

SECTION 32

CHAPTER 7

DEEMING PROVISIONS FOR THE ZONING OF NEW AND STOPPED ROADS OUTSIDE
OF CENTRAL CITY

[Notified Proposal: 20 JULY 2016]

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1.0 INTRODUCTION

1.1 PROPOSAL

1.1.1 The proposal is to insert deeming provisions (rules) into the proposed Replacement District Plan (pRDP) setting out the relevant zone provisions that would apply to new and stopped roads, outside of the Central City. In essence, the rules provide that:

- (a) new public roads become subject to the provisions of the Transport Zone upon being vested; and
- (b) existing roads that are stopped become subject to the zone provisions that cover the adjoining land upon being stopped (where there are different zones on either side of the road, the provisions of the respective zones apply up to the centre line of the road).

1.1.2 The scope of the proposal is limited to the matter described above in accordance with the Panel's minute dated 13 July 2016,¹ in relation to notification of deeming provisions for new and stopped roads. The equivalent rule has already been proposed by the Council to apply within the Central City, although at the time of notification, this rule has not been decided on by the Independent Hearings Panel.²

1.2 BACKGROUND

1.2.1 The road network is constantly changing. New roads are regularly created in new subdivisions. Some roads are stopped. The challenge is ensuring that the District Plan zoning reflects the changes to the road network and that the planning provisions enable appropriate development.

Approach to the zoning of new and stopped roads in the existing Plans

1.2.2 Under the previously operative rules in the Christchurch City District Plan (the City Plan) all legal roads (with a few exceptions) were covered by the Special Purpose (Road) Zone and the rail network was covered by the Special Purpose (Rail) Zone. The extent of the Special Purpose (Road) Zone was not physically identified on the planning maps, and instead the planning maps generally showed the adjacent land's zoning extending over the roads, despite all legal roads being subject to the rules in the Special Purpose (Road) Zone. Since the Special Purpose (Road) Zone was not shown on the planning maps, there was no need for these maps to be altered as a result of the vesting or stopping of a road. However a plan change would have been required if there was any change to the location of the Special Purpose (Rail) Zone, as the Special Purpose (Rail) Zone was shown on the planning maps³.

1.2.3 The City Plan has the following text in Clause 4.3 (Part 8 of Volume 3) to address any changes to legal roads:

- (a) *The Special Purpose (Road) Zone shall be deemed to apply to all land that is legal road, within the meaning of the Local Government Act 1974, excluding*

¹ <http://www.chchplan.ihp.govt.nz/wp-content/uploads/2015/08/Minute-directing-notification-of-deeming-provisions-for-new-and-stopped-roads-13-07-2016.pdf>

² Council's recommended provisions attached to Council's updated closing legal submissions dated 4 May 2016, Schedule 1, at pages 29-30

³ Statement of evidence of Richard Shaw on behalf of the Crown, dated 14 January 2016.

that land shown on the planning maps as Special Purpose (Pedestrian Precincts) Zone, Conservation 5 Zone, and land comprising the carparking associated with the Bishopdale Shopping Centre.

- (b) Where subsequent to notification of the Plan (24 June 1995), land is vested in the Council as road then it shall be deemed to be included in the Special Purpose (Road) zone.*
- (c) Where a road has been stopped, the site that was formerly within the Special Purpose (Road) Zone will revert to the zoning as shown on the planning maps"*

1.2.4 The vires of provision (c) is questionable in that it purports to change the zoning of land without using the statutory process required by Schedule 1 of the Resource Management Act 1991 (**RMA**).

1.2.4 There are no equivalent provisions for the Special Purpose (Rail) Zone in the City Plan. This reflects the fact that the extent and location of roads are generally more frequently altered, than rail infrastructure.

1.2.5 Banks Peninsula District Plan just applied the adjoining zone to roads and did not have a specific zone for roads.

Approach to the zoning of new and stopped roads in the Replacement District Plan

1.2.6 In Stage 2 of the pRDP, the Council proposed a Transport Zone to cover transport infrastructure, including road and rail corridors. This was made operative through Decision 12.

1.2.7 The Transport Zone reinforces the operational function of the transport network as an integral component in the provisions for the Transport Zone.

1.2.8 The Transport Zone approach is beneficial for a number of reasons including:

- (a) Providing a clear demarcation of the area intended for transport related activities;
- (b) Providing a set of provisions to facilitate the development and maintenance of transport infrastructure (and associated infrastructure) and control other uses to protect the transport function of the zone;
- (c) Managing the role that the Transport network plays in providing public space and amenity (such as public artwork, streetscapes, landscaping, street furniture and public amenities) for the City; and
- (d) Protecting view-shafts and enabling efficient changes to infrastructure.

1.2.9 The Transport Zone is identified on the planning maps for clarity and certainty of where the Transport Zone and application of the relevant provisions applies.⁴

1.2.10 When the Transport Zone was proposed, it was also anticipated that during the life of the Replacement District Plan the Council will periodically undertake changes to update the planning maps to apply the Transport Zone to new roads and remove it from any stopped roads⁵.

⁴ Statement of evidence of Richard Shaw on behalf of the Crown, dated 14 January 2016.

⁵ Statement of evidence of David Falconer on behalf of the Christchurch City Council, dated 16 December 2015 page 20.

Submissions on the Replacement District Plan

- 1.2.11 No submissions were received in Stages 1 and 2 of the pRDP on the zoning of new and stopped roads.
- 1.2.12 Decision 12 on the Stage 2 Transport provisions, confirmed the Transport Zone (outside the Central City). Decision 12 also provided that within the Transport Zone, activities permitted in adjoining zones can also be permitted in the Transport Zone, except for sensitive activities (such as residential and education activities). This means that for roads that have been stopped, the now operative Transport Zone provisions (outside the Central City) already provide for the activities permitted in adjoining zones. However when roads are stopped adjacent to a residential zone, for example, residential activities will not be permitted on the stopped road, under the current Transport Zone provisions, as residential activities are sensitive activities.
- 1.2.13 In Stage 3 of the pRDP, the Crown submitted on the Central City proposal (Proposal 13) seeking there be a process less cumbersome than the plan change process for adding new roads, or removing stopped roads from the Transport Zone. The Crown was concerned that since plan changes are publicly notified, this could provide an opportunity for opponents to delay a proposal to rezone a stopped or new road through submissions and appeals. However the legal status of the road may have already been established via a Local Government Act 1974 or Public Works Act 1981 process.
- 1.2.14 As the Crown only raised this issue in Stage 3, when only the Central City Transport Provisions were before the Panel, there was only scope to insert provisions relating to the zoning of new and stopped roads in Chapter 7 as they relate to the Central City. However, it would be desirable for coherence and consistency to have the provisions apply across the entire Transport Zone (both within and outside the Central City), and this additional proposal seeks to achieve that.

1.3 EVALUATION

- 1.3.1 The proposal as described above is based on the following evaluation. The evaluation has been made in response to the Panel's minute in relation to notification of deeming provisions for new and stopped roads dated 13 July 2016. This report has been prepared to fulfil the obligations of the Council under the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 ('**Order**') and the RMA.

2.0 STRATEGIC CONTEXT

2.1 PURPOSE OF THE TRANSPORT ZONE

- 2.1.1 The purpose and scope of the Transport Zone is discussed in the Panel's Decision 12 and sections 1.2.6-8 of this Section 32.
- 2.1.2 Decision 12 on the Transport Chapter sets the objectives and policies for the Transport Zone. It also provides the rules and methods for achieving the objectives.

3.0 RESEARCH

3.1 Process, Information Sources and Advice

- 3.1.1 In determining the zoning of roads Council has received technical advice and assistance from various experts. Council technical staff have provided information

and informal feedback throughout development of the proposal. Where appropriate, the Council has relied on information provided in evidence to the Stage 2 Transport and Stage 3 Central City hearings of the pRDP, including the evidence of the Crown.⁶

4.0 RESOURCE MANAGEMENT ISSUES

4.1 STRATEGIC PLANNING DOCUMENTS

4.1.1 The Panel has discussed the higher order documents in Decisions 1 and 7. The Council refers to the discussion in those decisions. Many issues are of a strategic nature and therefore consideration has already been given to the strategic policy direction in higher order documents that have been carried through into the Transport Chapter through the Panel's Decisions 7 and 12.

4.2 ORDER IN COUNCIL

4.2.1 The process for the pRDP is prescribed by the Order which amongst other matters, states that the Council must have particular regard to the Statement of Expectations (Schedule 4 of the order). The relevant expectations for the Transport Chapter and specifically the zoning of roads include:

(a) *clearly articulates how decisions about resource use and values will be made, which must be in a manner consistent with an intention to reduce significantly (compared with the existing district plans) —*

(i) *reliance on resource consent processes; and*

(ii) *the number, extent, and prescriptiveness of development controls and design standards in the rules, in order to encourage innovation and choice; and*

(iii) *the requirements for notification and written approval:*

(b) *provides for the effective functioning of the urban environment of the Christchurch district, reflecting the changes resulting from the Canterbury earthquakes, including changes to population, land suitability, infrastructure and transport:*

4.2.2 Overall the proposal for the deeming provisions for new and stopped roads responds to the Statement of Expectations as follows:

- a. Contributes to the effective functioning of the transport network; and
- b. Reduces the need for resource consents for transport activities on new roads and non-transport activities on stopped roads.

4.3 RESOURCE MANAGEMENT ISSUES IDENTIFIED

RESOURCE MANAGEMENT ISSUE 1 – Provisions that apply to new and stopped roads

Whether there is a process that is less cumbersome than the plan change process for applying the Transport Zone provisions to new roads, or applying other zone provisions in respect of stopped roads, outside of the Central City?
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⁶ Statement of evidence of Richard Shaw on behalf of the Crown, dated 14 January 2016.

5.0 EVALUATION

5.1 SCALE AND SIGNIFICANCE

5.1.1 The level of detail required for the evaluation of the proposed District Plan provisions has been determined by an assessment of the scale and significance of the implementation of the proposed provisions. The scale and significance assessment considers the environmental, economic, social and cultural effects of the provisions and whether the provision:

1. Is directed by a higher order document; and/or
2. is important to resolve an issue or problem particularly to protect life and property; and/or
3. relates to a wide range of policy options or only variations of a theme; and/or
4. where it is a policy direction, radically changes from business as usual under the operative City Plan; and/or
5. where it is a policy, will affect reasonable use of land; and/or
6. adversely affects specific stakeholder interests including Ngāi Tahu; and/or
7. gives rise to adverse effects and whether there is certainty of effects based on the availability of information to assess benefits and costs.

5.1.2 The direction of the Panel limits the potential scope of the issues to be considered to be whether deeming provisions for the zoning of new and stopped roads outside of the Central City would be the most appropriate way to achieve the Objectives and policies of the pRDP. Therefore, this requires a focused evaluation.

5.2 EVALUATION OF OPTIONS

5.2.1 The evaluation contained within this Section 32 report is confined to an evaluation of two options that address the resource management issue provided in paragraph 4.3. Specifically, the options are:

1. Deeming provisions to specify which zone rules apply to stopped or newly vested roads with subsequent changes to update the relevant planning maps to align the changed areas with the application of the deeming rules; or;
2. Plan change process (ie no deeming provisions).

5.2.2 Section 32(1)(b) RMA requires an evaluation of whether the provisions are the most appropriate way to achieve the objectives by identifying other reasonable practicable options, assessing the efficiency and effectiveness of the provisions in achieving the objectives, and summarising the reasons for deciding on the provisions.

5.2.3 The evaluation must identify and assess the benefits and costs of environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions, including opportunities for economic growth and employment. The assessment must if practicable quantify the benefits and costs and assess the risk of acting or not acting if there is uncertain or insufficient information available.

5.2.4 A wider evaluation of the appropriateness of the provisions for Transport Zone was undertaken by the Panel as part of Decision 12.

5.3 EVALUATION OF OPTION 1 (DEEMING PROVISIONS + AMENDMENTS TO THE PLAN)

Summary of approach

- 5.3.1 The proposal is that the District Plan contains provisions that state where new roads are vested in the Council (generally through subdivision), the provisions of the Transport zone apply to that land rather than the provisions for the zone shown on the Replacement District Plan planning maps. Also if a road is lawfully stopped, the provisions for the adjoining land apply rather than the Transport Zone provisions. If the adjoining land on either side of the road is different, then the adjoining zone provisions will apply up to the centre line of the road in respect of the land being stopped as road.
- 5.3.2 These deeming provisions provide for a pragmatic approach to ensure that all roads (including newly created roads) are subject to the Transport Zone provisions as intended, while the appropriate development of land occupied by stopped roads will immediately fall to be considered against the provisions of the adjoining zone.
- 5.3.3 Under this option there is no need for immediate planning map zone changes under the Schedule 1 RMA process. The provisions of this additional proposal just means that once the new road has been created and vested in Council, then additional resource consents are not required for the operation and maintenance of the road or any alternation to the road (unless the alterations are beyond the road reserve and/designation).⁷

Benefits.

- 5.3.4 This option is anticipated to provide the following benefits:
1. Enables the use of stopped roads for activities not anticipated in the Transport zone, supporting the well-being of those who can utilise the subject land for activities not otherwise provided for.
 2. Enables the use of new roads for transport activities permitted in the Transport zone
 3. Supports an efficient and effective transport network.
 4. A reduction in consenting costs and time
 5. Irrespective of whether land is subject to the Transport Zone or the zoning of land on the respective sides of the stopped road, the district wide provisions of the plan (eg Chapter 9 Natural and Cultural Heritage) continue to apply.
- 5.3.5 It has not been practical to quantify or monetise these benefits since the Panel issued its minute in relation to notification of deeming provisions for new and stopped roads on 13 July 2016.

Costs

- 5.3.6 This option is anticipated to have the following costs:
1. Interim differences between the zoning shown on the planning maps and the Replacement District Plan provisions that apply to stopped and new roads. This situation would be rectified by periodic updates to amend the planning maps to reflect the creation or stopping of roads.

⁷ Closing Opening submissions for the Crown on the Central City hearing

2. Less public notification/participation in the process

5.3.7 It has not been practical to quantify or monetise these costs since the Panel issued its minute in relation to notification of deeming provisions for new and stopped roads on 13 July 2016. However, it is noted that in its evidence on this matter as part of the Central City Proposal hearing, the Crown was unable to identify any costs.

Table 1. Evaluation of against Objective 3.3.2a	
Objective 3.3.2a	Option; Deeming Provisions with subsequent updates to the relevant planning maps
<p>3.3.2 Objective - Clarity of language and efficiency</p> <p>The District Plan, through its preparation, change, interpretation and implementation:</p> <p>a. Minimises:</p> <ul style="list-style-type: none"> i) transaction costs and reliance on resource consent processes; and ii) the number, extent, and prescriptiveness of development controls and design standards in the rules, in order to encourage innovation and choice; and iii) the requirements for notification and written approval; 	<p>The approach proposed by this additional proposal will ensure that the appropriate provisions would apply to the land once its legal status has changed. For land vested as road this would mean that the Transport Zone provisions would apply, which enables new transport infrastructure and additions to existing infrastructure to be permitted activities. This could avoid the requirement for consents for these activities if the previous underlying zoning provisions continued to apply.</p> <p>This would also reduce costs by avoiding unnecessary delays and costs associated with relying on repeated plan change processes in order to enable roads to be governed by the provisions of the Transport Zone.</p> <p>Allowing this approach would best promote the Statement of Expectations and would accord with the Strategic Directions Objectives, particularly by minimising transaction costs in accordance with Strategic Directions Objective 3.3.2⁸.</p>

The risk of acting or not acting

5.3.8 There is considered to be sufficient degree of certainty and information about the subject of this proposal. The risk associated with acting is therefore low. The possible consequence of not acting is that the use of stopped and new roads may not be as efficient. This likelihood of this risk is considered medium. There have already been situations of new roads being created and roads being stopped since the Panel issued its decision on the Transport Zone outside the Central City in Decision 12.

5.4 EVALUATION OF OPTION 2 (PLAN CHANGE PROCESS)

Summary of approach

5.4.1 During the life of the Replacement District Plan the Council will periodically undertake plan changes following the creation and stopping (and even widening or alteration)

^{8 8} Closing Opening submissions for the Crown on the Central City hearing

of roads, in order to update the coverage of the Transport Zone (i.e. apply the Transport Zone to new roads and remove it from any stopped roads). This option is essentially the 'do nothing' option, as this is the situation that currently exists.

Benefits

5.4.2 This option is anticipated to provide the following benefits:

1. Avoids differences between the zoning shown on the planning maps and the provisions that apply to the zoning of stopped and new roads.
2. Initial Public Notification/participation in the process, compared with option 1.

5.4.3 It has not been practical to quantify or monetise these benefits since the Panel issued its minute in relation to notification of deeming provisions for new and stopped roads on 13 July 2016.

Costs

5.4.4 This option is anticipated to have the following costs:

1. Limits the use of stopped roads for non-transport activities without resource consent
2. Limits the use of new roads for transport activities without resource consent
3. No reduction in consenting costs and time

5.4.5 It has not been practical to quantify or monetise these costs since the Panel issued its minute in relation to notification of deeming provisions for new and stopped roads on 13 July 2016.

The risk of acting or not acting

5.4.6 There is considered to be sufficient degree of certainty and information about the subject of this proposal. The risk associated with acting is therefore low. The possible consequence of acting is that the use of stopped and new roads may not be as efficient. The likelihood of this risk is considered medium as some use of roads will still be enabled without resource consent. Situations of new and stopped roads has already been identified since the Panel issued its decision on the Transport Zone outside the Central City in Decision 12. In the Panel's minute in relation to notification of deeming provisions for new and stopped roads on 13 July 2016, Council has been directed to act on this issue and notify deeming provisions for new and stopped roads.

5.5 CONCLUSION

5.5.1 Option 1 is considered the most appropriate approach to achieve Objective 3.3.2 of Chapter 3 of the replacement District Plan and fulfil the direction of the Independent Hearings Panel's minute dated 13 July 2016 in relation to notification of deeming provisions for new and stopped roads, the benefits to the environment outweigh the costs.