

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 decision: 28 April 2017

Hearing Panel: Judge John Hassan (Deputy Chair), Ms Sarah Dawson, Mr Stephen Daysh, Ms Jane Huria.

Decision to make Minor Corrections

DECISION 57

Chapter 6 General Rules and Procedures (part) – Noise, Airport matters and Hagley Park

Background

[1] The Hearings Panel ('the Panel') issued its decision on Chapter 6 General Rules and Procedures (part) – Noise, Airport matters and Hagley Park on 10 November 2016.¹ An element of Decision 57 that related to the Specific Purpose (Tertiary Education) Zone was then subject to an appeal to the High Court ('the Appeal') by Christchurch International Airport Limited ('CIAL'). Following discussion the parties to the Appeal have made an application to

¹ Decision 57 Chapter 6 General Rules and Procedures (part) – Noise, Airport matters and Hagley Park 10 November 2016. The Panel issued a supplementary decision – Decision 59 on 2 December 2016 to amend Strategic Objective 3.3.12 to address certain exceptions to the objective for reasons of clarity.

the Panel for a minor correction to Objective 3.3.12 which they say, if made by the Panel, would resolve the Appeal ('the Application').²

[2] The Application seeks an amendment to Strategic Direction Objective 3.3.12 ('the Objective') to include an express exemption within the Objective for development at the University of Canterbury.

[3] The drafting amendment would be as follows (new text shown as underlined):

3.3.12 Objective - Infrastructure

...

- b. Strategic infrastructure, including its role and function, is protected from incompatible development and activities by avoiding adverse effects from them, including reverse sensitivity effects. This includes:
- i. avoiding noise sensitive activities within the Lyttelton Port Influences Overlay area; and
 - ii. managing activities to avoid adverse effects on the National Grid, including by identifying a buffer corridor within which buildings, excavations sensitive activities will generally not be provided for; and
 - iii. avoiding new noise sensitive activities within the 50dB Ldn Air Noise Contour and the 50dB Ldn Engine Testing Contour for Christchurch International Airport, except:
 - A within an existing residentially zoned urban area; or
 - B within a Residential Greenfield Priority Area identified in the Canterbury Regional Policy Statement Chapter 6, Map A; or
 - C for permitted activities within the Open Space 3D (Clearwater) Zone of the Christchurch City Plan, or activities authorised by a resource consent granted on or before 6 December 2013; and
 - D for permitted, controlled, restricted discretionary and discretionary activities within the Specific Purpose (Tertiary Education) Zone at the University of Canterbury; and
 - iv. managing the risk of birdstrike to aircraft using Christchurch International Airport; and
 - v. managing activities to avoid adverse effects on the identified 66kV and 33kV electricity distribution lines and the Heathcote to Lyttelton 11kV electricity distribution line, including by identifying a buffer corridor within which

² Joint Memorandum of Counsel on behalf of the Christchurch International Airport Limited and the University of Canterbury requesting a further minor correction to Decision 57, 21 April 2017. The parties to the joint memorandum are CIAL, the University of Canterbury and the Christchurch City Council.

buildings, excavations and sensitive activities will generally not be provided for; and

...

[4] The parties argue that the amendment would better reflect the intent and reasoning of the Panel's decision. They say it would be consistent with the approach the Panel took to the similar situation relating to the development at the Clearwater Resort and would resolve the Appeal. The parties also state that the amendment was sought by the University of Canterbury at the hearing before the Panel.³

[5] The parties note that although the Panel did not expressly refer to the particular paragraphs of Mr Millar's evidence, the Panel did find that Policy 6.3.5 (4) of the Canterbury Regional Policy Statement did not require new buildings and development at the University of Canterbury to be avoided.⁴ Further the Panel found that in relation to Strategic Objective 3.3.12:⁵

On a similar basis, we are also satisfied that the consenting regime as sought by CIAL is not required to achieve Strategic Directions Objective 3.3.12. Specifically, we are satisfied that note of the relevant activities constitute 'incompatible activities' in the sense intended by that objective. Hence, there is no associated requirement to avoid those activities within the 50 contour.

[6] The parties request that the Panel consider an amendment to Objective 3.3.12 to make express what was clearly intended by the Panel. The parties argue that the amendment would clarify in the Replacement Christchurch District Plan ('the plan') why there are not noise sensitive activity rules for the parts of the University of Canterbury which are within the 50dB Air Noise Contour. The parties submit that this would assist users of the plan by making the Panel's intentions clear and avoid the need to revisit the Panel's reasoning.⁶ The parties submit that the amendment would be consistent with the Statement of Expectations which states that the plan "contains objectives and policies that clearly state the outcomes that are intended for the Christchurch district" and is "easy to use".⁷

³ The Application [5] referring to the Evidence in chief of Mr Darryl Millar, 17 February, 2016 at [67] – [69] and [79] – [80].

⁴ Decision 57 at [70] and [71].

⁵ Decision 57 at [73].

⁶ The Application at [18].

⁷ The Application at [19].

Jurisdiction to make minor corrections

[7] Clause 16 of Schedule 3 to the OIC provides as follows:

- (1) The hearings panel may, at any time, issue an amendment to a decision to correct a minor mistake or defect in a decision of the panel.
- (2) This power includes the power to amend or correct a proposal, provided that the amendment or correction is made before the proposal becomes operative in accordance with clause 16 of this order.

[8] The parties submit that the omission of an exemption within Objective 3.3.12 (b) (iii) for the University of Canterbury is a defect for the purposes of clause 16. The parties refer to the Environment Court's comment in *Re an application by Christchurch City Council*⁸ and to the Panel's recent Decision on Further minor corrections to Decision 45. The Environment Court said that for the purposes a similar provision in clause 16 of Schedule 1 to the RMA an error was where:

...the draftsman seeks only to clarify what is clearly intended by the document and does not in any way make a change to it which alters its meaning.

Decision

[9] We find that the amendment sought meets the requirements of clause 16, Schedule 3 to the OIC for the reasons set out in the Application. In particular the amendment remediates the decision by recognising the proper relationship between objectives and rules in the plan as required under ss 75(1) and 76(1) of the RMA. We agree with the submission from the parties that this is also consistent with the Statement of Expectations. The amendment is helpful to clarify that relationship for the reader of the plan and therefore assists with the proper reading of the plan. We are satisfied that there are no issues of natural justice and the amendment can properly be regarded as being minor.

[10] While the application was put to us as a minor correction, had our jurisdiction continued under clause 13(5) of the OIC to reconsider provisions for the sake of coherency and consistency, it is a matter that we would have regarded as a lacuna in the expression of the

⁸ *Re an application by Christchurch City Council* [1996] 2 ELRNZ 431. at 441.

Objective, that we would have reconsidered. It was a matter put to us in evidence by Mr Millar, the University of Canterbury's expert witness and not opposed by any party. In that regard it completes our decision.

[11] We direct the Council to make the amendment to Strategic Objective 3.3.12 (b)(iii) to include:

D for permitted, controlled, restricted discretionary and discretionary activities within the Specific Purpose (Tertiary Education) Zone at the University of Canterbury; and

For the Hearings Panel:



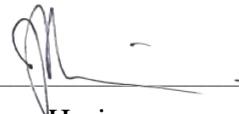
Environment Judge John Hassan
Deputy Chair



Ms Sarah Dawson
Panel Member



Mr Stephen Daysh
Panel Member



Ms Jane Huria
Panel Member