

**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

**MEMORANDUM OF COUNSEL REGARDING PROVISIONS THAT WERE LEFT
OPEN FOR SUBMISSION IN THE NOTIFIED VERSION OF THE E-PLAN**

24 SEPTEMBER 2015

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MAY IT PLEASE THE PANEL:

1. This memorandum of counsel is filed on behalf of the Christchurch City Council (**Council**) in relation to the notification of provisions as part of the proposed Christchurch Replacement District Plan (**pRDP**) process.
2. The purpose of this memorandum of counsel is to seek the following directions from the Panel:

That the Panel defer making a decision on the appendices listed below and submissions made on those appendixes in Stage 1, and instead make a decision on them after hearing submissions in the relevant Stage 2 hearing:

- (a) 8.6.6 (Halswell West Outline Development Plan (**ODP**)) – Stage 2 Subdivision;
 - (b) 15.9.4 (Commercial Core Zone (North Halswell) ODP) and 15.9.10 (Lyttelton mater plan overlay area) – Stage 2 Commercial; and
 - (c) 16.7.2 (Industrial General Zone (Islington Park) ODP), 16.7.11 (Industrial Heavy Zone (Springs Road) ODP), 16.7.12 (Industrial Park Zone (Wairakei Road) ODP); and 16.7.13 (Industrial Park Zone (Memorial Ave) ODP) – Stage 2 Industrial.
3. For completeness, this memorandum also addresses Appendices 8.6.4 (North Halswell ODP) and 8.6.5 (Buchanans Road (South Masham) ODP)), however the Panel has already made a direction that the ODPs included in those two Appendices (and submissions on them) are to be deferred and heard with the separate New Neighbourhood zone process.¹

¹ Minute New Neighbourhood Provisions, Directions – scope of hearing, dated 26 August 2015 (referring to the Council's memorandum of 19 August 2015).

Background

4. It has come to the Council's attention that a number of Appendices notified as part of Stage 1 were not clearly notated in the online version of the pRDP (referred to as the ePlan) as not being open for submission in Stages 2 and 3.
5. The different stages of the pRDP have been identified in the ePlan with different colours and shading as shown below:

Stage one text Stage two text Stage three text Immediate effect text Decision text

6. The exception to this is that all headings in the pRDP have been shown as bold black text, regardless of the stage the provision that the heading relates to was notified as part of.
7. All of the Stage 1 Appendices that appeared to be open for submission in later stages are appendices that comprise a heading and then a diagram. None of the appendices listed below included text outside of the diagram, and this is the key reason why the provisions all appeared to be open for submission in later stages. If the Appendices had included text, the text would have been greyed out and therefore clearly not open for submission.

Specific Stage 1 appendices left open for submission in Stages 2 and/or 3

8. The relevant appendices of the pRDP that are the subject of this memorandum are set out in the table below, together with directions respectfully requested from the Panel:

Provision	Comment
Appendices: 8.6.4 (North Halswell ODP); and 8.6.5 (Buchanans Road	Appendices 8.6.4 and 8.6.5 appeared open for submission in Stages 1, 2 and 3. Submissions were received on these Appendices as part of Stage 2, ² although no submissions were received

² Gina Wabit (#2488.4) made a submission on Appendix 8.6.4. The Riccarton/Wigram Community Board (#2363.27) made a submission on Appendix 8.6.5.

Provision	Comment
(South Masham) ODP)	<p>as part of Stage 3. These Appendices are the North Halswell and Buchanans Road (South Masham) Residential New Neighbourhood ODPs.</p> <p>The Council considers that the submissions received on these Appendices as part of Stage 2 should be considered as part of the Residential New Neighbourhood Zone hearing.</p>
Appendix 8.6.6 (Halswell West ODP)	<p>Appendix 8.6.6, the Halswell West ODP, appeared open for submissions in Stages 1, 2 and 3. Submissions were received on this Appendix as part of Stage 2,³ although no submissions were received as part of Stage 3.</p> <p>As discussed below, the Council seeks that the Panel defer making a decision on this Appendix until it makes a decision on the Stage 2 Subdivision Proposal (i.e. rather than making a decision on this Appendix as part of the Stage 1 Subdivision Proposal) so that all submissions (including Stage 2 submissions) on the Appendix can be considered together.</p>
Appendices: 14.10.3 (Appendix - Development plan Prestons Road Retirement Village); and 14.10.4 (Appendix - Development plan Addington)	<p>Although Appendices 14.10.3 and 14.10.4 appeared open for submission in Stage 2, no submissions were received on the Appendices in Stage 2. The Council does not consider that leaving the Appendices open for submission in Stage 2 will impact on the Panel's decision making because there are no relevant submissions for the Panel to consider.</p>
Appendices: 15.9.2 (Commercial Core	<p>Appendices 15.9.2, 15.9.3, 15.9.4, 15.9.5, 15.9.6, 15.9.10, 15.9.11 and 15.9.12 appeared open for</p>

³ Christchurch City Council (#2123.201), Antony Pan and San Tsun Yu (#2474.8), RJ and CB Sissons (#2475.8), Bromac Lodge Limited (#2476.8), Martin Harcourt (#2477.8), Mercantile Trust (#2478.8), Fulton Hogan Land Developments Limited (#2097.2, .4 and .5).

Provision	Comment
<p>Zone (Belfast) ODP); 15.9.3 (Commercial Core Zone (Ferryhead) ODP); 15.9.4 (Commercial Core Zone (North Halswell) ODP); 15.9.5 (South West area catchment (for North Halswell ODP area)); 15.9.6 (Commercial Core Zone (Sydenham) – Masterplan overlay area); 15.9.10 (Lyttelton mater plan overlay area); 15.9.11 (Sumner master plan overlay area); and 15.9.12 (Commercial retail park zone (Moorhouse Avenue)</p>	<p>submission in Stage 2. Submissions were received on Appendices 15.9.4 and 15.9.10.⁴</p> <p>For similar reasons as outlined above, the Council considers that the Panel should defer making a decision on Appendices 15.9.4 and 15.9.10 until after the Stage 2 Commercial and Industrial hearing to ensure the submitters on those Appendices can be heard in relation to their submissions.</p> <p>The Council does not consider that leaving Appendices 15.9.2, 15.9.3, 15.9.5, 15.9.6, 15.9.11 and 15.9.12 open for submission in Stage 2 will impact on the Panel's decision making because there are no relevant submissions for the Panel to consider.</p>
<p>Appendices: 16.7.2 (Industrial General Zone (Islington Park) ODP); 16.7.3 (Industrial General Zone (Kennaway Park) ODP); 16.7.4 (Industrial General Zone (Musgroves) ODP); 16.7.5 (Industrial General Zone (North Belfast) ODP); 16.7.6 (Industrial General Zone (Trents Road) ODP); 16.7.7 (Industrial Heavy Zone</p>	<p>Appendices 16.7.2, 16.7.3, 16.7.4, 16.7.5, 16.7.6, 16.7.7, 16.7.8, 16.7.9, 16.7.10, 16.7.11, 16.7.12, 16.7.13 and 16.7.14 appeared open for submission in Stage 2. Submissions were received on Appendices 16.7.2, 16.7.11, 16.7.12 and 16.7.13.⁵</p> <p>The Council considers that the Panel should defer making a decision on Appendices 16.7.2, 16.7.11, 16.7.12 and 16.7.13 until after the Stage 2 Commercial and Industrial hearing to ensure the submitters on those Appendices can be heard in</p>

⁴ New Zealand Institute of Architects – Canterbury (#2335.19) made a submission on Appendix 15.9.4. Project Lyttelton (#2548.2) made a submission on Appendix 15.9.10.

⁵ Greg and Kathryn Corston (#2440.1) made a submission on Appendix 16.7.2. The Crown (#2387.688, 2387.689 and 2378.690) made submissions on Appendix 16.7.11. Helen Keeley (#2317.1), Quaifes Valley Properties Limited (#2490.1), the Crown (#2387.691 and 2387.692), Apple Commercial Limited (#2329.3), Mark and Kay Nichols (#2494.2, 2494.4, 2494.5, 2494.6, 2494.7, 2494.8) made submissions on Appendix 16.7.12. The Crown (#2387.693, 2387.694 and 2378.695 and FS#2810.253), Commodore Airport Hotel Limited (#2174.5, 2174.7, 2174.8, 2174.11, 2174.17), Christchurch International Airport Limited (#2348.129 and FS#2817.93), Memorial Avenue Investments Limited (2378.72) made submissions on Appendix 16.7.13.

Provision	Comment
(Sir James Wattie Drive) ODP); 16.7.8 (Industrial Heavy Zone (South West Hornby) ODP); 16.7.9 (Industrial Park Zone (Tait Campus) and industrial general zone (Stanleys Road) ODP); 16.7.10 (Industrial Park Zone (Awatea) ODP); 16.7.11 (Industrial Heavy Zone (Springs Road) ODP); 16.7.12 (Industrial Park Zone (Wairakei Road) ODP); 16.7.13 (Industrial Park Zone (Memorial Ave) ODP); and 16.7.14 (Areas Subject to Waste Water Discharge Restrictions)	relation to their submissions. The Council does not consider that leaving Appendices 16.7.3, 16.7.4, 16.7.5, 16.7.6, 16.7.7, 16.7.8, 16.7.9, 16.7.10 and 16.7.14 open for submission in Stage 2 will impact on the Panel's decision making because there are no relevant submissions for the Panel to consider.

Appendix 8.6.6

9. As recorded above, the Council has become aware that Appendix 8.6.6 (the Halswell West ODP) to the Subdivision Proposal, was notified as part of both Stage 1 and Stage 2 of the pRDP. As explained in the evidence in chief of Mr Long in the Stage 1 Subdivision Hearing, the Council became aware that the wrong version of the Halswell West ODP was notified in Stage 1, and recommended that the Panel accept submissions which sought to include the correct version.⁶
10. It now appears that if the Panel makes a decision on Appendix 8.6.6 as part of Stage 1, under the Christchurch Earthquake (Christchurch Replacement District Plan) Order 2014 (**the Order**), the Appendix would be deemed to be approved under clause 15 of the Order and would then become operative following the process set out in clause 16 of the Order.

⁶ Refer to page 87 of Attachment A, and page 66 of Attachment B of Mr Long's evidence.

It follows that the Panel would not be able to consider the submissions made on that Appendix as part of the Stage 2 hearings and decisions process. In particular, the Council considers that the Panel would only be able to make changes to Appendix 8.6.6 (if it was included in the Panel's Stage 1 decision) as part of Stage 2 *if* the changes were of no more than minor effect (clause 13(6) of the Order), unless the Panel directed that Appendix 8.6.6 be re-notified under clause 13(6)(b).

11. To avoid any jurisdictional issues associated with any decision on Appendix 8.6.6 of the pRDP, the Council respectfully requests that the Panel defer making a decision on Appendix 8.6.6 until after the Stage 2 hearing into the Subdivision Proposal. The Council submits that deferring the decision on Appendix 8.6.6 will enable the Panel to consider all of the submissions received as part of Stage 1 and Stage 2.

12. For completeness, the Council records that the Halswell West ODP has been addressed in evidence filed in the Stage 2 Residential hearing, in relation to the submissions by Anthony Pan and San Tsun Yu (#2474), RJ and CB Sissons (#2475), Bromac Lodge Limited (#2476), Martin Harcourt (#2477) and Mercantile Trust (#2478) (**landowners**).⁷ Fulton Hogan (#2097) also has an interest in the issue, and has proposed a solution that includes an amendment to the ODP included in Appendix 8.6.6 (a 10m planted buffer at the interface between the rural and urban zonings).⁸ The Council's evidence accepts that concerns raised by the landowners adjoining the Fulton Hogan land has been adequately addressed by the suggested amendment to the ODP being a 10m planted buffer, with the exception that the 10m is the very minimum depth for an effective interface.⁹

⁷ Evidence of Graham Taylor dated 27 August 2015.

⁸ Evidence of Julie Anne Comfort, Gregory Dewe and Alexandra FAMILTON dated 27 August 2015.

⁹ Rebuttal Evidence of Sarah Oliver dated 2 September, paragraph 4.50.

Appendices 15.9.4, 15.9.10, 16.7.2, 16.7.11, 16.7.12 and 16.7.13

13. For the same reasons set out above in relation to Appendix 8.6.6, to avoid any jurisdictional issues associated with any decision on Appendices 15.9.4, 15.9.10, 16.7.2, 16.7.11, 16.7.12 and 16.7.13 of the pRDP, the Council respectfully requests that the Panel defer making a decision on these Appendices until after the Stage 2 hearing into the Commercial and Industrial Proposal.

Service of memorandum

14. The Council also requests a direction regarding service of this memorandum. It proposes to serve all Stage 1 and Stage 2 submitters on the Appendices identified in the memorandum.

DATED this 24th day of September 2015



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