

Mediation Report: Chapter 9.4 Trees

To: Independent Hearings Panel – Christchurch Replacement Plan

From: John Mills, Environment Commissioner – Mediator

Date: 3 March 2016

This is a record of mediation outcome held for this topic. It is prepared in accordance with Clause 10(4) of Schedule 3 to the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014.

This report covers mediation sessions on the following Chapter 9.4 Trees Proposal topics:

1. Policy changes to address safety, amenity and nuisance
2. Public Realm Tree protection
3. Definition of a 'qualified arborist' as it relates to the public realm (rules P2, P3 and P5)
4. Controlled activity for pruning and trimming trees to reduce or eliminate nuisance
5. Site specific requests
6. Subdivision Trees

A without prejudice Revised Proposal dated 3 March 2016 was tabled at the mediation and formed the basis for discussions.

Outstanding Matters

Summary of Matters the Panel will be required to determine as identified at the Mediation:

1. *Where the public realm rule should apply.*
2. *Should the Operative Plan 'Notable Trees' be scheduled under the Proposed Plan when they are located in the public realm.*
3. *The listing of the Coastal Redwood on the Sedgleys property; and potentially The listing of the elm trees, on their neighbour's property, raised by Chris and Maree Johnstone following presentation of further material with respect to their rebuild foundations; and the trees raised by Mr Stalker and Mr Harty, following a site visit.*

Session 6 - Subdivision Trees

(Informal session held prior to commencement of the formal mediation. Mediator not present.)

Attendees: Andrew Long (CCC), Alan Matheson (CCC), Caroline Rachlin (CCC), Shane Moohan (CCC), Matt Conway (Counsel for CCC), Sandra McIntyre (Crown), Vicki Barker (Crown), Claire McKeever (Eliot Sinclair), Warren Haynes (Eliot Sinclair), John Thornton (self), Michael Ostash (self), Alice Burnett (Beca/Minutes)

The discussion was undertaken at the start of the day, noting however the policy discussions under 9.4 were still to be undertaken throughout the rest of the mediation and this may influence this topic.

The Council presented possible wording for two new rules and matters of discretion dealing with removal of subdivision tree consent notices. The wording was discussed and some refinements will be made. Agreement was reached in principle about the approach. Mr Ostash agreed that very poor health and shape to be appropriate especially shape, when assessing whether or not a Consent Notice should be removed.

With respect to the proposed policy wording, agreement was reached to make amendments to wording and formatting of Policy 9.4.2.1, these changes will be reflected in a draft to be circulated to mediation participants for comment before a revised proposal is filed and then closing submissions.

Session 1 - Policy changes to address safety, amenity and nuisance

Attendees: Caroline Rachlin (CCC), Alan Matheson (CCC), Shane Moohan (CCC), Matt Conway (Counsel for CCC), Warren Haynes (Eliot Sinclair), Claire McKeever (Eliot Sinclair), Helen Lowe (Christchurch Civic Trust & others), Sandra McIntyre (Crown), Paul McMahon (Spreydon and Heathcote Community Board), Lindsay Carswell (Christchurch Civic Trust & others), John Thornton (self), Michael Ostash (self), Ainsley McLeod (Transpower), John Richards (NZTA/ Crown), Vicki Barker (CERA/ Crown), Penny Lemon (Orion), Mike Mora (Riccanton Wigram Community Board/ Riccarton Bush Trust), Alice Burnett (Beca/Minutes)

The attendees discussed the draft /without prejudice changes to the Revised Proposal dated 3 March 2016 prepared by the Council. In particular, the question of how much guidance about the tree assessment and scheduling approach should be incorporated into the policies.

Eliot Sinclair indicated that its preference would be to include more guidance into the Plan about the tree assessment methodology and assessment criteria, given its link to the subdivision tree consent notice removal issue. Eliot Sinclair was not able to stay for the remainder of the discussion recorded below.

It was agreed by the remaining participants that the method does not need to be embedded into the policies, and the key area where further guidance should be provided in the policies related to the matters that will be considered when making a judgement call about whether a particular tree should be scheduled in the plan. Wording was discussed and agreed in principle on this matter, with the wording to be refined further over the next two weeks. Key aspects discussed were consideration of safety, nuisance, and potential impacts on strategic infrastructure, electricity lines and earthquake recovery. Corresponding changes will also be considered in the matters of discretion.

The Crown and Orion expressed concern with reference to 'citywide' as it is not clear what that means.

Mr Mora wished to discuss the incorporation of Plan Change 44 into the revised proposal. This discussion was taken offline and was resolved, with no further changes being necessary to the provisions.

Session 2 - Public Realm Tree protection

Attendees: Caroline Rachlin (CCC), Alan Matheson (CCC), Shane Moohan (CCC), Matt Conway (Counsel for CCC), Helen Lowe (Christchurch Civic Trust & others), Sandra McIntyre (Crown), Paul McMahon (Spreydon and Heathcote Community Board), Lindsay Carswell (Christchurch Civic Trust & others), John Thornton (self), Michael Ostash (self), Ainsley McLeod (Transpower), John Richards (NZTA/ Crown), Vicki Barker (CERA/ Crown), Penny Lemon (Orion), Mike Mora (Riccanton Wigram Community Board/ Riccarton Bush Trust), Dean Chrystal (Fulton Hogan), Alice Burnett (Beca/Minutes)

The attendees discussed how to best protect the trees that are contained within the public realm, and noted the Panel's minute. Three options discussed were further scheduling of trees, reliance solely on scheduling or to have a blanket general rule to cover all trees in

the public realm. There was no opposition to the public realm tree protection rule per se; rather the discussion was whether reliance on such a rule is sufficient or whether there should be scheduling of individual trees in the public realm.

No agreement was reached on whether the public realm rule should apply to extended areas outside the areas to which it currently applies; the respective positions of the parties will be recorded in closings for the **panel to decide**. Agreement was reached that there is no need for the public realm rule to apply within Sites of Ecological Significance.

No agreement was reached in relation to whether the current Operative Plan trees that are in the 'Notable' category and are located in the public realm should be rolled over into the listings for the Proposed Plan. ***This is a matter for the panel.***

Session 3 - Definition of a 'qualified arborist' as it relates to the public realm (rules P2, P3 and P5)

Attendees: Caroline Rachlin (CCC), Alan Matheson (CCC), Shane Moohan (CCC), Matt Conway (Counsel for CCC), Helen Lowe (Christchurch Civic Trust & others), Sandra McIntyre (Crown), Paul McMahon (Spreydon and Heathcote Community Board), Lindsay Carswell (Christchurch Civic Trust & others), John Thornton (self), Michael Ostash (self), Ainsley McLeod (Transpower), Vicki Barker (CERA/ Crown), Penny Lemon (Orion), Mike Mora (Riccarton Wigram Community Board/ Riccarton Bush Trust), Di Lucas (Christchurch Civic Trust & others), Alice Burnett (Beca/Minutes)

All parties were in general agreement with the definition circulated by the Council, and this will be incorporated into the revised proposal with minor amendments. Ms Lowe raised the need to allow for equivalent alternate qualifications and indicated that she would provide further feedback.

Ms Lowe suggested, in relation to P6(a), having a form of peer review and/or counter signing when people are removing a significant tree, such as having an independent review. Mr Thornton noted that the arborist needs to look at the correct time span when considering the removal of a tree.

Agreement was reached on the inclusion of a rule allowing the removal of (a) dead tree(s) when an arborist certifies the tree is dead and the removal of trees where 2 arborists certify the tree has lost structural integrity to the extent that it is no longer viable. In relation to the latter, parties agreement was subject to the seeing final wording.

Agreement was made to include reference to the appropriate rules; P2, P3 and P5, within the definition of "suitably qualified arborist".

Session 4 - Controlled activity for pruning and trimming trees to reduce or eliminate nuisance

Attendees: Caroline Rachlin (CCC), Alan Matheson (CCC), Shane Moohan (CCC), Matt Conway (Counsel for CCC), Helen Lowe (Christchurch Civic Trust & others), Sandra McIntyre (Crown), Paul McMahon (Spreydon and Heathcote Community Board), Lindsay Carswell (Christchurch Civic Trust & others), John Thornton (self), Michael Ostash (self), Ainsley McLeod (Transpower), Vicki Barker (CERA/ Crown), Penny Lemon (Orion), Mike Mora (Riccarton Wigram Community Board/ Riccarton Bush Trust), Alice Burnett (Beca/Minutes)

Discussion was had around a new controlled activity for pruning, which is beyond minor pruning and to assist in addressing issues associated with nuisance. There was agreement by all participants that it would be too difficult to define 'nuisance' clearly and appropriately

and draft an associated rule, but that an allowance for pruning/trimming along the draft wording as suggested by Council (based on the removal of foliage to a specified amount in a 3 year period) could assist. Council agreed to circulate wording of this for comment to all participants at the mediation.

Session 5 - Site specific requests

Attendees: Caroline Rachlin (CCC), Alan Matheson (CCC), Shane Moohan (CCC), Matt Conway (Counsel for CCC), Helen Lowe (Christchurch Civic Trust & others), Lindsay Carswell (Christchurch Civic Trust & others), Chris and Maree Johnstone (self), Simon Harty (self), Faye and Ron Sedgley (self), John Stalker (self), Alice Burnett (Beca/Minutes)

Johnstone:

Discussion was had around the issues associated with the tree on the neighbouring property to the Johnstones such as shading, and the impediment to the rebuild of their earthquake damaged house due to the tree roots. It was agreed that the Johnstone's would send a report from the engineer working on their property outlining the concerns with the rebuild of their house in relation to the house. After receiving the report, the Council will decide on whether to recommending delisting the tree. This would need to be reported to the Panel.

A related comment was made by Council that there should be policy recognition of the impact of the earthquakes and in particular the potential impact of trees hindering re-building. This will be included in a draft to be circulated for comment as part of the action associated with Session 1.

Stalker:

Discussion was in relation to the two trees on Mr Stalker's property at Ludecke Place (which were included on the list of trees because of the mediation agreement) and the issues they are causing with stormwater and wastewater due to their location.

H Lowe requested time to view and report back on a response to this (she would request Brad Cadwallader to undertake a site visit) It was agreed that any outcomes of this will be addressed through the next procedural steps including closing submissions if needed.

Sedgley:

Discussion was had around the two trees on the Sedgleys property (Liquid Amber and Coastal Redwood). The first tree was added on to the list due to the mediated agreement, the second subject of submission and evidence due to be being included within the notified version. It was confirmed that the City Council were not opposing the Liquid Amber being removed from the schedule. It was also recognised that the liquid amber was subject to a resource consent application seeking its removal. This matter was being followed up by the Council to check the status of the resource consent application.

Mrs Sedgley also provided information on having lodged a further submission regarding the liquid amber.

However, the delisting of the Coastal Redwood is a ***matter for the panel***.

Harty:

Discussion was in relation to a listed tree on Mr Harty's property and his request to remove the tree from the schedule due to safety and health issues. The City Council advised that it would wish for a site visit to be undertaken to review this tree. H Lowe also sought a site visit to review the tree and to report back on views following this visit. The outcomes of this will be addressed through the next procedural steps including closing submissions if necessary.

Hoon Hay Valley Road Totaras:

Ms Lowe asked to get an update on the Hoon Hay Valley Road tree listing (totara trees). Her request was made on behalf of Dr Wilkes who was not able to attend.

Burnside High School Cabbage Trees:

Ms Lowe also asked about the Burnside High School cabbage trees which had been raised in evidence. Council undertook to follow up with Ngai Tahu about the trees' cultural values and it was agreed to have a conversation about this offline, including Council reporting back to Ms Lowe in the first instance.

A handwritten signature in black ink, appearing to read 'J. Mills', written over a horizontal line.

John Mills
Environment Commissioner - Mediator
5 April 2016