

Christchurch Must Have A Cathedral - Just Not The Cathedral

The Court of Appeal has just released its decision in the appeal by The Great Christchurch Buildings Trust (**GCBT**) against the High Court's decision permitting the Church Property Trustees (**CPT**) to demolish the Christ Church Cathedral and build a new cathedral of a new design in Cathedral Square (see our [note](#) for a summary of the High Court decision).

The Court of Appeal has confirmed the decision in the High Court. The CPT is allowed to partially demolish and deconstruct the Christ Church Cathedral and build a new cathedral of any design on that site. The Court has also confirmed that the decision turns on the terms of that particular trust.

GCBT made three main arguments:

1. There had been a trust for the establishment and erection of a building, and once the building was erected, it became a trust for the building. The trustees had to then preserve and protect the building. They could not demolish or deconstruct it unless the trust expressly said that they could.
2. The Cathedral Trust was a trust over the actual building itself, not just the land. Public subscriptions had been raised to build a cathedral with a particular design. The donations could not be used for any other purpose, and therefore the trustees had to preserve the Cathedral with that particular design.
3. Legislation applying to the Cathedral obliges the CPT to maintain and repair the existing Cathedral.

The Court of Appeal confirmed that the Cathedral Trust was established to erect a cathedral on the site, not *the* cathedral. The Court accepted that once erected, the building became trust property and the trustees were obliged to preserve the building. Whether a severely damaged building has to be restored to its original state depends on the terms of the particular trust. The Court determined that there was nothing in the terms of the Cathedral Trust establishing that only the present cathedral could meet the Trust's purpose. This meant that the building could be demolished or deconstructed. The obligation to maintain therefore means that there must remain a cathedral on the site – CPT does not have to maintain *the* cathedral on the site.

As to the second argument, it Cathedral Trust was for the construction of a cathedral on the site. But the terms of the trust did not refer to any particular design, or say that the Cathedral could never be altered or replaced if it became inadequate (or was damaged). While public money was donated for the construction, the Court held that the donors did not, by their donation, become stakeholders in the administration of the Cathedral Trust. There was no evidence that the donations had been conditional. This means that the CPT is not bound to any particular design.

Lastly, particular legislation relating to the Cathedral was found to have no effect on the position.

The matter has been sent back to the High Court, to allow the process originally put in place by Chisholm J to be completed (ie. for the CPT to complete its decision-making process).

Note that the Court did not discuss the question of whether or not the Cathedral could be repaired, as the parties agreed that it could. The issue there is costs, which was also not before the Court.

The general principle for heritage building owners is that if their building is held on trust, they ought to make sure that they understand what the terms of their own trust require them to do for their building.