

**BEFORE THE CHRISTCHURCH REPLACEMENT
DISTRICT PLAN 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 proposed
Christchurch
Replacement District
Plan – Stage One
generally

**MEMORANDUM OF COUNSEL ON BEHALF OF CHRISTCHURCH CITY
COUNCIL SEEKING DIRECTIONS FROM HEARINGS PANEL REGARDING
SPECIFICATION OF RELIEF FOR ALL SUBMITTERS
ON REMAINING STAGE 1 PROPOSALS**

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MAY IT PLEASE THE PANEL:

1. INTRODUCTION

- 1.1 The purpose of this memorandum is to seek a direction from the Hearings Panel for specific relief to be provided by all submitters who have not clearly done so in their primary submission, for all remaining Stage 1 Proposals. For the avoidance of doubt, this means the specific amendments that a submitter seeks to the provisions of a notified proposal.
- 1.2 As the Hearings Panel is aware, there are a number of submitters involved in the Strategic Directions priority hearing who did not specify the amendments to the notified provisions that they were seeking in their primary submission. In the Pre Hearing Report and Directions dated 15 November 2014 (**Report**), the Hearings Panel directed that any submitter who had not clearly specified relief sought by way of amended provisions for the Strategic Directions Proposal was to lodge specific relief with the Independent Secretariat by 3:00pm 19 November 2014. This was some 5 weeks after the closing date for submissions.
- 1.3 In the circumstances of the Strategic Directions priority hearing, the receipt of the specific relief on 19 November 2014 meant that the Council was required to review the specific relief and respond to the identified significant issues by way of supplementary evidence within two working days. This turnaround was complied with but is submitted to be an extraordinary timeframe for experts to review detailed relief, form an expert opinion, and provide written evidence to a standard that will assist the Hearings Panel. This is against the context of a truncated hearings process where appeal rights to the Environment Court have been removed.
- 1.4 It is submitted that, while all parties and the Hearings Panel are under significant pressures as part of this process, the burden on and potential prejudice to the Council is significant, given that the date for filing primary submissions closed on 8 October 2014, and specific

relief should have been provided by submitters at that time. This legal requirement is addressed further below.

2. PRE-HEARING REPORT AND DIRECTIONS OF 15 NOVEMBER 2014

2.1 Paragraph 18 of the Report states that:

The need to clarify relief sought arises because the public notice form attached to the Order did not require submitters to specifically identify the particular changes they were seeking with reference to the provisions of the Plan. The request was made by the Panel primarily to assist it to understand the issues for the hearing. In response to the concerns expressed by the Council in its Memorandum and at the pre-hearing meeting as to pressures it faced in completing its evidence, as the Panel noted to Mr Winchester, this can be addressed by allowing the Council capacity to seek leave to file supplementary evidence on anything arising. Given that submitters must keep to the scope of their written submissions in detailing their specific relief, the Panel considers this ought to be a sufficient contingency measure to the extent that Council witnesses had not sufficiently covered matters in their original evidence.

2.2 It is respectfully submitted that this statement requires a response, particularly as to the Hearing Panel's conclusion as to the legal obligation on submitters to specify their relief. The public notice form attached to the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 (**Order**), as referred to in the Report, is Schedule 5 - the "Public Notice of Proposal" form. This form is used to notify the public that a proposal prepared under the Order has been formally "notified" and is available for submissions. While it specifies the form of the *public notice*, it does not set out the legal requirements for the contents of a submission, which is what the *submission form* does.

2.3 The Order did not amend the usual Resource Management Act 1991 (**RMA**) process insofar as it relates to the contents of a submission form on a district plan. Form 5 of the Resource Management (Forms, Fees, and Procedures) Regulations 2003 sets out the content of a submission form on a publically notified proposal, including identifying the particular changes sought. The Council's submission form replicates Form 5 (albeit in a different format - as electronic submissions were encouraged - and using slightly different wording given the changes in terminology introduced by the Order).

2.4 A full copy of the submission form is **attached** to this Memorandum of Counsel, but notably the bottom of page 1 includes a section where the submitter must identify the chapter, provision number and name, and/or map number to which their submission point relates. They must also state whether they support, oppose or seek to have the provision amended and set out the reason for that view. The submitter must then stipulate from the following options, the decision that is sought on that provision:

- (a) the decision I seek is that the provision be retained;
- (b) the decision I seek is that the provision be deleted; or
- (c) the decision I seek is that the provision be amended as follows: [and a blank section follows where the submitter stipulates what amendments are sought].

2.5 That text is repeated again on the following page, where the submitter can then address their next submission point. The submission form also states "*If you have more than one submission point, please attach an additional sheet and specify the chapter and either objective, policy or rule*".

2.6 It is accordingly submitted that the standard RMA requirement for submitters to specify the relief sought in their submission on a proposal was not varied, and indeed this information is required in order for a submission to be valid. Notwithstanding this, well-resourced and professionally advised submitters, such as those represented by Greenwood Roche Chisnall, elected not to specify their relief. This raises a number of issues, including whether

submissions are valid at all, and if they are, whether there is scope for the Hearings Panel to consider the specific relief which has belatedly been provided.

2.7 By inference, it is understood that the Hearings Panel has accepted those submissions as being valid, but there are still important questions of scope that are at large, notwithstanding the greater flexibility afforded to the Hearings Panel by the Order. In order for the replacement plan process to be efficiently managed, it is submitted that it is both a legal requirement, and would assist the Hearings Panel and all parties, for specific relief to be provided in submissions (and, if not already provided, for this to be done so as soon as possible).

2.8 Accordingly, while the Report notes that "*The request [for specific relief] was made by the Panel primarily to assist it to understand the issues for the hearing*", it is respectfully submitted that the requirement for submitters to file specific relief is a legal obligation under the RMA, and one which clearly applies to this process.

2.9 As noted earlier, aside from being a legal requirement, from a practical and evidential perspective, it is necessary for specific relief to be known by the Council and other participants in the process in order to consider, in full, the position being advanced by a submitter. This is particularly important when a submitter is essentially challenging both the substance and detail of large parts of the Phase 1 proposals, and ultimately advances what amounts to a re-written chapter. It goes without saying that it is important for the credibility of the process for the Council, as proponent of proposals, to be given a reasonable period of time to consider the various submitters' cases and provide evidence in response.

3. DIRECTIONS SOUGHT ON REMAINING STAGE ONE PROPOSALS

3.1 At this point, the Council has no knowledge of what specific changes various submitters, for example the Property Council and other submitters represented by Greenwood Roche Chisnall (as being the most obvious "block" of submitters), seek to the remaining Phase 1

chapters. This means that the Council is unaware of the alternative provisions it needs to consider, analyse and respond to in mediation and evidence in the hearings to come. It already appears that a number of submitters are taking the opportunity to formulate relief on the hoof without considering issues of scope or fairness. While the Council acknowledges that aspects of the orthodox RMA process have necessarily had to change as a consequence of the Order, it is submitted that it does not authorise nor justify the fundamentals of the RMA's Schedule 1 process being dispensed with by those submitters.

3.2 The Council wishes to record its serious concerns with the approach being taken by these parties. It is submitted that it will be difficult, if not impossible, for the Council's witnesses to fulfil their duty to assist the Hearings Panel throughout the Stage 1 hearings, unless and until they know the specific relief being promoted and have sufficient time to address it.

3.3 Moreover, parties like the Property Council currently have the extraordinary luxury of preparing relief, chapter by chapter, as they move through the hearings process. For example, after receiving the Hearings Panel's decision on the Strategic Directions Proposal, the Property Council and other similar submitters can then go about proposing a re-write of the Commercial Chapter as they see fit, based on broad and non-specific themes identified in their written submission. This is submitted to be inconsistent with natural justice, and at odds with the legal obligations of submitters as set out in the RMA's standard form for submissions.

3.4 In respect of the important pre-panel processes of mediation and witness caucusing, there is a need for specific relief to be provided in order to initiate for these processes to be efficient, effective and meaningful, for those attending to be able to prepare in advance, and to take place well before a hearing starts.

3.5 To ensure the situation that has arisen for the Strategic Directions priority hearing is avoided in the future, and to allow the Council sufficient time to appropriately consider and respond to the alternative provisions being promoted by submitters (including the very important

step of engaging in mediation well before a hearing starts, rather than at the same time that evidence is due to be filed and pre-circulated) we respectfully seek a direction that *all* submitters for Stage 1 proposals (except for the four priority hearings), who have not already provided specific relief within their original submissions, are to file specific relief by 19 December 2014.

3.6 The Council has already submitted that it is extraordinary, even bearing in mind the timeframes that all parties are required to work under, for well-resourced and competently advised parties to have not identified detailed relief in their primary submissions. This view remains.

4. DIRECTION SOUGHT

4.1 Counsel respectfully seeks a direction from the Hearings Panel that any submitter who has not clearly specified relief sought by way of amended provisions, for all Stage 1 submitters, be filed with the Independent Secretariat and served on the Council, by 5:00pm Friday 19 December 2014.

4.2 For the avoidance of doubt, the Council considers that directions are not required for the second, third and fourth priority matters (temporary activities related to earthquake recovery, provisions for repair and rebuilding of multi-unit residential complexes and rezoning for the Halswell exemplar housing area), as pre-hearing meetings for these three matters have already been completed.

4.3 It would also be useful, for subsequent phases of the replacement district plan process, if the Hearings Panel was to remind all submitters of their obligations arising from Form 5 of the Resource Management (Forms, Fees, and Procedures) Regulations 2003 which sets out the content of a submission form on a publically notified proposal, including identifying the particular changes sought.

4.4 We record that, for subsequent phases of the process, the Council reserves its position to seek that submissions be disallowed if they do not comply with that legal requirement. The Council also reserves its

position in respect of questions of scope for the Stage 1 submissions
and relief.

DATED this 1st day of December 2014



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



The proposed
**Christchurch
Replacement District Plan**

Submission form

(Submissions can be made online at
proposeddistrictplan.ccc.govt.nz)

Your submission can be made:

Online: proposeddistrictplan.ccc.govt.nz

Emailed to: dpreview@ccc.govt.nz

Posted to:

District Plan Submissions
Christchurch City Council
PO Box 73001 Christchurch 8154

Delivered to:

Christchurch City Council
53 Hereford Street, Christchurch

Submissions must be received no later than 5pm Wednesday 8 October 2014

Submitter Details (All details marked with * must be provided)

Full Name(s)*

Postal address*

Email Address*

Phone number* (include area code) Mobile number*

Contact person (if different from submitter)

Trade Competition

Note: If you are a person who could gain an advantage in trade competition through making a submission, your right to make a submission may be limited by Clause 6(2) Schedule 1 of the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014. Please complete the following.

I could gain an advantage in trade competition through this submission. Y N

If you answered Yes to the above statement please complete the following.

I am directly affected by an effect of the proposal that -

(a) adversely affects the environment ; and

(b) does not relate to trade competition or the effects of trade competition Y N

Please specify the specific proposal that your submission relates to:

- | | |
|---|--|
| <input type="checkbox"/> Proposal 1: Introduction | <input type="checkbox"/> Proposal 8: Subdivision, Development and Earthworks |
| <input type="checkbox"/> Proposal 2: Definitions | <input type="checkbox"/> Proposal 10: Designations and Heritage Order |
| <input type="checkbox"/> Proposal 3: Strategic Directions | <input type="checkbox"/> Proposal 12: Hazardous Substances and Contaminated Land |
| <input type="checkbox"/> Proposal 5: Natural Hazards | <input type="checkbox"/> Proposal 14: Residential |
| <input type="checkbox"/> Proposal 6: General Rules and Procedures | <input type="checkbox"/> Proposal 15: Commercial |
| <input type="checkbox"/> Proposal 7: Transport | <input type="checkbox"/> Proposal 16: Industrial |

The specific provision that your submission relates to is:

Please identify the specific provision of the plan that your submission relates to by providing the chapter and clause number or planning map number; eg chapter 14, provision 14.3.3.3 Site Coverage

Chapter Provision number and name Map Number

My submission is:

I support I oppose I seek to have the above provision amended

Reasons for my submission:

If you have more than one submission point, please attach an additional sheet and specify the chapter and either objective, policy or rule.

The decision I seek is that the provision:

Be retained Be deleted Be amended as follows: