

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

AND

IN THE MATTER OF an application by Christchurch City Council
for directions that submissions by David
Lawry and Hands off Hagley are out of scope
of proposals notified in Stage 2 and 3

Date: 15 December 2015

MINUTE

In relation to scope of submissions by David Lawry and Hands Off Hagley

[1] The Chair of the Hearings Panel has issued a Minute in relation to the scope of submissions in response to an application by Christchurch City Council ('Council') to determine whether a number of submissions are 'out of scope' of proposals notified in Stage 2 and 3.¹ The Council's application included submissions from Mr David Lawry and Hands off Hagley. The Chair had previously recused himself from considering those submissions. This Minute addresses those two submissions.

David Lawry (2514)

[2] At the Pre Hearing Meeting for Stage 2 and 3 Definitions held on 29 October 2015, the Christchurch City Council ('Council') requested directions from the Hearings Panel that the submission filed by Mr Lawry on Stage 2 of the Definitions proposal was 'out of scope'. The Council noted at paragraph 15 of its Pre Hearing Memorandum² that:

¹ 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 dated 8 December 2015.

² Memorandum of Counsel for Christchurch City Council filed in advance of the pre hearing meeting for definitions Stage 2 and 3 combined dated 21 October 2015.

A definition for "*Airport purposes*" has been sought by David Lawry (#2514.15) in the context of Christchurch International Airport Limited's designation which was heard as part of Stage 1. On 29 September 2015 the Hearings Panel advised by a Minute that it considers Mr Lawry's submission on the Christchurch International Airport Designation to be out of time. The Council therefore considers that there is no scope to consider the inclusion of this definition, and seeks a direction from the Panel confirming this position.

[3] At the pre hearing meeting, I raised with Mr Lawry the need for him to consider on what basis it was open to the Hearings Panel to consider the inclusion of a definition that had no corresponding provisions that were notified in Stage 2. The transcript records the discussion³:

JUDGE HASSAN: Mr Lawry, one of the things that you may want to think about is in terms of the fact that a definition has to have a purpose within a plan. Now, so where there may be cases which refer to say the concept of airport purposes somewhere in Auckland, for instance, they will relate to the thing that they were dealing with and I suspect in that case a designation so what is your position on the purpose of this definition? Have you thought about that?

MR LAWRY: Have you received my submission on this matter, sir?

JUDGE HASSAN: Yes.

MR LAWRY: So my debate would be that I signalled very early that this definition had to be sorted out before the other hearings. It was in my view the scheduling is the process here the problem. I can't quite see how we have managed to progress on the designation issues when there is a definition that has not been addressed and it was actually raised in my very first submission in October specifically saying "This definition needs to be confirmed prior to any further designations being addressed". So just my view would be - - -

JUDGE HASSAN: No, you haven't quite understood me, I am sorry if I may - - -

MR LAWRY: Sorry, if I am - - -

JUDGE HASSAN: Just a little bit there - so the determination was made in regards to scope on the matter of the submission you sought to make on the designation and that has been made.

MR LAWRY: Yes, and I accept that, yes.

JUDGE HASSAN: And the definition may or may not have a place within a designation in a plan, for instance there might be in some cases definitions of terms in designations, but you do have a live submission on the designation issue. So it comes back to my question, given that you do not have a live submission on the designation issue, in other words the designation, its substance, its content, what it will provide for and what it will not are all matters that we determine in the absence of your submission. So bearing that in mind, is there a purpose other than the designation that this definition relates to?

³ Pre Hearing Meeting Transcript Stage 2 and 3 Definitions 29 October 2015 at pages 2-4

MR LAWRY: Other activities in (INDISTINCT 0.46) so you have got designation issues and (INDISTINCT 0.56) which the issue is there is no definition and the point I pointed out is that - - -

JUDGE HASSAN: But the definition has to relate to a provision in the plan, does it not?

MR LAWRY: Maybe I should put it this way, is it accepted the scheduling has disadvantaged me in that debate?

JUDGE HASSAN: A definition by itself you see is not a plan provision, a definition may relate to a plan provision but you do not have a submission in regard to any plan provision do you, just a question about a definition, which at the moment seems like an orphan definition that doesn't relate to any plan provision.

MR LAWRY: There is no more I can add, you make your decision, sir.

[4] I then issued directions for Mr Lawry to respond to the Council's application in writing⁴. Mr Lawry filed a document in response ('scope document').⁵

[5] Under the heading of "I make the following submission" on the first page of Mr Lawry's scope document, he records the following:

In my initial submission to the Hearings panel dated 13 October 2014 at pages 11-14, I made a specific request that the matter of defining "Airport Purposes" be dealt with before any further designation matters were made.

[6] Mr Lawry then asks a series of questions of the Hearings Panel about the timeliness of that request, the consideration of definitions and scheduling of matters.

[7] We note that at the Pre Hearing Meeting and in his scope document, Mr Lawry refers to his 'submission' dated **13 October 2014** as the basis of his concern. This 'submission' has already been addressed in the Hearing Panel's Record of Decision regarding a request to consider a late submission dated 2 July 2015⁶ where the document lodged by Mr Lawry dated 13 October 2014 and earlier email correspondence during March 2014 in relation to that matter were considered ('Record of Decision'). We remind Mr Lawry that at paragraph [5] it was recorded by the Acting Chair, Ms Dawson:

⁴ Minute dated 30 October 2015

⁵ Undated 'paper' Stages 2 and 3 Definitions, specifically 'Airport Purposes' delivered by email on Wednesday 4 November 2015 at 9.30am. The email also attached a further document, headed 'Airport Designation Issue Dakota Park', undated.

⁶ We also issued a further minute with a minor correction to the dates in paragraph [32] (i) of the 2 July Record of Decision to refer to 2014.

There is no dispute that the document, although dated 13 October 2014, was not lodged with the Council as required under the Canterbury Earthquake Replacement District Plan Order 2014 ('the Order') until 14 June 2015.

[8] Ms Dawson considered the 13 October 2014 document (and the earlier March 2014 correspondence) as a submission made out of time and rejected the request to waive the time frames and receive it as a 'late submission' for the reasons outlined in the Record of Decision. On that basis, it has already been determined that the document dated 13 October 2014 is not a valid submission and we need not consider this further.

[9] We record that Mr Lawry accepted that position, as noted in our Minute dated 29 September 2015 and also at the Pre Hearing Meeting on Stage 2 and 3 Definitions.⁷

[10] In his scope document, Mr Lawry has questioned whether the position he now finds himself is due to errors on the part of the 'hearings panel staff' in scheduling the hearings. We find that the suggestion that his predicament can be attributed to the Independent Secretariat is unfair and unfounded. Insofar as Stage 1 matters are concerned, it is entirely Mr Lawry's responsibility to ensure he lodges a submission within the statutory timeframes required. In any case, as noted, we have already made our relevant determination on that matter.

[11] I will now consider the scope of Mr Lawry's submission lodged in response to the Stage 2 notified proposals.

[12] In his Stage 2 submission Mr Lawry essentially repeats the requests he made in the document dated 13 October 2014. He is requesting, in Stage 2 that the Hearings Panel include a definition for 'Airport Purposes' in Chapter 2. As signalled at the pre hearing meeting Mr Lawry has a difficulty in that there are no provisions notified in Stage 2 (or Stage 3) that required a definition of 'Airport Purposes'.

[13] We granted leave for the Christchurch International Airport Limited ('CIAL') to file a reply to Mr Lawry's scope document. CIAL filed a memorandum in support of the Council's application for directions. CIAL submitted that it would be prejudiced if we were to allow Mr Lawry's submission on Stage 2 to be considered, relying on the same grounds raised in

⁷Minute in relation to correspondence from Mr D Lawry relating to Stage 2 Chapter 10 Designations and Transcript Stage 2 and 3 Definitions at page 2-4

response to Mr Lawry's request in relation to Stage 1⁸. CIAL notes further that the Designation decision was not appealed and it is entitled to rely on the certainty created by the completion of that process.⁹

[14] We accept CIAL's submission that the Designation decision was not appealed and CIAL is entitled to rely upon the Designation once included in the CRDP. Nor can we revisit that Designation or the Panel's related decision. Unlike the Panel's other decisions on CRDP provisions, we have no powers under the Order in Council to revisit a designation decision once the Panel has issued a decision and it is notified.

[15] The Council did not support its application for a scope ruling with case authority. The test for when a submission is 'on' the plan change has been considered by the High Court in *Palmerston North City Council v Motor Machinists Ltd*¹⁰ as being "two limbed", i.e. 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.

[16] I find that authority assists in determining the question of scope.

[17] As to the first limb, I consider it would be premature and inappropriate to make any determination at this time on whether or not the inclusion of a definition of Airport Purposes would be within the ambit of the notified proposal.

[18] I reiterate that the Panel is not in a position to revisit the Designation or its related decision. That means, for example, that the Panel is not in a position to seek to include a definition of Airport Purposes in the Designation. The transcript extract invites Mr Lawry to consider whether an orphan definition, without any attendant CRDP provisions, would serve any relevant Resource Management Act 1991 purpose. However, it is a matter for Mr Lawry how he would run his case on that.

⁸ Memorandum of Counsel for CIAL in response to Sarah Dawson's email of 24 June 2015.

⁹ Memorandum on behalf of CIAL dated 11 November 2015 at para 9.

¹⁰ *Palmerston North CC v Motor Machinists Ltd* [2013] NZHC 1290 at [91]

[19] In the circumstances, I am not satisfied that Mr Lawry's Stage 2 submission seeking a definition of Airport Purposes would fail the first limb.

[20] In relation to the second limb, CIAL is most directly affected by the consideration of a definition of 'Airport Purposes'. CIAL is on ample notice of this requested relief and, bearing in mind that the Stage 2 and 3 Definitions hearing is not scheduled until 22 March 2015, I find it would not be denied effective opportunity to respond. As such, I find that the second limb would not be offended.

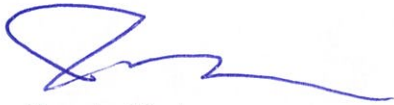
[21] For those reasons, I decline the Council's request for a ruling that Mr Lawry's pursuit of the inclusion of this definition in the CRDP is beyond scope.

Hands off Hagley (2302)

[22] Hands off Hagley is a group of citizens who are concerned about the use of Hagley Park. It lodged submissions on the Stage 2 chapter 18 Open Space proposal, notwithstanding that the Council intended Hagley Park to be addressed in proposals relating to the Central City to be notified in Stage 3. It appears that Hands off Hagley lodged its submission on Stage 2 out of caution, not knowing what would come in Stage 3. When Stage 3 proposals were notified, Hands Off Hagley did not submit on the provisions relating to Hagley Park in Chapter 13 Central City.

[23] As it happens, the matters relating Hagley Park Open Space are now to be addressed in the Central City hearing.

[24] The Council has indicated it will abide by the decision of the hearings panel. For the reasons outlined in the Minute issued in relation the other scope submissions, we have elected not to determine issues of scope at this stage of the process and will hear from Hands off Hagley and the Council at the Stage 3 hearing for Chapter 13 Central City, including provisions relating to Hagley Park.



Deputy Chair
Environment Judge John Hassan
For and on behalf of the Panel Chair