

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*

**LEGAL SUBMISSIONS AND STATEMENTS IN REPLY FOR THE
APPLICANT**

DATED 22 MARCH 2021

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Introduction

- [1] These reply submissions are short because the Church's opening submissions are comprehensive. These reply submissions only address matters where the Church believes it can advance the Panel's understanding of the issues.
- [2] The Panel received a lot of sincere evidence of a spiritual character from people in support of the application that a lawyer cannot convey well and that needs to be heard from the heart not the head applying wisdom. There was also the erudite evidence of Dr Moxon on Anglican Church's theological and liturgical approach to church design and on the conception of this design as a way of bringing that spirituality into form and place on the site. That spiritual dimension of the case raises special cultural heritage issues not found with commercial or public heritage buildings.
- [3] Attached to these submissions is a reply statement by Mr Forrest and by Mr Neal addressing new matters that arose during the hearing, including addressing the critique by the Council in legal submissions of some of the evidence presented by the Church. The reply to that new material is best made by the witnesses themselves as a statement in reply rather than through submissions. They are entitled to do so. It is not introducing new evidence but merely responds to the step of the Council to advocate against the application and critique the Applicant's evidence at the hearing. Additionally, Mr Neal addresses information received from the Council after the hearing.
- [4] These reply submissions concern some of the 'principal issues in contention' under the RMA, s 113(1). These submissions refer to them as ("PICs") in the table of contents as an acronym for 'principal issue in contention' and they are numbered 1 – 6.
- [5] The Panel must address these important matters by reaching express conclusions on them with reasons, including conclusions on their relevance and weight where appropriate.

PIC 1 – Activity Classification

- [6] The opening submissions for the Church contended that the Proposal involves *alterations and additions* to a Category 1 building under Rule 17.7.2. The Proposal is, therefore, a restricted discretionary activity. The Panel will recall Mr O'Leary

confirmed that the other non-compliances with the Plan did not alter that activity status.

- [7] The Council contended that the Proposal is *partial demolition* and hence it is fully discretionary.
- [8] The Council accepted that partial demolition could be a *alterations and additions* and the correct categorisation is a question of degree. That is not saying anything more than what is self-evident. After all, the definition of ‘alter’ in the dictionary is to change *character or composition of something often in a comparatively small but significant way*. In the context of building the definition includes structural changes. Also, the definition of *demolition* in the Plan expressly contemplates that *alterations and additions* can involve partial destruction or demolition by saying, “*excludes the partial destruction of a scheduled building which is associated with an approved external alteration and addition.*” That Plan approach is consistent with the Plan’s promotion of adaptive use of heritage buildings to secure their continued use and maintenance.
- [9] In addition to considering the text and definitions, the Church approaches the issue of categorisation in two ways.
- [10] First, as a matter of practical judgement, the Church contends that the Proposal is *alterations and additions* in the ordinary sense in which that term is used in the building industry. It fits better than the category *partial demolition* as a description of the Proposal. Dr Gjerde’s proposed southwestern annex would involve the destruction of part of the southwest wall and would also be an addition or alteration as contemplated by the District Plan. There is no principled basis for saying that the outcome should be different simply because the Church’s proposal operates on the frontage as Mr Jessen seemed to imply.
- [11] The second approach is to consider relevant factors affecting the scale of change by the alterations. The factors the Church proposes as relevant are:
- (a) Is the building’s footprint after destruction diminished by the alterations?
 - (b) Do the building’s existing primary structural features and roof extent remain more or less the same by the alterations?
 - (c) What is the relative scale of the change across the entire building?

- [12] The Proposal's alterations preserve the building's original footprint, its basic structural features and are comparatively small in scale considering the total building size.
- [13] Furthermore, as an important and additional dimension of the second approach the Church contends that the alterations and additions are a package to advance the functionality of the building to pursue the original use. It is therefore a composite of additions and alterations for the same use and not simply partial demolition.
- [14] Therefore, the Proposal is appropriately described as *alterations and additions*.

PIC 2 – The Scope of Liturgical Exemption

- [15] The liturgical exemption identified in the explanation to Rule 17.7.2 recognises that the scope of the discretion and the consideration of the policies and assessment criteria should not be undertaken in a way that imposes controls on the manner of religious or liturgical practice, use or observance. As explained in the opening submissions, church buildings have semiotic qualities, and liturgy is not confined simply to matters of internal arrangement and practice. The Church's arrangement of the church's structural configuration can have liturgical dimensions. The Plan's explanation is addressing the external alteration of buildings (because that is all it controls) and recognises the liturgical dimension such changes can have. The consequences of the liturgical exemption are the following:
- (a) The Council must not exercise powers and discretions to control liturgy or to challenge whether changes are liturgically necessary. All that is relevant is the impacts on the matters over which discretion is reserved.
 - (b) Because cultural heritage values include social and spiritual values the liturgical exemption correspondingly respects the connected community's exercise of choice to support its cultural and spiritual practices, and securing these benefits must be weighted appropriately.
- [16] The Panel's Chair questioned Church witnesses concerning whether or not the baptismal font could simply be moved more centrally. The response was that that is not liturgically sound without the Congregation processing through the main entrance centrally. There is no evidence that simply moving the font would meet

the Church's overall liturgical needs that informed the Proposal. It, therefore, would be going against the liturgical exemption to consider it a viable alternative.

- [17] Dr Gjerde's option of an annex on the southwestern side fails to respect the liturgical and spiritual considerations that are important to an assessment of whether that alternative is available and appropriate. Dr Moxon's evidence demonstrated powerfully a side entrance would be inappropriate and unorthodox.
- [18] There is, therefore, a pretence in Dr Gjerde's alternative proposal that the only consideration is to pursue an option that satisfies his architectural eye for better composition. That submission is not made unkindly because Dr Gjerde presented as a very thoughtful and reasonable person. Still, the fact that the alternative he put forward was made against the liturgical and spiritual requirements of the Church that were explained in detail at the hearing demonstrates an expert can determinedly operate and express opinions within the silo of their expertise. Dr Gjerde's singular design preoccupation could also be characterised as 'wilful and inconsiderate', to use his words, for that reason.
- [19] What the District Plan demands is the consideration of all of the factors and the liturgical exemption points to the need for care in the management of places of special spiritual significance.
- [20] Dr Gjerde's proposal would require the clergy and congregation to process into the building from the side rather than entering past the baptismal font and towards the altar in a central alignment. That has no parallel in established churches that are arranged in the way in which the All Saints Church is arranged internally in the classic layout. Dr Gjerde's proposal is unorthodox.
- [21] In the Cathedral of the Holy Spirit in Palmerston North, where there is an annex that is sometimes used for access to the church in addition to the centrally located great doors¹, the annex comes into a gathering atrium that is divided from the main church building by large glass barriers extending to the ceiling (framed by existing vaulted arches) with central doors providing a large enclosed gathering area. The way that the congregation, clergy and readers proceed to the altar past the pews is, therefore, in the conventional way.

¹ The parishioners at the time did not overrule the Jersey de Clere design with central doors as happened with All Saints.

- [22] To achieve that type of configuration would require significant structural changes to the All Saints' interior that would affect the integrity of the internal features and layout and is unworkable.
- [23] Mr Bowman was able to find one other example of a side entrance used by a church. The Church understands it has not been a success, and it is an outlier and we know little about it other than that it exists.
- [24] Mr Bowman knew what the Church's aspirations were, its consequences and yet stated them in the Conservation Plan without demur.
- [25] Based on the liturgical exemption and basic respect for spiritual communities' preferences the Panel should regard Dr Gjerde's alternative as inappropriate or at least involving trade-offs to spiritual and cultural values that the Church considered (and was entitled to consider) unacceptable.

PIC 3 – Relevance of New Zealand Bill of Rights and the Value of Freedom of Religious Expression

- [26] The Church's opening submissions present a detailed argument for the consideration of the New Zealand Bill of Rights, s 15 in the Panel's assessment. Indeed, the Church would go further and submit that the application of that provision means that refusing consent offends a fundamental constitutional principle of legality because the refusal in all the circumstances could not be *reasonably justified* under the New Zealand Bill of Rights s 5.
- [27] The Council denies, by unreasoned assertions, that the constitutional value of religious freedom has any relevance to the Panel's assessment. It is as if the Council considers the RMA sits completely outside rather than within the core societal values of the community expressed in law. It never has.
- [28] It is submitted that the constitutional value of religious freedom is relevant both to legality and to recognising and weighting the social and cultural benefits of the Proposal because that supports the freedom and the spiritual values of the connected community. That is relevant in either of the following ways under the plan and the RMA:
- (a) As a matter of discretion under Rule 17.7.2 because that allows consideration of the beneficial impacts on *cultural heritage* values including

social and spiritual values. Sustaining the faith community's values and the freedoms is intrinsic to their identity; or

- (b) If the Panel decides the activity is discretionary then the beneficial impacts on *cultural heritage* values including social and spiritual values because of how broadly *cultural heritage* is defined by the Plan and under RMA s 104(1)(c).

PIC 4 – Alternatives

- [29] Most of the legal submissions for the Council concerned Policy 1.4 and a sustained critique of Mr Forrest's evidence on the topic. The Council's submissions did not grapple with the diverse policy concerns of the Plan identified by Mr Forrest in his primary evidence.
- [30] Attachment 2 contains Mr Forrest's reply to those legal submissions and that demonstrates that Mr Forrest considered the main alternative (which is more or less Dr Gjerde's proposal) in Mr Forrest's cost/benefit assessment. Dr Gjerde's option of a southwest annex is no surprise; the southwest annex was a key alternative that CBAB considered and which Mr Forrest analysed as the "notional alternative".
- [31] The Council's allegation that neither the Church nor Mr Forrest appropriately considered alternatives is patently incorrect. The only place for an alternative equivalent facility was one more or less situated where Mr Gjerde placed it.
- [32] The truth is that the Council cannot accept that that southwest annex option has been discounted because it fails badly on a cost/benefit analysis under Policy 1.4 considering the impact on the apostolic, missional, and pastoral and liturgical values that are relevant under Policy 1.4. The reporting officers were deaf to these considerations in the cost/benefit analysis and call for more alternatives to be considered. That is simply an attempt to compel the Church to accept the Council's preference to preserve the integrity of the frontage rather than confront and respect the spiritual and cultural values informing the Church's choice.
- [33] The consideration of alternatives requirement should not be used to compel a spiritual body to accept alternatives that do not meet their social, spiritual and cultural needs for reasons that have been given fully and faithfully to the Panel. That is abusive and against New Zealand's constitutional values.

- [34] The Panel must, it is submitted, squarely confront the contest of values before it and not hide (as the reporting officers do) behind a spurious ‘alternatives’ argument as if the trade-offs between values can be resolved by the chimera of a new configuration not affecting the frontage and still meeting the church’s spiritual pastoral, apostolic and liturgical aspirations.
- [35] If the Panel agrees with the Church’s submission that the proposal is not partial demolition, then Policy 1.4 is either irrelevant or somewhat unimportant. However, even if it was applied, the Proposal has features that make it close to *alterations, and additions* and that can affect how Policy 1.4 is applied. The Proposal is undoubtedly not a relocation and it certainly does not alter the overall footprint or major structural elements of the existing building.
- [36] Furthermore it is hyperbole for the Council to say the direction in Policy 1.4 *to recognise* is strong and highly directive. It is less so than Policy 1.5 applying ordinary English.
- [37] Concerning, the first bullet point of Policy 1.4, it is submitted that the Church has demonstrated the overall retention of significant heritage values.
- [38] Concerning the second bullet point of Policy 1.4, that should not operate as an impossible barrier for applicants. An applicant can have special spiritual, social and cultural needs that affect the *available* options. Furthermore, nothing in Policy 1.4 suggests that the analysis of alternatives falls entirely on the Applicant. The process itself can (and in this case did) generate a sufficiently robust exploration of available alternatives and their assessment. Initially, the Council conveniently denied any responsibility for consideration of other options, but Dr Gjerde later helpfully laid out what he saw as the obvious alternative in a schematic. Ms Stevens proposal to replace the existing wooden doors with glass doors was a niggardly response to the Church’s stated aspirations and the Panel can draw its own conclusions from that.
- [39] In the end, any assessment of the degree to which alternatives need to be explored has to be applied sensibly recognising the nature of the building and the connected community that uses it. In this case, it is submitted that alternatives assessments are not the same as for secular buildings and is informed by the following matters:
- (a) The liturgical exemption contained within the District Plan;
 - (b) The New Zealand Bill of Rights, s 15;

- (c) The Church is a spiritual place where the spiritual preferences of the connected community must be considered. Here and a side entrances are not orthodox or appropriate and cannot work given the internal elements of the church because there is no place to gather before processing to the altar.

PIC 5 – Relevance of Seismic Risks

[40] The Council has now issued to the Church an earthquake-prone notice. The Council does not challenge the significant risks that the building presents in its existing state. It is submitted that the following are relevant and important considerations in this case:

- (a) The need to remedy the risk to the community.
- (b) The prospect that without some solution for this building, its cultural heritage values will be lost entirely.

[41] The Council, in its submissions, expressed confidence (without any evidence) that even if consent is declined the building could be saved because of the passion displayed by the congregants for their Church. That claim unhelpfully misrepresents the Church's case on why it is passionate about this Proposal but not the *status quo*. It also shows a cavalier attitude to a serious issue concerning the future of an outstanding heritage resource. That is because the reporting officers choose not to face the inconvenient truth that the Church must adapt to the needs of the Church or be forever lost.

[42] Rev. Fordyce's evidence on that matter was clear about how the Church authorises parish activity and the core requirements. Furthermore, the Panel has evidence of the escalating costs of the remedial works. These costs are rapidly placing the project beyond reach if it has not already done so. The issue is a national problem and many buildings will be lost without prompt action using an approach that works constructively with sincere landowners. Especially, voluntary bodies. All Saints Church has no appetite for saving a church that cannot fulfil the pastoral, liturgical and apostolic needs of its community and it is not right for a Council to predict in spite of that clear position that the problem of the church's future does not exist.

PIC 6 – Method of Evaluation

- [43] Mr Forrest's reply statement in Attachment 2 reasserts a classical and reliable method of evaluation and is a complete response to Mr Jessen's inaccurate submissions on Mr Forrest's evidence and on how planning evaluations may be reasoned.
- [44] There are two disordered ways to make a planning evaluation. The first is to use the overall judgment approach to policy rejected by *King Salmon*² where the Plan's policies are treated as a 'pick n mix' to be assessed in the round. The second approach is to treat all policies as equal and simply use them as a check box without referring to the qualities of the text and language of all the provisions applied to the case under consideration. The systematic *reconciliation* of the tensions in policy based on text applied in a way that is relevant to the case is the correct approach as confirmed by the majority judgment in *King Salmon*³. There are ways of doing that and Mr Forrest has candidly put one forward to explain his planning lens. Mr Forrest is not rewriting the policies he is knitting them into a coherent whole appropriate to the case.
- [45] Mr Forrest is right that the District Plan is the most relevant planning statement. But the Plan is far from determinative so the answer in this case does not simply 'fall out of the application of the policies' as Cooper J said in *Davidson* referring to a well-constructed plan that had clear policies applying to the case. The Plan is not that directive because of the many issues and aims that the Plan identifies as relevant. These are left to be weighted and reconciled by discretions exercised on a case by case basis.
- [46] The cultural heritage values of the All Saints Church are outstanding at a district level. The decision of Judge Kirkpatrick's division of the Environment Court in *Western Bay of Plenty Council v. Bay of Plenty Regional Council & Ors*⁴ (the *Matakana* decision) outlines what is required to plan for the management of outstanding resources. In that case, it was an outstanding landscape. The Court held that it was important to identify the values and attributes that made the resource outstanding or worthy of significant protection. Further, those attributes and values could provide a baseline for determining acceptable change. From that baseline vulnerabilities can be stated. Such an approach serves the rule of law because it is more transparent to the public and landowners regarding the

² *Environmental Defence Society v. The New Zealand King Salmon Company & Ors* [2014] NZSC 38

³ *Ibid* at [131]

⁴ *Western Bay of Plenty Council v. Bay of Plenty Regional Council & Ors* NZEnvC 147

consequences of the Plan's regime and enables them to contribute to the recording of the heritage values including associative values.

[47] In this case, the District Plan does not enumerate the values of the identified cultural heritage resources. There is also no clarity as to the scale of change that may be acceptable. The Plan does not distinguish between commercial buildings and buildings used by faith communities. The later raises significantly different or more extensive values than apply to 'secular' buildings.

[48] The Plan leaves much of the assessment to the decision-makers discretion applied on a case by case basis.

[49] Also, in the *Matakana* decision the Court at [118] made a useful distinction between criterion and a factor. Judge Kirkpatrick wrote:

“[118] If there is a factor which can be used as a criterion (in the true sense of being a test or standard), then that obviously assists in an objective assessment, but mistaking factors for criteria is appointment to lead an assessment which is closer to a check-box exercise than a reasoned judgment. So in addressing the list of factors, it is important to treat that list as establishing a foundation for the assessment rather than as the outcome of it. In undertaking the sorts of qualitative assessments which must be made in a wide variety of circumstances under the RMA, the range of relevant factors and the complexity of their interactions may drive a person to seek what appears to be the safety of ticking (or crossing off) a list of things and then totting up the score, but that is usually a mistaken approach. Nowhere is that more likely than in relation to the matters of national importance set out in section 6 of the RMA.”

[50] The lack of a values assessment and lack of direction in the Plan about the degree of change from those values in the District Plan reveals itself in the fact that the policies and assessment criteria operate more as factors than standards or tests. Again, because there is a case by case assessment, the first step is to assess the positive and adverse effects and then weigh them appropriately against the policies and assessment criteria.

[51] The *Matakana* decision shows a 'tick box' approach is not appropriate.

[52] Following its liturgical, pastoral, apostolic and missional preferences, the Church submits that the positive benefits for retention of cultural and heritage values and

supporting of the ongoing spiritual activity of the Church overwhelm any adverse effects so that sustainable management is best served by granting consent.

Conditions

- [53] Attached as Attachment 1 are conditions prepared by Mr Forrest that he recommends as part of his reply evidence.
- [54] The conditions attempt to secure appropriate detailed design that is certified by the Council to ensure that the intended design and heritage outcomes are achieved appropriately.
- [55] The Panel may decide that further refinement is required and the church is open to that.

Design Refinement

- [56] During the course of the hearing the Panel raised a number of design questions. For example there is a feature on the extension that aims to draw the eye to the front facade of the church by an elevating viewshaft. The Panel called it the “pop top”. It had a serious design purpose.
- [57] The Panel might consider there are elements of the design that require refinement. If that is so that should be done through an interim decision process if the change has limited impact on the overall design. The Church will consider these matters and advise the Panel whether or not it wishes to amend the application. It would be inappropriate to simply decline consent where modest design changes could be achieved to satisfy the Panel because of the huge cost of the consent process and because of the wider community heritage benefits a consent will secure.

Conclusion

- [58] The Church confronts a multi-dimensional predicament. It has tried to resolve this predicament according to the dictates of the law, respect for the community’s heritage interest and led always by conviction and faith.
- [59] Additionally, because this building is a special spiritual place there are special factors relevant to the decision-making. It is acknowledged some of these factors

result in a challenges to conventional views of heritage management that is fabric focussed. Hence the detailed challenge in the opening submissions for the Church against applying the ICOMOS framework as if it is a 'one size fits all' panacea for difficult heritage issues concerning spiritual places. The law (including the Plan) that is to be applied does not incorporate expressly that framework.

[60] The Church submits that it is appropriate to grant consent and asks the Panel to enable the Church community to move forward for the positive benefit of residents of Palmerston North who are greatly enriched by the Church's activities.



John Maassen

Attachment 1 – Draft Conditions

All Saints Offered Conditions

General and Administration

- 1 Except as modified by the following conditions, and subject to final design, the activity must be undertaken in general accordance with the information provided by the consent holder in the application dated June 2019 and held in the Palmerston North City Council file LU 5331. Where there is any inconsistency between the application documents and the requirements of these conditions, the conditions prevail.
- 2 The Consent Holder must ensure that all contractors/staff are made familiar with the conditions of consent, work methodologies, and the relevant details of the Construction Management and Heritage Management Plans prior to commencement of work, as part of site induction processes. Copies of all documentation including the conditions and approved consent plans (CMP and HMP), are to be held in the site office and available at any time upon request.

Documentary Record of the Building

- 3 Before any alteration or demolition works are commenced on the site, the consent holder must submit a documentary record (DR) of the heritage building to the Council's Head of Planning for certification (in consultation with Council's Heritage Advisor). The record must be sufficient to reconstruct exactly the elements of the building that are to be removed or are damaged in the course of undertaking the seismic strengthening or construction of the new addition and include a photographic record of those elements of the building affected.
- 4 The Head of Planning may refuse to certify the DR on reasonable grounds and must give detailed reasons for the refusal, to the consent holder, in writing. The consent holder must then submit a revised DR to the Council's Head of Planning for written certification that the DR is complete
- 5 No construction or demolition activities of any kind shall commence on the site prior to the DR being certified.

Detailed Design Certification

- 6 At least one month before construction commences on the site, the consent holder must submit detailed design plans to the Council's Head of Planning for certification (in consultation with the Council's building and engineering officers) that the plans are in accordance with the information provided with, and the outcomes being sought by, the consented application [refer Council file LU 5331]. In particular, details as to how the following aspects or elements of the design are to be achieved must be specified:
 - The transparency and fitting of the glass in the new addition to the Church [*Note: the Inner Business Zone Rules require that any construction, alteration, or addition to a building will provide clear glazing for at least 75% of its height for at least 75% of the ground floor building frontage*].
 - How the baptistery outer brick wall is to be removed and the bricks salvaged and stored.

- How the stained glass windows in the baptistery are to be safely removed and reinstated in the corridor of the new addition to the Church.
- How the brick is to be cut and materials salvaged to allow the new western side reception entrance to the Church to be created.
- How the new addition to the Church will be affixed to the existing fabric and how any services (e.g. pipework) and fittings (e.g. handrails) are to be placed without causing more than minor damage to the brickwork.

Construction Effects

- 7 At least one month before construction commences on the site, the consent holder must submit a Construction Management Plan (CMP) for certification by the Council's Head of Planning. The CMP must include the following detail:
 - (a) the planned construction methodology, sequencing, and approximate timeframe for construction;
 - (b) management of dust;
 - (c) management of noise and vibration;
 - (d) management of construction traffic;
 - (e) protocols or methods to enable protection of, or avoid damage to, the fabric of the Church during construction (other than those parts of the building for which consent has been sought and granted);
 - (f) details of a contact person available on site at all times during work. Contact details shall be prominently displayed at the entrance to the site so that they are clearly visible to the public at all times;
 - (g) methods to be used to communicate to neighbours the proposed hours of construction, the activities outside of normal working hours including weekends and public holidays and methods to deal with concerns raised about such hours;
 - (h) methods to record concerns raised about hours of construction activities and, where practicable, methods to avoid times which may have been identified as being particularly sensitive for neighbours.
- 8 The CMP must aim for the following outcomes, as far as practicable, during construction:
 - (a) construction noise received beyond the boundaries of the site does not exceed the limits prescribed in NZS6803:1999 Acoustics - Construction Noise.
 - (b) the fabric of the building that is to remain is protected;
 - (c) impacts on traffic safety and the efficiency of the road network is minimised;
 - (d) the safety of pedestrians is protected

Heritage Mitigation

- 9 A Heritage Management Plan (HMP), for certification by the Council's Head of Planning, must be lodged together with the CMP and include details in respect of the re-purposing of the stained glass and font of the baptistery with the aim of achieving the following outcomes:
 - (a) the stained glass windows are incorporated into the final Church design;
 - (b) the font is incorporated into the floor plan of the final Church design;
 - (c) any interventions are fully recorded, with materials catalogued;
 - (d) that additional interventions are limited to those that are necessary to improve the accessibility and safety, including fire safety, of the Church;
 - (e) that any additional plant or machinery required should be fixed in a manner that avoids damage or obstruction of significant heritage fabric, particularly where this requires points of egress through the structure of the Church.
- 10 A detailed record of the existing Church is to be made prior to construction commencing [refer Condition 3 above].
- 11 An "as built" record of the Church is to be made within a year of completion of construction.

Accidental Discovery Protocol

- 12 Prior to the commencement of works, the Consent Holder shall develop and have in place a procedure that is to be followed in the event that any urupā, taonga (significant artefacts), kōiwi (human remains) or archaeological sites (whether recorded or unrecorded) are disturbed and/ or discovered during site works.

Certification Process

- 13 Should the Head of Planning refuse to certify any of the documents required to be certified by these conditions, the detailed reasons for the refusal must be given to the consent holder in writing. The consent holder shall then submit a revised document to the Council's Head of Planning for reconsideration and written certification.

Advice Notes

- 1 For the avoidance of doubt, following construction, none of the conditions imposed in this consent prevent or apply to works or activities required to enable ongoing operation or maintenance of the Church and its activities on the site, including changes to street furniture or signage.
- 2 An archaeological authority must be obtained from Heritage New Zealand before any earthworks are undertaken on the site.

Attachment 2 – David Forrest’s Reply Statement to Council’s Legal Submissions

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*

STATEMENT IN REPLY BY DAVID JAMES FORREST DATED

17th MARCH 2021

Introduction

- [1] The purpose of this reply statement is to:
- (a) Respond to the critique of my evidence by Mr Jessen where he misunderstands or misrepresents my evidence and to correct what I consider are his misinterpretations of the District Plan;
 - (b) To explain and provide to the Panel a revised set of conditions.

A Contest of Values

- [2] Despite the significant areas of difference, there are matters of agreement among the experts about the application's valuable consequences. That includes the positive impacts of the Proposal by retaining significant heritage values identified by the heritage experts. There is no doubt that a functioning reinforced Church will have substantial social and cultural benefits for the All Saints' community and the wider Palmerston North community. There is also agreement the Proposal preserves the landmark qualities of the building.
- [3] The point of conflict arises between heritage experts' desires for complete preservation of the integrity of the frontage and its associated townscape values and the aspirations of the All Saints' community that were powerfully articulated at the hearing. Each position rests on relevant cultural heritage and social and community values.
- [4] I made the point in my primary statement of evidence that planning is about identifying and resolving contested values. A layer of complexity, in this case, is that the contest involves almost entirely social and cultural values. A significant component is spiritual values that the planning system does not conventionally address well and requires special care and sensitivity. It is an emerging issue of significance. I note, for example, the amendment to the Resource Management Act, Schedule 4, clause 7 in 2015. That introduced at clause 7.1(d) consideration of spiritual and cultural effects of special value for present or future generations. All Saints Church and its site represent a space of special spiritual importance for the profession of Christian faith by the Anglican Church. The positive effects the Church aims at are intended to benefit present and future generations of that community.

- [5] Adding to that complexity are the special circumstances in New Zealand relating to earthquake risk that powerfully impact on heritage in a way not present in most other Western countries where ICOMOS originated. Many heritage buildings present a significant public safety risk that must be addressed as a matter of priority. However, resources are limited and long term preservation of buildings where cost is a significant factor rely on repurposing the buildings to ensure the incentives are there to strengthen the buildings.
- [6] All of these matters are considered by the District Plan, and therefore Chapter 17 contains many provisions that pull in different directions trying to address these competing values. While the District Plan is the most complete statement of the community's aspirations, there are significant features of the Plan that show a lot of assessment and evaluation is left to the discretion available in the resource consent process. I would say, therefore, that the District Plan is the most complete statement we have in a planning document but that it is far from definitive. I say that because:
- (a) The policies are generic and apply to both commercial buildings and buildings of social or spiritual significance. They are therefore pitched at that somewhat generic level where all social and cultural values are recognised, and some buildings have values others do not. Hence a purely architectural perspective is inappropriate given the definition of *cultural heritage*
 - (b) There is no statement of the values attributable to the buildings that are listed so there is no strong value statement against which effects are to be assessed. That means all values must be assessed on a case by case basis. In that sense the District Plan does not truly identify historic heritage;
 - (c) The District Plan does not identify the tolerances of change that each building can accommodate in terms of impact on its values. Therefore there is no planning guidance on the level of tolerance of effects;
 - (d) The policies are not highly directive except in the case of discouraging demolition or relocation. Otherwise there is a balanced and overall judgment approach to be applied to address the tensions as described above on a case by case basis.

- [7] For those reasons, the discretion available under the rules needs to be applied on the evidence sensibly without overstating the directive or targeted nature of the objectives and policies of the Plan.
- [8] I undertook a classical objectives and policies analysis in the assessment of environmental effects and reached the conclusion that broadly the proposal was consistent with objectives and policies of the District Plan.
- [9] As a separate exercise in my evidence, to address the conflicting values and to attempt a systematic analysis of the intent of the Plan, I developed a compendium statement of what the Plan was trying to do, looking at Chapter 17 in its entirety with reference to the different provisions. I also consider this to be a legitimate approach to planning and analysing the conflicting values in play and how they are reconciled considering the community plan's provisions. I do not accept that the objectives and policies should be read in isolation but in the context of the entire statement in the relevant chapter of the Plan.
- [10] To illustrate the point above, I give the following examples:
- (a) The Council in the Introduction to Chapter 17 states *The Council strongly supports the act of protection and/or conservation, and adaptive reuse of places of cultural and natural heritage value within the City*. As I have noted in my primary evidence, cultural and natural heritage values include those spiritual values. I find that statement is one key part of an entire section that is informative as to the overall structure and meaning of the subsequent objectives and policies in the Plan;
 - (b) In the Issue Statement at 17.2, the Plan identifies the risk to cultural heritage from natural justice and *the need to achieve a balance between the protection of historic heritage and private property rights*. Again, I find these Issue Statements informative in understanding the way in which the objectives and policies have been structured and the overall intent of the Plan.
- [11] I therefore reject Mr Jessen's assertion that my analysis, comprising both the application and my evidence, is unconventional or incorrect in any way. I also reject the idea that because my evidence addresses matters of intention and attempts to grapple with the meaning of the Plan and the way in which it attempts to resolve contesting values constitutes "submission" as opposed to planning

analysis. It is the business of planning to consider text and meaning in planning documents as part of the evaluative exercise.

[12] I consider that my assessment is integrated and a fair assessment of the intention of the Plan and shows the limits of the Plan's guidance in this case because:

(a) It raises spiritual and cultural values of significance that would not apply to commercial buildings;

(b) The absence of values assessments in the Plan necessarily means that a case by case assessment is required.

Alternatives

[13] The Council's legal advocacy was almost entirely focused on Policy 1.4 in the Plan concerning alternatives and their costs and benefits.

[14] Mr Maassen has presented an interpretative analysis which raises a very valid question as to the extent to which Policy 1.4 applies because he argues the proposal is not *relocation or partial demolition* but, rather, an 'alteration and addition'.

[15] In my planning analysis I did consider Policy 1.4 and in response to it I provided an extensive analysis of the *social, cultural, and economic environment costs and benefits of the proposal against a notional annex on the south western face of the Church, which was the obvious alternative to the proposal* using a cost benefit matrix. This, in my opinion, is a very robust analysis given that the matters to be accounted for as directed by the Plan are not objectively verifiable and require judgment.

[16] Mr Jessen criticises my counter-factual for assessment on the basis it is simply a "notional" alternative using a side entrance on the southwestern side. I disagree. The obvious alternative to a front entrance was a side entrance and the only feasible location near the frontage is on the southwestern side. Dr Gjerde's alternative is more or less the same notional concept that I considered. Mr Bowman provided another example of a side access. It is not necessary to provide a detailed design to evaluate the significant social, cultural, and economic benefits and costs that might arise from the alternative. It is also feasible to consider a notional alternative when addressing whether or not those alternatives are "available". Available must mean at least 'fit for purpose' for the Church's needs otherwise it becomes meaningless when considering adaptive reuse. Therefore, it

was necessary to examine the extent to which the alternatives would meet the Church's requirements.

[17] In undertaking the alternatives analysis under Policy 1.4, I deliberately informed myself of the Church's needs to develop a high degree of sensitivity and understanding of the theological, apostolic, and partial values that have informed the Church's proposal. I note that there is no similar analysis by Mr O'Leary.

[18] I also reached the conclusion under Policy 1.4 that the proposal would result in the overall retention of significant heritage values.

[19] The additional comments that I would make in response to the advocacy for the Council on Policy 1.4, are the following:

(a) Whether or not the proposal is *partial demolition* or not, the fact remains that the proposal is part of the Church's *adaptive use* that the Plan talks about. The proposal is about modifications to the Church that preserves most of its structure to repurpose it for authentic Christian worship and fellowship based on the Church's kaupapa. Following from that, I consider:

(i) Policy 1.5 is more directive than Policy 1.4 because the verb to *encourage* is stronger than the verb to *recognise*;

(ii) I note that Policy 1.3 does not apply because what is proposed here is not *demolition* or *relocation* of a scheduled building;

(iii) Furthermore, I consider the intent of Policy 1.4 (second bullet point) is to ensure sufficient information is available to decisionmakers and applies across many types of buildings. An analysis of alternatives is rather different for a building with social, spiritual, and cultural values than for a commercial building.

(b) I am satisfied that the Panel has sufficient information to make an informed decision from the hearing about the issues and options. The assertion that there needs to be more consideration of alternatives is simply avoiding the evident conflict in values.

- (c) There is no denying that an alternative access and the basic spatial form of the alternative proposed by Dr Gjerde could provide access to the Church and a space for fellowship. It is equally plain that that would not be appropriate from the Church's point of view based on the spiritual, apostolic, pastoral, and other values that they hold. These differences cannot be bridged, but it would be entirely incorrect to say that they are not understood. What Mr Jessen's legal submission fails to do (and which is important from a planning point of view) is to identify and understand what further information could exist that might make for a better or more informed decision. I cannot see that there is better information. All there will be is another alternative design that might or might not satisfy some of the Council's experts, which will undoubtedly have fewer impacts on the frontage and the architectural integrity of the frontage and associated heritage values. I have accounted for that in my analysis.

- [20] I note the Panel's question on possible alternatives including the rearrangement of the baptismal font without alterations to the building. In considering these matters, I have given considerable deference to the Church's views because of the spiritual, social, and cultural values that legitimately exist concerning these matters.

Seismic Risks

- [21] I understand that an earthquake prone notice has been issued. I am satisfied from the evidence of Mr Newton that this building is highly susceptible to failure in a significant seismic event. I consider that this potential risk to public safety is important and needs to be considered in the overall evaluation. I also consider it reasonable to conclude that the prospect of any viable alternative proposal coming forward that preserves the building is small.

Conditions

- [22] I enclose amended conditions that I recommend for consent. I acknowledge the evidence that the implementation of the proposal will require detailed plans and that implementation of the project presents particular architectural and engineering challenges. These conditions establish the certification process that ensures that the project is successfully implemented. That is not unusual in cases of this type.

A handwritten signature in black ink, appearing to read "D. Forrest". The signature is written in a cursive style with a large, looping initial "D" and a trailing flourish.

David James Forrest

Attachment 3 – Vince Neal’s Reply Statement

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*

REPLY STATEMENT BY VINCENT ERNEST NEALL DATED 17

MARCH 2021

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- [1] I wish to touch on two points in reply for the Church. The first point concerns the foundations for the tower. The second involves the CBAB process of considering options.
- [2] Ms Stephens suggested a lack of detail as to why the foundations for the tower had changed. I have asked Mr Newton from Structural Concepts Limited to respond to that statement, and I attach his response.
- [3] It should be noted that the preferred “earthquake strengthening” concrete pad for the base of the tower cannot be poured under the existing Church building. With removal of the Baptistry wall, a greater circumference of the pad can be attained to the exterior of the building, upon which the new entrance would be sited. This will allow a broader foundation that keeps earthquake-generated stresses to a manageable level.
- [4] Dr Gjerde provided a schematic of an annex's spatial location on the southwestern face of the Church. That was the other alternative that CBAB carefully considered as part of its deliberations. It was not necessary to do a detailed design of how that would operate because its fundamental components are easily understood by applying common sense. The entrance to the Church on that alternative option would operate against aspirations of the Church community for the following reasons:
- (a) It does not allow visibility directly into the Church interior from passers by on the footpath.
 - (b) It does not provide direct welcoming access for both parishioners and visitors to the centre of the Church.
 - (c) It does not provide a central processional entrance to the Church for the choir, Church festivals, patronal days and special occasions.
 - (d) The size of any such lobby becomes restricted by the boundaries of the Church property as defined in Dr. Gjerde’s drawing (compared to utilising Church property in the front of the Church building).
- [5] That sort of alternative was the ‘notional alternative’ that informed the cost-benefit analysis that was carried out as part of this application and incorporated into David Forrest's evidence.

- [6] I found the Council's assertions of inadequate consideration of alternatives puzzling given the lengthy process I described in my primary that CBAB followed. The only other viable option is a notional entrance by an annex, as Dr Gjerde proposed, and it was that one that was discounted. I have already given evidence why other proposals that Ms Stephens suggested involving easements over third party land are not practicable.
- [7] I confirm that the Church has now received from the Council an earthquake-prone notice under the Building Act. So the current seismic issues must be resolved within seven and a half years or earlier, or otherwise, the building will be demolished. I remain very concerned about the potential impact on public safety of delay in strengthening.



Vincent Ernest Neall

SCL Reference: 2130-8558

16 February 2021

All Saints Advisory Board
338 Church Street
Palmerston North

ATTENTION: Vince Neall

Dear Vince

Re: Tower Foundation

The 3D schematic was at concept level only. When preliminary design was being carried out it was discovered that the concept was impracticable due to the significant uplift forces and bearing pressures. Hence a larger base that extended beyond the extents of the tower would be required. This would require an extension of the foundation under the baptistry that is now shown in the preliminary structural drawings. Unfortunately this cannot be avoided in whole or part. The removal of the baptistry enables a broader foundation to be constructed that keeps stresses to manageable levels.

Yours faithfully

FOR STRUCTURAL CONCEPTS LTD



Garry Newton
Managing Director
BE(Civil), MIPENZ, CPEng, IntPE(NZ)