

**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 MARK DAVID STEVENSON
ON BEHALF OF CHRISTCHURCH CITY COUNCIL**

COMMERCIAL / INDUSTRIAL PROPOSAL

16 JULY 2015

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TABLE OF CONTENTS

1. INTRODUCTION	1
2. SCOPE.....	1
3. ANCILLARY ACTIVITY	2
4. HEAVY INDUSTRIAL ACTIVITY	5
5. KEY PEDESTRIAN FRONTAGES	7
6. REVERSE SENSITIVITY.....	8
7. BUILDING SUPPLIER	9
8. GYMNASIUM.....	10
9. OUTDOOR STORAGE AREA	10
10. SECOND HAND GOODS OUTLET	12

1. INTRODUCTION

- 1.1 My full name is Mark David Stevenson. My experience and qualifications are set out in my evidence in chief for the Commercial and Industrial Proposals dated 13 April 2015.
- 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.
- 2.2 As requested by the Panel, this supplementary evidence covers the following definitions:
- (a) Ancillary Activity;
 - (b) Heavy Industrial Activity;
 - (c) Key Pedestrian Frontages;
 - (d) Reverse Sensitivity;
 - (e) Building supplier;
 - (f) Gymnasium;
 - (g) Outdoor Storage area; and
 - (h) Second-hand goods outlet.
- 2.3 I note that in my evidence I have addressed definitions that the Panel discussed with me at the hearing. I have also addressed a number of definitions which are pertinent to the Commercial or Industrial proposals, which the Panel discussed with **Mr Ivan Thomson**.

2.4 Feedback has been sought from representatives for submitters including the Crown on the definitions listed in paragraph 2.2 above, albeit in a very short timeframe. This is referred to below.

3. ANCILLARY ACTIVITY

3.1 Ms Dawson asked a question of whether it is intended that an ancillary activity is on the same site as the principal activities.¹ It was suggested that 'and' be added before "on the same site". This provides clarity that the ancillary component is to be on the same site to retain a relationship with the principal activity and I therefore propose an amended definition to reflect this.

3.2 The other matter raised in the hearing was whether the reference to "principal activities and business" is appropriate in the context of how the term is used. As an example, the term "ancillary activity" is used in the Specific Purpose Zones chapter (notified as part of Stage 2) with reference to ancillary activity to a hospital and to an education activity. The ancillary activities in those circumstances may not be a business. I therefore recommend that the wording in the opening paragraph refer to "principal activities and/or business". Feedback from planners,² acting for a number of submitters, has not indicated concern with the amendments described above.

3.3 Judge Hassan also questioned whether the concept of ancillary activity being 'subordinate' was necessary in the main body of the definition, using wording to the effect of "necessary support" as used in the context of ancillary office activity. An example was given of retailing in my answers that may not provide necessary support to a principal activity, but may still be ancillary. While I acknowledge the concept of subordinate is not explicit in the main body of the definition, I do not consider it appropriate in relation to all activities. No amendment is therefore proposed to this effect.

¹ Transcript, 13 July 2015 (Day 1) (**Transcript**), page 56.

² Darryl Millar (for Ngai Tahu Property); Fiona Aston (for Kennaway Park); Kevin Bligh (for Gelita); Nick Boyes (for Higgins Contractors); and Jane Whyte (for the Crown).

3.4 In terms of its application, the term 'ancillary' is used in the following Stage 1 Proposals:

- (a) Residential proposal:³
 - (i) Ancillary buildings to earthquake damaged houses (Policy 14.1.2.4); and
 - (ii) Health, managerial, administrative, social and professional and retail activities, ancillary to the Prestons Road retirement village (Policy 14.2.4.4.10).

- (b) Commercial proposal:⁴
 - (i) Office activity of an ancillary function in Large Format centres (Table 15.1, Policy 15.1.2.1);
 - (ii) Ancillary office activity as a permitted activity under rule 15.5.2.1 for the Commercial Retail Park zone;
 - (iii) Built form standards specific to Ancillary office activity (Road setback 15.5.3.2);
 - (iv) Rules permitting Ancillary retail activity and Ancillary office activity under rule 15.7.2.1 for the Commercial Mixed Use zone; and
 - (v) Matters of discretion for Ancillary Office and Retail activity (15.8.2.6).

- (c) Industrial proposal:⁵
 - (i) Provision for non-industrial activities in industrial zones that are ancillary in scale and on the same site as a permitted or consented activity (Policy 16.1.1.4(a));
 - (ii) Provision for ancillary activities in industrial zones (Policy 16.1.1.4(d));
 - (iii) Provision for ancillary office activity in industrial zones (Policy 16.1.1.5);
 - (iv) Rules permitting Ancillary retail activity and Ancillary office activity in the Industrial General (16.2.2.1), Industrial Heavy (16.3.2.1) and Industrial Park zones (16.4.2.1);

³ Attached to closing legal submissions for the Christchurch City Council dated 23 April 2015

⁴ Attached to closing legal submissions for the Christchurch City Council dated 11 June 2015.

⁵ Attached to closing legal submissions for the Christchurch City Council dated 11 June 2015.

- (v) Built form standards specific to Ancillary office activity and/or Ancillary retail activity in the Industrial General zone at Trents Road (Setback from adjoining zones 16.2.9.2.1) and Industrial Park zone (Road setback 16.4.3.3);
- (vi) Reference to ancillary office activity in the context of matters of discretion for landscaping (16.5.1.7); and
- (vii) Reference to (any) activity ancillary to the primary use of a site in the context of matters of discretion for non-industrial activities (16.5.2.1).

3.5 Given the broad application of the term 'ancillary', the definition needs to be flexible and, as conveyed earlier, use of the term 'necessary support' (to a principal activity) would not be appropriate in my opinion.

3.6 Of note is that the term 'ancillary' is used in proposals rather than 'ancillary activity'. The definition should therefore be 'Ancillary'. I therefore suggest the following amendments to the proposed definition (amendments in red indicate the changes now proposed):

Ancillary activity

*Any activity that is incidental to, and a part of, the **lawfully established primary principal activities and/or businesses permitted or consented and on the same site as the principal activities.** and*

~~is located on the same site as the primary activity.~~

[A principal activity for the purpose of this definition is the dominant activity on the site in terms of the proportion of the site and/or the quantum of floorspace used for that activity.]

Any ancillary office activity shall also provide necessary support to the functioning of the principal activities on the site.

Any ancillary retail activity shall also be limited to the display and sale of goods produced, processed or stored on the site.

4. HEAVY INDUSTRIAL ACTIVITY

- 4.1 Ms Dawson⁶ asked whether the understanding of Heavy Industrial activity would be limited to the activities listed in the definition and, related to this, Sir John Hansen⁷ asked whether a 'catch all' was appropriate, having regard to the potential that other activities not listed are heavy industrial activities. As conveyed in my answers to the Panel, there are a number of options.
- 4.2 The first option is to have a general description of the activity. An example of such an approach is a definition of "Light Industry" (being the inverse of heavy industry) in the Hamilton City Council's proposed District Plan.⁸ As stated in my answers to the Panel, the risk of this approach is that it lacks certainty of what is captured and not. The benefit it provides is a broader application than a list of activities.
- 4.3 The second option is a list of activities as proposed, the risk being that it does not identify all 'Heavy Industry'. The benefit is that it is clear what is included and excluded. An example of such an approach is the Invercargill District Plan which includes a reasonably comprehensive schedule of all activities that comprise 'Heavy Industry'.⁹
- 4.4 The third option, which addresses the risk identified in the preceding paragraph, is a list with a 'catch all' statement. There are no examples I have identified in the context of a definition of 'Heavy Industrial activity' or a similar term. The risk of a 'catch all' is that it has unintended consequences.

⁶ Transcript, pages 58 – 60.

⁷ Transcript, page 63.

⁸ Means manufacturing, warehouse, bulk storage, service and repair activities which do not involve the use of heavy machinery, are carried out indoors and are unlikely to give rise to significant adverse effects beyond the site and are generally of a small scale. They include printing works, furniture manufacture, car repairs, light engineering, tradesmen's depots and the like. <http://www.hamilton.govt.nz/our-council/council-publications/districtplans/proposeddistrictplan/appendix1/Pages/1.1-Definitions-and-Terms.aspx>

⁹ Appendix IX of <http://icc.govt.nz/wp-content/uploads/2014/10/Section-5.pdf>

- 4.5** Key elements in a 'catch all' could include:
- (a) activities that require resource consent for discharge of contaminants to land, water and/or air;¹⁰
 - (b) activities that generate significant or greater effects than light industry; or
 - (c) activities that use heavy machinery/equipment (taking the example of Hamilton City) or that store larger quantities hazardous materials/goods.
- 4.6** Clauses (b) and (c) are, in my opinion, difficult to define and therefore lack certainty. Clause (a) provides greater certainty as to the activities included. However, clause (a) is potentially too broad in the sense that it captures more activities than are appropriate. Through discussions with the Crown, I have concluded that including such a 'catch-all' could have unintended consequences. For example, activities discharging contaminants to land may be relatively innocuous and the Council at this time cannot provide assurance to the Panel that all industrial activities requiring consent for the discharge of contaminants will be 'heavy'.
- 4.7** With regard to clause (a), it may be argued that activities requiring consent from the Regional Council should not be subject to a second layer of control (by being defined as 'Heavy Industrial activity' and therefore subject to land use consent as a discretionary activity in the Industrial General Zone).
- 4.8** Reflecting this concern, an alternative is to rely on regional plan rules and other rules in the District Plan (controls on hazardous substances, noise, lighting/glare, transport) to manage the effects of the activity rather than attempting to define the activity of heavy industry in a comprehensive way (without unintended consequences). However, in my opinion, this does not support an integrated approach between Regional and District Council in appropriately managing the location of activities and their effects.

¹⁰ An example of wording could include: "Any other industrial activity that requires consent for the discharge of contaminants to air, land and/or water."

4.9 As stated in paragraph 36.12 of my Evidence in Chief for the Commercial and Industrial Proposals:

"While it is acknowledged that ECan's function is to manage discharges to air, land and water, the location of activities can be managed [by the District Plan] to avoid inappropriate development in sensitive environments."

4.10 Having considered the different approaches, I recommend a 'catch all' statement on the basis that it is clear and avoids a significant list while reducing the risk of activities being provided for that have potentially significant effects on an adjoining environment. However, there are issues with the different examples given of 'catch all' statements and further consideration will be given to this with a view to providing an appropriate 'catch all' in closing legal submissions.

5. KEY PEDESTRIAN FRONTAGES

5.1 In questions from Ms Dawson¹¹ it was suggested that the definition should state that the key pedestrian frontages are identified on the planning maps. I agree that it is appropriate. As conveyed in response to questions from Ms Dawson, I do not consider the entirety of the definition to be necessary as key pedestrian frontages are a method for defining where the retention of a 'main street' character is sought. I therefore propose amendments to the definition as follows (amendments in red indicate changes now proposed):

Key Pedestrian Frontage

means street frontages within the Commercial Core commercial zZones ~~where there is an intensity of development and movement of people, and the need for a strong active and visual interface between the public environment and private space.~~ defined on the planning maps.

5.2 The reference to the key pedestrian frontages being defined on the planning maps reflects what was sought in the Crown's submission and what the Crown agrees with.

¹¹ Transcript, page 57.

6. REVERSE SENSITIVITY

- 6.1 Judge Hassan¹² asked whether it was intended that the definition is limited to 'sensitive activities' as defined or whether reverse sensitivity can arise from other activities in a heavy industrial environment. Sensitive activities are defined such that activities that may give rise to complaints about existing activities may not necessarily be within the definition of 'sensitive activities'. I therefore propose further amendments in red below to indicate changes from the version presented as Exhibit 2 at the hearing (black text in bold are amendments as presented in Exhibit 2).
- 6.2 An alternative is that the definition of 'reverse sensitivity' be deleted, and instead reliance be placed on case law, the risk being that a different definition as proposed by Council may result in unintended consequences. I note that no party has sought to delete the definition of 'reverse sensitivity'.
- 6.3 The proposed definition is intended to convey an understanding of what 'reverse sensitivity' is for the reader who is not familiar with case law or the District Plan generally. Feedback from Radio NZ has indicated that a simplified definition would be a "clear, appropriate formulation".
- 6.4 I propose the following amendments to the definition of "reverse sensitivity" (amendments in red indicate changes now proposed):

Reverse sensitivity

*means the effect on existing **lawful** activities from the introduction **of new activities** or **the intensification of existing sensitive** ~~new~~ activities ~~into~~**in** the same environment, ~~where the new activities may raise concerns or complaints regarding the effects of existing activities which could lead to~~ **and may take the form of** restrictions ~~being placed on the existing **lawful** activities~~ **as a consequence of complaints.***

¹² Transcript, pages 62 – 63.

7. BUILDING SUPPLIER

- 7.1** Mr Thomson was asked by Ms Dawson¹³ about the addition of a clause to "Building supplier" that refers to any other goods allowed by any other definition under "Trade supplier". This addition was proposed on pages 16 and 17 of Attachment E to my Evidence in chief for the Commercial and Industrial Proposals, on the basis that a building supplier such as Bunnings sells other goods beyond those listed and within the scope of other activities defined as 'Trade suppliers'.
- 7.2** Following review and discussions with a planner acting for Bunnings, whose submission sought the amendment, I do not consider that there is a need to amend the definition.
- 7.3** The operative definition of 'Building supplier' in the City Plan has the same clause as proposed and there has not been any issue of activities giving rise to adverse effects that are not anticipated by the plan.
- 7.4** While the proposed clause broadens the extent of what is included in the definition of Building supplier, it reflects the wide nature of goods sold by a Building supplier such as Bunnings. Notwithstanding this, the definition of 'Building supplier' is framed by the opening statement that it sells goods for the purpose of "construction, modification, cladding, fixed decoration or the outfitting of buildings".
- 7.5** I should add that the term "Building supplier" is not used in the Commercial or Industrial Proposals, and I am not aware of other chapters that use the term. The definition is effectively to assist in interpretation of the definition of "Trade supplier".
- 7.6** In my opinion, there are no implications of broadening the definition to include other activities within the scope of 'Building supplier' and no further amendments are therefore proposed following the hearing on the Definitions Proposal.

¹³ Transcript, page 80.

8. GYMNASIUM

- 8.1 Judge Hassan asked Mr Thomson¹⁴ whether the inclusion in the definition of 'Gymnasium' of apparel sales and other things enables restrictions on those activities, such as by a condition of resource consent. This is a similar issue to the one question raised regarding the definition of "Guest Accommodation". In the context of the definition of Gymnasium, the additional activities including apparel sales are framed by “ancillary facilities such as”, the definition of “ancillary” therefore having relevance. To retain an ancillary scale, a condition of consent could be introduced prescribing the maximum floor area.
- 8.2 On this basis a change to the definition of 'gymnasium' is not considered necessary.

9. OUTDOOR STORAGE AREA

- 9.1 Judge Hassan asked Mr Thomson¹⁵ whether the reference to 'storing' in the definition would include parking of vehicles or a car sales yards. It was suggested that the definition is checked for its purpose within the rules to avoid unintended consequences.
- 9.2 The term "Outdoor storage area" is used in the following Stage 1 proposals:
- (a) Temporary activities (Proposal 6, Decision 2):
 - (i) Standards on the location and screening of outdoor storage areas (Rule 6.4.2.2.1 P2, P3, P5).
 - (b) Repair and rebuild of multi-unit residential complexes (Proposal 8, Decision 3):
 - (i) Matters of discretion in respect of compliance with an ODP refer to the provision of outdoor storage areas in the layout of development (8.3.9.3).

¹⁴ Transcript, page 90.

¹⁵ Transcript, page 103.

- (c) Residential proposal:
 - (i) Limit on Outdoor Storage area associated with a Home occupation (Rules 14.2.2.1, 14.4.2.1, 14.6.2.1).

- (d) Commercial proposal:
 - (i) Standards on the location and/or screening of outdoor storage areas (Rules 15.2.3.7, 15.3.3.5, 15.4.3.6, 15.5.3.5, 15.6.3.5, 15.7.3.5).

- (e) Industrial proposal:
 - (i) Standards on the location and/or screening of outdoor storage areas (Rules 16.2.3.5, 16.3.3.5, 16.4.3.6).

- (f) Temporary activities (Proposals 6A - 6C):
 - (i) Standards on the location and screening of outdoor storage areas (Rule 6.4.3.2.1 P2, P3, P5, P9, P10; Rule 13.13.1.1.2.1 P2, P3, P4).

9.3 In the context of the Commercial proposal, rule 15.2.3.7, for example, states that any storage of vehicles, equipment, machinery and/or natural or processed products for less than 12 weeks in any year is exempt from compliance with the rule. The exemption in question is currently in the operative City Plan definition of "Outdoor storage area" but is proposed for inclusion in rules in the Commercial proposal given it is effectively a standard.

9.4 The effect of the exemption in the rules (where used¹⁶) is that car parking areas are exempt unless it is longer term vehicle storage (more than 12 weeks) in which case it is an 'outdoor storage area'. The same applies to yard space on an industrial site. Even with such a rule, the definition as drafted could capture car sales yards and other yard-based suppliers where goods are for sale, which is not intended.

9.5 It is therefore proposed that the definition is amended to state as follows (amendments in red indicate changes now proposed):

¹⁶ It is noted in the Commercial proposal that the 'exception' clause used in rule 15.2.3.7 has been inadvertently omitted from rules 15.5.3.5, 15.6.3.5, and 15.7.3.5 and should be included. It is also noted in the Industrial proposal that the 'exception' clause needs to be a separate clause under rules 16.2.3.5 and 16.4.3.6 so it applies to the whole rule).

Outdoor storage area

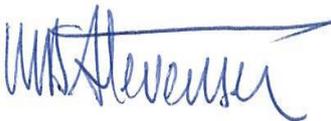
means any land used for the purpose of storing vehicles, equipment, machinery and/or natural or processed products outside of fully enclosed buildings for periods in excess of ~~12 weeks~~ a specified period in any year. It excludes yard-based suppliers and vehicle parking associated with an activity.

10. SECOND HAND GOODS OUTLET

10.1 Judge Hassan asked Mr Thomson¹⁷ whether the definition of Second-hand goods outlet should refer to a "land use concept where a business is operating" to avoid the "Trademe sellers getting caught". I agree and propose the following amendment to refer to a retail activity, which is defined as "...displaying or offering goods for sale or hire to the public":

means a business retail activity primarily engaged in selling pre-used merchandise and includes:

- a. antique dealers;
- b. auctioneers;
- c. charity shops;
- d. pawnbrokers;
- e. second-hand shops; and
- f. suppliers of:
 - i. demolition goods and materials; and
 - ii. trade-in goods.



MARK DAVID STEVENSON

16 JULY 2015

¹⁷ Transcript, page 110.