

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

**AND**

**IN THE MATTER OF** An application to correct a minor error  
pursuant to clause 13(5) and 13(6) and clause  
16(2) to Schedule 3 of the Order

Date: 22 October 2015

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**DECISION  
TO MAKE MINOR CORRECTIONS  
TO DECISION ON TEMPORARY ACTIVITIES (DECISION 9)**

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**Background**

[1] The Hearings Panel (the Panel) issued its decision on Temporary Activities 6A, 6B and 6C ('Decision 9') on 3 September 2015. By the time of the hearing the Council and submitters were in agreement. The Council supplied the Panel with a new version of the provisions that reflected that agreement. Changes to the notified proposals made by our decision were attached as Schedule 1 ('Decision Version 1'). Decision 9 included minor amendments to our Decision 2 on Temporary Activity Related to Earthquake Recovery, which were attached as Schedule 1A ('Decision Version 1A') to Decision 9.

[2] Counsel for the Christchurch City Council ('the Council'), a submitter and the proponent of these proposals for the replacement district plan, filed a memorandum on 7 October 2015 requesting the Hearings Panel to make a number of minor corrections to Decision Version 1 and 1A, and one correction to paragraph 7 of Decision 9 text. We note Decision Version 1 and 1A reflected the agreed revised provisions put forward by the parties, and as such the errors were made by the Council, rather than by our decision. We return to this later.

## Jurisdiction to make minor corrections

[3] Clause 16 of Schedule 3 to the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 ('OIC') provides as follows:

- (1) The hearings panel may, at any time, issue an amendment to a decision to correct a minor mistake or defect in a decision of the panel.
- (2) This power includes the power to amend or correct a proposal, provided that the amendment or correction is made before the proposal becomes operative in accordance with clause 16 of this order.

[4] Further, clause 13(5) and 13(6) of the OIC provides as follows:

- (5) While the hearings panel is considering a proposal, it may reconsider any decision it has already made on another proposal if it considers it is necessary or desirable to do so to ensure that the replacement district plan is coherent and consistent.
- (6) If the hearings panel considers, after reconsidering a decision under subclause (5), that an earlier proposal or a part of the replacement district plan requires change, the panel may direct the council—
  - (a) to make changes of no more than minor effect; or
  - (b) to prepare and notify a new proposal, and invite submissions on the new proposal in accordance with Schedule 1.

[5] The memorandum sets out the reasons for the request and statutory basis for making the changes pursuant to the above clauses and explained the statutory context of the provision with reference to similar provisions in the RMA and relevant case law.<sup>12</sup>

[6] The memorandum notes that the use of 16(2) may be:

read in a manner that prevents the Hearings Panel from using Clause 16 power to amend or correct a proposal that has become operative in accordance with clause 16 of the OIC (as the provisions of Decision 2 are now operative).

[7] The Council submits that if clause 16(2) is not available to correct Decision 1A, then alternative clauses 13(5) and 13(6) of the OIC may provide the jurisdiction to make further minor corrections to Decision 2.

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<sup>1</sup> Memorandum of Counsel for the Council at para 29-30, including reference to *Re an application by the Christchurch City Council* (1996) NZEnvC 97.

<sup>2</sup> Memorandum of Counsel for the Council requesting corrections to Decision 9 including schedules 1 and 1A (which incorporates changes to Decision 2).

[8] We accept that minor corrections to Decision Version 1 are warranted, and that clause 16(2) provides the power for us to make those corrections. We also accept that the changes sought to Decision Version 1A are appropriate under either clause 16(2) of schedule 3 or clause 13(5) and (6) of the OIC.

[9] Although we agree the drafting of clause 16(2) does not expressly apply to a correction to an operative proposal, in this case the Decision Version 1A changes came about through exercising our powers to reconsider an earlier decision. As such Decision 1A was essentially returned to a non-operative state. In any event we agree with the Council that clauses 13(5) and (6) would seem to apply. We are satisfied that we do have jurisdiction to make minor corrections to Decision Version 1A. We address the changes in turn.

### **Reasons for the correction**

[10] The memorandum sets out the requested corrections, which include an amendment to paragraph 7 of Decision 9, and corrections to both Decision Version 1 and 1A. Tracked change versions were provided. We do not repeat those matters in full here.<sup>3</sup>

### **Decision**

[11] With respect to changes sought under Clause 16, the memorandum states:

The corrections sought are simply to rectify mistakes or inaccuracies or to assist users with navigating the plan, rather than the substance of the affected provisions.

[12] We accept the minor corrections sought to Decision Version 1 are appropriate and will assist users with navigating the plan, we therefore direct changes using our powers under Clause 16 of Schedule 3 to the OIC in relation to:

- (a) Replacing references to 'Clause' with 'Rule';
- (b) Removing notes referring to the Definitions Chapter;

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<sup>3</sup> Memorandum of Counsel for the Council at para 8-27.

- (c) Insertion of the amended planning maps showing Orion’s electricity distribution lines, as attached to the evidence of Mr Eman for the Council, dated 12 June 2015; and
- (d) Correction of minor errors, as identified in paragraph 17 of the memorandum.<sup>4</sup>

[13] We note several minor errors with the corrections identified by the Council which we also correct.

[14] Attachment A and Attachment B to Council’s memorandum introduced zone “groups” to make it clear which set of rules (6.4.2 or 6.4.3) apply to a particular zone. We note the Residential New Neighbourhood Zone was included by the Council in both 6.4.2 and 6.4.3 (P2, P6 and P7), but only shown in ‘Group 1’, relating to 6.4.2. However, temporary earthquake recovery provisions relating to the Residential New Neighbourhood Zone were notified as part of the proposals subject to Decision 9. Accordingly, we have removed reference to the Residential New Neighbourhood Zones in Decision 2 (6.4.2) and ‘Group 1’, and added this zone to ‘Group 2’.

[15] Papakainga is not included in the ‘groups’ but is referred to in Rule 6.4.3 (P2 and P6) in Decision 9. For clarity we have added Papakainga to ‘Group 2’.

[16] With respect to the Council’s request to amend paragraph 7 of Decision 9, we accept that there are parts of the operative plan that need replaced. As a result we amend paragraph 7 of our decision as outlined in Attachment A.

[17] We also accept that the minor corrections requested to Decision Version 1A are of no more than minor effect and appropriate. We direct changes to Decision Version 1A using our powers under Clause 16 of Schedule 3 and/or clause 13(5) and (6) to the OIC in relation to:

- (a) Removal of italicised text, as detailed in paragraphs 18 - 23 of the memorandum;
- (b) Clarification of zones to which the different rules apply, as detailed in paragraphs 24 - 26 of the memorandum; and

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<sup>4</sup> As set out in Attachment A to the memorandum of Counsel.

- (c) Other minor corrections sought to Decision Version 1A as detailed in paragraph 27 of the memorandum, except for the changes we make outlined in paragraphs [14] and [15] above.

[18] The Council requests Commercial Retail Park be altered from italicised to un-italicised in P3 (6.4.2) in Decision 2. This zone was mistakenly italicised by the Council at notification, with text indicating it was being reviewed in Phase 2 of the District Plan review. However the Commercial Retail Park Zone was notified as part of Stage 1.

[19] No parties submitted with specific regard to this zone in either of the temporary activity proposals. We also note that this zone was clearly identified in the maps and provisions within the Commercial Chapter as being part of Stage 1. On that basis we accept the change is clearly an error in Council's notified proposal that has carried over into the decision. We consider this to be minor in nature, and we are satisfied that the request does not directly affect any submitters.

[20] While accepting the minor corrections put forward by the Council, except as otherwise amended by this decision, as stated, Decision Version 1 and 1A reflected the agreed revised provisions put forward by the parties. The corrections sought by the Council are a direct result of Council's own drafting errors, and once again points to a lack of quality control. The Council had opportunity to correct and modify the provisions, as has now been presented, prior to appending them to the evidence of Mr Eman and presenting them to the Panel. In fact every indication was that this would be done.<sup>5</sup>

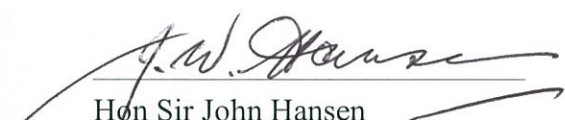
[21] It is also disappointing that the Council waited until 7 October, one day before the close of the appeal period, to raise these with the Panel. We expect the Council to provide greater assistance to the Panel going forward.

[22] Accordingly we direct the minor corrections requested by the Council, and those identified at paragraphs [14] and [15] above, be made as set out in the corrected Decision Version 1 and 1A marked Attachment B and C respectively.

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<sup>5</sup> Memorandum of Counsel for Temporary Earthquake Recovery Activity Proposals for Pre Hearing Meeting, dated 5 May 2015; and Statement of Issues Temporary Earthquake Recovery Activity Proposals, dated 13 May 2015

For the Hearings Panel:




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Hon Sir John Hansen  
Chair



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Ms Sarah Dawson  
Panel Member



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Ms Jane Huria  
Panel Member