

BEFORE THE PALMERSTON NORTH CITY COUNCIL

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF an application by the Anglican Diocese of Wellington for the refurbishment, strengthening and extension to the heritage-listed building known as All Saints Church, 338 Church Street, Palmerston North

**MEMORANDUM OF COUNSEL FOR THE APPLICANT ON
REPORT CONCERNING MR JESSEN'S SUBMISSIONS
DATED 3 MARCH 2021**

MAY IT PLEASE THE PANEL:

- [1] The Church thanks the Panel for the opportunity to respond to the report on the legal submissions for the reporting officers. The Church does not accept that report's reasoning or conclusion. It considers that the Church and the submitters in support have not received an actual or perceptually fair hearing and what occurred was unlawful. The Church's proposition is simple: neither the reporting officers nor the Council may engage a lawyer to advocate against the application at the hearing. That becomes a principal matter in contention that must be addressed in the decision under RMA s 113.
- [2] The Church is captive in the enclosure of the Council's process and cannot do anything practical to address the issue when the Council does not even see one. Therefore, the Church can only reserve all her rights, including addressing the legitimacy of the process under RMA s 290A if the need arises. More detailed reasoning on the Church's position is set out below.
- [3] In addressing this matter of contention, it should be noted in the Panel's decision that the Church agrees with the report author's conclusions that:
- (a) Mr Jessen's submissions for the reporting officers are advocacy. That is also plainly correct for the reasons given in the Church's supplementary memorandum that the report author did not have.
 - (b) The advocacy for the reporting officers was "unusual". A synonym for 'unusual' is 'extraordinary'. It is submitted what happened was unprecedented, and the Chair, with his experience, may agree.
 - (c) The introduction of legal argument in the manner that occurred has been unfair to submitters because it was not pre-circulated and came in after the submitters addressed the Panel. That unfairness, however, is now incurable since the hearing has been closed but for a written right of reply by the Church.
- [4] The Panel will need to decide whether the submissions were a s42A report. The Church disagrees with the report authors that Mr Jessen's submissions

were a s42A report on the application as specified in s42A and says that is manifestly incorrect because:

- (a) The submissions were made at the hearing and not pre-circulated following the RMA; and
- (b) The report was not *information* in the application as authorised under RMA s42A(1). Rather, it was advocacy prepared and aimed at the evidence and submissions presented at the hearing. Please closely consider the text of that cited provision.

- [5] The Church's primary concern with the report is that it is an opinion piece, not a legal opinion. The major basis for that submission is that on at least two occasions, the report refers to the absence of text in the RMA to support what happened, i.e. the reporting officers appointing an advocate to advocate against the application. However, in each case, the report author says that absence is not conclusive. Conventionally, the law is conveyed by text, and that is why lawyers interpret text: see the Interpretation Act 1999. The RMA is a code, and Part 4 codifies the hearing parameters in the text. In this case, the report's parameters are nothing more than the report author's opinion as no other authoritative source of law is given. For example, the report author creates an imaginary line that is not crossed, but no one knows what the line and the authority for it is.
- [6] On the other hand, the Church's argument follows the RMA text about roles and the fact the Council under the scheme of Part 4 has the function of the regulator.
- [7] Mr Jessen says that the Panel authorised the submissions implicitly in its pre-hearing directions. The Church accepts the Panel's directions on expert conferencing were not lawful, but the Church has difficulty accepting that the Panel also empowered or cultivated the Council to advocate against the application. That is a matter for the Panel, and if Mr Jessen is correct, it does not change the Church's view on the law or fairness. The Council has no right to fairness to be able to advocate against applications before it as it has a higher function as a regulator to host those who have an interest.

The report does not refer to any authority in any common law jurisdiction where fairness requires the regulator the opportunity to advocate against the application before it.

[8] The Panel may also wish to reflect on the propriety of the situation that the Church, found itself the subject of extraordinary measures by the Council to defeat its application for merely pursuing as volunteers a proposal to salvage the Church's future.

[9] The Church will provide concise reply submissions and evidence on all other matters in contention; however, it requests some latitude in timing. At this stage, the Church is working towards achieving a reply in about 10 working days. It will not address the matters in this memorandum any further except concerning the weight to attach to the S 42A report author's evidence following the appointment of an advocate for them.

A handwritten signature in blue ink, appearing to read 'John Maassen', with a horizontal line extending to the right and a small checkmark below the start of the signature.

John Maassen
Counsel for the Applicant