

Christchurch Cathedral Decision has Trust Focus

Heritage building owners need not be too concerned that the High Court decision last week to halt demolition of the Christchurch Cathedral puts a blanket ban on all heritage building demolitions. The High Court's decision about demolition is about the terms of the trust that the cathedral is held on.

The Great Christchurch Buildings Trust (GCB) had applied for judicial review of the Church Property Trustees' (CPT) decision to demolish the cathedral down to sill level. The High Court found in favour of the GCB, but it seems that this was not a complete victory for GCB.

There were two elements to the Court's decision:

1. Implementation of the CPT decision to demolish the cathedral down to sill level was stayed.
2. The cathedral has to be rebuilt on the same site, but the rebuilt cathedral does not have to be a replica of the current cathedral.

The effect of the stay is that demolition of the cathedral has to stop in the interim. The CPT is required to make a formal decision on whether or not to rebuild the cathedral, which it has not done yet. The Court indicated that in completing its decision, the CPT should take into account matters such as new costing and engineering information and CERA's opinion on the GCB rebuild proposal. Once the CPT has completed its decision, then the Court will consider whether that decision has been made in an appropriate manner.

This means a final decision on the cathedral's future is still some time away.

CERA had given a section 38 notice to CPT, requiring to advise within 10 working days whether it intended to demolish the building, and if so, when. The Court was not persuaded that the CERA notice meant that the CPT had to make the decision to demolish down to sill level.

The Court's decision was not based on the provisions of the Historic Places Act 1993 or the Canterbury Earthquake Response and Recovery Act 2010. Its decision was formed around the fact that the cathedral is held on trust, and the CPT must decide the cathedral's future according to the purposes of that trust.

The trust was established for the purpose of erecting a cathedral on site, and there is a continuing obligation to ensure that there is a cathedral on site. But that cathedral does not have to be identical to the first cathedral building that was on the site.

Lastly, it seems that the insurance proceeds can only be used to rebuild a cathedral on the existing site. This may require the CPT to look at other funding sources for the Cardboard Cathedral.

As the decision about whether demolition can occur and what may be rebuilt turned on the particular terms of the cathedral trust, this aspect of the decision is unlikely to have wider implications for heritage building owners as to whether or not they can demolish. Trustees will each need to consider the particular terms of their own trust deeds to determine what their obligations in dealing with their building are.

One factor that might affect how heritage building owners can deal with their buildings in the future is the proposed amendment to the Heritage New Zealand Pouhere Taonga Bill. This proposes the establishment of a list of 50 National Historical Landmarks, which are places of outstanding historical, physical or cultural significance.

While there has to be broad community support for inclusion in the list, a place cannot be included without the owner's consent. To be included, there must be a plan on mitigating the effects of natural disasters and a plan for management of the place to the highest practicable standard of care.

The Bill does not make clear what the effect of inclusion on the list is, but we would anticipate that there might be restrictions on how the building could be dealt with following a natural disaster, and also some Government financial support for any rebuilding.

Heritage building owners will need to consider this carefully. Potential inclusion on the list will also have to fit within the terms of any trust that holds the building in question.

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