

IN THE MATTER OF section 71 of the Canterbury Earthquake Recovery Act 2011 and the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014

AND

IN THE MATTER OF proposals notified for incorporation into a Christchurch Replacement District Plan

Date of hearing: 13 January 2016

Date of decision: 1 April 2016

Hearing Panel: Sir John Hansen (Chair), Mr Stephen Daysh, Mr John Illingsworth

DECISION 20

**Chapter 14 Residential (Part) and Chapter 17 Rural (Part)
Cranford Basin — Stage 3**

Outcomes: Planning maps changed as per Schedule 1

COUNSEL APPEARANCES

Ms S Scott and Ms S Meares	Christchurch City Council
Ms J Silcock	Crown
Ms P Steven QC	Grassmere Street Residents Group and Grants Road Holdings Limited
Mr E Chapman	Roger and Lynn Crozier
Mr A Hughes-Johnson QC	G, M and M Case

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INTRODUCTION

[1] This decision (‘decision’) continues the series of decisions made by the Independent Hearings Panel (‘Hearings Panel’/‘Panel’) concerning the formulation of a replacement district plan for Christchurch City (including Banks Peninsula) (‘Replacement Plan’/‘Plan’).¹ It concerns the zoning of Cranford Basin, which comprises approximately 170 hectares of rural land located to the north of Christchurch. The land is bounded by Queen Elizabeth II Drive to the north, Philpotts Road to the east, and the suburbs of Papanui to the west, St Albans to the south-east, and Mairehau to the east.

[2] This decision addresses those submissions supporting and opposing the Rural Urban Fringe zoning of Cranford Basin on Planning Maps 24 and 25 of the Plan. In addition, this decision addresses the Council’s submission requesting that the Residential Suburban zoning applying to the properties west of Philpotts Road on Planning Map 25 be amended to align with the Living 1 Deferred zoning in the existing Christchurch City Plan (‘Existing Plan’).

[3] In this decision, the phrase ‘Notified Version’ describes the planning maps notified by Council. A red-line version was not produced in closing by the Council as they are not recommending any changes to the Rural Urban Fringe zoning of Cranford Basin on Planning Maps 24 and 25 of the Replacement Plan (excluding the re-zoning to the west of Philpotts Road).

[4] Our amendments to the planning maps are detailed in Schedule 1. The reasons for these amendments are set out in this decision.

[5] This decision follows our hearing of submissions and evidence. Further background on the review process, pursuant to the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 (‘the OIC’) is set out in the introduction to Decision 1, concerning Strategic Directions and Strategic Outcomes (and relevant definitions) (‘Strategic Directions decision’).²

¹ The Panel members are Hon. Sir John Hansen (Chair), Stephen Daysh and John Illingsworth.

² Strategic directions and strategic outcomes (and relevant definitions), 26 February 2015.

Effect of decision and rights of appeal

[6] Our proceedings and the rights of appeal are set out in our earlier decisions.³ We concur with those.

[7] Under the OIC, any person who made a submission (and/or further submission) on the Notified Version, the Council and the Ministers may appeal our decision to the High Court (within the 20 working day time limit specified in the Order), but only on questions of law (and, for a submitter, only in relation to matters raised in the submission).

Identification of parts of existing district plans to be replaced

[8] The OIC requires that our decision also identifies the parts of the existing district plans that are to be replaced. In this case, the zoning of the identified properties in the Existing Plan is replaced by the Rural Urban Fringe zoning on Planning Maps 24 and 25 of the Replacement Plan, and the zoning proposals in Schedule 1.

PRELIMINARY MATTERS

Conflicts of interest

[9] We have posted notice of any potential conflicts of interest on the Independent Hearings Panel website.⁴

[10] At the commencement of the hearing, Panel member, Mr Daysh, recorded that a director of his firm had been a project leader for the Canterbury Earthquake Recovery Authority (‘CERA’) in relation to the approval process for the Land Use Recovery Plan (‘LURP’).⁵ Mr Daysh advised that he had no involvement with this matter prior to his appointment to the Panel, and had not discussed any issues associated with the previous roles with his fellow director.

[11] No submitter raised any issue in relation to this or any other conflict matter.

³ Strategic Directions decision at [5]–[9].

⁴ The website address is www.chchplan.ihp.govt.nz.

⁵ Transcript, page 2, line 20.

REASONS

STATUTORY FRAMEWORK

[12] The OIC directs that we hold a hearing on submissions on a proposal and make a decision on that proposal.⁶

[13] It sets out what we must and may consider in making that decision.⁷ It qualifies how the Resource Management Act 1991 (‘RMA’) is to apply and modifies some of the RMA’s provisions, both as to our decision-making criteria and processes.⁸ It directs us to comply with s 23 of the Canterbury Earthquake Recovery Act 2011 (‘CER Act’).⁹ The OIC also specifies additional matters for our consideration.

[14] Our Strategic Directions decision, which was not appealed, summarised the statutory framework for that decision. As it is materially the same for this decision, we apply the analysis we gave of that framework in that decision.¹⁰ As with all our decisions, we apply our Strategic Directions decision throughout.

[15] On the matter of the relevant statutory documents and our obligations in regard to them, we endorse and adopt [39]–[45] of the Strategic Directions decision.¹¹

The required “s 32” and “s 32AA” RMA evaluation

[16] Again, this is a matter referred to in earlier decisions. We adopt and endorse [48]–[54] of our Natural Hazards decision.¹²

⁶ OIC, cl 12(1).

⁷ OIC, cl 14(1) .

⁸ OIC, cl 5.

⁹ Our decision does not set out the text of various statutory provisions it refers to, as this would significantly lengthen it. However, the electronic version of our decision includes hyperlinks to the New Zealand Legislation website. By clicking the hyperlink, you will be taken to the section referred to on that website.

¹⁰ At [25]–[28] and [40]–[62].

¹¹ We note that changes were made to the CRPS and Regional Coastal Environment Coastal Plan to enable the Council to either avoid or mitigate new development in urban areas located within high hazard areas and in relation to the responsibilities for managing coastal hazards which took effect from 12 June 2015. They do not affect this decision.

¹² Natural Hazards (Part) (and relevant definitions and associated planning maps), 17 July 2015, pp 20-21.

Issues raised by submissions

[17] We have considered all submissions and further submissions received in relation to the zoning of Cranford Basin. Schedule 2 lists witnesses who gave evidence for various parties, and submitter representatives.¹³

[18] The issues raised by submissions related to the appropriate zoning of Cranford Basin. The submissions of the Grassmere Street Residents Group and Grants Road Holdings Limited (submitter 3193) ('GSRG/GRHL'), G, M and M Case (3280) ('the Case family'), and R & L Crozier (3268) all sought to change the zoning of Cranford Basin from Rural Urban Fringe to Residential Suburban. The submissions by G Cross (3978) and the Crown (3721) sought to retain the Rural Urban Fringe zoning.

[19] Mediation between the Council and submitters in December 2015 resulted in the parties agreeing that there is merit in rezoning Cranford Basin, but that a change to the LURP and the Canterbury Regional Policy Statement ('CRPS') would be required in order for the rezoning to occur. The parties also agreed that Cranford Basin can be distinguished from other areas outside the urban boundary, because of its location and being surrounded by urban development.¹⁴

Disputed issues and evidence

Giving effect to the LURP and CRPS

[20] Mr Thomson, who provided planning evidence on behalf of the Council, documented that the potential development of Cranford Basin has been the subject of several regional and district level planning processes over the past 20 years.¹⁵ This included submissions by residents to Proposed Change 1 ('PC1') to the CRPS in 2009 seeking residential rezoning over parts of Cranford Basin. The PC1 process recognised the opportunity for development in Cranford Basin, but considered more investigative work was needed. As such, Cranford Basin was identified as a Special Treatment Area within the urban limits for Christchurch.¹⁶

¹³ Counsel appearances are recorded on page 2.

¹⁴ Cranford Basin Mediation Report, Session 2, 7 December 2015.

¹⁵ Evidence in chief of Ivan Thomson on behalf of the Council at 4.3.

¹⁶ Evidence in chief of Ivan Thomson at 4.3.

[21] Mr Thomson went on to advise us that the LURP, which replaced PC1 following the Canterbury earthquakes, excluded Cranford Basin from the urban limits of Christchurch. Mr Mitchell, who, along with his wife, owns a property at 21 Grassmere Road, further explained to us that Cranford Basin was excluded from the urban limits in the draft version of the LURP notified for public consultation. Mr Mitchell's request, along with others, to have Cranford Basin included within the urban limits of Christchurch was ultimately unsuccessful when the LURP was finalised.¹⁷

[22] With respect to the submissions on the Plan seeking the rezoning of Cranford Basin, Mr Thompson was of the opinion that Objective 6.2.1 and Policy 6.3.1 of the CRPS are explicit that urban activities outside the defined urban limit (Map A) or a greenfield priority area must be avoided. He stated that in order to give effect to the CRPS, the Plan cannot allow new urban activities other than in areas identified in Policy 6.3.1(4) of the CRPS. Mr Thompson was also of the opinion that Objective 3.3.7(c) of the Strategic Directions reinforces this position.

[23] No other planning witnesses provided evidence on this matter, and Mr Thomson did not alter his opinion under cross-examination by Mr Chapman on behalf of R & L Crozier. Furthermore, the planning evidence of Mr Thomson aligned with the outcomes agreed by all parties at mediation.

[24] Mr Chapman did contend in his opening legal submissions on behalf of R & L Crozier that the rezoning of Cranford Basin would be consistent with Objective 3.3.7 of the Strategic Directions due to the "site being wholly contained within the existing urban area of greater Christchurch."¹⁸ However, he subsequently conceded at the hearing that there needed to be a change in the CRPS for the Panel to have authority to rezone Cranford Basin for residential purposes.¹⁹

[25] It is agreed that Cranford Basin (excluding the properties zoned Residential Suburban on the western side of Philpotts Road) is outside the urban area delineated by Map A.

¹⁷ Evidence in chief of John Stewart Mitchell on behalf of Grassmere Street Residents Group and Grants Road Holdings Limited at 22.

¹⁸ Opening submissions for Roger and Lynn Crozier at 13.2.

¹⁹ Transcript, page 2, line 11.

[26] We have dealt with this matter at [12]–[115] of our Stage 2 Residential decision.²⁰ We concur in those findings.

[27] In these circumstances, we need to say no more than we accept Mr Thomson’s opinion at [22] above, and will go straight to a consideration of the application for deferred zoning.

Deferred zoning

[28] GSRG/GRHL, the Case family, and R & L Crozier sought that a deferred zoning be applied to Cranford Basin if the properties could not be immediately rezoned for residential purposes. A deferred zoning was sought in anticipation of a future change to the LURP and Map A of the CRPS.

[29] Mr Thomson did not support a deferred zoning. While he acknowledged that he was not averse to using deferment as a tool for achieving integrated management in plan-making, in this case he considered there is no policy support for a deferred residential zone outside the urban boundary defined in the LURP and the CRPS. As such, Mr Thomson considered that a deferred residential zone would not give effect to the provisions of the CRPS (including Map A).

[30] In response to questioning by the Panel, Mr Thomson also expressed concern that a deferred zoning also pre-supposes that the CRPS will change. He considered that there was no policy direction from the Canterbury Regional Council that they will change the CRPS, or that Cranford Basin has greater merit for residential development than other areas around Christchurch which are outside of the urban limits.²¹

[31] The closing legal submissions by Ms Scott on behalf of the Council also did not support the deferred zoning of Cranford Basin. Simply, the Council submitted that a deferred residential zoning of Cranford Basin would not give effect to the CRPS or Objective 3.3.7(c) Strategic Directions, and would be inconsistent with the LURP. This view was also supported by Ms Silcock in her closing legal submissions on behalf of the Crown.

²⁰ Decision 17 Residential (Part) — Stage 2.

²¹ Transcript, page 20, line 22.

[32] In response to questions raised by the Panel at the hearing, the closing legal submissions of Ms Steven QC for GSRG/GRHL submitted that it is irrelevant that the proposed deferral involves an amendment to a higher order document.²² Ms Steven also submitted that it was irrelevant that a change to a regional policy statement is not commonly the trigger for the uplifting of a deferred zone or that it has never been used (by a territorial authority) before now.

[33] Ms Steven considered there is no statutory provision or Court decision stating that a deferred zoning approach, which was reliant on a change to a regional policy statement, may not occur. It was her submission that the only statutory imperative to consider relates to the relationship of a district plan with a regional policy statement, and that the former must give effect to the latter.²³

[34] Ms Steven provided examples of deferred provisions in the Existing Plan and the Hastings District Plan.²⁴ However, it is noted that these deferred provisions related to the provision of flood mitigation (Christchurch), and infrastructure and demand for the land (Hastings).

[35] The trigger that would apply to the deferred zoning being uplifted was discussed at the hearing and in the closing legal submissions. Ms Steven proposed a method that the deferral be uplifted when Map A of the CRPS is amended to include the land shown on the Outline Development Plan within the Existing Urban Area and Projected Infrastructure Boundary. This trigger was supported in the closing legal submissions by Mr Hughes-Johnson QC and Mr Chapman for the Case family and R & L Crozier respectively.²⁵

[36] We find that deferred residential zoning for Cranford Basin in the Plan would be inappropriate. As with all methods and rules, the deferred zoning would need to implement or give effect to the objectives in the Plan, and as a consequence also give effect to the CRPS. Given that the CRPS and Objective 3.3.7 of the Strategic Directions do not allow for new urban activities outside of the Map A urban limits, a deferred zoning for residential purposes would also not give effect to these higher order documents.

²² Closing submissions for the Grassmere Street Residents Group and Grants Road Holdings Limited at 71.

²³ Ibid at 72.

²⁴ Ibid at 75.

²⁵ Closing submissions for G, M and M Case; closing submissions for R & L Crozier.

[37] We are also strongly of the view that even if the LURP was amended to provide additional areas for future urban activities within Christchurch, evidence would need to show that residential development in Cranford Basin was necessary from a demand perspective and relative to the merits of other possible sites potentially available for development in Christchurch. It would also need to consider the intensification targets for housing sought for Christchurch, and the impact on those targets. This requirement negates the inclusion of a deferred residential zoning being immediately uplifted upon Map A of the CRPS being amended.

[38] As discussed at the hearing,²⁶ the recommendation of the Canterbury Regional Council on the LURP outlines that there is likely to be sufficient greenfield land that is, or will become, available for development to meet demand in greater Christchurch for the next 10 to 15 years.²⁷ As such, the Canterbury Regional Council considers it is not necessary for recovery to identify any further land as greenfield priority areas.

[39] The closing legal submissions on behalf of GSRG/GRHL, the Case family, and R & L Crozier did contend that the circumstances facing Cranford Basin are unique and that residential development in this area would go some way towards replacing the expected yield from land that is presently constrained (or which is not being actively developed). However, we find that it would be inappropriate to make a decision on the merits of residential development within Cranford Basin on an ad hoc basis, in isolation, and without expert evidence on where additional residential development should be located. We also did not have an evidential basis to consider the effect on intensification targets for Christchurch.

[40] Such matters should be addressed by way of a future plan change by the Council or a private plan change by the property owners within Cranford Basin, where the evidence could address all relevant factors.

Deferral of a decision

[41] The final aspect of the relief sought by the legal counsel for the GSRG/GRHL, the Case family, and R & L Crozier was that we defer our decision on this matter as late as possible, in the expectation that the Minister may make decisions to amend the LURP. If the Minister did

²⁶ Transcript, page 22, line 26.

²⁷ <http://ecan.govt.nz/publications/Plans/LURP-Review-Decision-Report-with-Recommendations.pdf>

amend the LURP, counsel considered that the Panel should give submitters the opportunity for further submissions in relation to any decision issued.

[42] Mr Chapman submitted in his closing legal submissions that delaying the release of a decision by up to three months is likely to result in a better planning outcome overall. Therefore, he considered it appropriate for the Panel to “hold back” any decision on this decision.²⁸ This approach was supported in the closing legal submissions of Ms Steven on behalf of the GSRG/GRHL.

[43] The wait and see approach was further endorsed in the closing legal submissions by Mr Hughes-Johnson on behalf of the Case family. Mr Hughes-Johnson contended that there appears to be “significant prospect” of change to the LURP within a defined time period.²⁹

[44] The closing legal submissions of Ms Silcock on behalf of the Crown did not provide any further updates on the likely timing of the review of the LURP. She advised that the Crown will abide by our decision as to the appropriateness of deferring a decision on the rezoning of Cranford Basin.³⁰

[45] Ms Scott, in her closing legal submissions on behalf of the Council, also advised that the appropriateness of the timing of a decision is a matter for the Panel to decide.³¹

[46] We are not prepared to delay the issuing of a decision in relation to Cranford Basin, as we have a statutory requirement under the OIC to make decisions on the Plan in a timely manner. In addition, and as already discussed in this decision, we do not consider that it would be appropriate to simply re-open the hearing if the LURP was amended in a reasonable timeframe. In this respect, it would be inappropriate to make a decision on the merits of residential development within Cranford Basin on an ad hoc basis and without consideration of the merits of other possible sites potentially available for development. Such matters should be considered in an integrated manner.

²⁸ Closing submissions for R & L Crozier at 11.

²⁹ Closing submissions for G, M & M Case at 8.3.

³⁰ Closing submissions for the Crown at 1.1–1.3.

³¹ Closing submissions for the Council at 4.2.

Philpotts Road Boundary amendment

[47] With respect to the Council’s submission on the zoning of properties on the western side of Philpotts Road, Mr Thomson noted that the submission is intended to correct a drafting error.³² In this regard, Planning Map 25 in the Existing Plan zones several properties on the western side of Philpotts Road as Living 1 Zone (deferred). Mr Thomson explained that these properties are within the existing urban limit on Map A of the CRPS and the deferment was put in place in the Existing Plan because the properties could not be serviced with a sewer outfall.

[48] Mr Thomson went on to advise that the area zoned Residential Suburban on the western side of Philpotts Road in the Notified Version has reduced from that zoned for residential purposes in the Existing Plan, and that some properties are designated for stormwater purposes (but have not been acquired).

[49] Mr Thomson was not aware of any reason to reduce the extent of the area zoned for residential purposes on the western side of Philpotts Road, and considered that the submission point by the Council should be accepted.

[50] The evidence of Mr Thomson, and the lack of submissions in opposition, satisfies us that the reduced zoning along the western of Philpotts Road was a drafting error by the Council and that correcting this error does not create any issues with respect to Map A of the CRPS. As such, we accept that the Residential Suburban zone should be extended in the manner illustrated in Attachment D to the evidence of Mr Thomson.

Section 32

[51] We refer to the necessary principles set out in our earlier decisions.³³

[52] Mr Thomson led the preparation of a s 32 report as part of the Council’s draft proposal to the Minister to rezone parts of Cranford Basin as part of Stage 3. Mr Thomson advised that the evaluation was undertaken knowing that the area is outside of the existing urban area.

³² Evidence in chief of Ivan Thomson at 9.23.

³³ Strategic Directions at [63]–[70].

However, he considered it was appropriate to do a full assessment of the merits because the LURP was being reviewed.³⁴

[53] In response to questioning by the Panel, Mr Thomson advised that the Minister did not accept the Council's proposal for rezoning because it is contrary to the CRPS and the LURP.³⁵

[54] Given that the rezoning of Cranford Basin would not give effect to the CRPS or the LURP, the rezoning provisions sought by the submitters are also not the most appropriate way to achieve the objectives of the Plan or to meet the requirements of the RMA.

Section 32AA

[55] We have already referred in earlier decisions to the matters we must address.³⁶

[56] We only have to consider changes that we have made. In this instance we have made only a minor amendment to the zoning on the western side of Philpotts Road on Planning Map 25 in order to correct a drafting error by the Council.

[57] Overall, we are satisfied that the notified zoning for Cranford Basin set out in Planning Maps 24 and 25 (subject to the minor amendment) is the most appropriate way to achieve the objectives of the Plan and the purpose of the RMA.

[58] In our assessment and findings on the evidence, we have assessed the efficiency and effectiveness of the minor amendment we have made to Planning Map 25. We are satisfied the zoning proposed for the Cranford Basin is the most appropriate way to achieve efficiency and effectiveness.

[59] In our evidential section we have summarised the reasons for deciding to make the changes we have.

[60] We consider that ss 32(1)(c) and 32AA(1) have been met by our amendments.

³⁴ Evidence in chief of Ivan Thomson at 8.1.

³⁵ Transcript, page 17, line 29.

³⁶ Above, at [16].

[61] We consider the consideration of the evidence and our findings is sufficient assessment of the matters to be considered under subs (2), (3) and (4).

[62] In reaching our decision, we have considered all submissions and further submissions made on the Notified Version, and had regard to the Council's recommended acceptance or rejection of those submissions, as filed.³⁷ We accept the Council's "Accept/Accept in Part/Reject Table".

Directions for consequential changes to Planning Maps

[63] The changes to the planning maps made as a consequence of this decision are recorded in Schedule 1.

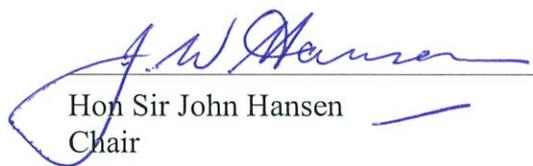
[64] A second decision will issue to the effect of further amending the Notified Version by inclusion of updated planning maps. For those purposes, we direct the Council to provide to the Panel, within 14 working days of the date of this decision, an updated set of planning maps.

Overall evaluation and conclusions

[65] Based on our evidential findings, we are satisfied that retaining the zoning of Cranford Basin as proposed in the Notified Version (excluding the correction in relation to Philpotts Road) best gives effect to the RMA and the superior planning documents.

³⁷ Evidence in chief of Ivan Thomson, Attachment A.

For the Hearings Panel:



Hon Sir John Hansen
Chair



Mr Stephen Daysh
Panel Member



Mr John Illingsworth
Panel Member

SCHEDULE 1

Rezone part of Lot 3 DP 17557, Lot 7 DP 5998 and Lot 8 DP 5998 on Planning Map 25 of the Notified Version from Rural Urban Fringe to Residential Suburban in accordance with Attachment D to the evidence of Mr Thomson.

SCHEDULE 2

This list has been prepared from the index of appearances recorded in the Transcript and from the evidence and submitter statements, as shown on the Independent Hearing Panel's website.

Submitter Name	No.	Person	Expertise or Role of Witness	Filed/Appeared
G, M & M Case	3280	M Branthwaite	Surveying	Filed
		A Carr	Traffic	Filed/Appeared
		M Case		Filed
		M Sinclair	Engineering	Filed
Christchurch City Council	3723	P Dickson	Stormwater	Filed
		S Douglas	Hydrogeology	Filed
		B O'Brien	Wastewater	Filed
		I Thomson	Planning	Filed/Appeared
		S Webb	Engineering	Filed
		T Wright	Traffic	Filed/Appeared
Grassmere Street Residents Group and Grants Road Holdings Limited	3193	J Mitchell		Filed/Appeared