

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: 18–25 January, 2–10 February and 9–10 May 2016

Date of decision: 30 September 2016

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

DECISION 46

CHAPTER 9: NATURAL AND CULTURAL HERITAGE (PART)
Chapter 9.3: Historic Heritage — Hagley Park (including Botanic Gardens)

Outcomes: **Proposals changed as per Schedule 1 to Decision 45**

COUNSEL APPEARANCES

Ms S J Scott and Ms CJ McCallum Christchurch City Council

Ms Pru Steven QC Canterbury Cricket Association Incorporated

TABLE OF CONTENTS

Introduction.....	4
<i>Effect of decision and rights of appeal</i>	<i>5</i>
<i>Identification of parts of Existing Plan to be replaced</i>	<i>5</i>
<i>Conflicts of interest</i>	<i>5</i>
Reasons.....	5
Statutory framework	5
<i>RMA s 6(f) and the Higher Order Documents</i>	<i>6</i>
<i>Whether Hagley Park should be given a heritage listing</i>	<i>6</i>
<i>Listing of the Cricket Pavilion and Setting at Hagley Oval and related rules</i>	<i>12</i>
Conclusion	19

INTRODUCTION

[1] This decision (‘decision’) concerns that part of the Sub-chapter 9.3 Historic Heritage proposal concerning Hagley Park and the submissions of Hands Off Hagley Incorporated (3711/FS5034) (‘HOH’) and Canterbury Cricket Association Incorporated (3455) (‘Canterbury Cricket’). It is one of a series by the Independent Hearings Panel (‘Hearings Panel’/‘Panel’) for the formulation of a replacement district plan for Christchurch City (including Banks Peninsula) (‘CRDP’) and¹ is released contemporaneously with Decision 45 on the remainder of the Sub-chapter 9.3 Historic Heritage proposal. That is due to the Chair, Sir John Hansen having recused himself on all matters relating to Hagley Park.

[2] Hagley Park is located at the centre of the city and is the premier park within the city. As described in the Hearings Panel’s Decision 35 on Chapter 18 Open Space (‘Open Space Decision’):

It comprises 165 hectares. In addition to its open spaces and mature woodlands, the park provides a major sporting and cultural focus, as well as offering a diverse range of entertainment and recreational opportunities.

[3] The Open Space Decision did not deal with the Botanic Gardens. This decision does, as it is in part concerned with listed historic heritage including within the Gardens.

[4] In this decision:

- (a) ‘Notified Version’ refers to the version of Sub-chapter 9.3 that was notified by the Christchurch City Council (‘CCC’/‘Council’) and to which, subsequent to consideration of submissions and mediation occurred changes were made;
- (b) ‘Revised Version’ refers to the final revised version that the Council ultimately proposed with its closing submissions²;
- (c) ‘Decision Version’ refers to the version of Sub-chapter 9.3 we have determined by Decision 45 and this decision, as set out in Schedule 1 to Decision 45. The Decision Version will become operative upon release of this decision and the expiry of the appeal period.

¹ The Panel members are Environment Judge John Hassan, Ms Sarah Dawson, Dr Phillip Mitchell and Ms Jane Huria

² Closing legal submissions for CCC dated 17 June 2016.

[5] This decision follows our consideration of submissions and evidence in relation to Hagley Park. 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’).³

Effect of decision and rights of appeal

[6] Our proceedings and the rights of appeal are set out in our earlier decisions.⁴ We concur in those.

Identification of parts of Existing Plan to be replaced

[7] The OIC requires that our decision also identifies the parts of the Existing Plan that are to be replaced by our decision. We confirm the position as adopted in Decision 45 and do not replace any provisions at this time.

Conflicts of interest

[8] We have posted notice of any potential conflicts of interest on the Independent Hearings Panel website.⁵ No submitter raised any issue in relation to this. As already recorded the Chair, Sir John Hansen, took no part in the hearing or deliberation of the subject of this hearing.

REASONS

STATUTORY FRAMEWORK

[9] The OIC directs that we hold a hearing on submissions on a proposal and make a decision on that proposal.⁶

³ Strategic directions and strategic outcomes (and relevant definitions), 26 February 2015.

⁴ Strategic Directions decision at [5]–[9].

⁵ The website address is www.chchplan.ihp.govt.nz.

⁶ OIC, cl 12(1).

[10] It sets out what we must and may consider in making that 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.

[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

RMA s 6(f) and the Higher Order Documents

[12] RMA s 6 provides that, in achieving the RMA's purpose, we must recognise and provide for various listed matters of national importance including s 6(f):

the protection of historic heritage from inappropriate subdivision, use, and development.

[13] Decision 45 sets out the Panel's analysis of Part 2, RMA including s 6(f), at [10]–[15]. We adopt that reasoning and have applied it to our determination of this matter.

[14] Decision 45 sets out an analysis of the Higher Order Documents, including various relevant objectives and policies of the Canterbury Regional Policy Statement 2013 ('CRPS'). We adopt that analysis, at [16]–[24] of Decision 45, and have applied it to our determination of this matter.

Whether Hagley Park should be given a heritage listing

[15] Hagley Park is not given a heritage listing in the Notified Version. HOH seeks that it be identified as a heritage place in the CRDP.

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.

¹⁰ At [25]–[28] and [40]–[62].

[16] The Panel's Open Space Decision gives a description of Hagley Park's history, legislation and related statutory instruments that pertain to it (including the Reserves Act 1977, Christchurch City Reserves Empowering Act 1971 and the Hagley Park Management Plan 2007) and its overall importance to the wellbeing of people and communities.¹¹ We concur with that Panel's discussion and findings on those matters. We were also assisted on these contextual matters by various historical and statutory references provided through the submitter statements and evidence of HOH's members, particularly those of its Chairman, Mr Meehan and members Professor Kissling, Mrs Anne Dingwall, and Ms Sue Williams.

[17] A Heritage Statement of Significance ('HSOS') was prepared for the Council for Hagley Park by landscape architect Ms Louise Beaumont. It concludes:

Hagley Park is of high overall significance to Christchurch, including Banks Peninsula. The Park has high historical and social significance as an intrinsic component of the early settlement plan for the city of Christchurch, and as a leading New Zealand example of a public park developed from the mid 19th century. The Park reflects the early colonists' desire to establish an English way of life in Canterbury, including the provision of English sports culture and it has a strong association with many prominent early colonists and notable 20th century Cantabrians who helped to shape the identity of the Park. Hagley Park has high cultural and spiritual significance as an essential part of the traditions of the city and the traditions of numerous residents. It is of cultural and spiritual significance for the meanings and associations it holds for tangata whenua as a historic mahinga kai area and traditional travel route, and in the case of Little Hagley Park, an established resting and meeting place. It is also of cultural significance for its past and ongoing role as the focus for many important events in the cultural life of the city, and for its association with the sporting history of Christchurch and Canterbury. It also has significance as a focus of debate concerning the value of public space and the rights of citizens. Hagley Park has high architectural and aesthetic significance as one of the city's defining open space features and technological and craftsmanship significance for its memorial fabric and park furnishings. The Park has high contextual significance as an important component of a group of early colonial sites and for its landmark status in the central city. The Park has high archaeological significance for its acknowledged and potential archaeological resource and scientific significance for its genetic resource and potential to advance New Zealand's early forest tree knowledge.

[18] Where an author of a HSOS is not called to give evidence, we would not normally ascribe weight to their opinion. In this case, however, Ms Beaumont's opinion has been volunteered in the Council's documentation, is not disputed by any party, and is consistent with what is widely understood within the community concerning Hagley Park's heritage value. We weigh it in our consideration, on that basis.

¹¹ Decision 35 at [58] – [154]

[19] Ms Jennifer May, an architectural historian, also gave evidence for the Council in relation to the heritage values of Hagley Park. Ms May considered that Hagley Park would likely qualify for listing, but noted that there were challenges in relation to the management of open spaces. Ms May said:¹²

Parks and open spaces can provide difficulties for management under heritage rules, which are specifically designed for built heritage. A key difficulty is the management of change, and the rules and policies around this, when dealing with more organic living heritage as opposed to the built more static form. In my view, the best mechanism for managing the heritage values of this significant space would be through management and conservation plans which provide specific policies for such management.

[20] In answer to questions from the Panel, HOH's representative witness Ms Williams emphasised that simply having Hagley Park listed in the CRDP would not be sufficient. In view of its importance to the city, HOH considered that such listing needed to be accompanied by rules and restrictions on activities.¹³

[21] Despite Ms May acknowledging the significant heritage value of Hagley Park (and the Council's HSOS also doing so), the Council opposed having Hagley Park listed in the CRDP.

[22] Underlying the Council's position on that matter is a concern as to how activities within Hagley Park are most appropriately regulated. As the Open Space Decision explains, activities in Hagley Park are regulated under a number of other non-RMA processes, in particular the Reserves Act. That does not, of course, preclude them from also being regulated under the RMA. However, the Council's planning witness, Ms Rachlin, considered that the protection already offered by those non-RMA processes was sufficient also for RMA purposes.¹⁴

[23] In opposing HOH's requested relief, the Council noted that HOH had not put forward a 'concrete proposal' about what rules it considers would be appropriate for this location. The Council cautioned against the assumption that the Chapter 9 rules applying to heritage items would be necessarily appropriate.¹⁵

[24] The primary focus of our evaluation of alternative approaches, under s 32AA, is to determine the most appropriate 'provisions' for achieving the objectives.

¹² Evidence in chief of Jennifer May, 3 December 2015 at 6.4.

¹³ Transcript, p 1381, ll 14 - 45

¹⁴ Rebuttal evidence of Caroline Rachlin, 15 January 2015 at 7.1.

¹⁵ Closing legal submissions for the Council at 18.13

[25] ‘Provisions’ includes policies, rules or other methods.¹⁶ We find that can encompass consideration of methods outside the RMA, such as under other legislation, which may still serve an RMA purpose of achieving relevant CRDP objectives. In particular, district plans may state methods, other than rules, for implementing policies (RMA s 75(2)).

[26] The evidence called by HOH did not include expert planning evidence that offered, or supported, specific rules that would accompany its requested listing of Hagley Park. To that extent, we agree with the Council that HOH did not advance a ‘concrete proposal’ for its requested regulatory approach. That is a significant factor counting against HOH’s position that listing needs to be accompanied by rules and restrictions on activities.

[27] On the other hand, we find a similar flaw in the Council’s assumption that listing is inappropriate if the proper method for protecting heritage values in Hagley Park is through non-RMA regulation of activities.

[28] We appreciate that, in those cases where the Notified Version has listed heritage reserve open spaces (e.g. the High Street Triangles, and Cranmer and Latimer Square), it has also proposed that rules apply. However, we also observe that the Council has accepted that it is appropriate to give CRDP recognition to the heritage significance of HA1 (Akaroa) without triggering additional resource consents beyond those provided in the underlying zoning.¹⁷

[29] Nor is it the case that there is no RMA regulation of heritage items within Hagley Park. The Notified Version includes a number of individual listed items and their settings and associated rules. For the reasons we give at [64]– [69], we confirm the listing of those items. Our decision to be handed down on topic 9.5 will include new rules, for inclusion in Chapter 8, concerning earthworks in relation to a heritage item. Those rules will address earthwork setbacks from heritage items or within a heritage setting. In addition, recognising that trees specifically contribute to the Park’s historic heritage, Decision 44 includes rules regulating work on public realm trees including in Hagley Park and, earthworks in close proximity to public realm trees will be addressed in the consequential changes to Chapter 8, to be handed down with our decision on topic 9.5. Also, the Open Space Decision has included a specific

¹⁶ s32(6)

¹⁷ Closing legal submissions for the Council at 6.10

rule in Chapter 18 Open Space, to manage the effects of parked cars within the drip line of trees within the Park.

[30] Objective 9.3.2.1, as determined by Decision 45, refers to the following (as well as its specific further outcomes):

The overall contribution of historic heritage to the District’s character and identity is maintained through the protection and conservation of significant historic heritage across the district...

[31] Related Policies 9.3.2.2 and 9.3.2.4, as determined by Decision 45, refer relevantly to:

- (a) “Identify historic heritage throughout the District which represents cultural and historic themes and activities of importance to the District...”(refer 9.3.2.2.a);
- (b) ”Assess the identified historic heritage in order to determine whether it qualifies as ‘Significant’ or ‘Highly Significant’ according to the [thresholds in 9.2.2.2.b.i and ii]”;
- (c) “Schedule significant historic heritage items and heritage settings where the [thresholds in 9.2.2.2.b.i or ii] are met: (and, for interiors, additional requirements); (refer 9.3.2.2.c); and
- (d) “Manage the effects of subdivision, use and development on the heritage items, heritage settings and heritage areas which are scheduled in a way that” achieves the outcomes in 9.3.2.4.a.i – iii, including as to “ongoing use and adaptive reuse” and “the need for a flexible approach to heritage management”.

[32] Objective 9.3.2.1 and these related policies do not prescribe or direct that rules must be the method for achieving and implementing them. On the contrary, Policy 9.3.2.4 explicitly refers to the need for a flexible approach to heritage management.

[33] Listing is a form of ‘provision’ and ‘method’ for the purposes of s 32AA, RMA. The evidence overwhelmingly satisfies us that Hagley Park meets the threshold for listing as Group 1 Highly Significant historic heritage, according to Policy 9.3.2.2.

[34] The evidence also overwhelmingly satisfies us that the most appropriate means for the management of effects of use of Hagley Park is one that recognises the proper role of non-RMA methods for that management, specifically under the Reserves Act 1977 and through the Hagley Park Management Plan. We find that it is inappropriate to go further than including the rules we refer to in [29] (including the modified temporary activity rules which we discuss at [39]–[64]). That is because, we are satisfied on the evidence that to do so would give rise to inappropriate further cost and uncertainty that, on the evidence, is not justified.

[35] In reaching that view on the evidence, we have considered the different position that applies in regard to the High Street Triangles, and Cranmer and Latimer Squares. We find that Hagley Park sits in proper contrast to them in the fact that, as the city’s premier park, it has its own dedicated reserve management plan.

[36] In view of the different position we find exists with Hagley Park, we have added the following to the ‘how to interpret and apply the rules’ provision, so as to ensure that Hagley Park is not inadvertently subject to rules relating to the management of historic heritage in Chapter 9:¹⁸

For the Hagley Park heritage item, Rule 9.3.4 - Activity Status Tables shall not apply other than heritage items and heritage settings individually scheduled in Appendix 9.3.7.2.

[37] We have considered the costs and benefits of listing Hagley Park. We have done so without quantifying those costs and benefits as, without having received evidence on that, it is impractical to do so (s. 32(2)(b), RMA). For the reasons we have given, we find there is no significant cost in doing so, given that we do not add to the rules we have noted. For the same reasons, we find there is significant, and overwhelming, benefit in specifically recognising the undisputed highly significant heritage values in the CRDP.

[38] For those reasons, we have accepted the submission of HOH in part, by including Hagley Park in Appendix 9.3.7.2 as a Group 1 Highly Significant historic heritage item together with the noted addition to the ‘how to interpret and apply the rules’ provision.

¹⁸ At 9.3.3 j.

Listing of the Cricket Pavilion and Setting at Hagley Oval and related rules

[39] The Notified Version includes the ‘Cricket Pavilion and Setting’ in its Appendix 9.3.6.1.3 Schedule of Significant Historic Heritage Places (Central City), and records that it is a Group 1 ‘High Significance’ listing.

[40] Related rules of the Notified Version include the specification in proposed permitted activity Rule 9.3.3.2.1 of the following:

P4	The installation of temporary marquees or containers for events in a heritage item which is an open space	a. The structure is removed within one month after the event.
P5	The installation of temporary marquees or containers for events in a heritage setting.	a. The structure is removed within one month after the event.

[41] Where P4 and P5 are not met, a restricted discretionary resource consent is required in accordance with RD6, and the matters for discretion in 9.3.5.6 applied.

[42] Canterbury Cricket’s particular interests at Hagley Park concern the now-completed Hagley Oval development at South Hagley Park. Its primary concerns about the Notified Version’s rules that we have described are as to how they impact on the ability to erect temporary structures associated with the use of Hagley Oval for major cricket events. It submits that the uncertainties and costs they impose, particularly in relation to use of the Oval, are unjustified and inappropriate.

[43] Canterbury Cricket holds a resource consent for the Oval, granted on a direct referral to the Environment Court in 2015, in *Re Canterbury Cricket Association Inc.*¹⁹ The consent authorises the ongoing use of the Oval for major cricket fixtures, all of which require the erection of temporary grandstands, broadcasting facilities, fencing, signage and other temporary structures. The consent conditions require that the number and placement of temporary structures are to be ‘generally in accordance with’ a series of Match Management Plans.²⁰ Condition 3 limits the total number of days for temporary facilities and structures associated with major fixtures to a maximum of 40 days per season. Condition 13 provides for

¹⁹ [2013] NZEnvC 184.

²⁰ Closing legal submissions on behalf of Canterbury Cricket at 6 and attachments.

maximum days for pack-in and pack-out, depending on the type of structure, either side of the major fixture, ranging from 1-3 days.

[44] It explained that, whilst the conditions of its resource consent provide some flexibility, it is possible that additional resource consents, or variations to the existing conditions, may be required in the future once the Match Management Plans have been tested in a ‘real world scenario’.²¹ In the event that changes are needed to operational matters, involving consenting, it seeks to avoid a heritage assessment having to be undertaken as to the impacts of temporary buildings or structures on the setting of the Cricket Pavilion building. It submitted that imposing such an assessment requirement would be ‘unjustifiable’ in terms of cost. It made three related points in support of that submission:

- (a) Any building/structures would be for the purpose of enabling the Oval to be used for (permitted) recreational activities consistent with its zoning and recreational reserve status.
- (b) Any such building/structures would be temporary, not leaving a residual footprint on the Oval or having any long term adverse impact on the heritage fabric of the Cricket Pavilion building.
- (c) To require such a heritage assessment would be contrary to the Statement of Expectations in Schedule 4, OIC.

[45] To address these concerns, Canterbury Cricket asked that we:

- (a) Reduce the heritage setting to a distance of 20 metres around the Cricket Pavilion, or;
- (b) Amend Rule 9.3.3.2.1 to provide permitted activity classification for the ‘installation of temporary seating, fencing, broadcasting facilities, sight screens, toilets, food and beverage stalls, and signage for cricket events in the Hagley Oval heritage setting’. This was in addition to the temporary structures that were

²¹ ibid at 8

included in the Notified Version, namely ‘installation of temporary marquees or containers for events’ in a heritage setting.

[46] Canterbury Cricket’s closing recorded that, while it had not reached agreement with the Council at mediation, it could operate within the permitted activity Rule 9.3.3.2.1 (P5) recommended by Ms Rachlin, the Council’s planning witness.²² Canterbury Cricket supports the Revised Version on that basis. We understand that, in those circumstances, Canterbury Cricket no longer seeks changes to the heritage setting for the Cricket Pavilion. Canterbury Cricket did not call any heritage evidence in relation to the extent of the heritage setting.²³

[47] HOH’s primary submission on Chapter 9, also addressed issues relating to temporary activities within Hagley Park. In addition, it filed a further submission in opposition to Canterbury Cricket’s primary submission. For ease of reference, we refer to both as the ‘HOH submission’.

[48] Part of HOH’s concern is that enabling temporary structures and activities, as sought by Canterbury Cricket in relation to the Oval, would not recognise the heritage significance of Hagley Park. In relation to that concern, it referred us to the finding of the Environment Court in *Re Canterbury Cricket Association Inc* at [348]:²⁴

... for the purposes of 6(f) RMA we find Hagley Park is an area of historic and cultural heritage derived from its landscape design.

[49] HOH is also concerned that Canterbury Cricket’s requested relief would permit temporary activities and structures that may have adverse environmental effects that are more than minor. It argued that it would not be appropriate to classify activities with those effects as permitted activities.²⁵ In relation to that concern, HOH referred us to a finding by the Environment Court in *Re Canterbury Cricket Association Inc* concerning the frequency, scale and duration of temporary facilities and structures at the Hagley Oval, as initially proposed over the cricket season. On that matter, the Court found:²⁶

... it is possible that there will be frequent periods of intense use over the duration of the cricket season. If this occurs this will be an adverse effect, which is more than minor.

²² Closing legal submissions for Canterbury Cricket, 10 June 2016 at 4.

²³ Opening legal submissions for Canterbury Cricket, 3 February 2016 at 9.

²⁴ [2013] NZEnvC 184.

²⁵ RMA s76(3)

²⁶ *Re Canterbury Cricket* at [434]

[50] Related to the same matter, HOH referred us to the Court's discussion (at [435]) of its concern that the effects of activities would extend beyond the 20 days per year (proposed) because they included set up and dismantling of temporary structures. The Court amended related consent conditions so as to reduce effects to a level the Court found acceptable.²⁷ This included restrictions on the time to 'pack-in and pack-out' each side of major fixtures as discussed above.

[51] HOH's extensive reference to *Re Canterbury Cricket Association Inc* reflects its concern that what Canterbury Cricket seek that we allow for, as permitted temporary activities, would be more enabling than the resource consent conditions imposed by the Environment Court and the proposed Chapter 6 General Rule 6.2.2.2.1 (P2), also on temporary activities.²⁸

[52] Canterbury Cricket's counsel, Ms Steven QC, submitted that HOH's comparisons of proposed rules with the *Re Canterbury Cricket Association Inc* decision were irrelevant. Specifically that is because the resource consent only applies when the Oval is being used for major cricket fixtures. It does not apply when the Oval is being used for other recreational activities.²⁹

[53] As to the matter of the proposed temporary activity rules of Chapter 6, Ms Steven submitted that the Chapter 9 rules were comparatively less permissive. She pointed out that proposed General Rule 6.2.2.2.1 specifically provides for temporary buildings or structures ancillary to an event, subject to standards that limit their duration including to no more than two weeks before or after the events opens or closes to participants. She explained that, by comparison, proposed Rule 9.3.3.2.1 P5 targets the building/structure rather than the activity, and requires that they be removed within one month after the event.³⁰

[54] In any case, she submitted that comparisons were irrelevant. In part, that is because the Chapter 6 temporary activity rules would serve a different purpose. They would apply city-wide and are deliberately more permissive than the underlying zone rules in view of the

²⁷ *Re Canterbury Cricket Assn Inc* [2013] NZ EnvC 222.

²⁸ Closing submissions for Hands off Hagley, 10 June 2016 at page 5 and Memorandum of Hands off Hagley Inc regarding Memorandum of counsel for Christchurch City Council of 19 April and 6 May 2016, dated 13 May 2016.

²⁹ Closing submissions for Canterbury Cricket, at 18.

³⁰ Closing submissions for Canterbury Cricket, at 12 - 14.

importance of earthquake recovery. She submitted that the Chapter 9 temporary activity rule would prevail over the Chapter 6 provisions.³¹

[55] The Council made similar submissions in disagreeing with HOH's submissions on these matters.³²

[56] We agree that the resource consent granted by *Re Canterbury Cricket Association Inc* is limited to the control of major cricket fixtures at the Oval and the effects generated by those fixtures. Its conditions are tailored to respond to the particular activity it authorises. The consent does not apply to other activities sought to be undertaken at the Oval. We agree with Canterbury Cricket and the Council that plan rules have an appropriate place at least insofar as it is necessary to cover other activities that may take place at the Oval. Should Canterbury Cricket seek to use the Oval for major fixtures in a way that is not provided for in its resource consent, it will need to secure a change to the resource consent conditions or a new consent unless the activity is a permitted activity under the CRDP. It is appropriate that those activities, and their effects, are managed by appropriate rules in the CDRP. Therefore, the existence of the resource consent does not remove the need for CRDP rules or render permitted activity rules for temporary activities inappropriate.

[57] For those reasons, we do not accept HOH's submission that the CRDP rules ought to be brought in line with the conditions of the resource consent.

[58] We also observe that HOH's submissions concerning *Re Canterbury Cricket Association Inc* were misdirected in not accounting for the different statutory purposes served by consents and rules, and the different statutory and evidential contexts of the Environment Court's decision and ours.

[59] A resource consent is authority to undertake the activities to which it applies, according to s 9(3), RMA. A permitted activity rule serves the different statutory purpose described in s 87A(1), namely to exempt an activity from a requirement to secure resource consent where the activity complies with 'the requirements, conditions, and permissions, if any, specified in the ... plan'. Hence, the fact that a resource consent authorises particular activities does not

³¹ Closing submissions for Canterbury Cricket, at 15 and 17.

³² Closing legal submissions on behalf of the Council, 17 June 2016, at 6.24.

necessarily preclude the inclusion of permitted activity rules in a plan that also apply to those activities. There can be many valid resource management reasons why it would be appropriate to include a rule in a plan having an effect of also authorising an existing consented activity. Related to that, we must determine the most appropriate temporary activities regime according to the statutory requirements we have set out (which differ from those that the Environment Court was required to consider), and in light of our findings on the evidence and relevant other information before us (rather than the findings made by the Environment Court on the evidence in *Re Canterbury Cricket Association Inc*). That does not, of course, in any sense diminish the respect properly accorded to this or any other reasoned decision of the Environment Court.

[60] As for the proposed Chapter 6 General Rules, it is sufficient for us to record that we find there is no material conflict between those proposed rules and the matters in issue concerning the permitted activity rules for temporary activities under this Sub-chapter 9.3. Chapter 6 provides for more general activities. Within Hagley Park, Chapter 6's rules would address amenity value effects. By contrast, the Sub-chapter 9 rules are concerned with structures within heritage settings and the effects of those structures on scheduled historic heritage. If temporary structures are erected within a heritage setting, then the more specific rules in Chapter 9 would apply.

[61] However, HOH's submission concerning the notified Stage 2 Chapter 6 General Rules and related definitions proposals³³ will be determined as part of those related decisions in due course.

[62] We note that the Council has reached agreement with the Arts Centre and the Canterbury Museum that the Revised Version's proposed permitted activity rules (now numbered Rule 9.3.4.1 P4 and P5) are appropriate for their needs.³⁴

[63] We have assessed the various alternative approaches, in terms of benefits and costs as required by s 32 RMA. We have done so on the evidence, but without quantifying those costs and benefits as, without having received evidence on that, it is impractical to do so (s 32(2)(b), RMA).

³³ (2302/FS2747)

³⁴ The Arts Centre of Christchurch Trust Board (3275) and The Canterbury Museum Trust Board (3351).

[64] On the evidence, we find that it would have been inappropriate to have granted Canterbury Cricket's initially sought alternative relief of reducing the heritage setting around the Cricket Pavilion. Canterbury Cricket was right to abandon that relief and we now formally reject it. The evidence overwhelmingly satisfies us that it is most appropriate that the Cricket Pavilion and Setting be included in the Decision Version as they appear in Appendix 9.3.7.2 Schedule of Significant Historic Heritage Places (Central City) of the Revised Version.

[65] The evidence demonstrates the validity of Canterbury Cricket's submissions, and we accept, that buildings and structures would be for permitted recreational activities consistent with the intentions of the underlying Open Space zoning and Hagley Park's recreational reserve status. We also accept that, as temporary activities, those buildings and/or structures would not leave a residual footprint or have any long term adverse impact on the heritage fabric of the Pavilion building.

[66] Those findings lead us to also agree with Canterbury Cricket that to require a heritage assessment would be contrary to the OIC Statement of Expectations. We find that the increased costs and uncertainties of the relief sought by HOH would not be for any worthwhile resource management benefit.

[67] The evidence satisfies us that the Revised Version would make proper provision for temporary activities without any material cost in heritage terms. In conjunction with the listing of the Cricket Pavilion and Setting, the Revised Version's proposed rules would make sensible provision for temporary events in a manner that would not cause significant harm to the identified heritage values and would most appropriately achieve the objectives we have noted.

[68] Therefore, we find:

- (a) HOH's requested relief is inappropriate for achieving the related Objective 9.3.2, and we reject it; and
- (b) The Revised Version's proposed rules are the most appropriate for achieving that objective, and also for achieving Strategic Directions 3.3.1, 3.3.2 and 3.3.9. Therefore, we have included those rules in the Decision Version.

Remaining listed heritage items in Hagley Park appropriate

[69] Although not contentious, for completeness, we confirm we have included in the Decision Version the remaining Hagley Park listed heritage items and settings, namely:

- (a) Hagley Park Bridge and Setting;
- (b) Curators House (including interiors)³⁵;
- (c) Cunningham House (including interiors);
- (d) Robert McDougall Art Gallery (including interiors) and setting; and
- (e) Bandsmen's Memorial Rotunda;
- (f) Rolleston Statue and Setting;
- (g) Fitzgerald Statue and Setting; and
- (h) Moorhouse Statue and Setting

CONCLUSION

[70] The provisions we have included in the Decision Version by this decision are in Schedule 1 to Decision 45.

[71] The Council is directed to include Hagley Park in Appendix 9.3.7.2 for the purposes of the direction in Decision 45 at [425]

[72] The Council and any other party seeking that we make minor corrections to any part of this decision must file a memorandum of counsel for those purposes, within 5 days of the date of this decision.

³⁵ In accordance with Decision 45 [133] –[139]

For the Hearings Panel:



Environment Judge John Hassan
Deputy Chair



Ms Sarah Dawson
Panel Member



Dr Phil Mitchell
Panel Member



Ms Jane Huria
Panel Member