

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: 29 June 2016

Hearing Panel: Environment Judge John Hassan (Chair), Ms Sarah Dawson, Mr John Illingsworth

DECISION TO MAKE MINOR CORRECTIONS TO DECISION

DECISION 24

Private Plan Change Request (Memorial Business Park)

[1] This decision deals with three matters requiring minor corrections and clarification of the Hearings Panel’s (‘the Panel’) decision (‘Decision’) on proposals for the Industrial Park Zone (Memorial Avenue) on 13 June 2016. We address these matters in turn.

Updated Industrial Park Zone (Memorial Avenue) Outline Development Plan

[2] The Decision directed the Christchurch City Council (‘the Council’) to confer with MAIL and other parties (and, as appropriate, Secretariat staff) to file an updated Industrial Park Zone (Memorial Avenue) Outline Development Plan (‘Memorial Avenue ODP’) addressing the various matters noted in the Decision.¹ This direction has brought to our attention the need for

¹ At [288] of the Decision

a minor correction regarding changes we directed to the Council's closing version of the Memorial Avenue ODP in relation to:

- (a) the extent of the restricted location for guest accommodation; and
- (b) the omission of a maximum height limit relating to an area of the restricted location for guest accommodation.

[3] The agreed closing position of the Council and MAIL, as illustrated on the revised Memorial Avenue ODP ('revised ODP') provided with Council's closing submissions, restricts guest accommodation to two areas fronting Memorial Avenue.² The closing position was that the north-western area would be subject to a 12m height limit, and the south-eastern area (being located between the Memorial Avenue access points) to a 20m height limit.

[4] In addition, the Council supported extension of the restricted guest accommodation area to the southeast of the 'Main Access' point up to the shared boundary with the Commodore Airport Hotel. This was indicated on the revised ODP, but no height limit was specified.

[5] Our Decision accepted that guest accommodation should be a permitted activity within the location specified on the revised ODP fronting Memorial Avenue. For the avoidance of doubt, that includes the hatched but uncoloured area supported by the Council. However, in directing changes to the revised ODP, we failed to direct that this area be illustrated as such.³ In addition, a height limit was not specified.

[6] It is our decision that this area should also be subject to a 12m maximum height limit, and as such, be shaded yellow on the ODP. For this we rely on the reasoning set out at [183]–[193] of the Decision that a height limit of 20m should be restricted to the agreed area denoted on the revised ODP only.

[7] We consider the Decision requires a correction to ensure the Memorial Avenue ODP accurately gives effect to the Decision, and direct changes using our powers under cl 16 of Schedule 3 to the OIC. Decision 24 is hereby amended in accordance with Schedule 1.

² The Council's closing version of the ODP showed both the CCC and MAIL closing positions.

³ The Decision at page 367.

Andrew Centre Limited and Avon Hotel Limited

[8] We received a memorandum from Andrew Centre Limited and Avon Hotel Limited (‘the Submitters’) requesting a minor correction to the Decision.⁴

[9] In short, the Submitters sought an amendment to paragraph [46] of the Decision to correctly reflect the Submitters’ position.⁵

[10] Paragraph [46] stated:

[46] Andrew Centre Limited and Avon Hotel Limited did not oppose establishment of an industrial park on the MAIL site.⁶ Nor did it oppose the level of office enablement and guest accommodation supported by the Council.⁷ It shared the concerns of the Council and the Crown as to the additional activities sought by MAIL.⁸

[11] We accept the Decision requires a correction to correctly reflect the Submitters’ position, and direct changes using our powers under cl 16 of Schedule 3 to the OIC. Paragraph [46] of Decision 24 is hereby amended in accordance with Schedule 2.

Clarification sought by the Christchurch City Council

[12] We received a memorandum from the Council requesting clarification as to the Decision.⁹

[13] The memorandum set out in some detail the reasons for seeking clarification. Succinctly put, this relates to whether the Decision confirms the zoning for land that is part of the Commodore Airport Hotel site, as shown in ‘black hatch’ on the map in paragraph 2 of the Memorandum.¹⁰

[14] The Council sets out its understanding of the Decision as follows:

⁴ Memorandum of counsel for Andrew Centre Limited and Avon Hotel Limited requesting correction to Decision 24, 23 June 2016.

⁵ At paragraphs 3–6.

⁶ Including as permitted activities, industrial, warehousing and distribution, high technology industry, service, ancillary retail (up to 250m² or 25% GFA of all buildings on the same site), food and beverage outlet, service station, commercial services, transport facility, emergency service facilities, gymnasium pre-school, parking lots and parking buildings and a community corrections facility: Closing submissions on behalf of Andrew Centre Limited and Avon Hotel Limited at paras 1.2, 2.1 and footnote 6.

⁷ Closing submissions for Andrew Centre Limited and Avon Hotel Limited at para 1.6.

⁸ Closing submissions for Andrew Centre Limited and Avon Hotel Limited at para 1.5.

⁹ Memorandum of counsel on behalf of the Council seeking clarification as to Decision 24, 24 June 2016.

¹⁰ Footnote 1 of the Memorandum describes this land as “Small adjacent piece of land fronting Memorial Avenue, which includes the Commodore tennis courts and the owners/managers residence”.

5. The Council’s understanding of the intention of Decision 24 as far as it applies to the Commodore Hotel Land, through footnote [196], is that the Decision confirms the IP zoning for the area covered by the ODP only, with the appropriate zoning of the Commodore Hotel Land (otherwise called the “Hotel site” or “Hotel” in the footnote), deferred until the Panel’s decision on the General Rules proposal.

[15] The Council’s understanding of the Decision is correct, the Decision confirms the Industrial Park Zone (Memorial Avenue) for that area covered by the Industrial Park Zone (Memorial Avenue) Outline Development Plan only.¹¹

[16] Clause 16(1) of Schedule 3 to the OIC provides that we may, at any time, issue an amendment to a decision to correct a minor mistake or defect in a decision of the Panel. We are satisfied that we have the power to correct the Decision by addressing the clarification sought by the Council. We direct amendments to paragraph [9] of Decision 24 as set out in Schedule 3.

Jurisdiction to make minor corrections

[17] 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.

[18] The minor corrections set out above satisfy both (1) and (2).

Decision

[19] We direct amendments to the Decision as set out in Schedules 1 to 3.

¹¹ Being the revised ODP attached to the Council’s closing legal submissions.

SCHEDULE 1

Replace the table on page 367 of the Decision as follows (changes shown underlined):

Change title to:	Appendix 16.6.15 Industrial Park Zone (Memorial Avenue) – Outline Development Plan
Delete text from the KEY and where relevant remove any related symbol/notation from the plan.	<p>“Council position - Guest Accommodation, office activity restricted to this area”</p> <p>“MAIL position”</p> <p>“Office activity restricted to this area as well as being allowed in MAIL’s guest accommodation area”</p> <p>“(Designation) (for information only)”</p> <p>“RGA Residential Guest Accommodation Zone”</p>
	<p>“Appendix 16.6.15 Industrial Park zone (Memorial Ave)”</p> <p>“Proposed” (from “Road access point - Proposed controlled intersection)</p>
<p><u>The uncoloured hatched area on the ODP indicated as “Council position - Guest Accommodation, office activity restricted to this area” shall be shown in yellow so that it provides for guest accommodation with a 12m height limit.</u></p>	

SCHEDULE 2

Replace paragraph [46] of the Decision as follows:

[46] Andrew Centre Limited and Avon Hotel Limited did not oppose establishment of an industrial park on the MAIL site.¹ However, it did have concerns with the level of office enablement and guest accommodation supported by the Council.² It shared the concerns of the Council and the Crown as to the additional activities sought by MAIL.³

¹ Including as permitted activities, industrial, warehousing and distribution, high technology industry, service, ancillary retail (up to 250m² or 25% GFA of all buildings on the same site), food and beverage outlet, service station, commercial services, transport facility, emergency service facilities, gymnasium pre-school, parking lots and parking buildings and a community corrections facility: Closing submissions on behalf of Andrew Centre Limited and Avon Hotel Limited at paras 1.2, 2.1 and footnote 6.

² Closing submissions for Andrew Centre Limited and Avon Hotel Limited at para 1.6.

³ Closing submissions for Andrew Centre Limited and Avon Hotel Limited at para 1.5.

SCHEDULE 3

Replace paragraph [9] of the Decision as follows (changes shown underlined):

[9] The OIC requires that our decision also identifies the parts of the Christchurch City District Plan and Banks Peninsula District Plan ('Existing Plan') that are to be replaced by the Decision Version. This decision is confined to the appropriate zoning of the MAIL site, excluding that area of land owned by the Commodore Airport Hotel, which will be considered as part of the General Rules Proposal. Therefore, it replaces the zoning that the Existing Plan ascribes to the site (as shown on the relevant Planning Maps).

For the Hearings Panel:



Environment Judge John Hassan
Deputy Chair



Ms Sarah Dawson
Panel Member



Mr John Illingsworth
Panel Member