

**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 Christchurch Replacement District Plan: Proposal 21
(Specific Purpose (Tertiary Education) Zone)

LEGAL SUBMISSIONS FOR THE UNIVERSITY OF CANTERBURY

(submitter number 2464)

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May it please the Panel:

INTRODUCTION

- 1 These legal submissions are made on behalf of the University of Canterbury (**UC**) in relation to Proposal 21 of the proposed Christchurch Replacement District Plan (**pCRDP**), being the Specific Purpose (Tertiary Education) Zone (**SPTE Zone**). These submissions will cover the following points:
 - 1.1 Overall endorsement of the SPTE zone;
 - 1.2 the definition of 'site'; and
 - 1.3 issues of scope in relation to urban design and rules relating to building modulation.

THE SPTE ZONE AS IT APPLIES TO UC

- 2 UC fully endorse the creation of a separate zone which is "tailor-made" to a tertiary education facility. This stems primarily from two factors, being:
 - 2.1 The strategic location of UC in the heart of a residential zone; and
 - 2.2 The particularly varied functions of a university, mixing academic learning, a strong on-site residential component; research and private partnerships – in order to bring a range of students and staff to the city.
- 3 In the context of its post 2011 environment Central Government has provided specific funding, to allow UC to re-establish itself in a post-quake environment – and the core of that funding is to undertake capital works promptly in order that the "business" of the university and its contribution to the City can be restored – and expanded upon.
- 4 Accordingly from a functional perspective, UC's position through this planning process has been to:
 - 4.1 Ensure that the plan's rules are drawn in a manner that is sufficiently broad to enable the overall university to re-establish and flourish; and

- 4.2 Eliminate any unnecessary rules, which have the potential to undermine the Government's objectives for the UC site; and
 - 4.3 To provide certainty to neighbours of UC, that boundary setbacks, and rules are defined, to ensure that the overall amenity of the university setting is enhanced – and that the university's neighbours will continue to enjoy the overall setting and amenity that UC provides to the city.
- 5 In this regard UC, in the words of Dr Cochrane, is be a community in its own right within the SPTE zone, as well as contributing significantly to the broader community of Christchurch.
- 6 With that overall position UC has worked through the mediation process to narrow down the issues, to a relatively confined list of remaining issues that principally concern;
- 6.1 Traffic and parking - arising from the definition of "site"
 - 6.2 Zone boundary interface and urban design; and
 - 6.3 Planning matters.
- 7 UC's position has been to ensure that the plan is consistent with UC's mode of operation, and that any provisions applying to UC are consistent with city wide interpretations.

THE DEFINITION OF 'SITE'

Overview of the issue

- 8 In the course of the evidence, reference may be made to Dovedale, Ilam Fields and Ilam which make up the overall UC area zoned SPTE and known for the purposes of this submission as "The Ilam Campus"..
- 9 The evidence is that from an administrative perspective, there is only one site. Lectures, exams, study facilities, research and the various faculties use the overall site.
- 10 Stage 2 of the pCRDP embraces that concept by defining 'site' for SPTE Zone purposes. It considers that all land used by a tertiary education and

research provider shall be considered as one site, with the exception of built form standards and general city-wide standards.

- 11 Parking standards are contained in the general city-wide standards. The exception to the one site definition means that for parking “something other” than the one site SPTE definition must be considered..
- 12 UC and the Christchurch Polytechnic Institute of Technology (**CPIT**) made submissions seeking to remove the exception for general city-wide standards, so that those standards can apply across their respective campuses, treating UC and CPIT as respectively one site. This has been opposed by the Christchurch City Council (**CCC**) on the basis of its implications for car parking at UC, which are outlined below .

Car parking and its relationship with the definition of ‘site’

- 13 The car parking requirements in Chapter 7 of the pCRDP (which are operative) for the SPTE Zone recognise UC as one site. This means that the number of car parks which are required at UC are proportionate across the entire campus, and based on student numbers.
- 14 Under the notified definition of ‘site’, if UC was not to be treated as a single site for the city-wide standards (which include car parking standards), UC would be treated as three sites, and as a result car parking would be required on each of those, based on a proportionate number of students to that “sub-site”. This has significant problems however, as UC does not operate as several sites, and so determining student numbers separately across its campus is both problematic and completely unrealistic from an administrative perspective.
- 15 In the context over an overall campus, does one attribute carparking to the first lecture theatre of the day; to the last lecture; or where the closest coffee cart is? The dynamics of university funding, require that the use of lecture theatres, study facilities, research facilities are maximised – irrespective of their placement on campus.
- 16 Given the conflict between the car parking requirements for UC in Chapter 7, and the conflict which has arisen in the notified definition of ‘site’, UC has submitted that they be treated as one site for the city-wide standards.

Reasons why the notified definition is problematic and unrealistic

- 17 The reasons why the notified definition of 'site' is problematic and unrealistic for UC has been set out in the evidence of Penelope Lemon and Michael Oliver for UC, as well as by Dr Rod Carr where he outlined how UC operates as a single campus, despite being spread out. These submissions adopt the evidence of Ms Lemon, Mr Oliver, and Dr Carr as showing sufficient grounds why the notified definition of 'site' is problematic and unrealistic.

Reasons why UC's proposed amendment should be allowed

Consistency in the pCRDP

- 18 Allowing UC's amendment would allow for consistency in the PCRDP in a many number of ways, as set out below.

- 19 Chapter 7, which is operative, treats UC as one site for car parking situations. The notified definition of 'site' clearly conflicts with an operative part of the new Plan, and thus it should be amended to be aligned with those decisions already reached by the Hearings Panel.

- 20 Policy 7.1.1.4, which is operative, sets out the policy relating to car parking and loading in the Transport Chapter. The policy states:

(a) Require car parking and loading spaces which provide for the expected needs of an activity in a way that minimises adverse effects.

(b) Enable a reduction in the number of car parking spaces required in circumstances where it can be demonstrated that:

(i) the function of the surrounding transport network and amenity of the surrounding environment will not be adversely affected; and/or

(ii) there is good accessibility by active and public transport and the activity is designed to encourage public and active transport use; and/or

(iii) the extent of the reduction is appropriate to the characteristics of the activity and its location; and/or

(iv) the extent of the reduction will maintain onsite parking to meet anticipated demand.

- 20.1 Following the evidence presented on behalf of UC by Dr Carr, Ms Lemon, and Mr Oliver, is it clear that UC's amendment would be consistent with Policy 7.1.1.4, despite leading to a reduction in car parking numbers, because:

20.1.1 it would avoid adverse effects, such as the loss of open space and unnecessary development and costs on UC;

20.1.2 there are already significant transport facilities available to students, such as public transport, and the availability of bike stands etc; and

20.1.3 the reduction would be appropriate given UC's spread-out nature and characteristics, as detailed in expert evidence.

21 Similarly, Policy 7.3.1.1 sets out the assessment criteria for a local authority to take into account where car parking is sought to be provided (restricted discretionary activity), on a separate site (which, if the Council's submission is approved, would be what UC would require to seek consent for). While this is analogous, for the reasons set out in the paragraph above, it is clear that UC's amendment would be consistent with these matters of assessment. The assessment criteria are:

1. Whether the equivalent number of parking spaces can be provided on a separate site which:

- a. is sited within safe and easy walking distance of the activity; and*
- b. does not require people to cross arterial roads to gain access to the activity, thereby compromising the safety of pedestrians and the function of the road, unless there are safe crossing facilities; and/or*
- c. is clearly associated with the activity through signage or other means; and/or*
- d. whether a legal agreement has been entered into, bonding the parking to the activity; and/or*
- e. is surrounded by appropriate land use activities with which the car parking is compatible.*

21.1 Providing car parking across the entire UC campus would meet the assessment criteria above, if UC was forced to seek consent to do so. However, there is no need for UC to have to go through this process when it is clearly not necessary. The car parking that UC provides is all within safe and easy walking distance of the campus, any road crossings can be done at safe crossing facilities, the car parking is all associated with UC and owned by UC, and is all connected with the part of the campus it is located at in an appropriate manner.

- 22 Policy 21.7.1.1.3 of the SPTE Zone Chapter encourages “education providers to retain as much open space as practicable on sites”. If UC’s amendment was not approved this would potentially lead to the loss of open space, given the increase in requirements for car parks that the definition of ‘site’ would suddenly require. This is because the land which UC has which would be available for car parking is only that currently being used as open space.

Discussions with Council

- 23 On 30 April 2014, the Council issued a memorandum outlining their interpretation for Cultural 4 Zone under the previous Christchurch District Plan. This was in relation to a question by RMG (on behalf of UC) as to the Council’s interpretation of ‘site’, and whether UC’s three main areas (East of Ilam Road, West of Ilam Road, and Dovedale) should be considered as one entity, or three discrete sites.

- 24 While this was in relation to accommodation being an ancillary and accessory activity, we submit that an analogous position can be drawn to car parking in our situation.

- 25 The Council’s Solicitor, Brent Pizzy, generally agreed with UC’s approach that it should be considered one site, stating that:

taking a purposive and workability approach to interpretation of the provisions in the District Plan, there is no reasonable basis, nor need, for reading a concept of “site” into the definition of “Tertiary education and research activity.

And that:

The preferable interpretation takes a more straightforward, workable approach by adopting the plain, ordinary meaning of the words used.

- 26 In treating UC as three separate sites, Mr Pizzy noted the following point:

it would require the consent authority to assess the proportion of the student’s courses that are being taught from that site rather than from the other parts of the University campus.

And that:

I consider that any of the alternative interpretations that import a “site” constraint into the location of the ancillary and accessory activities would greatly hinder the workability of the District Plan and hinder the ability to effectively and efficiently administer the Plan.

- 27 Mr Pizzy also considered the implication this definition would have in regards to the entire City Plan, stating that:

I have assessed the wider context of this definition (site) in the City Plan so as to identify whether there could be any reasonable basis for reading a “site” context into identification of the land and/or buildings for which the permitted use is being considered. There are no clear indications in the City Plan that the purpose of the provisions may have been that the relevant “site” for identification of the land/and or buildings in the definition of tertiary education and research activities are the areas occupied by each of the metropolitan education facilities, or by separate parts of those facilities.

- 28 We support and adopt the conclusions of Mr Pizzy, and believe his interpretation should be considered as analogous to the situation before us involving car parking.

SCOPE OF URBAN DESIGN ISSUES

- 29 UC made a submission on the plan relating to controls on building height at the road and site boundaries to define the point at which UC could build to maximum height – the issue was one as to whether a stepped building rule should be introduced, or whether a combination of setbacks and recession planes would provide protection of the adjacent residential amenity.
- 30 In this context, it is UC’s position that its overall plan will be to maintain a central core of buildings – but it acknowledges that rules are required for those parts of UC’s activities which are built close to a road with residential properties or to side boundaries with an adjacent zone.
- 31 However, in engaging urban designers to caucus and provide an outcome on the specific issue, the urban designers for both UC and the Council went beyond the original purpose to suggest options for further urban design controls ranging from a building modulation rule to an overall controlled activity status for buildings of a certain size on a frontage.

- 32 It is undoubted that the role of the urban designers was well-intentioned. However, in introducing urban design rules, where there were none – and none raised by submission – the issue of scope and jurisdiction have arisen.
- 33 Both Edward Jolly (on behalf of UC) and Josephine Schroder (on behalf of the Council) in their respective expert evidence noted their expert conferencing discussions on the proposal of a continuous building length provision to be included in the SPTE Zone. Despite both parties noting that such a proposal was out of scope in respect of submissions, Ms Schroder in her Rebuttal Evidence has drafted an overall urban design rule which she proposes for the pCRDP as a controlled activity rule for achieving building design.
- 34 Whilst it is accepted that Schedule 1 to the RMA is not relevant to these proceedings, the general approach to resolving issues of scope on a plan change provision is relevant.
- 35 The Court has effectively arrived at a two-pronged approach which requires any submitter to:
- 35.1 satisfy that a submission on a plan change falls within the ambit of the plan change or, in other words, be “on” a plan change; and
- 35.2 assess whether there is any risk that persons affected by any change in a submission are denied an effective opportunity to respond to those additional changes in the plan change process.

The Legal Framework

- 36 The Environment Court in *Halswater Holdings Ltd v Selwyn District Council* discussed the requirements of submissions ‘on’ plan changes, stating that “The limits on the scope of a submission on a plan change are that it must be “on” the plan change. The next step is that there has to be public notification”.¹ The Court went on to note that:²

if a person wants a remedy that goes much beyond what is suggested in the plan change so that, for example, a submission can no longer be said to be “on” the plan change then they may have to go about

¹ *Halswater Holdings Ltd v Selwyn District Council* (1999) 5 ELRNZ 205 at [39]

² At [41] – [42]

changing the plan in another way, e.g. by an individual's later request for a "private" plan change or by encouraging the Council to promote a variation of the plan change. Those procedures have the advantage that the notification process goes back to the beginning. A further consideration is that if the relief sought by a submission goes too far beyond the four corners of the plan change then the Council may not have turned its mind as to the effectiveness and efficiency" of what is sought in the submission.

It follows that a crucial question for a council to decide when there is a very wide submission suggesting something radically different from a proposed plan as notified is whether it should promote a variation so that there is time to have a section 32 analysis carried out and an opportunity for other interested persons to make primary submissions

37 The approach in *Halswater* was accepted by the High Court in *Clearwater Resort Ltd v Christchurch City Council*.³ In *Clearwater*, in determining whether a submission was 'on' a plan change, the Court's preferred approach was that:⁴

1. *A submission can only fairly be regarded as "on" a variation if it is addressed to the extent to which the variation changes the pre-existing status quo.*
2. *But if the effect of regarding a submission as "on" a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, this is a powerful consideration against any argument that the submission is truly "on" the variation.*

38 While accepting that it was common for submissions to address issues in plans in different manners than what is proposed by local authorities, the Court nevertheless held that:⁵

In a situation, however, where the proposition advanced by the submitter can be regarded as coming out of "left field", there may be little or no real scope for public participation. Where this is the situation, it is appropriate

³ *Clearwater Resort Limited v Christchurch City Council* HC Christchurch, AP34/02, 6 March 2003, William Young J at [69]

⁴ At [66]

⁵ At [69]

to be cautious before concluding that the submission (to the extent to which it proposes something completely novel) is “on” the variation.

39 From *Clearwater*, we can see that the Court takes a very cautious approach in such situations where issues of scope and submissions ‘on’ a plan change are raised.

40 Given the findings of the courts as to submissions ‘on’ plan changes, and on issues of scope, any proposal seeking to address issues of overall urban design in the SPTE Zone cannot be ‘on’ the plan change for the following reasons:

40.1 the SPTE Zone does not set specific design parameters, so any attempt to do so would be contrary to the nature and intent of the Zone itself;

40.2 both Mr Jolly and Ms Schroder accepted their proposals were out of scope, and therefore there is a limited jurisdiction for them to try and introduce new controls;

40.3 no Section 32 report/analysis has been undertaken, and as a result there is no genuine factual basis to accept such a proposal, given that the potential controls have not been fully considered as to their potential implications; and

40.4 as no notification process would result from such a proposal, this would adversely affect persons wishing to make submissions on it.

Other reasons why the submission should not be considered

The proposal is unnecessary.

41 A continuous building length provision should not be included in the SPTE Zone on the basis that such a provision would be ‘fanciful’ at best, i.e. it is a control which is unnecessary or highly unlikely to be required.

42 UC is currently undergoing extensive building works at its campus. Given the extent of its development, and its commitment to providing excellent teaching space (as set out in the evidence of Dr Carr), continuous building length provisions are highly unnecessary. This is because even if UC plans to build

a large building, they are almost certainly going to follow general building modulation in any case, due to the general nature of modern architecture.

43 UC understands Mr Jolly and Ms Schroder's proposal, and can see why it would be relevant if the situation was one where buildings, such as those from the 1960s and 1970s which are currently on UC's campus, were likely to be built today. This is not the case. The days of very large, ominous, continuous buildings are long in the past.

44 There needs to be a level of self-control and self-regulation in the pCRDP, and in the SPTE Zone, when it comes to the situation of UC undertaking its building development on their campus. There is simply no need to put in place a control to deal with every potential possibility, whether or not those possibilities are likely to eventuate or not.

45 UC is a single owner, priding itself on its green space and open campus. The older buildings on-site are from the past, and are almost certainly not ones which will be returning in any foreseeable future. As such, there should be no need to implement any provision dealing with continuous building length controls in the SPTE Zone.

Ms Schroder's proposal is unreasonable and unworkable

46 The provisions which Ms Schroder has drafted in her Rebuttal Evidence relating to overall urban design controls are not reasonable, and are not workable in practice.

47 For example buildings must be designed to "break down" the bulk and scale of the building. There is no reference point to bulk and scale. Is it the overall scale permitted on a UC site of a building of 30m in height – or is the reference point an adjacent residential setting?.

48 The controlled activity status suggested requires "active engagement with the street" whereas UC's position is to structure development around a central core. UC do not actively seek to turn all buildings to have prominence from a street frontage. They may be better angled to enable visitors to be guided to the building from the central core via walking paths and green areas.

49 The requirement for buildings to have human scale, is somewhat confusing in light of the height limits otherwise allowed at the site.

UC's overall view on these urban design rules

- 50 UC primarily wish to avoid unnecessary consenting regimes – in order to complete current and proposed developments in a timely manner.
- 51 It has provided guidance on scope.
- 52 Notwithstanding the above, it has tabled its own urban designer's evidence which supports introduction of :
- 52.1 A threshold for buildings of a certain bulk and location to be subject to urban design consenting.
- 52.2 Whilst taking that on board, UC's planner has also presented a permitted activity option on the range of rules that could be provided to provide limited building modulation as a permitted activity.
- 53 Subject to these submissions, UC confirms that if the panel determine that there is no issue with scope, it can live with proposed requirements, given the limited sites where these rules would apply in any case. But it wishes to inform the panel that it will always take architectural advice on its significant new buildings on site.

Dated 4 November 2015

Ewan Chapman
Counsel for University of Canterbury