

19 August 2015

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By email: mbelton@permanentforests.com

Dear Mark

LEGAL ADVICE – CHRISTCHURCH CATHEDRAL

- 1 You have instructed us to reconsider our previous advice on options for preventing further demolition of Christchurch Cathedral (“**the Cathedral**”) as a result of:
 - (a) The introduction of new heritage protection legislation; and
 - (b) The new proposal by the Church Property Trustees (“**the CPT**”) to build a facsimile of the Cathedral with modern architecture and building materials.
- 2 We **enclose** a copy of our previous advice dated 5 October 2012 for your convenience.
- 3 In our earlier advice, we outlined the process the CPT was required to follow if it was to demolish the Cathedral in favour of a modern architectural design, and concluded that:
 - (a) It would be unlawful for the Historic Places Trust or an Archaeological Officer to authorise demolition of the Cathedral where full restoration of the original site was both possible and practicable;
 - (b) Any decision by the Historic Places Trust to authorise demolition would likely be overturned by the Environment Court on appeal, or by the High Court on judicial review.
- 4 In summary, after considering the effect of new heritage protection legislation and the new Cathedral design proposed by the CPT, we are of the view that:
 - (a) The operation of the Canterbury Earthquake (Historic Places Act) Order 2011 (“**the HP Order**”) is, for now, unaffected by the introduction of the Heritage New Zealand Pouhere Taonga Act 2014 (“**the HNZPT Act**”);
 - (b) Our earlier advice in relation to the process that must be followed by the CPT to demolish or modify the Cathedral site remains unchanged;
 - (c) The alternative design proposal put forward by the CPT involves, at best, a modification of the original Cathedral site and will therefore still require authorisation under the HP Order before construction can commence.

EFFECT OF NEW HERITAGE PROTECTION LEGISLATION

- 5 As indicated to you in our earlier advice, authority to destroy or modify the Cathedral had to be granted by the New Zealand Historic Places Trust or an Archaeological Officer pursuant to the terms of the HP Order.
- 6 The HP Order provides that authorisation to modify or destroy an archaeological site such as the Cathedral may be granted by either:
- (a) The Historic Places Trust granting authority to do so under section 14 of the Historic Places Act 1993 (“**the HP Act**”); or
 - (b) An Archaeological Officer granting an emergency authority to do so under cl 9 of the HP Order
- 7 On 19 May 2014, the HP Act was repealed and replaced by the HNZPT Act.
- 8 The HNZPT Act makes a range of changes to existing historical protection law, including:
- (a) Renaming the Historic Places Trust to Heritage New Zealand Pouhere Taonga (“**Heritage New Zealand**”);
 - (b) Streamlining applications for authorisation to modify or destroy archaeological sites;
 - (c) Reducing timeframes for archaeological authorities following a state of emergency; and
 - (d) Increasing the maximum levels for monetary penalties.
- 9 Note that the definition of an archaeological site (section 2 of the HP Act and section 6 of the HNZPT Act) is unchanged, as is the general prohibition on destroying or modifying an archaeological site without consent (section 10 of the HP Act and section 42 of the HNZPT Act). It follows that the Cathedral retains its protected status as an archaeological site under the new Act, although for the reasons set out below this makes no material difference for the time being.
- 10 The HNZPT Act expressly states that the HP Order will continue to apply as if the HP Act had not been repealed. This means that any application by the CPT to either destroy or modify the Cathedral must adhere to the statutory requirements of the HP Act as if it was still in force, rather than the new requirements of the HNZPT Act.
- 11 As a result, much of our earlier advice provided to you continues to stand, including that:
- (a) Heritage New Zealand will be required to have regard to the statutory purposes and principles set out in the HP Act;
 - (b) Any proposed demolition of the Cathedral will need to be reconciled with the HP Act’s statutory purpose of the “protection, preservation and conservation” of New Zealand’s heritage, and its principles of involving the “least possible alteration or loss” to cultural heritage value and “safeguarding the options of present and future generations”; and
 - (c) A decision by Heritage New Zealand to authorise the demolition of the Cathedral may be appealed in the Environment Court, or judicially reviewed in the High Court.

- 12 As the HP Order continues to operate, the CPT may also apply to an Archaeological Officer to grant an emergency authorisation for the demolition of the Cathedral, taking into account the statutory purpose and principles of the HP Act and the Canterbury Earthquake Recovery Act 2011.
- 13 The HP Order will expire on 18 April 2016. If this order is not extended, any application received by Heritage New Zealand after this date will be processed in accordance with the provisions of the HNZPT Act rather than the HP Act.
- 14 We do not detect any major differences in the operation of the authorisation schemes under the HP and HNZPT Acts, at least as regards the full demolition of an archaeological site. However, should the CPT apply for authorisation after expiry of the HP Order we would encourage that you return to us for further advice.

EFFECT OF WARREN PROPOSAL

- 15 At the time of our earlier advice, the CPT proposed demolishing the Cathedral and replacing it with a modern architectural structure.
- 16 Since then, an alternative proposal from architect Sir Miles Warren (“**the Warren Proposal**”) has been put forward by the CPT for public consultation.
- 17 It is our understanding that the Warren Proposal involves the construction of a facsimile of the original Cathedral design with modern architecture and building materials by:
 - (a) Restoring and strengthening most of the Cathedral’s exterior walls, including the whole of the west facade, the side aisles, and nave to replicate the original;
 - (b) Rebuilding the interior structure, nave columns, arches, clerestory and roof in a modern, laminated timber design;
 - (c) Restoring the Cathedral’s stained glass;
 - (d) Replacing the damaged roof slates with new copper slates; and
 - (e) Constructing a new tower and spire out of reinforced concrete in the same dimensions of the original.
- 18 Although the Warren Proposal has been described by the CPT as a “compromise” between full demolition and restoration, it is our understanding that its construction will still require demolition of the original Cathedral site.
- 19 Further, even if the Warren Proposal does not require full demolition, the HP Act still requires that authorisation be obtained from Heritage New Zealand to “modify” an archaeological site.
- 20 Any attempt by the CPT to implement the Warren Proposal will therefore still require authorisation from Heritage New Zealand under the HP Act, regardless of the extent to which the original Cathedral site is altered.
- 21 In particular, the CPT would be required to reconcile the Warren Proposal’s demolition or modification of the original Cathedral site with the HP Act’s:
 - (a) Statutory purpose of the “protection, preservation and conservation” of New Zealand’s heritage; and
 - (b) Statutory principles of “least possible alteration or loss” of cultural heritage value, and “safeguarding the options of present and future generations.”

- 22 Having regard to these purposes and principles, we would continue to argue that it would be unlawful for Heritage New Zealand to grant authority to destroy or modify the Cathedral in favour of the Warren Proposal where there is expert evidence to the effect that full restoration of the Cathedral remains both possible and practical.
- 23 Any authorisation granted by Heritage New Zealand without sufficient regard to these purposes and principles would therefore likely be unlawful.
- 24 We would be pleased to discuss this advice with you if you have any questions.

Yours sincerely



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