

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

AND

IN THE MATTER OF an application for directions by the
Christchurch City Council relating to the
deferral of decisions on Stage 1
Chapters 15 (Commercial),
16 (Industrial) and 8 (Subdivision)

Date: 28 September 2015

MINUTE

**re an application for directions by the Christchurch City Council
re deferral of submissions relating to Appendices
to Chapters 8, 15 and 16 notified in Stage 1**

[1] The Christchurch City Council ('the Council') filed a memorandum dated 24 September 2015 regarding provisions that it erroneously left open for submission in the Notified Version of the E-Plan ('the Council's memorandum'). The error occurred because a number of Appendices notified as part of Stage 1 were not clearly notated in the online version of the proposed Christchurch Replacement Plan (referred to as the E-Plan). The Council has been using different shading effects to identify the various stages of notification, the exception being that headings are shown in bold black text, regardless of the stage when the provision was notified. This has led to confusion by some submitters as to which provisions are open or closed for submission. The Council now seeks directions from the Hearings Panel for the deferral of decisions on Stage 1 provisions affected by the error, until submissions on Stage 2 are heard. The affected provisions are as follows:

(a) **Stage 2 Subdivision**

8.6.6 — Halswell West Outline Development Plan (ODP)

(b) **Stage 2 Commercial**

15.9.4 — Commercial Core Zone (North Halswell) ODP

15.9.10 — Lyttelton master plan overlay area

(c) **Stage 2 Industrial**

16.7.2 — Industrial General Zone (Islington Park) ODP

16.7.11 — Industrial Heavy Zone (Springs Road) ODP

16.7.12 — Industrial Park Zone (Wairakei Road) ODP

16.7.13 — Industrial Park Zone (Memorial Ave) ODP

[2] The affected provisions were notified in Stage 1, and submissions were received and heard on those matters during hearings on Stage 1 Chapter 15 Commercial and Chapter 16 Industrial (part) ('the Stage 1 Commercial/Industrial hearing'), and on Stage 1 Chapter 8 Subdivision (part) hearing ('Stage 1 Subdivision hearing'). We are yet to issue our decisions on those proposals.

[3] As a result of an error in the E-Plan, some people have been led to believe that the affected provisions were also open for submission in Stage 2 and Stage 3. This has resulted in a second batch of submitters on the affected provisions that we have already heard ('Stage 2 submitters'). As yet, we do not know if the error has attracted submissions in Stage 3.

Jurisdiction to defer decisions after hearings completed.

[4] The Council's memorandum does not identify the jurisdictional basis upon which we can defer making decisions on proposals that we have already heard until we have heard another proposal. The memorandum should have addressed that.

[5] We are satisfied that we do have jurisdiction to make directions to defer decisions until after hearing later proposals in appropriate circumstances. The OIC directs that we must hold hearings on submissions on proposals that have been notified under cl 5 of Schedule 1 to the OIC, and make decisions in relation to those proposals as required by cls 12 and 14.¹ We have powers set out in the OIC for the purpose of, and incidental to, carrying out our functions. Further we must determine our own procedures except as set out in cl 3 of Schedule 2 and as

¹ OIC, cl 10(1).

otherwise stated in the OIC.² The OIC does not prescribe the timeframe for making our decisions following the hearing of a proposal, only that we must as soon as practicable, after we have made our decision under cl 12 of the OIC, serve a copy on the Council.³ Our consideration of the Council's request is guided by the principles of natural justice and the need to ensure the fair and efficient conduct of hearings. We are also mindful for the statutory time constraints imposed by the OIC.⁴

[6] We are immediately concerned that the Council's request to defer decisions on the affected provisions pending the hearing and consideration of further evidence and submissions from Stage 2 submitters has the potential to disadvantage Stage 1 submitters on the same provisions. This presents a procedural fairness issue. In order to overcome that procedural difficulty, we are of the view that we must ensure that the affected Stage 1 submitters are provided with an opportunity to be heard on matters raised by the Stage 2 submitters.

Identification of affected Stage 1 Submitters

[7] Through the Secretariat, we requested the Council to identify the affected Stage 1 submitters.⁵ We asked that the list include not only submissions coded to the affected appendices, but also to the provisions in the plan that refer to those appendices. We have reviewed that list, and we are satisfied that the Council is able to identify the affected Stage 1 submitters who will need to be notified.

Stage 3 Submitters

[8] We have considered whether or not we need to accommodate possible Stage 3 submitters in any procedural directions. We do not think the same considerations apply to any Stage 3 submitters, due to the confined nature of the Stage 3 Commercial/Industrial proposal (which relates to Richmond Working Men's Club). Our view is that the Council ought to contact any Stage 3 submitters on the affected provisions and advise them that they are out of scope, notwithstanding the error in the E-Plan.

² OIC, cl 10(2) and (3).

³ OIC, Sch 3, cl15(1)

⁴ OIC, cl 12(2).

⁵ The Council responded by email on 25 and 28 September 2015.

Direction to defer our Stage 1 decisions on affected provisions

[9] We are satisfied that it is appropriate to make the directions requested by the Council and defer our decisions on the affected provisions until we have heard from submitters who made submissions on the affected provisions in Stage 2.

Timetable for hearing

[10] In relation to the Stage 2 Commercial/Industrial hearing, we are further faced with a timing and scheduling difficulty because we are due to commence the hearing on 5 October 2015. We do not have sufficient time to give a clear 10 working days' notice of the hearing to the affected Stage 1 submitters, to enable them to be heard during the current hearing schedule for the Stage 2 Commercial/Industrial proposal. We have made enquires of the Independent Secretariat, and it appears that there may be some hearing time available on the days of 19 and 22 October 2015 where it may be possible to hear these submissions.

[11] We envisage that in order to hear Stage 1 submitters we would effectively need to conduct a hearing within the hearing on the affected provisions. Our tentative view is that the affected Stage 1 submitters will need to be given notice that there are Stage 2 submissions on the affected provisions, and that they are entitled to be heard in response to those submissions. We do not envisage a need for the Stage 1 submitters to restate their evidence or submissions, but that they should be afforded the opportunity to lodge rebuttal evidence once they have seen any relevant Stage 2 submissions and/or evidence. Stage 1 submitters should also be given an opportunity to seek leave to cross-examine on any relevant Stage 2 evidence called on the affected provisions.

Preliminary Directions

[12] Accordingly, with this in mind, we direct the Council to carefully consider issues of fairness and efficient use of hearing time and prepare a procedural timetable for our consideration by **5pm Wednesday 30 September 2015** that ensures:

- (a) affected Stage 1 submitters are given 10 working days' notice that they are able to be heard as part of the Stage 2 Commercial/Industrial hearing (noting the only dates

available to extend the Stage 2 Commercial/Industrial hearing are 19 and 22 October 2015;

- (b) that Stage 1 submitters are able to seek leave to cross examine Stage 2 evidence on the affected provisions;
- (c) Stage 1 submitters are able to lodge rebuttal evidence in reply to Stage 2 evidence on the affected provisions, provided it is within the scope of their submission;
- (d) the Stage 2 submitters are aware that there is already evidence and submissions that has been heard on the affected provisions at the Stage 1 hearings, and they are able to respond to that evidence at the Stage 2 hearing, provided it is within the scope of their submission;

[13] The Council is to draft an appropriate timetable to accommodate Stage 1 submitters on Appendix 8.6.6 at the Subdivision Stage 2 hearing and provide that to the Secretariat by **5pm** on **Friday 2 October 2015**.

[14] We further direct the Council to serve a copy of its memorandum of 24 September 2015 and this minute on both Stage 1 and Stage 2 submitters on the affected provisions who wish to be heard.

[15] The Council is to contact Stage 3 submitters and any further submitters (if any) on the affected provisions and explain its error, and advise them that their submission is out of scope **within 2 working days** of the close of further submissions on Stage 3.


The Honourable Sir John Hansen
Chair