

BEFORE THE INDEPENDENT HEARINGS PANEL

Under The Resource Management Act 1991

In the matter of the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014

And

In the matter of the Proposed Christchurch Replacement Plan – Natural and Cultural Heritage – Proposal 9.

Submitter *Number 3558.*
The Great Christchurch Buildings Trust

**MEMORANDUM OF COUNSEL FOR THE GREAT CHRISTCHURCH
BUILDING TRUST REGARDING FURTHER MEDIATION**

(Submitter 3558)

29 February 2016

Duncan Cotterill

Solicitor acting: J M van der Wal
PO Box 5, Christchurch 8140

Phone +64 3 379 2430
Fax +64 3 379 7097
hans.vanderwal@duncancotterill.com

May it please the Hearing Panel:

- 1 This memorandum is filed on behalf of the Great Christchurch Buildings Trust (“the Trust”) in response to the Panel’s minute of 22 February 2016 (“the Minute”), and in particular paragraph 63. This memorandum is filed outside the period referred on in paragraph 98(k) of the Minute, as instructions could not be obtained sooner. Counsel seeks leave to file this memorandum out of time, due to the importance of the unique circumstances of the Christ Church Cathedral (the Cathedral) in the context of the so-called “Dean Report”¹, which are addressed in this memorandum.
- 2 In paragraph 63 of the Minute, the Panel indicates that it will not comment on the activity status of demolition of the Cathedral until further mediation has taken place. The Minute also observes that there is a preference for a permitted activity status for works under s38 CERAct notices that existed as of a certain date.
- 3 It is unclear as to whether there is an expectation for the Trust and the Church Property Trustees (CPT) to engage in further mediation as to the status of the demolition of the Cathedral.
- 4 The Trust has actively pursued and supported the resolution of its differences with the Church Property Trustees as to the engineering and financial issues regarding whether the Cathedral is to be reinstated or replaced, through mediation rather than contested evidence. To this end it has willingly and actively participated in the Central Government mediation process of which the Dean Report is an integral part.
- 5 That process was entered into precisely to avoid the types of costs and delays that would be associated with the hearing and determination of full contested evidence in the areas of engineering, surveying and cost issues surrounding the feasibility of the reinstatement of the Cathedral. The Trust has done its utmost to conduct its case in accordance with the letter, spirit and intent of the arrangements behind that process.

¹ The Report on Facilitated Discussions with Engineers for Church Property Trustees and the Great Christchurch Buildings Trust on Engineering Options for Repair, Restoration or Replacement of the Christchurch Cathedral facilitated by Ms Miriam R Dean QC and released on 23 December 2015, Referred to as Appendix 3 of Mr Robert Nixon’s evidence of 13 January 2016, but filed on 2 February 2016.

- 6 For this reason it did not call its own engineering or surveying expert evidence, when it became clear that the Dean Report, which would make findings in this area as part of that process, was imminent. When the CPT's planning witness's brief was filed indicating that he (Mr Robert Nixon) was producing the Dean Report, which had been released after filing of the CPT's engineering and surveying evidence, the Trust therefore also withdrew its application to cross-examine those witnesses.
- 7 The Trust has indicated that full reliance was being placed by the Trust on the Dean Report in relation to the engineering and surveying matters. These matters are recorded in the memoranda, evidence and opening submissions filed for the Trust. They are also reinforced by the oral evidence of the Hon. James Anderton, who comments extensively on the Dean Report and indicates the extent to which it is relied on by the Trust to resolve the differences in engineering and surveying areas.
- 8 It is unfortunate that the Dean Report had, it appears by way of an oversight, not actually been filed along with the CPT's planning evidence², contrary to what the evidence itself stated. As a result it appears that the Panel may not have had an opportunity to read the Report before hearing from the CPT's planning witness, which is in turn unfortunate as well. This is particularly so because the CPT's engineering and surveying witnesses had both been party to the Report, but appear to be leading evidence that goes beyond the agreed findings of the report.
- 9 The key relevant conclusions of the Dean Report are:
- 9.1 The Cathedral can be reinstated;
 - 9.2 How much of the existing structure needs to be demolished or deconstructed need not be determined until a decision as to whether it is going to be reinstated or not has been made;
 - 9.3 There is agreement as to the projected cost for the reinstatement, the funds currently available to the CPT and the resultant shortfall;

² Evidence in Chief of Mr Robert Nixon, 13 January 2016.

- 9.4 The decision on whether the Cathedral is to be reinstated or reconstructed will be dependent on whether that cost shortfall can be met.
- 10 Both the CPT's engineering and surveying witnesses participated in the process that led to the Dean Report. There has been no evidence filed challenging the Dean Report. The CPT itself produced the Report.
- 11 In addition, the Panel has already heard evidence that there is some uncertainty as to whether the s38 notice can be relied on to demolish the Cathedral further and to what extent this can occur³. The closing submissions of the Trust will set out why that notice, given its age and the events that have occurred since its issue, can no longer be regarded as still enabling partial demolition of the Cathedral.
- 12 The Dean Report makes it clear that there is no agreement as to how much of the Cathedral needs to be demolished and that the s38 Notice is itself for partial demolition only.
- 13 On this basis, it is submitted that the Cathedral can be distinguished from other buildings where s38 notices still exist. Mr Anderton's unchallenged evidence as to the role of the Dean Report and associated process and the importance of that process in avoiding further litigation and delay around the engineering and surveying issues underline this⁴. That evidence also stated that he was confident the shortfall in funds would be met⁵.
- 14 In view of this it is respectfully submitted that a decision that the Cathedral can demolished even partially as a permitted activity under P8 and any mediation on this point, risks undermining the potential for avoiding the delays and expense of further litigation, which the Dean Report and its process were designed to achieve. To have these issues determined through mediation under the PRDP process runs the risk of undermining the effectiveness of the process of which the Dean Report is a key part.
- 15 Rather, it is considered that the Government's mediation process is the best means of ensuring that the future of the Cathedral can be determined without the delays of further contentious litigation around engineering and surveying

³ Paragraph 8.9 of Mr Nixon's evidence in chief.

⁴ Transcript 22 January 2016, pp 734 & 735

⁵ Transcript 22 January 2016, p735, paragraph 20

issues. It is submitted that mediation would however be very helpful in finding a way to ensure that the maximum benefit can be obtained from the Dean Report and process in terms of expediting the resolution of issues and clearing the way of the recovery of the Cathedral site, by allowing a full and considered evaluation without the risk of further contentious litigation.

16 On this basis the Trust seeks that:

16.1 The issue as to the activity status of demolition of the Cathedral under a s38 notice be considered separately from the demolition of other buildings under such notices, including in mediation;

16.2 Any further mediation on the activity status of demolition of the Cathedral be consistent with the purpose and findings of the Dean Report.

Dated 29 February 2016

A handwritten signature in blue ink, appearing to read 'J M van der Wal', with a stylized flourish at the end.

J M van der Wal
Counsel for the Trust