

**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: 8 December 2016

Hearing Panel: Environment Judge John Hassan (Chair), Ms Sarah Dawson, Mr Alec Neill, Mr Gerard Willis

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### **MINOR CORRECTIONS TO DECISION 33**

#### **Residential New neighbourhood in relation to land zoned Residential Suburban at Wigram and Prestons**

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#### **Background**

[1] This decision deals with a confined issue as to the zoning of some land at Prestons and Wigram. The Council and the land developer, Ngāi Tahu Property Limited ('NTP'), jointly request that the Hearings Panel<sup>1</sup> correct the zoning of this land ('the subject land') from 'Residential Suburban' to 'Residential New Neighbourhood' ('RNN') ('Joint Request').<sup>2</sup> This involves corrections to the Planning Maps and, as we explain, Decision 33.

[2] As their closing submissions for the Stage 1 Residential proposal explained, the Council and NTP had then agreed that a form of New Neighbourhood zone would be more appropriate

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<sup>1</sup> The Panel for Decisions 29 and 33 was Environment Judge John Hassan (Chair), Ms Sarah Dawson, Mr Alec Neill and Mr Gerard Willis

<sup>2</sup> Memorandum of counsel on behalf of Ngāi Tahu Property Limited [submissions 840/FS1375, 2235/FS2793] and the Christchurch City Council on the mapping the (sic) New Neighbourhood Zones at Prestons and Wigram, 22 November 2016

than the Residential Suburban zoning that had been proposed for it by the Council in its notified Stage 1 proposal. In view of that position, the parties asked that the determination of its zoning be deferred to Stage 2.<sup>3</sup> However, contrary to the Council's stated intention, the maps supplied by the Council for that decision continued to show the land as zoned Residential Suburban. That error was not picked up, and was carried into a supplementary decision that confirmed the related planning maps for this decision. Those maps were then included in the CRDP, at Stage 1.

[3] NTP made a submission in Stage 2 requesting that the subject land be rezoned to align with the remainder of the areas at Prestons and Wigram that were Living G in the Existing Plan.<sup>4</sup> The Council's notified proposals were for RNN zoning of the balance of those areas, i.e. not including the subject land.

[4] Ms Sarah Oliver's rebuttal evidence for the RNN hearing was confined to Wigram on the matter of RNN zoning, and included that<sup>5</sup>:

In regard to the minor changes proposed to the Wigram and Prestons ODP narrative (specifically clarifying variations to density requirements) by Mr Jones at paragraph 68 and 69 of his evidence, I accept these changes are appropriate. As Mr Jones has also identified, the Wigram ODP as proposed in the Revised Proposal dated 7 December failed to include land that was agreed in the Stage 1 Residential hearing to be deferred until the RNN hearing. **Further that this land is more appropriately zoned RNN. I agree with this position and the subject land has now been included in the Revised Proposal in Attachment A to this evidence (refer to the amended Appendix 8.6.29 ODP). (our emphasis)**

[5] However, NTP's closing submissions for the RNN hearing noted the agreement it reached with the Council in relation to both Wigram and Prestons, supporting RNN zoning. Those submissions were supported by NTP's planning evidence, from Mr Jason Jones, whose evidence dealt with both Wigram and Prestons. The Council's closing submissions, which followed NTPs, did not indicate the Council had in any way changed its mind on what it had agreed with NTP.

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<sup>3</sup> Closing legal submission on behalf of Ngāi Tahu Property Limited, 22 April 2015, at 31-33; and Closing legal submissions for Christchurch City Council, 23 April 2015, at 7.4 -7.7

<sup>4</sup> Ngāi Tahu Property Limited submission point 2235.35

<sup>5</sup> Rebuttal evidence of Sarah-Jane Oliver on behalf of Christchurch City Council, 5 January 2016, at 3.3

[6] Decision 29 on the RNN zone does not explicitly address the rezoning of the subject land. However, the decision confirms the RNN zoning as proposed in the Revised Version, subject to the modifications set out in the decision.<sup>6</sup>

[7] The Council filed a set of maps in response to directions in Decision 29. In error, however, the Council's maps showed the subject land as greyed out (i.e. not rezoned RNN). Decision 33 then carried that error forward, by confirming the maps as included in the CRDP.

[8] In the Joint Request, the Council confirms that what it had intended to ask for in the Revised Version it provided for the purpose of Decision 29 was that both Wigram and Prestons be changed from Residential Suburban to RNN zoning. The Council and NTP rely on the fact that the areas are subject to an Outline Development Plan which specifies densities that reflect the RNN provisions in Chapter 14. On that basis, they say that the clear intention is that, as an area subject to the ODP, the subject land should be zoned RNN.

[9] The rezoning of the subject land from Residential Suburban to RNN accords with our understanding of the Revised Version, and is supported by the evidence of Mr Jason Jones and Ms Oliver.

[10] As such, we consider that there is a defect in relation to the maps in Decision 33, as the maps do not reflect the Revised Version of the Plan as decided in Decision 29. In essence, the decision has carried forward an error in the maps the Council provided to us.

## **Corrections**

[11] Clause 16 of Schedule 3 to the Canterbury Earthquake (Replacement District Plan) Order 2014 ) ('OIC') provides that:

- (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.

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<sup>6</sup> Para [189](a)

[12] As no zoning for the subject land was provided for in Decision 33, it has not become operative. Therefore, the exclusion in cl 16(2) does not apply. We are satisfied, on the reasons we have given, that it is open and appropriate for us to make the corrections to the planning maps requested by the Council and NTP. In essence:

- (a) The correction fulfils Decision 29 (which, in effect, reconsidered and replaced that erroneous aspect of Decision 10 concerning the unintended Residential Suburban zoning of the subject land); and
- (b) It constitutes a minor correction, to give true effect to the related submissions and the intention of the relevant parties, as supported by the evidence and related findings.

For and on behalf of the Hearings Panel for Decisions 29 and 33:



Environment Judge John Hassan  
Chair

## **SCHEDULE 1**

Residential Suburban zoned land in Prestons and Wigram to be zoned Residential New Neighbourhood











