

IN THE MATTER

of the Resource Management Act
1991

AND

IN THE MATTER

of Proposed Plan Change 4 to the
Christchurch District Plan: Short-
Term Accommodation

MINUTE 8 – EXTENSION OF TIMEFRAME, CHRISTCHURCH CITY COUNCIL

Introduction

1. On 11 May, the Panel received a request from the Christchurch City Council (the Council) for an adjournment of the hearing for Plan Change 4 (PC4) and an amended timetable for evidence and legal submission¹. On 12 May, the Panel accepted the request and I directed an amended timetable (as sought by the Council) with the hearing to be held no sooner than 4 October 2021 and the new information from the Council to be provided seven weeks prior to the hearing². Since then, I have issued further directions specifying the hearing date and the associated timetable requirements for filing and serving evidence and legal submissions³. These required the following:

8. *The Council shall provide a copy of an economic assessment of Plan Change 4 for the purposes of section 32, together with an updated Section 42A report and section 32AA evaluation to take account of the economic assessment, to every person who made a submission and stated a wish to be heard, no later than **4 pm on Friday 27 August**. For clarification, this direction does not provide leave for the Council to file or serve any other expert assessments of Plan Change 4. This direction also provides leave for the new planner engaged by the Council to amend the Council's s42A report and s32 assessment to record any material matters where his expert planning opinion differs from*

¹ Memorandum of Counsel for Christchurch City Council seeking adjournment and timetabling directions, 11 May 2021

² Minute 3 – Request for Hearing Adjournment, Christchurch City Council, 12 May 2021

³ Minute 7 - Further Directions Specifying Hearing Timetable and Expert Conferencing Arrangements; and Request for Change of Directions Regarding Amended Section 42A Report, Christchurch City Council, 10 August 2021

that of the original report writer. The Council is to clearly and specifically identify each matter on which he expresses a different opinion from that in the original report.

9. *Any person who made a submission or further submission and who intends to call expert evidence responding to the new information from the Council⁴ shall provide briefs of that evidence to Lloyds Scully at Christchurch City Council no later than **4 pm on Friday 24 September**. Copies shall then be provided to the respective submitter and further submitters as appropriate.*
10. *The Panel will also provide the opportunity for expert rebuttal evidence to be filed, reducing the need for the Council or expert witnesses to spend time at the hearing responding to the evidence lodged by other witnesses. Any rebuttal evidence shall be provided to Lloyds Scully at Christchurch City Council no later than **4 pm on Friday 8 October**.*
11. *For those parties (including the Council) represented by counsel, counsel are requested to lodge their written submissions no later than **4 pm on Friday 8 October**. Counsel are also requested to lodge electronic copies of any cases on which they will rely at the same time as they lodge their legal submissions.*
12. The Panel has today, at 12.21pm, received a further request from the Council for an amendment to the timetable requirements⁵. It seeks an extension to the timetable for providing the updated Section 42A Report and section 32AA evaluation until 4pm on Wednesday 1 September. The Council does not seek an extension for providing the economic assessment, which the Council states it will provide by the required time of 4pm today.
13. The Council's Memorandum gives the following reasons for seeking the extension of time for Mr Bayliss, the Council's consultant planner, to provide the updated Section 42A Report and section 32AA evaluation:

Unfortunately, lockdown-related hurdles mean that the Council is unable to meet that timetable for Mr Bayliss' evidence. Those hurdles faced by Mr Bayliss are a

⁴ As directed in Clause 8

⁵ Memorandum of Counsel for Christchurch City Council regarding Amended Officer's Report and Economic Evidence, 27 August 2021

combination of: delays in receipt of the economic report; personal working-from-home circumstances; internet connection issues; and resource issues in his firm.

14. The Memorandum provides some initial information concerning the content of Mr Bayliss' updated Section 42A Report, as follows.

He (Mr Bayliss) advises that PC4 is, in the main, an appropriate response to the issues raised by short term accommodation and its direct and cumulative effects on the character of the environment in which it takes place, particularly residential coherence and a range of contributors to the quality of the environment. Having regard to the economic evidence and the practical difficulties of addressing cumulative effects of short-term accommodation, he is of the opinion that some of the changes proposed are not the most appropriate. He will be recommending the following changes:

- 1 Refine Objective 14.2.9 to focus on maintaining residential character and a predominance of residential activity within sites, minimising disturbance to neighbours, protecting strategic infrastructure from reverse sensitivity effects and focussing visitor accommodation in defined areas;*
- 2 Make consequential changes to the associated policies and remove the test in policy 14.1.9.1 that the activity be avoided where, having regard to cumulative effects, it is inconsistent with the centre-based framework for commercial activities;*
- 3 Change the status of unhosted visitor accommodation in a residential unit for more than 180 nights a year from a non-complying to a discretionary activity;*
- 4 Remove the proposed constraint on guests holding functions where the number of additional attendees exceed the number of paying guests staying overnight;*
- 5 Remove the controls on the maintenance of the exterior of the property; and*
- 6 Add a further permitted activity standard in rural zones.*

15. Counsel for the Council submits that, as the Council will be serving the economic report today and has provided the above summary of Mr Bayliss' key conclusions, there is no substantive prejudice arising for any other party and that no other change to the current timetable is warranted.

16. The Council's Memorandum was served immediately to all submitters who wish to be heard.

17. We received notification from Ms Hill, Senior Solicitor, Chapman Tripp, on behalf of Airbnb Australia Pty Limited⁶ (Airbnb)⁷ asking that Airbnb's position on this matter (as follows) be recorded for the Panel. Ms Hill asked if a formal memorandum on behalf of Airbnb was required, however, I advised this would not be necessary.
18. Ms Hill noted that submitters have a deadline of 24 September 2021 to provide a response to the Council's updated evidence. Without seeing the updated s42A Report and s32AA evaluation, she did not consider they were in a position to confirm whether Airbnb's planning expert will be able to meet that deadline. It was her view that the summary provided by counsel for the Council does not assist in ascertaining how much work may be required on Airbnb's planner's part. Airbnb sought to reserve the right to seek a commensurate 3 day extension for its planning brief should that be necessary after it has had the opportunity to view the Council's updated s42A Report and s32AA evaluation on 1 September.

Consideration

19. The Panel notes at the outset that the Council's very late request for a time extension, less than 4 hours prior to the time directed (which was signaled by the Council itself more than 3 months in advance), may cause several parties involved with PC4 considerable inconvenience and has also put the Panel in a difficult position.
20. There are submitters on PC4 whose interests we need to consider. Airbnb and Hospitality New Zealand⁸ have both provided expert planning evidence on PC4 and may wish to provide additional expert evidence responding to the updated s42A Report and s32AA evaluation from the Council. Christchurch International Airport Limited⁹ has provided a statement of evidence from its Environment and Planning Manager and may wish to provide expert evidence in response to the Council's new information. Any other submitter (who wishes to be heard) may also seek to do so, having seen the Council's economic assessment and updated s42A Report and s32AA evaluation.
21. The hurdles experienced by the Council's planning consultant relating to the effects of the Covid19 Alert Level 4 lockdown are reasonable but should have been evident more than 4 hours prior to the evidence deadline. The Council seeks a relatively modest extension of time, 3 working days. There is a time period of 4 weeks currently

⁶ Submitter S112 / Further Submitter FS4

⁷ Airbnb provided expert planning and economics evidence on PC4, on 10 May in accordance with the earlier timeframe requirements

⁸ Submitter S123

⁹ Submitter S101 and Further Submitter FS8

set down for any submitter (who wishes to be heard) to call expert evidence in response to Council's new information (by Friday 24 September). This gives a reasonable amount of time for submitters to consider the economics evidence (which will be available today), consider the initial information provided from Mr Bayliss in the Council's Memorandum today, and then have 3 working days less than 4 weeks to consider the updated s42A Report and s32AA evaluation, and respond with expert evidence if they wish. However, we need to be fair to all parties involved. Any resulting prejudice to affected submitters or further submitters (who wish to be heard and are intending to lodge expert planning evidence in response) needs to be addressed.

22. Given the explanation provided in the Memorandum, I accept an extension for the filing of the updated s42A Report and s32AA evaluation from Mr Bayliss is reasonable. The extension sought is brief, however, it still constitutes 3 less days for the preparation and lodging of expert planning evidence in response. In order to alleviate any potential difficulty for submitters intending to lodge expert planning evidence in response to Mr Bayliss's report, we consider opportunity needs to be available for such submitters to file a memorandum seeking a further deadline waiver (once they have viewed the Council's updated s42A Report and s32AA evaluation). However, we note that considerations regarding prejudice, fairness and effective operation of the hearing process apply to all parties, including parties who may wish to file rebuttal evidence and parties that may be requested to participate in expert conferencing. Any further deadline extension will need to avoid or, at the least, minimise any corresponding prejudice to other parties and to the fair and effective operation of the hearing itself.

Directions

23. I direct that the timetabling directions for the filing of evidence be varied as follows:
- (a) The Council can provide an updated section 42A report and section 32AA evaluation to take account of the economic assessment, to every person who made a submission and stated a wish to be heard, no later than **4 pm on Wednesday 1 September**. All other directions in relation to the Council's economic assessment of Plan Change 4 and the updated section 42A report and section 32AA evaluation continue to apply¹⁰.
24. Any submitter or further submitter, who stated a wish to be heard and is intending to

¹⁰ Refer to Clause 8 of the Hearing Procedures and Panel Directions, dated 10 August 2021

file expert planning evidence in response to the Council's updated section 42A report and section 32AA evaluation, and who considers their ability to file that evidence by **4pm on Friday 24 September** will be prejudiced by the late filing of this information from the Council, may file a memorandum seeking a further deadline waiver by no later than **4 pm on Wednesday 8 September**.

25. However, please be aware that the considerations above regarding prejudice and fairness to other parties, including parties who may wish to file rebuttal evidence or who may be requested to participate in expert conferencing, and to the fair and effective operation of the hearing itself, will be foremost in the Panel's minds when considering any applications for further deadline waivers.

Sarah Dawson (Chair)

27 August 2021