

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

AND

IN THE MATTER OF decisions on late submissions pursuant to
Clause 3(1)(e) of Schedule 2 and Clause 5 of
Schedule 3 to the Order

Date: 12 February 2015

RECORD OF DECISION

Background

[1] The Council has received a number of late submissions, in response to the Notification of the Memorial Avenue Investments Limited (MAIL) Plan Change. The submission period closed on 30 January 2015. A list of those late submissions, and our decision to accept them, is set out in Schedule 1.

[2] Clause 3(1)(e) of Schedule 2 to the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 authorises the Chairperson of the Hearings Panel to decide whether to accept any late submissions.

[3] Clause 5 of Schedule 3 of the Order provides that the Chairperson of the Hearings Panel may extend or waive compliance with any time limits specified by or under this Order, except in relation to the time limit specified in cl 12(2) which relates to completing the Panel's obligation under the Order. Clause 5 also states that the Chairperson of the Panel may accept submissions received after the relevant closing date notified under cls 5 or 7 of Schedule 1.

Statutory considerations

[4] Clause 5(2) of Schedule 3 sets out the matters that must be considered in exercising this discretion. These are:

- a) The interests of any person who, in the Chairperson's opinion, may be directly affected by a waiver.
- b) The need to ensure that there is an adequate assessment of the effects anticipated from the implementation of the proposal.
- c) The stage of the hearing when the Hearings Panel is provided with the submissions.

Validity of submissions

[5] Schedule 5 of the Order sets out the requirements of a submission.¹ I have reviewed the submissions referred to me and consider them to be valid. All of the late submissions, apart from that filed by Mr Wilkinson, use the Council form that follows Form 5 of the Regulations. Mr Wilkinson, did not use the form, however his written submission and accompanying emails, when read together, supply the necessary detail for a valid submission.

[6] The submissions were late for the following reasons:

1. Mr Wilkinson sent his submission electronically at 9.54 p.m. on 30 January 2015, on the understanding that his submission would be received by the Council before the end of the day. The Council however, did not receive the submission until 4.22 a.m. the following day.
2. Westgrove Committee. Mr Iain Malcolm, the Chairman, has explained that the submission of the Westgrove Committee was posted on Tuesday 27 January 2015, and it was not known why it was not received by the Council until 5 February 2015.
3. SH and SB Manning, explained that their submission was posted approximately 10 days before the closing date.

¹ The form of a submission is specified in Form 5 Resource Management (Forms, Fees, and Procedure) Regulations 2003.

4. Mr Roy Reid, posted his submission on the morning of 28 January 2015, expecting it would be received on time. It was not received by the Council until 5 February 2015.
5. Sheryn Linton and the Linton Family Trust sent submissions on 23 January 2015 from Brisbane. The submissions were not received by the Council until 4 February 2015.

[7] Although the submissions were received late, in the case of the submissions sent by post we note that under section 352(5) of the Resource Management Act 1991 provides

Where a notice or other document is sent by post to a person in accordance with subsection (1)(c) or (d), it shall be deemed, in the absence of proof to the contrary, to be received by the person at the time at which the letter would have been delivered in the ordinary course of the post.

[8] In the case of electronic submissions, we note that the s 11 of the Electronic Transactions Act 2002 provides that an electronic communication is received **at the time the electronic communication enters the information system.**

[9] Although it is likely that the submissions that were posted in time could be considered to be received in time “in the ordinary course of the post”, the electronic communication appears to be late. We do not consider it necessary to make any definitive finding on whether the submissions were or were not late, because out of an abundance of caution we have treated them as being late. We have concluded that there is no prejudice to their acceptance, having considered the statutory tests below.

Interests of directly affected persons

[10] The process for making submissions and further submissions is prescribed in the Order in Council. Following the receipt of submissions the Council is required to provide a list of submissions on its website and then invite further submissions supporting or opposing primary submissions where they represent a relevant aspect of the public interest or have an interest in the proposal greater than the interest the general public has. There is no prejudice to any person by accepting these submissions. The proponent of the Plan Change, MAIL, will also have an opportunity to respond as part of the further submission process.

[11] The Council is due to notify submissions by 16 February 2015, to enable further submissions to be made. The Council will need to include the submissions listed in Schedule 1 in its public notification or attend to their notification as soon as practicable.

The need to ensure that there is an adequate assessment of the effects anticipated from the implementation of the proposal.

[12] Accepting the late submissions will contribute to an assessment of the effects of the Proposal.

The stage of the hearing process

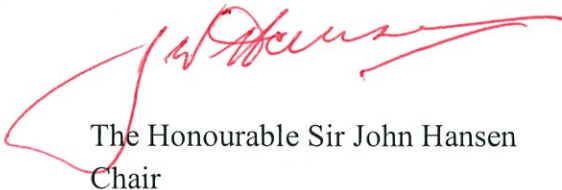
[13] There is sufficient time for the submissions to be notified to enable further submissions to be received well before any hearing on this matter. The timetabling for hearing is yet to be finalised.

Decision and directions

[14] Having considered the late submissions and the reasons given that have been referred to me for determination, I am satisfied that acceptance of the late submissions would meet the statutory requirements set out in clause 5(2) of Schedule 3 of the Order in Council.

[15] Accordingly it is so ordered:

1. The late submissions set out in Schedule 1 are accepted.
2. The Christchurch City Council is directed to publicly notify the submission in accordance with the Order.
3. The Independent Secretariat is directed to serve the late submitters with this decision.



The Honourable Sir John Hansen
Chair

Schedule 1 – Late Submissions

Submitter	Decision
Graham Wilkinson	Accept
Iain Malcolm	Accept
Roy Reid	Accept
Linton Family Trust	Accept
Sheryn Linton	Accept
SH and MB Manning	Accept