

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: 27 October 2016

Hearing Panel: Sir John Hansen (Chair), Environment Judge John Hassan (Deputy Chair), Dr Phil Mitchell, Ms Sarah Dawson, Ms Jane Huria

Decision to make Minor Corrections to Decision 11 issued 8 April 2016 and to revisit Decision 10 in relation to the access for Fendalton Mall at 17 Memorial Avenue

Background

[1] This decision follows an exchange of memoranda¹ and a minute² in relation to the zoning of 17 Memorial Avenue, Fendalton, and in particular that part of the site serving as an access for Fendalton Mall. Following our minute, the Christchurch City Council identified an error in relation to the maps which it supplied for Decision 11, the error being that the map did not show the full extent of the land to be zoned Commercial Core at 17 Memorial Avenue.

[2] Our analysis of the zoning for Fendalton Mall is set out in paragraphs [340] to [364] of Decision 11. This was not appealed. Having considered the evidence before us, it was our

¹ Memorandum of counsel on behalf of Fendalton Mall Limited regarding Planning Map 31. Memorandum of counsel on behalf of Fendalton Mall Limited regarding Planning Map 31. October 2016; Memorandum of counsel for Christchurch City Council responding to Fendalton Mall Ltd's memorandum regarding Planning Map 31 and the Panel's minute, 14 October 2016

² Minute – directions to amend Planning Maps, 4 October 2016

decision to rezone the entire Fendalton Mall site to Commercial Core. Mr Dewe, a planning witness for Fendalton Mall Limited, very clearly set out in his evidence the area to be rezoned.³

[3] In our Stage 1 Residential Decision (Decision 10), we confirmed Planning Maps supplied by the Council that identified the entire site at 17 Memorial Avenue as Residential Suburban. Subsequently, the residential planning maps were made operative by the Council, effectively zoning the full site at 17 Memorial Avenue Residential Suburban.

Jurisdiction to make minor corrections

[4] Clause 16 of Schedule 3 to the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 ('the Order') 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.

Jurisdiction to revisit an earlier decision

[5] Clauses 13(5) and (6) of the Order provides as follows:

- (5) While the hearings panel is considering a proposal, it may reconsider any decision it has already made on another proposal if it considers it is necessary or desirable to do so to ensure that the replacement district plan is coherent and consistent.
- (6) If the hearings panel considers, after reconsidering a decision under subclause (5), that an earlier proposal or a part of the replacement district plan requires change, the panel may direct the council—
 - (a) to make changes of no more than minor effect; or
 - (b) to prepare and notify a new proposal, and invite submissions on the new proposal in accordance with Schedule 1.

³ Statement of evidence of Gregory John Dewe, 23 April 2015, at Annexure B.

Decision

[6] The Planning Maps for the Commercial zoning are not yet operative, as such, it is within our jurisdiction to correct our decision on the Commercial Planning Maps.⁴ We do so, directing that the Planning Maps be amended in relation to that part of 17 Memorial Avenue used as an accessway, as shown in Annexure B of the statement of evidence of Gregory John Dewe, dated 23 April 2015, so that the area is zoned Commercial Core. This accords with the Council's request for corrections in its memorandum of 14 October 2016. We attach a copy of Mr Dewe's Annexure as Schedule 1. We make the change as the Planning Map contains an error and does not accord with the substance of Decision 11, issued 18 December 2015.

[7] In making that decision for corrections, it is appropriate to revisit our Decision 10 Planning Maps decision, dated 17 July 2016, to effect the removal of the Residential Suburban zone for that area identified above. We do so for coherency and consistency, and to remove the potential conflict of zoning for the site. This change is of no more than minor effect, as our Decision 11 has already made a finding that a Commercial Core zoning is appropriate for that part of the site, and is beyond challenge.

For and on behalf of the Hearings Panel:


Hon Sir John Hansen
Chair

⁴ Decision to make Minor Corrections to Decision and as to Planning Maps, Figures and Appendices – Decision 11, dated 8 April 2016

SCHEDULE 1

Area shown to be zoned Commercial Core on 17 Memorial Avenue, Fendalton – Annexure B to the Statement of Evidence of Mr Gregory Dewe, 23 April 2015

