

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

AND

IN THE MATTER OF an application for an extension of time to
lodge submissions pursuant to cl 5 of
Schedule 3 to the OIC

Date: 2 September 2015

RECORD OF DECISION

**re application for extension of timeframe
for making submissions on Coastal Hazards matters**

Decision and Directions

[1] Having considered the Application¹ by the Christchurch City Council ('Council') to extend the timeframe for submissions and further submissions on the Coastal Hazard aspects of the Stage 3 Natural Hazards Proposal (part) and the Coastal Environment Proposal,² the supporting affidavit of Michael Theelen, Chief Planning Officer employed by the Council,³ and having taken into account the matters in clause 5(2)(a)-(c) of Schedule 3 to the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 ('OIC'), I grant the extension as requested⁴ and direct as follows:

- (a) The closing date for submissions on the Coastal Hazard aspects of the Stage 3 Natural Hazards Proposal (Part) and the Coastal Environment Proposal is to be

¹ Application on behalf of Christchurch City Council for extension of the timeframe for making of submissions on coastal hazards matters, 31 August 2015.

² As set out in para [3] below.

³ Affidavit of Michael Renier Antonius Theelen, sworn 2 September 2015.

⁴ Council Memorandum dated 31 August 2015, at para 3(a)-(c).

extended by 30 working days, thereby amending the closing date for submissions from 4 September 2015 to **16 October 2015**;

- (b) The Council is to undertake the coding of submissions and upload the same to the Council's website, and give public notice calling for further submissions by **2 November 2015** (10 working days); and
- (c) Further submissions are required to be received by **16 November 2015** (10 working days).

Background

[2] The Council has applied for an extension to the closing date for submissions on the Coastal Hazards aspects of the Stage 3 Natural Hazards Proposal (part) and all of the Coastal Environments Proposal, pursuant to clause 5 of Schedule 3 to the OIC.

[3] The Application relates to the following provisions ('the Coastal Hazard aspects of the Stage 3 Natural Hazards Proposal (part) and the Coastal Environment Proposal'):

Proposal 5, Natural Hazards⁵

- (a) 5.0 Introduction Coastal Hazards;
- (b) 5.2.9 Policy – Changing Climate;
- (c) 5.6 Policies for coastal hazards (5.6.1. Policies for coastal erosion and sea water inundation and 5.6.2 Policies for coastal hazard mitigation works);
- (d) 5.11 Coastal erosion and coastal inundation rules (Rules 5.11.1, 5.11.2, 5.11.3, 5.11.4 and 5.11.5);

⁵ For the avoidance of doubt, the application does not extend to Stage 3 Floor Level and Fill Management Areas, Flood Ponding Management Areas, High Hazard Management Areas or Port Hills and Banks Peninsula Slope Instability Rules.

Proposal 19, Coastal Environment

- (a) All of Proposal 19.

Planning Maps

- (a) All Planning Maps which include the “Coastal Zone”, the “Coastal Environment” notation, Coastal Erosion Management Areas 1 and 2, and Coastal Inundation Management Areas 1 and 2; and
- (b) All Natural Hazard Planning Maps which include Coastal Erosion Management Areas 1 and 2, and Coastal Inundation Management Areas 1 and 2.

[4] The reasons for the request can be summarised as follows:

- (a) The regulatory effect of the Coastal Hazard aspects of the Natural Hazards Proposal and the Coastal Environment Proposal has attracted significant public interest, and an extension would better allow submitters to prepare and file submissions on the relevant issues.
- (b) The Council has been unable to undertake discretionary consultation on the Coastal Hazard aspects of the Natural Hazards Proposal and the Coastal Environment Proposal with affected land owners and the public generally, due to the tight timeframes of the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014.
- (c) The Coastal Hazard aspects of the Natural Hazards Proposal and the Coastal Environment Proposal affect a large number of properties, and responding to the implications of climate change and the associated coastal hazards is a difficult and complicated issue.
- (d) The Council has been advised that a large number of submitters will have difficulty meeting the current deadline for submissions (4 September 2015).

- (e) The Council considers that the suggested extension will not affect the ability to hold a hearing in 2016.
- (f) The Council points to a previous direction of the Panel, deferring the hearing of Residential Bach Zone provisions to Stage 3.⁶ The Council considers that an extension on Coastal Hazard matters will enable affected communities to prepare comprehensive submissions to address all coastal matters for their areas.

Preliminary matters

[5] Following the receipt of the application, I issued a Minute⁷ directing the Council to file an affidavit from an appropriate senior planning manager in support of the Application given the significance of the request and the interests of submitters. The Council complied with those directions and filed an affidavit from Michael Theelen, Chief Planning Officer. I address the content of the affidavit in the reasons for this decision below.

Jurisdiction

[6] Clause 5 of Schedule 3 to the OIC, provides:

Compliance with time limits

- (1) The chairperson of the hearings panel may—
 - (a) extend, or waive compliance with, any time limits specified by or under this order, except in relation to the time limit specified in clause 12(2) of this order; and
 - (b) accept submissions received after the relevant closing date notified under clause 5 or 7 of Schedule 1.
- (2) In making a decision under subclause (1), the chairperson must take into account—
 - (a) the interests of any person who, in the chairperson's opinion, may be directly affected by a waiver; and
 - (b) the need to ensure that there is an adequate assessment of the effects anticipated from the implementation of the proposal; and

⁶ Minute clarifying scope of matters to be heard in Residential Hearing (Stage 2), 14 August 2015.

⁷ Minute of Chair dated 1 September 2015

- (c) the stage of the hearing when the hearings panel is provided with the submissions.
- (3) A decision of the chairperson under this clause is final and there is no right of objection or appeal against it.

[7] For the purposes of this application, the Council request is to **extend** the time limits provided in clause 5 and 7 of Schedule 1 to the OIC. The notified submission period pursuant to clause 5 of Schedule 1 is due to expire on 4 September 2015.

[8] I am satisfied that, pursuant to clause 5 of Schedule 3 to the OIC, I have jurisdiction to consider the application to extend the time limits for making submissions on a proposal. However, when making a decision, I must take into account:

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

[9] The affidavit of Mr Theelen addresses these matters.

[10] I am mindful of our obligations under cl 12(2) of the OIC to hear submissions and make decisions not later than 9 March 2016. I must be satisfied that any extension of time will not impinge on our ability to meet those obligations.

Reasons for Decision

[11] I have considered the affidavit of Mr Theelen in support of the application in the context of the matters I must take into account in accordance with Clause 5 (2)(a)–(c) of Schedule 3 to the OIC. I am satisfied that the case for it is made and the circumstances on this particular matter warrant an exception, notwithstanding the overall timeframe exigencies we are subject to under the OIC.

The interests of any person who, in the chairperson's opinion, may be directly affected by a waiver;

[12] I am satisfied that the granting an extension will further enable more informed participation by persons, who have an interest in and are affected by the Coastal Hazard aspects of the Natural Hazards Proposal and the Coastal Environment Proposal, given the technical complexity of the relevant provisions.

[13] I have taken into account the interests of submitters who have participated in, or will participate in the submission and hearing process under the OIC for the development of the Christchurch Replacement District Plan (CRDP). I am mindful all have been under the same time pressures and a number of them would likely be 'directly affected' by this extension. The short timeframes are simply a consequence of the special procedures set up under the OIC, to provide an expedited process for the development of the CRDP. Many submitters have already expressed in their presentations to us their concern about the short timeframes. However, Mr Theelen has explained in his affidavit that the Coastal Hazard aspects of the Natural Hazards Proposal and the Coastal Environment Proposal that have been notified in Stage 3 are somewhat more complex than other proposals. That is because the proposed Replacement District Plan introduces a new set of provisions which seek to control activity rights based on predicted changes to the environment. In his opinion, the risk from coastal hazards is not easy to identify and understand, more so than for example the rock fall risk. To that extent, he considers that more time is justified and sets the Coastal Hazard aspects of the Natural Hazards Proposal and the Coastal Environment Proposal apart from other proposals.

[14] I acknowledge that many aspects of the proposed Replacement District Plan have proved difficult for lay submitters, in particular, to understand. However, I accept the views of Mr Theelen on the distinction to be drawn between the Coastal Hazard aspects of the Natural Hazards Proposal and the Coastal Environment Proposal and other proposals in this particular case. Although many other submitters on other proposals may feel aggrieved that they have not been given more time to participate in the submission and hearing processes relating to other proposals, I am satisfied that on balance, the interests of would be submitters on the Coastal Hazard aspects of the Natural Hazards Proposal and the Coastal Environment Proposal justify an extension for the reasons outlined by Mr Theelen.

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

[15] Mr Theelen has explained that the Council has received significant correspondence directly and through the media from the community about their need for more time to engage and gather scientific information which they believe will help them prepare their submissions on an informed basis. I am satisfied that an extension of time will assist would be submitters in their preparation and will ultimately facilitate a more informed submission and hearing process.

The stage of the hearing when the Hearings Panel is provided with the submissions.

[16] Stage 3 matters are to be heard early in 2016, and I am satisfied that the extension will enable hearings to take place and our decisions to be issued in accordance with the requirements of the OIC.

[17] Having taken into account the relevant matters in clause 5(2)(a)–(c) of Schedule 3 to the OIC, I grant the application for the extension as requested by the Council and direct accordingly as set out in paragraph [1](a)–(c) above.

For and on behalf of
The Honourable Sir John Hansen, Chair



Environment Judge John Hassan
Deputy Chair