

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: 14 December 2015

Date of decision: 4 April 2016

Hearing Panel: Hon Sir John Hansen (Chair), Mr Stephen Daysh, Ms Jane Huria and Mr John Illingsworth

DECISION 21

Specific Purpose (Flat Land Recovery) Zone — Stage 3

Outcomes: **Proposals changed as per Schedule 1**

COUNSEL APPEARANCES

Mr P McNamara

Christchurch City Council

Mr D Allen and Ms J White

Crown

Mr M White

Human Rights Commission

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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 provisions of Chapter 21 Specific Purpose (Flat Land Recovery) Zone that was notified as part of Stage 3.

[2] In this decision, the phrase ‘Notified Version’ describes the version notified by Council and to which, subsequent to consideration of submissions and conferencing, a number of changes were made. This was then ultimately produced in opening by the Council as a red-line version (‘Revised Version’).²

[3] Where we refer to ‘Decision Version’, it is our redrafting of the Revised Notified Version, as set out in Schedule 1, which will become operative upon release of this decision and the expiry of the appeal period.

[4] 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’).³

Effect of decision and rights of appeal

[5] Our proceedings and the rights of appeal are set out in our earlier decisions.⁴ We concur in those.

Identification of parts of existing district plans to be replaced

[6] The OIC requires that our decision also identifies the parts of the existing district plans that are to be replaced by Stage 3 Specific Purpose (Flat Land Recovery) Zone. We return to this.

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

² Specific Purposes Chapter 21, 7 December 2015.

³ Strategic directions and strategic outcomes (and relevant definitions), 26 February 2015.

⁴ Strategic Directions decision at [5]–[9].

[7] The reasons for our decision follow the Preliminary Matters section.

PRELIMINARY MATTERS

Conflicts of interest

[8] We have posted notice of any potential conflicts of interest on the Independent Hearings Panel website.⁵ No submitter raised any issue in relation to this.

REASONS

STATUTORY FRAMEWORK

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

[10] 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.

[11] 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.

⁵ The website address is www.chchplan.ihp.govt.nz.

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].

[12] 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 In relation to this decision, the Transition Recovery Plan and the Residential Red Zone Offer Recovery Plan (July 2015) are also relevant. Together, the ‘Higher Order Documents’.

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

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

Specific Purpose (Flat Land Recovery) zone

[14] The Specific Purpose (Flat Land Recovery) zone (‘SP(FLR) zone’) by and large mirrors the so-called “Red Zone”, where the Crown made offers to purchase to all of the individual owners. This “red zone” area is not a ‘zone’ in a Resource Management Act 1991 (‘RMA’) sense. The area encompassing the notified SP(FLR) zone contained a total of 5992 properties. Only 87, dispersed across the entire area, remain privately owned.¹³ The SP(FLR) zone is an interim measure to deal with significant planning issues confronting this area.

[15] At the conclusion of the hearing, the Panel undertook an extensive viewing of this area. While some properties adjoin residential zones, the main impression is of driving through a rural and parkland area with scattered houses and other buildings throughout. Parts of the area are subject to natural hazard overlays, and further overlays have been notified for the Stage 2 Natural Hazard hearing.

[16] The area concerned runs from just east of the central city towards the estuary in New Brighton, and north to the Waimakariri River and Brooklands Lagoon. It is an area that suffered from the earthquake sequence that resulted in substantial liquefaction, along with associated flooding. As a consequence of the earthquake sequence a number of areas have become more prone to flooding during rainfall events and high tides.

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 and 23 July 2015.

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

¹³ Closing submission for the Crown at 5.6(c).

[17] From those 87 privately-owned properties, there were nine submissions, including the Crown (submitter 3721). Three individual submitters attended the hearing and we heard from them. They sought that the existing zoning of their properties remain, the chapter be dismissed in its entirety, or that the whole zone be residential.¹⁴ The 87 privately-owned dwelling owners were also supported by a submission made by the Human Rights Commission ('HRC') (3286). We also heard from the CCC (3723).

[18] We heard unchallenged evidence of the damage created in this area as a consequence of the earthquakes sequence. In particular, liquefaction was widespread. The extent of the damage was such that the experts consider an area-wide response to land use and remediation is required when and where heavy duty equipment can be utilised. The Government response to this damage can be seen from the decision made by the Ministers on 23 June 2011, agreeing that the "red zone" should be declared where such damage occurred.¹⁵

[19] Our site visit confirmed that unchallenged evidence. We accept on the evidence that the extent of the damage is such that an area-wide response is required. The evidence satisfies us that the consideration and determination of the future use of this land is a complex process that will require significant investigation and decisions. The aim of the SP(FLR) zone to prevent development that may interfere with the ability to make the correct long-term planning decisions for Christchurch is overwhelmingly supported by the expert evidence that we have heard and which we accept.

[20] One submitter, Mr Ernest Tsao, preferred that the entire area should be zoned residential in his submission at the hearing. His lodged submission sought the deletion of the Notified Version, which would have the same effect. The HRC sought that the existing zonings should remain, while accepting this would create, effectively, 87 spot zones throughout the area.

[21] The provisions relating to the properties that remained privately owned attempt, by and large, to recreate the pre-earthquake zonings, the activity status and the rights associated with them. There are constraints that recognise the significant changes brought about by the earthquakes and the extensive damage throughout this zone. Those limited constraints are

¹⁴ Ernest Tsao (3261), Jan Burney (3232) and Stephen Bourke (3476).

¹⁵ Closing submissions for the Crown at 3.1 referring to the statement of evidence of Ms Jacka for the Crown (submitted for the Natural Hazards Stage 1 hearing) at 6.4, referencing CAB Min (11) 24/15, CAB Min (11) 30/18 and Cabinet Paper 'Land damage from the Canterbury Earthquakes'.

intended to protect the entire zone in a way that will not significantly interfere with the potential future uses and development of the land, following the process set out below, while at the same time ensuring that remaining land owners are not unreasonably constrained in the use of their land.

[22] The obligation of the Council to provide water, wastewater and roading services is addressed in the Local Government Act 2002 and in Part 21 of the Local Government Act 1974, and is not part of our consideration.

[23] The Greater Christchurch Regeneration Bill establishes Regenerate Christchurch, which is an entity controlled by the Crown and the CCC.¹⁶ Its role is to lead regeneration in defined areas of Christchurch, including the residential “red zone”.

[24] The purpose of the Bill is to provide a new legal framework to support the regeneration of Christchurch over the next five years. It recognises the need to shift from recovery from the Canterbury earthquakes, in the CER Act, to regeneration. The Bill repeals the CER Act, on the cusp of 18/19 April 2016.

[25] It is extensive, but in relation to the area we are concerned with it requires a comprehensive consideration of the future use of the area, taking into account the wide range of land and infrastructure damage, and the appropriate future re-use. Implementing the future plans for this area will require a change to the plan, and will include public consultation, which undoubtedly will include consideration of the 87 privately-owned properties remaining in the area.

[26] The second purpose of this interim specific purpose zone is to safeguard the existing rights of the 87 privately-owned properties, while ensuring there is no development that could hinder or prevent the long-term solutions that will be put forward for this area.

[27] The Decision Version has rules providing for the continued residential and commercial use of these properties, generally in accordance with the existing zoning, however, there are key differences, for example, and non-exclusively:

¹⁶ The Greater Christchurch Regeneration Bill was passed on 31 March 2016, and as at the date of this decision is waiting for Royal Assent.

- (a) residential activities, excluding boarding houses, are only permitted on a site that was privately owned as at 12 October 2015;
- (b) additions to existing commercial buildings are limited;
- (c) activities ancillary to residential activities are only provided for on sites that were in private ownership as at 12 October 2015, e.g. home occupations, bed and breakfasts; and
- (d) non-residential activities, other than those existing, are not provided for other than by way of discretionary activity consent, e.g. pre-schools, health care and daycare facilities.

Human rights issues

[28] Mr White, on behalf of the HRC, referred to the Supreme Court decision in what is known as the *Quake Outcasts* case to submit that this specific purpose zone will interfere with the human rights and land use rights of the owners.¹⁷

[29] We do not think the majority Supreme Court decision assists Mr White. The key finding in that decision was that the Crown’s compensation offers to uninsured and uninsurable owners of properties within the “red zone”, at 50 per cent of the 2007 rating value of the land as at September 2012, were not lawfully made; secondly, that the Crown land classification (i.e., “red” and “green” zones) decision should have been made under the CER Act and introduced under a recovery plan. There was no discussion in that decision about land use.

[30] However, in a supplementary submission filed by the HRC, we were referred to the High Court decision of Panckhurst J.¹⁸

[63] The RMA governs how property owners may use their land. Section 9 provides a negative definition, that no-one may use land in a manner that contravenes a national standard, or a regional or district rule. Most important in this instance is the district plan, which prescribes conditions for the use and development of residential sections by reference to zoning. The applicants’ land was zoned residential, but subject to different building criteria depending upon the permitted intensity of residential

¹⁷ *Quake Outcasts v Minister for Canterbury Earthquake Recovery* [2015] NZSC 27 (13 March 2015).

¹⁸ Supplementary memorandum of the Human Rights Commission, 21 December 2015, citing *Fowler Developments Limited v Chief Executive of the Canterbury Earthquake Recovery Authority* [2014] 2 NZLR 54 (HC).

development. The property owners had the right to establish and live in their homes subject to compliance with the plan.

[64] It is the function of the City Council under section 31 of the RMA to manage and control “the effects of the use, development or protection of land and associated natural and physical resources ...”. In doing so, the Council before bringing down or changing a plan is required to make an evaluation of “alternatives, benefits and costs”. Hence, as Elias CJ has stated:

The district plan is key to the (RMA’s) purpose of enabling “people and communities to provide for their social, economic, and cultural well being”. It is arrived at through a participatory process, including through appeal to the Environment Court. People and communities can order their lives under it with some assurance.

That was no longer so in the red zone.

[31] The Commissioner emphasised that legislation should be interpreted consistently with international treaty obligations, unless Parliament has expressly overwritten/abrogated an obligation in the domestic instrument.¹⁹ He further submitted the principle was further affirmed in New Zealand’s recent reply to the HRC’s list of issues to be taken up in the consideration of a fifth periodic report considering New Zealand’s obligations under the International Covenant on Civil and Political Rights:²⁰

Certain Covenant rights are not directly reflected in the Bill of Rights Act but are given effect by other legislation and by common law. For example, the Privacy Act 1993, together with the common law tort of privacy, provides for rights of personal privacy (although these are also in part addressed through the right against unreasonable search and seizure). Similarly, the Children, Young Persons and their Families Act 1989, the Care of Children Act 2004 and other related legislation give effect to the rights of families and children. These legislative provisions are complemented by the well-established principle of New Zealand law that, wherever possible, legislation is to be interpreted consistently with the Covenant and other international human rights obligations.

[32] We accept that, but it is well settled law that the imposition of various zones and activity status under the RMA does interfere with individual property rights.²¹ There are accepted and valid societal and other reasons for this. Under the Replacement Plan, decisions affect all citizens and not just the 87 properties remaining in the “red zone”.

[33] Furthermore, there are significant infrastructure difficulties throughout the area of the specific purpose zone, of varying degrees of complexity. As noted earlier, there remains an

¹⁹ *New Zealand Airline Pilots Association Inc v Attorney-General* [1997] 3 NZLR 269, 289 (CA).

²⁰ Reply to the list of issues to be taken up in connection with the consideration of the fifth periodic report of New Zealand CCPR/C/NZL/Q/5/Add.1 5 January 2010 at page 1.

²¹ See for example *Falkner v Gisborne District Council* [1995] 3 NZLR 622 at 632 (HC).

obligation on the Council under other legislation to provide services for water, wastewater, and the provision of roads, which remain undisturbed by the notified zoning provisions. But the evidence shows that it would be uneconomic to provide the full infrastructure facilities enjoyed in residential zones in this zone. These infrastructure constraints were detailed in the evidence of Mr Rouse.²²

[34] It is also necessary for us to give effect to the higher order documents and our Strategic Directions decision. The higher order documents identify that future long-term use of the land will be considered in future planning processes, and that it is important that the zoning and the types of activity in the meantime do not foreclose options.

[35] We have already noted that the majority of the land is vacant, which provides a unique opportunity for a long-term, comprehensive redevelopment which is also unique in a city setting. We are satisfied this is an appropriate and realistic response to the earthquake damage. As a consequence of the earthquake sequence, the zone's existing environment is not residential in character, the circumstances differing significantly from those applying in the more general residential zones.

[36] In applying the higher order documents, we need to consider the evidence. There was no evidence called by HRC or the individual submitters, or a s 32 analysis to support the spot zoning advanced by them or the overall residential zoning put forward by Mr Tsao. To achieve integration of land use, development and infrastructure in accordance with the CRPS and our Strategic Directions decision, there would need to have been evidence of the potential different configurations of infrastructure supporting the spot zoning, including to ensure there can be efficient and effective provision of horizontal infrastructure and efficient land use. We note that this is one of the essential elements of the future zoning provisions.

[37] The difficulties created were summarised by Mr Rouse where he said:²³

I think that – and my understanding is because I am involved in some aspects of it – is that there is a lot of work being done on what the future use opportunities are for the Red Zone, and it is likely that there would be new road alignments and new activities carried out in the Red Zone and new horizontally infrastructure alignments. But they are unknown at this stage. So we have been reluctant to invest in the repair of infrastructure of current alignments because it may need an expensive relocation or

²² Transcript, page 17, lines 6–14 (Rouse).

²³ Transcript, page 20, lines 34–41 (Rouse).

realignment once future use decisions are made and the infrastructure could be in the wrong place.

[38] The CCC, in closing, acknowledged a key concern of the HRC and the residential submitters is that the proposal was “using the unlawful red zone as a proxy to change the Resource Management Act zoning”.²⁴ The submission continued, however, that this was not accepted, and that there was a proper resource management foundation for the specific purpose zone. CCC submitted, correctly in our view, that the zone reflects the environment that exists at the current time, following the Canterbury earthquake sequence. It also reflects the necessary extraordinary response from central Government, local Government and land owners. The Zone Objective reflects this:²⁵

A largely open environment with a very low density of residential and non-residential activities, that;

- (i) Reflects the changes in land uses in the area, including building clearance;
- (ii) Recognises the natural hazard risks affecting many properties;
- (iii) Recognises the infrastructure limitations of the area;
- (iv) Acknowledges the interim nature of this zone; and
- (v) Maintains the longer-term potential of the area to contribute to the recovery and future enhancement of Christchurch.

[39] Again, correctly in our view, the CCC submitted that the zone is forward-looking, as it recognises that the land within has long-term potential to contribute to the recovery, and also the future enhancement of Greater Christchurch.²⁶ Mr Eman’s evidence on behalf of the CCC was that this was the most appropriate way of recognising the unique circumstances of the area, which arise as a consequence of the earthquake sequence. This includes the long-term opportunities presented, and the significant constraints that continue.²⁷

[40] Mr Eman also gave evidence that such an interim zoning was the most appropriate, and was a proper response to the unique circumstances. We consider this is adequately supported by the evidence and the s 32 report.

²⁴ Closing submissions for CCC at 2.13.

²⁵ Closing submissions for CCC at 2.14; Rebuttal evidence of Peter Eman on behalf of the CCC, Attachment A (Objective — Activities in the Flat Land Recovery Zone).

²⁶ Closing submissions for CCC at 2.16.

²⁷ Evidence in chief of Peter Eman on behalf of CCC at 3.3.

[41] In closing, the CCC dealt with Ms Burney’s statement at the hearing, that the zoning was a continuation of the “red zoning”.²⁸ The CCC submitted that this was incorrect, because the Crown’s decision in relation to determinations of “red” and “green” zoned land and their response to it was for quite different purposes, and under different legislation, than the CCC’s planning response under the CRDP. They were made for different purposes, and based on different considerations, except to the extent that the specific purpose zone must acknowledge future processes involving “red” zoned land.

[42] CCC accepted the key consideration remained whether the Revised Version is the most appropriate in terms of s 32 of the RMA, and in the light of the higher order documents that we must give effect to. CCC submitted, again correctly in our view, that the threshold in s 85(3) of the RMA has not been reached, and that the proposal does not render land in the specific purpose zone “incapable of reasonable use, and places an unfair and unreasonable burden on any person having an interest in the land”.

[43] As we noted earlier, the rules grant rights similar to the existing zoning, and the constraints on those rights cannot be considered unfair and unreasonable when viewed against the wider context and circumstances. It is important to recognise that the final version of the provisions is generally in accordance with the existing zoning. We have noted earlier, at [27], the differences. But importantly, for those properties zoned Residential, residential activity is allowed as per its definition.²⁹ The constraint on the size of additions to existing buildings seems to us to be fair and reasonable when viewed in context. Again, the same applies to activities that are generally ancillary to those residential activities, again as detailed earlier.

[44] CCC acknowledged a level of uncertainty, but submitted, again correctly in our view, whether the land was zoned residential or was dealt with by way of a specific purpose zone would not remove that uncertainty, given the long-term process that is put in place by the Greater Christchurch Regeneration Bill.

[45] Neither HRC nor the submitters focused on the higher order documents and the RMA. Relevant to this, are those dealing with infrastructure matters. Objective 6.2.1 deals with the recovery framework and the integrity of strategic and other infrastructure and services with

²⁸ Transcript, page 89, line 1.

²⁹ Decision 16 Introduction and Definitions — Stage 1 at page 118 (except for Boarding houses, which are excluded to align with our Decision 10 Residential — Stage 1).

land use development; Objective 6.2.4 the integration of transport and land use; Policy 6.3.5 relates to the integration of land use and infrastructure. Under cross-examination, Mr Eman conceded that efficient and effective integration of infrastructure and land use development is a key theme of the future use of the Christchurch residential “red zone”.³⁰

[46] The Notified Version is not inconsistent with the recovery strategy and Transition Recovery Plan, October 2015, which states that a future long-term planning process for the land and the zone is only to occur with public consultation. That document also identifies the role of Regenerate Christchurch.

[47] The Revised Version as amended in response to submissions and attached with the opening statement of the CCC, is an improvement on the Notified Version in our view, and implements the relevant objectives in the Statement of Expectations, in particular that objectives and policies in the CRDP state the outcomes that are intended for the Christchurch district.

[48] In our view, it further implements the following Strategic Directions Objectives:

- (i) Objective 3.3.1 — enables recovery and facilitating future enhancement of the district
- (ii) Objective 3.3.2 — clarity of language and efficiency
- (iii) Objective 3.3.6 — dealing with natural hazards
- (iv) Objective 3.3.9 — dealing with natural and cultural environment
- (v) Objective 3.3.12 — dealing with infrastructure
- (vi) Objective 3.3.4 — dealing with housing capacity and choice
- (vii) Objective 3.3.5 — dealing with business and economic prosperity

³⁰ Transcript, page 48, lines 24–40.

(viii) Objective 3.3.1 — dealing with community facilities

[49] Finally, we are satisfied that the Revised Version gives effect to the purpose and requirements of the RMA.

[50] Importantly, the Revised Version satisfies us that it strikes an appropriate balance between maintaining the options for future use of the land and recognising hazard risks and infrastructure constraints, while avoiding unnecessary constraints on the property rights of the existing owners and the long-term needs of the Christchurch community. The Revised Version does not make arbitrary or capricious decisions regarding the remaining residents' land use rights. It is an informed and balanced view of the appropriate land use and planning response to an unprecedented natural disaster, and is well supported by the expert evidence that we have heard and accepted. For the sake of completeness, we note that neither the HRC nor the individual submitters called any expert evidence to challenge that in front of us.

[51] We find this to be clearly established on the evidence. For the above reasons, we do not accept the HRC submission.

INDIVIDUAL SUBMISSIONS

Ernest Tsao

[52] Mr Tsao resides at Hulverstone Drive, Avondale. His home was previously zoned Living 1 under the existing plan. He seeks that not only his property, but the whole of the “red zone” be zoned Residential. Clearly the latter suggestion is a totally impractical one.

[53] Mr Tsao was uninsured, but since the earthquake sequence has carried out all necessary repairs to his property. The property adjoins the green zone.

[54] The Council sees both infrastructure and access as issues. The surrounding land is now owned by the Crown. Mr Eman, in his evidence dealing with Mr Tsao's submission, reiterated his concerns about providing for the full range of activities in the Residential Suburban Zone (‘RS zone’) to the area generally. He pointed out that Mr Tsao's property is a rear section coming off Hulverstone Drive. The Avon River is lying on the other side of the road. As

noted, the rear of the property adjoins the RS zone. Other adjoining properties are in the SP(FLR) zone as notified.

[55] It appears that Mr Tsao relies on Hulverstone Drive for vehicle access to his property, and that the other infrastructure services are located in that road. Mr Eman's evidence was that the road and other infrastructure were damaged and are being reviewed as part of the Council's review of infrastructure within the residential "red zone". While no decisions had been made, Mr Eman said it is unlikely the infrastructure serving Mr Tsao's property would be brought up to normal standards, particularly as it is the only privately-owned property in a large block of residential "red zone" land along Hulverstone Drive.

[56] Mr Eman also accepted that a private infrastructure agreement may be possible in theory. But he said that this would need to be investigated and decided on its merits, and it faced some particular challenges and risks. He pointed out the close proximity of the road to the river, and that the road and services are subject to liquefaction and lateral spread risk in the case of future earthquake events. He further stated that the road was protected from the river by temporary stop banks, and that at high tide the water in the river was higher than the road level. Surface water on the road cannot drain freely because of this factor. It was also his evidence that the road, and services in it, are vulnerable to damage from resulting high water tables. It was his view that putting in upgraded roading access and other services above the minimum necessary to cater for a single house creates increased risk and potentially considerable ongoing maintenance costs for the wider community of such vulnerable infrastructure.

[57] Alternative access by road would be dependent on agreement with the Crown, which owns the surrounding land, granting an easement or selling such necessary land. Mr Rouse, in his evidence at paragraph 7.9, indicated that this would be unlikely until after the decisions are made on the future of the land in this zone.

[58] Mr Eman also stated at 5.9 of his rebuttal evidence:

There was also a concern about whether such an arrangement is even feasible. It seems likely that it would require some sort of legal instrument on the title requiring the current, or any future, landowner to upgrade the infrastructure for any future use of the land, other than for a single residential unit. There would be a high level of uncertainty as to the content of such a document and any dollar value it should contain, as it would need to cover a potential range of non-residential activities with different infrastructure requirements.

[59] He also addressed Mr Tsao's concerns about uncertainty as follows:³¹

In terms of the concerns about uncertainty Mr Tsao raises in his evidence, I note that even if Mr. Tsao's property were zoned Residential Suburban, this would not take the property out of the residential red zone. It would still be potentially subject to the review of the long-term use of the land identified in the Recovery Strategy and that forms part of the Residential Red Zone Programme. This creates uncertainty for the owners of all privately owned land within the residential red zone.

[60] In a submission to us, Mr Tsao sought that the whole of the notified SP(FLR) zone be zoned Residential.³²

[61] As we have stated, Mr Tsao enjoys most of the benefits of an RS zone, subject to the exceptions we have already noted. There are significant restraints relating to access and to infrastructure, as set out by the unchallenged evidence of Mr Eman, which we accept. While there are possible solutions to the access issue, the infrastructure one remains, and any solutions are highly problematic and uncertain. On the basis of that evidence, we do not accept Mr Tsao's submission and the relief he seeks. We confirm the zoning of his property in the Notified Version.

Jan Burney

[62] Ms Burney seeks the deletion of this whole chapter. She included with her statement documents headed 'late submission/statement request' from 21 other Brooklands residents. Ms Burney asked if the Panel would accept the signed statements from the Brooklands residents. We agreed to do so.³³ We understand that Ms Burney was not requesting that the documents be received as late further submissions under the OIC.³⁴ They also seek the same relief, although they did not appear in front of us to submit, or to call evidence to support any such submission. We have considered these submissions alongside Ms Burney's.

[63] Ms Burney lives with her partner, Mr Sharlick, at 3 Beacon Street, Brooklands. The property is still connected to the original wastewater and sewer provisions, and she has normal services. The property under the existing plan is classified as Living RS, Rural Settlement zone.

³¹ Rebuttal evidence of Peter Eman at 5.11.

³² Transcript, page 82 line 27–31.

³³ Transcript, page 86, lines 16–20.

³⁴ Memorandum of Jan Burney, 7 December 2015.

[64] In answer to the Panel, Ms Burney accepted that her residential activity rights remained, but complained that under the Natural Hazards proposal there were restrictions and limits on what she could do. That is a separate issue which will be determined in the second Natural Hazards hearing, by a differently constituted panel. However, the natural hazards raise a significant issue, and many other citizens of Christchurch in other areas as well have had natural hazards overlays imposed on their properties, with the restrictions that brings.

[65] There is nothing in Ms Burney's statement before us to suggest that the whole chapter should be rejected as she seeks. Her rights are as those set out earlier, but subject, of course, to any decision made in relation to natural hazards. Any such natural hazards decisions are independent of the Specific Purpose zone.

[66] We reject Ms Burney's submission.

Stephen Bourke

[67] Mr Bourke owns a property at 938 Lower Styx Road zoned SP(FLR). Under the existing plan, his property is zoned Living Rural Settlement. Essentially, Mr Bourke seeks a continuation of his rights to use his property for residential purposes. Similar to the position of Ms Burney, he also sought the deletion of the chapter provisions. He produced to us a geotechnical report prepared by Ashby Consulting Engineering Limited. This noted that Mr Bourke's insurers are prepared to fund rebuilding on the site if a building consent is issued, and that they would continue to insure it. Rule P1 of the Decision Version provides for this.

[68] Mr Bourke did speak to infrastructure issues, and said he is on essentially the main road through Brooklands, and that services are to be renewed across the road from him. We do not see that this zoning would prevent Mr Bourke from connecting to those services.

[69] As in Ms Burney's case, we reject Mr Bourke's submission to delete the chapter. However, we note that Mr Bourke's residential activity rights remain.

Non-residential use

[70] There remained only one outstanding issue between CCC and the Crown. That related to the activity status for non-residential activities on existing, privately-owned sites. Mr Eman,

for the Council, supported changes to provide for certain non-residential activities on privately-owned land, such as pre-schools, health care facilities, veterinary care facilities, education activities, places of assembly and spiritual activities. It was his view that these should be discretionary activities.

[71] For the Crown, Ms Whyte considered such activities should have non-complying activity status, because of concerns about integration between land use and the provision of infrastructure, and the other concerns relating to the character of the zone and the limited number of people living in it, and the fact that it was an interim zone pending the long-term planning response that has been put in place.

[72] Mr Eman did not consider the infrastructure issues raised by Ms Whyte required a more restrictive activity status. He considered that discretionary activity status would not compromise integration between land use and the provisions of infrastructure, because CCC is not proposing infrastructure works beyond maintaining services in some form within the specific purpose zone. Secondly, the status would allow the adequacy of infrastructure to be assessed on a site-by-site basis, and resource consent could be refused or granted subject to conditions such as including the private provision of infrastructure if there were such infrastructure concerns. It also recognised that some of the properties towards the fringes of the zone may not have the same infrastructure issues.

[73] Mr Eman also considered that that status would better align with Strategic Directions Objective 3.3.11, which seeks expedited recovery and establishment of community facilities and education activities in existing and planned urban areas to meet the needs of the community. Mr Eman considered that it would be neither efficient nor effective to require these non-residential activities to pass through the gateway test of s 104D for non-complying activities. He said these community facilities were not contrary to the specific purpose zone objectives.

[74] We accept the evidence of Mr Eman in preference to that of Ms Whyte on this particular issue. We consider a discretionary activity status would give effect to the Strategic Directions objective just mentioned. Overall, we consider it a more pragmatic and better response to the circumstances of this specific purpose zone, and not contrary to its objectives.

[75] Accordingly, on that one limited dispute between the CCC and the Crown, we find on the evidence in favour of the CCC, and have followed the Revised Version in determining that discretionary activity is the most appropriate.

[76] For the sake of completeness, we note a small portion of “red” zoned land within the central city. As requested by the Crown, we zone, without opposition, the small portion of land shown in Schedule 2 Central City Residential Zone.

Replacement of provisions

[77] Our decision is required to identify those parts of the existing plan that are to be replaced. This decision is confined to Stage 3 provisions relating to the Specific Purpose (Flat Land Recovery) Zone. Given this staged approach to our inquiry, it is not practical to carve out only those parts of the existing plan that are to be replaced by this decision on a provision-by-provision basis.

[78] Therefore, we have determined that the only parts of the existing plan that are to be replaced by this decision are the zonings of those areas of land in the existing plan (as shown on the relevant Planning Maps) that are to be zoned by this decision.

Definitions

[79] Definitions associated with the SP(FLR) zone proposal will be addressed in the Stage 2 and 3 Chapter 2 Definitions decision, in due course.

The Council’s s 32 report

[80] Mr Eman provided an updated s 32 report attached to his evidence in chief which reflected changes made to Council’s proposal. We are satisfied that the Council’s s 32 analysis is generally robust and well supported by the evidence.

Our s 32AA evaluation

[81] We have already referred in earlier decisions to matters we must address.

[82] We have evaluated the various options and approaches put to us, in accordance with the matters in ss 32 and 32AA. We are satisfied that our consideration of the evidence and our findings are sufficient assessment of those matters.

[83] 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.³⁵ Except to the extent that those recommendations have been modified by this decision, we accept the Council's 'Accept/Reject Table'.

[84] The key substantive change we have made to the Revised Version in the Decision Version relates to permitted activity P3. We have also introduced a new discretionary activity (D8) for when there is a breach in the permitted maximum increase in gross floor area (P3 (a)). Under the Revised Version this would have defaulted to a non-complying activity. On the evidence, we do not believe this was intended, nor would such an activity status be appropriate.

[85] We have amended permitted activity rule P1 to make it clear that residential activity, including the building of a new residential unit, is permitted in the zone, subject to built form standards. This was the agreed position of Ms Whyte for the Crown and Mr Eman for the Council. We have made one further amendment to P1 to align it with our Stage 1 Residential decision.³⁶ This change excludes boarding houses from being permitted, which was not a matter of submission before us. As such, we make this change using our powers under cl 13(2) of the OIC,³⁷ which allows us to make any changes to the proposal that we consider appropriate, noting we are not strictly limited to making changes within the scope of the submissions made on the proposal. We were addressed on this matter by way of a joint memorandum from the Council and the Crown, who support this exclusion.³⁸

[86] We have also included in the Decision Version additional activity specific standards for permitted activity P6 (relating to temporary buildings and signage). The Revised Version did not include relevant built form standards for temporary buildings and signage located in the SP(FLR) zone at Brooklands. We include these, as is appropriate, and also make consequential additions to RD1, RD2 and RD3.

³⁵ Evidence in chief of Peter Eman, Appendix B 'Accept/Reject Table'.

³⁶ Decision 10 Residential (Part) — Stage 1.

³⁷ Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014, cl 13 (2) (b)

³⁸ Joint memorandum of counsel for CCC and Crown in relation to activity status for boarding houses, 1 April 2016.

[87] We have also deleted the restricted discretionary activity rule RD7 from the Revised Version. This rule related to “land management and maintenance activities that do not comply with Hazardous Substance provisions”. The release of our Stage 1 and 2 Hazardous Substances and Contaminated Land decision (‘Decision 18’),³⁹ renders this rule redundant, as the provisions of Decision 18 adequately address this issue. The deletion of this rule is not a reflection on Council’s drafting, but is a result of the timing of the Revised Version and our Decision 18.

[88] Furthermore, we have made a number of minor edits to the provisions for the SP(FLR) zone. These edits have been made for clarity and to bring the chapter into line with other parts of the pCRDP.

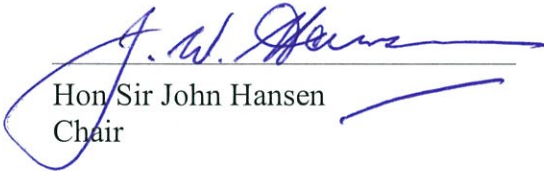
[89] We consider that ss 32(1)(c) and 32AA(1) have been met by our amendments.

OVERALL EVALUATION AND CONCLUSIONS


[90] Based on our evidential findings, we are satisfied that Decision Version, as amended from the Revised Version, gives effect to the RMA and properly responds to other higher order documents.

³⁹ Decision 18 Hazardous Substances and Contaminated Land — Stages 1 and 2.

For the Hearings Panel:



Hon Sir John Hansen
Chair



Mr Stephen Daysh
Panel Member



Ms Jane Huria
Panel Member



Mr John Illingsworth
Panel Member

SCHEDULE 1

Changes that the decision makes to the proposals

Chapter 21 Specific Purpose Zones

21.11 Specific Purpose (Flat Land Recovery) Zone

Note: The land within the Specific Purpose (Flat Land Recovery) Zone is to be the subject of a separate process to determine its long term future use. This process was outlined in the 'Residential Red Zone Programme' in the Recovery Strategy for Greater Christchurch, Mahere Haumanutanga o Waitaha, and referred to in the Land Use Recovery Plan, Te Mahere Whakahaumanu Tāone. In the Greater Christchurch Earthquake Recovery: Transition to Regeneration (Transition Recovery Plan) 2015, it is stated that a new Crown-Council entity called 'Regenerate Christchurch' will oversee the long-term development and enhancement of Christchurch's residential red zone. Regenerate Christchurch has a role in developing plans and strategies for areas within its scope such as the residential red zone. The development of these plans and strategies will occur under a different timeframe to the Replacement District Plan process.

21.11.1 Objectives and Policies

21.11.1.1 Objective — Activities in the Specific Purpose (Flat Land Recovery) Zone

- a. A largely open environment with a very low density of residential and non-residential activities, that:
 - i. reflects the changes in land uses in the area, including building clearance;
 - ii. recognises the natural hazard risks affecting many properties;
 - iii. recognises the infrastructure limitations of the area;
 - iv. acknowledges the interim nature of this zone; and
 - v. maintains the longer-term potential of the area to contribute to the recovery and future enhancement of Christchurch.

21.11.1.1.1 Policy — Residential activities

- a. Provide for the use of existing privately owned sites for residential activities, to the extent compatible with the natural hazard risks and infrastructure limitations.

21.11.1.1.2 Policy — Non-residential activities

- a. Only provide for the following non-residential activities:
 - i. home based activities, market or community gardens;
 - ii. existing commercial and community activities and their limited modification; or
 - iii. temporary activities, land management activities, water or hazard management or mitigation activities, and

- iv. new community facilities on privately owned sites assessed on a site by site basis, to the extent compatible with the natural hazard risks and infrastructure limitations.

21.11.1.1.3 Policy — Management of effects

- a. Manage activities within the Specific Purpose (Flat Land Recovery) Zone to:
 - i. reduce adverse amenity effects on occupied residential properties and effects at the interface with surrounding residential zones;
 - ii. sustain the qualities and values of the natural environment.

21.11.1.1.4 Policy — Future use

- a. The land in the Specific Purpose (Flat Land Recovery) Zone will be considered under a separate future process which will inform future land use zoning and development options.

21.11.2 Rules — Specific Purpose (Flat Land Recovery) Zone

21.11.2.1 How to use the rules

- a. The rules that apply to activities in the Specific Purpose (Flat Land Recovery) Zone are contained in:
 - i. The activity status tables (including activity specific standards) in this chapter.
 - ii. The activity status tables and standards in the following chapters (where relevant):
 - 5** Natural Hazards;
 - 6** General Rules and Procedures where relevant below:
 - 6.1** Noise;
 - 6.3** Outdoor Lighting and Glare;
 - 6.4** Temporary Earthquake Recovery Activities;
 - 7** Transport;
 - 8.6** Earthworks;
 - 9** Natural and Cultural Heritage;
 - 10** Designations;
 - 11** Utilities and Energy;
 - 12** Hazardous Substances and Contaminated Land;
 - 19** Coastal Environment.

Note: where there is no reference to the Specific Purpose (Flat Land Recovery) Zone in the above chapters, the provisions relating to a residential zone shall apply.

- b. Where the word 'facility' or 'facilities' is used in the rules e.g. community facilities, it shall also include the use of a site/building for the activity that the facility provides for, unless expressly stated otherwise.

Similarly, where the word/ phrase defined includes the word 'activity' or 'activities', the definition includes the land and/or buildings for that activity unless expressly stated otherwise in the activity status tables.

21.11.2.2 Activity status tables

21.11.2.2.1 Permitted activities

In the Specific Purpose (Flat Land Recovery) Zone the activities listed below are permitted activities if they comply with the activity specific standards set out in this table.

Activities may also be controlled, restricted discretionary, discretionary, non-complying or prohibited as specified in Rules 21.11.2.2.2, 21.11.2.2.3, 21.11.2.2.4, 21.11.2.2.5 and 21.11.2.2.6.

Activity		Activity specific standards
P1	Residential activity, except for boarding houses, on a site that was privately owned as at 12 October 2015.	<p>a. The activity shall comply with the following built form standards of the Residential Suburban Zone: 14.2.3.1, 14.2.3.3, 14.2.3.4, 14.2.3.5, 14.2.3.6, 14.2.3.7, 14.2.3.8, 14.2.3.9 and 14.2.3.11, except as provided for in (b) below.</p> <p>b. In the case of the Specific Purpose (Flat Land Recovery) Zone at Brooklands (Planning Maps 2 and 6) the activity shall comply with the following built form standards of the Residential Small Settlement Zone: 14.8.3.1, 14.8.3.2, 14.8.3.3, 14.8.3.4, 14.8.3.5, and 14.8.3.6.</p>
P2	Commercial activities that occur within an existing commercial building.	Nil
P3	Alterations, additions, maintenance and repair of an existing commercial building, accessory building, or built structure.	<p>a. Any increase in gross floor area shall not exceed 25m² within any continuous period of 10 years.</p> <p>b. Where the activity relates to an existing commercial building, the activity shall comply with the following built form standards of the Commercial Local Zone: 15.3.3.1, 15.3.3.2, 15.3.3.3, and 15.3.3.4.</p>

Activity		Activity specific standards
P4	Demolition and/or removal of existing buildings (including fencing, walls, paths, decks and pools).	<p>Nil</p> <p>Notes:</p> <p>The provisions within Chapter 6.1 shall apply.</p> <p>Noise from demolition activities shall comply with and be measured and assessed in accordance with New Zealand Standard NZS6803:1999 Acoustics – Construction Noise.</p>
P5	Land management activities and the use, repair and maintenance of Crown owned buildings.	<p>a. Any activity on a site adjoining an occupied residential unit or residential zone shall comply with:</p> <ul style="list-style-type: none"> i. the relevant noise standards for the residential zone in Rule 6.1.4.1.1.1 which shall be met at the boundary of that site or zone; ii. all standards for the residential zone in the Outdoor Lighting and Glare provisions in Rule 6.3.2.3.1; iii. hazardous substance quantities for Group 3 listed in Table 12.1.2.3; and iv. all standards for the residential zone in the Signage provisions in Rule 6.8.3.1. <p>Note: An activity is exempt from the General Noise, Outdoor Lighting and Glare, and Signage provisions where the activity is not located in the areas specified above.</p>
P6	<p>Temporary buildings and signage associated with:</p> <ul style="list-style-type: none"> - existing residential activity; - existing commercial activities; - relocation activities; - utilities and infrastructure; - existing recreation activities; or - that are ancillary to an approved building or construction project or maintenance, repair and demolition activities. 	<ul style="list-style-type: none"> a. Buildings shall be relocatable. b. No building shall exceed 50m² in gross floor area. c. The following built form standards of the Residential Suburban Zone shall be met where it relates to residential activity: 14.2.3.3, 14.2.3.4, 14.2.3.5, 14.2.3.6, 14.2.3.7, 14.2.3.8, 14.2.3.9 and 14.2.3.11, except as provided for in (d). d. In the case of the Specific Purpose (Flat Land Recovery) Zone at Brooklands (Planning Maps 2 and 6) the activity shall comply with the following built form standards of the Residential Small Settlement Zone: 14.8.3.2, 14.8.3.3, 14.8.3.4, 14.8.3.5, 14.8.3.6 and 14.8.3.8. e. The following built form standards of the Commercial Local Zone shall be met where it relates to commercial activity: 15.3.3.1, 15.3.3.2, 15.3.3.3 and 15.3.3.4. f. Any buildings or signage associated with the activity shall be removed from the site within one month of the completion of the project.

Activity		Activity specific standards
P7	Use, maintenance and repair of community facilities and community infrastructure.	Nil
P8	Operation, maintenance, repair, removal, replacement, relocation, and upgrading of existing utilities and roads; new utilities and roads; and ancillary temporary activities.	Nil
P9	<p>Hazard management or mitigation works including river control and drainage works carried out by or on behalf of a Local Authority exercising its powers, functions and duties under the Resource Management Act 1991, Soil Conservation and Rivers Control Act 1941, Christchurch District Drainage Act 1951, or Land Drainage Act 1908, unless expressly provided for as a non-complying activity, where undertaken outside:</p> <ul style="list-style-type: none"> i. a Site of Ecological Significance listed in Appendix 9.1.4.1; ii. an Outstanding Natural or Significant landscape or feature listed in Appendix 9.2.5.1; iii. areas of Outstanding or High Natural Character in the coastal environment in Appendix 9.2.5.4 and remaining areas in the coastal environment. 	<p>Nil</p> <p>Note: The design of hazard management or mitigation works shall be carried out by a chartered professional engineer.</p>
P10	Maintenance, repair, relocation and removal of flood protection and bank erosion protection works; and the maintenance of existing drains or ponds undertaken or authorised by the Crown, the Regional Council, or Christchurch City Council.	Nil
P11	Construction, maintenance and operation of structures, basins and wetlands for the conveyance, treatment, storage, retention or detention of water, wastewater, stormwater and land drainage water by the Christchurch City Council or a network operator.	<p>Nil</p> <p>Note: The requirements of the Infrastructure Design Standard and/or Construction Specification Standard apply</p>

Activity		Activity specific standards
P12	Bed and breakfast within a residential unit on a site that was privately owned as at 12 October 2015.	<p>a. There shall be:</p> <ul style="list-style-type: none"> i. a maximum of six guests accommodated at any one time ii. at least one owner of the residential unit residing permanently on the site; and iii. no guest given accommodation for more than 90 consecutive days <p>b. The activity shall comply with the following built form standards of the Residential Suburban Zone: 14.2.3.1, 14.2.3.3, 14.2.3.4, 14.2.3.5, 14.2.3.6, 14.2.3.7, 14.2.3.8, 14.2.3.9 and 14.2.3.11, except as provided for in (c) below.</p> <p>c. In the case of the Specific Purpose (Flat Land Recovery) Zone at Brooklands (Planning Maps 2 and 6) the activity shall comply with the following built form standards of the Residential Small Settlement Zone: 14.8.3.1, 14.8.3.2, 14.8.3.3, 14.8.3.4, 14.8.3.5, and 14.8.3.6.</p>
P13	Care for non-resident children within a residential unit in return for monetary payment to the carer on a site that was privately owned as at 12 October 2015.	<p>a. There shall be:</p> <ul style="list-style-type: none"> i. a maximum of four non-resident children being cared for in return for monetary payment to the carer at any one time, and ii. at least one carer residing permanently within the residential unit. <p>b. The activity shall comply with the following built form standards of the Residential Suburban Zone: 14.2.3.1, 14.2.3.3, 14.2.3.4, 14.2.3.5, 14.2.3.6, 14.2.3.7, 14.2.3.8, 14.2.3.9 and 14.2.3.11, except as provided for in (c) below.</p> <p>c. In the case of the Specific Purpose (Flat Land Recovery) Zone at Brooklands (Planning Maps 2 and 6) the activity shall comply with the following built form standards of the Residential Small Settlement Zone: 14.8.3.1, 14.8.3.2, 14.8.3.3, 14.8.3.4, 14.8.3.5, 14.8.3.6, and 14.8.3.8.</p>

Activity		Activity specific standards
P14	Home occupation on a site that was privately owned as at 12 October 2015.	<p>a. The home occupation shall limit:</p> <ul style="list-style-type: none"> i. the gross floor area of the building plus the area used for outdoor storage area occupied by the occupation to less than 40m²; ii. the number of FTE employed persons, who reside permanently elsewhere than on the site, to two; iii. any retailing to the sale of goods grown or produced on the site, or internet-based sales where no customer visits occur; iv. the hours of operation when the site is open to visitors, clients, and deliveries to between the hours of: v. 0700 – 2100 Monday to Friday; and vi. 0800 – 1300 Saturday, Sunday and public holidays; vii. visitor or staff parking area to outside the road boundary setback; viii. outdoor advertising to a maximum area of 2m². <p>b. The activity shall comply with the following built form standards of the Residential Suburban Zone: 14.2.3.1, 14.2.3.3, 14.2.3.4, 14.2.3.5, 14.2.3.6, 14.2.3.7, 14.2.3.8, 14.2.3.9 and 14.2.3.11, except as provided for in (c) below.</p> <p>c. In the case of the Specific Purpose (Flat Land Recovery) Zone at Brooklands (Planning Maps 2 and 6) the activity shall comply with the following built form standards of the Residential Small Settlement Zone: 14.8.3.1, 14.8.3.2, 14.8.3.3, 14.8.3.4, 14.8.3.5, 14.8.3.6, and 14.8.3.8.</p>
P15	Market gardens, community gardens and garden allotments.	<p>a. The activity shall comply with the following built form standards of the Residential Suburban Zone: 14.2.3.1, 14.2.3.3, 14.2.3.4, 14.2.3.5, 14.2.3.6, 14.2.3.7, 14.2.3.8, 14.2.3.9 and 14.2.3.11, except as provided for in (b) below.</p> <p>b. In the case of the Specific Purpose (Flat Land Recovery) Zone at Brooklands (Planning Maps 2 and 6) the activity shall comply with the following built form standards of the Residential Small Settlement Zone: 14.8.3.1, 14.8.3.2, 14.8.3.3, 14.8.3.4, 14.8.3.5, 14.8.3.6, and 14.8.3.8.</p>

Activity		Activity specific standards
P16	Storage of heavy vehicles on a site that was privately owned as at 12 October 2015.	<ul style="list-style-type: none"> a. No more than one vehicle shall be stored on the site. b. The activity shall comply with the following built form standards of the Residential Suburban Zone: 14.2.3.1, 14.2.3.3, 14.2.3.4, 14.2.3.5, 14.2.3.6, 14.2.3.7, 14.2.3.8, 14.2.3.9 and 14.2.3.11, except as provided for in (c) below. c. In the case of the Specific Purpose (Flat Land Recovery) Zone at Brooklands (Planning Maps 2 and 6) the activity shall comply with the following built form standards of the Residential Small Settlement Zone: 14.8.3.1, 14.8.3.2, 14.8.3.3, 14.8.3.4, 14.8.3.5, 14.8.3.6, and 14.8.3.8.
P17	Dismantling, repair, or storage of motor vehicles and boats on a site that was privately owned as at 12 October 2015.	<ul style="list-style-type: none"> a. The vehicles and/or boats shall be owned by people who live on the same site. b. The activity shall comply with the following built form standards of the Residential Suburban Zone: 14.2.3.1, 14.2.3.3, 14.2.3.4, 14.2.3.5, 14.2.3.6, 14.2.3.7, 14.2.3.8, 14.2.3.9 and 14.2.3.11, except as provided for in (c) below. c. In the case of the Specific Purpose (Flat Land Recovery) Zone at Brooklands (Planning Maps 2 and 6) the activity shall comply with the following built form standards of the Residential Small Settlement Zone: 14.8.3.1, 14.8.3.2, 14.8.3.3, 14.8.3.4, 14.8.3.5, 14.8.3.6, and 14.8.3.8.

21.11.2.2.2 Controlled activities

The activities listed below are controlled activities.

There are no controlled activities.

21.11.2.2.3 Restricted discretionary activities

The activities listed below are restricted discretionary activities.

Discretion to grant or decline consent and impose conditions is restricted to the matters of discretion set out in the following table.

Activity		The Council's discretion shall be limited to the following matters:
RD1	Activities P1, P3, P6, P12, P13, P14, P15, P16, or P17 in Rule 21.11.2.2.1 that do not comply with Rule 14.2.3.4 where the site coverage is between 35% and 40%; or for the Specific Purpose (Flat Land Recovery) Zone at Brooklands, that do not comply with built form standard 14.8.3.3.	<ul style="list-style-type: none"> a. Site density and site coverage – 14.13.2. b. The extent to which the proposal will facilitate immediate recovery activity while not compromising long term recovery.

Activity		The Council's discretion shall be limited to the following matters:
RD2	Activities P1, P3, P6, P12, P13, P14, P15, P16 or P17 in Rule 21.11.2.2.1 that do not comply with one or more of the built form standards 14.2.3.3, 14.2.3.6, 14.2.3.7 or 14.2.3.8, or for the Specific Purpose (Flat Land Recovery) Zone at Brooklands, that do not comply with one or more of the built form standards 14.8.3.2, 14.8.3.4 or 14.8.3.5.	As relevant to the breached built form standard: <ul style="list-style-type: none"> a. Impacts on neighbouring property – 14.13.3. b. Minimum building, window and balcony setbacks – 14.13.19. c. The extent to which the proposal will facilitate immediate recovery activity while not compromising long term recovery.
RD3	Activities P1, P3, P6, P12, P13, P14, P15, P16 or P17 in Rule 21.11.2.2.1 that do not comply with one or more of the built form standards 14.2.3.5, 14.2.3.9 or 14.2.3.11, or for the Specific Purpose (Flat Land Recovery) Zone at Brooklands, that do not comply with one or more of the built form standards 14.8.3.6 or 14.8.3.8 Any application arising from non-compliance with these standards will not require written approval and shall not be publicly or limited notified.	As relevant to the breached built form standard: <ul style="list-style-type: none"> a. Street scene - road boundary building setback, fencing and planting – 14.9.3. b. Outdoor living space – 14.13.21. c. Water supply for firefighting – 14.13.8. d. The extent to which the proposal will facilitate immediate recovery activity while not compromising long term recovery.
RD4	Activities P6 in Rule 21.11.2.2.1 that do not comply with one or more of the activity specific standards a, b, e or f.	<ul style="list-style-type: none"> a. Matters over which the Council has restricted discretion are set out in Section 6.2.3. b. The extent to which the proposal will facilitate immediate recovery activity while not compromising long term recovery.
RD5	Land management and maintenance activities that exceed activity specific standard P5 (a)(i) in Rule 21.11.2.2.1 by 10 dB or less (noise).	<ul style="list-style-type: none"> a. Matters over which the Council has restricted discretion are set out in Section 6.1.4.3. b. The extent to which the proposal will facilitate immediate recovery activity while not compromising long term recovery.
RD6	Land management and maintenance activities that exceed activity specific standard P5 (a) (ii) in Rule 21.11.2.2.1 (outdoor lighting and glare).	<ul style="list-style-type: none"> a. Matters over which the Council has restricted discretion are set out in Section 6.3.3. b. The extent to which the proposal will facilitate immediate recovery activity while not compromising long term recovery.
RD7	Land management and maintenance activities that exceed activity specific standard P5 (a)(iv)(signage).	<ul style="list-style-type: none"> a. Matters over which the Council has restricted discretion are set out in Section 6.8.5. b. The extent to which the proposal will facilitate immediate recovery activity while not compromising long term recovery.
RD8	Subdivision that involves conversion of the type of tenure from unit title or cross lease to fee simple, boundary adjustments, alteration of cross leases, company leases and unit titles, and where it is proposed to subdivide off land within the Specific Purpose (Flat Land Recovery) Zone from an area of land not within the Specific Purpose (Flat Land Recovery) Zone. Any application arising from non-compliance with this rule will not	<ul style="list-style-type: none"> a. Matters over which the Council has restricted discretion set out in Section 8.5. b. The extent to which the proposal will facilitate immediate recovery activity while not compromising long term recovery.

Activity		The Council's discretion shall be limited to the following matters:
	require written approvals and shall not be publicly or limited notified.	
RD9	Hazard mitigation works not provided as a permitted activity in Rule 21.11.2.2.1 P9.	<ul style="list-style-type: none"> a. The significance of ecological, landscape or natural values, ecological corridors, indigenous fauna, and whether these would be adversely compromised by the activity. b. The risk to life, property and the environment posed by hazards. c. The extent to which the activity would remedy or mitigate the hazard or be compatible with existing mitigation works or structures. d. Whether or not the work would be carried out under the supervision of a Chartered Professional Engineer. e. The extent to which the activity would protect buildings and their occupants. f. The extent to which the proposal will facilitate immediate recovery activity while not compromising long term recovery. g. The extent to which the hazard risk may be increased or exacerbated in other locations.
RD10	Activities P3 in Rule 21.11.2.2.1 that do not comply with one or more of the built form standards 15.4.3.1, 15.4.3.2, 15.4.3.3, and 15.4.3.4.	<ul style="list-style-type: none"> a. Maximum building height – 15.8.3.1 b. Minimum building setback from road boundaries/street scene – 15.8.3.2 c. Minimum separation from the internal boundary with a residential zone – 15.8.3.3 d. Sunlight and outlook at boundary with a residential zone – 15.8.3.4 e. The extent to which the proposal will facilitate immediate recovery activity while not compromising long term recovery.
RD11	Activities P14 in Rule 21.11.2.2.1 that do not meet activity specific standard (a).	<ul style="list-style-type: none"> a. Scale of activity – 14.13.5 b. Traffic generation and access safety – 14.13.6 c. Non-residential hours of operation – 14.13.22

21.11.2.2.4 Discretionary activities

The activities listed below are discretionary activities.

Activity	
D1	Activities P12, P13, P16 or P17 in Rule 21.11.2.2.1 (Bed and breakfasts, care for non-resident children, storage of heavy vehicles, dismantling, repair, or storage of motor vehicles and boats), that do not meet activity specific standard (a).
D2	Pre-school activity on a site that was privately owned as at 12 October 2015.
D3	Health care facility on a site that was privately owned as at 12 October 2015.
D4	Veterinary care facility on a site that was privately owned as at 12 October 2015.

D5	Education activity on a site that was privately owned as at 12 October 2015.
D6	Place of assembly on a site that was privately owned as at 12 October 2015.
D7	Spiritual activity on a site that was privately owned as at 12 October 2015.
D8	Activities P3 that do not meet activity specific standard (a).

21.11.2.2.5 Non-complying activities

The activities listed below are non-complying activities.

Activity	
NC1	Any activity not listed as a permitted, controlled, restricted discretionary, discretionary or prohibited activity.
NC2	Any land management activities that exceed the activity specific standards in Rule 21.11.2.2.1 P5 (a) (i) by more than 10dB.
NC3	Subdivision, unless provided for as a restricted discretionary activity.

21.11.2.2.6 Prohibited activities

The activities listed below are prohibited activities.

There are no prohibited activities.

PLANNING MAPS

Remove the Specific Purpose (Flat Land Recovery) zoning within the Central City planning maps and show the land as Central City Residential Zone.

Chapter 8 Subdivision, Development and Earthworks

8.8.2 Permitted Activities: Earthworks

(With respect to the volume applying in the Specific Purpose (Flat Land Recovery) Zone only)

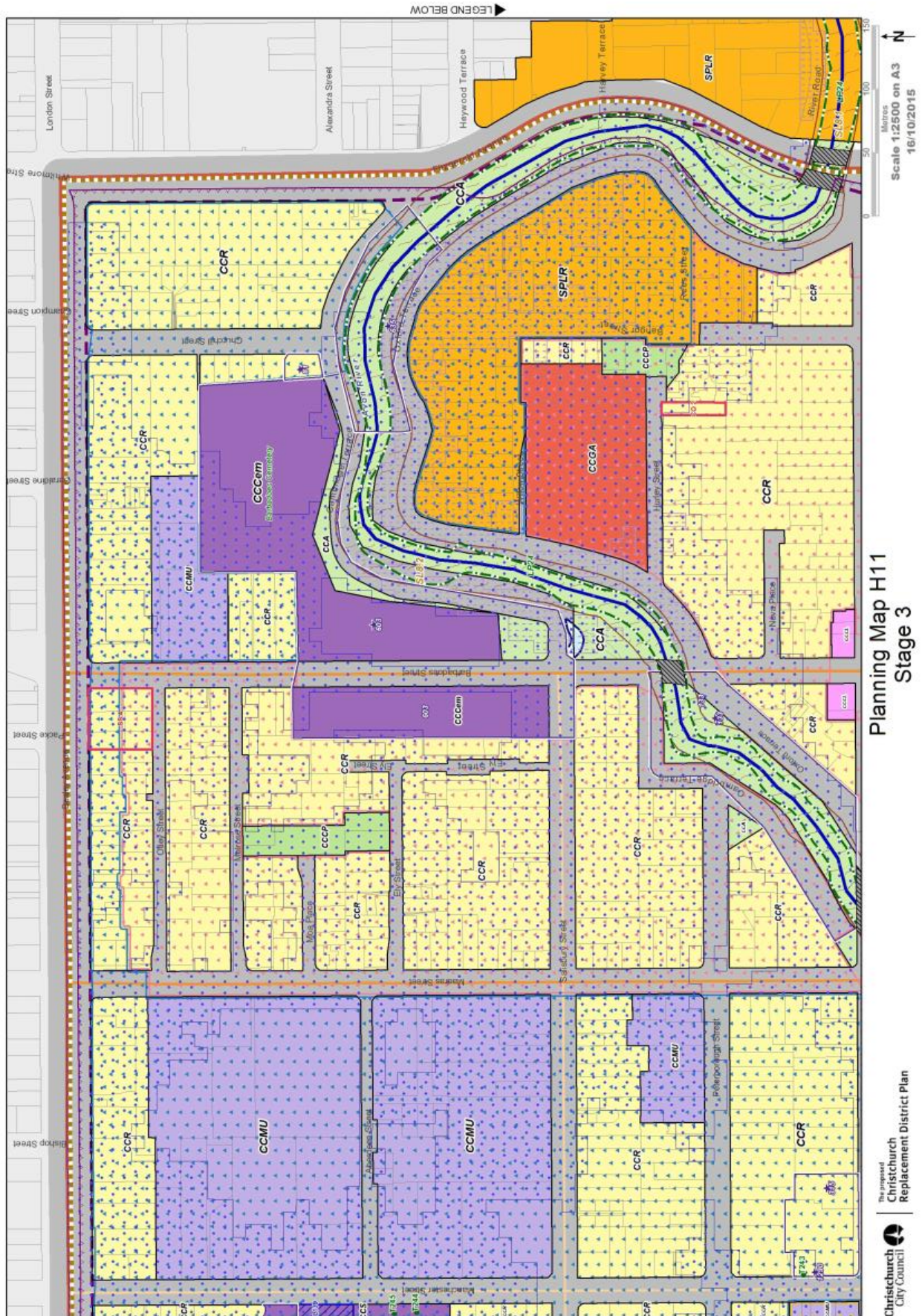
Table 1: Maximum volumes — earthworks

Zone / Overlay		Volume
Residential	a. All residential zones and deferred residential zones.	20m ³ /site
Commercial / Industrial	a. Commercial Fringe, Commercial Local, and Commercial Banks Peninsula zones.	20m ³ /site
	b. Commercial Core, Retail Park, Industrial General, Industrial Heavy, and Industrial Park zones.	100m ³ /site
Rural	a. Rural zones (excluding excavation associated with quarrying activities).	100m ³ /ha
Open Space	a. Open Space (Metropolitan Facilities) and Open Space (McLeans Island) zones.	500m ³ /ha
	b. Open Space (Community Park) zones.	20m ³ /site
	c. Open Space (Natural) and Open Space (Water and Margins) Zone zones.	50m ³ /ha
	d. Open Space (water and margins) zone at Lake Ellesmere / Te Waihora and Lake Forsyth / Wairewa.	10m ³ /ha
Specific Purpose	a. Specific Purpose (Airport) and Specific Purpose (Hospital) zone.	150m ³ /ha
	b. Specific Purpose Lyttelton Port zone.	100m ³ /ha
	c. Specific Purpose Cemetery zone, except as at 8.6.4.	20m ² /site
	d. Specific Purpose (Resort) Zone	20m ² /site
	e. Specific Purpose Cemetery zone, except as at 8.6.4.	100m ³ /ha
	f. Specific Purpose (Flat Land Recovery) Zone.	50m ³ /ha
Transport	a. Transport zone	No limit.
Coastal	a. Coastal zone	50m ³ /ha
Overlays	a. Outstanding Natural Landscapes, Areas of Outstanding Natural Character, Areas of Very High Natural Character, or Areas of High Natural Character	25m ³ /ha
	b. Coastal Environment	25m ³ /ha
	c. Sites of Ecological Significance.	Nil
	d. Outstanding Natural Features	Nil
	e. Important Ridgeline	Nil

Clarification:

1. The volume thresholds contained in Table 1 provide for that amount of fill and that amount of excavation.
2. Where a volume threshold in Table 1 is stated in m³/ha, this shall be applied as a ratio.
3. Where zone and overlay thresholds differ, the lower volume threshold shall apply.

SCHEDULE 2



SCHEDULE 3

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

Submitter Name	No.	Person	Expertise or Role of Witness	Filed/Appeared
Jan Burney	3232	Jan Burney		Filed/Appeared
Ernest Tsao	3261	Ernest Tsao		Filed/Appeared
Human Rights Commission	3286	Michael White	Senior Legal Adviser	Appeared
Stephen Bourke	3476	Stephen Bourke		Appeared
Crown	3721	Robert Rouse	Horizontal Infrastructure	Filed/Appeared
		Jane Whyte	Planner	Filed/Appeared
Christchurch City Council	3723	Peter Eman	Planner	Filed/Appeared
		Clive Anderson	Geotechnical	Filed/Appeared