

**BEFORE THE CHRISTCHURCH CITY COUNCIL
THROUGH ITS COMMISSIONER DELEGATE**

IN THE MATTER

of an application by Christ Church Cathedral Reinstatement Limited (CCRL) for the reinstatement of the Christ Church Cathedral and associated facilities and the management of other heritage items

AND

UNDER

the Christ Church Cathedral Reinstatement Act 2017 and the Christ Church Cathedral Reinstatement Order 2020 and the Resource Management Act 1991

COMMISSIONER'S DECISION

Dated: 22 December 2020

Result: Consent is granted on the conditions in Appendix 1

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Introduction

- [1] This decision addresses an important and unusual application for resource consent. It is important because it concerns heritage items and a heritage place of central importance to Canterbury's identity. It is about the reinstatement of the Christ Church Cathedral and the construction of ancillary structures as well as the management of other treasured heritage items including the Citizens' War Memorial and the Cathedral Square's Significant Trees.
- [2] It is an unusual application because the influential law is mostly found in a project-specific 2017 enactment that engendered a subsidiary and project-specific Order-in-Council in 2020. That legal situation reflects the controversy surrounding the destiny of these heritage items and place following the terrible damage to the Cathedral caused by Canterbury earthquakes in 2011 and subsequent aftershocks. These laws show that Parliament and the Crown made decisions to prepare a path for the renewal of the items and place to help the Anglican Community and for Canterbury's benefit (the "project"). Given that background and the laws made in response, it is important to attend to these instruments' purpose faithfully.
- [3] Certain words and phrases have particular meaning under the project-specific statutory instruments. For example, "reinstatement" has a unique meaning under the Christ Church Cathedral Reinstatement Act 2017 and the qualities of the definition are important for two reasons. First, the definition shows the breadth of the activities that can fall within the idea of reinstatement. Secondly, it shows that while reinstatement is the aim of the project, the definition anticipates a Cathedral with new parts and materials so that project of reinstatement cannot be characterised as the one involving the preservation of all the salvageable parts of Cathedral.
- [4] The Application provides for the following reinstatement activities:
- (a) Strengthening of the existing main Cathedral building, including repairing and strengthening existing walls, columns and roof.
 - (b) Construction of a new base-isolated ground floor structure supported by a new foundation and associated earthworks.

- (c) Reinstatement of the deconstructed west porch, which will be extended to deepen the foyer space.
- (d) Reinstatement of the Bell Tower and east end 'Vestry' structures.
- (e) Reinstatement of the deconstructed north and south transepts and west wall and reinstatement of a replicated rose window.
- (f) Removal of sections of the roof from the Cathedral for access and reinstatement of the roof apse.
- (g) Repair and or replacement of internal walls, ceiling and floor finishes.
- (h) Repair and installation of windows.
- (i) Construction of new buildings required for the Cathedral to function successfully as a spiritual facility and as a place for ministry, including a 'Visitor Centre' on the northern side of the site and a 'Cathedral Centre' on the southern side of the site. The Visitor Centre includes a café, museum, and retail spaces with associated basement and lower courtyard area. The Cathedral Centre is a two-level gathering, mission and administration building that includes office space for the Church.
- (j) Deconstruction and removal of the Citizens' War Memorial to storage off-site.
- (k) Relocation of the Columbarium within the site.
- (l) Landscaping and civil works to the site (hard and soft scape), including the relocation (within the site) of sections of the Wigram Wall, the creation of a lower courtyard area, the expression of a cultural narrative in the landscape surrounding the Cathedral, and the introduction of soft landscaping on the site.
- (m) Installation of temporary and permanent signage.
- (n) Extension of the consented hoarding line, along the south-east and northeast boundary with Cathedral Square, out to the edge of the kerb line to completely encompass the currently temporarily closed footpath.
- (o) Extension of the consented hardstand area to the north of the Cathedral for site operations, following the removal of the Citizens' War Memorial.

- (p) Reconfiguration of vehicle entry, egress and parking on-site.
- [2] Clare Dale is a senior planner with the Christchurch City Council who has considerable heritage-planning experience. Ms Dale prepared a report dated 15 December 2020 that was peer-reviewed by another senior planner at the Council called Odette White. I agree with most of that s 42A report, and this decision does not repeat Ms Dale's careful planning analysis.
- [3] However, I have reframed some of the recommended conditions in the s 42A report following dialogue with Clare Dale and the Applicant's planner, Tim Joll.
- [4] The key change is a change to certain conditions with the aim of clarifying the scope of the Council's certification role for activities that fall within the reinstatement activities described in clauses 9 - 10 of the Christ Church Cathedral Reinstatement Order 2020. The role is just that; only certification.
- [5] The need for that refinement is because I am concerned that the heritage consultant, Ms Lutz, who prepared a report for the Council on the Application, misinterpreted the Christ Church Cathedral Reinstatement Order 2020 and the scope of appropriate matters of control in her assessment report dated 8 December 2020. That highlighted to me, the consent conditions could, without reframing, be used as a vehicle for interference on matters of detailed design involving design choices that the Applicant may legitimately exercise guided by their experts. I consider that it is important that the conditions make it plain that activities falling within those clauses of the Order do not open debate on design and heritage matters thereby frustrating the reinstatement process and undermining the Parliament's purpose under the Christ Church Cathedral Reinstatement Act 2017.
- [6] The reasons for the concern on the correct framing of conditions arise from elements of Ms Lutz's report that are set out in this decision. Explaining the issue requires a consideration of the relevant legal framework, and I also set that out.
- [7] Concerning the urban design of spaces and facilities adjacent to the Cathedral, I consider that it is necessary to define specific outcomes in the conditions to ensure that the certification process provides sufficient scope to secure public safety and good urban design outcomes recognising the limits of the existing conceptual plans.

- [8] I consider that the matters of control in the Christ Church Cathedral Reinstatement Order 2020, clause 12 provide some scope for control in the arrangement and design of public spaces in a way that the reinstatement activities affecting the Cathedral's fabric do not. Even if that is not true, I consider the balance struck by the conditions attached to this decision to be appropriate.
- [9] The other reinstatement activities not covered by clauses 9 - 12 Church Cathedral Reinstatement Order 2020 are uncontroversial.

The Application

Application and Planning Analysis

- [10] The Application was prepared on behalf of Christ Church Cathedral Reinstatement Limited by Tim Joll, an experienced planner, assisted by Lynne Armitage at Christ Church Cathedral Reinstatement Limited. At page 5 of the Application the Applicant states:

"The Cathedral sits within a wider setting of Cathedral Square. It is noted that Cathedral Square (and its setting including the adjacent road reserve), is a highly significant (Group 1) schedule heritage item in the District Plan, Appendix 9.3.7.2 Schedule of Significant Heritage List No 98. While HN2P10 lists some buildings on the perimeter of the Square, the Christ Church Cathedral and monuments in Cathedral Square, Cathedral Square itself is not listed by HN2PT in its list of Historic Places.

Cathedral Square embodies the Canterbury Association's vision for Christchurch that the Square be set apart for a cathedral to be surrounded by a college building which would emulate the Plan of Christchurch College, Oxford. The proposed Maltese Cross shape of Cathedral Square dates back to the original Edward Jollie' Plan of Christchurch, the Capital of Settlement of Canterbury' dated circa 1849. Cathedral Square contains some of the city's most important heritage features, representing one of the most recognisable urban aspects of Christchurch City pre the Canterbury Earthquakes, and is of considerable focus in terms of the Christchurch City Recovery."

- [11] In section 3, the Application notes that the significant new works are required some of which are to bring the building up to Code. For example, the Application refers to the use of embedded concrete walls and columns and says:

"A large proportion of the strengthening super structure requires the construction of in-situ concrete walls and columns, that are embedded into the existing walls and buttresses.

In some cases, depending on the stability of the rubble core, pre-grouting of the rubble to hold it in place as the deconstruction rubble removal occurs may be required."

- [12] The north-east turret is to be increased by 4 metres to accommodate the roof of the new north-east Vestry.
- [13] A number of the corner elements of the main Cathedral were severely damaged with the Canterbury earthquake swarm. The most notable part being the bell-tower. Other examples include the Narthex (western porch) and the two eastern annexes (the Clergy and Choir Vestries). These elements will be constructed as new elements and included with the new base isolation system.
- [14] The replacement bell-tower will be visually similar to the previous tower but contain a mechanical lift and works to achieve seismic compliance. The eastern annexes will provide new facilities including a Choir rehearsal room, Chaplain room, Sacristy and storage. Figure 7 of the Application illustrates that annex and the Application says that it has been designed in a style that is a contemporary expression of the Gothic character of the Cathedral.
- [15] In assessing the effects in section 5.3 of the reinstatement activity, the Application notes:
- "In considering the matters of control contained in clauses 9 and 10 of the Order and assessing the effects of the proposed works, it is emphasised that the Cathedral has been severely damaged and it is in a highly vulnerable condition. The state of the Cathedral forms part of the existing environment against which any effects of the proposed works need to be considered when addressing the relevant measures of control in the Christ Church Cathedral Reinstatement Order 2020."*
- [16] The Application is assessed by recognised experts in the fields of engineering, heritage and conservation architecture. Their reports are attached to the Application. The reports on those parts of the Application concerning the Citizens' War Memorial and Significant Trees had to be carried out by suitably qualified professionals as a pre-requisite to the classification of the activities as a controlled activity under the Christ Church Cathedral Reinstatement Order 2020, clause 8.
- [17] The reinstatement works that fall within the classes covered by clauses 9 and 10 of the Order was prepared by Jeremy Salmond of Salmond Reed Architects who is a respected conservation architect. A separate heritage assessment was undertaken by Ms May of Heritage Management Services. Ms May stated in Appendix 14 of the Application her

conclusion that:

"The overall outcome will be one of positivity and transformation and above all, ensure this significant heritage building, an important cultural spiritual place, will be carefully reinstated and secured for future generations."

- [18] The reinstatement of the Cathedral is an extraordinarily challenging enterprise and practicable options for retaining existing heritage fabric is heavily influenced by a range of considerations that require input from a multi-disciplinary team as the project unfolds. That is acknowledged at page 40 of the Application where it is noted:

"The Heritage Professionals for the project note that a significant conservation and procedural issue for the works is the extent to which original elements of the building, can or will, be reinstated using the original building fabric of such elements, and in the same or similar location and configuration. They acknowledge that this will clearly be affected by the extent to which the structural and visual integrity of an element survives, the pragmatic necessities of the reinstatement works, and the quality of information available to recover it. Similarly, it will be important to establish an understanding of the acceptable character of introduced fabric and the physical and visual relationships within original fabric".

- [19] Addressing this situation, the Applicant's heritage assessment noted:

"A purely conservation approach to reinstatement will focus on the return of all known elements of the building to the original locations, and a consolidation of these in-situ.

It is recognised, however, that significant intervention of the fabric is required to incorporate necessary structural systems and to enable the execution of the construction process;

This would not inhibit the overarching objective of recovering the architectural integrity of the building and its component parts – with due regard to the changing needs of its users – and so should aim to reinstate wherever technically practicable significant original exterior and interior features; ...

... this issue arises in respect of almost every part of the building and the most appropriate method for each part will depend on the particular circumstance of the specific heritage significance, physical integrity and condition, and the buildability of the preferred approach".

- [20] I consider that that assessment is an intensely sensible one by Ms May. It appropriately recognises the significant challenges of the enterprise and the trade-offs that must inform a rational assessment of options.

[21] In section 7 of the Application, it notes:

"Clause 16 modifies section 104 of the RMA but does not specifically reference modifications to section 104(a). The following section, therefore, provides a brief assessment of the Canterbury Regional Policy Statement, however it is noted that additional 'other matters', which would typically be considered, such as the ICOMOS New Zealand Charter 2010, which is referenced in some of the attached technical reports, are not considered relevant or reasonably necessary to determine the Application given the specific matters of control."

[22] The Application concludes by offering a suite of 44 conditions, many of which anticipate that qualified professionals will address in an on-going way the construction challenges that will inevitably be encountered by the Applicant and its contractors.

Design Philosophy

[23] The architect firm Warren + Mahoney is the lead architects on the project. Helpfully, their report called "Christ Church Cathedral Reinstatement Concept Design Report" sets out the design objectives, brief and principles.

[24] The overarching design objective is expressed appropriately loftily as follows:

"To safely reinstate Christ Church Cathedral, as an awe-inspiring symbol of life, regeneration and healing and as a testament to what can be achieved through unwavering belief and the power of people".

[25] The key supporting principles are provided by the Very Reverend Lawrence Kimberley to further inform the vision of the reinstatement:

"Place of Worship

The seat of the Anglican Bishop of Christchurch, a place of Christian worship where beautiful music and art helps connect people with the spiritual dimension of their lives.

This rhythm of prayer (the pattern of daily worship) lies at the heart of the Cathedral life, forming a framework for all we do and is the source of energy for our common life and mission.

Connection

A place for people to gather, connect with history and tradition, and with each other, embrace in the future together.

Cathedrals are libraries of stories, that help carry the traditions and memories from the past into the present.

Cathedrals are places of connection, where the community can gather to connect and build relationships, to talk through difficult issues that touch our humanity and form a common vision for the future.

Thriving

A thriving centre point that stimulates life, activity in a flourishing city.

The final part of our vision is that a cathedral is the hub of life and the acidity at the centre of the city a place that thrives with energy, where ministries operate, pilgrims and visitors come to explore, people are comfortable to pray and there is always something happening and contributing to the wellbeing of the city.

A Sacred and Welcoming Place for All

Our mission includes being a place for welcome and hospitality for all into a sacred space that enables an experience of the divine.

The Dean and Chapter are committed to keeping the Cathedral open and free, every day of the week, all year round, for people, all faiths and none, to visit and find warm hospitality. The Cathedral must be commercially sustainable in order to support this goal.

Safe and Flexible

A safe, well equipped and flexible space for religious, civic/community gatherings.

Our vision is that the building will be safe, which means that no person's life is at risk in an earthquake or fire. It means the building is accessible and the needs of staff, children and vulnerable people are considered. It will be flexible and fit for purpose for a variety of uses.

Sustainable

A timeless and adaptable building that will be support and enhance the wellbeing of people, the city and the planners.

The Cathedral should be designed and built in a resource sufficient and environmentally responsible manner it should support local economies and have a positive impact on the health and wellbeing of its occupants. It will be well prepared to adapt future changes and to endure for regenerations to come."

Concept Plans

- [26] The elements of the proposal are graphically presented in concept plans.
- [27] The Council by an information request dated 9 November 2020 queried the use of concept plans. Partly because some of the Council's experts were struggling with what they considered to be a lack of design detail. In response Planz Consultants in a letter dated 19 November 2020 responded as follows:

"The resource consent application has been made in accordance with the provisions contained in the Christ Church Cathedral Reinstatement Order 2020, not under the normal RMA process. The OiC modifies the Resource Management Act 1991 (the RMA) to streamline the process for resource consent applications for the reinstatement of the Cathedral. The 'statement of reasons' contained in the OiC states:

The Minister considers the Order to be both necessary and desirable, as using processes other than the Act would cause to delays, further costs and uncertainty for the project. This would be inconsistent with the intent of Parliament in enacting the Act, and with the Act's purposes.

The reason in the OiC further notes:

The resentment work is based on the 'concept design', and it is considered that the level of detail provided in conjunction with the conditions of consent offered as part of the Application is sufficient for the Council to consider the proposal against the matters of control contained in the OiC and to consider the effects of the proposal on an informed basis.

At this stage the engineers do not have enough information to fully detail the strengthening works that are needed prior to final reinstatement of the buildings. The strengthening design is the base line for reinstatement design, so this too is in the concept phase. The Applicant has developed a concept design which covers the reinstatement of the Cathedral and the round to give a full view of the proposed works. This informs the project's scope, cost and programme, and also allows the wider project to advance the fundraising campaign. Importantly this concept design also provides information for stakeholders including the wider central business community delaying the consenting of the strengthening works will delay the physical works. There is an opportunity to overlap these works with stabilisation and compressing the project timeline and advancing the straighten of the building early. This not only reduces the overall costs of the works but reduces te risk of ongoing deterioration of the building and enables the oldest parts of the Cathedral to be reinstated as quickly as possible.

The Applicant is advised that a project delay to critical path items (such as strengthening) at the start of the project has the worst effect on a budget because it leads to additional escalation on the entire project cost. The budge estimate, which includes the construction, escalation element in line with the current market predictions of 2.4% per annum, forecasts an increase in costs of \$300K per month for each month of delay, including project overheads."

[28] Therefore, the reasons for the use of concept plans is three-fold:

- (a) The Applicant's engineers and architects cannot provide detailed design for the Cathedral that sincerely informs the response and outcomes for all parts of the project given the high level of uncertainty about the conditions that will be encountered.

- (b) Further delay adds enormous sums to the cost of the project further imperilling the project's achievability.
- (c) The concept plans are sufficient given the limits of the matters of control.
- [29] I do not agree with Mr Joll's notion that the Order-in-Council (by reason of certain text in the Explanatory Note to the Order) changes the requirement of Resource Management Act ("RMA), s 88 and Schedule 4 that the Application must contain sufficient detail. However, I accept Mr Joll's assessment that the information provided in the Application is sufficient to meet the requirements of RMA, s 88 and Schedule 4 of the RMA.
- [30] The critical direction concerning the sufficiency of information is in clause 1 of Schedule 4, and it states:
- "Any information required in this schedule, including an assessment under clause 2(i)(f) or (g) must be specified with sufficient detail to satisfy the purpose for which it is required."*
- [31] As Mr Joll correctly noted in his reply to the Council's request for further information, where matters of control are limited the function of the AEE is to provide sufficient information to enable those matters of control to be exercised in a reasonable way. In addition, it is necessary to have an eye to the current circumstances of the existing environment. An essential feature of that environment is the fundamentally compromised and mostly inaccessible Cathedral building with all the project uncertainties that follow from that.
- [32] I consider that the concept plans provide more than enough information to demonstrate that the reinstated Cathedral will be original as far as is practicable and appropriate and that the plans give the key parameters of the reinstatement project while allowing for sufficient flexibility to enable respond to conditions that will be encountered. Inevitably, the challenges of construction will require work-area specific responses guided by a multi-disciplinary assessment. That in turn, justifies a somewhat 'ambulatory' consent. By that I mean a consent whereby professionals can flexibly respond to an encountered situation in an appropriate and reasonable manner approved by them based on the building conditions as the experts find them.

Legal Framework

Background

- [33] The vigorous debate surrounding the fate of the Christchurch Cathedral led to the intervention by Parliament resulting in the enactment of the Christ Church Cathedral Reinstatement Act 2017. That Act anticipated a future Order-in-Council that would implement the enactment's aims following implementation of a strategy for reinstatement.
- [34] The design of the reinstatement Order is addressed in Part 2 of the Christ Church Cathedral Reinstatement Act 2017 and Part 2 has its own procedural safeguards to ensure the framing of the Order responds appropriately to the reinstatement planning developed by the Applicant. The Christ Church Cathedral Reinstatement Order 2020 was made by the Governor-General in Council on 24 August 2020 with the anticipated eye to the reinstatement framework that was developed over several years by the Applicant. That comes through in the Explanatory Note to the Order. That explanation is the Minister's reasons for making the Order.
- [35] These statutory instruments are the main statutory instruments affecting the exercise for powers concerning the Application. The key provisions of both the Christ Church Cathedral Reinstatement Act and the Christ Church Cathedral Reinstatement Order 2020 are set out below.

Christ Church Cathedral Reinstatement Act 2017

- [36] The key provisions of Part 1 are as follows.

4 Purpose

- (1) *The purpose of this Act is to facilitate reinstatement of the Cathedral, recognising its contribution to cultural, social, and economic wellbeing in Christchurch, its importance to Christchurch's regeneration, and its heritage value.*
- (2) *The purpose of this Act includes, in particular, any 1 or more of the following:*
- (a) *to facilitate reinstatement in an expedited manner compared with processes and requirements outside this Act:*
 - (b) *to provide a cost-effective process for reinstatement compared with processes outside this Act:*
 - (c) *to achieve earlier or greater certainty for the owner of the Cathedral and the Christchurch community generally as to the*

reinstatement of the Cathedral than would be likely under processes and requirements outside this Act.

5 Interpretation

(1) *In this Act, unless the context otherwise requires,—*

CWG Report *means the Cathedral Working Group Recommendation Report dated November 2016, including its appendices.*

Minister *means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act.*

reinstatement *includes 1 or more of the following:*

- (a) *any activity in relation to any part of the Cathedral that the CWG Report contemplates as being a reinstatement activity:*
- (b) *seismic strengthening of any part of the Cathedral:*
- (c) *demolition or deconstruction of any part of the Cathedral:*
- (d) *construction, reconstruction, or restoration of any part of the Cathedral:*
- (e) *improvement or enhancement of any part of the Cathedral or the design of any part of the Cathedral:*
- (f) *repair of any part or materials of the Cathedral:*
- (g) *reuse of any materials of the Cathedral:*
- (h) *use of any new materials:*
- (i) *any activity that is ancillary to any activity described in paragraphs (b) to (h).*

[37] The key provisions of Part 2 are set out below.

8 Governor-General may make Orders in Council

(1) *The Governor-General may, by Order in Council made on the recommendation of the Minister, grant exemptions from, modify, or extend an enactment, or any provisions of an enactment, referred to in Schedule 2 in connection with the whole or a part of the Cathedral area.*

(2) *An exemption from, modification of, or extension of an enactment or a provision—*

- (a) *may be absolute, or subject to terms or conditions; and*
- (b) *may be made by—*
 - (i) *stating alternative means of complying with the enactment or provision; or*
 - (ii) *substituting a discretionary power for the provision.*

...

...

- (5) *In this Act, **modify**,—*
- (a) *in relation to an enactment, includes to add provisions:*
 - (b) *in relation to an enactment, includes to grant any statutory authorisation or other permission or right under that enactment:*
 - (c) *in relation to a provision, includes to replace, disapply, or suspend the provision:*
 - (d) *includes to limit or exclude the jurisdiction of a court under an enactment.*

13 Christ Church Cathedral Reinstatement Review Panel

- (1) *The Minister must appoint a Christ Church Cathedral Reinstatement Review Panel of up to 6 persons who have appropriate knowledge, skills, and experience to assist the Panel to perform its functions.*

15 Functions of Panel

- (1) *The functions of the Panel are—*
- (a) *to review draft orders; and*
 - (b) *to provide advice on request to the Minister in relation to orders that may be required for the purpose of this Act.*

25 Restrictions and conditions relating to Cathedral land cancelled

- (1) *The following restrictions and conditions that apply to the Cathedral land, as noted on the record of title CB18K/1392, are cancelled:*
- (a) *a restriction imposed under the Cathedral Square Ordinance 1872 on the erection of buildings on part of the land formally held in Certificate of Title 405/151 while holding some land as a site for the erection of the Cathedral:*
 - (b) *a restriction imposed under section 8 of the Mining Act 1971:*
 - (c) *a restriction imposed under section 168A of the Coal Mines Amendment Act 1950:*
 - (d) *conditions imposed by Resolution 571660 of the Christchurch City Council, which relates to an application to construct a basement.*
- (2) *The Registrar-General of Land is directed to do anything necessary to give effect to subsection (1).*

Christ Church Cathedral Reinstatement Order 2020

[38] The relevant provisions from the Reinstatement Order are set out below.

5 Application

- (2) *The **applications** to which this Order applies are applications made under—*
- (a) *section 88 of the RMA for resource consents to undertake reinstatement of the Cathedral (except an application to undertake demolition without restoration or reconstruction); or*
- (3) *In subclause (2)(a) **restoration and reconstruction** have the meanings given in the Christchurch District Plan.*

6 Power to extend time limits

A consent authority must not extend a time period under section 37(1)(a) of the RMA in relation to an application unless the Applicant agrees to the extension.

7 Suitably qualified and experienced experts

- (1) *For the purposes of this Order, the following experts referred to in the Order must be suitably qualified and experienced:*
- (a) *a professional engineer (**engineer**):*
- (b) *a heritage professional:*
- (c) *a conservation architect:*
- (d) *a technician arborist.*
- (2) *The experts must—*
- (a) *be independent from the reinstatement project; and*
- (b) *be engaged on a professional basis; and*
- (c) *provide reasons for their advice.*

8 Classification of reinstatement activities under RMA

- (2) *The Application must be accompanied by—*
- Citizens' War Memorial*
- (a) *in relation to the Citizens' War Memorial,—*
- (i) *a heritage management plan prepared by a heritage professional or conservation architect with an engineer, which identifies in advance potential damage from removal and strategies to repair it; and*
- (i) *a certificate from an engineer certifying that removal is necessary in order to achieve the Applicant's proposed reinstatement of the Cathedral; and*

Significant tree

- (b) *in relation to a significant tree,—*
- (i) *a tree management plan prepared by a technician arborist; and*
 - (ii) *a certificate from the technician arborist and an engineer certifying—*
 - (A) *any damage or removal is necessary in order to achieve the Applicant's proposed reinstatement of the Cathedral; and*
 - (B) *all reasonable workable options to retain or protect the significant tree have been considered.*
- (3) *The consent authority may impose conditions on the resource consent, but, for the purposes of section 87A(2)(b) of the RMA, that power is restricted to the matters over which control is reserved in clauses 9 to 14.*

9 Reinstatement activities involving heritage upgrade works, deconstruction, reconstruction, and restoration

The consent authority's control is reserved in relation to the following matters involving heritage upgrade works, deconstruction, reconstruction, and restoration:

- (a) *the oversight of a heritage professional or conservation architect, and the implementation of heritage advice; and*
- (b) *the form and provision of information and interpretation material identifying the history and significance of the Cathedral; and*
- (c) *the materials and methodologies to be used to maintain heritage values (including integration with, and connection to, other parts of the Cathedral); and*
- (d) *the methodologies to be used to appropriately protect the Cathedral during heritage upgrade works, reconstruction, and restoration (for example, temporary protection plans); and*
- (e) *the documentation of change during the work and after completion (for example, by photographic recording); and*
- (f) *the methodology for any deconstruction (including the phasing of the works) and—*
 - (i) *how any heritage fabric is to be retained:*
 - (ii) *how any heritage fabric retained for reuse is to be stored.*

10 Reinstatement activities involving alterations, new buildings, and signs

The consent authority's control is reserved in relation to the following matters involving alterations, new buildings, and signs:

- (a) *meeting the requirements of the Building Act 2004 and Building Code; and*
- (b) *the methods for mitigating impacts on views of, or from, the Cathedral; and*

- (c) *the relationship between elements and materials (such as the orientation), and between the heritage setting, a heritage item, and any relevant significant tree; and*
- (d) *management of any temporary or permanent adverse effects on heritage fabric, layout, form, or heritage value (and management of the scale of that effect), and any positive effect on heritage fabric, layout, form, or heritage value; and*
- (e) *any signage on heritage items or in heritage settings; and*
- (f) *the design, detailing, and location of any sign (including its supporting structure and methods of attachment to a heritage item) and the sign's compatibility with the architectural form, features, fabric, and heritage values of the heritage item and heritage setting; and*
- (g) *the appropriateness of any moving or flashing sign and its potential detracting from the heritage values of a heritage item or heritage setting; and*
- (h) *the duration of temporary or permanent signs.*

11 Reinstatement activities relating to urban design

The consent authority's control is reserved in relation to the following matters of urban design:

...

- (c) *engagement with the surrounding space (including publicly accessible spaces) through—*
 - (i) *interaction with activities within the Cathedral (where appropriate); and*
 - (iii) *safety in building design; and*

15 Applications to be determined on non-notified basis

- (1) *Applications must be determined in accordance with Part 6 of the RMA unless otherwise specified by this Order.*

17 Consent authority must notify certain persons and invite comments

- (1) *As soon as practicable after an application is lodged, the consent authority must—*
 - (a) *notify the persons specified in subclause (2) that an application has been lodged; and*
 - (b) *invite written comments on the Application from them; and*
 - (c) *ensure that the Application is publicly available on an Internet site maintained by or on behalf of the consent authority; and*
 - (d) *specify in the invitation the date by which written comments are to be received by the consent authority (which must be no less than 15 working days from the date of the invitation).*

- (2) *The persons are—*
- (a) *Te Rūnanga o Ngāi Tahu and any relevant Papatipu Rūnanga identified by Te Rūnanga o Ngāi Tahu;*
 - (b) *Heritage New Zealand Pouhere Taonga;*
 - (c) *the Linwood-Central-Heathcote Community Board;*
 - (d) *owners and occupiers of land adjacent to the Cathedral area;*
 - (j) *any other person the consent authority considers appropriate.*
- (3) *An invitation is to be treated as a document to be served for the purposes of the RMA, and section 352 of the RMA applies accordingly.*
- (4) *A person invited to make written comments under this clause—*
- (a) *may not appeal under section 120 of the RMA against the consent authority's decision on the Application; and*
 - (b) *may not object under Part 14 of the RMA against the consent authority's decision on the Application; and*
 - (c) *is a person whom the consent authority must ensure is served with a notice of decision on an application.*
- (5) *Section 114 of the RMA is modified accordingly.*
- (6) *A person who makes written comments to a consent authority under this clause is not to be treated, under the RMA, as a submitter making a submission on the Application.*

18 Summary of written comments

- (1) *Before a consent authority makes a decision on an application, a summary of any written comments made under clause 17 must be prepared and considered by the consent authority.*
- (2) *The summary, together with the consent authority's response to the issues raised in the written comments, must be included in the notification of the decision to the Applicant and under clause 17(4)(c).*

19 Time limit for notification of decision

...

- (2) *The time limit specified in subclause (1) cannot be extended or deferred in any way (including under section 37, 88B or 88E of the RMA) except—*
- (a) *if the Applicant agrees to the extension or deferral; or*
 - (b) *under section 88C.*

Minster's reasons for the Order-in-Council

- [39] The Explanatory Note to the Order contains the required reasons of the Minister for the Order. The reasoning is instructive and is set out below.

"Statement of reasons

This statement records the reasons of the Associate Minister for Greater Christchurch Regeneration for recommending the making of an order under section 9(1) of the Christ Church Cathedral Reinstatement Act 2017 (the Act).

Background

After 6 years of litigation deadlock and extensive negotiations, the Crown brokered an agreement with the owner of the Christ Church Cathedral (the Cathedral) to reinstate the Cathedral after it suffered significant damage in the earthquake on 22 February 2011. One of the commitments the Crown agreed to was passing the Act, reinforcing the Government's intention to prioritise the reinstatement of the Cathedral

As described in further detail below, the Act's express purpose is to facilitate the rein-statement of the Cathedral, recognising its contribution to cultural, social, and economic wellbeing in Christchurch, its importance to Christchurch's regeneration, and its heritage value. This includes facilitating the Cathedral's reinstatement in a manner that is faster, more cost-effective, and more certain than using processes outside the Act (see section 4).

Christ Church Cathedral Reinstatement Limited (CCRL), the joint venture company managing the reinstatement of the Cathedral, has developed a concept design for rein-statement. This relied on the agreement reached with the Crown and the definition of reinstatement in the Act. CCRL's shareholders, the Cathedral's owner and the Christ Church Cathedral Reinstatement Trust (the fundraiser for the project) have agreed to the concept design.

In the course of developing the concept design, CCRL has seen a need for certainty of outcome, in terms of the project's momentum, cost, fundraising and completion. CCRL has therefore proposed an order under section 9(4) of the Act to the Associate Minister for Greater Christchurch Regeneration (the Minister responsible for the Act).

General reasons for Order

The Minister considers the Order to be both necessary and desirable, as using processes other than the Act would cause delays, further costs and uncertainty for the project. This would be inconsistent with the intent of Parliament in enacting the Act, and with the Act's purposes.

In relation to clause 5 (Application)

It is necessary and desirable to ensure that a resource consent application cannot be made for demolition unless it is in conjunction with restoration or reconstruction.

This is appropriate as it reassures the public and consent authorities that the demolition of the entire Cathedral and replacement of it with a new build will be prevented.

In relation to clause 7 (suitably qualified and experienced experts)

It is necessary and desirable to set out that the experts referred to in the Order must be suitably qualified and experienced and independent of the reinstatement project. This clause ensures the transparency and integrity of the processes set out by the Order.

In relation to clause 8 (controlled activities)

Without the Order, a resource consent application would be likely to be declined, because the reinstatement may require the removal of up to 3 London plane trees and will require the removal of the Citizens' War Memorial. Activities relating to this are classified as discretionary under the Christchurch District Plan. This would create uncertainty for reinstatement. Appeals could be pursued by CCRL, but that would delay reinstatement and increase the costs associated with the project. This approach would therefore be out of step with the purposes for which the Act was enacted.

In relation to clauses 9 to 14 (matters of control)

It is necessary and desirable to specify matters in respect of which control can be imposed. This is appropriate because any matters of control contained in the relevant RMA planning documents will not be applicable to the deemed controlled activities required for the reinstatement work. The matters of control have been developed to include the key potential effects of the reinstatement activities.

This approach to matters of control enables the consent authority to impose conditions on activities that may have wider environmental effects on the surrounding area, thus providing an appropriate check and balance on reinstatement. However, the matters for control, and the provisions governing those matters, are limited to those activities or matters on which the imposition of conditions will not impede the timeliness, cost-effectiveness, or certainty of reinstatement. This is considered necessary and desirable, given that including other conditionality, for example, limiting reinstatement to within the footprint of the existing Cathedral is anticipated to introduce significant uncertainty for the project, causing delays or significantly increased costs."

Assessment of the Legal Framework

- [40] It is evident that the statutory instruments were carefully constructed.
- [41] The Christ Church Cathedral Reinstatement Act 2017 contemplated the reinstatement of the Cathedral using new elements including seismic strengthening. The range of construction responses are captured by words such as 'demolition', 'deconstruction', 'construction', 'reconstruction' and 'restoration'. In subparagraph (e) of the definition of

'Reinstatement' the activity is defined as including "*improvement or enhancement of any part of the Cathedral or the design of any part of the Cathedral*". The words "improvement or enhancement" also take their meaning from the reality that the Cathedral is substantially ruined and that reinstatement is necessarily an improvement or enhancement of the Cathedral. The express recognition of 'design' as an aspect of reinstatement shows the necessity for new elements and redesigned elements as part of the reinstatement activity. Further, subparagraph (h) also recognises the use of new materials as an aspect of reinstatement.

- [42] In addition to the expansive notion of 'Reinstatement', Parliament anticipated a reinstatement design development process initiated by an entity representing the interests mostly of the Crown and the Anglican Church. The Act developed a process for the formulation of an Order-in-Council that would facilitate the objects of the Act as expressed in s 4. Any Order was likely to be developed taking account of the design process created by the joint venture entity. The Act provided for a Review Panel with appropriate experience to provide advice to the relevant Minister on the form of the Order once the design process had reached an advanced stage.
- [43] What the Act contemplated eventually happened. The result was that the Review Panel was able to make recommendations to the Minister for an Order that restricted public participation and the scope of powers of the Council in very definite terms.
- [44] In the Order, the Applicant is recognised as Christ Church Cathedral Reinstatement Limited or its equivalent. The Order-in-Council applies to applications under both RMA, s 88 and under s 127 of the RMA.
- [45] The power to extend timeframes under RMA, s 37 is expressly removed.
- [46] As a protection the Act requires that any application be supported by assessments of appropriately qualified experts in the fields of engineering, heritage, conservation architecture and a technician arborist.¹ Notably the Application only had to be supported by appropriate independent experts on for activities affecting the Citizens' War Memorial and the Significant Trees. Again, this reinforces the intention that the Applicant possesses freedom in the design of the Cathedral reinstatement.

¹ See Christ Church Cathedral Reinstatement Order, clause 7.

- [47] A qualifying application is classed as a controlled activity under clause 8(1) of the Order and under 8(3) the power to impose conditions is restricted by the matters in clauses 9 to 14.
- [48] A controlled activity cannot be refused. For matters concerning design of the Cathedral it would be difficult to draft conditions proposing a redesign because that would approach the prohibited ground of refusing the Application. Unsurprisingly, therefore clause 9 concerning heritage activities, heritage upgrades and restoration for the Cathedral are narrow matters of control affecting oversight, information provision, materials and methodologies and documentation. For alterations and new building elements, the matters of control in clause 10 of the Order are limited to meeting the requirements of the Building Act, methods of mitigation of impact of views, the relationship between elements and materials and other matters mostly relating to management of temporary effects.
- [49] Concerning the urban design of spaces and facilities beyond the Cathedral walls, clause 11 addresses the matter of control including; ensuring that that the Cathedral functions successfully as a spiritual centre, recognition and reinforcement of the context of site, engagement with the surrounding space and high quality architectural design. Importantly, the matter of control concerning 'engagement with the surrounding space' addresses public safety. The express reference in clause 11 to design as well as the scope of urban design matters of control suggests an intentionally broader degree of permissible control on design than is available in relation to reinstatement activities associated with the Cathedral under clauses 9 and 10. Again, this is understandable given the legitimate Council interest in how these facilities would operate within the Cathedral Square.
- [50] Ms Dale's s 42A report for the Council describes the legal instruments affecting the Cathedral as a political ownership/political response to events. That is an apt description but should not be viewed as a pejorative one. All heritage management is in a sense political because as Laurajane Smith argues, the enterprise of heritage is about "*helping us position ourselves as a nation, community or individual and our place in our cultural, social and physical world 'place'.*"²² Being political it is a contested space with competing values and interests. In the end people with appropriate authority must determine that debate exercising their authority according to law.

²² Laurajane Smith, "*Archaeological Theory and Politics of Cultural Heritage (Abingdon: Routledge 2004)*".

[51] The legal instruments recognise that the key holders of value in the Cathedral sufficient to reinstate it are the Anglican Church as owner and the Crown as the entity representing the Canterbury community. The legal instruments represent the political decisions made to achieve the outcomes that are valued by those representative holders of interest for the common good. The outcome in turn represents a balancing of the range of values that are relevant to the reinstatement task.

Assessment of the Application

Overview

[52] The Council obtained various peer review reports on the Application. Most of those reports supported the analysis and conclusions by the Applicant's experts. The heritage and urban design assessments did not support aspects of the Application. For that reason I address them below.

Heritage

Council's Heritage Peer Review

[53] The Council engaged Ms Lutz to carry out a review using a heritage professionals' lens.

[54] The following are key extracts from the heritage assessment by Ms Lutz.

"While the ICOMOS Charter is not part of the framework on which the Application is required to be assessed, it is relevant to assess the Application with the guiding principles of the ICOMOS Charter in mind. ICOMOS NZ is the only professional organisation for heritage specialists in New Zealand that ensures best conservation practice for the protection of cultural heritage values is undertaken, through the guidance within the ICOMOS Charter in combination with their Code of Ethics and Practice Standards for their members. The Order expects in clause 9(a) that the advice of a heritage professional is followed and requires in clause 9(c) that the works undertaken need to ensure that the heritage values are maintained. The appropriate methodologies will have to be in close relationship with the ICOMOS processes and practices to achieve this. There are no other professional standards available in New Zealand that guide the protection and maintenance of heritage values.

Section 9 (c) the materials and methodologies to be used to maintain heritage values (including integration with, and connection to, other parts of the Cathedral).

The new vestry additions

The original vestries will be demolished (under previously granted resource consent) and two new additions will be constructed in their place. The Applicant's heritage professional Mr Jeremy Salmond states in his assessment these new elements are designed in a contemporary expression of the Gothic character of the primary building. The methodology for this design used is "...adopting the intrinsic architecture of the original so that the addition is apparent only on close inspection..."¹ It seems in Mr Salmond's view it is only important to clearly distinguish a new element if this is well outside of the existing heritage building footprint.

Best conservation practice, as guided by the ICOMOS NZ Charter³, suggests a clear hierarchy of treatments for the protection of cultural heritage values in existing buildings, these include preservation, restoration, reconstruction and adaptation, all processes that work with the existing fabric to a more or lesser extent. In this case complete demolition and new additions (no reuse of materials is intended) are part of the solution for the Cathedral. To build new additions that resemble the original design this closely is in my view detracting from the heritage values of the remaining original fabric and this mimicry confuses the history of the place by not honestly showing the layers over time and diminishes the authenticity of the building. This has more than minor adverse effects on the heritage values of the Cathedral.

I do not agree with Mr Salmond's view that the new elements are: "...still signalling discreetly in detail that these are new."⁴ In my view a signal is loud and clear, not discreet and detailed. The design has not achieved this, but makes the additions look as if they were original at the base with new floating roofs. As noted in the comments of Historic Places Canterbury, the floating roof does not respect basic design principles of the Gothic style and therefore is inappropriate. I agree with this view.

I consider that these completely new elements need to be designed in sympathy with the Cathedral's design and heritage values, yet require to be clearly distinguishable to tell the story of the Cathedral, namely, being severely compromised during the earthquakes, and the diocese's need for changes to ensure ongoing use. In addition, it appears that the new additions are directly linked to the existing building fabric featuring the same materials. This enhances the illusion that both are of the same vintage with an altered roof. The clear distinction of old and new within a single building is a recognised conservation approach that can be seen in many international examples over the years, such as the Kaiser Wilhelm Memorial Church in Berlin, that was severely damaged during WWII.

The Applicant proposes a condition of consent that allows for further design development with the input of the Project's Heritage Professional. I agree with this condition, however, any further design change needs to be certified by the Council's heritage professional to ensure that the design response protects the existing heritage values as far as possible (see condition 46 below).

North east turret

³ ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value, 2010, Section 17.

⁴ Jeremy Salmond, Response to Council RFIs (Heritage), 17 November 2020, Item 2.

The north east turret is proposed to be strengthened and extended by approx. four metres to avoid an inappropriate intersection with the new addition's roof. Increasing the height of the turret is in Jeremy Salmond's view an appropriate architectural response to the steep new roof form, and will result in a "correspondingly appropriate heritage outcome".

Under best conservation standards and the guidance of the ICOMOS Charter the treatment is not that of preservation. Preservation does not include an extension and change of appearance to match other elements in an existing building. The rationale given in the Application is that a good architectural outcome is inherently a good heritage outcome. I disagree with this notion. In my view, while a solution may be fitting from an architectural perspective, this does not mean it also fits in terms of heritage protection. In my view the four metre extension of the turret has an adverse effect on its heritage values that is more than minor.

I also have concerns that no information on the methodology for this extension was provided in the Application or in the Request for further Information response. A clear methodology is required to ensure the extension is distinguishable from the original, inside and above the roof of the addition. A condition in this regard is required (see condition 45 below).

I believe that if it can be shown that the extension is kept as minimal as possible by demonstrating the necessity for the steep roof form, or the change to a less steep roof, in combination with a carefully developed methodology could possibly mitigate the effects to be minor."

Applicant's Response to Heritage Issues

[55] The Applicant's response to the Council's request for further included a response from Jeremy Salmond to Ms Lutz's concerns and it said:

"Like many heritage buildings, the Cathedral exhibits a history of change, including periodic additions and alterations. Few laypersons would be able to distinguish the west porch as an addition to the original building, while the Pascoe vestries are rather more obvious, although less distinguished.

There is ample precedent in the recent past for making change to old buildings, including listed heritage items, by adopting the intrinsic architecture of the original so that the addition is apparent only on close inspection, or even only on the basis of detailed research – Auckland War Memorial Museum is a prime example.

It is important also to distinguish change by addition that steps well outside the orthogonal footprint of the original building – as for example with the late visitor centre, where an empathetic but clearly contemporary response is appropriate – from the kind of addition represented by the proposed north and south Annexes which are more closely engaged in the architecture and form of the primary building.

The new Annexes proposed as part of this Application are so intimately bound into

the mass of the Cathedral that it is entirely appropriate to emulate the existing primary forms of the building while still signalling discreetly in detail that these are new.

Hence the approach to the design of these elements is to find an architecture that is formally "appropriate" as a conservation method while still incorporating details which, on inspection, clearly identify the junction between new and old.

There are four existing turrets on the building – each with a distinctively different relationship with other adjacent parts of the building. The two at the east end are of different heights and reflect differing functional requirements within the building.

That on the south porch stands clear above the roof, while that on the north porch is partially embedded in the roof of the Porch. So, the heritage outcome of the extended north turret is that it will be preserved, but extended, and that it will stand over the adjacent new gable roof in exactly the manner that the south porch turret presently does. The effects of this on heritage values of the place are that the outcome reflects existing detail and formal responses to the use of the turret as an architectural device.

For this reason, I consider this to be an appropriate architectural and heritage response and, in my opinion, an "in-appropriate" architectural response will undoubtedly result in an adverse effect on heritage values associated with the Cathedral."

Evaluation of Heritage Issues

- [56] I disagree with Ms Lutz that the ICOMOS Charter is an appropriate reference document for the assessment of the Application. None of the governing statutory instruments refer to the ICOMOS Charter. Also, the ICOMOS Charter appropriately applies to buildings where the law has earmarked them for complete preservation and is not therefore apt for a building that is in the state the Cathedral is in. The inapplicability of the ICOMOS Charter is also evident from the text of the statutory instruments and the activities they envisage. Further, Ms Lutz is incorrect in saying that clause 9(a) expects that a heritage professional's advice will be followed and that clause 9(c) requires that works be undertaken in a way that heritage values are maintained. Those matters addressed in clause 9 are matters of control and therefore only define the parameters within which conditions can be made. The framing of the conditions within those parameters is to be determined in light of relevant provisions of the RMA, case law, and the statutory instruments specific to this project. For example, the need for reasonable flexibility in the implementation of the project to achieve the positive effects that follow from the fulfilment of the project will be an important matter in the framing conditions.

- [57] These errors in analysis by Ms Lutz then lead to an assessment of the effect of the Application on heritage values that is far wider than is relevant to the performance of my role in drafting conditions within the Order -in- Council.
- [58] For example, Ms Lutz critiques the design of the Vestry and disagrees with Mr Salmond's response to the request for further information. Ms Lutz is of the view that best conservation practice requires a distinct and new design that avoids 'mimicry'. Mr Salmond takes a different view and his response identifies the need for an architecturally appropriate solution that also leads to an appropriate heritage solution recognising that an appropriate solution does not require a stark or distinctive difference in design vernacular as long as it is recognisably different.
- [59] There is no objective measure for assessing the merits of these two genuinely-held professional opinions. But that is the point. That is precisely why I consider, on matters of design Parliament has limited the scope of the Council's control. The debate demonstrates the need of a firm response by the Crown to achieve an affordable and appropriate reinstatement outcome.
- [60] Concerning the north-east turret, Ms Lutz disagrees again, with Mr Salmond's design analysis and tries to capture it her desire for a redesign under the rubric of "methodology" used in clause 9 of the Order. Mr Salmond considers that the north turret's heritage values are preserved but extended in order to achieve an appropriate architectural and heritage response.
- [61] Any design response is a management of trade-offs recognising engineering, architectural and heritage considerations. It is simplistic to treat one discipline as pre-eminent because that will be affected by the costs and benefits of the various trade-offs as well as the practicability of achieving particular outcomes. I prefer Mr Salmond's approach because it attracts me as realistic and more likely to accord with what I believe to be the true nature of the shared task of experts to determine the appropriate solutions in the implementation of this project.
- [62] The analysis above provides some insight into why I have amended the conditions to ensure that reinstatement activities associated with the Cathedral are only certified by the Council in a way that does not reintroduce debate concerning the design that frustrates implementation of the project.

- [63] On the other hand, I recognise the valuable role that the Council's professional reviewers can play in informing design choices as the project progress. The conditions allow for that.

Urban Design

Overview

- [64] The appropriate urban design of the facilities surrounding the Cathedral are of the utmost importance.

The Council's Urban Design Assessment

- [65] Ms Williams carried out the urban design assessment for the Council and the following are extracts from her report:

"Safety in building design

I consider that safety aspects of the proposal have not been adequately addressed. I have discussed each of these and the location in more detail below.

The Applicant's CPTED assessment outlines a number of recommendations which I support. As also noted in this report, the daytime experience for the public has the potential to be safe, given the number of visitors keen to see the reinstatement and the completed new additions and spaces.

Conversely, during the evening hours, both the report and Council's Cathedral Square CPTED review, dated 13 March 2020 both note the incidences of vandalism and anti-social behaviour in the area.

In relation to the proposal, I remain concerned about the after-hours safety of people in and around the Cathedral site – notably the opportunities for motivated persons to enter the eastern sunken garden, as well as crimes within the sunken courtyard and at an operational level for the Church, the use of courtyard as an outdoor urinal after hours.

Given there is likely to be potentially more visibility into the western sunken courtyard adjacent to Cathedral Square, as well as the ability to better escape up the steps and jump the after- hours fence if needed, the western courtyard is of less concern. The concerns relate to:

Eastern Courtyard

The Eastern Courtyard includes the potential opportunity for motivated people to jump in, or be thrown into the deep sunken courtyard. At 3.5metres deep, they will not be able to climb out. This is a fundamental CPTED issue relating to the creation of such a significant cut into the landform which presents three deep, vertical walls down to the courtyard. The fourth side is proposed as a retractable screen to better manage the extent of courtyard after hours.

Additionally, sightlines into the Eastern courtyard are likely to be compromised from the surrounding ground level given the walls down are vertical and to such a depth. There is likely to be less people walking around this more secluded eastern end after hours, so a cry for help may not be heard.

Furthermore, the courtyard could attract littering, and possibly other undesirable behaviours. The access control mechanisms offered are a 1200mm railing around the top rim of the courtyard, CCTV camera and possibly sensor lighting.

One of the core tenets of safety in design is access control and active management. In this case, I do not consider that the railings, CCTVS and lighting are sufficient access control management for preventing potential crimes in this location.

The most successful design remediation for this issue includes the eastern courtyard to be "designed out" at the developed design stage. This would include limiting the extent of underground excavation, and to finish under the air bridge. This would result in the retention of natural ground in this north-eastern location which could integrate with one side of the air bridge and become a sunny landscape amenity area, at grade.

Whilst I appreciate the controlled activity status of this Application, if the ideal above is not achieved, an alternative option for mitigating this significant crime attractor would include installing a louvered or toughened clear roof over the eastern courtyard. This would prevent the space from being entered at night, but would also provide improved flexibility to the program of activities for the courtyard during winter months. Here the space could become a conservatory of sorts, providing an all-weather space for spiritual contemplation.

Conclusion

The reinstatement of the Cathedral itself is a strong celebration for Ōtautahi Christchurch and wider Canterbury symbolising the post-quake recovery. The Visitors Centre and Cathedral Centre will support the principal functions of the Cathedral, and the reinstatement of the bell tower complete with an accessible lift to the top, will undoubtedly be a very attractive visitor experience.

However there are a number of aspects that are of fundamental concern:

The sunken courtyards to the north, do not respond contextually to or integrate well with the landform of The Square. This is an issue from an integration and natural legibility (wayfinding) perspective, and is a result of both the divergence from the natural landform (coherence issue), as well as the cumulative visual clutter resulting from the necessary railings and fences etc to mitigate the depth of the courtyard and steps down into them.

The creation of the open and deep sunken courtyards with no secure after-hours access control. Whilst 1200mm railing and CCTV cameras are proposed, these measures are not sufficient to mitigate the creation of the sunken courtyards which are likely to become crime attractors and may give rise to serious incidents. From a city-wide perspective, given that the open courtyards may be used for anti-social behaviour after hours, this may further add to the perception that the Central City is not a safe place to visit.

"Crime and victimisation data show that Christchurch is one of the safest cities in New Zealand. However, more than expected numbers of residents report being fearful of coming into the

*central city at night*⁵

To a lesser extent of concern, the potential entrapment spot in-front of the bin enclosure between the Cathedral Centre and the relocated Columbarium requires considered safety in design resolution.

In my opinion, the proposal for the Cathedral and surrounds does not meet Clause 11 assessment criteria Order of Council in their entirety. I consider that the following conditions will attempt to mitigate the key issues raised."

Applicant's Response on Urban Design

[66] The lead consultant on urban design is Boffa Miskell and below is a summary of their response to the concerns identified by the Council's reviewer:

"Point 37

In relation to the Boffa Miskell design and CPTED reports how are the specific recommendations made (10 in the CPTED report and 9 in the Urban Design report) been address in the Application (are they all being adopted) or reflected in the proposed conditions; for example, there does not appear to be any proposed conditions related to CPTED assessment and expertise being necessary of detailed design phase or to the additional safety and security measures that will be required. Further, the proposed urban design conditions does not pick up on the need for further resolution of many of the 9 matters identified above it.

Boffa Miskell response

We recommend this is addressed through a condition of consent calling for CPTED desktop reviews to be carried out during the Developed Design and before the detailed Design is confirmed prior to construction."

Evaluation of Urban Design Issues

[67] I consider that Ms Williams' assessment raises important issues that are well illustrated by her analysis. To the extent they relate to safety concerns, they are of paramount importance. I accept that the view of the Applicant's consultants and the Council that these issues can be addressed as matters of detailed design. I am satisfied that the outcomes anticipated in the Boffa Miskell Urban Design report (referenced in the conditions concerning urban design certification) provide sufficient certainty as to the required outcomes. The scope of the condition addressing the urban design matters is sufficient to ensure that the Council is satisfied with those conditions being met in the design. The scope

⁵https://ccc.govt.nz/assets/Documents/The-Council/Plans-Strategies-Policies_laws/Strategies/SaferChristchurchStrategy2016-2021-v2.pdf, Page 30

of the condition addressing urban design enables changes to the design to ensure these outcomes are achieved.

Conditions

- [68] I have amended the recommended conditions in some ways. I have discussed the amendments with Mr Joll and Ms Dale.
- [69] Appropriately, Ms Dale and Mr Joll had already recognised the limits of Ms Lutz's analysis. They recommended conditions that recognise that certification of detailed plans should not trespass into what are matters of legitimate design and construction choices for the Applicant.
- [70] The first duty of a planner is to evaluate applications according to law recognising that how sustainability and social and cultural wellbeing is understood in law is often found from a careful analysis of the legal arrangements governing these matters that also provide a sure footing for an appropriate planning evaluation.
- [71] Below is a summary of the main features of the conditions:
- (a) I have provided an Advice Note guiding interpretation to assist with the future administration of the consent.
 - (b) Condition 1 requires that development proceeds in "*general accordance with the information submitted*" because the Application contains concept plans and the words "general accordance" appropriately reflect tolerances available recognising the limits of that information.
 - (c) Conditions 2 and 3 make it plain that suitably qualified professionals are required to perform their functions under this consent at all times. Further, approved works must be performed under the certified information, plans and methodologies.
 - (d) Where relevant I have changed the wording in the proposed conditions to make it plain that provided certain information is given to the Council then certification may not be refused.
 - (e) Concerning those matters that relate to the reinstatement of the Cathedral, I have altered the conditions to require evidence supporting the work either from the

consent holder's Heritage Professional and the Applicant's Conservation Architect. That better recognises clause 9 of the Order-in-Council that addresses both types of expertise. I consider both have a role where those conditions apply.

- (f) Each certification condition requires that the information be supplied to a reasonable standard. That ensures appropriate attention to detail when seeking certification but is not intended to impinge on legitimate design freedom that the Applicant possesses provided the Application is otherwise met.
- (g) For each certification decision, there is an opportunity for input by the heritage team of the Council. I consider it valuable that heritage team have the chance to set out their views even though this will not be determinative of any outcomes. The Applicant has demonstrated its willingness to collaborate reasonably to achieve appropriate heritage outcomes.
- (h) The urban design condition (condition 40) does require the Applicant to meet certain outcomes in the final design. I anticipate that if these outcomes are not achieved in the design, then the Council may refuse certification.
- (i) I have introduced a final condition 68 that enables the Applicant to seek a further opinion of an Independent Hearing Commissioner about any matter in dispute. That advice is a non-binding opinion intended to guide the resolution of any dispute. I put it in as a stop-gap measure recognising that the project is an enormous one. These conditions provide an appropriate framework for the project where it is foreseeable differences may arise even if one hopes that the collaborative spirit evident until now will in all circumstances prevail.

John Maassen
Commissioner

Appendix 1 –Imposed Conditions