

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

AND

IN THE MATTER OF Directions pursuant to
Schedule 3, clauses 7 and 8 of the
Canterbury Earthquake (Christchurch
Replacement District Plan) Order 2014

Date: 21 August 2015

**MINUTE
PROPOSAL 8 (SUBDIVISION, DEVELOPMENT AND EARTHWORKS) AND
PROPOSAL 14 (RESIDENTIAL)**

DEFINITION OF SITE

Definition of “Site” and Reliant Definitions

[1] Following the hearings of Proposal 14 (‘Residential’) and Proposal 8 (‘Subdivision, Development and Earthworks’), and in the course of making their evaluations of alternatives so as to comply with ss32 and 32AA of the Resource Management Act 1991, the two Hearings Panels (‘the Panels’) have identified a lack of clarity in relation to the Council’s intention with the definition of ‘Site’.

[2] The Panels note that the definition of ‘Site’ is relied on for a number of other definitions, which are material to the Panels’ evaluations of alternatives on these Proposals. Examples of reliant definitions include:

- (a) “net site area”,
- (b) “site boundary” (“boundary”, “internal boundary” and “road boundary”), and
- (c) “coverage”.

[3] The Panels also note that the definition of “Site”, and its reliant definitions, form the basis of Activity and Built Form Standards contained within these Proposals, many of which are the subject of Submissions on the Proposals, and which the Panels must evaluate as to the appropriateness of alternatives. Examples include:

[4] Proposal 8:

- “minimum allotment size”, and

[5] Proposal 14:

- “site density”,
- “site coverage”,
- “outdoor living area”,
- “daylight recession planes”,
- “building setbacks from internal boundaries”,
- “setback and distance to living area windows and balconies and windows facing internal boundaries” and
- “road boundary setback”.

[6] Set out below is the definition of “Site” attached to the Council’s Closing Legal Submissions on the Definitions Proposal (Part). This is the definition contained in notified Proposal 2, with the amendments supported by the Council (through Mr Long’s evidence) shown in underline or strike-through. The Panels’ questions of clarification (to follow) regarding this definition relate specifically to sub-clauses d. and e. which refer to land subdivided under the cross lease or company lease systems and under Unit Titles Acts.

Site¹

means an area of land or volume of space shown on a plan with defined boundaries, whether legally or otherwise defined boundaries, and includes:

a. an area of land which is:

- i. comprised in a single allotment, or other legally defined parcel of land, and held in a single certificate of title; or*

¹ This Definition of “Site” was attached to the Council’s Closing Legal Submission on the Definitions Proposal 2 (Part), with amendments supported by the Council shown in underline or strike-through.

- ii. *comprised in a single allotment or legally defined parcel of land for which a separate certificate of title could be issued without further consent of the Council; being in any case the smaller land area of (i) or (ii); or*
- b. *an area of land which comprises two or more adjoining legally defined parcels of land held together in one certificate of title in such a way that the lots cannot be dealt with separately without prior consent of the Council; or*
- c. *an area of land which is comprised of two or more adjoining certificates of title where such titles are:*
 - i. *subject to a condition imposed under Section 77 of the Building Act 2004 or;*
 - ii. *held together in such a way that they cannot be dealt with separately without the prior consent of the Council;*
- d. *in the case of land subdivided under the cross lease or company lease systems (other than strata titles), site shall mean an area of land containing:*
 - i. *a building or buildings for residential or business purposes with any accessory building(s), plus any land exclusively restricted to the users of that/those building(s); or*
 - ii. *a remaining share or shares in the fee simple creating a vacant part(s) of the whole for future cross lease or company lease purposes; and*
- e. *in the case of land subdivided under the Unit Titles Act 1972 and Unit Titles Act 2010 (other than strata titles), site shall mean an area of land containing a principal unit or proposed unit on a unit plan together with its accessory units and common area; and*
- f. *in the case of strata titles, or where one or more residential unit is proposed to be erected above another residential unit, site shall mean the underlying certificate of title of the entire land containing the strata titles, immediately prior to subdivision; and*
- g. for the purposes of the activity standards (but not the built form or general city-wide standards) in the Specific Purposes (Schools) and Specific Purposes (Tertiary Education) Zones, site means all of the land used by a particular education or tertiary education or research facility, whether or not those parcels of land are contiguous with each other.*

Site also shall include the access to the site.

[7] Having reviewed the above definition, the reliant definitions and the various Activity and Built Form Standards which are based on these definitions, the Panels are unclear as to whether

a “site”, in the case of land subdivided under cross lease or company lease systems or under a Unit Titles Act, is intended by the Council to encompass:

- i. the whole area of the land underlying the entire complex of buildings, plus all exclusively occupied and common areas (i.e. the whole area of the underlying land prior to its subsequent subdivision under the cross lease, company lease or unit title arrangements) [Interpretation i.], or
- ii. the individual area of land containing a separately occupied building(s) (together with its accessory building(s)) and any land exclusively occupied by the users of that/those building(s) (as individually defined through the cross lease, company lease or unit title subdivision) [Interpretation ii.]?

[8] The Panels’ initial understanding of the notified version of sub-clauses d. and e. above was Interpretation ii.

[9] However, that interpretation appears to be contradicted by the Council’s support for the addition of the words “and common area” for land subdivided under the Unit Title Act, which appears to add an element of Interpretation i.

[10] The Panels’ initial understanding has been further confounded by wording within Rule 14.9.1 (Residential Design Principles, e.g. 4. Residential amenity) which appears to require consideration of matters within an overall “site” (i.e. Interpretation i.) which would be the subject of Built Form Standards if Interpretation ii. is applied. Examples include provision for outlook, sunlight and daylight between residential units within the overall “site”.

[11] The Panels’ understanding has not been assisted by the wording of the relevant Activity and Built Form Standards themselves.

[12] In order to provide the Panels with a proper understanding of the Council’s intention in relation to this definition, and to assist the Panels’ consideration of alternative provisions which are reliant on this definition, the Panels seek clarification from the Council as to:

1. the area of land that the Council intends to be encompassed as a “Site” under sub-clauses d. and e. of the definition (i.e. Interpretation i. or ii., or an alternative interpretation); and
2. confirmation (or otherwise) that the wording of the definition accurately reflects the Council’s intention; and
3. confirmation (or otherwise) that the reliant definitions, and associated Activity and Built Form Standards are accurately based on the appropriate interpretation.

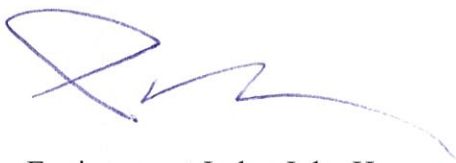
[13] The Panels emphasise the confined nature of this matter and that, in this minute, the Panels are not seeking any specific redrafting of the relevant provisions.

[14] Given its confined nature, and that it is a matter of clarification, the Panels consider it is sufficient to circulate this Minute only to the Council, with it also being posted on the Independent Hearings Panel’s website.

[15] Accordingly, it is directed as follows:

- (a) that the Council is to provide its response to the above matters of clarification by 5pm Friday, 28th August 2015.

Signed for and on behalf of the Chairperson



Environment Judge John Hassan
Deputy Chair

