

PALMERSTON NORTH CITY COUNCIL
RC LU 5331
ALL SAINTS CHURCH – 338 CHURCH STREET
MINUTE 2 OF HEARING PANEL

Introduction

1. In Minute 1 (dated 11 November 2020) we requested that all parties advise us of the experts they intend to call, and their corresponding fields of expertise, in respect to the hearing. Around the time of the due date (17 November 2020), we had received, via the Hearing Administrator, Ms Heather McGregor, memoranda from three parties – Counsel for Applicant (Mr Maasen), a representative of a submitter (Ms Dangerfield, Heritage NZ) and the Counsel for the Council (Mr Jessen). Each party set out a list of experts presently retained by them in support of the proceedings and the availability of such to attend any expert conferencing.
2. Those responses met the requirement that we signalled. Unfortunately, before we had time to respond and make suggestions for conferencing, an exchange of memoranda between the Applicant and the Council ensued which appears to have now cast some doubt for some of the parties on the utility of any conferencing. We do not intend to repeat the concerns of the two Counsel other than to say there is a disagreement between them on two central issues; namely:
 - a. Whether there are genuine opportunities for peer-to-peer ‘expert’ conferencing based on the list of eight people whom the Applicant proposes to call at the hearing and make available for expert conferencing;
 - b. The role and professional obligations of Mr Bowman (listed as a heritage expert for the Council).
3. Our response to these two matters, along with a suggested way forward follows.

Expert Conferencing

4. Ultimately it is up to the parties to determine how to progress this. We say this because we cannot compel conferencing to occur. We can simply request or suggest it which is what we did in our initial minute. In doing so, we explicitly acknowledged that expert conferencing enables recognised experts in a particular field (the examples we gave being urban design, heritage, economics and planning) to identify key matters of agreement and disagreement, which will hopefully assist our understanding of the key issues in contention and reduce unnecessary duplication in evidence which in turn, should make for a more efficient hearing process overall. Further, we saw the deferred hearing date as affording an immediate opportunity for expert conferencing to occur over the coming weeks.
5. In terms of issue a. above, whilst we understand the Applicant’s desire to present the full breadth of its expertise it has to hand within the church to inform the heritage assessment, we have difficulties with this approach as it relates to peer-to-peer expert conferencing. To this end, we share Mr Jessen’s observation that such an approach is not expert conferencing per se; but is more akin to mixed conferencing between persons with self-identified expertise in various discrete fields and that

some of these diverse fields of expertise are not suitable for peer-to-peer debate and rather should be expressed through written evidence at the hearing.

6. On the above basis, it is still our preference that expert conferencing between the Applicant, Submitter and the Council occur in relation to the matters of heritage, urban design and planning and that it occurs in accordance with the code of conduct for expert witnesses as set out in part 7 of the [Environment Court's Practice Note](#).
7. The experts for peer-to-peer conferencing for the Applicant, Submitter and Council appear to be:
 - a. Heritage¹: Mr Brown (Applicant), Ms Stevens (Council), and Dr Jacobs (Heritage NZ)
 - b. Urban Design: Dr Gjerde (Council) and Mr Cogan (Applicant)
 - c. Planning²: Mr O'Leary (Council) and Mr Forrest (Applicant)
8. Whether the Applicant participates in this exercise with its above listed heritage, urban design and planning witnesses is entirely up to it, but such participation is nevertheless readily encouraged by this Panel. To be clear, this is not to undermine the importance of the participation of other witnesses for the Applicant; however, we expect that it would be more productive to hear from them in evidence and at the hearing, than in conferencing involving no peer being called by other parties.
9. As for the timing of any conferencing undertaken, we agree with the observations of both the Applicant and the Council that the original timetable was tight but that was a function of a desire to facilitate some initial conferencing ahead of the production of the s42A report so as to hopefully narrow the issues in contention. We also acknowledge that the original intended momentum for conferencing has been reduced with the events of last week; however, with nine working days still available between now and the required circulation of the s42A report there is still potential for initial conferencing on heritage and urban design topics (either individually or together) to occur and to have some benefit. In addition, we agree with the suggestion of the Council that an alternative possibility for expert planning conferencing is for it to occur at the conclusion of the evidence exchange and before the hearing commences.
10. Finally, and in an endeavour to assist whichever experts participate in conferencing, we have formulated a series of questions (attached to this minute) on each of the three topics upon which we would appreciate discussion and feedback on. Participants in conferencing are by no means limited to these questions and participants are best placed themselves to determine what additional questions should be posed. As mentioned in Minute 1, we do not envisage the need for the conferences to be facilitated, but if parties would prefer facilitated sessions, they should signal that to Ms McGregor as soon as possible.

¹ We have not listed Mr Bowman given the second issue we address below and also as the Council has offered his non-attendance so as to address the applicant's concern with Mr Bowman's role

² We have not included Geraldine Baumann in the list given she is described as Senior Legal Advisor, Heritage New Zealand and not as a Planner.

11. For the above reasons, we make no further requests other than to ask whatever conferencing is undertaken is recorded in the form of a Joint Witness Statement and that these are sent to Ms McGregor the earliest possible time following the completion of conferencing for each topic.

Mr Bowman

12. In terms of issue b. above, Counsel for the Applicant has raised a concern about Mr Bowman's role in the proceedings. This stems from the fact that he authored the Conservation Management Plan lodged by the Applicant and whether he has ongoing duties to the Applicant as opposed to the peer review role he has been commissioned to perform by the Council.
13. This is not a matter that the Panel need concern itself with so long as Mr Bowman is complying with the code of conduct for expert witnesses as set out in the Environment Court's Practice Note. That aside, this matter is best addressed on a Counsel-to-Counsel basis.

Hearing date/evidence circulation

14. Minute 1 advised that the hearing will be held during the week of 18 January 2021. This is still the case albeit that specific dates have now been set – with the hearing scheduled for **20-21 January** with 22nd January as a reserve day if required. A formal hearing notice, including details on times, venue, etc will be sent by Ms McGregor this week.
15. The evidence circulation timetable set out in Minute 1 is unchanged.
16. For any questions of clarification regarding the above, please email Ms McGregor in the first instance.



DJ McMahon
Hearing Panel Chair

For and on behalf of:
Commissioner J Black
Commissioner H Lutz
Commissioner DJ McMahon

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ATTACHMENT TO MINUTE 2 OF HEARING PANEL

Suggested Conferencing Questions

Heritage

1. Do the experts agree that the summary of the Church's heritage values as identified in Appendix G to the application (pp. 43-50) is representative and generally appropriate as a baseline for the assessment of the proposal's effects on historic heritage? If not, why?
2. Do the experts agree that the partial demolition of the existing church will result in the overall retention of significant heritage values, authenticity and integrity? If yes, what are those significant values; and if no, why?
3. Do the experts agree that the proposed additions are generally sympathetic to the identified heritage values of the Church? If not, why?
4. Related to the above, can the experts assist us with an understanding of the extent to which the proposed additions and alterations avoid features of particular heritage significance?
5. Do the experts agree the extent to which the proposal is consistent with the Conservation Plan prepared by Mr Ian Bowman? If not, why?
6. If consent is granted for the proposal, do the experts agree the specific matters that should be managed by conditions for the purposes of avoiding, remediating or mitigating effects on historic heritage? If so, what are those matters? If not, please provide reasons for difference in opinion.

Urban Design

1. Do the experts agree that the proposed redevelopment will maintain or enhance a safe, convenient and pleasant pedestrian environment? If not, why?
2. Do the experts agree that the proposed frontage provides strong visual connections with the street? If not, why?
3. Do the experts agree whether the proposed design will amount to a "high quality" building design that acknowledges and responds to the context of the site and surrounding environment? If not, why?
4. Do the experts agree that the proposed addition provides active street frontage and enhances the visual quality and design of the Church at street level? If not, why?
5. Do the experts agree whether the proposed additions and alterations respect the scale of the existing building and avoid visual dominance? If not, why?

6. Do the experts agree whether the proposed additions and alterations reflect the architectural style and character of the building? If not, why?
 7. Do the experts agree on the full nature and scale of the proposal's effect on public safety, visual amenity, pedestrian amenity, and efficient, convenient & safe access? If not, what are the different views and reasons for them?

Planners

1. Do the experts agree the full extent of matters under s104(1)(b) of the RMA that are relevant to this proposal? If not, what are the matters of difference and the reasons for the differing views? Related to this, is there any disagreement between the experts as to the proposal's fit or consistency with any of the s104(1)(b) matters of relevance? If yes, what matters are in dispute and what are the reasons for the differing views?
2. Do the planners agree that the proposal has been informed by a thorough analysis of the alternative options available to the proposed partial demolition of the Church, including social, cultural, economic and environmental costs and benefit? If not, what are the differing views in this respect and the reasons for the differing views?
3. In the event that consent is granted, do the experts agree what conditions should be imposed. If not, what are the matters of difference and the reasons for the differing views on those matters?