

**BEFORE THE CHRISTCHURCH REPLACEMENT
DISTRICT PLAN 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 definitions relating to
"facilities" and "activities"

**MEMORANDUM OF COUNSEL FOR CHRISTCHURCH CITY COUNCIL IN
RESPONSE TO PANEL'S MINUTE DATED 30 OCTOBER 2015**

5 NOVEMBER 2015

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MAY IT PLEASE THE PANEL

1. This memorandum is filed on behalf of the Christchurch City Council (**Council**), at the direction of the Panel in its Minute dated 30 October 2015 (**Minute**), to clarify the Council's position regarding the appropriate approach to the use of the definitions of "activities" and "facilities" in the proposed Replacement District Plan (**pRDP**).
2. The Panel has expressed concern that, in some instances, where a "facility" is permitted in a particular zone, this may give rise to ambiguity about whether it is solely the land or building which is permitted, or whether it also extends to the use of the land or building for the permitted purpose.
3. The Council accepts that there is the potential for ambiguity and that it is desirable that this is rectified.
4. The Panel's Minute poses two questions in paragraph [5] seeking clarification of the position, and also seeks advice in paragraph [6] about potential scope or "knock on" issues. The Council's position and suggested solution is set out in further detail below.

COUNCIL POSITION REGARDING MEANING OF "FACILITY" AND "ACTIVITY"

5. In response to the question at [5](a) of the Minute, the Council's intention is that where "facility" is used, it applies to the land and/or buildings *and* extends to the intended use for that purpose, unless expressly stated otherwise.
6. It is also the case that the same position should apply to the use of the term "activity" as including use of land and/or buildings for that activity. This is because the activity is likely to generate the relevant effects, and the use of land and/or buildings for the activity can be managed through relevant standards (e.g. bulk and location and other built form standards)¹.

¹ The Council's suggested clarification does however contain a proviso which enables the "facility" or "activity" to be excluded (ie. that the presumption of inclusion can be overcome by express wording to the contrary)

7. Accordingly, the Council proposes appropriate clarification of this position, consistent with paragraph [5](b) of the Minute, by including the following words as a new clause 6 of the opening statement to the list of definitions in the Definitions proposal (under sub-heading of 'Definitions List'):

6. *Where a word/phrase defined includes the word 'facility' or 'facilities', the definition includes the use of that facility for the intended purpose unless expressly stated otherwise in the activity status tables, e.g. a recreation facility can also be used for recreation activities unless expressly stated otherwise.*

Similarly, where the word/ phrase defined includes the word 'activity' or 'activities', the definition includes the land and/or buildings for that activity unless expressly stated otherwise in the activity status tables.

8. It is also suggested that, in the sections of each Proposal titled "How to use the rules", the following clauses should be added:

"Where the word 'facility' is used in the rules e.g. Spiritual facility, it shall also include the use of a site/building for the activity that the facility provides for, unless expressly stated otherwise.

Similarly, where the word/ phrase defined includes the word 'activity' or 'activities', the definition includes the land and/or buildings for that activity unless expressly stated otherwise in the activity status tables."

SCOPE ISSUES

9. The Council considers that the proposed changes/clarifications are within the scope of submissions and, furthermore, do not raise fairness issues to the extent that the clarifications are likely to be more enabling than restrictive.

10. The specific submission points that the proposed amendments are considered to be within the scope of are as follows:

(a) **Stage 1 Crown submission (495)** seeks:

- (i) Section 12.3 states that the Crown seeks the following decisions:

(a) Amend the proposals to:

...
(iv) provide consistency in content and formatting across all proposals

(ii) Page 40 of the same submission states as follows:

Review and amend the definitions relating to community based facilities and activities to reduce duplication and provide greater clarity, including consequential amendments to related provisions. The review and amendment should retain the intent of the provision to provide for community facilities and activities.

(iii) Also on page 46 of the same submission it states:

Review and amend the definitions relating to non-residential community based facilities and activities to reduce duplication and provide greater clarity, including consequential amendments.

(b) **Stage 2 Crown submission (2387.6)** seeks the following relief:

"Make any necessary amendments to the proposals to improve their usability including by:

(i) *Clarifying what rules apply to certain activities, and which activity status applies"*

(c) **Stage 3 Crown submission (3721.37)** seeks the following relief:

a) *Amend Proposal 2 and Proposal 13.17 (Central City Definitions) to:*

...
iii. *Provide clear and usable definitions.*

11. It is submitted that there is little doubt that the Crown submission points outlined above provide sufficient scope to make the Council's recommended changes. Accordingly, no clause 13(2) or 13(4) issues are submitted to arise.

12. In the time available, the Council has not had the opportunity to closely analyse every single submission point on all proposals to determine whether the proposed change might detrimentally affect the interests of an

individual submitter, as this task would require manual analysis and may take several days (up to a week).

13. In general however, because the proposed change clarifies a matter of ambiguity and responds to specific relief sought in submissions, it is submitted that there is unlikely to be any prejudice to submitters in that it will generally provide for a more enabling approach and reduce the likelihood of additional consenting requirements, as envisaged by the Statement of Expectations. The only instances where people might be argued to be affected by the suggested clarifications are where they have sought a more restrictive approach to a specific definition, rule or standard, to the effect that a "facility" does not also provide for the intended "activity".
14. Either way, as it is considered that the Panel has full powers to make the necessary clarifications, the Council does not consider it necessary to undertake an analysis of individual submissions to this level of detail.
15. The Council has however, as requested in paragraph [7] of the Minute, identified relevant submission points on definitions which use the words "facility" and "activity". This is attached to this Memorandum as **Annexure A**.
16. Counsel would be happy to attend a telephone conference with the Panel regarding the contents of this Memorandum, if that would be of assistance to the Panel.

DATED this 5th day of November 2015




J G A Winchester / S J Scott
Counsel for Christchurch City Council

ANNEXURE A - DEFINITIONS CONTAINING 'ACTIVITY/ACTIVITIES' OR 'FACILITY/FACILITIES'

Black text = definition as notified

Red text = definition requested by submitters

 = definition 'pairs' separating 'activity' from the 'facility'

Stage 1	Stage 2	Stage 3 (Definitions)	Stage 3 (Central City) <i>Repetitions of Stage 1, 2 & 3 versions</i>
Ancillary activity 1028.1 (Carter)			
	Ancillary aggregates processing activity 2338.3 (Maurice R Carter Ltd) 2331.1 (Canterbury Aggregate Producers Group) 2455.28 (Fulton Hogan)		
Ancillary office activity 705.48 (Foodstuffs (South Island) Properties Ltd, Foodstuffs South Island Ltd) 725.9 (Bunnings Ltd) 790.8 (Progressive Enterprises Ltd) 827.10 (Higgins Contractors Ltd) 827.10 (Higgins Contractors Ltd) 1014.8 (Gelita NZ) 977.6 (Goodman Property Trust)			Ancillary office activity No submissions
Ancillary retail activity 705.49 (Foodstuffs (South Island) Properties Ltd, Foodstuffs South Island Ltd)			Ancillary retail activity 3569.2 (Gregg et al)
Ancillary showroom activity			

Stage 1	Stage 2	Stage 3 (Definitions)	Stage 3 (Central City) <i>Repetitions of Stage 1, 2 & 3 versions</i>
776.3 (Bellavista Property Consultants)			
Bird strike risk activities 863.40 (CIAL) 863.13 (CIAL)			
Care facility 868.12 (Archer Memorial Baptist Home Trust) 495.346 (CERA) 495.372 (CERA) 755.1 (Bupa Care Services) 763.24 (Christchurch Methodist Central Mission Methodist Church of NZ)	Care facilities 2185.4 (Mobil Oil NZ Ltd) 2218.1 (Transpower NZ Ltd) 2185.7 (Mobil NZ Ltd) 2123.4 (CCC) 2347.1 (Ryman Healthcare Ltd)		Care facility No submissions
Commercial activities No submissions			Commercial activities No submissions
	Community activity 2351.3 (Rangi Ruru Girls' School) 2387.13 (CERA) 2269.2 (CPIT) 2464.2 (The University of Canterbury) 2141.4 (Devine)		Community activity No submissions
Community facility 495.329 (CERA) 656.3 (Catholic Diocese of Christchurch) 676.2 (Integrated State Schools) 676.15 (Integrated State Schools) 833.3 (Christ's College) 891.3 (St Andrews College) 495.331 (CERA) 495.360 (CERA)	Community facility 2351.3 (Rangi Ruru Girls' School) 2351.8 (Rangi Ruru Girls' School) 2387.14 (CERA) 2387.15 (CERA) 2269.3 (CPIT) 2464.3 (The University of Canterbury) 2141.5 (Devine)		Community facility (Stage 1 version) 3602.166 (Carter Group Ltd) Community facility (CC-specific) No submissions

Stage 1	Stage 2	Stage 3 (Definitions)	Stage 3 (Central City) <i>Repetitions of Stage 1, 2 & 3 versions</i>
837.8 (Rangi Ruru Girls' School) 793.5 (Church Property Trustees) 785.3 (The Order of St John, South Island Region Trust Board)			
	Conservation activities 2311.52 (Rod Donald Banks Peninsula Trust) 2146.2 (The Isaac Conservation and Wildlife Trust)		Conservation activities No submissions
Convenience activities No submissions			
	Cultural activity No submissions		Cultural activity No submissions
	Cultural facility No submissions		Cultural facility No submissions
		Earthquake waste processing activities 3444.7 (Burwood Resource Recovery Park Ltd)	
Education activity 656.3 (Catholic Diocese of Christchurch) 837.9 (Rangi Ruru Girls' School) 676.17 (Integrated State Schools) 495.345 (CERA) 495.349 (CERA) 676.16 (Integrated State Schools) 756.1 (CPIT) 797.1 (University of Canterbury) 863.43 (CIAL) 891.2 (St Andrews College) 837.8 (Rangi Ruru Girls' School)	Education activity 2351.3 (Rangi Ruru Girls' School) 2348.155 (CIAL) 2348.156 (CIAL) 2351.7 (Rangi Ruru Girls' School) 2185.5 (Mobil Oil NZ Ltd) 2387.18 (CERA) 2089.16 (Catholic Bishop of Christchurch)		Education activity (Stage 1 version) No submissions Education activity (Stage 2 version) No submissions

Stage 1	Stage 2	Stage 3 (Definitions)	Stage 3 (Central City) <i>Repetitions of Stage 1, 2 & 3 versions</i>
738.1 (Ilam and Upper Riccarton Residents' Assn)			
Education facility 495.344 (CERA) 495.370 (CERA)	Education facility 2351.3 (Rangi Ruru Girls' School) 2387.19 (CERA)		Education facility 3602.167 (Carter Group Ltd)
Emergency service facilities 495.343 (CERA) 495.369 (CERA) 785.2 (The Order of St John, South Island Region Trust Board)			Emergency service facilities No submissions
Entertainment activity 495.340 (CERA) 495.371 (CERA)	Entertainment activity No submissions		Entertainment activity (Stage 1 version) No submissions Entertainment activity (Stage 2 version) No submissions
Entertainment facility 495.339 (CERA) 495.368 (CERA)			Entertainment facility No submissions
	Equestrian facility No submissions		
	Freight handling activities No submissions		
		Golf amenity management activities 3006.2 (Andrew Bell)	
Hazardous facility 832.13 (Transpower NZ Ltd)	Hazardous facility 2348.150 (CIAL) 2218.3 (Transpower NZ Ltd) 2340.8 (Orion NZ Ltd) 2464. 6 (The University of Canterbury)	3721.97 (CERA)	Hazardous facility 3721.98 (CERA) 3721.105 (CERA) 3721.106 (CERA) 3721.107 (CERA)

Stage 1	Stage 2	Stage 3 (Definitions)	Stage 3 (Central City) <i>Repetitions of Stage 1, 2 & 3 versions</i>
	2269.6 (CPIT) 2364.8 (Bunnings Ltd) 2373.34 (Progressives Enterprises Ltd) 2165.116 (Horticulture NZ) 2185.9 (Mobil Oil NZ Ltd)		
Health care facility 648.1 (Canterbury District Health Board) 525.1 (Nurse Maude Assn) 755.2 (Bupa Care Services) 763.23 (Christchurch Methodist Central Mission Methodist Church of NZ) 495.347 (CERA) 495.373 (CERA) 745.2 (Ryman Healthcare Ltd)	Health care facility 2360.1 (CDHB) 2082.5 (Christchurch Methodist Central Mission) 2347.2 (Ryman Healthcare Ltd)		Health care facility (Stage 1 version) No submissions Health care facility (Stage 2 version) 3317.51 (Ryman Healthcare Ltd Retirement Villages Assn of NZ) 3602.169 (Carter Group Ltd)
	Heavy industrial activity 2307.8 (Gelita NZ Ltd)		
High technology industrial activity No submissions			
Industrial activity 704.4 (The Isaac Conservation and Wildlife Trust) 827.7 (Higgins Contractors Ltd) 397.4 (Rockgas Ltd) 886.4 (Canterbury Aggregate Producers Group) 1014.10 (Gelita NZ)	Industrial activity 2307.7 (Gelita NZ Ltd)		Industrial activity (Stage 1 version) No submissions
Key activity centres 705.139 (Foodstuffs (South Island) Properties Ltd Foodstuffs South Island Ltd)			

Stage 1	Stage 2	Stage 3 (Definitions)	Stage 3 (Central City) <i>Repetitions of Stage 1, 2 & 3 versions</i>
705.144 (Foodstuffs (South Island) Properties Ltd Foodstuffs South Island Ltd) 966.2 (Foxton Properties Ltd, Terrace Development Services Ltd, Hallgrow Farms Ltd) 1156.22 (Johns Road Horticultural Ltd)			
			Key facilities 3602.132 (Carter Group Ltd)
		Land management activities No submissions	Land management activities No submissions
		Land management activity 3602.187 (Carter Group Ltd)	
Large format retail/Large format retail activity 288.5 (Harvey Norman Ltd) 310.64 (CCC) 705.53 (Foodstuffs (South Island) Properties Ltd Foodstuffs South Island Ltd)			
	Major hazard facility 2359.8 (Liquigas Ltd)		
	Major sports activity No submissions		Major sports activity No submissions
	Major sports facility 2358.1 (Canterbury Car Club Inc)		Major sports facility No submissions
Mineral extraction activity 704.3 (The Isaac Conservation and Wildlife Trust) 827.8 (Higgins Contractors) 886.6 (Canterbury Aggregate)			

Stage 1	Stage 2	Stage 3 (Definitions)	Stage 3 (Central City) <i>Repetitions of Stage 1, 2 & 3 versions</i>
Producers Group)			
	Minor sports activity No submissions		Minor sports activity No submissions
	Minor sports facility No submissions		Minor sports facility No submissions
	Motorised sports activity No submissions		Motorised sports activity No submissions
	Motorised sports facility 2358.2 (The Canterbury Car Club Inc) 2146.5 (Isaac Conservation and Wildlife Trust)		
Motor-serving facility No submissions			Motor-serving facility No submissions
Noxious or offensive activity 310.68 (CCC) 686.6 (Silver Fern Farms Ltd) 772.5 (Lowe Corp and Colyer Mair Assets Ltd) 766.4 (Tegel Foods Ltd) 1014.11 (Gelita NZ)			
Park and ride facilities No submissions			
	Park management activities No submissions		Park management activities No submissions
	Park management facility No submissions		Park management facility No submissions
	Passive cemetery activities No submissions		Passive cemetery activities No submissions
		Passive recreation activities 3469.2 (Rod Donald Banks Peninsula Trust)	

Stage 1	Stage 2	Stage 3 (Definitions)	Stage 3 (Central City) <i>Repetitions of Stage 1, 2 & 3 versions</i>
	Pre-school activity 2348.163 (CIAL) 2387.27 (CERA)		Pre-school activity No submissions
	Pre-school facility 2348.164 (CIAL) 2387.28 (CERA)		Pre-school facility No submissions
Port activities 723.36 (Mobil Oil NZ, Z Energy Ltd and BP Oil NZ Ltd) 988.24 (Mobil Oil NZ Ltd) 915.79 (Lyttelton Port Company Ltd)			
Public transport facility No submissions			Public transport facility No submissions
	Quarrying activity 2218.6 (Transpower NZ Ltd) 2331.3 (Canterbury Aggregate Producers Group) 2455.27 (Fulton Hogan Ltd) 2240.1 (Dean Sulzberger)		Quarrying activity No submissions
Recreation activity 495.337 (CERA) 495.366 (CERA) 733.1 (Viatcheslav/Slava Meyn)	Recreation activity No submissions		Recreation activity (Stage 1 version) 3602.175 (Carter Group Ltd) 3602.174 (Carter Group Ltd) Recreation activity (Stage 2 version) No submissions
Recreation facility 495.336 (CERA) 495.365 (CERA) 733.2 (Viatcheslav/Slava Meyn)		Recreation facility No submissions	Recreation facility (Stage 1 version) No submissions Recreation facility (Stage 3 version)

Stage 1	Stage 2	Stage 3 (Definitions)	Stage 3 (Central City) <i>Repetitions of Stage 1, 2 & 3 versions</i>
			No submissions
Regionally significant activities 886.7 (Canterbury Aggregate Producers Group)			
	Renewable electricity generation activities No submissions		
Residential activity 495.354 (CERA) 863.48 (CIAL) 893.1 (D & S Grimshaw) 181.1 (Ross Divett) 310.95 (CCC)	2352.4 (Cook) 2185.4 (Mobil Oil NZ Ltd) 2514.21 (Lawry) 2149.2 (Scott)		Residential activity 3721.165 (CERA)
Retail activity 287.1 (Cats Protection League) 34.8 (NZ Racing Board) 723.6 (Mobil Oil NZ, Z Energy Ltd and BP Oil NZ Ltd) 988.6 (Mobil Oil NZ Ltd) 388.4 (McDonalds Restaurants NZ Ltd) 863.50 (CIAL)	2514.22 (Lawry)	3699.3 (McDonald's Restaurants (NZ) Ltd)	Retail activity 3699.4 (McDonald's Restaurants (NZ) Ltd)
	Rural activity 2277.1 (Canterbury Sports Ltd) 2331.5 (Canterbury Aggregate Producers Group) 2460.42 (Tegel Foods Ltd)		
	Rural tourism activity 2311.6 (Rod Donald Banks Peninsula Trust) 2311.53 (Rod Donald Banks Peninsula Trust)		

Stage 1	Stage 2	Stage 3 (Definitions)	Stage 3 (Central City) <i>Repetitions of Stage 1, 2 & 3 versions</i>
	Rural tourism facility No submissions		
	Rural viticulture activity 2346.2 (Irvine)		
Sensitive activities 310.99 (CCC) 310.110 (CCC) 495.357 (CERA) 596.9 (Radio NZ Ltd) 704.2 (The Isaac Conservation and Wildlife Trust) 832.10 (Transpower NZ Ltd) 922.3 (Orion NZ Ltd) 922.15 (Orion NZ Ltd) 863.51 (KiwiRail) 915.64 (Lyttelton Port Company Ltd) 1014.13 (Gelita NZ)	Sensitive activities 2348.165 (CIAL) 2123.14 (CCC) 2359.9 (Liquigas) 2218.7 (Transpower NZ Ltd) 2255.5 (Air NZ Ltd) 2307.9 (Gelita NZ Ltd) 2248.2 (Radio NZ Ltd) 2185.3 (Mobil Oil NZ Ltd) 2460.43 (Tegel Foods Ltd) 2246.1 (KiwiRail Holdings Ltd)		Sensitive activities (Stage 2 version) 3721.172 (CERA) 3721.173 (CERA)
	Sound amplified activity No submissions		Sound amplified activity No submissions
	Spiritual activity 2147.3 (Catholic Diocese and others) 2141.1 (Devine)		Spiritual activity No submissions
Spiritual facility 495.335 (CERA) 495.364 (CERA) 752.2 (Alpine Presbytery) 763.2 (Christchurch Methodist Central Mission, Methodist Church of NZ) 793.4 (Church Property Trustees)	Spiritual facility 2141.2 (Devine)		Spiritual facility (Stage 1 version) No submissions Spiritual facility (Stage 2 version) 3602.176 (Carter Group Ltd)

Stage 1	Stage 2	Stage 3 (Definitions)	Stage 3 (Central City) <i>Repetitions of Stage 1, 2 & 3 versions</i>
	Templeton rural activity No submissions		
			Temporary activities No submissions
	Temporary activities and buildings 2269.9 (CPIT) 2464.9 (The University of Canterbury) 2387.31 (CERA) 2387.32 (CERA) 2302.1 (Hands off Hagley Inc)	3569.6 (Gregg et al) 3580.2 (Mulligan)	Temporary activities and buildings 3586.1 (Sargent et al) 3569.3 (Gregg et al) 3721.176 (CERA)
Temporary buildings and activities 793.6 (Church Property Trustees) 785.4 (The Order of St John, South Island Region Trust Board)			
Tertiary education and research activity 405.1 (James and Gabrielle McKee) 721.1 (Susan Harding) 721.2 (Susan Harding) 1056.1 (Mark Shepherd) 1063.2 (Barbara Watson) 722.3 (Peter Harding) 722.4 (Peter Harding) 738.3 (Ilam and Upper Riccarton Residents' Assn) 756.4 (CPIT) 797.4 (University of Canterbury) 1055.1 (Doug Sellman)	Tertiary education and research activity 2269.10 (CPIT) 2464.10 (The University of Canterbury) 2213.1 (McKee)	3277.1 (CPIT)	Tertiary education and research activity No submissions
	Tertiary education and research facility 2269.11 (CPIT) 2464.11 (The University of	3277.2 (CPIT)	

Stage 1	Stage 2	Stage 3 (Definitions)	Stage 3 (Central City) <i>Repetitions of Stage 1, 2 & 3 versions</i>
	Canterbury)		
Trade and industry training facility 756.5 (CPIT)	Trade and industry training facility 2348.167 (CIAL) 2269.12 (CPIT)		
Urban activities 310.104 (CCC) 495.342 (CERA) 1014.14 (Gelita NZ)		Urban activities 3721.177 (CERA)	Urban activities 3721.178 (CERA)
Veterinary care facility No submissions			
Warehousing and distribution activities 397.7 (Rockgas Ltd) Warehousing and distribution activities 863.56 (CIAL)			