

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

AND

IN THE MATTER OF Proposal 8 Subdivision, Development and
Earthworks (Part)

Date: 3 November 2015

MINUTE

Request by Transpower for leave to file closing submissions and further evidence

[1] This morning, we have read a Memorandum of Counsel on behalf of Transpower New Zealand Ltd seeking leave to file closing submissions and call further evidence if necessary, following its opportunity to review the transcript.¹ The Memorandum was emailed to the Secretariat, and received at 5.06pm on 2 November 2015.

[2] This concerns the hearing into Proposal 8, on subdivision, earthworks and development. As scheduled, the hearing commenced on Monday 2 November and ran for 1.5 days, concluding adjourned earlier this afternoon.

[3] The fact that the Memorandum was filed after 5pm on Monday 2 November meant that the first practical opportunity to consider it was prior to the scheduled 10.00 a.m. resumption this morning. Transpower did not seek to arrange to have counsel attend the hearing to address the Memorandum. As such, and amongst various competing commitments the Panel had that morning, an indication was given by email through the Secretariat that:

¹ Memorandum of counsel on behalf of Transpower New Zealand Ltd – leave to file closing submissions and call further evidence if necessary – 2 November 2015

- (a) Leave for filing closing submissions would be granted, subject to hearing directions to issue as to timetabling;
- (b) Leave to file further evidence would be declined, for reasons to follow by Minute.

[4] Judge Hassan has passed this matter to me, on the basis that he has recused himself from deliberating on matters at issue between Orion New Zealand Limited (submitter 2340/FS 2797) and Combined Provinces, Federated Farmers of New Zealand (2288), and given that this recusal was by reason of His Honour having acted for Transpower prior to his appointment to the bench.

[5] On the matter of closing submissions, I confirm that leave is granted for Transpower to file closing submissions, subject to hearing directions to issue as to timetabling. Judge Hassan, indicated in adjourning the hearing today, that a further Minute will issue giving timetable directions for sequential closing submissions for all parties.

[6] On the matter of further evidence, I confirm that leave is declined as I do not consider it would be consistent with principles of fairness and efficiency (to which the Panel is subject through both the Resource Management Act 1991 and the OIC²) to accede to the request. I come to that view for a range of reasons.

[7] Primarily, these concern the lateness of the request, in particular in the fact that it was made after the relevant submitter evidence was called and tested before the Panel, and the relevant witnesses discharged, and considerably later than when Transpower ought properly have sought leave.

[8] Transpower's belated request can be contrasted with that of Orion, on 27 October 2015. At that time, in response to the evidence of Ms McKenzie for Federated Farmers, well in advance of the scheduled hearing, Orion sought leave to have its witnesses from earlier hearings called and to supplement their evidence. It also requested leave to cross-examine Ms McKenzie. Both requests were granted.

² Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014

[9] Unlike Orion, Transpower did not seek any leave at that time to file supplementary evidence and cross-examine Ms McKenzie. Indeed, nor did it take any action in light of Orion's leave request, at least not before its 2 November request. Whilst I understand that Transpower had sound reasons, in terms of efficiency, to elect to call limited evidence and not attend the hearing, those elections did not preclude Transpower from reconsidering its position. However, the proper time for action on its part was prior to the hearing, and certainly not so late as the evening following the date on which the evidence of other submitters was called, and tested, and relevant witnesses discharged.

[10] The Secretariat informs me that the transcript for 2 November 2015 was available on the Panel's website, by 6pm that day. I am satisfied that the pre-exchanged evidence of Ms Mackenzie, and the Orion and Council witnesses, gave Transpower fair and sufficient notice of matters also traversed in the summaries which witnesses gave, and the answers given in Ms Appleyard's cross-examination (of Ms MacKenzie) and to the Panel.

[11] Surprisingly, in view of its lateness, Transpower's Memorandum does not indicate that it had sought the views of the Council, Orion or Federated Farmers, as to its request. However, I find there would be prejudice for each of these parties at least to the extent that we would need to find additional hearing time and potentially allow for associated directions as to supplementary evidence and/or cross-examination. Quite apart from those parties, there are the interests of the range of other submitters we have heard, including in terms of securing timely and efficient determination of the relief they have pursued in this hearing.

[12] Coinciding with that prejudice, I find it would be contrary to our overall obligations to as to timely, fair and efficient hearing and determination of these proceedings for the Christchurch Replacement District Plan.

[13] However, in the circumstances, I find it appropriate to allow leave for Transpower to present closing submissions, despite its election not to attend the hearing. In particular, that is in the sense that Orion's requested relief is somewhat related, including in the fact that Transpower also has relevant interests in the New Zealand Electrical Code for Practice for Electrical Safe Distances 2001 (NZECP 34:2001), made under the Electricity Act 1992. As I have noted, His Honour will be making timetabling directions on this matter for parties generally, for a sequential exchange.



AG Neill
Panel Member