

**BEFORE THE CHRISTCHURCH REPLACEMENT
DISTRICT PLAN HEARINGS PANEL**

IN THE MATTER of the Resource Management
Act 1991 and the Canterbury
Earthquake (Christchurch
Replacement District Plan) Order
2014

A N D

IN THE MATTER of the hearing regarding
Proposal 10: Designations in the
Christchurch Replacement
District Plan

**CLOSING LEGAL SUBMISSIONS ON BEHALF OF
THE MINISTER OF EDUCATION
Proposal 10: Designations**

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MAY IT PLEASE THE HEARINGS PANEL

Introduction

1. As noted in the Minister's opening legal submissions, the designations that the Minister has sought be rolled over into the Proposed Christchurch Replacement District Plan ("**Proposed Plan**") are uncontroversial.
2. Apart from the Crown submission, which on behalf of the Minister supported inclusion of the designations and sought to tidy up certain technical issues/errors, submissions were received only from the Council (similarly technical and relating to five designations) and Ms Mary Ellen Shackel (a broad submission related to all central city designations).
3. The differences between the Minister and the Council which existed at the time that evidence was prepared have now been resolved, which means the only opposition to any aspects the roll-over of the Minister's designation is Ms Shackel.

Matters at issue

4. The Minister's Roll-over Notice sought that 116 designations be rolled over into the Proposed Plan, with modifications sought to several of the designations. Further discussions both within the Ministry and with the Council have resulted in a more refined list of designations for which modification is now sought. The Minister now seeks that the Panel roll-over 85 of its 116 designations **without** modification.
5. The remaining 31 designations can be categorised as follows:
 - (a) 13 designations require minor technical or administrative changes which have no substantive effect. All changes are agreed with the Council and are set out in the joint memorandum of counsel for the Council and the Minister, dated 23 January 2015. One of these designations is the Hagley Community College designation (L41), which is subject of Ms Shackel's submission.
 - (b) 18 designations require more substantive amendments by way of changes primarily because they involve changes to the "purpose" of the designation to better reflect the current and future education uses for which the proposed designations will be used. Also some involve

inclusion of additional land parcels that were not previously included in the original designation (ie, increases to the size of the designations).

6. Additionally, the Christchurch East Primary School designation (L27) is in respect of one of two Ministry sites captured by Ms Shackel's submission, and is therefore at issue notwithstanding that the Minister sought that it be rolled over without modification.
7. The Minister respectfully submits that:
 - (a) Those remaining 85 designations that it seeks be rolled over without modification and that are not subject to submissions, other than submissions in support, should be confirmed by the panel. For completeness, the Minister agrees with the submissions on behalf of the Council regarding existing designations upon which submissions have only been received in support, seeking no modifications;¹
 - (b) The panel should similarly confirm without further detailed analysis those 13 designations which are the subject of the joint memorandum of counsel for the Council and Minister, as they are minor administrative changes of no substantive effect. These "modifications" should be considered in a similar category to those designations for which roll-over is sought without modification; and
 - (c) On the basis of the above, the outstanding issues for the panel's determination under section 171 of the RMA fall into three categories:
 - (i) Whether to delete the four conditions from the designation for Redcliffs Primary School;
 - (ii) Whether to make the other 18 substantive modifications to designations sought to be rolled-over by the Minister; and
 - (iii) Whether to give effect to or reject the broad submission by Ms Shackel that the central city designations should not be rolled over.

¹ Council's opening legal submissions at paragraphs 4.14-15.

Redcliffs Primary School (L82) – landscaping conditions

8. The Minister's Roll-over Notice sought deletion of the following conditions from the designation for Redcliffs Primary School:

Special conditions - Redcliffs Primary School

1. *That the landscaping for the proposed car park, submitted as further information on the 11th October 2006, be established in accordance with the plan now labelled PL/CPO/4/3 and held on the Council file.*
 2. *That the landscaping be established within 6 months of the date of the final information of the car park. Any dead, diseased, or damaged landscaping is to be replaced immediately with plants of a similar species.*
 3. *That the proposed Coprosma Dark Spire hedge shown on plan PL/CPO/4/3 to be established along the road boundary shall be maintained at a minimum of 0.8m high.*
 4. *That the proposed Quercus palustris (Pin Oak) and Quercus rubra (Red Oak) trees shown on plan PL/CPO/4/3 be a minimum height of 1.2m at time of planting.*
9. Redcliffs Primary School was badly affected by rockfall during the Christchurch earthquake sequence. At this stage the Minister still requires the school site for Education purposes, but the site has been closed since the earthquakes for safety reasons while its future is being determined.
10. Mr McCallum-Clark's rebuttal evidence² explains that, due to extensive rockfall issues associated with the site, when the site is used for Education purposes again it will need to be subject of significant redesign and rebuild which will require the Minister to revisit the overall layout of the site and the resulting package of mitigation (which may address rockfall concerns). On that basis, the existing designation conditions are considered outdated and unnecessary and should be deleted. The outline plan process provides sufficient scope to deal with adverse environmental effects, should the school eventually be rebuilt.
11. Ms Radburnd on behalf of the Council has confirmed that, on the basis of Mr McCallum-Clark's rebuttal evidence, the Council no longer opposes the

² Statement of rebuttal evidence of Matthew McCallum Clark on behalf of the Minister of Education, para 1.11.

deletion of these conditions.³ Accordingly, this particular modification can be considered as one of the broader group of substantive modifications that the Panel must analyse under section 171 (see below).

Substantive modifications

12. The Minister acknowledges that the Panel must satisfy itself that the substantive modifications sought by the Minister will achieve the sustainable management purpose of the RMA, with a focus upon the potential adverse effects of the modification and having particular regard to the matters set out in section 171(1).
13. As alluded to in the Minister's opening submissions, the Minister agrees with the submissions of the Crown that the Panel's section 171 analysis of modifications to designations should be proportionate to the modification proposed, and the potential adverse effects associated with making that modification.
14. Mr McCallum Clark has confirmed his understanding that the modifications proposed by the Minister largely relate to current activities that are undertaken on land owned by the Minister, and in accordance with the underlying Cultural 3 zoning in the operative Christchurch City Plan.⁴ Accordingly, the "effects" associated with the modifications will be negligible if not nil. The degree of analysis required for the purposes of section 171 is accordingly significantly reduced.
15. Mr McCallum Clark has undertaken a comprehensive section 171 assessment and Part 2 analysis of the designations that the Minister seeks be rolled-over, albeit that the analysis is with respect to the designations as a group rather than individually.⁵ The Minister respectfully submits that this level of analysis is sufficient to justify the roll-over process, particularly given that no modifications sought by her are now opposed specifically by any person.

³ Transcript (IHP Designations Transcript 150209) at page 136.

⁴ Primary evidence of Matthew McCallum-Clark on behalf of the Minister of Education, para 5.22.

⁵ Primary evidence of Matthew McCallum-Clark on behalf of the Minister of Education, paras 5.1-22.

Submission by Mary Ellen Shackel – central city

16. As the panel is aware, the general submission by Ms Shackel is broadly based on an opinion that the Christchurch central city is unsafe, should be relocated, and accordingly that designations located within the central city should not be rolled over. This would affect two Minister of Education designations; the Hagley Community College (L41) and Christchurch East Primary School (L27).
17. Mr McCallum-Clark has addressed Ms Shackel's submission insofar as the Minister of Education is concerned. Mr McCallum-Clark confirms that the schools were available for use for Education purposes promptly after the Christchurch earthquake sequence.⁶ Importantly, as far as the Minister is concerned, the Minister and Ministry are required to manage the School network in a way that provides capacity in appropriate locations to serve the relevant catchment.⁷ In short, the provision of schools by way of designation is driven primarily by the location of residential development (ie, where the children are) and to a lesser extent, other activity in the area. If the Proposed Plan ultimately provides for continued residential activity or other activity that may increase demand for education facilities in the vicinity of the city centre, then schools will be required to accommodate students from, and education needs in, that area.
18. If Ms Shackel's submission is upheld in a way that precludes future residential activity or other activity then the Minister may need to review the need for these designations should there be an impact on the education network such as a significant reduction in student rolls.
19. Ms Shackel's submission raises an issue of a fundamental nature that is best addressed by other participants in this process. However, in the event that the Panel concludes that it is appropriate to roll-over designations in the central city to enable the rebuild, then it follows that the Minister's designations should also be rolled-over to ensure that the necessary education infrastructure is in place to serve the redevelopment of the central city.

⁶ Primary evidence of Matthew McCallum-Clark on behalf of the Minister of Education, para 6.3.

⁷ Primary evidence of Matthew McCallum-Clark on behalf of the Minister of Education, para 6.4.

Conclusion

20. In conclusion, the Minister's submission is that the effects of rolling over the designations with the modifications that the Minister seeks:
- (a) Is consistent with relevant provisions of applicable planning documents;
 - (b) Does not require an alternatives assessment to be undertaken because they:
 - (i) relate to existing designations or sites adjacent to existing sites which are owned by the Minister such that the Minister has an interest in the land sufficient for undertaking the work;
 - (ii) will have minor, if any, adverse effects on the environment;
 - (c) Are reasonably necessary for the achievement of the Minister's education objectives and statutory responsibilities; and
 - (d) Are necessary to ensure that the Minister of Education is able to promptly and appropriately respond to the needs of Christchurch as part of the earthquake recovery process.

DATED this 11th day of February 2015



Daniel Sadlier
Counsel for the Minister of Education