

**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** the Christchurch Replacement District Plan

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**CLOSING SUBMISSIONS FOR THE CROWN ON  
PROPOSAL 21 – SPECIFIC PURPOSE ZONES**

6 November 2015

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## MAY IT PLEASE THE HEARINGS PANEL:

### Introduction

1. These closing submissions respond to matters arising at the hearing on 3 and 4 November 2015 in relation to the following Specific Purpose Zones:
  - (a) Specific Purpose (Defence Wigram) Zone ("**Defence Wigram**");
  - (b) Specific Purpose (Hospital) Zone ("**Hospital Zone**");
  - (c) Specific Purpose (School) Zone ("**School Zone**");
  - (d) Specific Purpose (Tertiary Education) Zone ("**Tertiary Education Zone**"); and
  - (e) Specific Purpose (Cemetery) Zone ("**Cemetery Zone**").
2. As the Panel acknowledged at the hearing, the witnesses on behalf of the Council and Crown have worked together such that there are very few matters remaining in dispute.
3. The Crown relies on its opening submissions and rather than repeat that information, these submissions focus on the following issues that arose at hearing:
  - (a) In relation to Defence Wigram:
    - (i) the wording in the "How to Use the Rules" section; and
    - (ii) the scope issue raised by the Council in relation to the reduced setback in the "Built Form Standards";
  - (b) In relation to the Hospital Zone:
    - (i) the scope issue regarding the rezoning of CDHB-owned land adjacent to Hilmorton Hospital;
  - (c) In relation the School Zone:
    - (i) the default non-complying status for activities in the School Zone; and
  - (d) In relation to the Cemetery Zone:

- (i) the outstanding issues in relation to the best way to direct a comprehensive consent approach.
4. These submissions also address the Crown's position in relation to the Elmwood proposal and comment on the use of the 'alternative zoning' approach.
5. The main outstanding legal issues for the Crown in this hearing are matters of scope which the Panel will be familiar with. The relevant legal tests for scope are set out in the opening submissions for the Crown and the Council, and also in the joint opening legal submissions for Pegasus health (Charitable) Limited and Nurse Maude Association. For the reasons set out in the Crown's opening submissions, and further in these closing submissions, it is submitted that all of the changes sought by the Crown are within the scope of the Crown's Stage 2 submission on the Christchurch Replacement District Plan ("**Replacement Plan**").<sup>1</sup>

## **Defence Wigram**

### *How to use the Rules (21.1.2)*

6. The Panel heard the differing views of the experts on how to deal with inconsistencies in the Plan.
7. The Crown sought that that the following wording should be added to the Defence Wigram Zone to provide clarity and ensure there are no conflicts with other parts of the Replacement Plan:

*"Note: in the event of an activity being provided for by rules in more than one chapter then the relevant rule in Chapter 21 prevails."*

8. Ms Carter for the Council disagrees with this approach and at the hearing she stated:

*"I consider it more appropriate to identify any inconsistencies or double ups now during this District Plan review process, and to delete duplicate or contradictory provisions, and/or use cross-referencing where appropriate."<sup>2</sup>*

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<sup>1</sup> In these submissions, references to the various Government departments and Crown agencies are within the Crown submission and are to be read as coming under 'Crown umbrella' approach for this Replacement Plan.

<sup>2</sup> Hearing Transcript, Day 1, page 32, line 25.

9. However, Ms Carter also agreed, following questions from the Panel, that the process of ensuring things are aligned is not as robust as the Panel might hope.<sup>3</sup>
10. The problem for the New Zealand Defence Force ("NZDF") is that it has not made a submission on all of the potential conflicts. Therefore the NZDF faces issues of scope being raised in future hearings if it attempts to resolve the possible conflicts down the track. Given the number of potential conflicts that could arise, the NZDF would also need to be involved in multiple hearings.
11. There are inevitably going to be conflicts that were never anticipated by the NZDF in relation to the Defence Wigram Zone. The Panel raised the possibility of addressing possible conflicts with the Defence Wigram Zone in a "wash up" hearing at the end of the process. The Crown accepts that such an approach could address the concerns raised, provided that the NZDF could rely on this occurring and any conflict issues being addressed at that time.<sup>4</sup>
12. Otherwise, the Crown continues to seek a clear provision in the Defence Wigram Zone to address any possible conflicts. In terms of the wording proposed by Ms Sweeney, Ms Carter stated that if it "*was to be effective it would have to be a rule.*"<sup>5</sup> Ms Sweeney accepted that a rule would be an appropriate mechanism to deal with the overlap issue.<sup>6</sup>
13. In light of this, the Crown suggests the following wording:
- "Rule XX: In the event of inconsistency or overlap between the provisions of Chapter 21 and the other parts of this plan, the provisions of Chapter 21 take precedence."*
14. There are examples of similar rules being used in Proposed Auckland Unitary Plan<sup>7</sup> and the Wellington City Plan.<sup>8</sup>

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<sup>3</sup> Hearing Transcript, Day 1, page 39, line 39.

<sup>4</sup> Hearing Transcript, Day 1, page 39, line 31.

<sup>5</sup> Hearing Transcript, Day 1, page 36, line 30.

<sup>6</sup> Hearing Transcript, Day 1, page 107, line 5.

<sup>7</sup> Part 3, Chapter G, section 2.1 (general rules and special information requirements) of the Proposed Auckland Unitary Plan - "...*The activity status within a precinct takes precedence over the same activity within a zone or an Auckland-wide provision, whether more restrictive or enabling...*"

The following amendments are also proposed by NZDF in relation to the Proposed Auckland Unitary Plan:

- (a) In the event of inconsistency or overlap between the provisions of the General Coastal Marine zone and the other coastal zones, the provisions of the other coastal zones take precedence; and
- (b) The activities, controls and assessment criteria in the General Coastal Marine zone apply to the CMA in the Defence zone unless otherwise specified in the following provisions which take precedence.

*Built from standards (21.1.2.3.5) – reduction in setback from 10m to 6m*

15. The only other outstanding matter in relation to Defence Wigram was a scope issue in relation to the reduced separation from neighbour's setback (from 10m to 6m).
16. Ms Carter confirmed:

*"Through informal mediation with the Crown I have agreed to the merits of a reduced separation from neighbours setback to six metres, but I am concerned that there is no scope in the Crown submission to include this, which means there is a fairness issue as neighbours have not had the opportunity to comment."<sup>9</sup>*
17. The Crown submits that there is no fairness issue arising out of this agreed change, because, as highlighted during opening submissions, the Defence Wigram designation itself has no setback requirement.<sup>10</sup> Therefore, the Council's argument that a neighbour may think a reduction in the 10m setback (to 6m) may be an issue, such that they would have submitted on the provision, is in the Crown's position, not a tenable one (and certainly not a "real risk" as required by case law).
18. The Crown submits that this change is within scope or could be approved by the Panel for the reasons outlined above, and in the Crown's opening submissions at paragraphs 17 – 21.

## **Hospital Zone**

### *Changes agreed*

19. The Panel heard that all changes have been agreed in relation to the Hospital Zone and the Crown supports the latest redlined proposal that was filed in the joint memorandum of counsel on 2 November 2015 (subject to the drafting issue around the intent of the 'alternative zone' in exclamation marks, as identified by the Panel at the hearing<sup>11</sup>).

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<sup>8</sup> In relation to the Lincolnshire Farm structure plan, the Plan states "... where conflict exists between the District Plan and the provisions of this structure plan, the structure plan should generally be considered to take precedence."

<sup>9</sup> Hearing Transcript, Day 1, page 32, line 17.

<sup>10</sup> Hearing Transcript, Day 1, page 101, line 27.

<sup>11</sup> Hearing Transcript, Day 1, page 13, line 31.

### *Rezoning of CDHB-owned land adjacent to Hillmorton Hospital*

20. The Crown's opening legal submissions outline the CDHB's position in relation to the rezoning of land adjacent to the Specialist Mental Health Services facility at Hillmorton Hospital on Annex Road from Residential Suburban to Specific Purpose (Hospital) Zone.<sup>12</sup>
21. At the hearing, Mr Blair confirmed that the Council no longer opposes the rezoning of this site.<sup>13</sup>
22. However Mr Blair also stated:

*"Because of the staged nature of the District Plan review there are some scope and jurisdiction issues to be resolved. I understand that the Panel will need to make a decision on those issues of scope before deciding on those rezoning requests."*<sup>14</sup>
23. The scope issue arises because the Hillmorton Site on Annex Road was notified in Stage 1 as Residential Suburban when there was no Specific Purpose Zone Proposal. The CDHB's submission to rezone the site Specific Purpose (Hospital) Zone was made at Stage 2 when the Specific Purpose (Hospital) Zone Proposal was notified.
24. The CDHB's position – that this rezoning is clearly within scope – is set out in the Crown's opening submissions at paragraphs 31 to 34. The issue is similar to the scope issues the Panel heard from Mr Leckie in relation to Pegasus Health and Nurse Maude. To the extent relevant, the CDHB supports the submissions made by Mr Leckie on this point<sup>15</sup> and submits that the rezoning sought by the CDHB is within scope.

### **School Zone**

#### *Default non-complying status*

25. The Panel heard from Mr McCallum-Clark and his view that the default non-complying activity status for activities not specifically provided for under Rule 21.6.2.2.4 is unduly restrictive and discretionary activity status is more appropriate.

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<sup>12</sup> Opening submissions for the Crown on Proposal 21, paragraphs 28 – 36.

<sup>13</sup> Hearing Transcript, Day 1, page 9, from line 36.

<sup>14</sup> Hearing Transcript, Day 1, page 10, line 20.

<sup>15</sup> Hearing Transcript, Day 2, from page 165.

26. Mr McCallum-Clark also highlighted to the Panel that, in light of the latest 'tracked changes' version of the Residential Rules advanced in the Council's closing submission, the default non-compliance rule status doesn't actually have any practical effect. The following discussion between Mr McCallum-Clark and Mr Daysh illustrates this point:<sup>16</sup>

*"MR DAYSH: You are pointing out that if you went down the Residential alternative zone you would be discretionary as a default?"*

*MR McCALLUM-CLARK: Yes, sir.*

*MR DAYSH: But because the way this is ruled, residential type things in this zone would be non-complying, which is inconsistent? Is that the way I am reading your ---*

*MR McCALLUM-CLARK: Well, yes. In my view on it, from a planning point of view, discretionary is an appropriate activity status, rather than non-complying. But in any event, because of the way these rules have been constructed, we end up at that discretionary status anyway, in which case the non-complying rule here is somewhat redundant."*

27. During cross examination Ms Dixon conceded that she was not aware that the latest track change version of the Residential chapter shows that the Council has agreed that activities not otherwise provided for in the Residential Zone be downgraded from non-complying to discretionary.<sup>17</sup>
28. The Crown submits that because the 'alternative' Residential Zone rules currently already provide for activities as discretionary, the default non-complying status in the Specific Purpose (School) Zone is redundant, conflicting, and should be deleted.
29. If the Panel disagrees, then the Crown submits that the default non-complying status is overly restrictive and should be downgraded to discretionary. As outlined in the Crown's opening submissions, non-complying status is used to signal the Council's desire to discourage types of activities and is typically used where the receiving environment is regarded as "*delicate or vulnerable and/or the activity in question is*

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<sup>16</sup> Hearing Transcript, Day 1, page 114, line 24.

<sup>17</sup> Hearing Transcript, Day 1, page 47, line 46.

*particularly noisome or noisy, or in some other way likely to produce significant adverse effects".<sup>18</sup>*

30. The Crown also highlights that Ms Dixon confirmed that she did not assess this issue in her section 32 report as she did not see the cost of a non-complying activity as being dramatically different to the cost of a discretionary activity application.<sup>19</sup>

#### *Elmwood Club Proposal*

31. At the hearing the Panel requested clarity over the Ministry's position in relation to the Elmwood Proposal.
32. The Elmwood Club ("**Club**") is proposing a substantial redevelopment of its facilities and has entered into discussions with the Ministry over a 'shared use' facility, partly located on Heaton Intermediate School land. In the Club's submission on the Replacement Plan, the Club sought to change part of the 'alternative zone' for Heaton Intermediate School, to provide an easier path for RMA approval of the facility.
33. This was advanced by the Club at the Specific Purpose (School) Zone mediation session. As recorded in the Mediation Report, this was identified as an unresolved issue. In its evidence, the Club subsequently sought amended relief to provide for recreational activities as permitted activities on this School site, rather than a change to the 'alternative zone'.<sup>20</sup>
34. Discussions between the Ministry and the Club are ongoing, and the Ministry supports, in principle, shared use facilities.
35. With respect to the Club's submission, the Ministry does not support the originally sought change to the 'alternative zone', however as outlined in opening submissions, it does not oppose the permitted activity status now sought.
36. Essentially, the Ministry's overall position on the Elmwood Proposal and the relief sought in Mr Gow's evidence is 'neutral', ahead of further discussions between the Club and the Ministry.

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<sup>18</sup> Opening submissions for the Crown, paragraph 40, referring to *Mighty River Power Limited v Porirua City Council* [2012] NZEnvC 213 at [18] and *Day v Manawatu – Wanganui Regional Council* [2012] NZEnvC 182 at [2-48].

<sup>19</sup> Hearing Transcript, Day 1, page 48, line 31.

<sup>20</sup> Evidence of Mr Gow on behalf of the Elmwood Club.

37. As directed by the Panel, there have been further discussions between the Ministry, the Council and the Club in relation to the permitted activity status. However, the Crown understands that the Council and the Club have been unable to come to an agreed position to date.

## **Cemetery Zone**

### *Comprehensive consent approach*

38. The Panel heard the differing views of Mr Eman for the Council and Ms Hickey for the Crown as to the most appropriate way to direct a 'comprehensive consent approach' in relation to the Cemetery Zone.
39. Mr Eman agrees that it is good practice to strive for integrated planning and to apply for related consents together.<sup>21</sup> He also agrees that a policy should be used to give clear direction on how the outcomes intended in a plan should be achieved.<sup>22</sup>
40. However, Mr Eman remains of the view that an advice note should be used to direct a comprehensive consent approach, rather than a policy.
41. Mr Eman is also of the view "*that it would be more appropriate to leave the issue of whether joint hearings are required to be dealt with under section 102 of the Resource Management Act.*"<sup>23</sup>
42. Notwithstanding these views, Mr Eman agreed "*that a policy can be a control, requiring something to be undertaken by a plan user or by the Council*"<sup>24</sup> and that "*there is nothing in the RMA that precludes a plan from having a policy like this that pertains to a matter of process.*"<sup>25</sup>
43. Following questioning from the Panel, Mr Eman also agreed that in terms of process, "*a joint hearing or a comprehensive consent hearing more accord[s] with the Statement of Expectations and the Strategic Direction chapter need for clarity and reducing of consenting requirements...*"<sup>26</sup>

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<sup>21</sup> As stated in para 5.8 of Mr Eman's evidence and as agreed through cross examination.

<sup>22</sup> Hearing Transcript, Day 1, page 21, line 5.

<sup>23</sup> Hearing Transcript, Day 1, page 18, line 5.

<sup>24</sup> Hearing Transcript, Day 1, page 23, line 40.

<sup>25</sup> Hearing Transcript, Day 1, page 20, line 32.

<sup>26</sup> Hearing Transcript, Day 1, page 26, line 22.

44. As set out in the Crown's opening submissions, it is submitted that the addition of a Policy is "fairly and reasonably" envisaged by the Crown's submission as a whole.<sup>27</sup> The wording sought is set out below:<sup>28</sup>

*"Ensure A comprehensive consent approach, including joint hearings should be undertaken where multiple consents are likely to be required for activities planned to be undertaken in a cemetery, particularly where consent is also required from the Canterbury Regional Council, including joint hearings for existing and future cemeteries that provides for activities planned to be undertaken in a cemetery."*

45. Following questioning from the Panel, Ms Hickey agreed that the use of a comprehensive consent approach across all chapters of the Plan would be appropriate.<sup>29</sup> The Crown would support the inclusion by the Panel of a Policy to that effect.

## **Alternative Zones**

### *General*

46. At the hearing there was discussion around the use and terminology of 'alternative zones'.
47. The Crown agrees with the position confirmed by counsel for the Council at the hearing – that all of the 'alternative zone' rules apply to the Specific Purpose Zones, not just permitted activities.<sup>30</sup> The Crown would support clarifying this and making it consistent across the different Specific Purpose Zones.
48. The Crown also supports the evidence of Mr Blair that this sort of "zoning" approach has worked well in Christchurch to date.<sup>31</sup>
49. Notwithstanding this, the Crown agrees that there is the possibility for confusion to arise in relation to the terminology used. One way of dealing with this would be to remove references to an 'alternative zone' and instead replace them with references to the 'underlying zone rules'. This would help avoid confusion around what the 'alternative zone' is.

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<sup>27</sup> See the Opening submissions for the Crown, paragraphs 63 – 67.

<sup>28</sup> Evidence of Ms Hickey, paragraph 7.11.

<sup>29</sup> Hearing Transcript, Day 1, page 123, line 20.

<sup>30</sup> Hearing Transcript, Day 1, page 40, line 44.

<sup>31</sup> Hearing Transcript, Day 1, page 11, line 44.

50. There are also two specific points that the Crown would like to highlight to the Panel in relation to the use of 'alternative zones' in the Specific Purpose (Hospital), (School) and (Tertiary Education) Zones. These are addressed in turn below.

*Matters arising out the use of 'alternative zones' in the Hospital Zone*

51. The Crown wishes to clarify one point for the Panel in relation to the Hospital Zone following the discussions that arose at the hearing around the 'alternative zoning' terminology.
52. The Specific Purpose (Hospital) Zone is an 'overlay' that provides for activities and a built form not generally anticipated in the underlying zone – in much the same way as a designation.
53. The Ministry of Health's hospital sites, except part of Christchurch Central which will be considered in Stage 3, are not designated and therefore there are only two tiers of zone provisions that apply to hospital sites - the underlying (or 'alternative') Residential Zone provisions and the Specific Purpose (Hospital) Zone ('overlay') provisions.
54. Much like for a designation, the Crown considers that the provisions of the Specific Purpose (Hospital) Zone take precedence. These provisions specifically provide for hospital, and hospital-related, activities through rules and built form standards. If a 'non-hospital' activity is proposed within the Specific Purpose (Hospital) Zone, then the rules and standards of the 'underlying' Residential Zone would apply. Furthermore, if a site is no longer used for hospital purposes, the 'overlay' could be 'uplifted' and only the 'underlying' Residential Zone would apply. In this sense, the Crown considers that references to the 'alternative zone' should be changed to 'underlying zone rules.'
55. Further, since there are unlikely to be any hospital-related activities that are not already listed as permitted or restricted discretionary activities, the need for a non-complying activity status is somewhat redundant and inefficient as the underlying Residential Zone provisions would be the default position in any event.
56. If the Panel is minded, the following provisions in the Hospital Zone could be better clarified by the suggested wording set out below:

21.5.2.2.1 Permitted Activities

~~P8 Any activities or facilities not listed as which were be permitted or restricted discretionary activities in the alternative-Specific Purpose (Hospital) Zone are subject to the rules of the underlying residential zone as for those sites listed in 21.5.3. Refer to alternative zones for relevant rules and built form standards.~~

21.5.2.2.5 Non-Complying activities

~~NC1 Any activity not provided for as a permitted, restricted discretionary or discretionary.~~

57. The Crown submits that these changes are "consequential or ancillary changes" and are therefore within the scope of the Crown's submission.<sup>32</sup> Alternatively, they could be dealt with under the Panel's powers under clause 13(2) or 13(6) of the Order.

*Matters arising out the use of 'alternative zones' as they relate to the New Zealand Fire Service Commission in the School and Tertiary Education Zones*

58. As a matter of practicality, the Crown also wishes to highlight to the Panel that the New Zealand Fire Service Commission is relying entirely on the 'alternative zoning' approach in the Specific Purpose (School) and (Tertiary Education) Zones to provide for planned fire stations at the university and at a former school site within these Zones. Should this approach be revisited by the Panel there may be significant practical implications for these planned developments.
59. The Crown requests that the Panel considers these practical implications if it decides to revisit the 'alternative zoning' approach.

**Date:** 6 November 2015



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<sup>32</sup> Section 9.8 – 9.10, Part A of the Crown's Stage 2 Submission.