



Proactive Release

The following Cabinet material has been proactively released by the Department of the Prime Minister and Cabinet, on behalf of Hon Poto Williams, Associate Minister of Greater Christchurch Regeneration:

Christ Church Cathedral Reinstatement Order 2020

The following documents have been included in this release:

Title of Paper: Christ Church Cathedral Reinstatement Order 2020 (CAB-20-SUB-0409 refers)

Title of Minute: Christ Church Cathedral Reinstatement Order 2020 (CAB-20-MIN-0409 refers)

Title of Paper: Facilitation of Christ Church Cathedral's Reinstatement (DEV-20-SUB-0058 refers)

Title of Minute: Facilitation of Christ Church Cathedral's Reinstatement (DEV-20-MIN-0058 refers)

Report on Decisions Made in Approving the Draft Christ Church Cathedral Reinstatement Order 2020

Including the following submissions documents:

Summary of Written Comments

Christ Church Cathedral Reinstatement Order 2020 – Written Comments

Christ Church Cathedral Reinstatement Review Panel's Recommendations on the draft Order

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant section of the Act that would apply has been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to redaction code:

- 9(2)(a), to protect the privacy of natural persons.
- 9(2)(g)(i), to maintain the effective conduct of public affairs through the free and frank expression of opinion.
- 9(2)(i), to enable commercial activities to be carried out by Ministers or the Crown, without prejudice or disadvantage.

IN CONFIDENCE

Office of the Associate Minister for Greater Christchurch Regeneration
Chair, Cabinet Business Committee

CHRIST CHURCH CATHEDRAL REINSTATEMENT ORDER 2020

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Christ Church Cathedral Reinstatement Order 2020 (the Order).

Executive Summary

- 2 The Government supported the reinstatement of the earthquake-damaged Christ Church Cathedral (Cathedral) by passing the Christ Church Cathedral Reinstatement Act 2017 (the Act). Under the Act Orders in Council can be made to facilitate reinstatement [CAB-17-MIN-0521 refers].
- 3 Cabinet agreed to the development of the Order to modify the process for future resource consent applications for the Cathedral, including:
 - 3.1 treating “restricted discretionary” and “discretionary” activities as “controlled” activities under the Resource Management Act 1991 (RMA); and
 - 3.2 preventing public notification of resource consent applications.
- 4 The Order has been drafted and has been subject to all the requirements set out under the Act. As a consequence of feedback and recommendations received on the draft Order during the required statutory processes, I have made technical changes to the draft Order. These changes have focused on strengthening protections for the London Plane trees and the Citizen’s War Memorial, and to prevent the full demolition of the Cathedral. No changes have been made which changed the policy intent outlined to Cabinet.
- 5 I consider that the draft Order meets the requirements set out in the Act. The draft Order will help reinstate the Cathedral to the heart of Christchurch, promoting regeneration in the central city. Compared with processes outside the Act it will help ensure the efficient, cost effective and certain reinstatement of the Cathedral. I intend to recommend the making of the draft Order to the Governor-General.

Policy

Background

- 6 After six years of litigation deadlock and extensive negotiations, the Crown brokered an agreement with the owner of the Cathedral to reinstate the

earthquake-damaged building. One of the commitments the Crown made was passing the Act [CAB-17-MIN-0521 refers].

- 7 The Act facilitates the Cathedral's reinstatement, recognising its contribution to Christchurch, its importance to earthquake regeneration, and its heritage value. This includes facilitating reinstatement in a manner that is faster, and/or more cost-effective and/or certain, than using processes outside the Act (section 4 refers). The Act enables this by an Order in Council (Order) mechanism.
- 8 Stabilisation of the Cathedral began in May 2020 and a concept design for reinstatement based on the definition of "reinstatement" in the Act has been agreed by the Cathedral's owners and the Christ Church Cathedral Reinstatement Trust (the fundraiser for the project).

Using normal resource consent processes would cause further delays, more costs and uncertainty

- 9 Christ Church Cathedral Reinstatement Limited (the project manager for reinstatement) is concerned that using normal processes for future resource consent applications would cause further delays, more costs and uncertainty.
- 10 The reinstatement of the Cathedral will likely involve activities that are "restricted discretionary" or "discretionary" under the Resource Management Act 1991 (RMA). This includes removing the Citizens' War Memorial and the possible removal of up to three protected trees from the site. Resource consent applications for reinstatement would very likely be publicly notified due to the special circumstances that surround the Cathedral, the public interest and the effects of the project. This means that using the normal processes for future resource consent applications for the Cathedral would likely create delays, increase costs and uncertainty.
- 11 Public notification and any appeal of a decision are likely to cause delays to the project of between six months and two years. I also note the extensive public input over the past nine years. Depending on the length of these delays, work on the project could potentially stop after the site is established and stabilised, adding further costs to re-establish the site once consent is granted. Every month of delay will cost \$300,000. This process does not have a certain outcome; an appeal may still result in a decision that does not facilitate reinstatement.
- 12 If the resource consent is declined, aspects of the Cathedral will have to be redesigned. This will cause almost \$1.9 million in additional costs for professional services such as architects and engineers, increase construction costs and create further delays. It will likely also have a detrimental impact on fundraising, as large donors are unlikely to commit their funds without understanding the full concept design.

The policy agreed upon by Cabinet

- 13 On 4 May 2020, Cabinet agreed to the drafting of an Order that would modify the normal process for resource consent applications under the RMA to streamline the consenting process for the reinstatement [DEV-20-MIN-0058 and CAB-20-MIN-0189 refer].
- 14 The Act required me to undertake engagement. I issued an invitation to the public, local authorities and Te Rūnanga o Ngāi Tahu. I received 68 comments with a mixed range of views. In response to this feedback, I decided to make minor technical changes to the draft Order, to provide for the ability of consent authorities to place further controls over the removal of the Citizens' War Memorial and London Plane trees, heritage management and urban design. This reflected the perspective of the Christchurch City Council, which suggested stronger controls in these areas and the concerns of some of the public about the removal of the Citizens' War Memorial and London Plane trees. I did not change any of the policy agreed to by Cabinet that underlies the Order.
- 15 Following these changes, I asked the Christ Church Cathedral Reinstatement Review Panel to review the draft Order and provide recommendations. I also sought written comments on the draft Order from the Regulations Review Committee and I consulted with the Minister for the Environment as required in the Act. The feedback and recommendations received through these processes were generally supportive, although the Review Panel recommended some drafting changes to the Order. As a consequence, I made further changes to the draft Order to:
- 15.1 take a more conservative approach in relation to the removal of the Citizens' War Memorial and London Plane trees; and
 - 15.2 limit reinstatement to ensure that the Cathedral cannot be fully demolished and replaced with a new building.
- 16 The resulting final draft Order remains consistent with the original policy intent as discussed in my earlier Cabinet paper. However, I feel that the Order is improved as a result of this consultation. In particular, there is further protections added for the Citizens' War Memorial and London Plane trees to ensure that the reinstatement process will only affect them, if necessary.
- 17 In summary, the Order:
- 17.1 treats all restricted discretionary and discretionary activities relating to the reinstatement of the Cathedral as controlled activities;
 - 17.2 prevents the notification of resource consent applications relating to the rest of the reinstatement work on the Cathedral;
 - 17.3 provides an ability for consent authorities to impose conditions on the resource consents in relation to certain matters, including appropriate conditions for the removal of the Citizens' War Memorial and the London Plane trees (if necessary for reinstatement);

- 17.4 requires the processing of resource consent applications within 40 days;
- 17.5 requires consenting authorities to seek and consider written comment from specified parties within 15 days, during the 40 day processing time;
- 17.6 prevents the appeal on a resource consent decision, except by the applicant; and
- 17.7 allows the consent authorities to enforce conditions, but removing the ability of the public to do so.
- 18 An extensive amount of public input has gone into the future of the Cathedral over the past nine years, including through the process in the Order. I therefore consider the approach taken by the Order, preventing public notification and appeals, is appropriate.
- 19 Since May 2020 the Cathedral site has become a hive of activity as stabilisation of the building has begun. It is necessary and desirable that this momentum does not cease. The Order will help realise the Cathedral's contribution to cultural, social and economic wellbeing in Christchurch, its importance to Christchurch and its heritage value.

Timing and 28-day rule

- 20 I seek authorisation for the submission of the draft Order to Executive Council on 7 September 2020. The Order is proposed to come into force on 9 October 2020, subject to the approval of Cabinet and the Executive Council.

Compliance

Requirements of the Act met

- 21 Under section 9(1) of the Act, I must not recommend an Order to the Governor-General unless I am satisfied that I have complied with the relevant requirements set out by the Act (sections 9 and 10 refer). I confirm that:
- 21.1 I am satisfied that the proposed Order is necessary and desirable for the purpose of the Act (section 9(1)(a)(i) of the Act refers);
- 21.2 I am satisfied that the proposed Order does not breach section 12 of the Act (section 9(1)(a)(ii) of the Act refers);
- 21.3 I have "had regard to" the recommendations of the Review Panel and any comments received from Regulations Review Committee on the draft Order and statement of reasons (section 9(1)(d) refers);
- 21.4 I have consulted with the Minister for the Environment, being the Minister responsible for the Resource Management Act 1991 (section 9(1)(e) refers);

- 21.5 the engagement process under section 10 has been complied with and I have had regard to the written comments received (sections 9(1)(f) and 10 refer);
- 22 Section 9(3) provides an opportunity to repeat a process in 9(1)(b), (c), (d), (e), or (f), if I consider that given the differences between the draft it would be appropriate. I note that there are differences between the drafts of the Order, but each has refined and decreased the scope of it. Nothing new has been added to the Order. Christ Church Cathedral Reinstatement Limited is the one party that might be interested in providing more comments on a public engagement document but this must be balanced against the need for expediency for reinstatement. As such I do not consider there is a need to repeat any of the processes listed above.
- 23 I therefore seek Cabinet's approval to submit the Order to the Executive Council.

Compliance on other matters

- 24 The effect of the Order does raise potential issues in terms of the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993, in particular with respect to section 27(1) of the New Zealand Bill of Rights Act which preserves the right to the observance of natural justice. This is because the Order will prevent the public notification of any resource consent application for the reinstatement work, reducing the rights of public participation under the RMA. There will also be no appeal rights, apart from for the applicant on the consent conditions.
- 25 I note that judicial review will still be available. The draft Order will also:
- 25.1 allow any party that the consent authority considers appropriate to make a written comment on a resource consent application; and
 - 25.2 include the ability to extend the timeframe for considering a resource consent application.
- 26 I note the public's views have been incorporated in many ways over the past nine years and the processes to hear those views have been fair. I do acknowledge that this may indicate that there could be further public interest in the resource consent application. However, I consider it necessary to limit these rights normally available to the public in order to support timely, certain and cost-efficient reinstatement.
- 27 The public were given further opportunity to comment during the written comment period on the draft Order and I have had regard to that feedback. As a result I included the "any other person the consent authority considers appropriate" in the list of the persons that can be notified. I note that this potentially means the consent authority can open written comment on the resource consent application to the general public, if it wishes.

- 28 The Order is itself also subject to judicial review, although the Act does impose a time limit on the application for review.
- 29 It is also necessary to limit the right to take enforcement action to the local authorities concerned and to Ministers of the Crown. This will enable the local authorities concerned to enforce the conditions of the resource consent, but removes the power of the general public to take enforcement action, irrespective of whether consent conditions are being complied with. It is unusual for the public to take this type of enforcement action but if such action was taken it could impede the reinstatement of the Cathedral.
- 30 The Order also complies with:
- 30.1 the principles of the Treaty of Waitangi;
 - 30.2 the principles and guidelines set out in the Privacy Act 1993 (if the regulations raise privacy issues, indicate whether the Privacy Commissioner agrees that they comply with all relevant principles);
 - 30.3 relevant international standards and obligations;
 - 30.4 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 31 The Regulations Review Committee has reviewed this Order and did not raise any concerns with it. In line with DEV-20-MIN-0058, I am reporting back to the Regulations Review Committee on the final content of the Order before the dissolution of Parliament on 6 September 2020.

Certification by Parliamentary Counsel

- 32 The Order was drafted by the Parliamentary Counsel Office and is certified as being in order for submission to Cabinet.

Impact Analysis

- 33 A Regulatory Impact Summary was prepared for this Order, in accordance with the necessary requirements, and was submitted when Cabinet approval was sought for the policy decisions (DEV-20-MIN-0058 and CAB-20-MIN-0189 refer).
- 34 A Regulatory Impact Panel, with members from the Ministry for the Environment and the National Emergency Management Agency considered that the Impact Summary met the quality assessment criteria.

Publicity

- 35 I intend to make a media statement announcing the Order after the Governor-General makes it on 7 September 2020.

Proactive release

- 36 I intend to proactively release this paper, and other relevant documents, with information redacted as necessary.

Consultation

- 37 The Treasury, the Department of the Prime Minister and Cabinet's Policy and Advisory Group, Ministry for the Environment, Ministry of Justice, Ministry of Culture and Heritage, Heritage New Zealand Pouhere Taonga, Department of Internal Affairs, Ministry of Business, Innovation and Employment and Land Information New Zealand have had the opportunity to be consulted on the draft Cabinet paper.

Recommendations

I recommend that the Cabinet Business Committee:

- 1 **note** that on 29 April 2020 the Cabinet Economic Development Committee agreed to the development a draft Order under the Christ Church Cathedral Reinstatement Act 2017 (the Act) to provide for a modified process for resource consent applications for the reinstatement of Christ Church Cathedral (Cathedral), including that:
 - 1.1 the consent authorities must grant resource consent subject to conditions;
 - 1.2 only specified persons (and other persons considered appropriate by consent authorities) will be able to make a written comment on the application;
 - 1.3 the time limit for processing applications will be limited with extensions limited;
 - 1.4 there will be no rights of appeal, apart from the applicant on the consent conditions;
 - 1.5 the Associate Minister for Greater Christchurch Regeneration would have approval of final details and other technical changes [DEV-20-MIN-0058 refers];
- 2 **note** that the Christ Church Cathedral Reinstatement Order 2020 will give effect to the decision referred to in paragraph 1 above;
- 3 **authorise** the submission to the Executive Council of the Christ Church Cathedral Reinstatement Order 2020;
- 4 **note** that the Christ Church Cathedral Reinstatement Order 2020 will come into force on 9 October 2020;
- 5 **note** that the Act requires that as the responsible Minister I must not recommend the making of an Order to the Governor-General unless:

- 5.1 I am satisfied that the proposed Order is necessary and desirable for the purpose of the Act (section 9(1)(a)(i) of the Act refers);
 - 5.2 I am satisfied that the proposed Order does not breach section 12 of the Act (section 9(1)(a)(ii) of the Act refers);
 - 5.3 I have “had regard to” the recommendations of the Review Panel and any comments received from Regulations Review Committee on the draft Order and statement of reasons (section 9(1)(d) refers);
 - 5.4 I have consulted with the Minister for the Environment, being the Minister responsible for the Resource Management Act 1991 (section 9(1)(e) refers);
 - 5.5 the engagement process under section 10 has been complied with and I have had regard to the written comments received (sections 9(1)(f) and 10 refer);
- 6 **note** that the requirements in paragraph 5 have been met; and
 - 7 **note** that I intend to recommend the Christ Church Cathedral Reinstatement Order 2020 to the Governor-General.

Authorised for lodgement

Hon Poto Williams

Associate Minister for Greater Christchurch Regeneration



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Christ Church Cathedral Reinstatement Order 2020

Portfolio Associate Greater Christchurch Regeneration

On 24 August 2020, Cabinet:

- 1 **noted** that on 29 April 2020, the Cabinet Economic Development Committee agreed to the development of a draft Order under the Christ Church Cathedral Reinstatement Act 2017 (the Act) to provide for a modified process for resource consent applications for the reinstatement of Christ Church Cathedral, including that:
 - 1.1 the consent authorities must grant resource consent subject to conditions;
 - 1.2 only specified persons (and other persons considered appropriate by consent authorities) will be able to make a written comment on the application;
 - 1.3 the time limit for processing applications will be limited with extensions limited;
 - 1.4 there will be no rights of appeal, apart from the applicant on the consent conditions;
 - 1.5 the Associate Minister for Greater Christchurch Regeneration would approve the final details and other technical changes;

[DEV-20-MIN-0058]
- 2 **noted** that the Christ Church Cathedral Reinstatement Order 2020 will give effect to the decision referred to in paragraph 1 above;
- 3 **authorised** the submission to the Executive Council of the Christ Church Cathedral Reinstatement Order 2020 [PCO 22936/2.0];
- 4 **noted** that the Christ Church Cathedral Reinstatement Order 2020 will come into force on 9 October 2020;
- 5 **noted** that the Act requires that as the responsible Minister, the Associate Minister for Greater Christchurch Regeneration must not recommend the making of an Order to the Governor-General unless she:
 - 5.1 is satisfied that the proposed Order is necessary and desirable for the purpose of the Act (section 9(1)(a)(i));
 - 5.2 is satisfied that the proposed Order does not breach section 12 of the Act (section 9(1)(a)(ii));

- 5.3 has “had regard to” the recommendations of the Review Panel and any comments received from Regulations Review Committee on the draft Order and statement of reasons (section 9(1)(d);
- 5.4 has consulted with the Minister for the Environment, being the Minister responsible for the Resource Management Act 1991 (section 9(1)(e);
- 5.5 the engagement process under section 10 has been complied with and the Associate Minister has had regard to the written comments received (sections 9(1)(f) and 10;
- 6 **noted** that the Associate Minister for Greater Christchurch Regeneration confirms that the requirements referred to in paragraph 5 above have been met.

Michael Webster
Secretary of the Cabinet
