

IN THE MATTER OF the Canterbury Earthquake
(Christchurch Replacement District Plan)
Order 2014

AND

IN THE MATTER OF An application by the Christchurch City
Council for directions as to the scope of
submissions on the proposed Christchurch
Replacement District Plan

Date: 8 December 2015

MINUTE

**in relation to an application by the Christchurch City Council for directions as to the
scope of submissions on the proposed Christchurch Replacement District Plan**

Background

[1] At the Pre Hearing Meetings held for the Stage 3 notified proposals on the proposed Christchurch Replacement District Plan ('pCRDP') the Christchurch City Council ('Council') made applications to the Hearings Panel to issue directions to the effect that a number of submissions (in whole or in part), set out in Schedule 1 to this Minute ('scope submissions/submitters') were out of scope, on the basis that they were not 'on' the proposals as notified.

[2] I have previously recused myself from dealing with issues relating to the Christchurch International Airport Designation and Hagley Park. The scope submissions from Mr David Lawry relating to the request for a definition for 'Airport Purposes' and the submission from Hands Off Hagley, in relation to Hagley Park, are to be addressed in a separate Minute to be issued by the Deputy Chair, Environment Judge John Hassan, on behalf of the Hearings Panel (excluding myself).

[3] At the Pre Hearing meeting we issued directions that the scope submitters be provided with an opportunity to respond in writing to the Council's applications and that the Council be provided with an opportunity to reply. We received responses from a number of the scope submitters. Schedule 1 identifies whether or not a response was received. The Council then filed a consolidated reply by way of Memorandum (Council's Reply).¹

[4] We have considered the Council's applications, the relevant submissions and the response from scope submitters and the Council's Reply.

Jurisdiction to rule a submission 'out of scope' before a hearing commences.

[5] The various pre hearing memoranda filed by the Council do not identify the jurisdiction for the Hearings Panel to make the directions sought. In the exercise of our powers under cl10, OIC the Hearings Panel may determine that the relief sought by a submission is outside of the scope of the proposal as notified. The OIC provides the Hearings Panel with a broad discretion (subject to cl 13(4), OIC) to make decisions on the notified proposals that may be beyond the scope of submissions (cl 13(2)(a) and (b)). Cl 13(4) provides that if the hearings panel considers that changes are needed to deal with matters that are, in a material way outside of the scope of the proposal as notified, and to deal with submissions on it, we must direct the Council to prepare and notify a new proposal and invite submissions on it. As part of our decision making function we will necessarily consider whether matters raised by submitters are relevant or irrelevant to our jurisdiction.

[6] The Council is asking us to make a direction, that the whole or a part of a submission is beyond scope, ahead of the hearing of that submission, we need to consider whether it is appropriate to do so.

[7] We note that we have previously issued a Minute on the scope of submissions on Stage 2 notified proposals that related to matters notified in Stage 1 that we have already heard.² In that Minute we directed that three submissions that related to Stage 1 submissions were to be disregarded in relation to Stage 2. We also considered whether those submissions could be

¹ Memorandum of Counsel in relation to possible out of scope submission for Stage 2 and 3 hearings dated 11 November 2015

² Minute directions to Christchurch City Council regarding scope of stage 3 submissions dated 23 June 2015

considered as late submissions on Stage 1, but we did not allow them on that basis because the hearings on the relevant Stage 1 Chapters had concluded.

[8] We have also received requests from the Council to rule submissions are out of scope during the course of various hearings. For example at the recently held Stage 2 Chapter 8 Subdivision hearing, Counsel for the Council, Mr Laing, submitted that we would need to determine the scope of submissions when deciding whether or not to accept or reject the relief requested by submissions.³

[9] As Chair I have the power to grant waivers of time, including the time for lodging submissions and further submissions on notified proposals.⁴ Christ's College has requested that if there are issues of scope in relation to its submission that I consider as an alternative accepting their submission as a 'late submission'. I return to this later.

[10] The Hearings Panel also has the power under cl 7, Schedule 3, OIC to make procedural directions, including the power to direct that the whole, or any part, of a submission be struck out if the panel considers that-

- (a) The whole submission, or part, is frivolous, is vexatious, or discloses no reasonable or relevant case; or
- (b) It would otherwise be an abuse of the hearing process to allow the whole submission, or the part, to be taken further.

[11] The Council has not framed its application in the nature of an application to 'strike out' the whole or any part of the scope submissions. On that basis we have not considered the Council's request as an application to 'strike out'. Even if we had such an application before us, we would exercise caution in exercising that power in the context of this plan review process. The approach taken by the Council to notify the pCRDP in stages (including dividing some chapters), has created confusion for some members of the public, which is evidenced by the number of requests we have received to consider 'late' submissions, and the number of submissions the Council says are out of scope. For reasons of procedural fairness, and the

³ Opening Legal Submissions of Christchurch City Council for Stage 2 Chapter 8 Subdivision dated 30 October 2015

⁴ C13 Schedule 2, OIC and cl5 Schedule 3, OIC

importance of the public participatory nature of this process we are of the firm view that it is not appropriate to 'strike out' the scope submissions. There would need to be clear evidence of there being 'no relevant case' or 'abuse of process' to warrant that step. We have not received any evidence from the Council to support such a conclusion.

[12] We further note that we have the power to manage the hearing process in such a way to ensure a fair hearing for all participants, including cl7(2), Schedule 3 that provides

At the hearing, the hearings panel may direct a submitter not to present –

- (a) The whole or any part of a submission, if all or part of it is irrelevant or not in dispute; or
- (b) any part of the submission does not relate to that part of the proposal being dealt with at the hearing

[13] That power is available to us 'at the hearing'. This further leads us to the conclusion that it is premature to make any determination in relation to the scope submissions, particularly where they are on Stage 2 matters that are to be heard alongside related Stage 3 matters, as is the case for many of the scope submissions.

[14] We have considered the test for when a submission is 'on' a plan change as considered by the High Court in *Palmerston North City Council v Motor Machinists Ltd*⁵ as being "two limbed", it must:

- (a) Fall within the ambit of the plan change; and
- (b) (if allowed) not deny persons directly or potentially directly affected by the additional changes an effective opportunity to respond,

[15] Mr Gardner-Hopkins on behalf of Papanui Road Limited, provided a helpful analysis of the relevant case law his memorandum⁶ and further submitted:

...the procedural fairness consideration discussed in these cases are most informative. In light of those principles, PRL considers that an overly legalistic or unduly narrow approach to site specific submissions (such as that made by PRL) should be avoided.

⁵ *Palmerston North CC v Motor Machinists Ltd* [2013] NZHC 1290 at [91]

⁶ Memorandum of Counsel Addressing the Scope of Papanui Road's Submission on Central City Stage 3 zoning dated 4 November 2015 paragraphs 2.1-2.9

[16] We agree, particularly in light of the fragmented approach the Council has adopted with regard to the staging of notification of the pCRDP. The fact that the Council has made numerous applications for orders to ‘defer’ parts of proposals and individual submission points to be heard alongside other relevant proposals, and is continuing to make such applications, is telling. Except in cases where there are discrete provisions within a proposal, or where an entire proposal(s), has already been heard and/or decided, we decline to make the directions requested by the Council. We will hear and consider the submissions in the usual manner and address any issues of scope or relevancy should they arise at the relevant hearing.

Christ’s College (2019) request to be considered as a late submission.

[17] On the basis that the submitter has requested that we consider their submission point as a late submission, we have considered the request and the submissions filed in support.⁷ Pursuant to clause 3 of Schedule 2, OIC and clause 5 of Schedule 3, OIC I grant the relief requested and direct the Council to notify the submission in accordance with the OIC.

G T Developments Limited (3646)

[18] Most of the provisions for the Rural proposal were notified in Stage 2 and have now been heard. G T Developments did not make a submission on the Stage 2 Rural proposal, but raised general issues in relation to the more limited proposal notified in Stage 3. GT Developments Limited have conceded that their submission should be confined to the provisions notified in Stage 3.⁸ We so direct.

[19] In all other cases, the submissions in Schedule 1 remain live and we will consider them at the relevant hearing.



The Honourable Sir John Hansen
Chair

⁷ Memorandum of Counsel for Christ’s College (2019) dated 30 October 2015

⁸ Memorandum in response to directions of the Chair on behalf of GT Developments (2011) Ltd relating to the scope of Stage 3 Chapter 17 Rural dated 6 November 2015.

Schedule 1

Chapter	Submitter	Submitter #	Submitter Response
Ch 6 General Rules (St 2&3)	Christ's College	2019	Memorandum of Counsel dated 30 October 2015
	Riccarton Bush Trust Board	3266	Memorandum of Counsel (undated)
Ch 8 Subdivision	Barrington Issues Group	3005.2	Email dated 2 November 2015
	Orion New Zealand Limited	3720.16	Memorandum of Counsel 6 November 2015
Ch 9 Natural and Cultural Heritage	Ann and Sydney Kennedy	3318.1-3 (Part)	Letter dated 6 November 2015
Ch 11 Utilities & Energy	Rockgas Limited	3620.11	Memorandum dated 2 November 2015
		3620.12	Memorandum dated 2 November 2015
Ch 13 Central City	Papanui Road Limited	3685.4	Memorandum of Counsel dated 4 November 2015
	Christ's College	2019	Memorandum of Counsel dated 30 October 2015
Ch 15 Commercial (Richmond Working Men's Club)	Papanui Road Limited	3685.4	Memorandum of Counsel dated 4 November 2015
Ch 17 Rural	GT Developments (2011) Ltd	3646	Memorandum from Planning Consultant dated 6 November 2015
	EJ and SJ Stevens, and JCB and AJ Stevens	3274 and 3599	Memorandum from Planning Consultant dated 6 November 2015
Ch 5 Natural Hazards	List of submitters are set out in the Schedule attached to the Panel's minute of 29 October 2015		No response
Ch 6 General Rules	Burton	2004	No response
	Hooker	2034	No response
	Paul Davis	3059	No response
Ch 8 Subdivision	Kathleen Naomi Clinton	3039.3	No response
Ch 11 Utilities & Energy	Dave Bain for SCIRT	3001.1	No response

Ch 15 Commercial (Richmond Working Men's Club)	Lyttelton Mt Herbert Community Board	3716.19	No response
Ch 17 Rural	Cashmere Park Trust and Cashmere Fields	3306 and 3594	No response
	Jill Rice	3584	No response
Ch 18 Open Space	Natalie Paula Edward	2178	No response