

12 October 2012

Rob Hall
General Manager Southern
Historic Places Trust
PO Box 4403
Christchurch Mail Centre 8140

Dear Mr Hall

Christchurch Cathedral

- 1 We act for a group of Christchurch residents who are concerned at the proposal by the Church Property Trustees ("CPT") to demolish Christchurch Cathedral. As you will be aware, this is currently the subject of judicial review proceedings issued by the Great Christchurch Buildings Trust ("GCBT") in the High Court at Christchurch. Our clients are concerned however that in the event the proceeding is unsuccessful, the CPT will endeavour to proceed with the demolition of the Cathedral.
- 2 Our clients have instructed us to advise them whether the proposed demolition is lawful having regard to the requirements of the Historic Places Act ("HP Act"). We have advised them that it may be unlawful for the Historic Places Trust ("the Trust") to authorise the total or partial demolition of the Cathedral.
- 3 The purpose of this letter is to explain the reasons for that advice, and to alert the Trust to the risk of acting illegally in authorising any request by the HPT to authorise demolition.

Authority to demolish the Cathedral

- 4 Christchurch Cathedral is both a historic place and an archaeological site for the purposes of the HP Act. In particular, it satisfies the definition of an archaeological site under section 2 of the HP Act because it is associated with human activity that occurred before 1900 and can provide evidence relating to the history of New Zealand.
- 5 Section 10 of the HP Act prohibits the destruction, damage or modification of archaeological sites except in accordance with an authority granted by the Trust. That provision has been amended in so far as it applies to Christchurch by the Canterbury Earthquake (Historic Places Act) Order 2011 ("the Order").
- 6 Under clause 7 of the Order, the Trust may grant authority to destroy, damage or modify the Cathedral (as an archaeological site):
 - (a) By way of an authorisation under section 14 of the HP Act; or
 - (b) By an emergency authority under clause 8 of the HP Order.

- 7 In either case, the Trust **must** have regard to the purpose and principles set out in section 4 of the HP Act, as follows:

4 Purpose and principles

(1) The purpose of this Act is to **promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand.**

(2) In achieving the purpose of this Act, all persons **exercising functions and powers under it shall recognise—**

- (a) the principle that historic places have lasting value in their own right and provide evidence of the origins of New Zealand's distinct society; and
- (b) the principle that the identification, protection, preservation, and conservation of New Zealand's historical and cultural heritage should—
 - (i) take account of all relevant cultural values, knowledge, and disciplines; and
 - (ii) **take account of material of cultural heritage value and involve the least possible alteration or loss of it; and**
 - (iii) **safeguard the options of present and future generations; and**
 - (iv) be fully researched, documented, and recorded, where culturally appropriate; and
- (c) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga.

[Emphasis added]

- 8 Clause 10(3)(a) of the HP Order provides that the emergency officer considering an emergency application must take account of the provisions of the HP Act (including section 4) *"to the extent that they are not inconsistent with any of the purposes of the Canterbury Earthquake Recovery Act 2011"* (**"the CER Act"**).
- 9 The purposes of the CER Act, set out in section 3, are as follows:
- (a) To provide appropriate measures to ensure that greater Christchurch and the councils and their communities respond to, and recover from, the impacts of the Canterbury earthquakes:
 - (b) To enable community participation in the planning of the recovery of affected communities without impeding a focused, timely, and expedited recovery:
 - (c) To provide for the Minister and CERA to ensure that recovery:
 - (d) Enable a focused, timely, and expedited recovery:
 - (e) To enable information to be gathered about any land, structure, or infrastructure affected by the Canterbury earthquakes:
 - (f) To facilitate, co-ordinate, and direct the planning, rebuilding, and recovery of affected communities, including the repair and rebuilding of land, infrastructure, and other property:

- (g) To restore the social, economic, cultural, and environmental well-being of greater Christchurch communities;
 - (h) To provide adequate statutory power for the purposes stated in paragraphs (a) to (g); and
 - (i) To repeal and replace the Canterbury Earthquake Response and Recovery Act 2010.
- 10 Having considered these provisions, we are concerned that any application by the CPT for authorisation to demolish the Cathedral (whether in whole or in part) should be declined, regardless of whether that authorisation is requested under section 14 of the HPT Act, or by way of an emergency authority under clause 8 of the HP Order. The purpose of the HP Act clearly requires that the Cathedral, as a heritage building and an archaeological site, must be protected and preserved. This purpose is subject to the purposes of the CER Act to the extent of inconsistencies, but in our view there are no such inconsistencies: demolition is not necessary for the recovery of Christchurch.
- 11 In particular, we note:
- (a) The Cathedral is an archaeological site because it has been associated with human activity since the 1850s;
 - (b) Expert evidence filed by the GCBT in the High Court at Christchurch has established that it is not necessary to demolish the Cathedral. The Cathedral can be safely maintained in its existing state, or restored to its condition before the earthquake;
 - (c) The Cathedral is an outstanding example of New Zealand's historical and cultural heritage. Its importance in that regard has been heightened by the extensive demolition of other heritage buildings in the Christchurch central business district;
 - (d) There would be an irreplaceable loss to New Zealand's cultural heritage if the Cathedral is demolished;
 - (e) Demolition would therefore be contrary to section 4(1), 4(2)(a) and in particular section 4(2)(b)(ii) of the Act, which requires "*the least possible alteration or loss*" of New Zealand's historical and cultural heritage;
 - (f) Demolition would also remove the options of current and future generations for the purposes of section 4(2)(b)(iii) of the Act. Future generations would be permanently and unnecessarily denied the opportunity to experience the Cathedral if it is demolished;
 - (g) It is irrelevant for the purposes of the HP Act that the CPT wishes to demolish the Cathedral. The Trust has a statutory power to decline authorisation under section 14(1)(b) of the HP Act or clause 10(2) of the HP Order, and must do so if it is satisfied that demolition would be contrary to the purposes of the HP Act; and
 - (h) Demolition is not warranted by the purposes of the CER Act. It is not necessary for the recovery of Christchurch that the Cathedral be demolished (ie. recovery would not be delayed or otherwise impeded if the Cathedral is retained in its existing state or restored). Moreover, our clients consider that for the purposes of section 3(g) of the CER Act, it is essential to the social, economic, cultural,

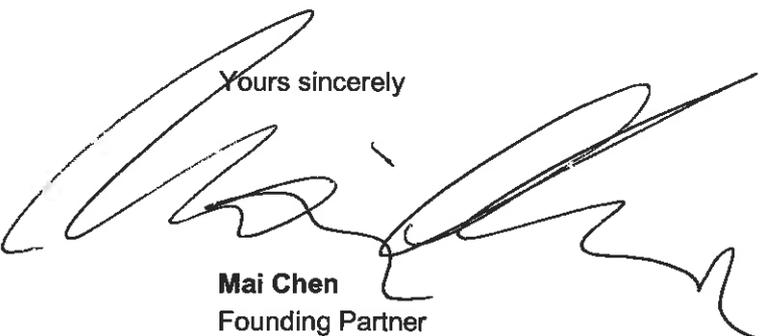
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and environmental well-being of greater Christchurch communities that the Cathedral is protected and preserved for future generations.

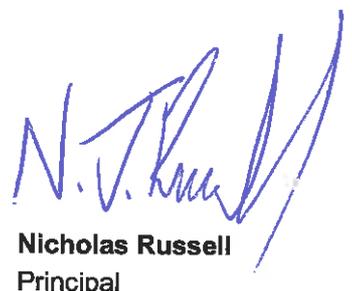
Conclusion

- 12 Christchurch Cathedral is an essential and irreplaceable part of the cultural and historic heritage of Christchurch, and New Zealand. Section 4 of the HP Act requires that it be protected, at least in circumstances where demolition is neither necessary nor inevitable. Our clients would be highly concerned by any decision to authorise its demolition in these circumstances, and would seek to challenge the lawfulness of that decision including by way of judicial review.
- 13 Our clients would welcome the opportunity to meet with you to discuss these matters, including alternatives for demolition, in greater detail.

Yours sincerely



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