

26 June 2017

The Great Christchurch Buildings Trust
PO Box 23
Christchurch

Dear Sirs

Resource consent application for demolition of the Cathedral

- 1 You have requested advice on the likelihood of a resource consent being obtained by the Church to demolish the Christ Church Cathedral (**the Cathedral**).
- 2 We consider the section 38 notice¹, giving notice that the Cathedral is to be demolished to the extent necessary to remove the hazards, has now expired. We note there is the power under the Greater Christchurch Regeneration Act 2016 to carry out or commission the demolition of a building. However, this power does not override the requirement for resource consents or building consents to be obtained.

Executive Summary

- 3 Taking into account the information available at this time we consider the likelihood of a resource consent being granted to demolish the Cathedral is low.
- 4 We have reached this conclusion after reviewing the recommendations of the Cathedral Working Group (**CWG**) and the decision of the Independent Hearings Panel (**IHP**) on Chapter 9: Natural and Cultural Heritage (Part) of the Christchurch Replacement District Plan.
- 5 We consider the key consideration is whether the objectives and policies contained in the Christchurch Replacement District Plan (**the Plan**) seeking to protect historic heritage can be achieved, while taking into account the engineering requirements and associated costs, and the risk to life and/or property.

Resource consent process

- 6 The Cathedral is a Group 1 High Significance heritage building and setting under the Plan and is a Category 1 Historic Place².
- 7 Under the Plan there are specific rules requiring a resource to be obtained to demolish the Cathedral. The Minister does have the power to amend or revoke this requirement³ however, any decision would be subject to the usual grounds of judicial review.

Demolition or partial demolition for the purposes of restoration and/or reconstruction

- 8 If the demolition or partial demolition is for the purposes of restoration and/or reconstruction and a resource consent application for this purpose has also been lodged the application to

¹ Issued under section 38 of the Canterbury Recovery Act 2011 on 28 October 2011

² Heritage New Zealand Pouhere Taonga Act 2014

³ Section 71 Greater Christchurch Regeneration Act 2016

demolish can be considered as a controlled activity.⁴ A controlled activity cannot be declined; however, the Council may impose conditions on the grant of consent.

- 9 If the application is processed as a controlled activity it will not be limited or publicly notified as the Plan specifically provides that a controlled activity under this rule shall not be limited or publicly notified.

Demolition to build a new Cathedral

- 10 If a proposed demolition is not part of a restoration and/or reconstruction proposal it will be considered as a restricted discretionary activity.⁵ The ability of the decision maker to grant or decline consent is restricted to the matters identified in the Plan.

- 11 If the application is processed as a restricted discretionary activity, (i.e. if the demolition is not part of a proposal to restore or reconstruct the Cathedral), the notification of the application will be determined in the usual way under the Resource Management Act 1991 (**the Act**).

- 12 The key objective and policy under the Plan relating to an application to demolish the Cathedral are Objective 9.3.2.1.1 and Policy 9.3.2.2.8.

- 13 Objective 9.3.2.1.1 reads:

9.3.2.1.1 Objective – Historic Heritage

a. The overall contribution of historic heritage to the Christchurch District's character and identity is maintained through the protection and conservation of significant historic heritage across the Christchurch District in a way which:

i. enables and supports:

A the ongoing retention, use and adaptive re-use; and

B the maintenance, repair, upgrade, restoration and reconstruction;

of historic heritage; and

ii. recognises the condition of the buildings, particularly those that have suffered earthquake damage, and the effect of engineering and financial factors on the ability to retain, restore, and continue using them.

- 14 Policy 9.3.2.2.8 reads:

9.3.2.2.8 Policy – Demolition of heritage items

a. When considering the appropriateness of the demolition of a heritage item scheduled in Appendix 9.3.7.2 have regard to the following matters:

i. whether there is a threat to life and/or property for which interim protection measures would remove that threat;

ii. whether the extent of the work required to retain and/or repair the heritage item is of such a scale that the heritage values and integrity of the heritage item would be significantly compromised;

iii. whether the costs to retain the heritage item (particularly as a result of damage) would be unreasonable;

⁴ 9.3.4.1.2 C3 of the Christchurch Replacement District Plan

⁵ 9.3.4.1.3 RD8 of the Christchurch Replacement District Plan

iv. the ability to retain the overall heritage values and significance of the heritage item through a reduced degree of demolition; and

v. the level of significance of the heritage item.

- 15 Objective 9.3.2.1.1 and Policy 9.3.2.2.8 are focussed on the protection and conservation of historic heritage, while recognising that the threat to life and/or property and the costs of retention are also highly relevant.
- 16 The Christchurch City Council's (**the Council**) ability to decline the consent or to grant consent and to impose conditions on the consent is restricted to the matters listed at clause 9.3.6.2:
- 16.1 Whether the engineering requirements and associated costs of retaining the Cathedral in whole or in part are unreasonable.
 - 16.2 Whether there is a threat to life and/or property as a result of the condition of the building.
 - 16.3 Where demolition of the whole or a substantial part of building is proposed, whether resource consent has been applied for and/or granted for a replacement building in accordance with Rule 15.10.1.2 C2 and 15.10.1.3 RD9.
 - 16.4 The methodology for demolition including the phasing of the works, heritage fabric to be retained, and how any heritage fabric to be retained is to be stored.
 - 16.5 Any mitigation measures, such as installation of interpretative panels on the site that identify the history and significance of the heritage item, and may include photographs, text and architectural plans of the building.
- 17 The Council's discretion to grant or decline consent is restricted to the matters of discretion. It is noted that the principles of Part 2 of the Act can still be considered although they are also restricted to the matters over which discretion has been reserved.⁶
- 18 In making its decision on any application to demolish Cathedral the Council will consider the evidence before it. As a guide we have reviewed the following decisions and reports that considered a substantial amount of evidence on a range of issues:
- 18.1 Cathedral Working Group Recommendation Report – November 2016 (which considered the Report of Miriam Dean QC – November 2015); and
 - 18.2 The Decision of the Independent Hearings Panel on Chapter 9: Natural and Cultural Heritage (Part) of the Christchurch Replacement District Plan.
- 19 We note that the conclusions reached in the reports and decisions outlined above are in different contexts and have different considerations, however, these reports/decisions are still useful tools to guide our assessment of the likelihood of a resource consent application to demolish the Cathedral being granted.

Cathedral Working Group Recommendation Report

- 20 The Cathedral Working Group (**CWG**) took into account a range of considerations; including:
- 20.1 Safety – the level of safety for those working on the project was found to be commensurate with an activity on any construction site;

⁶ *Ayrburn Farm Estates Ltd v Queenstown Lakes District Council* [2013] NZRMA 126 (HC) at [100] cited in *Lambton Quay Properties Nominee v Wellington City Council* [2013] NZEnvC 238; 17 ELRNZ 374; this issue was not considered in *Lambton Quay Properties Nominees Limited v Wellington City Council* [2014] NZHC 878.

- 20.2 Heritage Context and Values – the heritage value was found to be high or exceptional;
 - 20.3 Fit for Purpose – Making the Building Better Suited to User Requirements – the recommendation was to improve the standards of utilities and services so that the Cathedral can be used by as wide a range of the community as possible;
 - 20.4 The Cathedral in the Square – the broader role of the Cathedral and its importance to the people of Christchurch. A recommendation was made for ongoing financial support through a “Cathedral Support Arrangement” – to recognise the role the Cathedral plays in the economic and tourist life of the City;
 - 20.5 Costs and Funding – expert advice gave a high degree of confidence that a \$55 million public fundraising campaign to reinstate the Cathedral can be achieved in three to five years; and
 - 20.6 Rebuilding the Cathedral – a recommendation was made for empowering legislation to establish a fundraising trust, and to address the regulatory environment.
- 21 These considerations are considerably wider than the matters of discretion which the Council would consider when assessing a restricted discretionary application to demolish the Cathedral. It is noted that even after taking into account the range of matters which the CWG considered, the CWG still found that the reinstatement of the Cathedral was the preferred option.

Decision of Independent Hearings Panel

- 22 The Independent Hearings Panel (**IHP**) heard extensive evidence on the provisions which should be put in place to control any application to reinstate or replace the Cathedral. The IHP created a number of pathways for demolition by providing three different approaches for different factual situations. It provided for a resource consent application to be considered as a:
- 22.1 permitted activity where the works are carried out under section 38 of the Canterbury Earthquake Recovery Act 2011;
 - 22.2 controlled activity where demolition or partial demolition is to form part of a restoration and/or reconstruction proposal; and
 - 22.3 restricted discretionary activity where demolition and replacement building are proposed.
- 23 The IHP heard significant evidence from both those in favour of replacement and those in favour of restoration. It stated:

[190] The Council’s HSOS records that the ChristChurch Cathedral has high cultural and spiritual significance for its former role as the Cathedral Church of the Anglican diocese in Canterbury, its civic role as a venue for important cultural events and as the physical and metaphorical heart of the city. The Cathedral has high technological and craftsmanship significance, for the period of construction, for its quality of its masonry construction and the accomplishment of its constructional and applied decoration. It has high contextual significance as the eponymous major feature of Cathedral Square and as the city’s defining central landmark.

Consideration of Matters of Discretion

- 24 Taking into account the above we now consider an application to demolish the Cathedral under each of the matters of discretion identified in the Plan.

Whether the engineering requirements and associated costs of retaining the Cathedral in whole or in part are unreasonable.

- 25 Both the Miriam Dean Report and the CWG Recommendation Report have considered a significant amount of evidence and reached the conclusion that the Cathedral can be reinstated through a combination of approaches, which include repair, rebuild and restoration.
- 26 The costs have been considered and the CWG recommended the reinstatement project budget be capped at \$100 million. The CWG has a high degree of confidence based on expert advice that a public fundraising campaign can raise the required \$55 million within three to five years.
- 27 In our view, based on the above it is difficult to conclude that the engineering requirements or costs of retaining the Cathedral are unreasonable.

Whether there is a threat to life and/or property as a result of the condition of the building.

- 28 The Cathedral remains standing more than six years after the February 2011 earthquake and is fenced, minimising the risk to the public to the extent possible. A section 38 notice was issued in 2011 but was not acted on and is likely to have expired.
- 29 The advice to the CWG was that the level of safety for those working on the reinstatement of the Cathedral was found to be commensurate with activity on any construction site.

Where demolition of the whole or a substantial part of building is proposed, whether resource consent has been applied for and/or granted for a replacement building in accordance with Rule 15.10.1.2 C2 and 15.10.1.3 RD9.

- 30 A replacement building has not obtained consent under rule 15.10.1.2 or rule 15.10.1.3. If a replacement building did obtain consent this would be a matter to be taken into account along with the other matters of discretion.

The methodology for demolition including the phasing of the works, heritage fabric to be retained, and how any heritage fabric to be retained is to be stored.

- 31 The CWG has considered a number of options and has recommended that the only features to be demolished and rebuilt are the western wall, the front porch and the tower. The CWG states at page 3 of its report⁷:

“By way of contrast, the “Scott-Warren” approach would involve the complete removal and replacement of the roof and the deconstruction of the exterior walls down to sill level. Our heritage advice is that this will involve the loss of a large percentage of the remaining heritage fabric and compromise the remaining heritage values to an unacceptable level.”

- 32 Based on the information available the approach preferred by the CWG is consistent with the objectives and policies of the Plan.

Any mitigation measures, such as installation of interpretative panels on the site that identify the history and significance of the heritage item, and may include photographs, text and architectural plans of the building.

- 33 We have not reviewed any information, which would be considered under this matter of discretion as a specific proposal has not been put forward.

Part 2

- 34 In considering whether to grant or decline a consent application to demolish the Cathedral the Council may take into the relevant matters under Part 2 of the Act.

⁷ Cathedral Working Group Recommendation Report November 2016

35 Section 6 of the Act provides for the consideration of matters of national importance. Section 6(f) states:

6 *Matters of national importance*

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

...

(f) *the protection of historic heritage from inappropriate subdivision, use, and development.*

...

36 Section 7 of the Act also requires that particular regard is had to a number of matters, including:

- (aa) The ethic of stewardship;
- (b) The efficient use and development of natural and physical resources;
- (c) The maintenance and enhancement of amenity values;
- (f) Maintenance and enhancement of the quality of the environment; and
- (g) Any finite characteristics of natural and physical resources.

37 The Cathedral's significant historical values are clear from the available information and the reports/decisions that we have reviewed. The finite nature of historic heritage, particularly in Christchurch post-earthquake, will clearly be a significant consideration for any decision-maker. Furthermore, the ethic of stewardship clearly supports the protection of the Cathedral for future generations, and we consider the maintenance and enhancement of amenity values and the environment also support the reinstatement of the Cathedral.

38 We add as a final point that approval from Heritage New Zealand will also be required. Given the conclusions in this opinion, we have not considered this further but we recognise that this is another barrier to a successful application.

Costs and timing

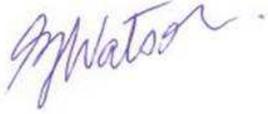
39 The consent process would require extensive expert evidence and would be very costly. It would be the subject of extensive submission by interested third parties, and would almost certainly be subject to appeals to the fullest extent possible. We consider the prospect of a successful application for demolition consent is low. The costs of attempting to obtain a consent would be very significant.

40 We raise as an aside whether Trustees could legitimately and reasonably spend trust funds on a process that would have a very low prospect of success. We do not comment further on this point at this stage. It may be that the Trustees would need to apply to the Court for directions as to whether or not those funds should be expended – otherwise they risk finding themselves again in a position where their actions are criticised by the Court.

Conclusion

41 We consider the likelihood of a resource consent being granted to demolish the Cathedral is low. The costs of bringing the application would be significant, and the timing of the ultimate outcome uncertain.

Yours sincerely

A handwritten signature in purple ink, appearing to read 'Sarah Watson'.

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