

ChristChurch Cathedral can be Deconstructed

Panckhurst J in the High Court has lifted the stay on the deconstruction of the ChristChurch Cathedral. Unless there is an appeal, the Church Property Trustees (CPT) can proceed with their plan to demolish the Cathedral and erect a contemporary cathedral on the site. However, the litigation as a whole is not yet over.

The Great Christchurch Buildings Trust (GCBT) sought to judicially review the CPT's decision to deconstruct the cathedral to a height of two to three metres, on the basis that this was a breach of trust. Chisholm J gave a judgment in November 2012 that the purpose of the trust was to have a cathedral on the site, not *the* cathedral. There was no breach of trust as the CPT's decision was incomplete – the trustees had not made any decision on whether to repair or replace. On 5 September 2013, the CPT looked to complete its decision making process by passing a resolution to deconstruct the existing Cathedral and construct a new Cathedral, and commit to a contemporary design for this new Cathedral. Given this resolution, the CPT sought to have the stay lifted.

Panckhurst J rejected GCBT's argument that CPT's September 2013 resolution did not complete its decision making process, as it did not give a settled commitment to build a new Cathedral. The Court found that the trustees had properly expressed their resolution in measured terms. They recognised that there might be a shortfall in funding, that there were projected fundraising deficiencies, that they had only a concept design (which was subject to budget constraints), that further design amendments might be required, that they had committed to have the majority of funds in hand before significant work commenced, that there was uncertainty in the construction timeframe and that they needed to obtain resource consents and archaeological consents. Recognition of these potential problems did not, in this case, show that there was no commitment to build a new Cathedral. It showed a commitment on terms that enabled the trustees to adapt to situations that might arise.

GCBT went further and alleged that the real purpose of the application to lift the stay was to enable demolition to occur and thereby remove the GCBT's preferred option of restoration – in other words, there was no honest intention to commit to the construction of a contemporary cathedral. These are serious allegations, which, if proved, would require the Court to supervise the CPT.

The starting point in considering these allegations was the decision-making process, which, it appears, the Court considered to be appropriate. A working group was established to evaluate options for repair or redevelopment. Legal advice was taken following Chisholm J's judgment. A process was settled for evaluation the options. Architects were engaged to develop design options. Expert advice was obtained (including as to building aspects, construction costs and fundraising), and interested parties and members of the public were consulted. All of these factors fed into a discussion paper prepared for the CPT trustees prior to their September 2013 decision.

Panckhurst J considered that while mistakes were made in the process (such as the use of funds for the Transitional Cathedral), there was nothing to show that the Trustees had an improper motive or dishonest intention.

The judgment is a decision on the facts of the case – particularly as there is a requirement under the particular terms of this trust to rebuild a cathedral in its current location. As such, the decision should not be taken as a recitation of the steps that trustees in similar circumstances must follow in order to make valid decisions.

Panckhurst J also affirmed Chisholm J's approach that judicial review principles applied to the application (although there was no argument before him on the point) because of the "public nature" of the decision. He was, however, clear that this is not usually the case and that the principles usually applicable to trustee decision-making would be the touchstone in his decision.

Appeals aside, the litigation will still continue. Chisholm J's decision had raised an issue as to whether the CPT had been able to use a portion of the Cathedral insurance proceeds to construct the Transitional Cathedral (the "cardboard cathedral"). The CPT accordingly sought directions from the Court as to whether their actions had been correct. Panckhurst J had in an earlier judgment found that this was contrary to the terms of the Cathedral Trust. The trustees accordingly sought relief from personal liability, but have now sought to abandon that application on the basis that most of the money (over \$4 million) has been repaid to the Cathedral Trust and they expected that the remaining smaller sum would soon be paid. Panckhurst J refused permission to abandon that application at this stage. One of the key reasons is that the CPT is seeking direction that the Cathedral contents insurance money can be used to restore the deficiency in funds, which is a key issue that the court needs to determine before looking at personal liability.