

CHRISTCHURCH REPLACEMENT DISTRICT PLAN
INDEPENDENT HEARINGS PANEL

CHRISTCHURCH REPLACEMENT DISTRICT PLAN HEARINGS
PROCEDURES

14 JANUARY 2015

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1) INTRODUCTION

- a) The Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 (The Order) sets out the process for the development of the Christchurch Replacement District Plan. The Order includes the establishment of an Independent Hearings Panel (Hearings Panel), appointed by the Minister of Earthquake Recovery and Minister for the Environment (The Ministers) to hear submissions and make decisions on the Proposals for inclusion in the Replacement District Plan as notified by the Christchurch City Council (the Proposals).
- b) This document is intended to assist all parties who will participate in the hearing process. This document is presented in two parts. Part 1 explains various administrative arrangements and the roles of the participants in the hearings and of the Independent Secretariat. Part 2, details the hearing procedures that will apply to the hearings processes, and preparations. These include procedures for:
 - pre-hearing meetings;
 - expert conferencing;
 - mediation;
 - hearing sessions.
- c) These procedures are as required by The Order and as directed by the Hearings Panel.
- d) The document does not repeat the wording of The Order unless necessary to provide clarity. The Order should be read in conjunction with this document. The Order can be viewed online at <http://legislation.govt.nz/regulation>
- e) The procedures that follow recognise the extraordinary circumstances under which the District Plan is being reviewed. As a result of the Canterbury earthquakes in 2010 and 2011, there is a need for expediency in the preparation and determination of a district planning framework to provide certainty for the community and those seeking to invest in the recovery of Christchurch. To that end, The Order places an onus on the Hearings Panel to hear submissions and make decisions on the Proposals in a little over a year. The existing district plans for Christchurch and Banks Peninsula took some 10 years to complete the hearing and appeal process. Whilst recognising the need for expediency in the procedures for hearing and decision making outlined in the Order, the hearings must be conducted in a manner that enables participation and the right to a fair hearing, albeit in a shortened time frame. The procedures outlined below have that in mind.
- f) The first set of Proposals was notified on 27 August 2014. It is expected that during 2015 the Council will notify another set of Proposals for the remaining parts of the District Plan. The Ministers have issued Terms of Reference to the Hearings Panel which requires certain priority matters for decision by 28 February 2015. The Hearings Panel is required by The Order to complete its decisions on all matters by 9 March 2016.
- g) The procedures in Part 2 of this document will apply to all pre- hearing and hearings conducted by the Hearings Panel unless modified by the directions of the Hearings Panel. This document may be updated from time to time through the hearings process.

PART 1

2) THE WEBSITE

- a) The Independent Hearing Panel has established a web site for the hearing process at www.chchplan.ihp.govt.nz.

3) THE HEARINGS PANEL

- a) The Ministers have appointed the Hearings Panel. The Order appoints Sir John Hansen to be the Chairperson of the Hearings Panel. The other members are:
- Judge John Hassan (Deputy Chairperson);
 - Sarah Dawson;
 - Dr Philip Mitchell;
 - Jane Huria;
 - John Sax.

The profiles of members of the Hearings Panel can be found on the web site.

- b) Each hearing will have a quorum of 3 panel members. The Chair may direct that the hearing panel sit as two panel's as the need arises. The Chair or Deputy Chair or other panel member presiding at any hearing session or pre-hearing meeting will be responsible, on behalf of the panel, for making all procedural directions and orders.

4) TERMS OF REFERENCE

- a) The Minister's Terms of Reference for the Hearings Panel can be viewed on the website.
- b) Pursuant to Clause 9(2)(a) of the Order, the following have been identified in the Terms of Reference as the matters of priority for first decisions by 28 February 2015:
- i) The Strategic Directions proposal;
 - ii) Temporary activities related to earthquake recovery, such as house lifting activities;
 - iii) Provisions for repair and rebuilding of multi-unit residential complexes;
 - iv) Rezoning for exemplar housing areas under Action 8 of the Land Use Recovery Plan that are publicly notified in the first draft proposals.
- c) Pursuant to Clause 9(2)(b) of the Order, the following are also to be given priority over other matters but a decision need not be made by 28 February 2015:
- i) The Natural Hazard Proposal
 - ii) The Residential Proposal
 - iii) Designations
 - iv) The Commercial Proposal
 - v) Any other discrete matter identified by the panel resulting from the submissions process that is an impediment to recovery.

- d) The Hearings Panel is required to hold hearings on submissions on proposals that have been notified and make decisions in relation to those proposals. In the case of designations and heritage orders only, this involves a draft decision and then a final decision.

5) ROLE OF THE CHRISTCHURCH CITY COUNCIL

- a) The Christchurch City Council (the Council) has a number of duties in relation to this process.
- b) The Council is responsible for preparing and notifying the Proposals and calling for submissions from the public. Once the period for making submissions and further submissions has closed, the Council is required to provide all submissions to the Hearings Panel. From that point on, the Council obligations are to present the Proposals to the Hearings Panel. The Council as the proponent of the Christchurch Replacement District Plan will be required to provide evidence to support the Proposals or any proposed amendments to the Proposals. The Council will be invited to respond to matters raised by submissions, and when directed by the Hearings Panel in accordance with the Order.
- c) Once decisions have been made by the Panel, the Council resumes its administrative role and is required to publicly notify decisions and make the Proposals operative.
- d) The Council is required to attend all pre-hearing and hearing sessions unless excused by the Hearings Panel. The Council may also be directed by the Hearings Panel, to participate in some expert conferencing, and mediation sessions.
- e) The Council is also encouraged (as are all submitters) to meet outside of the formal hearing process with other submitters and report on any agreements reached on any points at pre hearing meetings and/or hearing sessions. The Hearings Panel recognises that the ability for this to occur may be influenced by time and resource constraints.
- f) For the avoidance of doubt the Council is not responsible for the management of the Hearings Panel's inquiries into the Proposals.

6) ROLE OF SUBMITTERS

- a) Every person who makes a submission or further submission on a proposal, and who has indicated that they wish to be heard, may speak to their submission at the relevant hearing session (and to call evidence at that session). Unlike a council hearing, there is no right of appeal to the Environment Court for a decision made by the Hearings Panel. Decisions can only be appealed to the High Court on points of law. This means that the case that you present should be clear, concise, well-reasoned and cover all points of concern.
- b) You may exercise that right either by speaking to your submission, personally, or by having a representative speak to your submission on your behalf. The representative may be a lawyer, but does not have to be.

- c) If you choose to have a lawyer [or other agent] speak on your behalf, he or she may make legal submissions, to the Hearings Panel on matters that arise from your submission.
- d) Be assured that the Hearings Panel will have read your submission (whether you choose to attend the hearing or not). As such, it is not necessary or appropriate for you to read out your submission. Rather, you should just highlight any key points arising from it that you think you need to emphasise to assist the Panel. Speaking to your submission means just that. If you have made a further submission in response to another person's submission, you may speak to that also. However, you are not permitted to go beyond what your submission itself covers or asks for.
- e) In speaking to your submission, you (or your representative) must comply with directions which the Panel may give as to procedures. Prior to each hearing the Hearings Panel will hold a pre hearing meeting to discuss amongst other things the time tabling and procedural requirements for each hearing. Following the pre hearing meeting, a report will be issued (Pre Hearing Report and Directions) and it will include specific directions for each hearing. The directions may differ from the general procedures in this document, so it will be important to read the report and directions and comply with any directions. A copy of the report will be sent to you with the Notice of Hearing and will be available on the website. You must be ready to present at your allocated time and keep to your allocated time limit. The Friend of Submitter will be available should you want any assistance with procedures. To assist the panel please prepare your written statement in accordance with the requirements set out at paragraph 18 below. If you intend to call evidence in support of your submission please refer to paragraph 7 and 8 below.

7) WHO MAY PRESENT EVIDENCE

- a) Every person who makes a submission or further submission on a proposal, and who has indicated that they wish to be heard, may call evidence. Evidence is given by a witness under oath or affirmation to tell the truth.
- b) The Council may (in addition to its right to call evidence as a submitter) call evidence in response to any evidence called by any other submitter, and on anything directed by the Hearings Panel.
- c) The Hearings Panel may commission a consultant or other person to prepare a report on any submissions or matters arising or considered necessary. The Panel may seek that evidence be given on such matters.
- d) Any party who calls evidence must comply with the Hearings Panel's directions as to evidence. Failure to do so may mean that the evidence cannot be presented without the Hearings Panel giving leave to do so.

8) TYPES OF EVIDENCE: LAY EVIDENCE V EXPERT EVIDENCE

- a) Evidence can be of two types:
 - i) Matters of fact which any person having knowledge of those facts can give (e.g. a submitter can give evidence on how they are concerned a proposal may impact on them),
or
 - ii) Matters of opinion, by a qualified expert about issues within his or her field of expertise. In order for the panel to give weight to opinion evidence, the person must be qualified to give that evidence.
- b) A basic requirement for all evidence is that it assists the Hearings Panel in its task.

LAY (OR NON EXPERT) EVIDENCE

- a) Lay witnesses can help the panel with information about aspects of the environment that you appreciate and the reasons for that appreciation and how that appreciation might be affected by the proposals and provisions in the plan.
- b) All non-expert evidence is to be prepared in accordance with clause 17 below.

EXPERT EVIDENCE

- a) An expert witness can assist the Hearings Panel by giving opinions on matters on which they have specialised knowledge of relevance to the decisions that the Panel is tasked to make. For example, that could be on matters such as planning, transport engineering, noise, Māori cultural knowledge, natural hazards, urban design or other matters.
- b) When preparing and giving their evidence expert witnesses must comply with the Code of Conduct for Expert Witnesses as set out in Clause 7 of the Environment Court Practice Note 2014 or its amendments. A link to the Practice Note is available on the website.

9) ROLE OF THE INDEPENDENT SECRETARIAT

- a) The Hearings Panel has an office of independent advisers and support staff as an Independent Secretariat.
- b) The role of the independent advisers will include:
 - independent legal counsel to assist the panel with legal issues and to cross-examine witnesses on contested matters when required and such other functions as the panel considers appropriate.

- providing independent planning reports on issues raised in submissions, participating in pre hearing meetings, and expert conferencing and other assistance as directed by the panel.
- commissioning independent experts as requested by the panel.

The role of the support staff (under the direction of the Chairperson) will include:

- hearing notifications;
 - scheduling various hearing related activities;
 - meeting arrangements;
 - appointing and managing facilitators and mediators;
 - making available hearing directions/advisory notices or decisions;
 - making available evidence and reports received by the Hearings Panel; and
 - handling public and media enquiries to the Hearings Panel.
- c) The support staff will manage the website to ensure all of the above information is correctly displayed and updated.
- d) The website will contain information that is specific to the Hearing, which may include information provision requirements that apply to the Council under The Order as listed above under the Role of Christchurch City Council.

10) FRIEND OF SUBMITTER

- a) The panel has appointed a Friend of Submitter, Dr Brent Cowie. His role will be to assist submitters, who do not have professional assistance, with the procedures associated with this decision making process.
- b) The Friend of Submitter will be available for consultation on process matters during the course of the hearing process. Where appropriate he may assist submitters with common interests to combine in the presentation of their cases.
- c) It is not the role of the Friend of Submitter to provide advice on the merits of particular submissions.
- d) Dr Cowie can be contacted:
brent.cowie@xtra.co.nz;
 or ph. 0800 777 441

11) HEARINGS ADMINISTRATION

VENUE

- a) The Hearings will be conducted at 348 Manchester Street in one of the two hearing rooms available (unless advised in a notice of hearing that the hearing will take place in an alternative venue).
- b) Alternative hearing rooms may be utilised to cater for larger groups of submitters for the purposes of pre-hearing meetings.

TRANSCRIPT

- a) The hearing sessions will be digitally recorded and transcribed at the end of each hearing day. Transcriptions will be available on the website on the evening following a hearing session.
- b) If any party wishes to correct the transcript, notices of corrections must be received in writing by the Hearings Panel by 10am the following working day.

PART 2

12) PRINCIPLES OF THE HEARINGS AND HEARING SESSIONS

- a) Hearings will be conducted in accordance with the following principles:
 - i) Hearings procedure will be appropriate and fair;
 - ii) The hearings will be conducted so as to avoid unnecessary formality; and
 - iii) Hearings and procedures will recognise tikanga Māori.

- b) In addition, the Hearings Panel will:
 - i) be inclusive and acknowledge the broad range of interests, capability and capacity represented in submissions;
 - ii) where practicable use collaborative and active participation processes to enhance / complement the formal hearings process;
 - iii) act in a fair and transparent manner in proceedings;
 - iv) conduct an efficient process which minimises the costs and time to all parties involved in the hearing;
 - v) provide submitters with an adequate opportunity to be heard, while, where necessary, limiting the length of oral presentations, avoiding repetition of information and the presentation of irrelevant material;
 - vi) give effect to the Māori Language Act 1987, and receive evidence written or spoken in Māori', and
 - vii) recognise New Zealand sign language where appropriate, and receive evidence in sign language if required.

- c) Timeframes stated in this Hearings Procedures (or associated directions) are intended to balance competing considerations arising from:
 - i) ensuring that submitters who wish to be heard have a fair hearing;
 - ii) conducting an efficient hearing process; and
 - iii) meeting the deadline for completing decisions on the Priority Matters by 28 February 2014 and the remaining Proposals by 9 March 2016.

- d) Timeframes may be adjusted (either shortened or lengthened) by the Hearings Panel to meet particular circumstances, either on application by the Council, any submitter or by the Panel's own direction.

13) HEARING PROCEDURES - COMMUNICATIONS

CONFIRMATION THAT SUBMITTERS WISH TO BE HEARD

- a) If you have made a submission on the District Plan and you have clearly indicated that you wish to be heard then the first communication you will receive from the Hearings Panel is a notice of pre – hearing meeting. The purpose of the pre-hearing meeting is outlined in paragraph xx below.
- b) If you have clearly indicated that you do not wish to be heard, then you will not receive any further communications from the Hearings Panel regarding pre hearing or hearing sessions. The Council will notify you of the decisions in due course.
- c) If you have not clearly indicated that you wish to be heard, you will receive an email or letter from the Independent Secretariat, on behalf of the Hearings Panel. The email or letter will ask you to confirm to the Independent Secretariat whether or not you wish to be heard. If you confirm your wish to be heard within 5 days of receiving the email or letter, you will be treated according to paragraph 13) a). If you do not confirm your wish to be heard within that period, you will be treated according to paragraph 13) b).

COMMUNICATIONS FROM THE HEARINGS PANEL

- d) The Hearings Panel will communicate with parties in the following ways:
- i) **Procedural Minute;**
 - ii) **Direction** – including, but not limited to, a general directive of the Hearings Panel requiring a response from one or more parties, or a direction striking out a submission under Cl 7(1) (e) of Schedule 3, directions as to how and when matters are to be heard under clause 7(1) (a) to (d) and directions restricting the matters to be heard under Cl 7(2) of Schedule 3 of the Order.
 - iii) **Advisory notice** – information applying to one or more of the parties;
 - iv) **Notice of pre-hearing meeting;**
 - v) **Report of pre-hearing meeting;**
 - vi) **Notice of expert conferencing;**
 - vii) **Notice of Mediation** (or other alternative dispute resolution process);

viii) **Notice of Hearing** – which sets out the dates, times and places (venue) of the hearing sessions.

- e) Communications from the Hearings Panel relating to procedural matters generally will be issued by the Hearings Panel support staff (on the Hearings Panel’s behalf) on the website or, in some circumstances where the matters affect only a limited number of parties, by way of email or post.

COMMUNICATIONS OR REQUESTS TO THE HEARINGS PANEL

- f) No person should attempt to communicate directly with the Hearings Panel or any member of the Panel except during a pre-hearing meeting or a hearing session.
- g) Initially any communications or requests to the Hearings Panel are to be served on the Independent Secretariat at:
 - a. Email: info@chchplan.ihp.govt.nz
 - b. Mail: PO Box 113, Christchurch 8140
- h) In addition, more general inquiries can be directed to the Support Staff at:
 - a. Email: info@chchplan.ihp.govt.nz
 - b. Phone: 0800 2424040.
- i) Once the hearing venue is established revised communication details will be issued.
- j) A communication or request made to the Hearings Panel or any response to such communication or request will, unless good reason for withholding it exists, be treated as official information which is publicly available. Where appropriate in the opinion of the Hearings Panel, such communications, requests or documents may be posted on the Hearings Panel’s website.
- k) Any person who makes any communication or request to the Hearings Panel that could affect any other person who has made a submission must also provide a copy of that communication or request to that person so that they have the opportunity to respond to the Hearings Panel.
- l) If any submitter, who has indicated they wish to be heard, or the Council or their representative, needs to communicate with the Hearings Panel regarding any difficulties with the directions given or procedural minutes issued, then they must do so in writing (which may be by letter or memorandum, which may be conveyed by email). However any communications of this kind must be served on the Independent Secretariat 2 working days before the next relevant scheduled pre-hearing meeting or hearing session and is strictly limited to two A4 pages of not less than 11 point font. Any such communication must be served by the person making the communication on any person that could be affected.

SERVICE AND PROVISION OF DOCUMENTS

- m) Formal service of documents from the Hearings Panel will be by way of the web site unless submitters have been advised directly by the Hearings Panel that another form of service is required.
- n) The Independent Secretariat will notify submitters of documents being posted on the website by e mail where there is a legal requirement to do so or if directed to do so by the Hearings Panel.
- o) If parties wish to receive documentation through the post, arrangements can be made through the Independent Secretariat on 0800 2424040.

14) PRE-HEARING MEETINGS

- a) Pre-hearing meetings are important for ensuring the fair and efficient running of the hearing sessions that will follow. They are intended to assist in the clarification of matters or issues concerning Proposals and/or submissions and facilitating resolution. That includes identifying and resolving procedural issues, and determining whether substantive issues raised in submissions can be addressed through mediation, other alternative dispute resolution process, and expert conferencing or by way of a hearing session.
- b) The Friend of Submitter will be available at times noted on the website, or contacted by phone on 0800 777 441 to assist submitters to prepare for the pre -hearing meeting.
- c) A Notice of Pre-hearing Meeting will be issued to all submitters that are invited or required to attend via email or post. A copy of the notice will be posted on the website. The notice may specify directions to submitters as to matters relevant to the pre-hearing meeting.
- d) All submitters issued with a Notice of Pre-hearing Meeting are expected to attend the meeting or be represented by a person who is sufficiently familiar with what the submitter seeks in their submission and the evidence they intend to call at the relevant hearing session.
- e) The Council is required to be represented at every pre-hearing meeting unless the Hearings Panel excuses that attendance.
- f) The Hearings Panel may invite anyone else it considers appropriate to attend a pre-hearing meeting.
- g) Prior to any hearing or hearing session, there will be a pre-hearing meeting which the Council and all submitters who are to be heard are expected to attend or be represented at. That pre-hearing meeting will be for the purposes of:
 - i) Determining the number, sequence, anticipated timing and duration, and subject matter of all subsequent hearing sessions;
 - ii) Clarifying and confirming which submitters will be heard at each subsequent hearing session (with regard to the relevant content of submissions);

- iii) Considering any requests for change to these Hearing Procedures.
- h) Pre-hearing meetings are to:
- i) Clarify any matter or issues relating to submissions on the proposed Christchurch Replacement District Plan;
 - ii) Clarify the pathway for a particular proposal, i.e.:
 - Determine whether submitters consent to participating in **mediation**¹ or any other alternative dispute resolution process;
 - Make arrangements as to **expert conferencing**² including as to timing, participation, facilitation and reporting of outcomes including joint witness statements;
 - Make arrangements for submitters (or their representatives) to meet with other submitters and/or the Council (or their representatives) to clarify or narrow the matters / issues in dispute.
 - Confirm the matters at issue and/or report any agreement reached between the parties by way of informal meetings;
 - If appropriate, schedule a further pre- hearing meeting.
 - iii) Confirm arrangements for the calling of evidence including identifying the **expert witnesses and/or non-expert witnesses** to be called by each party, the timetabling for the calling of evidence and matters in relation to the form and length of evidence and arrangements for its pre-circulation ;
 - iv) Determine any application(s) for a witness summons;
 - v) Estimate the likely hearing time required at a hearing session and determine arrangements for hearing sessions, including as to the order in which submitters will be heard and witnesses called;
 - vi) Settle time limits in relation to hearing sessions, including time limits for the making of representations, the presentation of legal submissions, the presentation of evidence and cross-examination;
 - vii) Assist the making of directions on those and any other matters in relation to the conduct of hearings.
- i) To assist with the clarification or narrowing of matters/issues as between submitters or as between submitters and the Council, the chairperson may direct that a pre-hearing meeting be adjourned to be resumed at a later time or date in order to facilitate discussion as between those parties (or their representatives) to clarify or narrow the matters / issues. The chairperson (or a person approved for this purpose) will then act as a facilitator of those discussions.
- j) After each pre-hearing meeting, the chairperson of the pre-hearing meeting will prepare a Report of Pre-hearing Meeting that:
- i) identifies the parties who attended (*attendees*);

¹ Refer to Appendix 1 for Mediation procedures.

² Refer to Appendix 2 for Expert Conferencing procedures.

- ii) sets out any understanding of a matter or issue between attendees;
 - iii) sets out any clarification or resolution of any matter or issue agreed between any of the attendees;
 - iv) may record directions arising from the pre-hearing meeting, including as to:
 - hearing timetable;
 - hearing venue;
 - evidence including the expert witnesses and/or non- expert witnesses to be called, the order in which that evidence is to be called, the form and length of evidence, and arrangements for its pre-circulation;
 - mediation or other alternative dispute resolution ;
 - expert conferencing arrangements and joint witness statements;
 - arrangements for clarifying or narrowing matters / issues in dispute;
 - witness summonses;
 - hearing sessions, including as to the timing and order for the making of representations and legal submissions and the calling of witnesses;
 - arrangements in regard to cross-examination, including as to whether and on what basis cross-examination will be allowed and requirements for prior time estimates;
 - other matters in relation to the conduct of hearings.
- k) The Council or any submitter to be heard at a hearing session to which a pre-hearing meeting relates may, not later than 5 working days before the commencement of that hearing, make a written application to the Chairperson of the Hearings Panel requesting any changes to the Report of Pre-hearing Meeting. Such applications must:
- i) Specify the changes requested;
 - ii) In the case of any of an application by or on behalf of a submitter who did not attend the pre-hearing meeting or have a representative attend on their behalf, include an explanation for that non-attendance (failure to attend if so required, without reasonable excuse, being a matter that may count against the granting of the request);
 - iii) Be copied to the Council and submitters who are recorded in the Report of Pre-hearing Meeting and confirmation that this is done must be included in the application.
 - iv) The Chairperson can grant any requested change the Chairperson considers appropriate. The Chairperson may direct that a further pre- hearing meeting be held for the purposes of determining whether or not any requested change should be made.
- l) Pre Hearing sessions will be open to all members of the public unless there are reasons in terms of Schedule 3 Clause 12 of The Order for protecting sensitive information by requiring that the whole or part of a pre hearing session be held with the public excluded or by prohibiting or restricting the publication or communication of any information supplied to or obtained by the Hearings Panel.

CONSEQUENCES OF NOT ATTENDING PRE-HEARING MEETINGS

- m) If a submitter who is required to attend a pre-hearing meeting³ fails to attend without reasonable excuse, the Hearings Panel may decline to consider the person's submission. If this occurs, the person will have no rights of appeal. A right of objection to the Hearings Panel is however available to the person if the Hearings Panel makes a decision declining to hear a person's submission.⁴

15) HEARING SESSIONS

- a) Hearing sessions, and their timetabling, will be arranged according to the Hearings Panel's judgement of what would best suit its timetabled decision-making responsibilities (subject to our overarching responsibilities to ensure fair and appropriate proceedings). This will be determined by the Hearings Panel following the pre-hearing meeting and detailed in the related Report of Pre-hearing Meeting.
- b) All submitters who indicated on their submissions that they wish to be heard (and every requiring authority that has a designation or heritage protection order included in the proposed plan) will be advised of the date, time and venue of hearing sessions at least 10⁵ working days in advance.
- c) In addition, all notices of hearing sessions for each topic, and any updates, will be available on the website.
- d) Hearing sessions will be open to all members of the public unless there are reasons in terms of Schedule 3 Clause 12 of The Order for protecting sensitive information by requiring that the whole or part of a hearing session be held with the public excluded or by prohibiting or restricting the publication or communication of any information supplied to or obtained by the Hearings Panel.
- e) At each hearing session no fewer than 3 members of the Hearings Panel will be present. The Hearings Panel will determine how many members will attend each hearing session and will advise that in the notices of hearing sessions.

16) PRE-CIRCULATION OF EVIDENCE

- a) The evidence to be called by the Council or any submitter will be required to be pre-circulated. "Pre-circulation of evidence" means providing a written or electronic copy of each brief of evidence to:

³ Schedule 3 Clause 3(1) and (2) of the Order.

⁴ Schedule 3 Clause 18 of the Order.

⁵ Clause 4(c) Schedule 3 of the Order

- i) The Council and every other submitter who is to be heard at a hearing session (at their stated address for service, which may include email or by providing it to the Secretariat in accordance with f) below);and
 - ii) to the Hearings Panel (c/- the Secretariat).
- b) The purpose of pre-circulation is to ensure all parties, and the Hearings Panel, understand the issues that are to be presented prior to the hearing session commencing. It will also enable a much more efficient hearings process.
- c) **The Hearings Panel will issue directions for the pre circulation of evidence (as well as submitter statements and legal submissions) following a pre hearing meeting which will be convened before each hearing. A Pre hearing Report and Directions will be issued following the pre hearing meeting and it will contain the specific directions for each hearing. A copy of the pre hearing report and directions will be sent to parties with the notice of hearing and posted on the website. All parties are required to comply with the directions contained in the pre hearing report.**
- d) The hearings panel may direct that evidence is to be pre-circulated contemporaneously (i.e. all at the same time) or sequentially (i.e. according to a timetable) and, if sequentially, in a particular order and according to a particular timetable.
- e) Pre-circulation of evidence is the responsibility of the person who calls that evidence.
- f) Notwithstanding paragraph e) above evidence shall be deemed to have been pre circulated by the party who calls the evidence when it is posted on the hearing website, provided the evidence is supplied to the Secretariat in the format set out in Appendix 4 no later than 3pm on the day that pre circulation is required to occur. Please note this does not shift the responsibility for pre circulation to the Secretariat. The Secretariat will use its best endeavours to have the evidence up loaded to the website on the day it is received. If the party who calls the evidence is unable to meet the cut off for receipt of 3pm then they must ensure that evidence is pre circulated by alternate means.
- g) If any party wishes to receive a hard copy of evidence from the party calling the evidence they are entitled to request that from the party calling the evidence. If any request is made then it must be made at least two working days before the evidence is due. The party calling the evidence is required to provide the evidence in the format requested (i.e. hard copy or CD). The party calling the evidence shall request confirmation of receipt from the party it provides the evidence to, so as to avoid any disputes as to compliance with directions of the Panel.
- h) Supplementary or rebuttal evidence will only be accepted at a hearing session where circumstances make it necessary for such evidence to be provided; and with the leave of the Hearings Panel.
- i) The Secretariat will give electronic notice to any relevant submitters of briefs of evidence that are made available. Copies of briefs of evidence will be available on the Hearings Panel's website.

17) FORM OF EVIDENCE

- a) Evidence to be presented at a hearing session is to be in the form of a written statement of evidence which must:
 - i) Include an executive summary of no more than one page;
 - ii) Specify the full name and occupation of the witness (and, if an expert, the expert's relevant experience and qualifications, and commitment to abide the Code of Conduct, which will be attached in schedule to the statement of evidence);
 - iii) State which proposal by reference to Chapter and plan objective provision including, policy, rule, planning map or other provision the evidence relates to.
 - iv) Have all pages and paragraphs numbered;
 - v) Be not less than 11 point font and line spacing not less than 1.5;
 - vi) If proposing any change to a Proposal, specify the change (including any new wording, with amendments or deletions shown with underlining, and strike through as is appropriate).

EXHIBITS

- b) All exhibits, including photographs, maps and other visual presentations, are to be presented in a practical and manageable form, and should be of a scale sufficient to be clearly legible. Individual documents or photographs should be separately identified. Clearly mark exhibits with the date of hearing and name of the submitter or witness who will present them. Please make available hard copies to the Independent Secretariat when you file your evidence and or statement in advance of the hearing or as otherwise directed.

18) PRESENTING WRITTEN STATEMENTS (INCLUDING LEGAL SUBMISSIONS)

- a) If you choose to speak to your submission you can do this by preparing and reading a written statement as per clause 6(e). If you choose to have a lawyer or other agent speak to your submission on your behalf, he or she may also present a written statement (including legal submissions). A written statement is usually not made under oath.
- b) **The Hearings Panel will issue directions for the pre circulation submitter statements and legal submissions following a pre hearing meeting which will be convened before each hearing. A Pre hearing Report and Directions will be issued following the pre hearing meeting and it will contain the specific directions for each hearing. A copy of the pre hearing report and directions for each hearing will be sent to parties with the notice of hearing and posted on the website. All parties are required to comply with the directions contained in the pre hearing report.**

- c) Written statements are to meet the following requirements:
 - i) They are not permitted to go beyond what your submission itself covers or asks for (but may include responses to anything in the Council's or other parties' evidence that pertains to what your submission covers or asks for).
 - ii) The Hearings Panel asks that they be in the form indicated in Appendix 3 and be provided to the Secretariat in a format that is in accordance with Appendix 4 (so as to enable them to be posted onto the website).
 - iii) Their purpose is to summarise the decision that you want the panel to make.
 - iv) They should include an executive summary of the reasons you are requesting changes to the District Plan.
 - v) They must clearly state what changes to the District Plan you are seeking. If you are asking for new words to be inserted in the plan, the written statement will need to provide a copy of the relevant plan provision with the new, amended or deleted words shown with underlining, and strike through as is appropriate.

19) PRE-READING OF STATEMENTS AND EVIDENCE

- a) The Hearings Panel will in most cases pre-read submissions, written statements (including legal submissions and representations) in advance of the relevant hearing session.
- b) Before the hearing session, the Panel may have directed the order of presentation of statements and evidence, limitations on presentations to the parts of the statements and evidence to those matters in dispute and place time limits on presentations.

20) COUNCIL REPRESENTATIONS

- a) Prior to the commencement of every hearing session on a Proposal or part of a Proposal, the Council must provide to the Hearings Panel (through the Independent Secretariat) in the format required by Appendix 4, a copy of its opening representations, which may include legal submissions, which must:
 - i) identify the relevant Proposal provisions;
 - ii) state the Council's position in relation to those provisions and the reasons for that position;
 - iii) state the Council's response to any reports commissioned by the Hearings Panel;
 - iv) Identify the evidence it intends to call (including as to its s 32 report).

- b) Copies of the Council’s opening representations will be available on the Hearings Panel’s website prior to the hearing commencing.

Hearings Panel will issue specific directions in the pre hearing meeting report for each hearing regarding presentation of representations including legal submissions, taking into account the particular issues for each hearing.

21) ORDER OF PRESENTATION AT HEARING SESSIONS

- a) At a hearing session on a Proposal or part of a Proposal, subject to any directions the Hearings Panel may make (including following a pre-hearing meeting), the order of proceedings will be as follows:
- i) The Council will make its opening representations, identifying the relevant Proposal provisions, clearly stating the Council’s position in relation to those provisions and the reasons for that position (including response to the commissioned reports). The Council will call its evidence as to those matters (including as to its s 32 report) and its rebuttal evidence;
 - ii) That evidence will be the subject of:
 - Cross-examination by those parties whom the Hearings Panel have given leave to do so; and
 - Re-examination by the Council;
 - iii) Those parties who support the Council’s position will speak to their submissions, or make their representations and call their evidence, in the order directed by the Hearings Panel;
 - iv) That evidence will be the subject of:
 - Cross-examination by parties whom the Hearings Panel have given leave to do so;
 - Re-examination by the party who called the evidence;
 - v) Those parties who oppose the Council’s position will speak to their submissions, or make their representations and call their evidence, in the order directed by the Hearings Panel;
 - vi) That evidence will be the subject of:
 - Cross-examination by the Council and other parties whom the Hearings Panel have given leave to do so;
 - Re-examination by the party who called the evidence;
 - vii) The Council will have a right of reply (and, to the extent it has modified its position on any provisions of the Proposal from that presented in its opening, will include in its reply

the new, amended or deleted words shown with underlining, and strike through as is appropriate).

- viii) Where the Hearings Panel has required or commissioned any reports, specific directions will be made as to when report authors present their report and are the subject of cross-examination and questioning.

22) WITNESSES APPEARING AT HEARING SESSIONS

- a) All expert and non-expert witnesses must attend hearing sessions in person and confirm that the statement of the evidence they have produced is true and correct.
- b) Affidavit evidence will be required of any expert and non-expert witness who is not able to attend a hearing session, if the Hearings Panel is to give that evidence any weight when making its decisions.
- c) All witnesses will need to be prepared to:
- present a highlights summary of their evidence of up to 10 minutes; and
 - explain relevant figures, plans and tables in their evidence; and
 - summarise any changes to their evidence for any reasons including as a result of facilitation or conferencing.

CROSS-EXAMINATION AND QUESTIONING

- d) There is no right to cross-examine any party or witness. However, the Hearings Panel may permit cross-examination or questioning of a witness at a hearing⁶. Cross-examination or questioning of a witness will normally only be permitted where:
- i) It assists the Hearings Panel to better understand an issue that is relevant to the preparation of its recommendations; and
- ii) It is consistent with the principles set out in clauses 12 above; and
- iii) the party who seeks to undertake cross-examination abides any directions of the Hearings Panel as to cross-examination; and
- iv) If the witness sought to be cross-examined is an expert witness the party who seeks to cross examine has called evidence that pertains to that expert witness's evidence; and
- v) the cross-examination is for the purposes of putting conflicting evidence to that witness to confirm their view and/or other circumstances warrant it, including matters of witness reliability; and

⁶ Note the definition of "witness" encompasses any author of a report commissioned by the Hearings Panel under clause 8, Schedule 3 of The Order and an officer of the Council (or person commissioned by the Council) who attends a hearing to assist the panel by giving evidence.

- vi) If the witness is a non-expert, the cross examination is for the purposes of resolving disputed issues of fact and/or other circumstances warrant it, including matters of witness reliability.
- e) **The Pre hearing Report and Directions for each hearing session will direct that parties give notice to the Hearings Panel, prior to the hearing commencing of any requests to cross-examine the witness(es) of any other party.** The notice is to include the witness to be questioned, the topics to be covered in cross-examination and an estimate of the time likely to be required to cross-examine each witness. The Hearings Panel will then determine whether to allow such cross-examination and, if cross-examination is allowed, which witnesses may be questioned, which topics may be covered and how long such cross- examination may take.
- f) The party that wishes to cross-examine must also serve the notice to the party calling the particular witness/witnesses.
- g) The Hearings Panel will make all notices of cross-examination and its determination in respect of such notices available on the web site.
- h) Following cross-examination the Hearings Panel will allow re-examination of witnesses by the party that called them.
- i) The Hearings Panel may question any witness or party. In the case of a witness, such questioning will generally follow the conclusion of cross-examination (although, it can occur at any time). The Hearings Panel will invite the party (or their representative) who called the witness to ask any questions arising from the Hearings Panels' questions.
- j) Until the Hearings Panel discharges a witness, the witness must remain available to the Hearings Panel (and the party calling that witness must assist to ensure that).
- k) No party may question any other party directly. Should a party want to put a question to another party (including to any Council representative), the party wanting to do so may ask the chairperson to put the question (but it will be a matter for the chairperson to determine whether or not, and on what basis, the question will be put).
- l) Cross-examination of any witness by each party will not exceed 30 minutes each unless leave is granted to do otherwise. **Please note the Hearings Panel may specify different time limits for each party to cross examine each witness in the pre hearing meeting report and directions.**

POWER TO SUMMONS WITNESSES

- m) Sections 19, 20 and 23 to 25 of the Inquiries Act 2013 apply to each hearing session as if the Hearings Panel was a Commission, and the Hearing was an inquiry. Section 23 of the Inquiries Act 2013 provides that:

An inquiry may issue a witness summons in writing to any person, requiring that person to attend and give evidence before the inquiry.

- n) A summons to a witness to appear at a hearing session **must** state the time, date and place the person is to attend, the documents that are to be produced, the persons entitlement to be paid costs and travelling expenses and the penalty for failing to attend.
- o) On receipt of an application in accordance with Section 23 of the Inquiries Act, the Hearings Panel will then determine whether to grant such application and, if granted, what terms or conditions may attach to any summons that is issued.

23) PRESENTING IN TE REO

- a) Any party, representative or witness may speak in te reo Māori at a hearing session.
- b) The Hearings Panel support staff must be informed of the intention to use te reo Māori at least 5 working days prior to the hearing session so that an interpreter can be arranged. Any karakia, powhiri, or mihi will not be translated into English unless requested before the hearing. (Note: The Māori Language Act 1987 states that no person may insist on being addressed or answered in te reo Māori.(s.4(2)(a))).
- c) If evidence is to be given in te reo Māori, that evidence is to be pre-circulated with an English translation.

24) PRESENTING IN NEW ZEALAND SIGN LANGUAGE

- a) Any party, representative or witness may present in New Zealand Sign Language. The Hearings Panel support staff must be informed of the intention to use New Zealand Sign Language at least 5 working days prior to the hearing session so that an interpreter can be arranged. (Note: The New Zealand Sign Language Act 2006 states that no person is entitled to insist on being addressed or answered (by persons other than the interpreter for the purpose of the proceedings) in New Zealand Sign Language (s.7(2)(a))).

25) CONFLICTS OF INTEREST AND REGISTER OF INTERESTS

- a) The Hearings Panel has agreed that where a Panel member:
 - i) has previously advocated or provided technical advice advocating for a policy or provision to be included in the proposed plan or the draft plan; or
 - ii) advocated for a particular outcome in relation to a plan change or resource consent; or
 - iii) advocated for or appeared as a witness for a past client; or holds a property interest;

which may result in a perceived bias, he or she will be required to disclose such positions or perceived conflicts to the Chairperson prior to the hearing session.

- b) The Chairperson (or, in the case of issues affecting the chairperson, the deputy Chairperson) will decide on a course of action, which may include:

- i) removing the member from that part of the hearing session and from deliberations and decision making on a matter; or
 - ii) asking parties whether they are content that the Panel member hear a particular matter in which those submitters are involved; or
 - iii) determining that the potential conflict is not material to the matters to be considered.
- c) The Independent Secretariat will maintain a register of interests for Hearings Panel members and any advisors to the Panel, including mediators as the case may be. To the extent that the registered interests may be relevant to the Proposals being heard, the Register will be published on the Website.

GLOSSARY

When used in this Hearing Procedures document, these words are intended to have the following meanings:

- a. **Chairperson** means the chairperson of the Hearings Panel
- b. **Expert conferencing** means a process by which expert witnesses confer and attempt to reach agreement on issues, or at least to clearly identify the issues on which they cannot agree, and the reasons for that disagreement. Such a conference is a structured discussion between peers within a field of expertise which can narrow points of difference and save hearing time (and costs). All experts have a duty to ensure that any conference is a genuine dialogue between them in a common effort to reach agreement about the relevant facts and issues. Expectations of witnesses conferencing are set out in appendix 3.
- c. **Expert witness** means a person who would be recognised by the Hearings Panel as an expert in his or her field by reason of relevant qualifications and/or experience
- d. **Hearing** means the overall process undertaken by the Hearings Panel under The Order.
- e. **Hearing session** means a particular session at which submissions are heard by the Hearings Panel as part of the Hearing
- f. **Hearings Panel or Panel** means the Hearings Panel established by section 8 of The Order.
- g. **Mediation** is a process of assisted negotiations to discuss a dispute and work toward a solution that is acceptable to all parties rather than have the Panel impose an outcome on the parties. The expectations for Mediation are set out in appendix 1.
- h. **Member of the public** means any person who is not a submitter, a witness, a representative of the Christchurch City Council, a member of the Hearings Panel, Friend of Submitter, or one of the Independent Secretariat assisting the Hearings Panel.

- i. **Member**, in relation to the Hearings Panel, includes the chairperson
- j. **Non-expert witness** means a witness who is not an expert witness and includes a submitter giving evidence.
- k. **Practice Note** means Environment Court of New Zealand Practice Note 2011 available on the following website: <http://www.justice.govt.nz/courts/environment-court/legislation-and-resources/practice-notes/practice-notes> (or any amended or revised version issued by the Court)
- l. **Replacement District Plan** means the single district plan for the Christchurch district that is prepared and made operative in accordance with The Order as a replacement for the District Plan.
- m. **Representation** means the case or arguments advanced in support of a Proposal or amended proposal by the Council and may include legal submissions.
- n. **Requiring Authority** means—
 - (a) a requiring authority within the meaning of section 166 of the RMA; and
 - (b) a heritage protection authority within the meaning of section 187 of the RMA
- o. **RMA** means the Resource Management Act 1991
- p. **Statement**

A statement is simply a summary of the decision that you want the panel to make, and is usually not made under oath. It usually highlights the main points of your submission and might respond to submissions made by others.
- q. **submission-**
 - (a) means a written or an electronic submission received by the Christchurch City Council on the proposed plan; and
 - (b) includes a further written or electronic submission on the proposed plan
- r. **submitter** includes a person representing a submitter or further submitter
- s. **The Order** means The Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014
- t. **will say statement** means a statement prepared by an expert witness that will as a minimum:
 - (a) Set out the key facts and assumptions relied upon;
 - (b) Identify the methodology and standards used in arriving at his or her opinion;
 - (c) Clearly explain the opinion arrived at.

u. witness includes any author of a report commissioned by the Hearings Panel under clause 8, Schedule 3 of the Order and an officer of the Council (or person commissioned by the Council) who attends a hearing to assist the panel by giving evidence as provided for by clause 1, Schedule 3 of the Order.

u. **working day** shall have the same meaning as the RMA except for the period commencing 20 December in any year and ending on 10 January the following year which will be the subject of procedural directions.

Sir John Hansen

Chairperson

Christchurch Replacement District Plan Independent Hearings Panel

APPENDIX 1- MEDIATION

1. At pre-hearing meetings, the Hearings Panel will be asking submitters to confirm whether they consent to participating in mediation or any other alternative dispute resolution process. Mediation will normally be encouraged by the Hearings Panel in any case where it appears that the issues are suitable for being mediated.
2. If parties consent, the Hearings Panel may refer a matter to mediation or to another alternative dispute resolution process. The parties will be advised of the scope of a mediation session and of the time, date and venue of the mediation by way of email, or by telephone.
3. The Hearings Panel will appoint a mediator or a person to facilitate the mediation or other process as required by Schedule 3 Clause 10(3), and the person who conducts the mediation must report the outcome to the Hearings Panel (Clause 10(4)). However, material will not be included in the report without a person's consent if the material was communicated or made available by the person on a without-prejudice basis (Schedule 3 Clause 10(5)).
4. Parties attending mediation must be authorised to be able to agree or otherwise settle the matters and issues that are the subject of the mediation. Parties will be expected to provide such authorisation in writing to the mediator. Parties who are employees or representatives of corporate submitters will need to ensure that they have the appropriate authority to agree to the outcomes at the mediation meeting.
5. The Hearings Panel will require the parties in attendance to sign a joint statement, that will be attached to the facilitators report, which will include the following matters:
 - a. who attended;
 - b. the matters and issues that were agreed;
 - c. any issues that are outstanding; and
 - d. any other relevant information.
6. A template for this purpose will be provided.
7. Mediation will not be open to members of the public or to submitters who are not directly involved in that mediation to attend.

APPENDIX 2 EXPERT WITNESS CONFERENCING

1. The Hearings Panel may, at any time prior to or during the Hearing, direct that a conference of experts be held (Schedule 3 Clause 9). Expert conferencing will normally be directed in any case where expert witnesses are likely to be called to give evidence.
2. The Hearings Panel or a member of the Hearings Panel will decide whether a person has appropriate qualifications, expertise and experience to be qualified to attend as an expert at an expert conference.
3. In order to enable all experts to know in advance the opinions and reasons for opinions of other experts, a member of the Hearings Panel or a person appointed by the Panel may direct the experts to prepare will say statements in advance of the expert conferencing. All will say statements are to be prepared in accordance with the Code of Conduct for Expert Witnesses as set out in Appendix 3 Clause 1(g) of the Practice Note 2014.
4. The Hearings Panel will have the same expectations of expert witnesses as set out in clause 7(2)(a) and 7(2)(b) of the Practice Note 2014, which are:
 - a. An expert witness has an overriding duty to impartially assist the Court [Hearings Panel] on matters within the expert's area of expertise.
 - b. An expert witness is not, and must not behave as, an advocate for the party who engages the witness. Expert witnesses must declare any relationship with the parties calling them or any interest they may have in the outcome of the proceeding.
5. In addition, every person at an expert conference who is participating in his or her role as an expert witness must agree to comply with the Code of Conduct for such witnesses and not act as an advocate for the party who engages the witness. The expert witness must exercise independent and professional judgement and must not act on the instructions or directions of any person.
6. An expert conference will be facilitated by a member of the Hearings Panel or a person appointed by the Panel (Schedule 3 Clause 9(2)). The facilitator of a conference must, no more than 3 working days after the conference, prepare a report on the conference and provide it in writing or electronically to the Hearings Panel and the persons who attended the conference (Schedule 3 Clause 9(3)), with the report to omit any material as required by Schedule 3 Clause 9(4).
7. The Hearings Panel will require the experts to sign a joint statement, that will be attached to the facilitators report (where applicable), which will include the following matters:
 - a. the key facts and assumptions that are agreed upon by the experts;

- b. identification of any methodology or standards used by the experts in arriving at their opinions and reasons for differences in methodology and standards (if any);
 - c. the matters and issues that are agreed between the experts;
 - d. the issues upon which the experts cannot agree and the reasons for their disagreement;
 - e. an identification of all material regarded by the experts as primary data: and
 - f. identification of published standards or papers relied upon in coming to their opinions;
 - g. confirmation that in producing the statement the experts have complied with the Code of Conduct for Expert Witnesses.
8. Expert conferencing will **not** be open to members of the public or to submitters who are not experts to attend

APPENDIX 3 – FORM OF STATEMENTS

1. The parts of the Proposal [name of submitter] submission relates to are as follows:
 - Refer to Proposal by reference to Chapter and plan provision (Objective, Policy or Rule), planning Map or other provision.
 2. The particular changes that I [name] am seeking are as follows:
 - (copy and paste plan provisions and identify changes with underlining for additions and strike out for deletions):
 3. Executive Summary of submission with reasons for submission (limited to 2 pages).
 4. Any other matters you wish to raise related to your submission, including legal argument.
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APPENDIX 4 - FORMAT OF DOCUMENTS TO BE PROVIDED TO THE SECRETARIAT

The following applies to evidence, statements (including legal submissions) and representations.

1. General hard copy requirements.
 - a. All text shall be single sided A4 with a minimum font size of 11. Line spacing must be a minimum of 1.5 lines.
 - b. Non text shall be be single sided and provided on A3 or A4.
 - c. All coloured exhibits shall be provided as colour copies of good quality.
 - d. All documents including appendices, must have page numbers, a table of contents and be hole punched (2 holes) for an A4 Lever Arch folder. If the evidence or document for one party is more than 100 pages in total, it must also be tabbed and provided to the Secretariat in lever arch folders.
 - e. Each statement of evidence shall be signed by the witness who is to give that evidence.
 - f. Permission from the Panel may be sought to deviate from the hard copy requirements.

2. Electronic copy requirements.
 - a. If the electronic copy of any document is less than 5MB it can be emailed to the Secretariat.
 - b. If the electronic copy of any document is greater than 10MB, it must be provided to the Secretariat on a disk or portable storage device (e.g. USB Stick). Any electronic files over 5MB in size may be too large to email or publish on the website and so should be split into multiple parts. If splitting electronic files, please make it clear when naming the separate parts of the document the order they should be reassembled in.
 - c. The electronic documents should ,where practicable ,be provided as a Microsoft Word document or PDF. If this is not possible, other arrangements can be made with the Secretariat before providing the document.
 - d. If any party is providing video evidence on a DVD two copies must be provided one for the Panel and one for the Council.

- e. Any party unable to create electronic copies of documents must contact the Secretariat before the date on which pre circulation or service is required.