

**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

IN THE MATTER of the Natural and Cultural
Heritage Stage 3 Proposal

**MEMORANDUM OF COUNSEL ON BEHALF OF CHRISTCHURCH CITY COUNCIL
PROPOSING DIRECTIONS FOR A RESUMED HEARING**

19 APRIL 2016



Simpson Grierson
M G Conway / C G Coyle
Telephone: +64-4-924 3511
Facsimile: +64-4-472 6986
Email: matt.conway@simpsongrierson.com; charlotte.coyle@simpsongrierson.com
DX SX11174
PO Box 2402
WELLINGTON

MAY IT PLEASE THE PANEL:

1. This Memorandum is filed on behalf of Christchurch City Council (**Council**) in order to update the Panel on remaining issues and propose amended timetabling directions for the closing of the Natural and Cultural Heritage Proposal.
2. The amended timetabling directions sought are set out in the **attached** schedule, and are explained further below.

Remaining issues and matters that would benefit from a resumed hearing

3. The Council understands that 9 and 10 May 2016 may be available for a resumed hearing on Topics 9.1 – 9.5. For the reasons outlined below, the Council respectfully suggests that this time would be best utilised if it focused on:
 - (a) Topic 9.3, for the hearing of evidence about heritage interiors, and the provision of any Panel questions and feedback about the revised objectives, policies and rules resulting from the recent mediations.
 - (b) Topic 9.5, in relation to the updated revised proposal and evidence being filed in April (including the proposed Ngā Wai / Water Strategic Objective), as well as the relationship between that topic and Topic 9.2, Chapter 4 (Papakāinga) and the Utilities and Energy Proposal (Stage 3).
4. While the Council does not otherwise seek further hearing time in relation to the remainder of the topics within this chapter, it would welcome any feedback from the Panel in relation to the revised proposals for each topic, and/or a technical drafting hearing on the above dates if that would assist the Panel. The Council will of course assist the Panel in any way it can about any parts of Chapter 9.
5. A brief update about the extent of issues remaining in relation to each of the topics in this chapter is provided below.

Topic 9.1 – Indigenous Biodiversity

6. Topic 9.1 has been significantly advanced through mediation and discussions with submitters, and the live issues remaining as between submitters and the Council in relation to Topic 9.1 are as set out in the Council's closing submissions dated 15 April 2016.
7. Subject to any matters about which Panel members seek further information, the Council respectfully submits that there is no need to revisit this topic at a resumed hearing.

Topic 9.2 – Outstanding Natural Features and Landscapes, Significant Features and Landscapes and Areas of Natural Character in the Coastal Environment

8. The key issue remaining in relation to Topic 9.2 about which the Council considers further hearing time could potentially assist is the relationship of the provisions in this Topic with those in Chapter 4 and Topic 9.5. The Council considers this issue would most efficiently be heard alongside the resumption of the hearing on Topic 9.5, given the alignment in subject matter.

Topic 9.3 – Historic Heritage

9. Topic 9.3 has been significantly advanced through mediation and discussions with submitters, including matters of drafting and resolution of some of the site-specific requests relating to heritage listings.
10. Some areas of disagreement remain in relation to some matters of principle (eg the activity status for activities such as demolition of heritage buildings including those that are subject to a section 38 notice) and some site specific requests. The Council considers those matters have crystallised to the point where proceeding to closings and a decision on the basis of evidence already heard would be the most efficient course of action.
11. In relation to matters of drafting, considerable progress has been made through the recent mediations, and the Council considers that the most efficient way to proceed would be to receive any Panel feedback on the revised proposal and then have a further day of drafting mediation followed by closings.

- 12.** At this stage, in addition to any aspects of the provisions that may be identified by the Panel, the Council considers that the following aspects of Topic 9.3 would benefit from any feedback the Panel may have and additional mediation time to further refine the provisions:
- (a) aspects of the policies in relation to the management of heritage items;
 - (b) refinement of the rules relating to demolition of buildings with a section 38 notice, minor alterations, the use of expert certification and supervision in relation to works on heritage buildings, and certification of heritage fabric;
 - (c) definitions, including 'alteration of a heritage item', 'demolition', 'heritage fabric', 'heritage setting', 'maintenance' and those relating to certification.
- 13.** A revised proposal for Topic 9.3 is due to be filed on 20 April along with supplementary evidence about heritage interiors, and the Council is proceeding with that step.
- 14.** Submitters' supplementary evidence on heritage and closing submissions for Topic 9.3 are currently due on 29 April and the Council's closing submissions are currently due on 10 May. The Council respectfully suggests that all closing submissions on Topic 9.3 are deferred to enable receipt of any Panel feedback on the 20 April revised proposal at the hearing on either 9 or 10 May, to inform further mediation on the provisions. Submitters can then close in writing on the basis of a revised proposal filed after mediation, followed by the Council's closing in writing.
- 15.** The proposed timetabling directions in the attached schedule reflect the Council's suggested approach as described above.

Topic 9.4 – Significant Trees

- 16.** Topic 9.4 has been significantly advanced through mediation and discussions with submitters. Some of the site-specific listing submissions that were live at

the hearing have now been resolved, leaving a smaller number for the Panel to decide. Some areas of disagreement remain in relation to matters of drafting but these are reduced in number from those that were live at the hearing. The level of disagreement about the provisions should be more readily ascertainable once submitter closings are filed on 20 April.

17. The Council respectfully submits that it would be most efficient for any remaining issues to be discussed in parties' closing legal submissions and that, subject to any matters about which the Panel members seek further information after having read the revised proposal or closings, there is no need to revisit this topic at a resumed hearing.

Topic 9.5 – Sites and Areas of Ngāi Tahu Cultural Significance

18. Further progress has been made through mediation on Topic 9.5. The Council's evidence and revised proposal for this Topic were filed on 15 April and submitter evidence is due on 22 April.
19. The Council confirms that further hearing time would assist in relation to this Topic, in particular given the further evidence that is being filed. The Council considers that one day should be sufficient for completing the hearing of evidence on this Topic. Paragraphs 2.6-2.8 of Ms Ferguson's 15 April evidence sets out a summary of the key areas that have been the focus of discussions, and which may need to be addressed at the resumed hearing, subject to the evidence filed by submitters on 22 April. Not all of those matters are necessarily the subject of disagreement.
20. As outlined in Ms Ferguson's 15 April evidence,¹ it has been agreed by the parties that a strategic objective for Ngā Wai / Water, Waterbodies, Te Tai o Mahaanui and the Coastal Environment should be included in the proposal. While the areas to be covered by this strategic objective were common ground, no agreement was reached in respect of drafting. Ms Ferguson has included a proposed strategic objective 3.3.16 as Appendix 1 to her evidence of 15 April. This may also need to be addressed at the resumed hearing.
21. The Council's evidence about identification and mapping of the sites and areas of Ngāi Tahu cultural significance has been prepared by Mr Craig Pauling.

¹ At paragraph 7.1.

Mr Pauling is going to be overseas from 7-22 May inclusive, and therefore would not be available to attend a resumed hearing on 9 or 10 May. The Council would be grateful if Mr Pauling's evidence could be heard in advance of 7 May if possible. If that were able to be accommodated, the Council considers it would be beneficial to hear the evidence of Mr Kyle Davis for Ngāi Tahu at the same time, given that it will address the same matters as Mr Pauling's evidence. Alternatively, if it were possible to have any questions of Mr Pauling put to him in writing for written answer before 7 May, the Council would work to accommodate that. The Council seeks the Panel's directions about how it would prefer to proceed in light of this unavailability.

Other Proposals – Transport (S3), Rural (S3), Subdivision (S1 and S3), Utilities and Energy (S3), Commercial and Industrial (S3)

- 22.** The Council's understanding is that there are no outstanding matters as between the Council and submitters in relation to Transport (S3), Rural (S3) and Commercial and Industrial (S3).
- 23.** There is one live issue in relation to Subdivision (S1 and S3) as between the Council and the Rod Donald Banks Peninsula Trust and Akaroa Civic Trust, namely the most appropriate activity status for subdivision not complying with rule 8.2.2.2 RD 13 in the Akaroa Historic Area.
- 24.** Minor matters remain outstanding in relation to Utilities and Energy (S3), namely the consent requirements for underground utilities within the drip line of a significant tree. This matter will be addressed in closing submissions.
- 25.** The Council wishes to align the Utilities and Energy Proposal (S3) with Topic 9.5 Sites and Areas of Ngāi Tahu Cultural Significance. The Council is working through the Utilities and Energy proposal alongside the revised proposal for Topic 9.5 filed Friday 15 April 2016. The Council considers this issue may require hearing time and would most efficiently be heard alongside the resumption of the hearing on Topic 9.5, given the alignment in subject matter.
- 26.** At this stage it is not anticipated that further hearing time will be necessary in relation to these other proposals other than the matter of alignment with

Topic 9.5 as noted above, and the Council proposes the continuation of the existing timetable for revised proposals and closings.

Service emails

- 27.** It has come to the Council's attention that when filing the revised proposals for Topics 9.1 Indigenous Biodiversity, 9.2 Outstanding Natural Landscapes and Features and 9.4 Significant Trees, some submitters were inadvertently omitted from Council's email service list. Closing submissions from submitters were due on 7 April for Topic 9.1 and on 21 March for Topic 9.2. Closing submissions from submitters for Topic 9.4 are due on 20 April.
- 28.** The Council advised the affected submitters of the omission by email dated 14 April 2016 and sought confirmation of whether those submitters wished to file closings with extended filing dates. The Council has not been advised of any submitters who consider they have been disadvantaged by this omission and as a result, no directions are sought.

DATED this 19th day of April 2016



M G Conway / C G Coyle
Counsel for Christchurch City Council

Schedule of timetabling directions – Updated 19 April 2016

Week	Topic 9.1 (Indigenous Biodiversity)	Topic 9.2 (Outstanding Natural Features and Landscapes, Significant Features and Landscapes and Areas of Natural Character in the Coastal Environment)	Topic 9.3 (Historic Heritage)	Topic 9.4 (Significant Trees)	Topic 9.5 (Sites and Areas of Ngāi Tahu Cultural Significance)	Other Proposals: Transport – S3 Rural – S3 Subdivision – S1 and S3 Utilities and Energy – S3 Commercial and Industrial – S3
18 – 24 April			20 April – CCC supplementary evidence (interiors) and revised proposal	20 April – submitter closings	22 April – Ngāi Tahu and other submitter evidence	
25 April – 1 May			29 April – submitter supplementary evidence (interiors)	28 April – CCC closing	29 April – rebuttal evidence	27 April – CCC to file all revised proposals
2 – 8 May						2 May – submitter closings 6 May – CCC closing
9 – 13 May			9 or 10 May – half day hearing for Panel feedback on drafting matters in revised proposal		9-10 May – resumed hearing	
16 – 20 May			One day in week of 16-20 May – mediation on remaining drafting matters in light of Panel feedback			
23 – 27 May			25 May – CCC to file revised proposal		25 May – submitter closings	
30 May – 3 June						
6 – 10 June			8 June – submitter closings		8 June – CCC closing	
13 – 17 June						
20 – 24 June			22 June – CCC closing			