

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: On the Papers

Date of decision: 7 November 2016

Hearing Panel: Hon Sir John Hansen (Chair), Environment Judge John Hassan (Deputy Chair), Dr Philip Mitchell, Ms Sarah Dawson, Ms Jane Huria

DECISION 55

Chapter 15 Commercial (Part) and Chapter 16 Industrial (Part): Proposal for a 500m² Gross Leasable Floor Area Maximum Tenancy for Offices

Outcomes: Proposals changed as per Schedule 1

COUNSEL

Mr JGA Winchester and Ms CJ McCallum

Christchurch City Council

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INTRODUCTION

[1] This decision (‘decision’) continues the series of decisions made by the Independent Hearings Panel (‘Hearings Panel’/‘Panel’) concerning the formulation of a replacement district plan for Christchurch City (including Banks Peninsula) (‘Replacement Plan’/‘Plan’).¹

[2] This decision concerns Chapter 15 Commercial (Part) and Chapter 16 Industrial (Part) in relation to a proposal for a 500m² Gross Leasable Floor Area Maximum Tenancy for Offices in the Key Activity Centres (‘KAC/KACs’), including the Commercial Retail Park zone (Langdons Road), and the Industrial Park zone (Tait Campus and Awatea), together (‘office cap’).

[3] In this decision, the phrase ‘Notified Version’ describes the version notified by the Christchurch City Council (‘CCC’/‘Council’). For the reasons we discuss below, no changes were proposed to the Notified Version.

[4] Where we refer to the ‘Decision Version’, it is our approval of the Notified Version, as set out in Schedule 1, which will become operative upon release of this decision and the expiry of the appeal period.

[5] This decision follows our consideration of submissions and the Council’s evidence on the papers. Further background on the review process, pursuant to the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 (‘the OIC’) is set out in the introduction to Decision 1, concerning Strategic Directions and Strategic Outcomes (and relevant definitions) (‘Strategic Directions decision’).²

Effect of decision and rights of appeal

[6] Our proceedings and the rights of appeal are set out in our earlier decisions.³ We concur in those.

¹ The Panel members are Hon. Sir John Hansen (Chairperson), Environment Judge John Hassan, Dr Philip Mitchell, Ms Sarah Dawson and Ms Jane Huria.

² Strategic directions and strategic outcomes (and relevant definitions), 26 February 2015.

³ Strategic Directions decision at [5]–[9].

Identification of parts of existing district plan to be replaced

[7] The OIC requires that our decision also identifies the parts of the existing district plan that are to be replaced by our decision. We confirm the approach as set out in Decision 11 at [751] is applicable here, and this decision does not therefore replace any other provisions at this time.

PRELIMINARY MATTERS

Conflicts of interest

[8] We have posted notice of any potential conflicts of interest on the Independent Hearings Panel website.⁴ No submitter raised any issue in relation to this.

REASONS

STATUTORY FRAMEWORK

[9] The OIC directs that we hold a hearing on submissions on a proposal and make a decision on that proposal.⁵ In this case, however, no hearing was required because following the issue of the notice of hearing, no submitter requested to be heard, nor did they file any evidence, or request to cross examine Council witnesses. We determined that it was appropriate to decide the matter on the papers.⁶

[10] The OIC sets out what we must and may consider in making our decision.⁷ It qualifies how the Resource Management Act 1991 ('RMA') is to apply and modifies some of the RMA's provisions, both as to our decision-making criteria and processes.⁸ It directs us to comply with s 23 of the Canterbury Earthquake Recovery Act 2011 ('CER Act').⁹ The OIC also specifies additional matters for our consideration.

⁴ The website address is www.chchplan.ihp.govt.nz.

⁵ OIC, cl 12(1).

⁶ Minute, 24 June 2016.

⁷ OIC, cl 14(1).

⁸ OIC, cl 5.

⁹ Our decision does not set out the text of various statutory provisions it refers to, as this would significantly lengthen it. However, the electronic version of our decision includes hyperlinks to the New Zealand Legislation website. By clicking the hyperlink, you will be taken to the section referred to on that website.

[11] Our Strategic Directions decision, which was not appealed, summarised the statutory framework for that decision. As it is materially the same for this decision, we apply the analysis we gave of that framework in that decision.¹⁰ As with all our decisions, we apply our Strategic Directions decision throughout.

The required s 32 and 32AA evaluation.

[12] In Decision 11 we concluded on the evidence of Mr Philip Osborne, an economist, for the Council and Mr Marius Ogg, a valuation expert, for the Crown, that there was a case made for the extension of the office cap, that had been proposed to apply to Neighbourhood Centres (excluding Spreydon/Barrington), to KACs (including the Commercial Retail Park zone (Langdons Road), and to the Industrial Park zones (Tait Campus and Awatea). We found:

[221] The weight of the evidence just discussed satisfies us that imposing a maximum tenancy cap on offices in KACs and those two Industrial Park zones would support the recovery of the CBD. The evidence directly pertains to our task in giving effect to the CRPS. In particular, we refer to CRPS Objective 6.2.5. The evidence suggests that, without a cap on maximum tenancy size of offices, there is some greater risk of development and distribution of offices in KACs and Industrial Parks that could otherwise go to the CBD. That would pose an associated risk of adverse impacts on the CBD of the kind noted in CRPS Policy 6.3.1.

[222] In addition, the evidence demonstrates that imposing a cap would not impose a significant cost on the KACs. Mr Ogg explained that very few of the centres around Christchurch actually have reasonable office offering and, particularly pre-earthquake, there were considerable vacancies. When asked about the capacity of Northlands and Merivale Malls to develop, Mr Osborne explained that any capacity they had would more likely be taken up by retail than by office uses. These factors indicate to us that imposing an office cap in centres would not likely restrict developers much beyond the existing market conditions.

[223] In addition, Mr Bartlett indicated that AMP was not interested in extending significant offices at Styx. In regard to Commercial Retail Park zone north of Langdon's Road, we received only minimal evidence. The Joint Statement expresses the joint views of Messrs Stevenson and Chrystal that "the office allocation reflects development which is currently permitted, consented or occurring on the site".

[224] As for the two Industrial Park zones, we accept that we do not have any evidence as to the implications or otherwise of the imposition of a maximum tenancy cap for any current or prospective development in those areas.

[225] We also accept the evidence that a 500m² cap would continue to allow for suburban suppliers, such as small accountancy or legal firms (the typical "mum and dad" firm), to be able to establish within suburban centres.

¹⁰ Strategic Directions decision at [25]–[28] and [40]–[62].

[226] In terms of the s 32 requirement that we assess benefits and costs, and the risks of acting or not acting, we find on the evidence that the balance favours the imposition of a cap.

[13] We also found that although the suburban mall owners were not opposed to the position reached, it was possible that other interested persons may not be aware of the prospect of the office cap being extended in that way. We directed that the Council notify a new proposal to address the issue.¹¹

[14] The additional proposal was notified on 9 February 2016 and eight submissions were received. There were no further submissions. A list of submissions received is attached in Schedule 2. The only submitter to engage in expert witness conferencing and mediation was AMP Capital Investors (New Zealand) Limited ('AMP')¹². A joint witness statement was filed by Mr Copeland, AMP's economist, and Mr Osborne for the Council.¹³ No agreement was reached between the Council and AMP at mediation. The Council met with a number of the submitters prior to filing evidence on a without prejudice basis.

[15] The Council filed evidence on 9 June 2016 from Mr Mark Stevenson, a planner¹⁴ and Mr Philip Osborne, an economist.¹⁵ No submitters filed evidence. AMP advised the Secretariat that it no longer wished to be heard.¹⁶ There were no applications to cross examine Council witnesses.

[16] This decision follows on from our consideration of the issues relating to tenancy office caps in Decision 11. We adopt and endorse the reasoning of Decision 11.

[17] We refer to the necessary principles in section 32 and 32 AA set out in our earlier decisions.¹⁷ We have considered the Council's s 32 Report prepared at the time of public notification of the Notified Version, and the evidence of Mr Stevenson and Mr Osborne.

[18] Mr Stevenson outlined the appropriateness of the proposal in terms of the relevant statutory framework, higher order documents and Decision 11, as it relates to the relevant

¹¹ Decision 11 at [759]-[761].

¹² Submission (OT5)

¹³ Joint witness statement of Michael Copeland and Philip Osborne, 17 May 2016.

¹⁴ Evidence in chief of Mark Stevenson, 9 June 2016.

¹⁵ Evidence in chief of Philip Osborne, 9 June 2016.

¹⁶ Email from AMP to Secretariat, 20 June 2016, at 3.59pm.

¹⁷ Strategic Directions at [63]-[70].

objectives and policies. Mr Stevenson addressed the relevant s 32 evaluation matters and considered the alternatives suggested in submissions, including an exemption suggested by TFT Properties Limited ('TFT') that the rule only apply to office buildings erected after February 2016. He also considered Tait Foundation and Tait Limited's ('Tait') request to exclude the Industrial Park (Tait) zone from the limit on the basis of its unique circumstances.¹⁸ In both cases he recommended not to include the relief requested, because, in the case of TFT, he could not distinguish between the impact of an office cap for new buildings and existing buildings, nor did he consider Tait's circumstances to be sufficiently unique. We note that neither submitter called evidence to support a different conclusion being reached. We accept Mr Stevenson's evidence.

[19] Mr Stevenson also did not accept AMP's requested relief to exclude District centres. In the absence of evidence to the contrary we accept Mr Stevenson's evidence.

[20] Mr Osborne's evidence was consistent with his views as recorded by us in Decision 11. He considered the various alternatives requested in submissions and concluded that the Notified Version remained the most appropriate means to achieve the objectives of the Canterbury Regional Policy Statement ('CRPS') and the CRDP.

[21] In their joint witness statement, Mr Osborne and Mr Copeland, for AMP, were generally agreed that the continued dispersal of commercial activity through Christchurch City will undermine planned infrastructure and result in inefficiencies that will impact upon the growth and recovery of the Christchurch economy. However, they differed on whether this risk was better addressed through the office cap, or via Mr Copeland's suggestion to rely on the quantum of office space in KACs.¹⁹

[22] Despite that difference in view, AMP elected not to be heard and did not call Mr Copeland to give evidence to support that difference. Mr Osborne considered Mr Copeland's alternative in his evidence in chief, but rejected it. That was on the basis that, in order to achieve economic benefits of a centralised city and facilitate the recovery of the Central City, it is necessary to implement limits on the basis of a hierarchy, with the Central City possessing

¹⁸ Tait (OT7) at [11].

¹⁹ Expert witness joint statement at 3.9.

the greater development opportunity followed by the KACs. Mr Osborne was also of the view that a simple quantum approach lacked “discernment”. He said:²⁰

Without identifying generally the businesses that are more appropriate in the Central City, commercial office floorspace will compete evenly with that in the Central City. Typically, larger businesses are more competitive for office space, as such these would represent a more than proportionate uptake of District centre capacity. As a consequence, this means that there is a higher risk that those businesses that cannot afford to locate in the Central City and those that are less appropriate will seek to locate in District centres. In this case one of two things happen: these businesses apply for a resource consent and locate elsewhere or they do not locate in Christchurch. A more targeted set of provisions reduces the competitive effect of other commercial floorspace on the demand for the Central City while allowing a more efficient market for local commercial businesses.

[23] Mr Osborne considered that the type of office activity directed into the CBD is important for its recovery. Simply limiting the total quantum of office space outside the CBD is likely to delay the CBD recovery. He concluded that not only does the proposal target the activities that will facilitate the recovery of the Central City but in doing so would release capacity in District Centres for more vulnerable commercial businesses.²¹

[24] Mr Osborne concluded that in light of the clear guidance in the Central City Recovery Plan, as well as Decision 11, the CRDP seeks to facilitate the Central City in terms of recovery and its primacy for commercial office activity. He considered that the targeted approach not only provides greater certainty for Central City investments, greater efficiencies and higher profile for the Central City, but also would have the positive effect of releasing capacity within the KACs and, to an extent, the Industrial Parks for more appropriate commercial activities that seek more “localised and locational attributes”.²²

[25] In the absence of further contrary expert opinion, we accept Mr Osborne’s evidence.

[26] We are satisfied that extending the office cap to the KACs (including the Commercial Retail Park zone (Langdons Road) and the Industrial Park zone (Tait Campus and Awatea), as proposed in the Notified Version, is the most appropriate method to achieve the CRPS objectives. In doing so we have considered the costs and benefits of alternatives, as outlined in the evidence of Mr Stevenson and Mr Osborne and raised in submissions. We have

²⁰ Evidence in chief of Philip Osborne, 9 June 2016, at 7.7.

²¹ Ibid at 9.3.

²² Ibid at 10.3.

considered the Council's section 32 evaluation accompanying the Notified Version. We find the Notified Version to be supported by the s 32 evaluation and the evidence.

Definitions

[27] No additional changes are made to the definitions as decided in Decision 16.²³ We will consider any further technical drafting matters if needed as part of our Decision on Stage 2 and 3 Definitions decision in due course.

OVERALL EVALUATION AND CONCLUSIONS

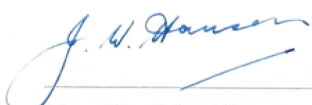
[28] Accordingly, in light of the submissions and evidence we have considered, and for the reasons we have set out, we are satisfied that:

- (a) We have exercised our function, in making this decision, in accordance with the provisions of Part 2, RMA (there are no applicable regulations).
- (b) As part of the Replacement Plan, the provision for a 500m² Gross Leasable Floor Area Maximum Tenancy for Offices in the KACs and the Industrial Park zone (Tait Campus and Awatea) in Schedule 1 to this decision:
 - (i) accords with and assists the Council to carry out its statutory functions for the purposes of giving effect to the RMA;
 - (ii) is the most appropriate to achieve the Strategic Directions and Objectives in Chapter 15 Commercial (part) and Chapter 16 Industrial (part);
 - (iii) gives effect to the CRPS (to the extent relevant);
 - (iv) duly aligns with other RMA policy and planning instruments, the land use recovery plans, and the OIC (including the Statement of Expectations).

²³ Decision 16 and minor corrections.

- (c) As part of the Replacement Plan, the amended rules we have included in Chapter 15 and 16 will achieve the purpose of the RMA.

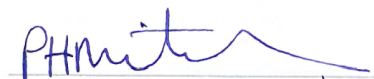
For the Hearings Panel:



Hon Sir John Hansen
Chair




Environment Judge John Hassan
Deputy Chair



Dr Philip Mitchell
Panel Member



Ms Sarah Dawson
Panel Member



Ms Jane Huria
Panel Member

SCHEDULE 1

Changes that the decision makes to the proposals:

Chapter 15 Commercial - Rule 15.4.1.1 P10 and Rule 15.7.1.1 P19 only.

Chapter 16 Industrial - Rule 16.6.1.1 P11 only

Changes to earlier decisions are shown as tracked.

15.4.1.1 Permitted activities

P10	Office activity	a. The maximum tenancy size shall be 500m ² GLFA in a District or Neighbourhood Centre. This clause does not apply to the Key Activity Centre at Spreydon/Barrington.
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15.7.1.1 Permitted activities

P19	Office activity within the Commercial Retail Park Zone located north of Langdons Road.	a. The activity shall be limited to a total of 10,000m ² GFA in the Commercial Retail Park Zone north of Langdons Road. b. <u>The activity shall have a maximum tenancy size of 500m² GLFA.</u>
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16.6.1.1 Permitted activities

P11	Office activity within the Industrial Park Zone (Tait, Awatea)	Office activity within each Industrial Park Zone (Tait, Awatea) shall: a. be limited to a total of 5,000 m ² ; b. have visually transparent glazing on the ground floor elevation facing the street for a minimum of 20% of that elevation where the office activity fronts the street. c. <u>have a maximum tenancy size of 500m² GLFA.</u>
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SCHEDULE 2

Submitter Name	Submitter Number
Chris Lee	OT1
Lynn Anderson or Cantago Properties Ltd	OT2
TFT Properties Ltd	OT3
Alexander McMillan Trust	OT4
AMP Capital Investors (New Zealand) Limited	OT5
Scentre (New Zealand) Limited	OT6
The Tait Foundation and Tait Limited	OT7
Kite Enterprises Ltd	OT8

SCHEDULE 3**Table of evidence filed**

Submitter Name	No.	Person	Expertise or Role if Witness	Filed/Appeared
Christchurch City Council		M Stevenson		Filed
		P Osborne		Filed