

Independent Hearings Panel

Christchurch Replacement District Plan

Te paepae motuhake o te mahere whakahou a rohe o Ōtautahi

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

AND

IN THE MATTER OF Pre-hearing Report and Directions pursuant to
cl 3(4) and cl 4(4) of Schedule 3 of the Order

Panel: Sir John Hansen, Chair (chairing pre-hearing meeting)
Judge John Hassan, Deputy Chair
Sarah Dawson

Counsel: S Scott and M Conway for Christchurch City Council
C Carranceja and J Silcock for Crown
A Hughes-Johnson QC for Church Property Trustees
J Appleyard for Christchurch International Airport, Orion, Catholic
Diocese, Alpine Presbytery, Taylor Space Limited, G and M Gaba,
Lyttelton Port Company Limited, Burwood Resource Recovery Park
and Church Property Trust.
S Hutching for Christchurch Gondolas, Silver Fern Farms Ltd, Castle
Rock Limited, R and L Holloway and Kennaway Joint Venture
Partnership.
G Cleary for Radford Family, Anglican Living Limited, C Lund and
Company Limited, Windlass Holdings Limited, Viewfield Trust and
16 Oxford Tee Limited.
G Baumann for Heritage New Zealand
H Marks for Carter Group, Rochford Group Holdings, Poynder Trust
and Greenwood.
J Walsh for Ngāi Tahu Property Limited and Te Rūnanga O Ngāi
Tahu in respect of North Belfast Industrial General zone, and
Annadale Enterprises Limited.
D van Mierlo for Te Rūnanga O Ngāi Tahu
H van der Wahl for Willisden Farms Limited, University of
Canterbury Limited, CERES New Zealand Limited and Great
Christchurch Building Trust.
P Anderson for Royal Forest and Bird Protection Society
G Hamilton for Fulton Hogan Limited and Isaac Conservation and
Wildlife Trust.
G Thomas for Tait Foundation Limited and Tait Limited.
B Burke for Graham and Joy McVicar.

Submitters: Refer to the transcript

Other attendances: Sarah Fowler, Hearings Assistant
Cindy Robinson, Independent Legal Advisor
Richard Ball, Friend of Submitter
Marcus Langman, Independent Secretariat
Claire Edmondson, Independent Secretariat

Date of meeting: 28 October 2015

Date of report: 3 November 2015

**PRE-HEARING REPORT AND DIRECTIONS
CHAPTER 9: NATURAL AND CULTURAL HERITAGE - STAGE 3
(and related definitions and associated planning maps)**

DIRECTIONS FOR HEARING

STAGE 3 CHAPTER 9 NATURAL AND CULTURAL HERITAGE PROPOSAL

The Chairperson directs:

Updated issues statement

- A. No directions required as an updated Statement of Issues was filed on 29 October 2015.

Hearing date

- B. The hearing for the Natural and Cultural Heritage proposal will commence at *10 a.m. on 18 -22 January 2016 (pm only on 21 January) and 2 and 3 February 2016 (6.5 hearing days) with two reserve days of 4 and 5 February 2016 if required.*

Accept/Reject Schedule in Council's evidence

- C. The Council planning witness is to provide a table or schedule in their evidence that recommends whether submissions are accepted, accepted in part, or rejected.

Exchange of evidence

- D. All evidence and submitter statements are to be pre-circulated. Where a party is relying on the website for this purpose, the evidence or submitter statement must be served on the Independent Secretariat by *3 p.m. on the day the evidence is required to be filed.*

- E. The Christchurch City Council is to file its primary evidence by *5 p.m., 2 December 2015.*
- F. Submitter evidence is to be filed by *5 p.m., 10 December 2015.*
- G. The Christchurch City Council (and any submitter rebutting relevant submitter evidence) is to file its rebuttal evidence by *5 p.m., 18 December 2015.*

Expert Conferencing

- H. The Independent Secretariat are to establish a timetable for expert conferencing to commence at *10 a.m., 9, 10 and 16 or 17 November 2015.*

Mediation

- I. The Council is directed to establish a timetable and topic-based schedule for facilitated mediation, to take place on *18, 19 and 24 November 2015.* Attendees at mediation may be accompanied by relevant experts for the purpose of providing advice to submitters. Representatives that attend must have the authority to bind the parties they represent.

Cross-examination applications

- J. All applications for leave to cross-examine a witness are to be made in writing by *12pm, 12 January 2016.* Applications are to be served on the party calling the witness to be cross examined.

- K. Cross-examination shall be limited to **10 minutes** for any witness. Any party wishing to exceed these limits must include this in their application for cross-examination and give reasons for the leave sought.
- L. Any parties wishing to aggregate cross-examination through a single counsel or submitter representative must notify the Chairperson of this in their leave application.

Hearing time limits

- M. Presentation of evidence and submissions is limited to **10 minutes** each. Any party wishing to exceed these limits must file a memorandum for the leave sought.

Legal submissions and representations

- N. Opening legal submissions, while preferred **three working days** in advance, can be handed up on the day of presentation. Closing legal submissions, whether by Counsel or a lay submitter, are to be provided to the Independent Secretariat in writing by **3 p.m. on the business day prior to presentation at the Hearing**.
- O. Counsel will need to advise the Secretariat **three working days** prior to the Hearing if presenting an opening legal submission in person, and the length of time requested, to enable scheduling.
- P. Directions regarding the filing and hearing of closing submissions will be made towards the end of the hearing.

Redlined version of proposal

Q. The Council is to provide a redlined version of the proposal showing accepted changes by *4 November 2015*.

Pre-hearing report¹

[1] The Natural and Cultural Heritage proposal was notified in the Stage 3 proposals for the Christchurch Replacement District Plan on 25 July 2015.

[2] As previously directed, the Christchurch City Council (Council) filed an issues statement for the Natural and Cultural Heritage proposal on 21 October 2015 ('Pre Hearing Memorandum'). The Council filed a supplementary memorandum updating the statement of issues on 28 October 2015 (Supplementary Memorandum). The Council filed a further updated memorandum incorporating requests made by submitters at the Pre Hearing Meeting to amend the statement of issues on 29 October 2015 as directed at the Pre Hearing Meeting (Updated Statement of Issues).²

[3] The Directions made following the pre-hearing meeting are set out at the front of this report. All parties are required to comply with these directions.

Conflicts of Interest

[4] Conflicts of Interests have been posted on the Hearings Panel website. The Chair has recused himself from the hearing of submissions related to Hagley Park because of his role as a trustee of the Canterbury Cricket Trust. The position was confirmed as being acceptable to Hands off Hagley by Ms Martin, the Secretary of Hands off Hagley during the Pre Hearing meeting for Chapter 13 Central City.³

¹ This report is provided under Clause 3(4) of Schedule 3 of the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014, whereby the Chairperson is to provide a report on the pre-hearing meeting to the Hearings Panel and the persons who attended the pre-hearing meeting. The report must set out the issues that were agreed and the issues that remain outstanding. The report may also set out the nature of evidence that the parties are to call at the hearing, the order in which the parties are to call evidence at the hearing and a proposed time table. The report must not include any information offered on a without prejudice basis.

² Memorandum of Counsel setting out updated Statement of Issues for Natural and Cultural Heritage (Stage 3) including provisions from other proposals that will be heard alongside this proposal dated 29 October 2015.

³ Transcript of Pre Hearing Meeting Stage 3 Chapter 13 Central City dated 27 October

Submitters in attendance

[5] We heard from a number of submitters and their attendance is identified in the transcript⁴. Submitters identified amendments to the Council's statement of issues as set out in the Supplementary Memorandum, including the definitions to be considered in the hearing. Mr Hughes-Johnson QC requested some refinements to the time table for filing of the redlined Revised Version of the proposal and expert witness conferencing. The amendments to the statement of issues requested by submitters are now included in the Updated Statement of Issues.

Scope of hearing

[6] In the Council's Pre Hearing Memorandum for this matter and for the Pre Hearings for Stage 3 proposals the Council requested that a number of provisions be transferred to be heard alongside Chapter 9 Natural and Cultural Heritage. We directed that a consolidated application for such orders be made by 12pm on Friday 30 October 2015. An application was made on 30 October 2015 ('Council's Application')

[7] We have considered the Council's Application and have made those orders accordingly ('the Order'). A copy of the Order is attached to this Report as Schedule 1.

[8] The scope of the hearing for Chapter 9 Natural and Cultural Heritage is confirmed for the provisions set out at Page 17 to 23 of Schedule A to the Order including all relevant definitions and planning maps.

[9] We advise that we intend to hear all submitters in a single hearing, with topics within it. It will be for the parties to decide whether they go to the whole hearing, or attend to those matters only raised in their submissions. We will also work with submitters who may wish to only appear once, even though their submission may traverse more than one topic.

Hearing date commencing 18 January 2016

[10] The hearing has been scheduled to commence at *10 a.m. on 18 January continuing on 19-22 January (pm only on 21 January) and 2 and 3 February 2016 (with reserve days available on 4 and 5 February 2016).*

⁴ A copy of the transcript from the pre-hearing is available at www.chchplan.ihp.govt.nz.

[11] The scheduling of the topics for the hearing will be the same as that specified for mediation as set out in paragraph 15. Parties whose submissions cover a range of topics can seek a single hearing time, and should advise the Independent Secretariat when timetabling for the hearing is sought.

Expert conferencing and mediation

[12] Expert conferencing enables experts to conference on matters (in private and without any influence from their clients) so that they can find areas of agreement, and identify matters of disagreement.

[13] Expert conferencing has been scheduled by the Independent Secretariat to take place on *9, 10 and 16 or 17 November 2015*.

[14] We record that to date the involvement of planning experts in expert witness conferencing has generally not been as productive as we had anticipated. In the Pre Hearing Meeting for the Cranford Basin Mr Carranceja for the Crown submitted that as an alternative there may be value in Planners participating in mediation along with their clients. This approach was supported by the Council. We consider that is an appropriate way to proceed in this hearing also. On that basis we direct that Planning experts attend mediation rather than expert witness conferencing. We remind Planning experts they must comply with their obligations as expert witnesses as set out in the Environment Court Practice Note 2014.

[15] Mediation is a different process, whereby negotiation takes place on a without-prejudice basis between parties, with an aim to reach agreement or narrow the issues in contention between the parties (the Council and submitters, as opposed to the experts).

[16] We find that in the case of the Natural and Cultural Heritage proposal, a direction for mediation is warranted. We direct the Council to establish a timetable and topic-based schedule for facilitated mediation, to take place on *18, 19 and 24 November 2015*. We record that the parties agreed that it would be appropriate to schedule mediation for cultural issues on the 18th or 19th of November due to the hearing on Papakainga. Submitters are also advised that they may approach the Council at any time to seek informal mediation (and that this relates to all chapters in the second stage of proposals).

[17] If mediation with the Council is not successful, this will not impact on submitters' ability to talk to their submission at the hearing, or to call evidence.

Council evidence

[18] We require that whatever the Council agrees to in terms of changes, that when making its recommendations to us, it clearly evaluates in its evidence the requirements of Section 32 in relation to those changes it is recommending as compared to the notified version. This will assist the panel with its own considerations for the purpose of its own Section 32AA evaluation. We do not make a direction on this matter, however, as it is for the Council to determine what evidence it calls.

[19] We direct that the Council provide a table in an annexure that identifies those submissions it is recommending to accept, accept in part, or reject. This simply makes it easier for submitters, and us, to identify what the Council is recommending in relation to that submission. Any changes following the initial exchange of evidence should be clearly identified in the rebuttal evidence in a similar manner.

Evidence exchange timetable

[20] The evidence exchange timetable will be:

- (a) The Christchurch City Council is to file its primary evidence by **5 p.m., 2 December 2015**.
- (b) Submitter evidence is to be filed by **5 p.m., 10 December 2015**.
- (c) The Christchurch City Council (and any submitter on relevant submitter evidence) is to file its rebuttal evidence by **5 p.m., 18 December 2015**.

[21] The parties are reminded of the requirement to serve all parties with their evidence, and attention is drawn to paragraph 16 of the Hearing Procedures document.⁵ If you are relying on the website for pre-circulation, you must get all documentation to the Independent Secretariat by 3 p.m. on the day the evidence is due.

⁵ Refer www.chchplan.ihp.govt.nz/Hearings: Hearings Procedures dated 14 January 2015.

[22] We encourage those counsel or representatives representing a number of clients to closely consider combining cases and/or witnesses for their clients.

Evidence or written statement?

[23] Evidence can only be filed in accordance with the timetable above, unless leave is sought. We would expect that submitters would want to see the outcome of the Council's position prior to filing evidence.

[24] We refer to paragraphs 17 and 18 of the Hearing Procedure document,⁶ which sets out the difference between written statements and evidence. A written statement is not normally taken under oath, whereas a statement of evidence is.

[25] We strongly encourage technical reports to be filed as evidence by the author, in support of a submission. If this is contested by the Council, or others, it is important to have the ability to cross-examine the author to test the evidence. If it is simply attached to a submission, this affects the "weight" we can give to such reports (although they will certainly be taken into account when we come to our decision).

Legal submissions and representations

[26] Legal submissions must be in writing. For opening submissions, while we prefer these to be lodged with the Secretariat prior to the hearing, they may be handed to us on the day. Closing submissions are to be lodged with the Secretariat at 3 p.m. on the day prior to the presentation.

[27] We are conscious that there is the potential for confusion for lay persons as to their role in the hearing and whether they are able to make legal submissions, cross-examine witnesses, give or call evidence or simply speak to their submission that they filed on the District Plan. In recognition of this we have endeavoured to set out the distinctions in Part 1 of the Hearing Procedure document on the website.

[28] We encourage submitters to refer to this and the Friend of the Submitters (Richard Ball) will be available to assist further. We wish to note that a lay submitter is entitled to make legal submissions (submissions on any relevant law relating to the District Plan) and cross-examine

⁶ Refer www.chchplan.ihp.govt.nz/Hearings: Hearings Procedures dated 14 January 2015.

if they wish, but they will need seek leave to cross-examine and give notice to make legal submissions as required by the Hearing Procedures.

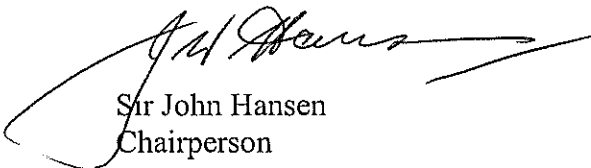
[29] If legal submissions are more than three pages then they are to include a table of contents.

Time limits for cross-examination

[30] Cross-examination will be limited to 10 minutes.

[31] Leave to cross-examine is to be filed by *12 pm., 12 January 2016*. Parties may aggregate the cross-examination through a single counsel or submitter representative, but should notify the Panel of this in their leave application. Leave can also be sought to increase the time limit for cross-examination. Reasons for this should be set out in your application for leave.

[32] Attention is drawn to clause 22 d) to k) of the Hearings Procedures document on the website as to the requirements for cross-examination and seeking leave.



Sir John Hansen
Chairperson