

IN THE COURT OF APPEAL OF NEW ZEALAND

CA57/2013
[2013] NZCA 331

BETWEEN THE GREAT CHRISTCHURCH
BUILDINGS TRUST
Appellant

AND CHURCH PROPERTY TRUSTEES
First Respondent

CHIEF EXECUTIVE OFFICER OF THE
CANTERBURY EARTHQUAKE
RECOVERY AUTHORITY
Second Respondent

Hearing: 18 April 2013

Court: O'Regan P, Wild and French JJ

Counsel: F M R Cooke QC and A Foote for Appellant
J V Ormsby, J W A Johnson and J-L Day for Respondent
No appearance for Second Respondent

Judgment: 26 July 2013 at 10 am

JUDGMENT OF THE COURT

- A The appeal is dismissed.**
- B The orders made in the High Court are confirmed.**
- C The matter is remitted to the High Court for the completion of the process contemplated by the orders made in that Court.**
- D The appellant must pay the first respondent costs for a standard appeal on a band A basis and usual disbursements. We certify for two counsel.**
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REASONS OF THE COURT

(Given by O'Regan P)

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Introduction

[1] This is an appeal from a decision of Chisholm J,¹ dealing with an application for judicial review commenced by the appellant, The Great Christchurch Buildings Trust (the GCBT) against the first respondent, the Church Property Trustees (the CPT), the statutory body which holds the Cathedral in central Christchurch on trust. The Canterbury Earthquake Recovery Authority (CERA) is the second respondent, but it took no part in the appeal and abides the decision of this Court.

[2] The proceeding related to a resolution of the CPT to partially deconstruct and partially demolish the Cathedral, after it was severely damaged by the earthquakes that occurred in Christchurch between September 2010 and December 2011.

[3] The GCBT challenged the lawfulness of the decision of the CPT and sought a declaration that the decision to deconstruct was a breach of the trusts upon which the CPT holds the Cathedral and an order setting aside the decision. The core of the

¹ *The Great Christchurch Buildings Trust v Church Property Trustees* [2012] NZHC 3045, [2013] 2 NZLR 230.

GCBT's case was that the trusts upon which the CPT hold the Cathedral require it to maintain and repair the Cathedral (that is the current, damaged, structure).

[4] Chisholm J found that the CPT was entitled to deconstruct the present structure, but only if the deconstruction was undertaken for the purpose of constructing a new cathedral on the same site. Accordingly, he granted the judicial review and ordered that the implementation of the decision of the CPT be stayed until further order of the Court. He made a declaration that, while the Cathedral Trust requires there to be a cathedral on the site, the building did not necessarily have to replicate the Cathedral as it stood before the earthquake.²

[5] Although nominally successful, the GCBT failed in its principal objective, which was to have the decision to deconstruct declared unlawful so that the CPT would become bound to repair the current structure and restore the existing Cathedral to the state it was in prior to the earthquakes.

Issues on appeal

[6] The issues on appeal are framed by the three principal submissions made by the GCBT in support of its case that the CPT is obliged to maintain the present Cathedral on the present site. Those submissions are:

- (a) Under normal trust law, a trust for the establishment and erection of a building becomes a trust for that building after the building has been erected. Once it is erected, the trustees must preserve, protect and repair the trust asset and are not free to demolish it or deconstruct it in order to build a new building unless there are express provisions permitting them to do so.
- (b) The Cathedral Trust was intended to be a trust over the building itself not just the land. Public subscriptions were raised for the building of the present Cathedral conforming to the design chosen by the body to

² We use this term as a shorthand reference to the trust on which the CPT holds the cathedral site and the Cathedral, as described in detail later in this judgment. There is no deed of trust or similar document setting up a trust called the Cathedral Trust.

which the donations were made. Those subscriptions could not be used for any other purpose, and therefore the trustees are bound to preserve the Cathedral erected from the funds donated by the public.

- (c) Legislation applying to the Cathedral enshrines the obligation on the CPT to maintain and repair that Cathedral, and the deconstruction of the Cathedral undermines that statutory obligation. The legislation includes the power to maintain and repair trust property but not a power to demolish or destroy it.

[7] Before dealing with these arguments, we will set out the history of the Cathedral. This provides context for the GCBT's arguments and is also necessary to establish the terms of the Cathedral Trust. We will also briefly summarise the events leading to the present dispute and the judgment under appeal, including those aspects of the High Court judgment that are no longer in dispute.

History of the Cathedral

[8] The following narrative is based on that set out in the High Court judgment. We have made some alterations and added some material reflecting the matters raised in the hearing before us.

[9] Evidence about the early history of the Cathedral was given in the High Court by Ian Lochhead and Richard Gray. Dr Lochhead, an associate professor of art history at the University of Canterbury, specialises in the history of New Zealand architecture. His publications include material about the history of the Christchurch Cathedral. Mr Gray is a lawyer, one of the CPT, and Chancellor of the Diocese of Christchurch.

[10] Further historical material came to light after the High Court hearing and we admitted into evidence in this Court an additional affidavit by Dr Lochhead annexing this material.

From inception to construction

[11] The idea of a cathedral in Christchurch was conceived by the Canterbury Association which was created in 1849 to establish a settlement in New Zealand. One of the Canterbury Association's purposes was to establish and maintain ecclesiastical and educational institutions in connection with the Church of England. On instructions from the Canterbury Association, Edward Jollie prepared a town plan in 1850 which attached the expression "Cathedral Square" to the area currently known as Cathedral Square.

[12] Having acquired lands in Canterbury, the Canterbury Association declared by deed dated 9 September 1851 that specified lands, including Cathedral Square,³ were reserved and appropriated:

... to the intent and purport that the same may be used for the establishment and maintenance of Ecclesiastical and Educational Institutions in connection with the Church of England ... to the intent that such Lands may be held by the said Association in trust for the said Ecclesiastical and Educational purposes with such power of Sale alienation Mortgage charge or any other disposition and of general management as the said Association are by the said Letters Patent⁴ declared capable of having and enjoying.

[13] During the mid 1850s the Canterbury Association transferred its functions to other entities. As part of that process the Canterbury Provincial Council passed the Church Property Trust Ordinance 1854 which established the CPT as a body corporate with perpetual succession. Subject to later statutory recognition,⁵ that body has existed ever since and is the first respondent in this proceeding.

[14] The following year the functions of the Canterbury Association were transferred to the Provincial Council, and the Canterbury Association effectively went out of existence. Lands held by the Canterbury Association for ecclesiastical and educational purposes (including the land in Cathedral Square) were transferred to the Provincial Council on trust for those purposes.⁶

³ The deed recorded that the Cathedral Square land comprised 3 acres, 1 rood and 10 perches.

⁴ These are the 1849 Letters Patent establishing the Canterbury Association.

⁵ In the Church Property Trust (Canterbury) Act 1879 [CPT Act 1879] and the Anglican (Diocese of Christchurch) Church Property Trust Act 2003 [CPT Act 2003].

⁶ The Canterbury Association Ordinance 1855, cl 6 confirmed that trusts for ecclesiastical and educational purposes survived.

[15] Although the Provincial Council initially transferred Cathedral Square to Christ's College, it was surrendered back to the Provincial Council within a short time pursuant to the Cathedral Square Ordinance 1858. In terms of that Ordinance, the area comprising Cathedral Square was then held by the Provincial Council:

... as a site for the erection of a Cathedral in connection with the Church of England, which site shall be conveyed to the Bishop of Christchurch and his Successors, to be held, in trust, for the uses as aforesaid of the Church of England in the said Province: And the said Superintendent, upon the commencement of the said Cathedral, is hereby empowered and required to convey the aforesaid site accordingly: ...

[16] The description of the cathedral land was slightly modified by the Cathedral Square Ordinance Amendment Ordinance 1859 and the Cathedral Square Ordinance 1864, but not materially. In particular, cl 3 of the 1864 Ordinance still referred to the site being held by the Superintendent "as a site for the erection of a Cathedral" and provided for the conveyance of the site to the Bishop "as soon as the building of the said Cathedral shall be commenced". Like the 1858 Ordinance, the 1859 and 1864 Ordinances all still referred to "a Cathedral". No requirements as to its design or size were stated.

[17] According to the GCBT the acquisition of the cathedral land by the Bishop was a "key moment" marking the creation of the trust for the erection of the Cathedral upon which the CPT currently holds the Cathedral. A deed dated 20 January 1865 conveys the cathedral land as set out in the 1864 Ordinance from the Superintendent to the Bishop and his successors. It is unclear exactly when the land was conveyed from the Bishop to the CPT, but it is common ground that the land was vested in the CPT.

[18] In the meantime a Cathedral Commission had been appointed by the Synod of the Diocese of Christchurch to "make a public appeal for subscriptions towards the building of the Cathedral" and to oversee the building of the Cathedral. George Gilbert Scott, one of the leading Gothic Revival architects of the day, was commissioned in 1861 to prepare plans for the Cathedral.

[19] In 1863, the Cathedral Commission launched a public appeal for funds through *The Press*. The public notice launching the appeal said:

Complete plans for the whole Cathedral by Mr Gilbert Scott are in the hands of the Commission; and they have determined to adhere rigidly to a design which is worthy of the great name of its author.

[20] The notice concluded:

Let it be remembered that the Cathedral is the work of the whole Diocese, and let a great and united effort be made, and we shall accomplish, under the blessing of Almighty God, a work which will impress its character on this rising people, will be the glory of our Metropolis and Province, and will be pointed at with just pride by our grandchildren's children, as a standing memorial of the Christian faith and zeal of the founders of their country.

[21] Mr Gilbert Scott's first design was rejected by the Cathedral Commission but a later version was accepted.

[22] The foundation stone was laid on 16 December 1864 and by the following year the foundations had been completed. However, lack of funds led to the suspension of work in 1866.

[23] The lack of progress with the Cathedral became a matter of public controversy. The editorial in *The Press* of 28 June 1872 was critical of the unsightly nature of the site, and of the Church's proposal for further public subscription. The Editor stated:

The idea of screwing a Cathedral out of the citizens of Christchurch by the threat of occupying the centre of the city with a permanently unfinished building is ingenious; but we trust it will not be acted on ...

[24] In 1872, the Cathedral Square Ordinance 1872 which related to the land immediately surrounding the land for the Cathedral (that is, the Square) was passed.⁷ Clause 4 of the 1864 Ordinance, which stated that certain parts of Cathedral Square would be retained by the Superintendent of Canterbury as "an open square or for plantations", was repealed and replaced by cl 2 of the 1872 Ordinance which provided:

2. Those portions of the said section of land which are described in the Schedule A to this Ordinance shall be held by the Superintendent of the Province for the time being and his successors as a site for the erection of a Cathedral in connection with the United Church of England and Ireland in New Zealand and upon trust to convey the

⁷ This ordinance was not before the High Court.

fee simple and inheritance in the same by deed to the persons named in Schedule B to this Ordinance their successors and assigns in trust for the purpose aforesaid subject to the condition that no buildings be erected thereon save as hereinafter mentioned.

[25] Again, the provision refers to “a Cathedral”. But counsel for the GCBT, Mr Cooke QC, pointed out that Schedule A referred to the site being reserved for “the” Cathedral, which was by then partly constructed.

[26] Work recommenced in 1873 with Benjamin Mountfort as supervising architect. Some changes from Mr Gilbert Scott’s design followed. These were approved by Mr Gilbert Scott’s son. Construction of the nave⁸ and tower was completed in 1881 and the building was consecrated as the Cathedral Church of Christ on 1 November that year.

[27] Further changes to the Cathedral building occurred in 1894, with the addition of the west porch to Benjamin Mountfort’s design. Following the death of Benjamin Mountfort and a public appeal by Bishop Julius for £12,000 to complete the Cathedral, his son, Cyril Mountfort was appointed resident architect. Further work on the Cathedral commenced with the laying of the foundation stone for the transepts⁹ in 1900, and the Cathedral was finally completed in 1904.

[28] The Judge had before him conflicting evidence about the public funding for the Cathedral’s construction. It was common ground that private donations were received in response to public appeals for funds between 1857 and 1881. The Judge accepted that construction of the Cathedral involved significant funding from private donations. He said the precise amount was not critical.

Following construction

[29] Aside from changes to the furnishing of the interior of the building and some reordering to meet evolving liturgical requirements, there were no major changes to the Cathedral until the choir vestries were added in 1963. The crypt was also enlarged at that time. The last major change to the Cathedral occurred between 1992

⁸ Main body of the church building.

⁹ The section of the building that lies across the main body of the building.

and 1995 when the visitors' centre on the north side of the building was built. Between 2006 and 2007 seismic strengthening of the Cathedral took place.

[30] Further funding has been raised from the public in more recent times. There was a fundraising campaign for the 125th anniversary of the Cathedral. The purpose of the campaign was to restore the Cathedral and ensure survival of the choir. A total of \$8 million was raised, of which \$4 million was applied towards restoration of the Cathedral.

[31] Over recent times the day-to-day running costs of the Cathedral have come from a variety of sources. For example, for the year ended 31 December 2011 the total income was in the region of \$1.1 million of which about \$215,000 came from offertories and donations and \$120,000 came from the Christchurch City Council by way of a grant. The Dean and Chapter Estate also supplied regular income.¹⁰ A similar pattern can be seen in earlier years.

[32] The Cathedral is registered as a Category 1 heritage building by the New Zealand Historic Places Trust. Category 1, which is the highest listing available, is described in s 22(3) of the Historic Places Act 1993 as a place of special or outstanding historical or cultural significance or value. It is also listed as a Group 1 building in the Christchurch City Council's District Plan. This recognises the significance of the Cathedral to the Christchurch community.

[33] The Judge recorded Dr Lochhead's evidence to the effect that the Cathedral was the first Anglican Cathedral to be completed in New Zealand. Dr Lochhead commented:

16. As the most prominent Gothic Revival building in Christchurch, Christ Church Cathedral also functions as a lynch pin for the city's larger grouping of Gothic Revival buildings. These include the contemporaneous Canterbury Museum, strategically sited at the western end of Worcester Street on the axis of the Cathedral, and reflecting the Cathedral's western rose window in its own facade, the buildings of Canterbury College (now the Arts Centre of Christchurch), Christ's College, the Canterbury Provincial Council Buildings and St Michael and All Angels Church.

¹⁰ This is discussed below from [92].

17. Christchurch was unique among nineteenth-century cities in the close connection between the founders' concepts of social reform, religious belief and architectural aesthetics, which was given expression through the use of the Gothic Revival style in all the city's key religious and public buildings. This combination of factors caused Dr Timothy Barringer, Paul Mellon Professor of British Art at Yale University to describe Christchurch as 'in many ways the most telling product of British culture in the 1850s'. As the symbolic heart of the city, Christchurch Cathedral is essential to the integrity of this grouping of Gothic Revival Buildings. Demolition of Christ Church Cathedral would entail more than the loss of a building of enormous heritage significance in its own right, but would greatly diminish the cumulative heritage value of ... Christchurch's entire collection of surviving Gothic Revival buildings.

The earthquakes

[34] The first major earthquake occurred on 4 September 2010 and this caused damage, but not major structural damage, to the Cathedral. The earthquake on 26 December 2010 also caused some damage, but not structural damage.

[35] However, the major earthquake on 22 February 2011 caused significant structural damage to the Cathedral. More damage was caused by two earthquakes that occurred on 13 June 2011 and still more by a further two earthquakes on 23 December 2011.

[36] The High Court judgment recounts the various steps that were then taken to make the site safe, and the advice received by the CPT. In the period immediately preceding the decision under challenge, the CPT considered three options that had been developed at a meeting involving the CPT's engineering advisors, Holmes Consulting, the Historic Places Trust and CERA. The three options were:

- (a) *Option 1, maximum retention*: this option involves retaining most of the walls of the Cathedral held in place by the insertion of interior steel shoring systems.
- (b) *Option 2, deconstruction*: this option involves deconstruction of the Cathedral building to sill level, which is about two to three metres above the ground. This option took into account the fact that virtually

all of the walls of the Cathedral had some degree of offset above that level.

- (c) *Option 3, an intermediate option*: this option involves stabilising the eastern end of the Cathedral and deconstructing the western end.

[37] The GCBT favours option 1. The CPT eventually resolved to implement option 2.

[38] Holmes Consulting provided the CPT with a matrix evaluating these options. It advised that each was feasible, with varying levels of cost. The High Court judgment records that at the time of the decision the cost of option 1 was estimated to be \$100 million (excluding GST), and the cost of option 2 was between \$66 million–\$76 million (excluding GST). These figures need to be seen in contrast to the advice the CPT was given that the likely insurance amount remaining available to it would be in the order of \$28.5 million.¹¹ The Judge recorded that the Cathedral had been insured on a functional replacement value basis and the insurer had agreed to settle by paying the CPT approximately \$39 million, but that negotiations were continuing.¹²

The CPT's decision

[39] The decision of the CPT that was challenged in the judicial review proceeding and is the focus of the present appeal was made on 1 March 2012. On that date the CPT resolved:

Further to the receipt of the Section 38 Notice from CERA,¹³ the 23 December events and the subsequent assessments and review, it is with great regret and sadness that the Church Property Trustees resolve that the Christ Church Cathedral is to be partially deconstructed and partially demolished with great care and respect down to a level of approximately 2–3 metres to meet the required safety standards for an un-propped site. This will allow safe retrieval of taonga and heritage items to the extent possible.

¹¹ At [36].

¹² At [152].

¹³ See below at [45].

[40] The High Court Judge recorded that, apart from deconstruction of what remained of the tower during April and May 2012, no major steps had been taken to implement the decision. As noted earlier, he ordered a stay of any further implementation of the decision.

Matters not in dispute

[41] A number of matters that were in dispute in the High Court were not in issue in this Court. We list them for completeness.

[42] In the High Court, the CPT challenged the standing of the GCBT. Chisholm J concluded that the GCBT did have the necessary standing to bring the proceeding.¹⁴ In this Court, the CPT did not renew its challenge to the GCBT's standing.¹⁵

[43] The CPT also argued in the High Court that the decision to deconstruct the Cathedral was not amenable to judicial review. Again, Chisholm J found against the CPT on that issue and also found that the Court had the power to make a declaratory order under the Declaratory Judgments Act 1908.¹⁶ The CPT did not contest that finding in this Court.¹⁷ As neither standing nor amenability to judicial review is an issue before us, we will proceed on the basis that the decision is amenable to judicial review and that the GCBT has standing to challenge it, without actually deciding either point.

[44] Counsel confirmed that there is no dispute between the parties as to whether the Cathedral can be repaired to its former state. The evidence before the High Court was that it could be, though such repairs would be more expensive than deconstruction and construction of a new cathedral.

[45] The decision of the CPT to deconstruct the Cathedral was prompted by a notice received by the CPT from CERA. When notice was given under s 38 of the

¹⁴ At [73].

¹⁵ But see the comment on the High Court decision in Marcelo Rodriguez Ferrere "Judicial review of charitable trusts" [2013] NZLJ 107, in which the author expresses the view that the GCBT did not have the necessary standing.

¹⁶ At [82]–[95].

¹⁷ Ferrere, above n 15, is also critical of this aspect of the High Court decision.

Canterbury Earthquake Recovery Act 2011 the notice advised that CERA had determined that the Cathedral building was dangerous in terms of the 2011 Act, and in particular that there was a risk that it could collapse or otherwise cause injury or death to a person in the building as a result of an earthquake that generates shaking that is less than a moderate earthquake. The CPT was given formal notice under s 38(4) of the 2011 Act “that your building is to be demolished to the extent necessary to remove the hazards”.

[46] In the High Court, the CPT argued that it had no option other than to comply with the notice given by CERA, and that the only way of doing this was by deconstruction. Chisholm J did not accept that the notice required the CPT to make the decision to deconstruct the Cathedral.¹⁸ The CPT do not challenge that finding and we say no more about it.

[47] In the High Court the CPT argued that it held the Cathedral site and the Cathedral under the terms of the 1851 deed referred to at [12] above, which created a trust for the purpose of “establishment and maintenance of Ecclesiastical and Educational Institutions”. Chisholm J found that the 1851 Trust was superseded by the later Ordinances, which created an express trust for the erection of a cathedral on the site.¹⁹ The CPT no longer maintains the position that the 1851 Trust applies, nor does it contend that the site is now held for broad ecclesiastical purposes.

The High Court judgment

[48] Having resolved the issues just referred to, Chisholm J turned to the key issues arising from the interpretation of the instruments comprising the Cathedral Trust and the legislation under which the CPT holds property on trust. We will outline his findings on the specific issues as we deal with the issues on this appeal. For present purposes it is necessary only to record that Chisholm J found that the Cathedral Trust was established for the purpose of erecting *a* cathedral on the site, not *the* Cathedral. Once the Cathedral was erected, there was a continuing obligation on the CPT to ensure that there is *a* cathedral on the site, but not a continuing obligation to maintain *the* Cathedral. He found that there had been no change in the

¹⁸ At [167].

¹⁹ At [108].

obligations of the trustees after the erection of the Cathedral to require preservation of the Cathedral as erected.²⁰ He found that, once the Cathedral had been severely damaged, then the obligation of the CPT was either to repair the existing structure or replace it with another cathedral.²¹ He found that it would be against the spirit of the Trust for the repair or reconstruction to be unnecessarily deferred.²²

[49] Chisholm J therefore found that the decision of the CPT could be unlawful if the CPT did not have an intention to rebuild a cathedral on the same site. Having been assured by the CPT's counsel in the High Court that the CPT did have such an intention, the Judge concluded that the CPT's decision was "incomplete", and that he should therefore stay its implementation, rather than grant the relief sought by the GCBT.²³ He also declared that, while there must be a cathedral on the site, it does not necessarily have to replicate the Cathedral as it stood before the earthquakes occurred.²⁴

Trust for *a* cathedral or *the* Cathedral?

[50] We turn now to the first submission made by Mr Cooke for the GCBT, outlined at [6](a) above. Mr Cooke argued that the Cathedral Trust was a trust for *the* Cathedral, not a trust for *a* cathedral, as Chisholm J found. He said that a trust for the construction of a building becomes a trust for that building, once the building has been constructed. The building itself then becomes trust property and the trustees' obligations to preserve trust property apply equally to the land and to the building itself.

[51] Mr Cooke prefaced this argument with an argument that the Cathedral Trust in this case was an executory trust rather than an executed trust, and argued that the Court takes a more liberal approach to the interpretation of trusts of that kind than those contained in a trust deed setting out the terms of the trust and the obligations of the trustees in detail. Senior counsel for the CPT, Mr Ormsby, took issue with that distinction, and we see considerable merit in his argument that no further steps were

²⁰ At [134]–[145].

²¹ At [146].

²² At [147].

²³ At [163] and [168]–[180].

²⁴ At [181].

contemplated in relation to the Cathedral Trust, which would suggest it is not an executory trust. But more importantly, we do not think anything turns on this distinction and we do not consider it necessary to resolve this point.

[52] No real issue was taken with the High Court Judge's identification of the terms of the Cathedral Trust. From the time of the 1858 Ordinance, the site was held "for the erection of a Cathedral in connection with the Church of England" and similar wording was used in the later iterations of this Ordinance in 1859, 1864 and 1872. Of course, that simply reflects the reality that the site did not have a cathedral on it at that time, so a reference to "the Cathedral" would have been inapposite. Mr Cooke did, however, place some importance on the fact that Schedule A to the 1872 Ordinance referred to "the Cathedral", but it seems to us that is no more than shorthand for the Cathedral referred to in cl 2 of the 1872 Ordinance.

[53] We can see no error in the High Court Judge's approach to this aspect of the case. The wording of the relevant Ordinances is decisive: the site was held on trust by the CPT for the erection of "a" cathedral.

[54] That is not the end of the matter, however. Mr Cooke argued that when a trust is set up for the construction of a building and the building is constructed as contemplated, then the trust becomes a trust for the building that has been constructed. This is because the building itself then becomes trust property and the trustees' obligations to preserve the trust property apply equally to the land and the building itself. That is true as far as it goes, and no doubt the CPT did treat the Cathedral as built as trust property and did comply with the obligations to preserve it. But whether the duty to preserve trust property includes a duty to restore the severely damaged structure is dependent on the terms of the particular trust, rather than on any immutable rule of law or equity.

[55] Mr Cooke relied on two cases in support of his proposition that the CPT cannot, without breaching the Cathedral Trust, deconstruct and rebuild the Cathedral.

[56] The first of these is *Ex parte Greenhouse*.²⁵ In that case the owner of land on which a chapel stood conveyed the land and the chapel to trustees for the purpose of building almshouses on the land surrounding the chapel and the purpose of ensuring that divine service continued to be conducted in the chapel. One of the terms of the trust created by the settlor was that rents from other land held in trust should be employed for the repairing of the almshouses and the chapel from time to time as required. One hundred and eighty years later, the surviving trustee conveyed the land to a corporation “for the continuing and perpetuating the said charitable work” and otherwise for the charitable uses and purposes set out in the original settlement and subsequent instruments.

[57] The chapel was in a state of disrepair when transferred to the corporation, though it seems it was in a state which would have allowed for relatively inexpensive repairs. Within two years of the conveyance to the corporation, the corporation had the chapel demolished and granted a lease of the land that had been the site of the chapel and the neighbouring graveyard to one of its members for a 99 year term. The bell on the chapel, which had been given by the original settlor was moved to another site, the timber was wholly or partly used in building a house and the stones from the chapel were used in building a bridge.

[58] Proceedings were brought against the corporation for breach of trust. The Vice-Chancellor, Sir Thomas Plumer, was unimpressed with the corporation’s conduct. He said:²⁶

The corporation took upon themselves the execution of this charity. The chapel was out of repair, but the parishioners were disposed to contribute to its repair. It could not be very much out of repair, because six or seven years before divine service had been performed in it. They, who never ought to have been made trustees, commit, as soon as they become such, the grossest and most indecorous breach of trust, by violating the burial-ground and pulling down the chapel, without any authority or sanction! There is no pretence that it was necessary for the public safety. The bell is carried to the marketplace and the pews to the parish church, and the stones of the church are used in repairs of a bridge! It is an enormous breach of trust, and such as could not be expected in a Christian country!

²⁵ *Ex parte Greenhouse* (1815) 1 Madd 92, 56 ER 36.

²⁶ At [41].

[59] He ordered that the corporation convey the property at its own expense to new trustees and that the members of the corporation account for the materials of the chapel and pay their value. He ordered an inquiry into the expense for restoring the chapel and the neighbouring burial ground.

[60] We do not see this rather colourful episode as having much bearing on the present case. There was no doubt in *Greenhouse* that the chapel was standing at the time the trust was created, so it was a trust for “the” chapel, rather than “a” chapel. That in itself distinguishes it from the present case. And the concern of the Court appeared to be more about the transfer of the property to an associate of the trustee and the discontinuance of the charitable purpose, than the actual destruction of the chapel. Whether a decision to demolish the chapel but immediately rebuild another would have attracted the same reaction from the Court is unclear, but seems unlikely. We see this case as dealing with a different situation, and therefore of only marginal assistance.

[61] The other case relied on by Mr Cooke was *In the matter of the Trusts of the Church of St Jude, Brighton*, a decision of an Acting Judge of the Supreme Court of South Australia, Hannan AJ.²⁷

[62] The factual situation in *St Jude* was remarkably similar to the present case. Land had been conveyed by a trust deed in 1854 for the erection of a church but the terms of the trust were:

Upon trust to permit and suffer to be erected and built upon the said piece of land hereby conveyed a church or building for the Celebration of Divine Worship ... and from time to time to permit and suffer such [building] to be enlarged, altered, repaired and reinstated when necessary or expedient subject to the trust’s provisions and regulations hereinafter declared.

[63] The trustees applied to the Court for an order empowering them to demolish the church after it was badly damaged by an earthquake, and build a new church on the same site. They wanted to build a bigger church because the damaged church had been too small for the congregation.

²⁷ *In the matter of the Trusts of the Church of St Jude, Brighton* [1956] SASR 46 (SASC).

[64] Hannan AJ considered that the words “permit and suffer such [building] to be enlarged, altered, repaired and reinstated when necessary or expedient” did not authorise the trustees to demolish the damaged church and build a larger church on the same site. He saw the references to enlarging, altering and repairing as referring to changes to the existing structure. And he saw the power to “reinstate” to be limited as follows:²⁸

To reinstate the Church of St Jude therefore means to build it up again when it has collapsed or become ruinous or dilapidated passed repair, so that it has to be demolished; to put it back as it was before, not necessarily of the same materials, but according to the same design, so as to be easily recognisable by those who knew the fallen or ruined church when it was stable and standing firmly upright.

[65] As the trustees did not intend to reinstate the church under that narrow meaning of the term, they did not have the power to do what they proposed. Rather, they could demolish the church only if they intended to reinstate it with a building that would be substantially identical to the original church.

[66] Mr Cooke accepted that the terms of the trust in relation to the Church of St Jude differed from those in the present case. But he said the key point was that the trustees of the Church of St Jude, like the CPT, had not been given a power to deconstruct the church. That, he said, meant that the case was on all fours with the present case. He said that the *St Jude* case stood for the proposition that a trust for the erection of a building becomes a trust for that building once it is constructed and the trustees then need to point to additional powers to demonstrate that they have the power to demolish the property which the trust was established to construct.

[67] Chisholm J distinguished the *St Jude* case. He saw *St Jude* as being fact specific. It turned on the terms of the trust governing the Church of St Jude, and, in particular, the interpretation of the term “reinstate”. As the words that were the focus of the *St Jude* decision did not appear in the Cathedral Trust, he thought the case was of limited assistance.²⁹

²⁸ At 53.

²⁹ At [141].

[68] Counsel for the CPT, Mr Ormsby, argued that *St Jude* was wrongly decided because Hannan AJ limited the scope of the trustees' power by reference to the other powers specified rather than the overall objects of the trust. That is a reference to the fact that Hannan AJ applied the maxim *expressio unius est exclusio alterius*³⁰ in interpreting the trustees' powers, and considered that because they had powers of enlarging, altering, repairing and reinstating, it had to be considered that the omission of the power to demolish and rebuild had been deliberate. Mr Ormsby said the Judge ought to have implied the powers necessary to allow the trustees to carry out the objects of the trust.

[69] We consider that the High Court Judge was correct to distinguish *St Jude*. It was a decision that was grounded in the particular terms of the deed of trust in issue, and not a case of general application.

[70] In any event, were it not distinguishable, we would not follow it. The original indenture in that case provided that the settlor left an area of land for a church, a parsonage house and a school. There was no prescription as to design, size or the like. The trustees had powers to enlarge, alter, repair and reinstate these buildings when necessary or expedient. We would not adopt the Acting Judge's reasoning that interpreted the indenture to require the trustees in office a century after the date of the indenture to recreate the damaged church even though it no longer met the needs of its congregation: it is hard to imagine that the settlor would have intended that outcome, given his desire to provide for the congregation's needs.

[71] It is notable that, despite there being no express power to demolish the church in *St Jude*, there was no real dispute that demolition was permitted if the church were badly damaged as long as a replica was built to replace it.

[72] We consider that the answer in the present case must depend on the terms of the trust before us, and we do not see *St Jude* as assisting us in determining that question.

³⁰ As Hannan AJ applied that maxim in *St Jude* at 52, "If an instrument authorises a particular mode of dealing with land or other property, this excludes any other mode of dealing with it for the same purpose".

[73] We return to the terms on which the site of the Cathedral was conveyed to the Bishop, as predecessor in title to the CPT. The conveyance was for a charitable purpose, namely the erection of an Anglican cathedral. The conveyance occurred only when it was clear the Cathedral was to be erected, but we do not see any particular significance in that. The commencement of the building of any Anglican cathedral of any design would have met the condition precedent to the conveyance to the Bishop under the relevant Ordinance. The charitable purpose for which the conveyance occurred was the erection of a cathedral and once it was erected it must have been intended that the site would be used only for a cathedral. But we do not see anything in the wording of the relevant Ordinances that leads to the conclusion that only the present Cathedral could meet the purpose for which the trust was established.

[74] If we are wrong about that (and the GCBT is right that the purpose was the erection of, and subsequently the maintenance of, the present Cathedral and no other), the Trust would have failed if the Cathedral had been totally destroyed by the earthquake. Mr Ormsby pointed out that if the Trust failed, then the site would revert to the party from whom it was conveyed (the Provincial Council, the successor of which is the Christchurch City Council). He argued that on the GCBT's analysis, the Trust may have already failed, because the state of the Cathedral building is such that it has been deconsecrated and cannot be used for the purposes for which the Cathedral was established.

[75] We agree that the logical extension of Mr Cooke's argument is that the Trust would fail if the Cathedral were destroyed, and we can see no reason to interpret the relevant Ordinances in that way. It seems to us to be much more in keeping with the purpose for which the site was conveyed to the Bishop by the Provincial Council that the trustees be permitted to replace the Cathedral if they consider that this is the best way of ensuring that the purpose of having a cathedral on the site endures.

Is the Cathedral Trust a trust over the present Cathedral only?

[76] We now turn to the second of Mr Cooke's submissions, outlined at [6](b) above. Mr Cooke argued that the terms of the Cathedral Trust unambiguously

related to the construction of a particular building, not the building of cathedrals from time to time. He said the only reason that the relevant Ordinances refer to “a” rather than “the” Cathedral is that the Cathedral had not been built at the time they were promulgated. And he said it was significant that the initial Ordinances were conditional, in that the land was required to be conveyed to the Bishop and his successors only on the “commencement of the said Cathedral” (1858 Ordinance), or “the building of the said Cathedral shall be commenced” (1864 Ordinance). He said this showed that the Ordinances clearly related to a specific building.

[77] While we accept Mr Cooke’s submission as far as it goes, it seems to us to beg the issue now before us. It is obvious that the Ordinances had to refer to “a cathedral” in the abstract in circumstances where no such building existed. But they were not specific about the nature of the Cathedral and did not make any reference to the Cathedral having to be of a particular design. Nor did they say that the Cathedral could never change over time or be replaced if it became inadequate for its purpose or, as has now happened, severely damaged.

[78] Mr Cooke called in aid of his argument the fact that the Cathedral had been financed by way of public subscriptions. He said (correctly) that if the public appeal for funds had not raised the necessary money, the Trust would have failed and the land would never have been transferred to the trustees under the terms of the 1864 Ordinance.

[79] The money received from the public appeal was itself trust money, and became part of the property held on trust by the trustees of the Cathedral site. He said the construction of a particular building was the very essence of the Trust.

[80] To support this submission, Mr Cooke referred us to *Wellington Diocesan Board of Trustees v Attorney-General*, a decision relating to a planned cathedral in Wellington.³¹ In that case, public funds had been raised for the building of an Anglican cathedral on the site of St Mark’s Church in Dufferin Street, near the Basin Reserve in Wellington. It was then decided that erection of a cathedral on that site

³¹ *Wellington Diocesan Board of Trustees v Attorney-General* [1937] NZLR 746 (SC).

was “impracticable or inexpedient”, and a new proposal was put forward to erect the cathedral on a site at the northern end of the city.

[81] In considering whether it was necessary to apply to the Court for orders reflecting that the original purpose had become impracticable or inexpedient, Myers CJ said:

It was suggested that there may be no need to approach either the Attorney-General or the Court as it may be contended that there has been no change of purpose. The purpose, it is suggested, was to build a cathedral in the City of Wellington, and such purpose is being adhered to. I cannot support that suggestion. The original purpose was to build a cathedral on a particular site, and in the minds of some of the contributors this site may conceivably have been the all-important consideration. The change of site from one portion of the city to another does, in my view, involve a change of purpose within the contemplation of the Act. ... It is true that the trustees declared a trust to apply the fund then in hand and thereafter to be subscribed in or towards the erection and equipment of a cathedral and buildings in connection therewith on the St Mark’s Church site or on any other land in the City of Wellington. But, seeing that the monies were contributed for the express purpose of erecting a cathedral on a particular site, its erection upon a site at the other end of the city would primarily, I think, involve a breach of trust.

[82] Mr Cooke drew parallels between this situation and that which applied to the fundraising for the Christchurch Cathedral. He referred to the notice launching the public appeal in 1863, quoted at [18]–[20] above and, in particular, the fact that this notice referred explicitly to the fact that the Cathedral had been designed by Mr Gilbert Scott, and was intended to be a standing memorial. Mr Cooke referred us to evidence given by Dr Lochhead in the High Court that Mr Gilbert Scott was one of the foremost architects in the world and that contributors would have been aware of this.

[83] Mr Gilbert Scott died before the Cathedral was constructed and, as noted earlier, Benjamin Mountfort took over. Changes to the plans designed by Mr Gilbert Scott were approved by his son, and on Mr Mountfort’s death Mr Mountfort’s son took over as the supervising architect.

[84] Mr Cooke relied on Dr Lochhead’s evidence to the effect that donors to the Cathedral gave money for the construction of specific parts of the fabric of the building, and in some cases this is acknowledged in the structure itself.

Dr Lochhead also said that donations between 1899 and 1904 must be seen as contributions towards the construction of the particular building, not towards the support of the generic functions of a cathedral. Further contributions to the building continued after its construction, including from the Christchurch City Council and from one of the trustees of the GCBT, Mr Burden.

[85] From all of this, Mr Cooke submitted that it was unrealistic given the terms of the Trust and surrounding circumstances to say that “CPT were free to knock the Cathedral down at a later point in time in order to erect a new building of their preference”.

[86] We find the reliance on the *Wellington Diocesan Board of Trustees* case misplaced in the circumstances of this case. The situation in the *Wellington Diocesan Board of Trustees* case was that money had been raised for the building of a cathedral at a particular site, but the building had not occurred. The trust funds still comprised the contributions made by members of the public, and the Court found that the trust was for the specific purpose of building a cathedral at a particular site. The case was about the proper application of the trust fund.

[87] The situation would have been quite different if the Wellington Cathedral had been built at the St Mark’s site and the trust on which the funds were held had been fulfilled. At that point, the trust over the funds would have come to an end because the funds would have been applied in accordance with the terms of the trust to the building of the cathedral. The cathedral would then become subject to whatever ownership arrangement applied to the land on which it was built.

[88] In the present case, contributors gave money to trustees (the Cathedral Commission) and the Cathedral Commission applied it in accordance with the terms of the trusts on which the money was held towards the building of the Cathedral. At that point the contributors had no ongoing interest in the Cathedral: it was then held subject to the Cathedral Trust. That seems to be acknowledged by GCBT, because that is the basis of its argument on the first issue. It seems to us to be quite unrealistic to say that those who contributed to the building of the Cathedral in the 1870s still have some say over what happens to the building 140 years later. While

they would, of course, have hoped that it would continue to exist into the future, as the ancient cathedrals of Europe have, they must also have accepted that if a natural disaster or war led to its destruction or to its being severely damaged, what would happen then would be determined by the trustees of the Cathedral at the time, not by the terms on which money had been raised a hundred or more years before.

[89] Mr Ormsby pointed out that there is nothing in the Ordinances which indicates that the conveyance of the site for the Cathedral was in any way conditional on a particular design being followed. This is so, even though by the time of the 1872 Ordinance it was known that the Cathedral Commission wished to proceed with the Gilbert Scott design. We agree that the conveyance was not conditional on any particular design being adopted. There is simply no reference to the design in any part of the Ordinances.

[90] Mr Ormsby also pointed out that the Cathedral that was ultimately built did not strictly follow the original design by Mr Gilbert Scott, and it is notable that there was no suggestion that this in any way breached the terms on which the public funding was provided. Nor was there any suggestion that the CPT had any ongoing obligations to the providers of the public funding once the money had been applied towards the construction of the Cathedral. He argued that, if GCBT's view were right, there were probably breaches during the construction because changes were made from Mr Gilbert Scott's original design, and the fact these were approved by Mr Gilbert Scott's son would not have brought them into compliance with the law as GCBT described it. We agree. Mr Ormsby said that if there were any doubt about the terms in which the Cathedral was held by the CPT, we should adopt the interpretation that leans towards that which supports what has actually happened in relation to the Cathedral.³² We do not see any ambiguity that requires us to call on that doctrine.

[91] Donors to the fundraising campaign for the building of the Cathedral and others who donated after it was built did not, by their donation, become stakeholders in the administration of the Cathedral Trust. If their gifts were conditional and the

³² Jean Warburton *Tudor on Charities* (9th ed, Sweet & Maxwell, London, 2003) at 180, citing *Attorney-General v Smythies* (1831) 2 R&M 717, 39 ER 568.

donee agreed to be bound by the condition, that would be a different story. But there is no evidence that conditions of that kind applied to the donations made in relation to the Cathedral.

Terms of trust confirmed by Anglican (Diocese of Christchurch) Church Property Trust Act 2003

[92] The final submission made by Mr Cooke for the GCBT, outlined at [6](c) above, is that legislation applying to the Cathedral confirms that the terms of the Cathedral Trust prevent the CPT from demolishing or deconstructing the Cathedral. The Church Property Trust (Canterbury) Act 1879 (CPT Act 1879) was passed by Parliament when construction of the Cathedral was incomplete. Under the CPT Act 1879, the CPT administered all Trust properties associated with the Anglican Church in the Canterbury region. The CPT Act 1879 created statutory trusts over the two estates associated with the establishment and ongoing operation of the Cathedral, the Bishopric Estate and the Dean and Chapter Estate.

[93] These Estates are now continued by the Anglican (Diocese of Christchurch) Church Property Trust Act 2003 (CPT Act 2003). The CPT Act 1879 included a provision allowing income from the Dean and Chapter Estate to be applied “in second place” towards the “erection” as well as the “maintenance and repair of the fabric of the Cathedral Church of Christchurch”.³³ Section 2 of the 1879 Act defined the building in the following terms:

The Cathedral Church of Christchurch means the cathedral in connection with the Church of England, situated in that part of the City of Christchurch known as Cathedral Square, the site whereof was conveyed to the said Bishop of Christchurch by [the Cathedral Square Ordinance 1858].

[94] It is noteworthy that “the cathedral” was used in this definition at a time when construction of the Cathedral was far from complete and it had not yet been consecrated.

[95] Mr Cooke argued that the CPT Act 2003 confirmed that the Cathedral Trust relates to the particular building at 1 Cathedral Square. He relied on the definition of

³³ CPT Act 1879, s 21(8).

“Cathedral” in the 2003 Act for that proposition. This definition is set out at s 4, and reads “Christchurch Cathedral in Cathedral Square in Christchurch”.

[96] Mr Cooke acknowledged that the CPT Act 2003 does not itself set out the terms and conditions of the Cathedral Trust, but said that the definition of “trust property” in s 4 includes all property held on trust by the CPT for any object or purpose relating to the Anglican Church in the Diocese, and therefore includes property held subject to the Cathedral Trust. Under s 6 of the CPT Act 2003, the function of the CPT is to hold and administer trust property in accordance with the Act.

[97] Mr Cooke argued that, because the CPT Act 2003 continues the two ancillary trust funds that had been established by the CPT Act 1879, the Bishopric Estate and the Dean and Chapter Estate, it confirmed the nature of the Cathedral Trust. His argument is based on the premise that the Bishopric Estate and the Dean and Chapter Estate exist for the purpose of ensuring that Christchurch Cathedral continues as a living institution at the heart of Christchurch.

[98] Mr Cooke bases that contention on the fact that the Bishopric Estate is held on the primary trusts to provide a suitable residence for the Bishop and the Bishop’s family and the payment of remuneration to the Bishop,³⁴ while the Dean and Chapter Estate has as the primary trusts the payment of the Dean’s remuneration and the provision of a residence for the Dean and Dean’s family.³⁵ The secondary trusts of the Dean and Chapter Estate include the following:

- (a) to maintain the services in, and activities of, the Cathedral;³⁶
- (b) to keep the Cathedral and its precincts in good repair;³⁷

³⁴ CPT Act 2003, s 15.

³⁵ CPT Act 2003, s18.

³⁶ CPT Act 2003, s19(c).

³⁷ CPT Act 2003, s19(e).

(c) to maintain and repair the Cathedral.³⁸

[99] Mr Cooke attached great importance to the secondary trust to maintain and repair the Cathedral and the fact that the 2003 Act does not refer to the erection of a cathedral, but only the maintenance and repair. We do not see that as particularly significant: it simply reflects that by 2003 the Cathedral had been erected, whereas it was still a work in progress in 1879.

[100] Mr Cooke said it was inconsistent with the trust relating to the Dean and Chapter Estate for the CPT to say that it had a discretion to deconstruct the Cathedral in order to build a new one, because the trust funds were established for the very purpose of maintaining and repairing the current building and under s 6 they are required to hold and administer trust property in accordance with the CPT Act 2003.

[101] Mr Ormsby disputed the significance of the CPT Act 2003 in relation to the present dispute. He said it was clear that the Dean and Chapter Estate did not include the Cathedral because the property comprising that estate is listed in Schedule B to the CPT Act 1879 and that does not include the Cathedral site. We agree. The CPT Act 2003 defines the Dean and Chapter Estate by reference to the CPT Act 1879 so the situation that applied under the CPT Act 1879 also applies in relation to the CPT Act 2003.

[102] We accept Mr Ormsby's submissions that there is nothing in the CPT Act 1879 or the CPT Act 2003 that purports to modify the terms of the Cathedral Trust as described in the Ordinances of 1858, 1859, 1864 and 1872. The CPT Act 1879 "ceases and determines" all trusts relating to the lands described in Schedules A and B of that Act³⁹ and then creates the new trusts for the Bishopric Estate and the Dean and Chapter Estate.⁴⁰ These provisions have no effect on the ongoing existence of the Cathedral Trust and do not purport to alter its terms. Nor do any other provisions of the 1879 Act.

³⁸ CPT Act 2003, s19(h). The equivalent provision in the CPT Act 1879, s 21(8) authorised the application of income in second place towards "the erection, maintenance and repair of the fabric of the Cathedral Church of Christchurch".

³⁹ CPT Act 1879, s 6. Schedule A sets out the property of the Bishopric Estate and Schedule B sets out the property of the Dean and Chapter Estate.

⁴⁰ CPT Act 1879, Part 2 and Part 3.

[103] While it is true that “trust property” is defined widely enough in the CPT Act 2003 to include the Cathedral, that does not mean that all the provisions of that Act apply in relation to the Cathedral Trust. In particular, the provisions relating to the Dean and Chapter Estate apply only to that Estate – they have nothing to do with the Cathedral Trust and do not assist in interpreting the Cathedral Trust. Those provisions of the CPT Act 2003 that do apply in relation to the Cathedral Trust do not have any bearing on the issues before us.

[104] Chisholm J was also unimpressed with this argument. He did not think that the fact that the powers listed in s 19 relating to secondary trusts permitted the CPT to make funds available for the repair and maintenance of the Cathedral meant they had an obligation to do so.⁴¹ We agree. All s 19 provides is for the CPT to apply funds towards maintenance and repair as part of a secondary trust, assuming that the primary trusts have already been satisfied.

[105] Chisholm J was also unable to see how the existence of the powers in s 19(e) and (h) revealed a statutory intention that the Cathedral is to be preserved in its current form indefinitely.⁴² We agree with this also. All that Parliament did in s 19 was empower the trustees to apply capital and/or income from the Dean and Chapter Estate towards the maintenance and repair of the Cathedral if the primary purposes had been satisfied and the trustees so decided. That did not oblige them to do this, however.

[106] Mr Cooke argued that Chisholm J had been wrong to read down the power to apply capital and/or income from the Dean and Chapter Estate towards maintenance and repair of the Cathedral. He argued that s 19 had to be read in conjunction with s 6(1) of the CPT Act 2003, under which the CPT is to hold and administer trust property in accordance with the CPT Act 2003. We do not see why that changes anything. The CPT could administer the trust property referred to in the CPT Act 2003 in accordance with the CPT Act 2003 without ever spending any money on the maintenance and repair of the Cathedral. That would not place them in breach of the

⁴¹ At [126].

⁴² At [127]–[128].

2003 Act, and would place them in breach of the Cathedral Trust only if they failed to meet one of their obligations under that trust.

[107] Mr Cooke's argument also requires us to interpret the definition of "Cathedral", which is "Christchurch Cathedral in Cathedral Square in Christchurch", as somehow only encompassing the building standing at the time that the CPT Act 2003 was passed. On that basis, had the Cathedral been totally destroyed by the earthquakes and replaced with a new cathedral, the definition would not apply, even though there was an Anglican cathedral standing in Cathedral Square in Christchurch called Christchurch Cathedral. Interpreting the definition in that way would produce the nonsensical result that the definition did not apply to the new cathedral even though it fitted exactly the description set out in the CPT Act 2003.

[108] With respect to Mr Cooke, we see his argument based on the CPT Act 2003 as ignoring the reality that the Bishopric Estate and the Dean and Chapter Estate are trusts that have primary objects that do not have any particular relationship with the Cathedral at all. Even the secondary objects of the Bishopric Estate have nothing to do with the Cathedral itself. The fact that secondary trusts in relation to the Dean and Chapter Estate empower the trustees to maintain and repair the Cathedral places no obligation on them and does not affect the terms of the Cathedral Trust.

[109] This argument is also something of a two-edged sword, because s 7 of the CPT Act 2003 empowers the CPT to exercise any of the powers set out in Schedule 1 to the CPT Act 2003 and those set out in the Trustee Act 1956. As Mr Johnson, who argued this aspect of the case for the CPT, pointed out, the powers set out in Schedule 1 of the CPT Act 2003 include the power to build on or develop any property whatsoever,⁴³ and the power to enter into such contracts or do or perform such things as in the opinion of the CPT will be for the benefit of any trust administered by it.⁴⁴ Mr Johnson argued that Schedule 1 gives the CPT the power to deconstruct the current Cathedral and construct a new cathedral, if the CPT considered that in light of the damage to the current Cathedral this would best serve the spiritual dimensions of the Cathedral and the uses of the Church. We agree.

⁴³ CPT Act 2003, Schedule 1, cl 14.

⁴⁴ CPT Act 2003, Schedule 1, cl 17.

Result

[110] We conclude that the Judge correctly interpreted the Cathedral Trust and that there is no basis for our intervention in the outcome of the High Court decision. We therefore dismiss the appeal. The orders made by the High Court Judge are confirmed. The High Court Judge adjourned the proceeding so that the CPT could reconsider its position and complete its decision having regard to the High Court judgment. As we have upheld the High Court order, it is appropriate to remit the matter to the High Court so that the process contemplated by Chisholm J can be completed. We make an order to that effect.

Costs

[111] Costs should follow the event. The appellant must pay to the first respondent costs for a standard appeal on a band A basis and usual disbursements. We certify for two (but not three) counsel.

Solicitors:

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