low cost, low quality building replacements and repairs.
11. The amount of the original grant may not necessarily equate to value. The value of the building or property may not necessarily have been increased by an amount equal to the grant. Grants frequently fund works which stabilise, strengthen and maintain the existing fabric and provide for systems such as fire sprinklers, items that are considered by many occupants to be standard rather than items to pay higher rents for. Heritage buildings are frequently high cost buildings to own, operate and maintain and can be difficult to lease as alterations to facilitate energy efficiency, for example and modern use may not be possible. The owners of heritage buildings are rarely seeking, or are able to gain, high financial returns from their buildings. It may be unfair to simply require repayment of the full grant from the insurance proceeds where higher rental returns were not generated by the grant.

1 Cont'd

12. The longer that a grant has been awarded to an owner the more difficult it will be to assess the repayment sum, if any, that should be made to the Council by the building owner. The Council and the City generally will have had the benefit of the building being upgraded for the period of time since the work was completed. Hence the amount of repayment should logically be reduced in proportion to the period of time since the work was undertaken. There is also the issue of inflation reducing the value of the grant with time. A Limited Covenant that provided protection for a stated number of years would be simpler to deal with than a full covenant but would still present these issues.
- 13 Building owners will more than likely be in a difficult position following a major force majeure event and the sudden demand that they repay a grant will possibly be seen as a harsh requirement which may influence their decision in favour of demolition. At the very least it will impose an unwelcome request in a time of heightened stress for building owners when pressure is already present from insurance companies and government organisations such as CERA.

FINANCIAL IMPLICATIONS

14. If the standard conservation covenant form was amended to require grant repayment in certain circumstances then, in respect of future grants, such an amendment may produce addition funds which could be applied to future grants.

LEGAL CONSIDERATIONS

15. In return for heritage grants the Council requires that grant recipients agree to the registration of a heritage covenant against the Certificate of 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). The covenant also requires that consent be gained from the Council for alterations to the building. The covenant document includes provisions and procedures for reclaiming the grant in the event of a breach of the conditions of the covenant. Breach is clearly defined in the documents and does not include demolition or damage to the building following an event such as an earthquake.

CONSULTATION FULFILMENT

16. If the Committee was minded to alter the current form of heritage covenant to require the repayment of grants from insurance proceeds as discussed in this report, consideration will need to be given to the appropriate level of public consultation required before that is done.

STAFF RECOMMENDATION

That the Heritage and Arts Committee retains the current form of conservation covenant consent and does not attempt to seek repayment of all or portions of grants in the event of the building being demolished other than in the event of a breach as outlined in the current covenant form.

COMMITTEE RECOMMENDATION

Councillor Buck moved:

That the Council agree that the Heritage and Arts Committee retains the current form of conservation covenant consent and does not attempt to seek repayment of all or portions of grants in the event of the building being demolished other than in the event of a breach as outlined in the current covenant form.

The motion was seconded by Councillor Corbett and when put to the meeting was declared **carried** on division No.1 by 3 votes to 2, the voting as follows:

COUNCIL 22. 3. 2012
HERITAGE AND ARTS COMMITTEE 7.3.2012

- 4 -

1 Cont'd

For (3): Councillors Buck, Corbett and Livingstone

Against (2): Councillors Broughton and Johanson.

PART B - REPORTS FOR INFORMATION

2. DEPUTATIONS BY APPOINTMENT

Nil.

3. ARTS UPDATE

Staff presented a report at the meeting providing an update for the Committee on the Arts in Christchurch (see Attachment A).

4. HERITAGE BUILDING RECOVERY UPDATE

A verbal report was provided by Council staff on the following heritage issues in Christchurch:

- CERA safety issues
- risk assessment processing
- Section 38 notices on prominent buildings
- council staff efforts to consult with building owners.

The Committee noted the urgency for a review of the Heritage Recovery Plan, due to the number of buildings that have been demolished, or are under threat demolition.

It was left to the Chair to raise this issue with the Mayor and the Chief Executive.

PART C – DELEGATED DECISIONS

5. CONSERVATION COVENANT CONSENTS – REQUEST FOR DELEGATED AUTHORITY FOR MINOR WORKS

The Committee considered a report seeking approval to sub-delegate to the General Manager Strategy and Planning, its power to approve its power to approve heritage conservation covenant consent applications, where the proposed works are of a minor nature.

The proposed changes to the covenant consent procedures were sought in order to streamline the process for building owners and to avoid duplication through the covenant consent and resource consent processes.

STAFF RECOMMENDATION

That the Heritage and Arts Committee sub-delegates its 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)” to the General Manager Strategy and Planning provided that the sub-delegated power shall be limited to the approval or decline of building repairs and alterations of a minor nature arising from the Canterbury Earthquakes. For the purposes of this resolution “repair or alterations of a minor nature” means works that effect or outcome of which will not alter the original appearance of the building, internally or externally, and which do not involve building extensions or partial demolitions. Such works may include:

5 Cont'd

- (a) structural alterations and enhancements to the seismic performance of the building where these can be concealed within the walls, floors, ceilings and other voids within the building
- (b) the reconstruction of small portions of the structure such as chimneys and the replacement of building materials like for like where the original material has been damaged beyond repair, and
- (c) the General Manager Strategy And Planning will report to the Council six monthly on the exercise of this delegation.

COMMITTEE DECISION

The Committee **resolved** that the staff recommendation be adopted with the following change to (c):

- (c) The General Manager Strategy and Planning will report to the Council **regularly** on the exercise of this delegation.

6. CANTERBURY EARTHQUAKE HERITAGE BUILDING FUND TRUST COVENANT

The Committee considered a report seeking approval to approve the Conservation Covenant form to be registered against the Certificate of Title to the recipients property in favour of the Council and sub-delegate to the General Manager of Strategy and Planning its power to approve heritage conservation covenants that are subject of a grant by the Canterbury Earthquake Heritage Building Fund.

STAFF RECOMMENDATION

- (a) That the standard form of Conservation Covenant attached to this report be approved for use by the Council in respect of Canterbury Earthquake Heritage Building Fund Trust grants that require full covenants.
- (b) That the Committee's 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 are the subject of a grant by the Canterbury Earthquake Heritage Buildings Fund, be sub-delegated to the General Manager Strategy and Planning.

COMMITTEE DECISION

The Committee **resolved** that it:

- (a) Approve the standard form of Conservation Covenant attached to the report for use by the Council in respect of Canterbury Earthquake Heritage Building Fund Trust grant subject to Clause 3 of the Fourth Schedule being amended to:

"If the Owner is unable to arrange insurance or any aspect of insurance (such as earthquake cover) on either a full replacement or indemnity basis because of any general unavailability of such insurance in the Canterbury insurance market, or if such insurance is not available on terms and conditions acceptable to the Owner acting reasonably, then, provided that the Owner has used reasonable endeavours to obtain such insurance, and continues to do so, the Owner shall not be in breach of its obligations under this clause."

In addition, that the Committee approve the amendments referred to above also being made to all existing and future covenants entered into by the Council under the Heritage Incentive Grants Scheme.

- (b) That the Committee sub-delegate to the General Manager Strategy and Planning its 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 are the subject of a grant by the Canterbury Earthquake Heritage Buildings Fund.

COUNCIL 22. 3. 2012
HERITAGE AND ARTS COMMITTEE 7.3.2012

- 6 -

6 Cont'd

Councillor Broughton asked that it be recorded that she had voted against the resolution.

At the conclusion of the meeting had an informal briefing of several heritage building related matters.

The meeting concluded at 11.30 am.

CONFIRMED THIS DAY OF 22 MARCH 2012

ARTS UPDATE FOR HERITAGE & ARTS COMMITTEE

7 March 2012

FUNDING***CHRISTCHURCH EARTHQUAKE MAYORAL RELIEF FUND***

The following five arts organisations were successful in their applications to this fund:

<u>Christchurch Music Centre</u> -	\$70,000 - towards costs incurred for planning and re-establishment of new facility
<u>The Court Theatre</u> -	\$100,000 – development of the Shed complex in Addington
<u>The Loons, Lyttelton</u> -	\$250,000 – towards the rebuild of their premises
<u>Chart Music Industry Trust</u> -	\$80,000 – towards a dedicated band rehearsal space
<u>CPIT ArtBox project</u> -	\$80,000 – development of 18 Art Boxes for arts practitioners

CNZ CHRISTCHURCH CREATIVE COMMUNITIES FUND

Second round of 2011/12 financial year closed 24 February with 92 applications received. This is indicative of arts organisations being ready to undertake projects with venues and opportunities more available. The previous round last August received 36 applications.

CNZ has granted an extra \$20,000 to this scheme for allocation in the February round.

CCC STRENGTHENING COMMUNITIES FUND

Three major arts organisations (CSO, Showbiz Christchurch and Court) are in the last year of three year funding contracts and will be applying this year for further support.

PERFORMING ARTS

The seven Heart Strings guitars crafted by Bruce Pickering, fetched a total of \$111,000 at an auction on 24th February.

The Bedford music venue opened its new premises, 86 Moorhouse Avenue on Saturday 3 March and the popular Lyttelton venue, Wunderbar will open on 30 March.

Christchurch Symphony Orchestra's 2012 season will be performed in the Aurora Centre, the Middleton Grange Performing Arts Centre and CBS Arena.

Court Theatre reopened in December with a successful season of Roger Hall's Shortcut to Happiness and the second show Side by Side by Sondheim opened on 12th February with good forward bookings. Scared Scriptless is now housed in the new theatre with shows every Friday and Saturday night at 10.15 pm. Very good houses with young people enjoying the theatre facility.

Showbiz Christchurch is in rehearsal for Buddy which opens at the Aurora Centre on 19th April.

The Music Centre of Christchurch is working on its new complex and has presented a business plan to the CCP. It continues to run its concert series with weekly performances at the Salvation Army Citadel in Beckenham and St Augustine's Church in Cashmere.

Waitaha Cultural Council, Nga Tahu and CCC have been successful in their bid for the national kapa haka competitions to be held in the city in 2015. This will be the first time since 1986.

Elmwood Players, Riccarton Players, Repertory and Top Dog Theatre all continue to offer theatre performance opportunities.

Christchurch School of Music is operating from Cathedral College and Marian College class rooms. Although numbers are slightly down the school is offering a wide range of instrumental classes.

Woolston Brass are continuing to rehearse their bands and also offer classes in their Dampier Street venue which is not badly damaged.

The Theatre Royal sustained further damage in the 23 December quake which has delayed the opening date. The central section including the auditorium needs to be replaced.

The Events Village in Hagley Park will stay until the end of September when facilities will be re located.

CPIT is in discussion with the Arts Circus project (to be governed by the Theatre Royal Trust) to bring the Circo Arts course back to the city.

VISUAL ARTS

The Christchurch Art Gallery opened Julia Morrison's exhibition Meet Me on the Other Side in the Ng Gallery on 10 February. This exhibition shows evocative post-quake sculptures and 'liquefaction' paintings. The exhibition was first shown in Auckland in late 2011 where it was acclaimed for its 'horrifying brilliance' and 'force and pathos'.

Arts Canterbury held a very successful ceramic, jewellery and objet d'art exhibition at the George Hotel in December. 27 artists displayed work, 15 works were sold and commissions for jewellery and a glass replica of a house to be demolished were received. Arts Canterbury has a continuing relationship with the George where local artists are displayed throughout the hotel.

CPIT has increased its number of architecture students.

Design & Art College has good enrolments and also an increase in architecture students.

ARTS SERVICE ORGANISATIONS

Creative NZ is no longer supporting the creative hub at CPIT and organisations are seeking new premises. Several organisations are negotiating space in the Alice in Videoland building which will also house the Physics Room and CNZ.

The Christchurch Community Arts Council is looking to publish its next Arts Participation Guide in May this year.

Chart Music Industry Trust is working on its plan to build a purpose built rehearsal space for young contemporary musicians – Beat Box.

Arts Voice Christchurch held the first arts forum on 2 February with guest speakers Peter Townsend from the Chamber of Commerce and Anthony Wright of the Canterbury Museum. A well attended evening with interesting Q & A session.