

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 an application to make minor corrections to Decision 56 pursuant to cl 16, Schedule 3 of the Order

Minor correction: 23 June 2017

Hearing Panel: Hon Sir John Hansen (Chair), Environment Judge John Hassan (Deputy Chair), Mr Stephen Daysh, Ms Sarah Dawson, Ms Jane Huria

Minor corrections to Decision 56 - Chapter 6 General Rules and Procedures

[1] The Hearings Panel ('the Panel') issued its decision on Chapter 6 General Rules and Procedures ('Decision 56') on 10 November 2016.

[2] On 23 May 2017 Carter Group Limited, Scentre New Zealand Limited, Kiwi Property Holdings Limited, Bunnings Limited and NPT Limited ('the Submitters') filed a memorandum in relation to the signage rules. The Submitters presented a joint case at the hearing of the Signage provisions of the General Rules chapter of the Christchurch Replacement District Plan ('CRDP'). The submitters raise a concern regarding the interpretation of the signage rules by the Christchurch City Council ('the Council') and seek clarification as to whether the definition of sign / signage is intended to apply only to signage affixed to the exterior of buildings or whether it encompasses signage placed internally (for example in a window). The Submitters request the Panel make a minor correction to clarify the intended meaning.

[3] The Submitters are concerned that the Council's broad interpretation captures a range of signage that is not affixed to the exterior of a building, and is simply visible through a window or door, irrespective of its content or purpose. The Submitters consider that this approach is

inconsistent with the Panel's decisions on the Signs provisions, and the broader strategic direction of RDP.

[4] The definition of 'Sign/Signage' is as follows:

Sign/Signage

means any device, graphic or display of whatever nature visible from a public place, for the purposes of:

- a. identification of, and provision of information about, any activity, site or building;
- b. providing directions;
- c. promoting goods, services or forthcoming events; or
- d. containing a message directed at the general public, whether temporary or otherwise.

A sign or signage may be three-dimensional or otherwise, that is, manufactured, painted, written, printed, carved, embossed, inflated, projected onto or otherwise fixed to or attached upon any external surface of any building or, in the open, on any site, wall, pole, hoarding or structure, or onto any rock, stone, tree or other object. It includes:

- e. any method of illumination, whether by an internal or external non-neutral light source;
- f. any sign displayed upon any parked vehicle and/or trailer for the express purpose of directing attention to any activity, site or building; and
- g. any tethered balloon of more than 0.5m in diameter.

[5] The differences in interpretation between the Submitters and the Council are:

- (a) The Submitters consider that the definition only applies to signs attached to the exterior of the building and not the interior, irrespective of whether it can be viewed externally.¹
- (b) The Council considers that the definition captures all exterior and interior signs if they are visible.²

[6] In support of the Submitters' request, counsel has set out the origins of the definition, commencing with the use of the term 'outdoor advertisement' in the Operative City Plan. The Submitters say that, although the name of the definition changed to 'sign' in the 'CRDP', the

¹ Memorandum of Carter Group and others, 12 June 2017.

² Memorandum of CCC, 12 June 2017.

defined meaning was virtually the same. Under the Operative City Plan, it was only advertising attached to the exterior of a building that was captured by the relevant resource consent requirements. The Submitters consider that the Council's broader interpretation may be because the now operative CRDP Signs provisions omit the following note, which was included in earlier working versions of the provisions and on which all evidence before the Panel was based:

“These rules apply to outdoor advertisements only”.

[7] The Council opposes the relief requested and points to a number of factors that it submits support its broad interpretation.³ It submits that the definition does not apply solely to outdoor signs and that indoor signs, e.g. those able and intended to be seen through a window from outside, would and should also be caught by the definition. In addition, while the definition includes reference to "fixed or attached upon the external surface of any building" the Council considers that this does not limit the definition to just the external surface of buildings, due to the use of the word 'may' at the start of the sentence. The Council notes that no submissions were received to amend this definition and the only changes made through the hearings related to formatting, style and grammar.

[8] The Council submits that the qualifier requested by the Submitters was not a feature of the definition or 'how to use the rules' provisions of the CRDP. However, we note that the qualifier was included in the notified version for the Central City zone.⁴

[9] Mr Scott Blair, the Council's planning witness on the signage issue, included in his evidence in chief, Attachment B, 5 February 2016 (in the General Rules Stage 2 & 3 hearing) a version of the provisions that 'integrated' the Central City provisions notified as Chapter 13.14 into Sub-chapter 6.8 ('integrated chapter').⁵ Through this exercise, Mr Blair included the 'outdoor advertisements' note into the integrated chapter which in effect meant in that version that the note applied District-wide, rather than just within the Central City. Mr Blair in his rebuttal evidence, Attachment A, dated 26 February 2016 (for the General Rules Stage 2 & 3 hearing) deleted the 'outdoor advertisements only' note.⁶ There was no discussion in Mr Blair's evidence in chief or rebuttal that explained why the note was included and then deleted. The

³ Memorandum of Counsel for CCC responding to Carter Group and Others, 31 May 2017.

⁴ Sub-chapter 13.14 (Central City chapter) of the CRDP was publicly notified in Stage 3 on 25 July 2015.

⁵ Statement of evidence of Adam Scott Blair on behalf of Christchurch City Council, 5 February 2016.

⁶ Rebuttal evidence of Adam Scott Blair on behalf of Christchurch City Council, 26 February 2016.

Council submits ‘that it could be assumed that it would result in a consistent position for signage in the Central City with that which applied throughout the rest of the City.’

[10] For the reasons we now set out, we agree with the Submitters that a minor correction can and should be made to the ‘how to use the rules’ provision, but not on the basis sought by the Submitters.

Interpretation of the definition

[11] We consider the positions put by the Submitters and the Council fail in different ways to reflect a plain reading of the definition.

[12] We start by considering the definition in its context. As [17] of Decision 56 records, the purpose of the notified version was:

...to enable businesses and other organisations to promote their products, services and activities while controlling the potential adverse effect of signs on urban design and amenity outcomes.

[13] That purpose is relevantly reflected in Objective 6.8.2.1, particularly in its emphasis on enhancing visual amenity values and character of the surrounding area, buildings or structures, and in related Policies 6.8.2.1.2 and 6.8.2.1.3. Predominantly, these provisions focus on the character and visual amenity of the surrounding area and public realm (as well as on integration of signage with a building’s external appearance) and on avoiding public safety problems from distraction.

[14] In a purposive sense, the definition is primarily intended to serve these related objectives and policies and related rules.

[15] As such, we find that it only applies in circumstances described in the definition, including in particular its reference to

projected onto or otherwise fixed to or attached upon any external surface of any building or, in the open, on any site, wall, pole, hoarding or structure, or onto any rock, stone, tree or other object.

[16] Therefore, we agree with the Submitters that an interpretation that captured interior signs simply because they “are visible” from public places is unrealistic and contrary to the plain

meaning of the definition. In particular, it would not serve the related objectives, policies and rules to have the definition interpreted to capture changes in internal displays inside a shop intended for customers who have entered the shop. The same applies regardless of the business concerned. It would create uncertainty and result in activities being in breach of the rules of the plan or resource consents every time an internal display was modified.

[17] The definition, although inelegantly drafted, properly supports related CRDP provisions if the second part of it is understood as meaning essentially what it says, namely that to be caught by the provisions, the signage must be:

projected onto or otherwise fixed to or attached upon any external surface of any building or, in the open, on any site, wall, pole, hoarding or structure, or onto any rock, stone, tree or other object.

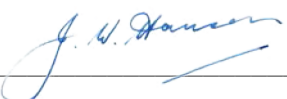
However, we do not entirely agree with the Submitters' position. Rather, we consider the purpose of the definition is fulfilled if 'projected onto or otherwise fixed to or attached upon any external surface' is read to include a sign attached to the internal surface of a window and displayed (in the sense of advertising) to a public place. That is because, for the reasons we have given, a sign so attached for the stated purposes of the definition is properly to be read as being a display attached upon an external surface (namely the transparent window or door) even when attached to the interior of that surface.

[18] Jurisdiction to make minor corrections

[19] We have previously set out our jurisdiction to make minor corrections, and it is unnecessary to repeat it. The interpretation we have set out of the definition means we do not consider it legally flawed. However, we are concerned that the Council would appear to have misinterpreted it. Therefore, in terms of achieving the Strategic Objectives concerning clear interpretation, there would be some benefit in providing further clarification. We consider this best in the 'How to use the rules' section, in that it pertains to proper CRPD administration. We direct the Council to include the note in the 'How to use the rules':

"These rules do not apply to signs affixed inside a building unless affixed to the interior surface of any window or door in order to provide for external display visible from a public place for any of the purposes described in the definition of 'sign/signage'.

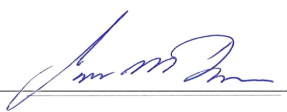
For the Hearings Panel:



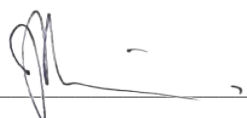
Hon Sir John Hansen
Chair




Environment Judge John Hassan
Deputy Chair



Ms Sarah Dawson
Panel Member



Ms Jane Huria
Panel Member



Mr Stephen Daysh
Panel Member