

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

Counsel: S Scott and C McCullum for Christchurch City Council
C Carranceja and J Silcock for Crown
H Marks for Maurice R Carter Limited
A McLeod for Transpower
J Appleyard for Orion and Burwood Recovery Park Limited
J Robinson for Christ College, McVicar and University of Canterbury

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
Victoria Henstock, Independent Secretariat

Date of meeting: 27 October 2015

Date of report: 3 November 2015

**PRE-HEARING REPORT AND DIRECTIONS
CHAPTER 5: NATURAL HAZARDS – STAGE 3
(and related definitions and associated planning maps)**

DIRECTIONS FOR HEARING
STAGE 3 CHAPTER 5 NATURAL HAZARDS PROPOSAL (PART)

The Chairperson directs:

Updated issues statement

- A. The Christchurch City Council (Council) is to file an updated issues statement noting the changes discussed during the pre-hearing meeting for the Natural Hazards proposal by *5 p.m. 4 November 2015*.

Hearing date

- B. The hearing for the Natural Hazards proposal will commence at *10 a.m. 24-26 February 2016 (3 days)*.

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., 21 January 2016*.

- F. Submitter evidence is to be filed by *5 p.m., 2 February 2016*.
- G. The Christchurch City Council (and any submitter rebutting relevant submitter evidence) is to file its rebuttal evidence by *5 p.m., 11 February 2016*.

Expert Conferencing

- H. The Independent Secretariat are to establish a timetable for expert conferencing to commence at *10 a.m., 3 and 4 December 2015*.

Mediation

- I. The Council is directed to establish a timetable and topic-based schedule for facilitated mediation, to take place on *15 and 16 December 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, 15 February 2016*.
- 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 **24 November 2015**.

Pre-hearing report¹

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

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

[2] As previously directed, the Christchurch City Council (Council) filed a Statement of Issues for the proposal on 19 October 2015 ('Pre Hearing Memorandum'). Submitters sought a number of points of clarification to the Statement of Issues. We have accepted those changes. We direct the Council to file an updated Statement of Issues incorporating those accepted changes by *5pm on 4 November 2015*.

[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.

Submitters in attendance

[4] We heard from a number of submitters and their attendance is identified in the transcript².

Scope of hearing

[5] The Pre Hearing Memorandum set out the proposed scope of the Stage 3 Chapter 5 Natural Hazards hearing. We note specifically that pursuant to the Canterbury Earthquake (Christchurch Replacement District Plan) Amendment Order (No 2) 2015 ('Amendment Order'), Clause 6 withdraws the following provisions from the Stage 3 proposal;

- (a) Provision 5.0 (Introduction Coastal Hazards);
- (b) Provision 5.2.9 (Policy – Changing Climate);
- (c) Provision 5.6 (Policies for coastal hazards);
- (d) Provision 5.11 (Coastal erosion and coastal inundation rules); and
- (e) The Natural Hazards Overlays for Coastal Erosion Management Area's 1 and 2 in the Natural Hazards (part) Stage 3 planning maps 1-78 and R1-R9.

[6] The Scope of the Natural Hazards hearing will therefore be all of the remaining notified Stage 3 component (i.e. the text that is not subject to the Amendment Order.) The particular

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

provisions are set out in the Pre Hearing Memorandum at paragraph 6.1-6.13 and additional matters are addressed in paragraph 7 and 8 therein. This includes the Natural Hazards part of the Central City Chapter, being Central City 13.15 and all relevant definitions used in the provisions included within the scope including those in Chapter 13.17 and 13.15.

[7] We requested the Council to make a consolidated application for Orders to transfer matters from other hearing Chapters to be heard alongside other Chapters. That application was made on 30 October 2015³ and we have made Orders accordingly.⁴ A copy of the Order is included in Schedule 1 to this Report. The scope of the Chapter 5 Natural Hazards hearing is set out at page 7 and 8 of Schedule A to the Council's Application (as appended to our Order).

[8] 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 24 February 2016.

[9] The hearing has been scheduled to commence at *10 a.m. 24 February 2016 and continue on 25 and 26 February 2016 (3 hearing days)*.

[10] 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

[11] 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.

³ Application by Christchurch City Council for Order confirming the allocation of Notified Provisions to Stage 3 and combined Stages 2 and 3 hearings dated 30 October 2015.

⁴ Minute confirming Orders requested by the Christchurch City Council as to the allocation of Notified Provisions to Stage 3 and combined Stages 2 and 3 hearings dated 3 November 2015

[12] We record that to date the involvement of planning experts in expert witness conferencing has generally not been as productive as we had anticipated. 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. 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.

[13] Expert conferencing has been scheduled by the Independent Secretariat to take place on *3 and 4 December 2015*.

[14] 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).

[15] We find that in the case of the Natural Hazards 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 *15 and 16 December 2015*. 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).

[16] 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

[17] 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.

[18] 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

[19] The evidence exchange timetable will be:

- (a) The Christchurch City Council is to file its primary evidence by *5 p.m., 21 January 2016.*
- (b) Submitter evidence is to be filed by *5 p.m., 2 February 2016.*
- (c) The Christchurch City Council (and any submitter on relevant submitter evidence) is to file its rebuttal evidence by *5 p.m., 11 February 2016.*

[20] 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.

[21] 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?

[22] 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.

[23] 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.

[24] 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

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

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

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

[25] 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.

[26] 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.

[27] 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 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.

[28] If legal submissions are longer than three pages then they must include a table of contents.

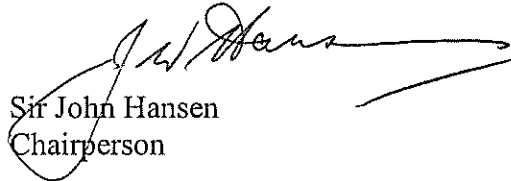
Time limits for cross-examination

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

[30] Leave to cross-examine is to be filed by *12 pm., 15 February 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.

[31] Parties are reminded to also serve their applications for cross examination on the party calling the expert to be cross examined.

[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