

**BEFORE THE CHRISTCHURCH REPLACEMENT
DISTRICT PLAN INDEPENDENT HEARINGS PANEL**

IN THE MATTER of the Resource Management
Act 1991 and the Canterbury
Earthquake (Christchurch
Replacement District Plan) Order
2014

AND

IN THE MATTER of the Stage 1 Residential (part)
Proposal and Stage 2
Commercial and Industrial (part)
Proposals

**MEMORANDUM ON BEHALF OF CHRISTCHURCH CITY COUNCIL REGARDING THE NEW
BRIGHTON MEDIUM DENSITY OVERLAY**

1 OCTOBER 2015

 **Simpson Grierson**
Barristers & Solicitors

J G A Winchester / S J Scott
Telephone: +64-3-968 4018
Facsimile: +64-3-379 5023
Email: sarah.scott@simpsongrierson.com
PO Box 874
SOLICITORS
CHRISTCHURCH 8140

MAY IT PLEASE THE PANEL:

1. The purpose of this memorandum is to address the timing of the Panel's decision making on the New Brighton Medium Density (Higher Height Limit and Individual Site Density) Overlay (**RMD overlay**), to clarify the scope of the Commercial and Industrial Stage 2 hearing with regard to the RMD overlay (given comments made in the Council's memorandum of counsel filed in advance of the Commercial/Industrial Stage 2 pre-hearing meeting dated 3 August 2015 and questions asked of counsel during the Stage 2 Residential hearing¹), and to seek a direction from the Hearings Panel that it does not make a decision on the RMD overlay until the three submitters who have submitted on the RMD overlay in Stage 2 have been heard through the Commercial/Industrial Stage 2 hearing.

Background

2. In Stage 1:
 - 2.1 Rule 14.3.3.2(8) was notified, and provided that the Higher height limit overlay at New Brighton was 20m for Central New Brighton; and
 - 2.2 the RMD overlay was applied to Stage 1 notified land in New Brighton, as shown by the black dotted lines in **Figure 1** on the following page:

¹

Transcript, pages 773 – 774.

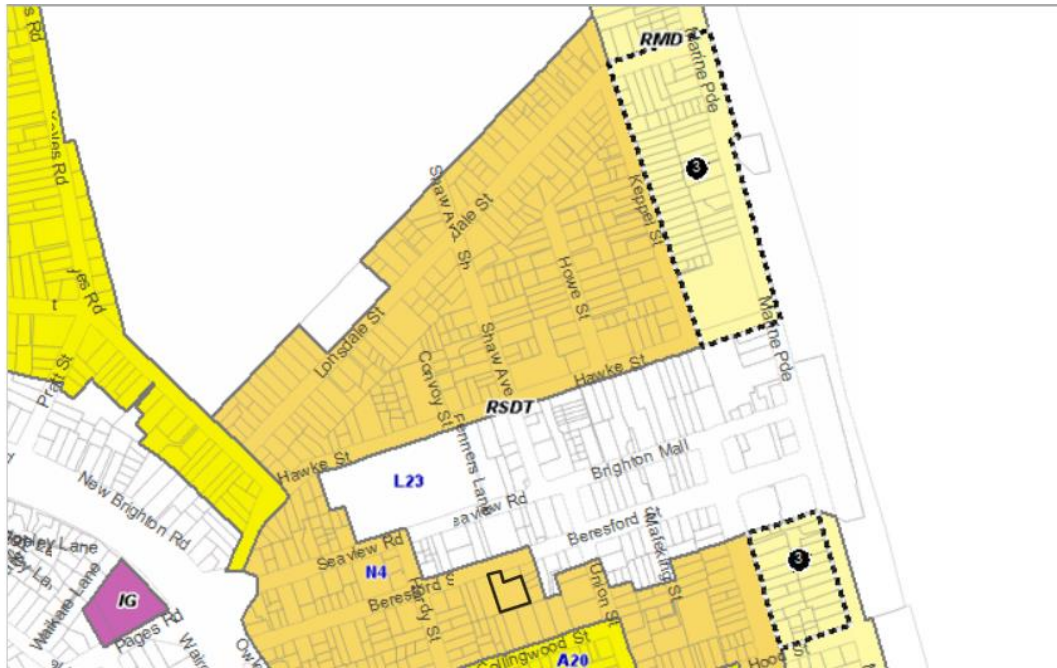


Figure 1:

Screen shot of Stage 1 Planning maps 26, 27, 33 and 34 showing Medium Density (higher Height Limit and Individual Site Density) Overlay.

3. The RMD overlay therefore formed part of the Stage 1 Residential Hearing. There were no submissions on Rule 14.3.3.2(8) or the RMD overlay as shown on planning maps 26, 27, 33 and 34 in Stage 1.
4. In Stage 2:
 - 4.1 The Council re-notified the RMD overlay on planning maps 26, 27, 33 and 34, except that the Council included in the legend of all four planning maps the words "*Medium Density (Higher Height Limit and Individual Site Density) Overlay (New Brighton Areas to be removed in Stage two)*".
5. One submission has been received in support and two in opposition to the removal of the overlay for the RMD overlay (by J Maunder (#2132), and Werner (#2065) / P Zaneen (#2465) respectively), in Stage 2.
6. The memorandum filed by the Council in advance of the Stage 2 Commercial and Industrial pre-hearing meeting sought to include matters relating to New Brighton into the scope of the Stage 2 Commercial and Industrial hearing, as follows:²

²

Memorandum of Counsel regarding pre-hearing meeting Commercial and Industrial Stage 2 hearing, dated 3 August 2015, paragraph 2.1(a)(iii).

The scope of the [Stage 2] hearing is all of the Stage 2 text in Proposals 15 and 16 and land zoned commercial or industrial on the Stage 2 planning maps, including:

(a) *With respect to New Brighton:*

Amendment to remove the "Medium Density (Higher Height Limit and Individual Site Density) Overlay (New Brighton)" from the planning maps as notified in Stage 2 of the pRDP. The proposed overlay was shown on the planning maps in stage 1 of the pRDP. Rule 14.3.3.2 (8) of the notified Residential Proposal in Stage 1 permits buildings up to 20m in height in the Residential Medium Density zone. The effect of removing the overlay in Stage 2 is a change to the height limit, which is proposed to be 9m under Rule 14.3.3.2 as notified in Stage 1. It is recommended that this is heard as part of the Commercial hearing given the driver for the reduced height limit in the residential zone subject to the overlay is a reduction in the height limit in the Commercial Core zone.

Clarification

7. The Council accepts that it cannot "remove" a Stage 1 overlay, by renotifying the provision in Stage 2 and including a note in the legend to that effect. The Council is prevented from doing this by clause 5(6) of the Order in Council, which states "*After a proposal has been notified under this order [ie, the Stage 1 Residential Proposal] the council must not amend or withdraw any provisions of the proposal, except as provided for by clause 13(4) of this order and clause 4(10) of this schedule*". Clause 3(4) of the Order and clause 4(10) of the Schedule 1 of the Order are irrelevant in this instance.
8. It follows that Council accepts that the RMD overlay cannot be "removed" from the plan in that manner. Although the RMD overlay went unchallenged in Stage 1 (and could be included in the Panel's forthcoming decision on the Stage 1 Residential Proposal), as the Council essentially renotified the RMD overlay in Stage 2 and three submissions were received on it, Council considers that the Stage 2 submitters have a right to be heard and should be given that opportunity.
9. The reason why the Council sought that the RMD overlay be heard alongside the height limits for the neighbouring Commercial Core land at New Brighton (ie, in the Stage 2 Commercial/Industrial Stage 2 chapter), is that the permitted height limits for the commercial and residentially zoned land at New Brighton are intrinsically linked. The

history of these height limits is outlined by Mr Mark Stevenson in his evidence in chief for the Commercial/Industrial hearing,³ and Mr Stevenson also addresses the *Stage 2* submissions on the RMD overlay, but does not go as far as recommending changes to the RMD overlay (height) because of the effect of the Order in Council set out in paragraph 7 above.⁴

Direction sought

10. In summary, Council considers that the three submissions made on the RMD Overlay in Stage 2 should be considered/heard by the Hearings Panel, before it makes a decision on the RMD Overlay through Stage 1. Council therefore seeks a direction that the Panel not make a decision on the RMD Overlay in Stage 1, until after the conclusion of the Stage 2 Commercial/Industrial hearing.
11. Because the Commercial/Industrial hearing is scheduled to start on Monday 5 October and a decision has not been made on Stage 1 Residential at this time, it is respectfully submitted that there will be no prejudice in not making a decision on Stage 1 Residential until after the Commercial/Industrial hearing has concluded, which is currently scheduled for Thursday 8 October 2015.
12. For completeness, it also considers that the RMD overlay was also not within the scope of the Stage 2 Residential Hearing.

DATED this 1st day of October 2015



J G A Winchester / S J Scott
Counsel for Christchurch City Council

³ At paragraphs 12.21 to 12.24.

⁴ At paragraphs 12.27 to 12.28.