

**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

**SECOND STATEMENT OF EVIDENCE OF WENDY SARAH HICKEY
ON BEHALF OF THE CROWN (SUBMITTER #2387)**

PROPOSAL 21: SPECIFIC PURPOSE (CEMETERY) ZONE

Dated the 15th day of October 2015

BUDDLEFINDLAY

NEW ZEALAND LAWYERS

Barristers and Solicitors
PO Box 2694, Wellington

Solicitors Acting:

David Allen

Partner

Phone: 04 462 0423 Fax: 04 462 0418

Email: david.allen@buddlefindlay.com

Lisa Bazalo

Solicitor

Phone: 04 498 7325 Fax: 04 462 0825

Email: lisa.bazalo@buddlefindlay.com

TABLE OF CONTENTS

1. INTRODUCTION	2
2. CODE OF CONDUCT	2
3. SCOPE	3
4. EXECUTIVE SUMMARY	4
5. DEFINITION OF "COMPREHENSIVE CONSENT"	5
6. SCOPE OF THE CROWN'S SUBMISSION	5
7. COMPREHENSIVE CONSENT APPROACH	6
APPENDIX A: STAGE 2 CROWN SUBMISSION	9

1. INTRODUCTION

- 1.1 My name is Wendy Sarah Hickey. I hold the position of Senior Advisor at the Canterbury Earthquake Recovery Authority (“**CERA**”). I have been in this position since 8 September 2014. I hold a Bachelor of Environmental Management from Lincoln University and have nine years’ planning experience working in local government.
- 1.2 This is the second statement of evidence I have prepared on the Christchurch Replacement District Plan (“**Replacement Plan**”). My first statement of evidence was provided in respect of the hearing on Proposal 2 (Definitions) in Stage 1.¹
- 1.3 I started my planning career working at Environment Southland from April 2006 to December 2007 in the Resource Planning department, assessing resource consents applications. Following this I was employed at Rodney District Council (subsequently Auckland Council) as a Planner from December 2007 to September 2014. In this position I assessed Notices of Requirement, provided planning advice and was involved in and led various Council initiated plan changes. I also assisted in drafting provisions, attended workshops and summarised submissions for the Proposed Auckland Unitary Plan.

2. CODE OF CONDUCT

- 2.1 I confirm that I have read the code of conduct for expert witnesses as contained in the Environment Court’s Practice Note 2014. I have complied with the practice note when preparing my written statement of evidence, and will do so when I give oral evidence before the hearings panel.
- 2.2 The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence to follow.
- 2.3 Unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

¹ Evidence of Wendy Hickey on behalf of the Crown on the Definitions Proposal, dated 23 June 2015. This statement of evidence is available for download at <http://www.chchplan.ihp.govt.nz/hearing/chapter-2-definitions-part/> under the heading “*Submitter Evidence*”.

2.4 While I have been employed by CERA to provide this evidence on behalf of the Crown, both my employer and I agree that I am giving evidence in an independent capacity. I and my employer recognise and acknowledge my overriding duty to the hearings panel in preparing and presenting this evidence.

3. SCOPE

3.1 I have been asked to provide evidence in relation to the Specific Purpose (Cemetery) Zone.

3.2 In forming my view I have read, support and rely on the following:

- (a) the decision of the Hearings Panel on Proposal 3 (Strategic Directions) released on 26 February 2015;
- (b) the evidence of Stephen Timms on the Strategic Directions Proposal, dated 25 November 2014²;
- (c) the Land Use Recovery Plan, Te Mahere Whakahaumanu Taone (“LURP”); and
- (d) the Statement of Expectations contained in Schedule 4 to the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014.

3.3 I have also read the evidence of Mr Eman on behalf of Christchurch City Council and I agree with his evidence in relation to the following matters:

- (a) amendments made to reduce reliance on built form standards;
- (b) rezoning of Little Akaloa cemetery to Specific Purpose (Cemetery) Zone;
- (c) deletion of the definition in relation to “Comprehensive Consent”;
- (d) minor amendments to improve consistency; and
- (e) the removal of advice notes from the Activity Table to a note.

² Evidence of Stephen Timms on behalf of the Crown on the Strategic Directions Proposal, dated 25 November 2014. This statement is available for download <http://www.chchplan.ihp.govt.nz/hearing/chapter-3-strategic-directions-and-strategic-outcomes/> under the heading “Evidence”.

- 3.4 I have had a number of informal meetings and email exchanges with Mr Eman regarding the Proposal. I also attended formal mediation on 12 October 2015.
- 3.5 My evidence focusses on the outstanding issue from the Crown's submission which relates to the 'comprehensive consent' approach. In particular my evidence addresses:
- (a) the agreement reached in relation to the deletion of the definition of "Comprehensive Consent";
 - (b) the scope of the Crown's submission; and
 - (c) the outstanding issues in relation to the proposed 'comprehensive consent' approach.

4. EXECUTIVE SUMMARY

- 4.1 The Crown's submission points have largely been met which, in my opinion, improves the clarity and ease of use of this Proposal. In particular the following changes have been made since the Proposal was notified:
- (a) rezoning of Little Akaloa cemetery to Specific Purpose (Cemetery) Zone;
 - (b) amendments to Rule 21.2.2.1 How to use the rules;
 - (c) inclusion of advice Notes 1 and 3 following Rule 21.2.2.1;
 - (d) amendments and deletions to the Activity Specific Standards in Rule 21.2.2.2.1 Permitted Activities;
 - (e) amendments to Rule 21.2.2.1 P4, P5 and P6; and
 - (f) deletion of the 'note' in the Activity Specific Standards in Rule 21.2.2.2.1 Permitted Activities.
- 4.2 However, there is one matter outstanding which has not been resolved which relates to the 'comprehensive consent' approach that has been adopted by the Council through advice "Note 1".
- 4.3 I consider that a policy is the most appropriate way of addressing the need for a 'comprehensive consent' approach (including joint hearings), rather than through a rule and advice note. In my opinion, I consider that the use of a policy:

- (a) better achieves the purpose of the RMA;
- (b) is consistent with the relevant planning documents;
- (c) is the most appropriate way to achieve objectives of the Strategic Direction Chapter; and
- (d) is consistent with the Ministers' Statement of Expectations, specifically clauses (a) and (b).

5. DEFINITION OF "COMPREHENSIVE CONSENT"

- 5.1 In his evidence, Mr Eman has recommended that the definition of "Comprehensive Consent" be deleted.³
- 5.2 I support the deletion of this definition on the basis that the definition is unclear, does not appropriately define the comprehensive consent approach, and can be better addressed in a policy.

6. SCOPE OF THE CROWN'S SUBMISSION

- 6.1 Mr Eman considers that the scope of the Crown's submission does not extend to seeking to include a new policy that provides direction on undertaking a comprehensive consent approach (including joint hearings).⁴
- 6.2 The Crown's submission did not oppose the inclusion of a comprehensive consent approach. However, the Crown was opposed to the unclear definition of "comprehensive consent". The Crown's submission on this point is set out in **Appendix A**.
- 6.3 In its submission, the Crown requested that a new rule be included that required joint hearings to be undertaken where consents were triggered by regional and district councils as well as under the Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("**NES**").
- 6.4 A number of discussions were had with the Council in relation to this submission point which lead me to consider the most appropriate method to address instances where consents are triggered in the regional and district council plans, and in the NES.

³ Evidence of Mr Eman, paragraph 5.5.

⁴ Evidence of Mr Eman, paragraph 5.8(c).

- 6.5 For the reasons set out below I consider that the most appropriate method for directing a comprehensive consent approach (that includes joint hearings) is not through a rule or an advice note, but through a new policy. I consider that in these circumstances, given the changes to the provision, a new policy is a 'consequential or ancillary change' as anticipated in the Crown's submission⁵ and is therefore within the scope of the Crown's submission.
- 6.6 I also consider that such a policy addresses the Crown's concerns in relation to the issue of "*the need for an undefined, comprehensive consent process*", as addressed in Part B of the Crown's submission set out in **Appendix A**.

7. COMPREHENSIVE CONSENT APPROACH

- 7.1 I do not support the reasons set out in Mr Eman's evidence for not using a policy to ensure that a comprehensive consent approach, that includes joint hearings, is undertaken.
- 7.2 Objective 3.3.2 of the Strategic Directions decision provides clear direction that the Christchurch Replacement District Plan should, through its interpretation and implementation, minimise transaction costs and set clear objectives and policies that clearly state the outcome intended.
- 7.3 In its decision on the Strategic Directions Proposal the hearings panel stated "*Strategic Directions should provide overarching direction for the Replacement Plan, and have primacy*".⁶ The Panel went on to say that "*this provision [Objective 3.3.2] makes explicit that objectives and policies in all other chapters are to be expressed and achieved in a manner consistent with the objectives in the Strategic Directions (subject of course to, to the RMA's requirements)*".⁷
- 7.4 The Crown's view expressed by Mr Stephen Timms at the hearing on the Strategic Directions Proposal also strongly expressed concern for the need to ensure that the Replacement Plan is clear about its intended outcomes in its objectives and policies.⁸ I agree with the evidence of Mr Timms on this matter.
- 7.5 While there is not a specific provision in the Cemetery Zone triggering the need for consent, there are restricted discretionary activities in the Cemetery

⁵ Section 9, Part A of the Crown's Stage 2 submission.

⁶ Decision 1 Strategic Directions and Strategic Outcomes (and related Definitions) paragraph 100

⁷ Decision 1 Strategic Directions and Strategic Outcomes (and related Definitions) paragraph 100

⁸ Evidence of Stephen Timms on behalf of the Crown, on the Strategic Directions Proposal, dated 25 November 2015, paragraph 9.3. This statement is available for download at <http://www.chchplan.ihp.govt.nz/hearing/chapter-3-strategic-directions-and-strategic-outcomes/> under the heading "*Evidence*".

Zone that will require consent and other relevant proposals such as the Subdivision, Development and Earthworks Proposal or Natural Hazards Proposal that may trigger the need for consent. In my opinion this provides justification in terms of section 32 of the RMA to include a new policy and it would be the most efficient and effect way of achieving Objective 3.3.2 because it would provide clear direction that clearly states the outcomes intended and minimises transaction costs and reliance on resource consent processes.

7.6 I also consider that including a new policy in relation to undertaking a comprehensive approach that includes joint hearings will:

- (a) *“allow relevant information to be presented together;*
- (b) *maintain consistency in decision making between regional and district councils; and*
- (c) *reduce costs and avoid time delays for applicants, submitters and councils”⁹.*

7.7 The outcomes of including a policy will therefore be consistent with Objective 3.3.2, the decision on the Strategic Directions Proposal, and the Statement of Expectations, specifically Clauses (a) and (b).

7.8 I note that Mr Eman’s evidence states that having such a policy in the Cemetery Zone and not elsewhere in the Replacement District Plan is a reason not to include a policy.¹⁰ I do not agree that this is a valid reason not to include such a policy.

7.9 Ensuring that the Replacement Plan reduces reliance on the resource consent process and contains objectives and policies that clearly state the outcomes that are intended for the Christchurch district is a key priority for the Crown (as set out in the Statement of Expectations, specifically Clause (a) and (b)). I consider that consistency with Objective 3.3.2 in the Strategic Directions decision and the Statement of Expectations are valid reasons to direct the use of a comprehensive consent approach through a policy.

7.10 Mr Eman also comments that the use of a policy to direct joint hearings is not consistent with the RMA, as section 102 of the RMA already covers the issue of joint hearings. I acknowledge that section 102 addresses the issue of joint

⁹ <http://qualityplanning.org.nz/index.php/consents/notified-consents/hearings?highlight=WyJzMTAyII0=>

¹⁰ Evidence of Mr Eman, paragraph 5.8(a).

hearings. However, the hearings panel in its decision on the Strategic Directions Proposal stated that “*nothing in the RMA precludes a plan from including objectives and/or policies pertaining to matters of process.*”¹¹

Therefore, I consider that including a policy that ensures a comprehensive consent approach, which includes the use of joint hearings and clearly states the outcome intended. I also consider this approach to be consistent with the RMA.

7.11 In terms of the wording of the Policy, I consider that some amendments should be made to the policy referred to in Mr Eman’s evidence¹² as set out below:

Ensure a comprehensive consent approach, including joint hearings is used 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 with the Canterbury Regional Council, including joint hearings is used for existing and future cemeteries that provide for activities planned to be undertaken in a cemetery.

7.12 I consider that the above amendments will improve clarity.

7.13 I also consider that ‘Note 2’, as set out in the revised version of the Specific Purpose (Cemetery) Zone attached to Mr Eman’s evidence,¹³ should be deleted. I consider that with the inclusion of the policy above, ‘Note 2’ would add little value and would be unnecessary.



Wendy Sarah Hickey

15th October 2015

¹¹ Decision 1 Strategic Directions and Strategic Outcomes (and related Definitions) paragraph 117

¹² Mr Eman at paragraph 5.7.

¹³ Evidence of Mr Eman on the Specific Purpose (Cemetery) Zone, Attachment A, dated 5 October 2015.

APPENDIX A: STAGE 2 CROWN SUBMISSION

Specific Purpose (Cemetery) Zone			
21.2.1 Objectives and Policies	Support	The Crown supports the objectives and policies outlined in 21.2.1	Retain the objectives and policies in 21.2.1
21.2.2.1 b – c General Provisions	Oppose	As drafted the provisions unnecessarily refer to the need for an undefined, comprehensive consenting process. A joint hearing of any applications under section 102 of the RMA is appropriate.	<p>Amend the 21.2.2.1 b - c to:</p> <p>Cemeteries are included in the Ministry for the Environment’s Hazardous Activities and Industries List (HAIL). As such, certain <u>All listed cemeteries will be managed to ensure that they comply with the requirements within the Specific Purpose (Cemetery) Zone may require consent from the Canterbury Regional Council under the requirements of the Resource Management</u> (National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.</p> <p>c. For existing and future cemeteries, where extensive works are expected to trigger consents from the Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011, Canterbury Regional Council or Christchurch City Council, a comprehensive consent process shall be undertaken.</p> <p><u>Joint hearings by ECan and the Council for existing and future cemeteries will be held where extensive works are expected to trigger consents under the Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.</u></p>

<p>Rules 21.2.2.2.1 P3 and P5 Permitted activities</p>	<p>Oppose</p>	<p>The Crown does not oppose the permitted activities themselves, but the overreliance on the built form standards.</p>	<p>Remove all unnecessary references to the built form standards in P3 and P5.</p>
--	----------------------	---	---