

# Coversheet: Christ Church Cathedral Reinstatement

Advising agencies	Department of the Prime Minister and Cabinet (DPMC)
Decision sought	To introduce enabling legislation for the reinstatement of the Christ Church Cathedral
Proposing Ministers	Minister for Greater Christchurch Regeneration (Hon Dr Megan Woods)

## Summary: Problem and Proposed Approach

<p><b>Problem Definition</b></p> <p><b>What problem or opportunity does this proposal seek to address? Why is Government intervention required?</b></p>
<p>Almost seven years after the earthquake of February 2011, Christ Church Cathedral (the Cathedral) remains significantly damaged. Progress on this important historic building has been delayed due to prolonged litigation and the difficulty of finding a solution that could be agreed between the key parties involved. The effects of this stalemate have extended beyond the building itself, with an impact on wider recovery and regeneration. While an agreed solution has now been found and the views of many parties extensively tested, there is still a risk that the project will be impeded if it is subject to existing processes. Government intervention is required to speed the reinstatement of the Cathedral, positively influence the regeneration trajectory of the central city, and ensure the Crown’s investment in the wider central city is protected.</p>
<p><b>Proposed Approach</b></p> <p><b>How will Government intervention work to bring about the desired change? How is this the best option?</b></p>
<p>Legislation would be introduced with an order in council mechanism to allow amendment of enactments (including plans and bylaws), for the period of the Cathedral reinstatement project. The primary advantages of this approach are that it:</p> <ul style="list-style-type: none"> <li>• addresses problems that have prevented action to date, optimising the certainty, viability and timeliness (as much as possible) of the reinstatement project;</li> <li>• reflects the high public interest in finding solutions for this building; and</li> <li>• provides statutory benefits that cannot be achieved through other means (e.g. providing for a streamlined consenting process but retaining checks and balances).</li> </ul>

## Section B: Summary Impacts: Benefits and costs

<b>Who are the main expected beneficiaries and what is the nature of the expected benefit?</b>
The main beneficiaries of the preferred option are the Church Property Trustees (property owner), the project deliverer, and the wider public. The direct benefits are almost entirely qualitative.

<b>Where do the costs fall?</b>
The costs mainly fall to the public (non-monetised), with potential administrative costs falling to the project deliverer, regulators and the government agency administering the proposed Bill.

<b>What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?</b>
The preferred option may carry a precedent risk. However, there are multiple unique circumstances due to the compounding effects of the damage to this significant building from the earthquakes, previous litigation, and the wider impacts these are having on recovery and regeneration of the central city. The unique circumstances, discussed in more detail in this impact statement, are considered to offset precedent risk.

<b>Identify any significant incompatibility with the Government’s ‘Expectations for the design of regulatory systems’.</b>
The preferred option has clear objectives, and seeks to achieve those in a least-cost way. It provides for engagement with relevant stakeholders and checks including a Review Panel which will ensure that all orders in council comply with the Government’s ‘Expectations for the design of regulatory systems’.

## Section C: Evidence certainty and quality assurance

<b>Agency rating of evidence certainty?</b>
The nature of this problem is essentially qualitative. The evidence provided is mainly from past experience or anecdotal evidence, specifically the prolonged litigation and the difficulty of finding a solution agreeable to the key parties involved in the past. There is little evidence that can be quantified in monetary terms.

*To be completed by quality assurers:*

<b>Quality Assurance Reviewing Agency:</b>
Regulatory Quality Team, The Treasury
<b>Quality Assurance Assessment:</b>
This Regulatory Impact Statement meets the Quality Assurance criteria.

Reviewer Comments and Recommendations:


The RIS shows clearly that alternative options have been carefully considered, implementation risks identified and mitigated, and stakeholders fully involved in the process.

# Impact Statement: Christ Church Cathedral Reinstatement

## Section 1: General information

Purpose
<ol style="list-style-type: none"><li>1. DPMC is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing:<ul style="list-style-type: none"><li>• key policy decisions to be taken by Cabinet.</li></ul></li></ol>

Key Limitations or Constraints on Analysis
<ol style="list-style-type: none"><li>2. Policy development for the proposed legislation has been progressed under significant time constraints. Therefore, a broad approach has been taken to summarising the options under key categories of response to the policy problem. There might be some aspects of the problem not fully addressed in the proposal. This may have a flow-on impact on the range of options considered in the impact statement.</li><li>3. The nature of this problem is essentially qualitative. The evidence provided is mainly from past experience or anecdotal evidence, specifically the prolonged litigation and the difficulty of finding a solution agreeable to the key parties involved in the past. There is little evidence that can be quantified in monetary terms. Consequently, the criteria used to assess options are mostly qualitative, i.e. efficiency, fit-for-purpose, certainty and confidence.</li><li>4. The regulatory proposal is only part of a wider Government support package for the reinstatement of the Cathedral and it is interdependent with other parts of the support package, such as financial and institutional support. There is an assumption that other parts of the support package will be effective so the resulting legislation can be used as intended to support the reinstatement.</li><li>5. Time for consultation on and testing of the proposals at this stage of the process is severely constrained and limited to date. However, the remaining risk is mitigated due to the fact that there have been multiple forms of engagement in the past six and half years, previous processes or decisions have been challenged and tested in the courts and there is broad cross-party support.</li><li>6. DPMC will continue to work with relevant central and local agencies; and key local stakeholders to ensure that the proposals provide for an appropriate balance of power between the Executive, Parliament and the courts.</li></ol>

Responsible Manager (signature and date):	
 4 December 2017	Pratima Namasivayam Strategic Policy, Greater Christchurch Group Department of the Prime Minister and Cabinet

# Section 2: Problem definition and objectives

2.1 What is the context within which action is proposed?
<ol style="list-style-type: none"><li>1. Almost seven years after the earthquake of February 2011, Christ Church Cathedral (the Cathedral) remains significantly damaged, and only recently a clear pathway to a solution has been found. It has been permanently barricaded since 22 February 2011, and the remains of the tower demolished for safety reasons. The interior of the building has been exposed to the elements since 2011, and ongoing aftershocks along with the effects of weather and pigeon excrement over time have exacerbated the damage.</li><li>2. The key options that have been considered for the Cathedral’s future are summarised and defined in <b>Appendix A</b>. Protracted litigation between the Church Property Trustees (as owner) and the Great Christchurch Buildings Trust, a charitable trust established to preserve Christchurch’s historic buildings, has delayed decision-making and prevented the owner from taking further action to stabilise the Cathedral. While the courts have decided in favour of the Church Property Trustees most recently, further litigation (for example, challenges to approvals granted in future) has been threatened from certain groups if the Trustees proceed with any action that is not restoration to the fullest extent.</li><li>3. To address the litigation deadlock, further investigations and negotiations were facilitated. On 23 December 2015, Miriam Dean QC, the government-appointed facilitator, concluded that neither full restoration nor full repair were viable options. However, either replacement or reinstatement of the Cathedral was technically possible with indicative budgets and timelines of:<ul style="list-style-type: none"><li>• Replacement: \$63-\$66 million (excluding GST) by 2019</li><li>• Reinstatement: \$105 million (excluding GST) by 2022.</li></ul></li><li>4. On 28 November 2016, the government-appointed Working Group charged with investigating the reinstatement of Christ Church Cathedral (the Cathedral Working Group) recommended an option to reinstate the Cathedral at a cost of \$100 million (excluding GST).</li><li>5. Reinstatement has been defined as a combination of repair, restoration, reconstruction/rebuild, seismic strengthening, deconstruction and partial demolition – largely reinstating the Cathedral to the extent that, for most people, it would be indistinguishable from the pre-earthquake building, but through different methodologies as required to address the various features of the damage.</li><li>6. This differs from full replacement – which the Church Property Trustees has previously wished to pursue, and which would involve significant or full demolition and replacement with a modern building. This also differs from the previous push for full restoration or repair by various campaigners and groups, as it requires some demolition to stabilise the building. (<b>Appendix A</b> provides more information about how the different options are defined.)</li></ol>

7. As part of its report, the Cathedral Working Group also recommended that legislation should be promoted, and that the legislation should enable consents and approvals so the project can start without delay.
8. In December 2016, following the delivery of the Cathedral Working Group's report and recommendations, the previous Cabinet agreed to initial financial support for the Cathedral, and noted that the then Minister supporting Greater Christchurch Regeneration intended to begin cross-party engagement on the approach to proposed legislation (CAB-16-MIN-0706 refers).
9. In July 2017, the previous Cabinet agreed to a revised offer (CAB-17-MIN-0340 refers) which was made to the Bishop of Christchurch, with support of Christchurch City Council and members from a number of parties across Parliament. This included:
  - Crown financial contributions (\$10 million cash contribution and \$15 million suspensory loan);
  - establishing an independent trust to lead public fundraising and enter a joint venture with Church Property Trustees to govern and manage the delivery of the project (the independent trust); and
  - promoting legislation to streamline consenting and approval processes.
10. In September 2017, the Synod of the Anglican Diocese of Christchurch voted to accept the offer.

#### **Historical and cultural significance of the Cathedral**

11. The Cathedral is one of New Zealand's best known and most identifiable buildings, and the widely recognised emblem of the city that bears its name. As a Category 1 historic place registered with Heritage New Zealand Pouhere Taonga, the Cathedral is recognised in statute as having special or outstanding historical or cultural significance or value.
12. The Cathedral was first planned in 1850, when the city was surveyed by its founders. It is the centrepiece and focal point of the city, with Cathedral Square anchoring the central business district. Construction took place over forty years between 1864 and 1904 with the support of prominent Canterbury families and the wider community. It suffered damage due to earthquakes while it was being built and throughout the 20<sup>th</sup> century, resulting in strengthening work and repairs. Major restoration works were undertaken between 1977 and 1981, and seismic reinforcement works were carried out in 1999.
13. While the Cathedral performed well in the September 2010 earthquake, it suffered significant damage to its western wall (including the porch) and tower in the earthquake of 22 February 2011 and has become increasingly vulnerable over time due to the ongoing aftershocks and exposure. The Cathedral is now one of the most prominent and visible remaining examples of the earthquakes' destructive power within the built environment of greater Christchurch. As a result the Cathedral has been and continues to be represented widely as a 'symbol of the devastation' suffered by the wider city.

14. On the other hand, much of the Cathedral remains standing and has also been represented as a symbol of resilience. For many Cantabrians, the Cathedral has provided a sense of place and identity, given the change the city has gone through and the loss of so many other identifiable landmarks. This is expressed in engagement carried out to date – for example, the Anglican Church’s public engagement in 2013, the Christchurch City Council’s ‘Share an Idea’ process, and the development of the Ministry for Culture and Heritage’s Heritage Buildings and Places Recovery Programme.
15. There are many differences of opinion on the future of the Cathedral, as highlighted by the results of the Anglican Church’s public engagement in 2013 and 2017. However, the majority of greater Christchurch residents, in the most recent engagement, want something to be done. For those who preferred reinstatement over a contemporary replacement, the most important reason was the historic or iconic value of the existing Cathedral.<sup>1</sup>

### **Regeneration significance of the Cathedral**

16. At present, the Cathedral is viewed as a symbol of a *lack* of recovery and regeneration progress. Leaving the Cathedral in disrepair, without timely certainty for its next steps, is untenable.
17. The immediate area in the vicinity of Cathedral Square has struggled to regenerate since the earthquakes, and anecdotal evidence suggests that delays on the Cathedral have been a key contributor, with suggestions by central city business and community leaders that the lack of action has ‘paralysed development’ in the area. The Mayor of Christchurch has echoed this message, noting in July 2017 that decisions on the Cathedral are critical to allow ‘the heart of the city to flourish once more’.
18. Continued uncertainty or a decision not to take action is likely to further impact:
  - Business and investor confidence in the regeneration of the central city;
  - Wider perceptions of progress and potential impacts on psychosocial and cultural recovery, given the Cathedral’s iconic status and highly visible location; and
  - The need to protect the Crown’s interests in the anchor projects and support its timely exit on the best possible terms. (For example, the Convention Centre directly adjoins Cathedral Square and Ōtākaro Ltd will be seeking private sector support to develop the surrounding Convention Centre Precinct. The terms for any such arrangements will therefore depend on market appetite to develop in this area. Additionally, the commercial success of the centre, is likely to be driven by delegate experience of a vibrant, activated Precinct and a redeveloped Cathedral Square.<sup>2</sup>)

<sup>1</sup> Research First, *Public Preferences for the Cathedral in Cathedral Square: Report prepared for Church Property Trustees*, May 2017

<sup>2</sup> Detailed Business Case for the proposed Christchurch Convention Centre Precinct, October 2013; and Implementation Business Case for the Christchurch Convention Centre Precinct, March 2016.

## Reinstatement under the status quo

19. Reinstatement under the current regulatory system will face significant uncertainties, as discussed in sections 2.2 and 2.3 below.

## 2.2 What regulatory system, or systems, are already in place?

### Existing planning framework

20. In order to progress works to reinstate the Cathedral a range of regulatory approvals from resource management, local government, heritage and building acts, plans and bylaws would be required.

#### *Archaeology*

21. The Cathedral is an archaeological site defined in section 6 of the Heritage New Zealand Pouhere Taonga Act 2014, and reinstatement works will likely affect the archaeological deposits at the site. Therefore, an authority from Heritage New Zealand Pouhere Taonga (HNZPT) will be required. The Canterbury Earthquake (Historic Places Act) Order 2011 expedites the authority process, requiring HNZPT to process an application within five days. The applicant must provide all information considered reasonable by the archaeological officer in the circumstances of the application. A ten day stand down period is required as the site is of interest to Māori and there are limited grounds for appeal.
22. However, the Order expires on 30 June 2021 with the Greater Christchurch Regeneration Act 2016. The expiry before the completion of the Cathedral reinstatement project (expected to take approximately 10-15 years) means any archaeological authority would also expire.

#### *Resource Management*

23. The Christchurch Replacement District Plan process took place over three years and has only recently been completed. The Independent Hearings Panel considered many submissions, and extensive and comprehensive evidence on the approach to reinstating the Cathedral. The Panel recognised the merits of the approach to reinstatement outlined in the report produced by Miriam Dean QC (refer section 2.1), and the high public interest in allowing it to proceed as quickly as possible. It was undisputed that something had to happen to progress an outcome.
24. The outcome of the Replacement District Plan process and the Panel's consideration is reflected in the Panel's intent to enable reinstatement in their decision. The Panel intentionally removed public notification from resource consent applications relating to the Cathedral and sought to enable works associated with reinstatement to proceed with as little delay as possible, as long as best practice and accepted heritage management, engineering and urban design processes were adhered to.<sup>3</sup>
25. Despite the intent to facilitate an outcome, there are unintended and avoidable risks using the District Plan process as a result of ancillary and unanticipated activities

<sup>3</sup> Independent Hearings Panel: Christchurch Replacement District Plan, *Decision 45: Chapter 9: Natural and Cultural Heritage (Part): Topic 9.3 – Historic Heritage*



requiring additional and less permissive resource consents (and therefore public notification could occur). In essence, the District Plan supports and enables reinstatement as a concept, but due to the wide scope of activities and associated works that would need to occur, a number of resource consents for controlled or restricted discretionary activities would likely be required. There is therefore a risk of conditions being imposed that are overly restrictive and will not allow for the Cathedral to be reinstated in a timely manner, or of resource consent being declined.

26. Additionally, it is highly likely that, due to the significant public interest in the building, Christchurch City Council would notify any resource consent application on the basis of 'special circumstances'. If the application is publicly notified, any member of the public is able to lodge a submission and potentially appeal any decision to the Environment Court which could result in delays in having the consent finalised, or the consent being declined. Given the extent of public and key stakeholder interest in the future of Cathedral, this is a heightened risk to the project.
27. If there were no appeals of the resource consent application, the process may be completed in 7-9 months. If the matter is appealed to the Environment Court the process could be delayed by a further 6-12 months, or longer.<sup>4</sup> Further appeals to higher courts are then possible, which could then take years to conclude, with no guarantee of success. The potential for significant delays and uncertainty of outcome is unlikely to provide confidence to the project deliverer, public, donors, businesses and investors about the future of the Cathedral or to allow for timely reinstatement.
28. These factors are likely to result in either a slow, complex and contentious reinstatement process, or another indefinite stalemate. This option is therefore unlikely to re-establish the Cathedral to its iconic status, or even to allow the Cathedral to be reinstated more affordably. This would reduce public confidence in recovery; negatively affect the ongoing regeneration of Cathedral Square and its surrounding area; and undermine the Crown's investment in the central city.

### **Regeneration framework**

29. New Zealand's recovery and regeneration framework, in general, does not have the means necessary to support the reinstatement of the Cathedral. While the status quo framework is in general fit-for-purpose to enable local institutions to lead the regeneration phase, it is not necessarily fit-for-purpose when local institutions, such as the Church Property Trustees, have extraordinary and multifaceted recovery and regeneration needs.

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<sup>4</sup> If there is significant opposition to the consent application, the applicant and CCC could seek that the matter is directly referred to the Environment Court for determination by the Court, earlier in the process. This could reduce the extent of delays.

## 2.3 What is the policy problem or opportunity?

30. In making its offer to support the reinstatement of the Cathedral, the Government is looking to achieve the following outcomes:
- Provide early certainty and confidence to the public, businesses and investors about the future of the Cathedral
  - Ensure an appropriate regulatory framework is in place to allow for expedited reinstatement without barriers
  - Maintain recovery and regeneration momentum by unlocking development of Cathedral Square and the surrounding area
  - Protect the Crown's considerable investment in nearby anchor projects and in the recovery and regeneration of the central city as a whole
31. The reinstatement proposal is a pragmatic proposal, recognising that some demolition is necessary and that funds are limited. It addresses previous concerns about non-replacement options by limiting the funds required (from an estimated \$221 million for restoration to \$104 million for reinstatement) and stabilising and base-isolating the building to ensure public safety. However, it is also sympathetic to heritage conservation, recognising the wider benefits of safeguarding as much of the Cathedral's historic and cultural significance as possible, in the context of what has been lost to the earthquakes.
32. This is a significant compromise on both sides and, while public opinion on the future of the Cathedral is diverse and varied and there are still potential risks of litigation from other parties, this is the closest the parties are likely to come to achieving a consensus. The Government has already taken the opportunity to act on this consensus, through agreeing to financial contributions totalling \$25 million. It is also in the process of establishing the independent trust to lead public fundraising and enter a joint venture with Church Property Trustees to govern and manage the delivery of the project.
33. However, there is a need to address the remaining risks and uncertainties to allow for expedited reinstatement without barriers.

### **Regulatory framework is not fit for purpose**

34. Previously, progress on this important historic building had been delayed due to prolonged litigation and the difficulty of finding a solution that could be agreed between the key parties involved. The effects of this stalemate have extended beyond the building itself, with an impact on wider recovery, due to its uniquely central location and rich cultural value. While an agreed solution has now been found and the views of many parties extensively tested, there is still a risk that the project will be impeded if it is subject to existing processes.
35. In addition, the reinstatement project and the surrounding area faces a number of problems due to uncertainty that, if not addressed quickly, will put the project at risk:
- **Design and engineering needs:** Given the nature of the damage to the Cathedral, more exhaustive investigations, design and engineering work is

needed to clarify the technical approach to reinstatement and activities required. This will be a step by step process for different parts of the build, carried out in stages (rather than all at once, in the beginning). Therefore, until the final stage, there will always be some uncertainty about the project's design needs.

- **Project timeframes:** The reinstatement project will take at least 10 years to complete. Because the design process will be ongoing, this may in turn lead to ongoing consenting issues (for example, variation of consent conditions).
- **Entities yet to be established:** The detail of the physical works and consenting requirements is dependent on design and engineering work still to be carried out, which cannot begin until the joint venture set up to deliver the reinstatement project is established. The establishment of the joint venture is dependent on negotiations between the independent trust (in the process of being established) and the property owner.
- **Wider uncertainty:** Due to delays in redevelopment in the Cathedral Square area, Regenerate Christchurch (a Crown-Council entity established to progress regeneration) is looking at other mechanisms and opportunities to increase momentum and support regeneration (including statutory interventions). Christchurch City Council is also considering potential processes required to relocate a key civic monument on the site (the Citizen's War Memorial).

#### **Government intervention is required as soon as possible**

36. Legislative intervention by central government is now required to reduce uncertainty, remove barriers, and kick-start the timely reinstatement of the Cathedral. It is important that the legislative framework for the Cathedral's reinstatement is clarified as soon as possible to ensure that key stakeholders, landowners and the wider community are aware of how the project will proceed. Taking these steps would speed the reinstatement of the Cathedral, positively influence the regeneration trajectory of the central city and support local institutions to achieve regeneration outcomes.
37. To achieve these outcomes, the Government's objectives through legislative intervention are to:
  - **Provide for an efficient and effective reinstatement process** (*e.g. reducing impediments, expediting the delivery process where needed and providing a fit-for-purpose, flexible process*); and
  - **Provide early certainty and confidence that the reinstatement project is able to be delivered** (*e.g. to address uncertainties and risks in the process, ensuring that delivery will be feasible, and assisting in the success of fundraising*).

#### **2.4 Are there any constraints on the scope for decision making?**

38. The scope of the legislation was broadly established by the offer of support made by the Crown to the Church Property Trustees on 4 July 2017. It set out that legislation will be promoted, and that the legislation may:
  - streamline consenting and approval processes;

- remove specified historic reservations of title;
- make any necessary amendments to confirm Cathedral and land ownership; and
- recognise the establishment of the fundraising trust.

39. Note, however, some of the above points are no longer proposed to be addressed in legislation.

40. Related ongoing work includes:

- the establishment of the independent trust – a Trust to be established to raise funds for the reinstatement project and enter into a joint venture with the Church Property Trustees to deliver the reinstatement project; and
- once the joint venture has been established, the initial design work and project planning will inform the nature and timing of consents and authorities required.

## 2.5 What do stakeholders think?

41. The key stakeholders in the Cathedral reinstatement are:

- **Church Property Trustees:** Owner and operator of the Cathedral. Represented in the Miriam Dean QC facilitations and on the Cathedral Working Group.
- **Great Christchurch Buildings Trust:** Represented in the Miriam Dean QC facilitations and on the Cathedral Working Group.
- **Other heritage groups:** Have an interest in the reinstatement of significant heritage building.
- **The local Anglican community:** Use the Cathedral for spiritual purposes.
- **Greater Christchurch residents:** Varied views on Cathedral as symbol of the city; have cultural connection to and place value in the Cathedral.
- **Christchurch City Council, Canterbury Regional Council and Heritage New Zealand Pouhere Taonga:** All three administer different processes likely to be impacted by Orders under the bill. In addition the Christchurch City Council contributed to the operating costs of the Cathedral and used Cathedral for civic events. Heritage New Zealand Pouhere Taonga's interests are in the Cathedral as a Category 1 historic place under the Heritage New Zealand Pouhere Taonga Act 2014, and as an archaeological site under that Act.
- **Crown:** Has significant investments in the regeneration of Christchurch.
- **Te Rūnanga o Ngāi Tahu/Te Ngāi Tūāhuriri Rūnanga:** Local iwi/hapu.
- **Nearby property owners, investors and businesses:** Decisions are impacted by the ongoing delays in the Cathedral reinstatement.

42. The problem that the intervention seeks to address arose partially from the previous litigation between the Church Property Trustees and the Great Christchurch Buildings Trust, while the opportunity arises from the successful facilitated discussions between the parties.

43. The Government has taken a series of steps to support a way forward between the parties, as outlined in paragraphs 3-10 above. One of these interventions was the establishment of the Cathedral Working Group which included members representing the Church Property Trustees and Great Christchurch Buildings Trust. Additional parties, such as heritage and archaeology experts were also engaged to inform the initial recommendations included in the Cathedral Working Group's report.
44. Since the Cathedral Working Group's report was delivered to the Bishop of Christchurch and the Minister supporting Greater Christchurch Regeneration in late November 2016, the Working Group has been disestablished. However, further engagement has taken place between relevant parties in the negotiation process.
45. The Bishop of Christchurch referred the Church Property Trustees' decision on the future of the Cathedral to the Diocesan Synod of Christchurch (made up of the Bishop, the clergy and lay members of the Anglican church). The Government provided information to the Synod and the public to inform this decision.
46. In developing these proposals, DPMC is consulting with the Treasury, the Ministry of Justice, the Parliamentary Counsel Office, the Crown Law Office, the Ministry for the Environment, the Ministry of Business, Innovation and Employment, the Ministry for Culture and Heritage, Land Information New Zealand, and the Department of Internal Affairs.
47. It is intended that relevant agencies and partners including Heritage New Zealand Pouhere Taonga, Christchurch City Council, Canterbury Regional Council and Te Rūnanga o Ngāi Tahu will be engaged in the next steps as relevant. Ōtākaro Limited will be informed. As property owner, the Church Property Trustees will also be consulted. Additionally, DPMC expects to liaise with Regenerate Christchurch and Christchurch City Council in relation to the Cathedral Square and surrounds regeneration strategy.

## Section 3: Options identification

### 3.1 What options are available to address the problem?

#### **Option 1: Status Quo (no legislative intervention)**

48. Under this option, the Government would not provide any legislative support to the Church Property Trustees, but would likely provide support through financial contributions and/or the establishment of entities. It is likely that the Church Property Trustees would wait as long as necessary to raise the shortfall in funds before committing to any Cathedral works, including undertaking consents and approvals, to mitigate the uncertainty and risks associated with this option. Under this option, all consents and approvals would be sought through standard processes.
49. Resource consent would be required for a restricted discretionary activity due to the extent of works required to the western porch and replacement tower. This consent can be approved or declined. The full range of consents required is still uncertain and there is a risk that associated unidentified activities could require additional consents. It is highly likely that, due to the significant public interest in the building, Christchurch City Council would notify the resource consent application on the basis of 'special circumstances'. If the application is publicly notified, any member of the public is able to lodge a submission and potentially appeal any decision to the Environment Court which could result in delays in having the consent finalised, or the consent being declined.
50. If there were no appeals of the resource consent application, the process could be completed in 7-9 months. If the matter is appealed to the Environment Court the process could be delayed by a further 6-12 months, or longer. These timeframes are for a single consent application. Multiple consents will be required, so these delays could compound. The potential for significant delays is unlikely to provide certainty and confidence to the public, businesses and investors about the future of the Cathedral or to ensure that an appropriate regulatory framework is in place to allow for expedited reinstatement without barriers. If there is significant opposition to the consent application, the applicant and Christchurch City Council could, early in the process, seek that the matter is directly referred to the Environment Court for determination. This could reduce the extent of, but not prevent, delays.
51. These factors are likely to result in either a slow, complex and contentious reinstatement process, or another indefinite stalemate. This option is therefore unlikely to provide certainty and confidence that delivery of the reinstatement project is feasible, which in turn is likely to negatively impact fundraising and the ability of the property owner to commit to the project with confidence it can be delivered.
52. As a result, it does not meet the objectives to provide for an efficient and effective reinstatement process, or to provide certainty and confidence that the reinstatement project is able to be delivered.

#### **Option 2: Provide an expedited consenting framework in legislation (plus probable Order in Council mechanism)**

53. Under this option, special legislation would be introduced to provide a consents and approval framework for the reinstatement project. A key approach that has been considered under this option is to establish an expedited 'controlled activity'



framework, under which resource consent cannot be refused but conditions could be put in place by the consenting authority under limited classes of condition. Due to the potential for activities or classes of conditions to be missed, this approach would need to be supported by an order in council provision allowing the Governor-General to modify the activities or classes of conditions listed. Additionally, notification and appeal rights would be removed (although mitigations could be put in place, such as a public comment period). This would be a hybrid approach to legislation, drawing on some previous enactments including the Hurunui/Kaikōura Earthquakes Emergency Relief Act 2016, the Hurunui/Kaikōura Earthquakes Recovery Act 2016, and the National War Memorial Park (Pukeahu) Empowering Act 2012.

54. Similar approaches that were considered within this broader framework include granting consents and approvals in legislation (similar to the National War Memorial Park (Pukeahu) Empowering Act 2012 model) or permitting activities to occur without consent. As well as likely requiring a supporting order in council mechanism to address any gaps or issues in the legislation, these approaches would involve at least some bypassing of standard checks and balances and may create risk of adverse effects. Granting consents in legislation would also require detailed design information which will not be available for a longer period of time (e.g. up to seven years). The controlled activity approach would be favoured under this option, if feasible, as it provides more opportunities for mitigations, checks and balances, would be a better fit for this project, and retains the oversight role of existing consenting authorities.
55. It is noted that Heritage New Zealand Pouhere Taonga Act 2014 processes would also likely need to be addressed under this approach, whether by granting exemptions from, modifying or extending existing processes or by granting authorities in the legislation.
56. Providing a consenting framework in legislation would likely reduce impediments for the reinstatement project, and expedite delivery, therefore meeting the Government's policy objective of providing an efficient and effective reinstatement process.
57. However, all of the approaches under this option require a level of information about the project that is not currently available, and will not be available for some time. Under a 'controlled activity' framework, for example, this would increase the likelihood that access to the order in council provision will be needed to amend the framework under legislation in response to information as it becomes available. Therefore, this approach is not fit-for-purpose based on the current status of the delivery project. It is also not currently feasible, and is unlikely to be feasible for some time (for example, information on design and consenting requirements is unlikely to be available until joint venture negotiations are complete, and these negotiations require the independent trust to be fully established).
58. Pursuing this option now might provide some certainty, through a Government commitment to reinstatement, but it is not fit-for-purpose in the current environment. As a result, this reduces the effect of any certainty that might be realised, given the almost certain need for any decisions under this framework to be revised and amended. Therefore, this does not meet the objectives and outcomes.

### Option 3: Provide an order in council mechanism to amend legislation

59. Under this option, legislation would be introduced with an order in council mechanism to allow amendment of enactments (including plans and bylaws), for the period of the reinstatement project. The primary advantages of this approach are that it:
- addresses problems that have prevented action to date, optimising the certainty, viability and timeliness (as much as possible) of the reinstatement project;
  - reflects the high public interest in finding solutions for this building; and
  - provides statutory benefits that cannot be achieved through other means (e.g. providing for a streamlined consenting process but retaining checks and balances).
60. This mechanism has been successfully used in the past, including to respond to the Canterbury earthquakes (under the now expired Canterbury Earthquake Response and Recovery Act 2010 and Canterbury Earthquake Recovery Act 2011), and the Hurunui/Kaikōura earthquakes (under the Hurunui/Kaikōura Earthquakes Recovery Act 2016) for a range of recovery activities. For the Hurunui/Kaikōura recovery, some examples of orders that have been passed to date include:
- **Coastal Route reinstatement:** modified provisions of the Resource Management Act 1991 and nine other pieces of legislation to accelerate the reinstatement of State Highway 1 north of Kaikōura.
  - **Unreinforced masonry buildings:** modified parts of the Building Act 2004 and the Resource Management Act 1991 in relation to certain buildings with unreinforced masonry parapets and facades.
  - **Ratings valuations:** modified parts of the Rating Valuation Act 1998 and the Rating Valuation Rules 2008 to allow the Kaikōura District Council to disregard earthquake damage in reassessing valuations of properties.
61. While the above orders in council cover a wide range of activities, the potential scope of an order in council mechanism for supporting the Cathedral reinstatement is more limited than these examples, with the scope of the proposed mechanism being limited to a geographic area (the Cathedral area) and the reinstatement of the Cathedral.
62. Overall, this approach best meets the objectives and outcomes in comparison to the alternatives. In particular, unlike the alternatives, it can accommodate current uncertainties arising from the governance structures necessary for the reinstatement project not being in place yet (which leads to uncertainties on design and consenting requirements). This is because the order in council mechanism enables consents and approvals to be addressed at a later date, when the necessary information becomes available.
63. At the same time, this option gives a clear signal as soon as possible that the Government is willing to support the project, providing certainty and confidence that it can be delivered, and that this can be done through an efficient and effective process.



64. Within this mechanism, there are broad options in relation to judicial review rights:

- **No judicial review rights:** This option is consistent with the Hurunui/Kaikōura Earthquakes Recovery Act 2016. The key disadvantage of this option is that the process will raise concerns about overriding judicial review and appeal rights which are available under standard processes, as discussed above in Option 1 and in section 2.2. This will be controversial as it engages with basic constitutional principles of New Zealand law – in particular, that there should always be an avenue of appeal from decisions made by public bodies.
- **Restricted judicial review rights:** This option also imposes a time limit on application for judicial review and/or no appeal rights to the Higher Courts. In comparison to the restrictions on judicial review in the Hurunui/Kaikōura Earthquakes Recovery Act 2016, the proposed option would allow judicial review of an order to the High Court only. In practice, this could mean there are still delays to reinstatement if a judicial review application was made. Time constraints on making an application would be built in to try manage such delays as much as possible, but delays of 2-12 months for consideration of a review could be possible. This does not account for the time to consider and address the outcome of any judicial review.

65. The restricted judicial review rights would result in moderate uncertainty that, for example, an order in council could be immediately relied upon. However, the risk of judicial review is present under all options that have been considered. This option goes some way to ensuring a time-limited outcome for any proceedings, which is essential to achieve the Government's objectives. It is likely to strike a better balance between enabling the basic constitutional right to judicial review, with the need to provide certainty on the future of the Cathedral. Without any limitation on judicial review, there is some risk that the Government's objectives and outcomes could be compromised.

66. An alternative model that was considered under this option in order to achieve that balance was to establish a new body (such as a standing Tribunal, chaired by a retired High Court Judge) to hear review applications. The Tribunal would have a limited relief scope – it could approve the Minister's recommendations or send the decision back for Ministerial reconsideration. This model was considered and dismissed. Compared to the High Court model it could result in quicker proceedings. However, in comparison, it was considered administratively burdensome, costly and created a two-step appeal process; that is, an appeal to the Tribunal and potential judicial review of the Tribunal's decision to the High Court. This would create further uncertainty and delays.

67. It is considered that there is a strong case for an exceptional circumstances approach to enabling the reinstatement of the Cathedral. Cathedral demolition works were enabled under Canterbury Earthquake Recovery Act 2011 emergency legislation through a section 38 notice issued in 2011. These works were intended to be enabled in the response and recovery phase. The Cathedral project is in essence a recovery project, which is only occurring in the regeneration phase due to a lengthy period of litigation taken against the property owner in acting upon this emergency notice. As such, any further delays caused by litigation could have significant implications on the delivery of this recovery project, having flow-on

implications on the trajectory of the recovery and regeneration of the central city, and the ability for the Government's objectives and outcomes to be achieved.

68. A limitation of rights may be more justifiable where public confidence and rights can be protected by other means such as providing participatory rights before decisions are made. It is proposed that mitigations of this kind can be offered by:

- Ensuring the proposed order in council mechanism has a limited scope; and
- Enabling public or appropriate party participation through a written comment period – where considered appropriate by the Minister, the public may have an opportunity to comment on the draft order. In all other cases, the Minister must invite comment from the people that the Minister considers appropriate.

69. It is also noted that there have been multiple opportunities for interested parties and members of the public to have a say on the future of the Cathedral over the past seven years, including previous decisions being challenged and tested in the courts, and considered during the Christchurch Replacement District Plan process.

70. Various interested parties, including the Church Property Trustees, Christchurch City Council, Great Christchurch Buildings Trust and other heritage groups provided evidence during the Replacement District Plan process. There is therefore already a reasonable understanding of the views and concerns of various parties, and the reasons for which they might have challenged or appealed processes. The reinstatement approach is a significant compromise by the property owner, to which the previously litigious parties have agreed.

71. It is considered that the order in council mechanism is appropriate and necessary in the context of the reinstatement of this unique and significant building, given the exceptional circumstances outlined above and in section 2.1 of this impact statement, and the degree of uncertainty on design and consenting requirements of the project at this point in time.

72. Additional checks and balances provided under this option include proposals that any order in council:

- is revoked after 15 years of enactment of the proposed Bill; and
- is reviewed by a Review Panel, which will examine proposed orders and provide advice to the Minister before the order is made. The Minister would be required to take the Panel's report into consideration. It is also proposed that, in appointing the Review Panel, the Minister must consider whether each appointee has knowledge, skills, or experience relating to mātauranga Māori and tikanga Māori, and any matters relevant to the reinstatement (for example, heritage architecture or environmental protection).

### **3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?**

73. To support the objectives of the Cathedral reinstatement project, the following criteria have been developed for the purpose of measuring success:

- **Efficiency** – reinstatement can be progressed with the support of a cost-effective and timely process (expedited if necessary).
- **Fit-for-purpose** – reinstatement can be progress under a process that is effective and fit-for-purpose, and is able to be delivered in future in accordance with the joint venture’s developed designs.
- **Certainty** – the reinstatement project can progress as planned by the joint venture, with reduced risk of delays and impediments, and with clarity of process and outcome.
- **Confidence** – the property owner, joint venture and potential donors understand that risks for the reinstatement project are reduced and have confidence that the project can be successfully completed, so they are committed to the delivery.

74. Efficiency must be balanced against fit-for-purpose, certainty and confidence. While an expedited process is preferred, durable outcomes are more likely to be achieved if flexibility is built in. As such, the preferred option is focused on enabling decision-making in future when more information is available, rather than proceeding directly to an expedited process that may have flaws or issues not yet able to be tested or identified.

### 3.3 What other options have been ruled out of scope, or not considered, and why?

#### Alternatives under existing legislation

75. Under the **Greater Christchurch Regeneration Act 2016**, the Government could make appropriate adjustments to the regulatory environment using tools provided under the Greater Christchurch Regeneration Act 2016 (the GCR Act) – through either a Regeneration Plan or an amendment to the relevant District Plan under section 71 of the GCR Act. Both of these tools could:
- Insert rules into the relevant District Plan(s) – for example, enabling works to be permitted or controlled activities – thereby either avoiding the need for resource consent or restricting the consenting requirements; and
  - Provide for public input of varying degrees, depending on the tool, into decision-making.
76. Under the new **Resource Management Act streamlined planning process**, councils may request the Minister for the Environment to use a streamlined planning process which is similar to the GCR Act processes above. The streamlined process has not been tested and it is difficult to estimate its timeframes.
77. These two options were ruled out early in the policy development process as there are limitations to their effectiveness. For example, they insufficiently remove uncertainty and potential for delay, as both tools can amend the relevant District Plan but not primary legislation (i.e. a controlled activity status cannot address the risk of notification on the ground of ‘special circumstances’). Alternatively, a permitted activity approach would remove the risk of notification, but would also remove all checks and balances and all oversight).

78. Additionally, these approaches can only address the existing District Plan framework – for example, archaeological processes would be out of scope.

**Resource Management Act 1991 Designation**

79. Designations usually enable central and local government to get planning authorisation for public works, and protect land for a given future activity.

80. The reinstatement project is not a public work being led by the Crown or a council; rather it will be led by a joint venture between the property owner (Church Property Trustees) and an independent trust. Therefore, this option has not been considered further.

81. For more detailed discussion on other status quo options, see section 2.2 and Option 1 above.

## Section 4: Impact Analysis

**Marginal impact:** How does each of the options identified at section 3.1 compare with the counterfactual, under each of the criteria set out in section 3.2?

	Option 1 (no legislative intervention)	Option 2 (Expedited consenting framework + Order in Council mechanism in legislation)	Option 3 (Order in Council mechanism in legislation)
<b>Efficiency</b>	0	0 Para 58	++ Para 59
<b>Fit-for-purpose</b>	0	- Para 56	++ Para 62
<b>Certainty</b>	0	+ Para 58	+ Para 63
<b>Confidence</b>	0	+ Para 58	++ Para 63
<b>Overall assessment</b>	0	+	++

**Key:**

- ++ much better than doing nothing/the status quo
- + better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

# Section 5: Conclusions

## 5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

82. Taking into account the range of activities likely to be needed and the current phase of the project, and recognising the constraints the project current faces, Option 3 is the recommended option. The alternative options have been dismissed as there is a case for legislative intervention, but the project is in the very early planning stages and the information is not available to support Option 2. As such, it would be highly likely that an order in council mechanism would be required in any case under any Option 2 approach, to address any gaps or issues with the legislation.
83. For a more comprehensive discussion on the benefits of Option 3, see paragraphs 62-69 above.

## 5.2 Summary table of costs and benefits of the preferred approach

Affected parties	Comment:	Impact	Evidence certainty
<b>Additional costs of proposed approach, compared to taking no action</b>			
Regulated parties* (Joint venture)	<ul style="list-style-type: none"> <li>Likely to experience some administrative cost from any involvement in the order process. Not expected to be significant.</li> <li>Difficult to quantify costs until more certainty is gained on design and consenting requirements.</li> </ul>	Low	Low
Regulators (Local and Regional Councils, Heritage New Zealand Pouhere Taonga)	<ul style="list-style-type: none"> <li>Likely to experience some administrative cost from any involvement (e.g. opportunity to comment on or provide input into proposed Orders). Not expected to be a significant additional cost.</li> <li>Difficult to quantify costs until more certainty is gained on design and consenting requirements.</li> </ul>	Low	Low
Wider government (Administering agency)	<ul style="list-style-type: none"> <li>May experience multiple one-off administrative costs as Orders are developed.</li> <li>Difficult to quantify costs until more certainty is gained on design and consenting requirements</li> </ul>	Low	Low
Other parties (Public, affected persons)	<ul style="list-style-type: none"> <li>Loss of democratic voice as part of the status quo process (e.g. notification of consent).</li> </ul>	Medium	High
<b>Total Monetised Cost</b>		\$0.00	
<b>Non-monetised costs</b>		Low	

\*Note: the preferred option will result in a draft Bill which in itself will not regulate particular parties. However, any orders in council developed under the proposed Bill would regulate activities of the joint venture which is charged with delivering the reinstatement project.

Expected benefits of proposed approach, compared to taking no action			
Regulated parties	<ul style="list-style-type: none"> <li>Ensures that the joint venture is able to deliver the reinstatement and that potentially significant risks under status quo processes are minimised.</li> <li>Administrative and others cost of the status quo process may be avoided or otherwise minimised through the Order process.</li> <li>Difficult to quantify costs until more certainty is gained on design and consenting requirements.</li> </ul>	High	Low
Regulators		Low	Low
Wider government	<ul style="list-style-type: none"> <li>Wider benefits of significant investment in anchor projects in Christchurch will be realised.</li> </ul>	High	High
Other parties	<ul style="list-style-type: none"> <li>Enables regeneration of the area surrounding Cathedral Square and the reinstatement of a significant cultural and civic landmark.</li> <li>Provides confidence that the reinstatement of the Cathedral will not be further delayed, therefore providing the public with confidence in the future of the city.</li> </ul>	High	High
<b>Total Monetised Benefit</b>		\$0.00	
<b>Non-monetised benefits</b>		High	

### 5.3 What other impacts is this approach likely to have?

84. The preferred option may carry a precedent risk. However, there are few buildings nationally that rival the significance and status of the Cathedral. As noted in section 2.1, it is the centrepiece and focal point of the city, with Cathedral Square anchoring the central business district, and it is the widely recognised symbol of the city that bears its name.
85. In this instance, there are multiple unique circumstances due to the compounding effects of the damage to this significant building from the earthquakes, previous litigation and the wider impacts these are having on recovery and regeneration of the central city.
86. Additionally, as discussed above in paragraph 67, the reinstatement project is in an extraordinary situation, as it is essentially a response and recovery project from the catastrophic damage caused by the earthquakes. It is only taking place in this phased of regeneration due to legal action being taken against the property owner as they were dealing with the immediate impacts of any emergency situation. For this reason, it is considered to sit well within the emergency response and recovery framework in which mechanisms of this kind have been considered appropriate.
87. When considered in the context of the multiple opportunities the public has had to provide views on the future of this building over the past seven years, these unique circumstances are considered to offset any precedent risk.

88. The preferred option is considered to be able to appropriately deal with any uncertain impacts that might arise.

#### **5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?**

89. The preferred option has clear objectives, and seeks to achieve those in a least-cost way. It provides for engagement with relevant stakeholders and checks including a Review Panel which will ensure that all orders in council comply with the Government's 'Expectations for the design of regulatory systems'.

## **Section 6: Implementation and operation**

#### **6.1 How will the new arrangements work in practice?**

90. The preferred option requires amendment to primary legislation, which is proposed to be undertaken through the Christ Church Cathedral Reinstatement Bill. The Bill is planned to be introduced as soon as possible. Implementation would then be able to begin, and could continue, for approximately 10-15 years.

#### **6.2 What are the implementation risks?**

91. The potential precedent risk is discussed above in section 5.3.

## **Section 7: Monitoring, evaluation and review**

#### **7.1 How will the impact of the new arrangements be monitored?**

92. The Christ Church Cathedral Reinstatement Bill is proposed to include a provision for a report on the operation of the Bill to be prepared at least once every 12 months, which outlines any orders in council made under the Bill.

#### **7.2 When and how will the new arrangements be reviewed?**

93. In addition to the annual review noted above (section 7.1), all orders in council made under the Bill would be revoked 15 years after commencement of the Bill, unless revoked sooner.



## Appendix A: Description of options for the Cathedral

Level of retention	Options for the Cathedral	Definition / description
High	Repair	<p><i>No deconstruction</i>  <i>Restore to good working order, fix or improve damaged condition <u>in situ</u></i></p> <ul style="list-style-type: none"> <li>Miriam Dean QC's facilitation established agreement between CPT and GCBT that this option is <b>not feasible</b> ("To repair only or restore only are not viable engineering options because they would not bring the Cathedral either in part or in whole up to 100 per cent of the seismic requirements of the new building code"<sup>5</sup>)</li> </ul>
High	Full Restoration	<p><i>Bringing back to its original state – i.e. may involve some deconstruction but would 'restore' by using the original materials put back in the same place</i>  <i>Includes seismic strengthening</i></p> <ul style="list-style-type: none"> <li>Presented to the public in 2013 and received support of 29%</li> <li>Miriam Dean QC's facilitation established agreement between CPT and GCBT that this option is <b>not feasible</b> ("To repair only or restore only are not viable engineering options because they would not bring the Cathedral either in part or in whole up to 100 per cent of the seismic requirements of the new building code"<sup>6</sup>)</li> <li>Estimated cost <b>\$104-\$221 million</b> (as at 2013)</li> <li>Estimated 6.5-20 years to deliver</li> </ul>
Medium-High	Reinstatement	<p><i>Some deconstruction as required to make the building safe</i>  <i>A combination of repair, restoration, reconstruction/rebuild and seismic strengthening – largely 'reinstating' the Cathedral to the extent that, for most people, it would be indistinguishable from the pre-earthquake building</i></p> <ul style="list-style-type: none"> <li>Option identified through Miriam Dean QC's facilitation and investigated by the Working Group in 2016 – proposed to be designed and procured in stages, so some decisions are still pending (e.g. regarding the design of the tower)</li> <li>Estimated cost <b>\$104 million</b> (as at 2017)</li> <li>Estimated 5-7 years to deliver (as at 2013)</li> </ul>
Low	Traditional (replacement)	<p><i>High level deconstruction / demolition</i>  <i>Traditional model but with modern, lightweight materials</i></p> <ul style="list-style-type: none"> <li>Presented to the public in 2013 and received support of 13%</li> <li>Estimated cost <b>\$85-181 million</b> (as at 2013)</li> <li>Estimated 5-22 years to deliver (as at 2013)</li> </ul>
Low	Contemporary (replacement)	<p><i>High level deconstruction / demolition</i>  <i>Modern design and functionality</i></p> <ul style="list-style-type: none"> <li>Presented to the public in 2013 – received support of 51% and selected by the CPT as their preferred option</li> <li>Considered as part of Miriam Dean QC's facilitation and noted by the Working Group during its investigations</li> <li>Estimated cost \$63-66 million (as at 2015) – increased to <b>\$75 million</b> (as at 2016)</li> <li>Estimated 4.5-9.5 years to deliver (as at 2013)</li> </ul>
Low	'Sir Miles Warren' option (replacement)	<p><i>High level deconstruction (to sill level)</i>  <i>"New build in a heritage skin" – strengthen the remaining walls, and replace all the roof and upper structure with a lightweight timber structure in a similar but contemporary design</i></p> <ul style="list-style-type: none"> <li>Noted and costed by the Working Group in 2016 as a potential alternative</li> <li>Estimated cost <b>\$65 million</b> (as at 2016)</li> </ul>

<sup>5</sup> Miriam Dean QC, *Report on Facilitated Discussions with Engineers for Church Property Trustees and the Great Christchurch Buildings Trust on Engineering Options for Repair, Restoration or Replacement of Christchurch Cathedral*, pp. 5, 24.

<sup>6</sup> Ibid.