

**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

**AND**

**IN THE MATTER** of the proposed  
Christchurch  
Replacement District  
Plan – Stage 2

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**APPLICATION FOR DIRECTION ON BEHALF OF CHRISTCHURCH CITY  
COUNCIL RELATING TO AMENDMENTS TO STAGE 1 DEFINITIONS AS PART  
OF STAGE 2 PROPOSALS**

**16 APRIL 2015**

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 **Simpson Grierson**  
Barristers & Solicitors

Simpson Grierson  
J G A Winchester / S J Scott  
Telephone: +64-3-968 4018  
Facsimile: +64-3-379 5023  
Email: sarah.scott@simpsongrierson.com  
PO Box 874  
SOLICITORS  
CHRISTCHURCH 8140

**MAY IT PLEASE THE PANEL:**

**1. INTRODUCTION AND DIRECTION SOUGHT**

**1.1** The purpose of this application is to seek a direction from the Hearings Panel on whether definitions that were notified in Proposal 2 of the proposed Replacement District Plan (**pRDP**) in Stage 1, can be modified by the Christchurch City Council (**Council**) when it notifies Stage 2 proposals on 2 May 2015.

**1.2** The purpose of the direction sought is to provide certainty to the Council on whether the proposed modifications to some Stage 1 definitions are sufficiently minor to be allowable under clause 5(6) of Schedule 1 of the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 (the **Order**). Clause 5(6) provides:

*After a proposal has been notified under this order, the council must not amend or withdraw any provisions of the proposal, except as provided for by clause 13(4) of this order and clause 4(10) of this schedule.*

**1.3** Clause 13(4) of the Order relates to a direction from the Panel to the Council to prepare and notify a new proposal, if it considers that changes are needed to deal with matters that are, in a material way, outside the scope of the proposal as notified and to deal with submissions on it. Clause 4(10) of the First Schedule of the Order relates to notices of requirement and is not relevant to this memorandum.

**2. AMENDMENTS TO STAGE 1 SUBMISSIONS AS PART OF STAGE 2**

**2.1** A number of words and phrases that were notified in the definitions chapter in Stage 1 are also used in the Stage 2 proposals. In some situations, the context of the Stage 2 proposals (which was not necessarily complete during the drafting of the Stage 1 definitions) means that, in the Council's view, the

Stage 1 definition should be modified in order to effectively and efficiently cater to both the Stage 1 and Stage 2 proposals. However, as per clause 5(6) of Schedule 1 of the Order, the Council is not able to amend the definitions that were notified in Stage 1, except if directed by the Hearings Panel through the course of decision making under clause 13(4) of the Order, or where the Hearings Panel has already made a decision on a definition through the Strategic Directions decision (being the only decision that has included decisions on district-wide definitions), and the decisions version of the definition can be notified in Stage 2.

- 2.2** In some situations the Council considers that the appropriate drafting is to add something further to the Stage 1 definition, for example, the Council is dealing with an existing definition (e.g. height) and where a new proposal such as Open Space is notified, the existing definition is added to by:

*"... and in the Open Space Zone also includes ..."*

- 2.3** The Council considers that a modification of this type is not an "amendment" for the purposes of Schedule 1 clause 5(6) of the Order and these changes are included in the draft Stage 2 chapters at present.

- 2.4** In other situations, the Council considers that the Stage 1 definition needs to be modified at greater length, and wishes to clarify with the Hearings Panel whether that type of drafting is possible in light of clause 5(6) of Schedule 1 of the Order. The definitions that fall into this category are set out at **Attachment A** to this application.

**2.5** The Council considers that, if the Hearings Panel is unable to direct that the modifications are allowed, the alternative options to the Council are:

- (a) to propose a 'repeat' definition in Stage 2, which would essentially be a copy of the Stage 1 definition modified to meet the Stage 2 proposal needs (for example have the definition of "Education activity" as part of Stage 1, and then propose in Stage 2 a similar definition of "Education activity – Stage 2", which would overcome the restriction in the Order); or
- (b) make no amendment to the Stage 1 definition in Stage 2, and rather the Council makes a submission on the Stage 1 definition as part of Stage 2.

**2.6** The Council does not consider either of the above two alternative options desirable as:

- (a) the repeat definition option is likely to be confusing to submitters, and is likely to cause logistical issues in having two separate (but similar) definitions heard and decided upon. This option would not be consistent with (d)(i) of the Statement of Expectations;
- (b) the second option would avoid repetition, but means that potential submitters on Stage 2 proposals would not be provided with a "full picture" of the Council's view from the outset of notification of Stage 2. This may also result in additional submissions that could be avoided if the Stage 1 definitions were able to be modified before Stage 2 is notified.

**2.7** The Ministers' comments on the draft Stage 2 chapters have encouraged the Council to "improve the usability of the draft proposals, particularly focussed on ensuring clarity and consistency of definitions and terminology". The comments state:

- *The August 2014 Ministers' comments, the Crown submission in October 2014, a usability report commissioned by the hearings panel and current hearings have all raised significant concerns with the definitions and terminology used throughout the draft proposals.*
- *The intention to introduce, through these proposals, amendments to definitions contained in the 27 August 2014 proposals, on top of changes that might be made by the hearings panel to those proposals, and potentially different definitions to come for the remaining draft proposals will be particularly confusing for all involved. Prior to notification on 2 May 2015 we urge the Council to further consider the approach to definitions, to ensure the notified proposals are informed by hearings and decisions by the hearings panel on other proposals, and to minimise confusion and complexity for participants in the process.*

**2.8** As mentioned above, the only decision that has included plan wide definitions in its decision to date, is the Strategic Directions decision. The Ministers' comments do not appear to have taken into account the restriction imposed on the Council by clause 5(6) of Schedule 1 of the Order.

### **3. DIRECTION SOUGHT**

**3.1** Should the Hearings Panel consider that the modifications set out in Attachment A are allowable under the Order, counsel respectfully seeks that the Hearings Panel makes the following direction:

*The modifications proposed by the Christchurch City Council to the Stage 1 definitions, as set out in Attachment A to the Council's Memorandum of Counsel dated 16 April 2015, are allowable under the Order in Council and may be notified as part of Stage 2 proposals.*

- 3.2 Counsel considers that if the above direction is made, it would appropriately be served on all Stage 1 submitters – so that all persons involved in the Stage 1 decision making process are aware of the direction and the relationship between the two Stages.

DATED this 16<sup>th</sup> day of April 2015

  
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J G A Winchester/S J Scott  
Counsel for Christchurch City Council

## Attachment A

The following definitions were notified in Stage 1. The Council proposes to modify those definitions, as part of Stage 2. The proposed Stage 2 modifications are shown in red text (underlined for additions and strikethrough for deletions).

Proposed amendments to Stage 1 definition	Reliant definitions	Related definitions
<p><b>Accessory building (non-residential activity)</b> means a building which is incidental to the principal building or buildings on the site. <del>In respect of land used for residential activity, accessory building includes a sleep-out, garage or carport, shed, glasshouse, fence, solar panels and solar water heating devices not attached to a building and an indoor swimming pool, but not a family flat, balcony or similar structure (whether free-standing or attached to any building).</del> An accessory building is not a residential unit. <u>On a vacant site, accessory building is a building that is ancillary or accessory to any activity that may be permitted on a site regardless of whether the principal building or buildings have yet to be constructed.</u></p> <p><b>Accessory building (residential activity)</b> means a building which is incidental to the principal building or buildings on the site. <del>In respect of land used for residential activity, a</del>Accessory building includes a sleep-out, garage or carport, shed, glasshouse, fence, solar panels and solar water heating devices <del>not attached to from</del> a building and an indoor swimming pool, <del>but</del>. <u>Accessory building does not include a family flat, balcony or similar structure (whether free-standing or attached to any building).</u> An accessory building is not a residential unit. <u>On a vacant site, accessory building is a building that is ancillary or accessory to any activity that may be permitted on a site regardless of whether the principal building or buildings have yet to be constructed.</u></p>	<p><del>Balcony</del> Building <del>Garage</del> Principal building Residential activity Residential unit Site <del>Sleep-out</del></p> <p>Balcony Building Garage Principal building Residential activity Residential unit Site Sleep-out</p>	
<p><b>Approved building</b> means any building associated with a permitted activity or approved as part of a resource consent.</p>	<p>Building</p>	<p>Accessory building Temporary <del>buildings</del> <u>and</u> activities <u>and</u> <del>buildings</del></p>
<p><b>Building</b> means as the context requires:</p> <ol style="list-style-type: none"> <li>a. any structure or part of a structure whether permanent, moveable or immovable; and/or</li> <li>b. any use, erection, reconstruction, placement, alteration or demolition of any structure or part of any structure in, on, under or over the land;</li> <li>c. any vehicle, trailer, tent, marquee, shipping container, caravan or boat, whether fixed or moveable, used on-site as a residential unit or place of business or storage;</li> </ol> <p>but does not include:</p> <ol style="list-style-type: none"> <li>d. any scaffolding or falsework erected temporarily for maintenance or construction purposes;</li> <li>e. fences or walls of up to 2m in height, not used for advertising or for any purpose other than as a fence or wall;</li> <li>f. retaining walls which are both less than 6m<sup>2</sup> in area and less than 1.8m in height;</li> <li>g. structures which are both less than 6m<sup>2</sup> in area and less than 1.8m in height;</li> </ol>	<p>Banks Peninsula District Plan Ground level Height Public artwork Residential unit</p>	<p>Accessory building Approved building Articulation Building line restriction Development Erection of a building Gross floor area Gross leasable floor area Habitable building Modulation Net floor area Public floor area (PFA) Relocatable</p>