

**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 3 of the Christchurch Replacement District Plan

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**OPENING SUBMISSIONS FOR THE CROWN ON THE SPECIFIC PURPOSE  
(FLAT LAND RECOVERY) ZONE PROPOSAL 21.11**

Dated: 14 December 2015

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## 1. INTRODUCTION

- 1.1 The Crown's submission on the Stage 3 notified provisions for the Specific Purpose (Flat Land Recovery) Zone ("**FLRZ**") supported the establishment of the FLRZ<sup>1</sup> and the provisions as notified, which enabled recovery activities to continue until the future use of the zone is decided through the Residential Red Zone programme.<sup>2</sup>
- 1.2 The Council's planner, Mr Eman, proposed substantial changes to the notified proposal in his evidence in chief ("**Eman Proposal**").<sup>3</sup> The Crown carefully considered the Eman Proposal and, for the reasons set out in Ms Whyte's evidence in chief, now supports provisions which are more enabling than the notified proposal.
- 1.3 Since the filing of evidence Ms Whyte and Mr Eman have continued to discuss the appropriate provisions for the FLRZ and, subject to a difference of opinion as to the appropriate activity status for community facilities,<sup>4</sup> have agreed on provisions which were circulated to the parties for comment prior to the hearing ("**Updated Revised Proposal**").
- 1.4 These submissions, with reference to the Updated Revised Proposal:
- (a) address a preliminary scope issue;
  - (b) outline the current Crown position in relation to the Updated Revised Proposal;
  - (c) respond to matters raised in Mr Tsao's evidence,<sup>5</sup> to the extent relevant to the Crown's position; and
  - (d) assess the Updated Revised Proposal against the relevant statutory requirements.

## 2. SCOPE ISSUE

- 2.1 A small portion of the FLRZ<sup>6</sup> is subject to the Christchurch Central Recovery Plan, Te Mahere 'Maraka Ōtautahi' ("**CCRP**"). Mr Eman agrees with

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<sup>1</sup> Pages 273 and 275-277 of the Crown's Stage 3 submission.

<sup>2</sup> Page 273 of the Crown's Stage 3 submission.

<sup>3</sup> Mr Eman's evidence in chief, Appendix A.

<sup>4</sup> Namely pre-school activities, health care facilities, veterinary care facilities, education activities, places of assembly and spiritual activities.

<sup>5</sup> Mr Tsao was the only other submitter to provide evidence and informally represents the Quake Outcasts group.

<sup>6</sup> Namely that area bordered by Oxford Terrace, Willow Street and Bangor Street, as shown on the Central City Zoning Planning Map and shown as Attachment E to Ms Whyte's evidence.

Ms Whyte's view that that portion of the FLRZ should be zoned Central City Residential Zone to avoid inconsistency with the CCRP.<sup>7</sup>

2.2 While there are no submissions specifically seeking a rezoning of this land, the Crown has lodged a broad submission on Proposal 13 (Central City) requesting that the Hearings Panel amend the proposal to ensure the proposal achieves consistency with the CCRP.<sup>8</sup> Mr Eman agrees: "*to be consistent with the CCRP that portion of the Recovery Zone would be more appropriately zoned Central City Residential Zone*".<sup>9</sup>

2.3 The Crown submits that:

- (a) the relief sought is within the scope of the above broad submission point on the Central City Proposal; and
- (b) no party is prejudiced by this change.

2.4 Evidence is being adduced at this hearing as it precedes the Central City hearing, ensuing that the Hearings Panel has all relevant evidence before it. It is anticipated that this issue will also be referred to in the Central City hearing.

### **3. CURRENT CROWN POSITION**

#### **Agreed objective**

3.1 Mr Eman and Ms Whyte agree on the following objective:

*"A largely open environment with a very low density of residential and non-residential activities that:*

- 1. reflects the changes in land uses in the area, including building clearances;*
- 2. recognises the natural hazard risks affecting many properties;*
- 3. recognises the infrastructure limitations in the area;*
- 4. acknowledges the interim nature of this zone; and*
- 5. maintains the long-term potential of the area to contribute to the recovery and future enhancement of Christchurch."*

3.2 Each element of the objective is well supported through the evidence before the Hearings Panel:

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<sup>7</sup> Mr Eman's rebuttal evidence paragraph 6.1. Under section 23(1) of the Canterbury Earthquake Recovery Act 2011 the Hearings Panel must not make a decision or recommendation that is inconsistent with the CCRP.

<sup>8</sup> Crown Stage 3 submission point 3721.582.

<sup>9</sup> Mr Eman's rebuttal evidence paragraph 6.1.

- (a) Once the work described by Mr Clark is completed there will be only a few commercial properties (approximately 6), approximately 70 residential properties and 11 vacant sections disbursed throughout the FLRZ (352 ha).<sup>10</sup>
- (b) Attachment D to Mr Eman's evidence in chief shows that the majority of privately owned properties in the FLRZ are within the High Flood Hazards Management Area.<sup>11</sup>
- (c) The infrastructure limitations of the area are detailed in the evidence of Mr Rouse.
- (d) The interim nature of the zone, and the long term potential of the zone to contribute to Christchurch's future recovery, are detailed in the evidence of Ms Whyte, Mr Eman, and the section 32 report for both the Notified Proposal and the Eman Proposal.<sup>12</sup>

### **Agreed policies and rules**

- 3.3 Subject to a difference of opinion as to the activity status of new community facilities on privately owned sites (discussed below), Ms Whyte and Mr Eman agree on the policies and rules to apply in the FLRZ.

#### *Residential activities*

- 3.4 Ms Whyte and Mr Eman agree that residential activities on privately owned sites should be provided for to a similar extent to that currently provided for in the Residential Suburban Zone in the Central City Proposal. They also agreed that Rule P1 enables homeowners in the FLRZ to conduct residential activities, within appropriate limitations, on their properties.
- 3.5 Mr Eman considers that "*providing for urban activities on the remaining privately owned sites is generally unlikely to compromise long term recovery and future use of this zone*".<sup>13</sup> The Crown also considers that the appropriate balance has been struck by the proposed provisions for residential activities.

<sup>10</sup> As noted by Ms Whyte, in her evidence in chief paragraph 6.11. As the Crown offer closed on 10 December these figures are potentially lower, but updated figures are not yet available.

<sup>11</sup> Although Mr Anderson concludes that "*the boundary between the Red and Green Zones does not define a unique line between land areas of significantly different land deformation risk as the result of liquefaction*", he also observes that *the Red Zones encompass some of the most liquefaction susceptible soils in the Christchurch urban area, and in many areas large settlements leading to increased flooding risk and lateral spreading caused severe damage to houses and infrastructure in the earthquake sequence*". Mr Anderson's evidence in chief, paragraph 3.4.

<sup>12</sup> For example, Mr Eman's evidence in chief at paragraph 8.2 notes that the fact that the FLRZ is surrounded by the existing urban area "*provides relatively unique opportunities to enhance the sustainability of Christchurch*".

<sup>13</sup> Mr Eman's evidence in chief paragraph 3.1.

### *Non-residential activities*

- 3.6 Ms Whyte and Mr Eman agree that non-residential activities of a residential scale<sup>14</sup> should be managed as permitted activities, similarly to how these activities are managed in the Residential Suburban Zone in the Central City Proposal. Mr Eman's evidence is that these activities are "*unlikely to create significantly greater conflicts with potential future uses than in respect of residential activities*", and the "*Residential Suburban zone provision for market gardens, community gardens and garden allotments would seem ideal activities for this area.*"<sup>15</sup>

### *Recognition of natural hazards*

- 3.7 Ms Whyte and Mr Eman agree that the FLRZ objective and policies should recognise the influence natural hazards have had, and continue to have within the FLRZ.<sup>16</sup> Specific recognition of natural hazards in the FLRZ objective and policies for the FLRZ are appropriate because it provides the framework for managing activities in the rules.
- 3.8 Under the Updated Revised Proposal, Chapter 5 (managing natural hazard risks) still applies. In addition, the Updated Revised Proposal includes reference to "*the natural hazard risks affecting many properties*" in the objective. Residential activities on existing privately owned sites are provided for "*to the extent compatible with the natural hazard risks and infrastructure limitations*".<sup>17</sup> If (contrary to the Crown's submission) the Hearings Panel decides that the provision of new community facilities on privately owned sites should be a discretionary activity, Ms Whyte and Mr Eman agree that the consent authority should determine the extent to which such activity is "*compatible with the natural hazard risks and infrastructure limitations*".<sup>18</sup>

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<sup>14</sup> Listed as P12-P17 - namely a bed and breakfast, childcare for non-residential children, home occupation, market gardens, storage of 1 heavy vehicle and dismantling or repair of privately owned boats or vehicles.

<sup>15</sup> Mr Eman's evidence in chief paragraph 7.44.

<sup>16</sup> See Ms Jacka's evidence in the Stage 1 Natural Hazards hearing, summarised in paragraph 5.1 of Ms Whyte's evidence, which explains that the Residential Red Zone was established because of the large scale earthquake damage to the area, necessitating area wide solutions. Mr Rouse's evidence explains that horizontal infrastructure has been significantly affected within the FLRZ and the particular approach to managing horizontal infrastructure within the FLRZ.

<sup>17</sup> 21.11.1.1.1 Policy – Residential Activities a.

<sup>18</sup> 21.11.1.1.2 Policy – Non-Residential Activities a iv.

## **Difference of opinion as to the activity status of new community facilities**

- 3.9 Mr Eman and Ms Whyte agree that, given the potential level of intensification that may result from new community facilities, they are not appropriate to be provided for as permitted or controlled activities and should be considered through a resource consent process in the FLRZ.<sup>19</sup> However, Ms Whyte considers that new community facilities on privately owned sites within the FLRZ should be non-complying.<sup>20</sup> Mr Eman considers they should have discretionary activity status.
- 3.10 Ms Whyte's view is that, based on the evidence of Mr Rouse, decisions relating to intensification of land uses beyond what is currently provided for under the Updated Revised Proposal as permitted or restricted discretionary activities should be made with key strategic decisions on infrastructure.<sup>21</sup> Mr Eman's rebuttal evidence reinforces this view, explaining that "*No decisions have yet been made by the Council about infrastructure provision during the interim period before the future land use of the red zone is resolved*".<sup>22</sup> Mr Anderson's evidence also supports the view that more intense development could be consented when large scale works can occur. His evidence is that "*given that scale of the liquefaction effects of settlements and lateral spreading that have affected the Red Zone in my opinion these effects are likely to be more economically dealt with on an area-wide basis where large plant can be used and the constraints of dealing with property boundaries and the attendant issues can be removed*".<sup>23</sup>
- 3.11 Ms Whyte notes that the FLRZ does not have a residential population that would necessitate new activities of this nature.<sup>24</sup> Mr Eman's section 32 report does not contain any specific analysis in support of community facilities having discretionary activity status.
- 3.12 Mr Eman considers that non-complying activity status is redundant because community facilities will not be contrary to any of the objective or policies for the FLRZ, and therefore will always meet one of the gateways for section

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<sup>19</sup> Ms Whyte's evidence paragraph 6.31.

<sup>20</sup> In the Updated Revised Proposal, D2-D7, the notified Proposal (which the Crown submitted in support of) proposed that most of the non-residential activities provided for in the Living 1 zone of the Operative Plan, and those in the residential suburban zone of the Replacement Plan, be non-complying activities. In Ms Whyte's Proposal these activities are deleted, with NC1 applying so that any activity not listed as a permitted, controlled, restricted discretionary, discretionary or prohibited activity is non-complying.

<sup>21</sup> Ms Whyte's evidence paragraph 6.32.

<sup>22</sup> Mr Eman's rebuttal evidence paragraph 5.5. This statement was made in response to Mr Tsao's request for rezoning.

<sup>23</sup> Mr Anderson's evidence in chief, paragraph 3.4(c).

<sup>24</sup> Ms Whyte's evidence paragraph 6.35.

104D consent for non-complying activities.<sup>25</sup> However, this is not the case. Ms Whyte's view is that, because non-complying activity status is appropriate for community facilities, Policy 21.11.1.1.2 clause iv should not be included. On such drafting there would not be any policy support for new community facilities on privately owned sites because Policy 21.11.1.1.2 *only provides* for the listed non-residential activities. It is therefore likely that such developments would be considered contrary to the relevant objective and policies. Rather, to gain consent the effects of the activity would need to be found to be minor.<sup>26</sup>

3.13 The fact that the Council is legally obliged to provide some level of infrastructure to privately owned sites does not, in the Crown's submission, necessarily mean that discretionary activity status for such new developments is appropriate.

#### **4. MR TSAO'S EVIDENCE**

4.1 Mr Tsao supports the proposed rules allowing a homeowner in the FLRZ to rebuild his or her house as a permitted activity.<sup>27</sup> Mr Tsao's key objection is the establishment of a specific purpose zone, seeking that a residential (or similar) zoning be retained.<sup>28</sup> Mr Tsao is also concerned that the FLRZ will decrease property values.<sup>29</sup>

4.2 Mr Tsao has questioned whether there is a planning basis for the establishment of the FLRZ, given its overlap with the red zone.

4.3 The Crown concurs with the Council's position that the establishment of the FLRZ is necessary and appropriate. It is submitted that careful consideration has been given to the circumstances of the FLRZ, the requirements of the higher order documents, and of the rights of existing owners to provide for their economic and social wellbeing, in the use of a specific purpose zone.

4.4 Such consideration is reflected in the following extract from Mr Eman's section 32 report:<sup>30</sup>

*"Broadly the objective and policies of the Specific Purpose (Flat Land Recovery) Zone seek to address the following key resource management issue:*

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<sup>25</sup> Mr Eman's rebuttal evidence paragraph 3.17.

<sup>26</sup> Under section 104D(1)(a) of the RMA.

<sup>27</sup> Mr Tsao's evidence paragraph 19.

<sup>28</sup> Mr Tsao's evidence paragraph 35.

<sup>29</sup> Mr Tsao's evidence paragraph 16.

<sup>30</sup> P 14 Eman's Updated section 32 report – however, this analysis is throughout the report.

*The future intended use, including options for long term recovery, of the flat land 'residential red zone' is uncertain and final zoning will be deferred until a comprehensive planning and consultation process ('Residential Red Zone' programme) has been completed. In the interim period, there is a need to provide for **existing activities on the remaining privately owned properties** and elements of immediate recovery activity, which consist of repair and maintenance works and land management activities, and prevent subdivision, intensification and new development that will compromise or impede options for the long term recovery and future use of the zone. Therefore, interim provisions are required to provide certainty about what land use and development is appropriate within the zone prior to the completion of the 'Residential Red Zone' and to manage any adverse effects of these activities." (Emphasis in original)*

4.5 Both Mr Eman and Ms Whyte support the establishment of a specific purpose zone, having regard to particular circumstances of the area.<sup>31</sup> Those circumstances include:

- (a) The land is largely vacant, as described in paragraph 3.2(a) above.<sup>32</sup>
- (b) This land is not managed or serviced in the same way as other residential land within the Christchurch City.<sup>33</sup>
- (c) As noted above, Mr Anderson's evidence is that the large scale liquefaction and lateral spreading effects in the FLRZ are likely *"to be more economically dealt with on an area-wide basis where large plant can be used and the constraints of dealing with property boundaries and the attendant issues can be removed"*.<sup>34</sup>

4.6 The higher order documents identify that the future long-term use of the land will be considered in future planning processes.<sup>35</sup> It is important that this zoning, and the types of activities enabled under it, do not foreclose options under those processes.

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<sup>31</sup> Mr Eman's evidence in chief paragraph 8.2.

<sup>32</sup> Ms Whyte's evidence in chief paragraphs 6.3 and 6.11.

<sup>33</sup> The specific management approach is discussed in the evidence of Mr Rouse.

<sup>34</sup> Mr Anderson's evidence in chief, paragraph 3.5.

<sup>35</sup> Recovery Strategy, p 40 states: *Future long-term use of red zone land will be considered once a substantial proportion of red zone land has been transferred to the Crown. CERA, on behalf of the Crown, will lead an assessment of future options for land use. The assessment will consider hazard risk, opportunities for economic return, natural features and ecology of the land and adjacent waterways. It will also consider any community input required as part of the process and look for consistency with urban growth policies for greater Christchurch. In the Transition Recovery Plan it is stated that a new Crown-Council entity called Regenerate Christchurch will "oversee the long term development and enhancement of ... Christchurch's red zone", and that: "Regenerate Christchurch has a role in developing plans and strategies for the regeneration areas in its scope (for example for the future use of the Christchurch residential red zone)."*

## **5. CONCLUSION**

- 5.1 It is submitted that, for the reasons given in Ms Whyte's evidence<sup>36</sup> and summarised above, the Updated Revised Proposal (together with the changes to community facility activity status sought by Ms Whyte):
- (a) achieves the purpose of the Resource Management Act 1991 by enabling development in a manner that enables people and communities to provide for their social, economic and cultural wellbeing and safety while appropriately avoiding, remedying or mitigating adverse effects;
  - (b) gives effect to the RPS, particularly Objectives 6.2.1, 6.2.4 and Policy 6.3.5;
  - (c) is consistent with the Statement of Expectations included in Schedule 4 to the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014; and
  - (d) implements Objectives 3.3.1, 3.3.2, 3.3.6, 3.3.9 and 3.3.12 of the decision of the Hearings Panel on strategic directions and strategic outcomes (and relevant definitions) dated 26 February 2015.

## **6. WITNESSES**

- 6.1 The Crown will call the following witnesses:
- (a) Mr Rouse, who will give evidence on the current horizontal infrastructure constraints facing the FLRZ and the appropriateness of the Updated Revised Proposal from the perspective of horizontal infrastructure; and
  - (b) Ms Whyte, who will give planning evidence on the notified proposal, the amendments sought by the Council and those sought by the Crown.

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<sup>36</sup> Ms Whyte's evidence, Attachment A.

6.2 The Crown relies on the evidence of Mr Clark in relation to land clearance activities in the FLRZ. As no party has sought to cross examine Mr Clark, he has been excused from appearing at the hearing.

**DATED** 14 December 2015



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**David Allen**  
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