

**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** Stage 2 of the Christchurch Replacement District Plan

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**OPENING SUBMISSIONS FOR THE CROWN ON THE STAGE 2 SUBDIVISION,  
DEVELOPMENT AND EARTHWORKS PROPOSAL**

Dated: 30 October 2015

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## 1. INTRODUCTION

- 1.1 The Crown's submission on the Stage 2 Subdivision, Development and Earthworks Proposal ("**Proposal**") sought:
- (a) to recognise the importance of earthworks to support recovery and to ensure that provisions relating to earthworks were appropriate, enforceable and clear;
  - (b) to simplify the structure of the Proposal so that it was easier to navigate and use;
  - (c) to reduce the level of prescription in the Proposal; and
  - (d) to provide an appropriate level of protection for natural values in the Proposal.
- 1.2 The Crown commends the Council for its constructive approach to dealing with submitters' concerns through discussions and mediation, resulting in virtually all of the Crown's concerns being addressed prior to the Crown filing its evidence-in-chief.<sup>1</sup>
- 1.3 These submissions:
- (a) confirm that, with one minor exception,<sup>2</sup> the Crown has no remaining issues with the Proposal;
  - (b) highlight the relevant directions in the higher order documents;
  - (c) note the Crown's support for submissions made by other parties; and
  - (d) comment on the relationship between the Proposal and Proposal 4 (Papakāinga).

## 2. REMAINING ISSUES FOR THE CROWN

- 2.1 The executive summary in section 4 of Helen Anderson's evidence for the Crown on this Proposal succinctly summarises the way in which the points that had been raised by the Crown on the Proposal have been addressed by the Council.

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<sup>1</sup> In the revised Proposal attached to Mr Long's evidence in chief of 5 October 2015. See paragraph 3.2 of Helen Anderson's statement of evidence.

<sup>2</sup> Identified in paragraph 2.4 below.

2.2 As is described there:

- (a) the concerns the Crown had about structure and clarity have been addressed, including through the deletion of assessment matters relating to land use, rather than subdivision;
- (b) the Crown's remaining suggestion for the purposes of clarity was to restructure the description of controlled activities in 8.2.2.1 to provide for subdivision and areas that are and are not subject to an Outline Development Plan and to provide a residual controlled activity for "*subdivision in any zone unless otherwise specified in 8.2.2.1 – 8.2.2.5*". As described in paragraph 2.4 below, the suggestion has since been addressed in part;
- (c) the Crown's concerns with the earthworks provisions have been addressed through reducing the period during which earthworks are not to exceed the volumes in 8.8.2 Table 1 from five years to one year;
- (d) the Crown's wish to include the effects of subdivision on natural values – such as indigenous biodiversity and ecosystems – within matters of discretion for allotment sizes and dimensions has been addressed through the restructured matters for control and discretion in 8.2.4.1 and 8.2.4.2 and its wish to include an assessment of the effects of earthworks on natural values has been provided for in a new clause 7 in 8.8.7;
- (e) the Crown's concern to ensure that the creation of minimum 1 ha lifestyle allotments in the Rural Banks Peninsula zone should be subject to legal encumbrances to protect more than one of the natural values that had been included with the previous provision has been addressed through the new controlled activity 8.2.2.1 C7 and through the related new restricted discretionary activity in 8.2.2.2 RD8 and the related new discretionary activity in 8.2.2.3 D6;
- (f) the Crown's submissions on minimum allotment sizes in Character Areas in residential zones have been addressed through changes to 8.2.3.1, Table 1 (and in 14.2.3.1 of Proposal 14 which was introduced during the Stage 2 Residential hearing); and
- (g) the Crown's concerns on minimum allotment sizes for emergency facilities have been addressed through the introduction of a new

controlled activity C4 which makes it clear that minimum allotment size requirements do not apply to those facilities.

- 2.3 Mr Long's rebuttal evidence of 21 October 2015 attaches a further revised Proposal ("**Revised Proposal**") which, with one exception, accepts the amendments proposed in Ms Anderson's evidence on behalf of the Crown.<sup>3</sup>
- 2.4 The exception relates to the description of controlled activities in 8.2.2.1. In Ms Anderson's evidence,<sup>4</sup> the new descriptions in C5 and C6 (which provide, in C5, for subdivision in an area subject to an Outline Development Plan and, in C6, for subdivision that is not subject to an Outline Development Plan in identified residential and rural zones) needed to be accompanied by an additional controlled activity to catch "*subdivision in any zone unless otherwise specified in 8.2.2.1 – 8.2.2.5*", and related restricted discretionary and discretionary activities (8.2.2.2 RD2 and 8.2.2.3 D3).
- 2.5 The Crown understands that the Council has no objection to Ms Anderson's suggested amendments, and that they were intended to be included in the Revised Proposal. In the Crown's view, they are needed to complete the suite of provisions.
- 2.6 There are now no remaining points of difference between the Crown and the Council. However, without changing the terms of the Revised Proposal, the Crown has some suggested grammatical improvements to the Revised Proposal. A marked up copy of the Revised Proposal will be handed up with these submissions.

### **3. THE HIGHER ORDER DOCUMENTS**

- 3.1 The Crown's opening legal submissions for the Stage 1 Proposal discussed the directions in the higher order documents and the Strategic Directions objectives relevant to subdivision and development.<sup>5</sup> In summary, these documents direct that the Proposal must:
- (a) enable an increase in the supply of housing in Christchurch;
  - (b) reduce consenting and notification requirements;
  - (c) use clear and concise language and be easy to use;
  - (d) use infrastructure efficiently and effectively; and

<sup>3</sup> At Appendix C and paragraph 6.55 of Helen Anderson's statement of evidence.

<sup>4</sup> Appendix C of Helen Anderson's statement of evidence.

<sup>5</sup> Crown's opening legal submissions on the Stage 1 Subdivision Proposal dated 22 June 2015, section 4.

- (e) use low impact and sensitive design.
- 3.2 In addition, and of relevance to matters addressed in Crown's submission on the Stage 2 Proposal,<sup>6</sup> the higher order documents and the Strategic Directions objectives direct that the Subdivision Proposal must:
- (a) enable the recovery of Christchurch; and
  - (b) support and preserve natural values.

### **Enable the recovery of Christchurch**

- 3.3 The Crown's submission on the Stage 2 Proposal emphasised that earthworks support recovery and rebuild activities by enabling construction, subdivision, land repair and rehabilitation.<sup>7</sup>
- 3.4 The need to enable the recovery of Christchurch is a consistent theme of the higher order documents and is encapsulated by Strategic Directions Objective 3.3.1(a), which directs the *"expedited recovery and future enhancement of Christchurch as a dynamic, prosperous and internationally competitive city"*.

### **Support and preserve natural values**

- 3.5 The need to enable recovery by supporting rebuild activities must be balanced against the need to support and preserve natural values such as indigenous biodiversity and ecosystems, the coastal environment and water bodies and their margins,<sup>8</sup> as directed by the higher order documents and the Resource Management Act 1991 ("**RMA**"). The relevant statutory directions are outlined briefly in the **Appendix** to these submissions.
- 3.6 As noted in Ms Anderson's evidence,<sup>9</sup> natural values matters have largely been addressed in the Stage 3 Proposals, including in Proposal 8, Proposal 9 (Natural and Cultural Heritage) and Proposal 19 (Coastal Environment). The Crown will therefore address the directions on natural values in the higher order documents in more detail during the Stage 3 hearing on Proposal 9.

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<sup>6</sup> Crown's Stage 2 submission dated 15 June 2015, pages 89 to 110.

<sup>7</sup> Crown's Stage 2 submission dated 15 June 2015, page 89 (paragraph 15.2).

<sup>8</sup> Crown's Stage 2 submission dated 15 June 2015, page 89 (paragraphs 15.4 and 15.6(a)(i)).

<sup>9</sup> See paragraph 5.10 of Helen Anderson's statement of evidence.

#### **4. SUPPORT FOR THE SUBMISSIONS OF OTHER PARTIES**

4.1 The Crown supports changes made in the Revised Proposal in response to submissions from:

- (a) the Canterbury District Health Board, to ensure that no minimum allotment size should apply in the Specific Purpose (Hospital) Zone;
- (b) the Experience Trust, to provide for additional matters of discretion relating to amenity in 8.8.7;
- (c) Cashmere Fields, to provide an exemption, in 8.8.5, to the filling and excavation provisions for the maintenance of farm access tracks; and
- (d) the Canterbury Regional Council, to include an exemption, in 8.8.5, from the earthworks provisions to enable agencies to carry out their functions and operations.

#### **5. SUBDIVISION IN THE PAKAKĀINGA ZONE**

5.1 Finally, the Crown wishes to place a marker next to the provision in 8.2.3.1 Table 1 which provides for there to be no minimum net site area in the Papakāinga Zone. The Crown supports that provision on the basis of its understanding that the currently agreed scope of the Papakāinga Zone only covers Māori land held under the Te Ture Whenua Māori Act 1993.<sup>10</sup>

5.2 The scope of the Papakāinga Zone as notified included non-Māori-titled land.<sup>11</sup> As Alan Matheson has said,<sup>12</sup> the Crown and Ngāi Tahu are continuing to engage on the nature and extent of the Papakāinga Zone, with a suggestion that the extent of the notified zone be reduced in combination with an overlay for the balance area within the historical Māori Reserve.

5.3 The Crown's only point here is that, were the provisions in the Papakāinga Zone to include non-Māori-titled land, then it may have difficulty in supporting the provision in 8.2.3.1 Table 1 which provides for there to be no minimum lot size in that zone. That would have the potential to allow unlimited development rights which could, in turn, undermine rural character and result in urban development outside of urban areas that are not consistent with Papakāinga development or the objective of the Papakāinga Zone.

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<sup>10</sup> Paragraphs 13.1 to 13.2 of Alan Matheson's evidence-in-chief dated 13 October 2015. Mr Matheson's evidence is available for download at <http://www.chchplan.ihp.govt.nz/hearing/chapter-4-papakāinga-zone-stage-2/> under the heading "Christchurch City Council Evidence".

<sup>11</sup> See page 40 (paragraph 12.5) of the Crown's Stage 2 submission.

<sup>12</sup> Paragraph 5.4 of Alan Matheson's evidence on the Proposal dated 5 October 2015.

5.4 Accordingly, the Crown would be obliged if the Panel would place a temporary marker by this provision so that it can be considered further if necessary in the context of the hearing of Proposal 4.

**DATED** 30 October 2015

A handwritten signature in blue ink, appearing to read "Emma Moore". The signature is written in a cursive style and is positioned to the right of a circular stamp or mark.

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**Paul Radich and Emma Moore**  
**Counsel for the Crown**

## APPENDIX – SUPPORT AND PRESERVE NATURAL VALUES – RELEVANT HIGHER ORDER PROVISIONS

1. Section 6 of the RMA sets out matters of national importance, that must be recognised and provided for by decision makers, including:
  - (a) *"the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development"* (section 6(a));
  - (b) *"the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development"* (section 6(b)); and
  - (c) *"the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna"* (section 6(c)).

### Strategic Directions decision

2. The Hearings Panel recognised in its Strategic Directions decision that there was a *"need for balance"* in the recovery objective, by way of recognising *"other important qualities and values of the City"*.<sup>13</sup>
3. Accordingly, Objective 3.3.1(c) provides for the *"expedited recovery and future enhancement of Christchurch as a dynamic, prosperous and internationally competitive city"*, in a manner that *"sustains the important qualities and values of the natural environment"*.

### Recovery Strategy for Greater Christchurch - Mahere Haumanutanga o Waitaha ("Recovery Strategy")

4. One of the six components of recovery, identified by the Recovery Strategy, is recovery of the natural environment.<sup>14</sup>
5. The Recovery Strategy seeks to *"restore the natural environment to support biodiversity and economic prosperity and to reconnect people to the rivers, wetlands and Port Hills"*, by achieving six recovery goals, including (for example) *"ensuring recovery activities value, protect and sustainably manage the sources of our water"* (natural environment recovery goal 6.1).<sup>15</sup>

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<sup>13</sup> Strategic Directions decision, at [153].

<sup>14</sup> Recovery Strategy, page 4.

<sup>15</sup> Recovery Strategy, page 11.

## Canterbury Regional Policy Statement ("RPS")

6. The RPS provides a direction to support and preserve natural values, in particular through:
- (a) Objective 5.2.1(2)(a),<sup>16</sup> which requires that development is located and designed so that it functions in a way that *"maintains, and where appropriate, enhances the overall quality of the natural environment of the Canterbury region, including its coastal environment, outstanding natural features and landscapes, and natural values"*.
  - (b) Chapter 7 (Fresh water),<sup>17</sup> which addresses resource management issues, objectives, policies or methods relating to water. For example, Objective 7.2.1 seeks that the region's fresh water resources be sustainably managed to enable people and communities to provide for their economic and social well-being, provided that *"the natural character values of wetlands, lakes and rivers and their margins are preserved and these areas are protected from inappropriate subdivision, use and development and where appropriate restored or enhanced"*.<sup>18</sup>
  - (c) Chapter 8 (The coastal environment),<sup>19</sup> which addresses issues related to activities in the coastal environment, including the appropriate occupation and use of the coastal marine area. For example, Objective 8.2.4 requires that the natural character of the coastal environment *"is preserved and protected from inappropriate subdivision, use and development"*, and that its *"natural, ecological, cultural, amenity, recreational and historic heritage values are restored or enhanced"*.<sup>20</sup>
  - (d) Chapter 9 (Ecosystems and indigenous biodiversity),<sup>21</sup> which addresses issues relating to exotic and indigenous ecosystems and indigenous biodiversity. For example, Objective 9.2.1 seeks to halt *"[t]he decline in the quality and quantity of Canterbury's ecosystems and indigenous biodiversity"* and support *"their life-supporting capacity and mauri"*.<sup>22</sup>

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<sup>16</sup> RPS, page 31.

<sup>17</sup> RPS, pages 65 to 86.

<sup>18</sup> RPS, page 71.

<sup>19</sup> RPS, pages 87 to 102.

<sup>20</sup> RPS, page 93.

<sup>21</sup> RPS, pages 103 to 114.

<sup>22</sup> RPS, page 105.

- (e) Chapter 10 (Beds of lakes and rivers and their riparian zones),<sup>23</sup> which addresses issues relating to the beds of lakes and rivers and their associated riparian zones. For example, Objective 10.2.1 seeks to *"[e]nable subdivision, use and development of river and lake beds and their riparian zones while protecting all significant values of those areas, and enhancing those values in appropriate locations"*.<sup>24</sup>
- (f) Chapter 12 (Landscape),<sup>25</sup> which addresses issues relating to outstanding natural features and landscapes in the Canterbury region, and landscapes that may warrant protection or management for other reasons. For example, Objective 12.2.1 seeks that *"[o]utstanding natural features and landscapes within the Canterbury region are identified and their values are specifically recognised and protected from inappropriate subdivision, use, and development"*.<sup>26</sup>

### New Zealand Coastal Policy Statement

- 7. The New Zealand Coastal Policy Statement guides local authorities in their management of the coastal environment and must be given effect to by the Hearings Panel.<sup>27</sup>
- 8. Relevantly, Policy 7 requires that, in preparing plans, areas of the coastal environment where particular activities and forms of subdivision, use and development are inappropriate or may be inappropriate without the consideration of effects need to be protected through objectives, policies and rules.<sup>28</sup>

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<sup>23</sup> RPS, pages 115 to 124.

<sup>24</sup> RPS, page 117.

<sup>25</sup> RPS, pages 139 to 146.

<sup>26</sup> RPS, page 141.

<sup>27</sup> RMA, s 75(3).

<sup>28</sup> New Zealand Coastal Policy Statement, pages 14 to 15.