

**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 decision: 27 March 2017

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

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**Decision to make Further Minor Corrections to Decision 45: Chapter 9: Natural and Cultural Heritage (Part) Topic 9.3 – Historic Heritage**

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**Background**

[1] Decision 45 was issued on 30 September 2016.<sup>1</sup> The Christchurch City Council (‘the Council’) lodged an appeal with the High Court in relation to Objective 9.3.2.1.<sup>2</sup> The Crown<sup>3</sup>, The Roman Catholic Bishop of the Diocese of Christchurch and The Church Property Trustees (‘the Churches’) and Heritage New Zealand Pouhere Taonga (‘HNZPT’) are parties to the appeal (‘the Parties’).<sup>4</sup>

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<sup>1</sup> Decision 45 Chapter 9: Natural and Cultural Heritage (Part) Topic 9.3 – Historic Heritage.

<sup>2</sup> Notice of Appeal to High Court, 7 November 2016.

<sup>3</sup> The Chief Executive of the Department of the Prime Minister and Cabinet for and Behalf of the Crown (submitter 3721).

<sup>4</sup> For completeness the Council as respondent is separately represented before the High Court. The Hearings Panel has also given notice to appear if required by the Court. Neither are parties to this matter.

[2] The Parties have been endeavouring to reach a resolution to the appeal and as a consequence the Crown, supported by the Churches, has made an application to the Hearings Panel for an order to make a minor correction to Objective 9.3.2.1 ('the Application').<sup>5</sup> HNZPT filed a memorandum confirming support for the proposed changes to Objective 9.3.2.1 as set out in the paragraph 1(a) of the Application and further, it confirmed that the changes would, at a practical level, resolve the appeal (from its perspective).<sup>6</sup> The Council filed a memorandum supporting the amended wording of Objective 9.3.2.1 but noted a concern that the amendment may not fit within the scope of a minor correction because it says the amendment 'arguably alters the meaning of the objective'.<sup>7</sup> The Council did not offer any legal argument to support its concern one way or the other.

### **Jurisdiction to make minor corrections**

[3] Clause 16 of Schedule 3 to the OIC provides as follows:

- (1) The hearings panel may, at any time, issue an amendment to a decision to correct a minor mistake or defect in a decision of the panel.
- (2) This power includes the power to amend or correct a proposal, provided that the amendment or correction is made before the proposal becomes operative in accordance with clause 16 of this order.

[4] The Crown refers to a previous minor correction decision of the Panel where the meaning is discussed.<sup>8</sup> In particular the Crown makes reference to the Environment Court decision *Re an application by Christchurch City Council*<sup>9</sup> where the Environment Court determined a change would be within clause 16 of Schedule 1 of the RMA (which is similar to, but not exactly the same as OIC, sch3, cl 16):

...if the draftsman seeks only to clarify what is clearly intended by the document and does not in any way make a change to it which alters its meaning.

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<sup>5</sup> Application by the Crown for an Order pursuant to Clause 16 of the Third Schedule of the OIC, supported by The Roman Catholic Bishop of the Diocese of Christchurch and The Church Property Trustees, Chapter 9 Natural and Cultural Heritage (Part) topic 9.3 – Historic Heritage, Objective 9.3, 20 March 2017 and accompanying Memorandum of Counsel in support of the Application, 20 March 2017.

<sup>6</sup> Memorandum of Counsel on behalf of HNZPT in response to Panel Minute dated 20 March 2017 with respect to Objective 9.3.2.1, 22 March 2017.

<sup>7</sup> Memorandum of Counsel for Christchurch City Council, 22 March 2017.

<sup>8</sup> Decision to make Minor Corrections to Decision 9 Temporary Activities 6A, 6B and 6C, 22 October 2015 at [3] to [9].

<sup>9</sup> *Re an application by the Christchurch City Council* [1996] NZEnvC 97.

[5] The Chair has previously accepted that the power to make minor corrections remains available to the Panel while there are appeals before the High Court.<sup>10</sup> The Panel has also generally adopted a pragmatic approach to minor corrections to decisions to ensure clarity of meaning, but also to allow for the inevitably fragmented approach to the hearings and decision making processes. This is consistent with the requirement under the OIC Statement of Expectations that the CRDP uses clear, concise language and is easy to use.<sup>11</sup>

### **Proposed amendments**

[6] The Hearings Panel has recently issued a minor correction decision to restructure the numbering, and to ensure drafting consistency, of the CRDP.<sup>12</sup> Our reference to the relevant objective and policy below has been updated accordingly.

[7] The Parties propose amendment to the wording of Objective 9.3.2.1.1 so that it would read as follows (additions shown in underline and deletions shown in ~~strike-out~~):

- a. The overall contribution of historic heritage to the Christchurch District's character and identity is maintained through the protection and conservation of significant historic heritage across the Christchurch District in a way which:
  - i. enables and supports:
    - A. the ongoing retention, use and adaptive re-use; and
    - B. the maintenance, repair, upgrade, restoration and reconstruction; ~~and~~
    - C. ~~in some situations, the demolition;~~of historic heritage; and
  - ii. recognises the condition of buildings, particularly those that have suffered earthquake damage, and the effect of engineering and financial factors on the ability to retain, restore, and continue using them; and
  - iii. acknowledges that in some situations demolition may be justified by reference to the matters in Policy 9.3.2.2.8.

[8] The Crown points to the Hearings Panel reasons for the references to demolition in the Objective which are recorded in paragraph [63] of Decision 45 as follows:

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<sup>10</sup> Minute as to the filing of further applications for minor corrections, 16 February 2017.

<sup>11</sup> OIC, Schedule 4 cl i.

<sup>12</sup> Minor Corrections as a result of the restructured chapters, 17 March 2017.

We have also included express **acknowledgement that in some situations demolition of heritage items is appropriate**. This is now expressly recognised in the provisions through recognition of financial and engineering factors and is consistent with our findings to s 6(f), discussed at [10]-[15] above. (Our emphasis.)

[9] The Crown submits that the amendments proposed to the Objective in paragraph 1(a) of the Application reflect and are consistent with the Hearings Panel's reasoning in paragraph [63] of Decision 45.

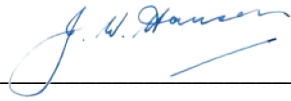
[10] The starting point for all Provisions is the Panel's decision. The Provisions need to reflect the decision as closely as possible.

[11] We agree that the proposed amendment better reflects the decision and the meaning intended by the Hearings Panel. We further note that the changes are consistent with and clarify the relationship between the Objective and Policy 9.3.2.2.8. (then 9.3.2.9). The relationship is further explained in Decision 45 at [99]:

...We find that the list of matters in Policy 9.3.2.9, are relevant considerations for ensuring whether demolition is appropriate. On the evidence we find the listing of these matters is particularly important for the proper consideration of applications for complex restoration or rebuilding projects involving historic heritage...

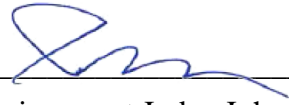
[12] Accordingly, pursuant to OIC, Sch 3, cl 16 we direct the minor amendment to Objective 9.3.2.1.1 as proposed at [7] above.

For the Hearings Panel:



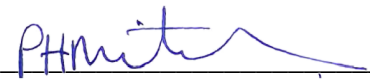
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Hon Sir John Hansen  
Chair



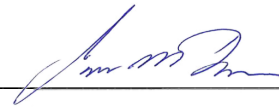
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Environment Judge John Hassan  
Deputy Chair



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Dr Philip Mitchell  
Panel Member



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Ms Sarah Dawson  
Panel Member



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Ms Jane Huria  
Panel Member