

IN THE MATTER OF the Canterbury Earthquake
(Christchurch Replacement District Plan)
Order 2014

AND

IN THE MATTER OF decisions on a late submission pursuant to
Clause 3(1)(e) of Schedule 2 and
Clause 5 of Schedule 3 to the Order

Date: 2 July 2015

RECORD OF DECISION
Request to consider late submission

Background

[1] The Hearings Panel has received a copy of correspondence sent to the Secretariat from Mr David Lawry in relation to a number of airport related matters. These matters are set out below.

[2] Attached to an email from Mr Lawry dated 19 June 2015 is a document titled ‘Submission on publicly notified proposal, for Christchurch Replacement District Plan’. The form is signed by Mr Lawry and is dated 13 October 2014 (‘the document’).

[3] The document addresses the following matters:

- (a) Definitions – Short Term Residential Activity, Residential Unit, Retail Activity, Airport Purposes.
- (b) Planning Maps relating to Noise Contours and Bird Strike.
- (c) Designations Airport Land Modifications.

- (d) Chapter 3 4.45 Health and Safety of People and the Environment.
- (e) Chapter 6.1 – Noise and 6.1.1.1 Insulation within the 55dBA Contour line.
- (f) Chapter 10 – D1 Christchurch International Airport Limited (‘Airport Designation’).
- (g) Chapter 14.1.4 – Strategic Infrastructure.
- (h) Rule 14.2.2.1 and 14.3.2.1 – Permitted Activities.
- (i) CIAL Bird Strike.

[4] Matters (a), (c), (d), (f), (g) and (h) formed part of the proposals for the Replacement District Plan that were notified in Stage 1 of the Christchurch Replacement District Plan (‘Replacement Plan’) on 27 August 2014 (‘Stage 1’). Submissions on Stage 1 closed on 8 October 2014. The further submission period closed on 6 November 2014.

[5] There is no dispute that the document, although dated 13 October 2014, was not lodged with the Council as required under the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 (‘the Order’) until 14 June 2015.

[6] The Hearing Panel conducted hearings in relation to Chapter 10 (Part) Designations¹ on 9 and 10 February 2015. The release of our decision on the Airport Designation is imminent.

[7] Prior to lodging the document with the Council on 14 June 2015, Mr Lawry had requested the Panel to allow him to make a late submission in relation to:

- (a) The 50dBA noise contour, engine testing and definition changes within the 50dBA (as set out in emails dated 29 and 30 March 2015), and
- (b) The Airport Designation (as requested in an email dated 31 March 2015).

¹ Excluding Designations to be rolled over by the Christchurch City Council that were notified in Stage 2.

[8] Following the lodgement of the document with the Council, Mr Lawry requested that a decision on the Airport Designation be deferred until his concerns were considered by the Panel (in an email dated 19 June 2015).

[9] The purpose of this decision is to consider whether under cl 5 of Schedule 3 of the Order, the document lodged with the Council on Stage 2 of the Replacement Plan and the correspondence received from Mr Lawry on 29 March (as clarified on 30 March) and 31 March 2015 can be considered by us as a late submission on Designation D1 Christchurch International Airport ('Airport Designation') including the meaning of 'airport purposes'.

Timeline of events

[10] Mr Lawry entered into correspondence with the Secretariat through the Friend of Submitter on airport related matters as follows.

Date and time of email	Description of correspondence
29/3/2015 9.52pm	Mr Lawry requests approval to make late submissions on the 50dBA issue.
29/3/2015 10.02pm	Secretariat seeks clarification of which parts Mr Lawry is wishing to submit on.
30/3/2015 11.19am	Mr Lawry advises he wishes to submit on 50dBA, engine testing and definition changes within the 50dBA.
31/3/2015 9.16am	Mr Lawry requests approval to make late submission on CIAL designation as well.
31/3/2015 7.48pm	Secretariat advises it has sought decision from Panel as to whether it will accept a late further submission.
1/4/2015 9.16am	Mr Lawry acknowledges Secretariat's email dated 31/3/2015.
31/3/2015 11.08pm	Secretariat advises Mr Lawry of response from Panel that matters relating to 50dBA contour lines will be dealt with in Stage 2 and that Mr Lawry is advised to lodge a submission once Stage 2 is notified.
1/4/2015 1.04pm	Mr Lawry acknowledges Secretariat's latest email dated 31/3/2015.
19/6/2015 10.43am	Mr Lawry seeks deferral of designation decision until his concerns have been heard.

[11] On 24 June 2015, I requested the Secretariat forward the above correspondence to the Council and Christchurch International Airport Limited ('CIAL') and asked whether the parties believed they would be prejudiced by the late submission.² In response to that email, the Secretariat received memoranda from Counsel for the Council³ and CIAL⁴. Mr Lawry also provided further comment, in an email dated 26 June 2015, 8.38am.

[12] In considering Mr Lawry's request I have taken into account the correspondence as outlined at [10] above, the memoranda from counsel for CIAL and the Council and Mr Lawry's email of 26 June 2015, 8.38am.

Statutory Considerations

[13] Clause 5 of Schedule 3 of the Order provides that the Chairperson of the Hearings Panel may extend, or waive compliance with any time limits specified by or under this Order, except in relation to the time limit specified in cl 12(2) which relates to completing the Panel's obligation under the Order. Clause 5 also states that the Chairperson of the Panel may accept submissions received after the relevant closing date notified under cl 5 or 7 of Schedule 1 of the Order, having considered the matters prescribed in cl 5(2) of Schedule 3 of the Order.

[14] Clause 5(2) of Schedule 3 of the Order sets out the matters that must be considered in exercising this discretion. These are:

- (a) The interests of any person who, in the Chairperson's opinion, may be directly affected by a waiver; and
- (b) The need to ensure that there is an adequate assessment of the effects anticipated from the implementation of the proposal; and
- (c) The stage of the hearing when the Hearings Panel is provided with the submissions.

² Email from Independent Secretariat dated 24 June 2015 at 2.48pm.

³ Memorandum for the Council dated 25 June 2015.

⁴ Memorandum for CIAL dated 25 June 2015.

[15] Clause 5(3) provides that a decision under cl 5 is final and there is no right of objection or appeal against it.⁵

Validity of ‘Submission’

[16] The first matter I need to consider is whether the correspondence and/or the document amounts to a submission on the Replacement Plan. I have reviewed the correspondence dated 29 March (as clarified on 30 March), 31 March and 19 June 2015. The emails do not of themselves meet the requirements for a submission as set out in the Resource Management (Forms, Fees, and Procedure) Regulations 2003.⁶ Nor were they made in accordance with cl 6(1), Schedule 1 of the Order. Failure to follow the statutory form does not necessarily amount to an invalid submission, so I have considered the substance of the email correspondence to determine whether they contain sufficient detail to enable them to be considered as a submission on the Replacement Plan.

[17] The correspondence dated 29 (and 30) March and 31 March 2015 request the opportunity to make a late submission on two separate issues. The emails of 29 and 30 March 2015 request to make a late submission on “the 50dBA issue, airport engine testing and aspects of the definitions in the 50dBA”. These matters are dealt with in Mr Lawry’s submission on Stage 2. I have not considered that matter further as part of this decision.

[18] In terms of the Airport Purposes Designation matter, Mr Lawry sent an email on 31 March 2015, advising, “I also desire to make late submissions that relate to the CIAL designation”. Although the email requests to make a late submission, it does not amount to a submission in form or substance. In the email, Mr Lawry explains his involvement in Plan Change 84 and the fact he raised issues about the designation at that hearing. The email outlines his concerns about enforcement issues relating to the airport’s activities. Enforcement matters are outside Hearings Panel’s jurisdiction under the Order. Mr Lawry clearly states in the email that he understands that the Designation hearing had taken place, and he states, “your decision is awaited”. Even if the content of the 31 March 2015 email might form the basis for a ‘submission’ on the Airport Designation it did not meet the requirements of the Order. It was well out of time, and was not lodged with the Council. The Hearings Panel has no jurisdiction

⁵ OIC, Schedule 3, cl 5(1).

⁶ Schedule 1, Form 5, as applied through OIC cl 5(1).

to consider matters brought to our attention outside the statutory process prescribed in the Order.

[19] For completeness, I observe that in the email from the Friend of Submitter, sent to Mr Lawry on 31 March 2015 at 7.48pm, the Friend of Submitter refers to requesting advice from the Panel regarding a late “further submission”. Mr Lawry’s email of 31 March 2015 at 9.16 am does not meet the requirements of a “further submission” which are prescribed by clause 7 of Schedule 1 to the Order, and even if it did, it was well out of time. The period for making further submissions on Stage 1 closed on 6 November 2015.

[20] The email of 19 June 2015 requests a deferral of the Airport Designation decision until the issues raised by Mr Lawry in that email, and in the documents attached to that email, are considered by the Panel. The email of 19 June 2015 is not a submission either.

[21] The document dated 13 October 2014 attached to the email of 19 June 2015 was never lodged with the Council within the publicly notified timeframes for Stage 1 matters. The document complies with the regulatory requirements as to form of a submission, and was lodged with the Council within time for Stage 2 matters.

[22] To the extent that the document addresses the Airport Purposes Designation, including the meaning of ‘airport purpose’, notified in Stage 1, I have considered whether it can be accepted as a late submission.

Interests of Directly Affected Persons

[23] Mr Lawry is a person directly affected by this application for waiver. Mr Lawry resides at 500 Yaldhurst Road, Christchurch,⁷ which is in close proximity to the airport. Mr Lawry was a submitter on Plan Change 84, and has lodged an Appeal in the Environment Court in relation to Plan Change 84 to the Operative Christchurch City Plan, which relates to the Special Purpose Airport Zone.⁸ Mr Lawry states in the document that his property is under the 50dBA noise contour and he is concerned about the expansion of airport activities and the impacts on his land.

⁷ Paragraph 1 of the Document.

⁸ Once operative Plan Change 84 is deemed to be part of the Replacement District Plan pursuant to OIC, cl 4(3).

[24] CIAL, as the Requiring Authority for the Airport Designation, is also a directly affected person. The issues raised by Mr Lawry directly relates to the airport operations. CIAL has an interest in ensuring that its request for the roll-over of its Airport Purpose designation, with modifications, is considered and determined by the Hearings Panel without undue delay. CIAL prepared and presented its case at the Designations hearing on the basis that there were no submissions opposing the roll-over of that part of the Designation that was in the Existing Plan.⁹

[25] The Christchurch City Council, as proponent and administrator of the Replacement District Plan, also has an interest in ensuring that the Replacement District Plan process is completed within the timeframe prescribed by the Order.¹⁰ Although the Council initially requested to make legal submissions and call evidence on the meaning of ‘Airport Purposes’¹¹, it reached agreement with CIAL that such matters would not need to be addressed during the Designation hearing.

Adequate Assessment of Effects

[26] The Hearings Panel received adequate evidence from the parties who participated in the Airport Designation hearing in relation to the scope of matters we are required to consider under clause 14(2) of the Order, and in particular the matters we are required to consider under section 171 of the Resource Management Act 1991.

[27] There are no submissions, made to the Hearings Panel in accordance with the Order, that raise any concern with the roll-over of those parts of the Airport Designation that are included in the Existing Plan. Ms Appleyard notes specifically that, prior to the hearing on the Designations Chapter, the Council and CIAL agreed that there would not need to be any submissions or evidence on the scope of activities which are included in the phrase ‘Airport Purposes’ and the Panel would not be asked to provide a definition of all activities within the phrase as such a decision would be more appropriate for declaration proceedings.¹² The hearing proceeded on the basis of that agreed position.

⁹ CIAL Memorandum, 25 June 2015, para 3.5.-3.9

¹⁰ OIC, cl 12(2)

¹¹ CCC Memorandum of Counsel, 28 January 2015; Notice of Opposition by CIAL, 28 January 2015; further Memorandum of Counsel, 29 January 2015.

¹² CIAL Memorandum dated 25 June 2015, para 3.8 and CIAL opening submissions dated 9 February 2015, paras 23 to 25.

The Stage of the Hearing Process

[28] Under our Terms of Reference, as required by the Order, the Hearings Panel is required to decide a number of matters as a priority. Pursuant to cl 3.2(c) of our Terms of Reference, Designations are one of the named proposals that are required to be given priority over other matters. The hearing of the Airport Designation took place on 9 and 10 February 2015.

[29] Mr Lawry first advised the Secretariat of his interest in the Designation matter on 31 March 2015 and of his wish to make a late submission. At that stage, the hearing had already taken place. Mr Lawry had not at that stage made a submission on the Airport Designation matter under the Order. Even if the content of email of 31 March 2015 amounted to a 'submission', it was still well out of time and had not been lodged with the Council.

[30] I am satisfied that Mr Lawry was aware, at the time, that the Designation hearing had taken place as part of Stage 1.¹³ He states in his email of 31 March 2015 that he was aware of that fact on 16 March 2015. The Council also provided a copy of a letter that it sent to Mr Lawry on 16 March 2015 that also explains the process.¹⁴ That letter also makes it clear that it was the airport noise matters that would be dealt with as part of Stage 2.¹⁵

[31] Ms Appleyard also points to the fact that Mr Lawry was aware of the Designation notification, submission process and hearing through his involvement in Plan Change 84.¹⁶

[32] Irrespective of when Mr Lawry first became aware that the Airport Designation matter was to be heard as part of Stage 1 of the Replacement District Plan, his request of 31 March 2015 to make a late submission on the Airport Designation was extremely late. I find that Mr Lawry had reasonable opportunity to make a submission within the timeframes prescribed by the Order or at least before the hearing commenced because:

- (i) The Airport Designation was publicly notified as part of the Chapter 10 proposal on 27 August 2015, and submissions were called for up until 8 October 2015.

¹³ Email to Mr Richard Ball dated 31 March 2015.

¹⁴ Letter from CCC to Mr Lawry dated 16 March 2015 para 2.

¹⁵ Ibid, para 5.

¹⁶ CIAL Memorandum dated 25 June 2014, para 2.4 – 2.8.

- (ii) The Council gave public notice of submissions received and called for further submissions on 22 October 2014. The period for making further submissions closed on 6 November 2014.
- (iii) During the period for submissions, Mr Lawry was a participant in Plan Change 84, and the interface with the Replacement District Plan process was in issue.¹⁷
- (iv) The Designation hearing was notified by the Secretariat on behalf of the Hearings Panel in the Public Notices section of the Press on 26 January 2015.
- (v) Information about the Replacement District Plan was available on the Council's website, and information, including evidence and submissions of parties involved in the hearing was available on the Panel's website.

[33] In his email of 26 June 2015, Mr Lawry points to the complexity of the process for the general public under the Order as a reason why he did not make a submission in time. I simply note that the timeframes and requirements for participating in the process are prescribed by the Order, and the circumstances are the same for all persons wishing to participate.

[34] I agree with the Council that if I was to allow Mr Lawry's late submission, Hearings Panel would need to defer its decision on the Airport Designation until:

- (a) Mr Lawry's submission was publicly notified;
- (b) Further submissions were received;
- (c) The parties were given an opportunity to be heard and call evidence if they wished to do so.

[35] Deferring the Hearings Panel's decision to enable those procedural steps to be met would cause significant delay. The Hearings Panel is required to hear submissions and make decisions on all proposals for the Replacement Plan by 9 March 2016. The Hearing's Panel is required

¹⁷ Memorandum of CIAL dated 25 June 2015 at para 2.1-2.10.

under our Terms of Reference to make a decision on the Airport Designation as a matter of priority over the matters notified in Stage 2. A delay in issuing the Hearings Panel's draft decision on the Airport Designation to consider Mr Lawry's late submission is likely to compromise the ability of the Hearings Panel to complete its obligations as required by the Order.

Other matters

[36] Mr Lawry considers that upon having raised with the Secretariat his wish to make a late submission on the CIAL Designation matter on 31 March 2015, and upon receiving the response from the Secretariat on 1 April 2015 that stated:

... matters relating to the 50 dBA contour lines will be dealt with by the Panel in Stage Two. On that basis, Mr Lawry is advised to lodge a submission with the Council once Stage 2 is notified on 2 May 2015

he "held the reasonable belief that these requests had been accepted and that the Panel intended to hear CIAL matters together to provide the greater clarity in Stage 2. As a direct result of that belief I have made submissions in the stage two process that took advantage of the approval to make late submissions."¹⁸

[37] By "these requests" I take this to refer to the request to make late submissions on the Airport Designation and the airport noise issue.

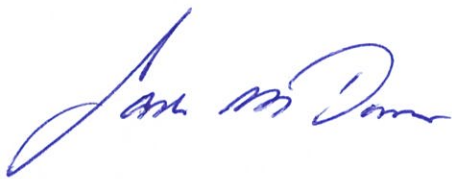
[38] Having reviewed the correspondence, it is clear that Mr Lawry wished to raise two issues. At first in his email of 29 March 2015 (as clarified on 30 March), he wished to make submissions on the airport noise contour, engine testing issue and changes to definitions in the 50dBA contour. He then indicated in his email of 31 March 2015 he "also" wished to make late submissions on the Airport Designation matter. I find that the response from the Secretariat on 1 April is clear and unambiguous. It did not address the request to make a late submissions on the Airport Designation. It was limited to advising Mr Lawry that matters relating to the 50dBA contour lines would be dealt with in Stage 2 and that he should make a submission at that time.

¹⁸ Email 26 June 2015, 8.38am.

[39] While Mr Lawry may consider his belief that all airport matters were deferred until Stage 2 to be reasonably held, that is not reflected in the email correspondence. In particular, in his email of 31 March 2015, Mr Lawry states that he is aware the hearing had taken place and “your decision is awaited”. The Council notes in paragraph 6 of its Memorandum that the powers and duties of the Panel and the Council only apply if there is a submission. At that stage there was no submission for the Panel to consider as a ‘late submission’. We have no jurisdiction to consider matters raised by members of the public outside of the process prescribed in the Order.

Decision

[40] For the reasons stated, Mr Lawry’s request is refused.

A handwritten signature in blue ink, appearing to read "Sarah M. Dawson". The signature is fluid and cursive, with a large initial 'S'.

Ms Sarah Dawson
Acting Chair