

IN THE MATTER OF section 71 of the Canterbury Earthquake Recovery Act 2011 and the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014

AND

IN THE MATTER OF proposals notified for incorporation into a Christchurch Replacement District Plan

Date of hearing: 22 October 2015

Date of decision: 13 June 2016

Hearing Panel: Sir John Hansen (Chair), Ms Sarah Dawson, Mr Gerard Willis

DECISION 23

**Application by Whittle Knight and Boatwood (Estate Agents) Limited
in relation to Commercial (Part)**

Outcomes: **We accept we have jurisdiction to consider the submission**

 **We grant the submission and re-zone 1 Clyde Road as
Commercial Local**

COUNSEL APPEARANCES

Mr J Winchester	Christchurch City Council
Mr A Hughes-Johnson QC	Whittle Knight and Boatwood (Estate Agents) Limited

WITNESS APPEARANCES

Mr M Stevenson	Christchurch City Council
Mr I Knight and Mr K McCracken	Whittle Knight and Boatwood (Estate Agents) Limited

TABLE OF CONTENTS

Introduction	3
<i>Interrelationship with decision on Stage 2 Commercial and Industrial proposals</i>	3
<i>Background</i>	3
Discussion	5
<i>The submission</i>	5
<i>Jurisdiction</i>	6
Decision	6

INTRODUCTION

Interrelationship with decision on Stage 2 Commercial and Industrial proposals

[1] This decision, relating to a single submission filed on the Stage 2 Commercial proposal, is released coincident with the decision on the Stage 2 Commercial and Industrial proposals. Because of the variation to the configuration of the Panel hearing this sole matter, it has been necessary to address this submission with an entirely distinct decision.

[2] However, in respect of all statutory matters, this decision endorses the matters outlined in the Stage 2 Commercial and Industrial Decision (Decision 23) at [13]–[28].

Background

[3] The submitter, Whittle Knight and Boatwood (Estate Agents) Limited (2301), owns a premises on the corner of Clyde and Riccarton Roads, being 1 Clyde Road. It was zoned Residential Suburban in Stage 1 of the proposed plan, and the submitter took no steps to submit on that notified chapter.

[4] The submitter, before instructing legal counsel, filed a submission on Stage 2, which was assigned to Stage 2 Chapter 15 (Commercial) in the Proposed District Plan database.¹ Subsequently, Mr Hughes-Johnson QC was instructed. The submitter filed no evidence in advance of the Stage 2 Commercial and Industrial hearing, but an RSVP to the hearing was received by the Secretariat on 28 September 2015.

[5] The Council's opening submissions included the following statement:²

5. OUT OF SCOPE SUBMISSION

- 5.1 Submitter Whittle Knight and Boatwood (Estate Agents) (#2301) is on the timetable to appear on 7 October. This submission seeks to rezone 1 Clyde Road in Riccarton to a (non-specified) Commercial zoning. 1 Clyde Road was notified in Stage 1 with a Residential Suburban zoning, which was not challenged through submission. Therefore the submission is considered to clearly be on Stage 1 land, and therefore not within the scope of the panel's decision making in this Stage 2 hearing.

¹ Submission 2301, 12 June 2015.

² Opening submissions for the Council, 5 October 2015.

[6] The matter was further discussed at the commencement of the hearing.³ On 6 October Mr Hughes-Johnson filed his opening submission and sought leave to file and serve statements by Mr Ian Knight and Mr Kim McCracken, and to have both speak at the hearing the following day. Mr Hughes-Johnson sought leave to address both jurisdiction and the merits of the submission at the hearing.

[7] The matter is compounded because the witness for the submitter (Mr Ian Knight, a shareholder and director) is married to Ms Jane Huria, who is a member of the Panel which heard the Commercial and Industrial Stage 2 proposals. Further, the Chair of that Panel, Judge John Hassan, has a rental property for which the company is a property manager. For this reason, both Ms Huria and Judge Hassan recused themselves from hearing the matter and the Independent Hearings Panel's Chair, Sir John Hansen, convened a hearing with the two other members of the Stage 2 Commercial Panel.

[8] On 8 October 2015 a chambers discussion took place between the Chair of the Independent Hearings Panel, Mr Winchester for the Council and Mr Hughes-Johnson. A minute then issued, directing that:⁴

- (i) The hearing of the Whittle Knight and Boatwood submission would commence on 22 October at 10 a.m.
- (ii) Leave was granted to the submitter to call two witnesses to give evidence in accordance with briefs provided.
- (iii) Leave was granted to the Council to call supplementary rebuttal evidence in response to that evidence, and viva voce evidence from Mr Stevenson
- (iv) Immediately following that hearing, a Chairperson's hearing (with other Panel members attending) would take place on the question of jurisdiction, including any application for directions under cl 13(4) of the OIC and/or for acceptance of a late submission.

³ Transcript, pages 9 and 10.

⁴ Minute on submission by Gill Knight on behalf of Whittle Knight and Boatwood, 9 October 2015.

[9] The hearing duly took place on the morning of 22 October 2015, with a Panel comprising the Chair of the Independent Hearings Panel (Sir John Hansen), and Ms Dawson and Mr Willis (the two remaining Panel members from the complete Stage 2 Commercial and Industrial hearing).

DISCUSSION

The submission

[10] Before turning to the jurisdictional issue, we will briefly address the merits. As we have noted, the subject property is on the corner of Riccarton and Clyde Roads. Directly opposite, on Riccarton Road, is Ilam Toyota, which stretches between Euston Street and Wharenui Road. Diagonally opposite, on the corner of Wharenui and Riccarton Roads are a number of shops, including a dairy, a hairdresser's, a bakery, and a Chinese vegetarian restaurant. On the corner of Euston Street and Riccarton Roads is a development of new shops and restaurants. Across, on the opposite corner of Clyde and Riccarton Roads, are a series of shops, including a mower and chainsaw shop, a travel agency and a pool shop. Next door to the subject premises, in Riccarton Road is the Ilam Motel, and next door in Clyde Road is an orthodontist. Photographs supplied by the submitter demonstrate that this corner is commercial in nature. It is a corner well-known to Panel members, which confirms this view.

[11] As to the merits, Mr Stevenson, the Council planner, reviewed his earlier opinion and concurred with the submitter's planner, Mr McCracken, that Commercial Local was the best zoning for the site.

[12] We guard against any preference either for or against the submitter because of the relationship with Ms Huria. As we have noted, we are extremely conscious of this. But it is clear that the notified zoning is clearly, and now accepted as, inappropriate. The evidence overwhelmingly establishes this.

Jurisdiction

[13] At the hearing on this matter, Mr Hughes-Johnson addressed the Panel as to its jurisdiction, including the late submission point relating to Stage 1 Residential.⁵

[14] There are a number of ways this matter can be approached. We have power to allow a late submission on Stage 1, and we consider we could do so without prejudice, as we do not accept any submitters on Stage 1 Residential could possibly view these premises as residential now or at any stage in the future. However, Stage 1 Residential has now been heard, and a decision has been handed down.

[15] We also recognise that because of the time constraints imposed by the OIC, the review of the plan has been undertaken in an extremely disjointed way. We also accept that this has led to confusion amongst submitters, although we do not accept that an experienced real estate agent such as Mr Knight would have been confused to the degree he puts forward.

[16] However, as Mr Hughes-Johnson noted, the land in question in Stage 2 is subject to an Accommodation and Community Facilities overlay. Mr Hughes-Johnson accepted this did not change the underlying zoning of the subject property, but submitted the notation clearly accepted the scope and quality of the activities which could lawfully be carried out on the proposed property. As he submitted, the rules associated with the underlying zoning were changed by the overlay to create a new land use opportunity as a permitted activity.

[17] We agree with his submission that in those circumstances the submitter should be entitled to respond to what was effectively a change in the quality of the activities permitted by the zoning. As the matter was coded to Commercial Stage 2 by the Council, the matter is within time.

DECISION

[18] We are satisfied that in Stage 2 Commercial the submission is within scope, as defined in the decision of Kós J in *Palmerston North City Council v Motor Machinists Limited*.⁶ On that basis we accept we have jurisdiction to consider the submission, and given the matters we

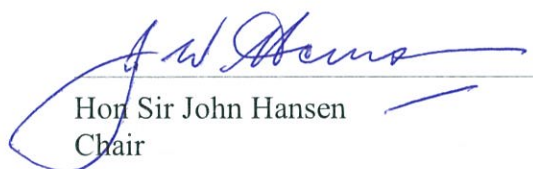
⁵ Submissions on behalf of Whittle Knight and Boatwood, 6 October 2015; Transcript, pages 492–495.

⁶ *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290, [2014] NZRMA 519.

have set out above, and the concession by Mr Stevenson, grant the submission and re-zone 1 Clyde Road as Commercial Local. A further consequential change is for the removal of the Accommodation and Community Facilities Overlay from this property.

[19] It is also necessary for us to exercise our power under cl 13(5) of the OIC to revisit our Residential Stage 1 decision and replace the Residential zoning with Commercial Local for the property at 1 Clyde Road. For the reasons set out above, we are satisfied that will be of minor effect, in accordance with cl 13(6)(a). We direct the Council to amend the Planning Maps accordingly.


For the Hearings Panel:



Hon Sir John Hansen
Chair



Ms Sarah Dawson
Panel Member



Mr Gerard Willis
Panel Member