

**BEFORE THE CHRISTCHURCH REPLACEMENT
DISTRICT PLAN INDEPENDENT HEARINGS PANEL**

IN THE MATTER of the Resource Management
Act 1991 and the Canterbury
Earthquake (Christchurch
Replacement District Plan)
Order 2014

AND

IN THE MATTER of the Introduction Proposal
(Part) and Definitions Proposal
(Part)

**SUPPLEMENTARY EVIDENCE OF JANICE CARTER REGARDING THE DEFINITION OF
'INFRASTRUCTURE' ON BEHALF OF CHRISTCHURCH CITY COUNCIL**

NATURAL HAZARDS CHAPTER LEAD

22 JULY 2015

 **Simpson Grierson**
Barristers & Solicitors

D J Laing / K E Viskovic
Telephone: +64-4-499 4599
Facsimile: +64-4-472 6986
Email: katherine.viskovic@simpsongrierson.com
DX SX1174
PO Box 2402
Wellington

TABLE OF CONTENTS

1. INTRODUCTION	1
2. SCOPE	1
3. CRITICAL INFRASTRUCTURE/STRATEGIC INFRASTRUCTURE	2
4. INFRASTRUCTURE.....	4
5. NATURAL HAZARDS DECISION.....	9
6. CONCLUSION.....	9

1. INTRODUCTION

1.1 My full name is Janice Carter. My experience and qualifications are set out in my evidence in chief for the Natural hazards Proposal dated 13 February.

1.2 I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014 and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

2. SCOPE

2.1 This supplementary evidence is provided in response to matters raised by the Independent Hearings Panel (**Panel**) during the course of the hearing of the Introduction Proposal (Part) and Definitions Proposal (Part) on 13 July 2015. I note that in preparing this supplementary evidence I have sought the views of the Crown, Orion New Zealand Limited (**Orion**) and Z Energy Limited, BP Oil NZ Limited, Mobil Oil NZ Limited (**the Oil Companies**) and Lyttelton Port Company (**LPC**).

2.2 In my previous supplementary evidence on the terms AEP and Hazard Mitigation Works, dated 16 July 2015, I stated that I took advice from Mr Graham Harrington and Dr Mark Yetton, however I omitted to state that I also consulted with the Crown and provided a draft of my evidence to Dr Wendy Saunders for her comments prior to filing.

2.3 As requested by the Panel, this supplementary evidence covers the following definitions:

- (a) critical infrastructure;
- (b) strategic infrastructure; and
- (c) infrastructure.

3. CRITICAL INFRASTRUCTURE/STRATEGIC INFRASTRUCTURE

- 3.1 At the hearing, Judge Hassan and I discussed the clarity of the definitions of 'critical infrastructure' and 'strategic infrastructure'.
- 3.2 At the outset, I note that neither of these definitions are proposed to be used in the rules of the proposed Christchurch Replacement District Plan (pRDP), and I record that I do not consider that either of these definitions provide sufficient certainty for the relevant terms to be used in a rule. I consider that there is scope for discussion as to what strategic infrastructure or critical infrastructure is, in a given circumstance.
- 3.3 I note that both definitions are "inclusive" definitions, having specific lists of items for which there is no debate. For an activity that is not listed to fall within the scope of the definition, it would need to meet the requirements of the qualifying words used at the start of the definitions. These two components of each definition, in my view, are useful and workable in their current form when applied in the context of the objectives and policies in the pRDP. Tying these definitions down further, in my opinion, would lose the advantage of flexibility in providing policy support for a range of essential activities which fit the qualifying words when consent is sought for those activities.
- 3.4 For 'strategic infrastructure', the qualifying words focus on what is "greater than local importance", and what is "infrastructure of national significance".
- 3.5 For 'critical infrastructure', that discussion is around what infrastructure services would have a serious effect on the communities within the Christchurch District if they were interrupted. Unlike strategic infrastructure this could be a local infrastructure service such as a medical centre, and includes a structure that supports/protects the critical infrastructure.
- 3.6 Judge Hassan stated in respect to critical infrastructure that: *"if I can make a case for saying anything I am doing by way of building work is necessary for those purposes, then whatever building work I am doing is*

infrastructure."¹ I agree that it would of considerable concern if critical infrastructure were used in the rules as the basis for determining activity status. I have searched through the Stage 1 provisions of the pRDP supported by the Council through the hearings processes to date and have found no such use.

- 3.7** I would consider it desirable if, once activity status is established, an applicant can refer to these policies and argue the point that they fall within the definition of 'critical infrastructure' and the relevant policy applies. However, I also note that for building work to be considered as 'critical infrastructure' in terms of the qualifying words discussed above, it would need to be shown to have "*a serious effect on the communities within the Christchurch District*" if interrupted, such that the work would "*require immediate reinstatement*". I consider that these words limit the application of the definition of 'critical infrastructure' so that "whatever building work" would not fall within the scope of the definition.
- 3.8** For completeness, I note that the definition of 'critical infrastructure' is contained in the Canterbury Regional Policy Statement (**CRPS**) and the term critical infrastructure is included in Chapter 11 Natural Hazards, policy 11.3.4 and policy 11.3.1.² The pRDP makes only a minor adjustment to this definition to focus the application of the term on the Christchurch District.
- 3.9** 'Strategic infrastructure' is also used in the CRPS, largely in Chapters 5 (Land Use and Infrastructure) and 6 (Recovery and Rebuilding of Greater Christchurch). 'Strategic infrastructure' is not referred to in Chapter 11. The CRPS also uses the terms "regionally significant infrastructure" and "significant" infrastructure and a number of other infrastructure-related terms (community-scale irrigation, stockwater and rural drainage infrastructure).³ However, while "significant" infrastructure is used in the natural hazards chapter⁴ of the CRPS, it is not defined. In my opinion, 'critical infrastructure' has a wider definition.

1 Transcript for the Introduction and Definitions Hearing, 13 July 2015 (Day 1) (**Transcript**), page 49 (line 15).

2 As amended by LURP Action 46 and took effect on 12 June 2015.

3 Canterbury Regional Policy Statement (**CRPS**), Glossary and Definitions, page 196.

4 Policy 11.3.1 as amended by LURP Action 46 and took effect on 12 June 2015.

- 3.10** The following discussion on the definition of 'critical infrastructure' is included in the section 32 Report to Chapter 11 of the CRPS, which I consider provides further support for retaining the proposed definition of 'critical infrastructure' in the pRDP:

The definition of critical infrastructure is based on the Schedule 1 of the Civil Defence Emergency Management Act 2002 (the CDEM Act), that lists lifeline utility entities. In addition to the lifelines scheduled in the CDEM Act, critical infrastructure includes public healthcare institutions and emergency services. This is infrastructure that will be vital, during and following a natural hazard event, to ensuring that response to the event and community recovery from the event will be rapid.⁵

4. INFRASTRUCTURE

- 4.1** Judge Hassan made the point that when a word is not defined in a district plan, one of the principles he understood is that the Resource Management Act 1991 (**RMA**) definition can be applied, further stating that you have to read an RMA definition for its purpose.⁶ I agree with that principle. In this case, I am of the view that the purpose of the definition in section 2 of the RMA in respect to the word "infrastructure" is clear; it is to be applied to section 30, which outlines the functions of a Regional Council. In section 30, the word "infrastructure" is only used once: at paragraph (gb).
- 4.2** It is my opinion that if the RMA intended the definition more generally then it would have either removed the reference to section 30 or provided another definition for general use. In this situation, I do not consider that it is appropriate to apply the RMA definition in the absence of a definition in the pRDP for infrastructure.

⁵ CRPS, Section 32 Report, page 252.

⁶ Transcript, page 48 (line 15).

4.3 Ms Dawson asked if there was anything in the definition of infrastructure in section 2 of the RMA that makes it unsuitable for wider use.⁷ In particular, Ms Dawson asked if a broader definition of infrastructure was included in the Plan, and the definition from section 2 of the RMA was included, how would that definition for the purposes of proposed Rule 5.10.1 (now Rule 5.5.1⁸) need to be amended?⁹

4.4 The choice of items contained in the proposed definition of infrastructure for the purposes on Rule 5.5.1 is deliberately narrow, given that the rule manages activities in areas at risk of slope instability. It provides a less restrictive consenting pathway for a limited range of essential activities (most of which are already located in these areas). For the purposes of Rule 5.5.1, I consider the following items listed in the RMA definition would need to be excluded:

- (a) facilities for the generation of electricity;
- (b) an irrigation system;
- (c) structures for transport on land by cycleways, walkways, or any other means;
- (d) facilities for the loading or unloading of cargo or passengers transported on land by any means;
- (e) an airport as defined in section 2 of the Airport Authorities Act 1966;
- (f) a navigation installation as defined in section 2 of the Civil Aviation Act;
- (g) facilities for the loading or unloading of cargo or passengers carried by sea, including a port related commercial undertaking as defined in section 2(1) of the Port Companies Act 1988; and
- (h) anything described as a network utility operation in regulations made for the purposes of the definition of network utility operator in section 166 of the RMA.

4.5 Services from the street to residential units would also need to be specifically stated as excluded for the purposes of Rule 5.5.1.

⁷ Transcript, page 44 (line 10).

⁸ Decision 6 of the Independent Hearings Panel - Natural Hazards Proposal (Part) 17 July 2015.

⁹ Transcript, page 44, (line 40) and page 45 (line 20).

4.6 I have discussed the first question with a number of the Chapter Leaders for the pRDP and with Mr Le Marquand for the Oil Companies, Mr Millar for Orion, Mr Bonis for LPC, and Ms Hickey and Mr Timms for the Crown. There was general agreement that where the word “infrastructure” was not used in the context of Rule 5.5.1 (which confers a very specific and narrow meaning) in the pRDP, a very broad definition of infrastructure can be inferred in terms of its ordinary meaning.

4.7 I have investigated the dictionary definition of “infrastructure”. The New Zealand Oxford Paperback Dictionary defines infrastructure as:

1. *The basic foundation of a society or enterprise.*
2. *The facilities (such as roads, bridges, sewers etc) regarded as a country’s economic foundation.*

4.8 The Concise Oxford Dictionary has a similar definition of infrastructure, as follows:

1.
 - a. *the basic structural foundations of a society or enterprise; a substructure of foundation;*
 - b. *roads, bridges, sewers, etc regarded as a country’s economic foundation.*
2. *Permanent installations as a basis for military etc. operations.*

4.9 These definitions indicate that “infrastructure” can be a very broad term and include many aspects of developed or developing countries. It is my view that infrastructure in this broad sense includes facilities such as schools and hospitals.

4.10 I understand from Mr Le Marquand that the RMA definition of infrastructure is vague in respect to bulk storage of fuel. I agree that an argument either way could be mounted and would be one amendment required, for clarity and certainty, to the RMA definition if it were to be adopted. Both the ordinary meaning of infrastructure identified above, and the definition of infrastructure for the purposes of Rule 5.5.1 satisfies the need for bulk fuel storage facilities to be included.

4.11 I also consider it debateable whether flood protection infrastructure is contained within the RMA definition. While there is provision for such works to be undertaken via the designation process, that process is not always relied upon.

4.12 I also asked the Chapter Leaders to consider whether the RMA definition of infrastructure could be adopted in their chapter in the situations where they use the word "infrastructure" within a rule. The chapters where this would be possible are:

- (a) Chapter 6 (General Rules and Procedures) – Rules; and
- (b) Chapter 13 (Central City, Temporary Earthquake Recovery Activities) - Rule 13.13.1.1.2.1.

4.13 I have looked at the rules in Chapter 6. Rule 6.4 Temporary Earthquake Recovery Activities - Rule 6.4.3.2.1 Permitted activities P10 for example states:¹⁰

***P10** Construction depots until 30th April 2018, located in the Specific Purpose (Flat Land Recovery) Zone*

- a. *The construction depot is:*
 - i. *used for construction work (as defined in section 6 of the Construction Contracts Act 2002) to repair or rebuild land, buildings, **infrastructure** or other facilities damaged by the Canterbury Earthquakes; or ...*

4.14 Construction depots are the focus of the rule and activity status, but the proviso includes that the construction depot is used for construction work to repair or rebuild land, buildings, **infrastructure** or other facilities. The term "other facilities" indicates that it does not matter if infrastructure is defined in this context. The key filters are construction depots and construction work. I therefore consider that the reference to "infrastructure" is to be considered in light of the text of the rule.

¹⁰ Chapter 6, Rule 6.4.3.2.1 Agreed Revised Provisions, 12 June 2015, page 26.

- 4.15** I consider that using the RMA definition of infrastructure has no real effect on this rule.
- 4.16** Similar rules are proposed in the Central City Temporary Earthquake Recovery Activities Chapter.
- 4.17** I consider that where the term "infrastructure" is used outside of Rule 5.5.1, the interpretation of the term will be determined by the context of the provision in which it is used.
- 4.18** Overall, conceptually there is no impediment to using the RMA definition for wider use in the pRDP where the range of facilities in the RMA definition are the ones contemplated by the rules. However, in most cases, a wider meaning of infrastructure is intended to be applied to the provisions of the pRDP. In terms of the rules discussed above, the RMA definition would narrow the meaning of "infrastructure" for no real purpose. For Rule 5.5.1, as explained above, the opposite is true which is why the term has been explicitly defined in that context.
- 4.19** I do have concern with having two definitions: one for wider application (the RMA definition) and one where it has been specifically narrowed for an identified purpose (the definition applying to Rule 5.5.1). I consider that this would reduce the clarity of the Plan and potentially cause confusion, particularly since there are already other definitions with the word "infrastructure" attached. A solution could be to apply one definition such as the RMA definition, and include an exception in that definition specifically for Rule 5.5.1.

5. NATURAL HAZARDS DECISION

- 5.1** I have read the Panel's decision on the Natural Hazards Proposal and note that in respect to the definitions of 'critical infrastructure', 'strategic infrastructure' and 'infrastructure' (for the purposes of Rule 5.5.1, which was previously Rule 5.10.1) the decision records that that these definitions may be amended as part of the Definitions Proposal.¹¹
- 5.2** I further note my general support for Policy 5.2.1.3 (on page 69 and page 141 of the Natural hazards decision). From my reading, the use of the word "infrastructure" in part c of Policy 5.2.1.3 has the intention to provide a wider meaning than 'critical infrastructure'¹² (compared with a and b of Policy 5.2.1.3) when applied to repair, maintenance and ongoing use in areas affected by natural hazards. I support this as providing policy support where infrastructure activities (in its widest sense) require work beyond the scope of existing use rights.
- 5.3** However, I record that the Panel has specifically narrowly defined the word "infrastructure" for the purposes of Rule 5.5.1 (previously 5.10.1) and has provided a new definition for "Repair and maintenance of existing infrastructure" also for the purposes of Rule 5.5.1 (previously rule 5.10.1). It is not clear whether this has widened those activities to which permitted activity status will apply (see rule 5.5.1f) or whether this definition would also have "infrastructure" underlined (i.e. the definition of infrastructure as per Rule 5.5.1 still applies as well).

6. CONCLUSION

- 6.1** My overall view is that the RMA definition of infrastructure appropriately amended for both wider use and the narrower purpose is not required. The ordinary meaning of infrastructure, while broad, is fit for current purposes. Various types of infrastructure can be understood in the pRDP in the context in which they are found. I further note that the submitters

¹¹ Decision 6 of the Independent Hearings Panel - Natural Hazards Proposal (Part) 17 July 2015, page 69, paragraph 233.

¹² Decision 6 of the Independent Hearings Panel - Natural Hazards Proposal (Part) 17 July 2015, pages 133 and 134.

consulted have indicated their preference for the narrowed definition in respect to Rule 5.5.1 to remain.

A handwritten signature in cursive script, appearing to read "Janice Carter", enclosed in a light blue rectangular border.

JANICE CARTER

22 July 2015