

**BEFORE THE CHRISTCHURCH REPLACEMENT
DISTRICT PLAN INDEPENDENT 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 Introduction Proposal
(Part) and Definitions Proposal
(Part)

**SUPPLEMENTARY EVIDENCE OF IVAN THOMSON
ON BEHALF OF CHRISTCHURCH CITY COUNCIL**

DEFINITIONS - OVERVIEW

16 JULY 2016

 **Simpson Grierson**
Barristers & Solicitors

D J Laing / K E Viskovic
Telephone: +64-4-499 4599
Facsimile: +64-4-472 6986
Email: katherine.viskovic@simpsongrierson.com
DX SX11174
PO Box 2402
Wellington

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1. INTRODUCTION

- 1.1 My full name is Ivan Thomson. My experience and qualifications are set out in my evidence in chief dated 9 June 2015 for the Introduction and Definitions Proposals.
- 1.2 I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014 and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

2. SCOPE

- 2.1 This supplementary evidence is provided in response to matters raised by the Independent Hearings Panel (**Panel**) during the course of the hearing of the Introduction Proposal (Part) and Definitions Proposal (Part) on 13 July 2015. It covers those definitions required to be filed by Thursday 16 July as per the Court's Minute of 14 July 2015.
- 2.2 As requested by the Panel, this supplementary evidence covers the following definitions:
- (a) Banks Peninsula, Christchurch District, Christchurch District excluding Banks Peninsula Ward;
 - (b) Building;
 - (c) Height;
 - (d) Legibility; and
 - (e) No complaints covenant.
- 2.3 Where further changes are proposed to definitions in this evidence, the changes have been shown with red text.
- 2.4 The remaining definitions that were raised by the Panel and for which a response is required by 16 July will be covered in supplementary evidence

by other Council witnesses. I note that although the Panel directed questions to me regarding a number of definitions, where it has been more appropriate for another witness to respond to the definition, they have done so in their supplementary evidence.

2.5 The Council will provide a redline version of the Definitions Proposal next week when it files its closing submissions for this hearing.

3. Banks Peninsula, Christchurch District, Christchurch District excluding Banks Peninsula Ward

3.1 Ms Dawson raised a concern regarding the deletion of the 'Banks Peninsula' definition (and by implication the definitions of 'Christchurch District excluding Banks Peninsula Ward' and 'Christchurch District').¹ The effect of these deletions would be that users relying on the hard copy version of the Plan would not necessarily know where to look to find the map, referenced as Appendix 2.1.

3.2 The Crown has agreed that these three definitions should remain.

3.3 I therefore consider that the definitions of 'Banks Peninsula', 'Christchurch District excluding Banks Peninsula Ward' and 'Christchurch District' should be reinstated into the Definitions Proposal. I note that these definitions were deleted in the version of the Proposal that was sent to the Panel on 14 July 2015 as the Council had agreed to the deletion of these definitions with the Crown.

4. Building

4.1 At the hearing, Ms Dawson pointed to a possible need to amend the definition of 'Building' following on from a matter raised by Ms Blair in her evidence for the Oil Companies.² Specifically, the matter concerns the word 'use' in sub -clause (b) of the definition.

1 Transcript, 13 July 2015 (Day 1) (**Transcript**), page 75 (line 40).

2 Transcript, page 79 (lines 30 -35).

4.2 I discussed this matter with the Council's Unit Manager Consents Team and we both agreed that the word 'use' is unnecessary.

5. Height

5.1 Ms Dawson identified missing words in the definition of 'Height' under subsection (f) of the definition.³

5.2 I agree that words are missing and the definition should read:

...

e. *any utility or part of a utility with a horizontal dimension of less than 55 millimetres;*

f. **the spires or towers of spiritual facilities that** *exceed the allowed zone height by no more than 3m or 20% of the building height (whichever is greater);...*

6. Legibility

6.1 Judge Hassan questioned the syntax of this definition, and sought clarification of its meaning.⁴

6.2 As I indicated in my response to his question, I consider the term relies on subjectivity for its interpretation and would be better in a design guide along with the other urban design terms I am proposing to delete. As the term is only used in assessment matters or matters of discretion I consider it can be removed from the definitions, as follows:

Legibility

means the degree to which a place can be easily understood and enables people to orientate themselves and find their way with strong visual and physical connections.

³ Transcript, page 93.

⁴ Transcript, page 96 (line 26).

7. No complaints covenant

- 7.1 Judge Hassan raised issues with this definition from two standpoints.⁵ Firstly around the word 'willingly', which may convey some element of coercion, and secondly around the degree of prescription in paragraph (b).
- 7.2 I record that a package of provisions involving the use of no complaints covenants is included in the Plan (Clause 14.4.4 Port Influences Overlay Area) in the Council's version of 23 April 2015, which is why the term is defined.
- 7.3 In answer to His Honour's questions, I said that I had concerns over whether or not the definition carried a connotation of coercion, and the use of the word 'willingly'. I also said⁶ that the non-complying status of an activity (that exceeds certain gross floor areas) which does not have a no complaint covenant seemed a little bit 'draconian'. However, having studied the Plan more closely, I now appreciate this rule does not concern the matters raised concerning the definition, draconian or not.
- 7.4 In relation to the definition, my opinion is that the word 'willingly' should be removed for two reasons. Firstly, it is not needed to interpret the rule and secondly because there is no way that I am aware of for determining whether a person 'willingly' entered into the agreement.
- 7.5 I also consider that 'any' adverse effect provides uncertainty, and could go beyond what is necessary to protect the Port's interest. I also consider that it may be problematic to list the effects which the no-complaints covenant is to address, as some may not be relevant in certain circumstances. Therefore, I suggest that the word "including" be deleted and replaced with the words "for example".
- 7.6 I conclude therefore that the definition should be amended as follows:

in relation to the Port Influences Overlay Area, means a covenant which is:

- a. registered against the title(s) of the land upon which the proposal is situated; and*

5 Transcript, page 101 (line 45) and page 103 (line 5).

6 Transcript, page 103 (lines 12-15).

b **willingly** entered into by the resource consent applicant, in favour of the Lyttelton Port Company Limited, to the effect that no owner or occupier or successor in title of the covenanted land shall object to, complain about, bring or contribute to any proceedings under any statute or otherwise oppose any **relevant** adverse environmental effects (**including for example** noise, dust, traffic, vibration, glare or odour) resulting from any lawfully established port activities.

7.7 For completeness, I record that the above amendments have been drafted in consultation with the Lyttelton Port Company.



Ivan Thomson
16 July 2016