

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 7 – FURTHER DIRECTIONS SPECIFYING HEARING TIMETABLE AND EXPERT
CONFERENCING ARRANGEMENTS AND
REQUEST FOR CHANGE OF DIRECTIONS REGARDING AMENDED SECTION 42A
REPORT, CHRISTCHURCH CITY COUNCIL**

Introduction

1. On 12 May, the Panel issued a Minute¹ in response to a Memorandum from Christchurch City Council (the Council) seeking adjournment of the hearing for Plan Change 4 (PC4), vacating of timetable directions for rebuttal evidence and legal submissions, and direction for an amended timetable².
2. Minute 3 directed that the timetabling directions for the filing of evidence and the hearing of PC4 be amended as follows:
 - (a) The hearing that was to commence on 17th May is adjourned and the timetable for rebuttal evidence and legal submissions is vacated;
 - (b) A new hearing date is to be set, with the hearing being no sooner than **Monday 4th October**;
 - (c) The Council is to file and serve an economic assessment of PC4 for the purposes of s.32 together with a s.42A report, including s.32AA evaluation, **seven weeks prior to the hearing**;
 - (d) Submitters are to file and serve any expert evidence responding to that new information from the Council **three weeks prior to the hearing**; and
 - (e) Rebuttal evidence (if any) and legal submissions are to be filed and served **one**

¹ Minute 3 – Request for Hearing Adjournment, Christchurch City Council, dated 12 May 2021

² Memorandum of Counsel for Christchurch City Council seeking adjournment and timetabling directions, 11 May 2021

week prior to the hearing.

3. Minute 3 went on to state that, once a new hearing date is determined, further directions would be made specifying the timetable requirements.
4. On 28 June, the Panel issued another Minute³ in response to a Memorandum⁴ from Ms JM Appleyard and Ms A Hill, counsel for Airbnb Australia Pty Limited (Airbnb) (Submitter S112 / FS04). Minute 5 amended point (c) of the Directions in Minute 3 to read as follows:

(c) The Council is to file and serve an economic assessment of PC4 for the purposes of s.32 together with an updated s.42A report and s.32AA evaluation to take account of the economic assessment, **seven weeks prior to the hearing**. For clarification, this direction does not provide leave for the Council to file or serve any other expert assessments of PC4.

Timetable Directions

5. A new hearing date for the week starting Monday 18 October has now been determined. Attached to this Minute are updated Hearing Procedures and Panel Directions for PC4 (dated 10 August 2021) specifying the timetable requirements for filing and serving evidence and legal submissions. These incorporate the directions contained in the Panel's Minutes 3 and 5.

Expert Conferencing

6. In response to the Memorandum⁵ on behalf of Airbnb, the Panel's Minute 5 considered the need to direct expert conferencing of the economics and/or planning experts involved in the hearing. We did not consider it was necessary or appropriate for us to direct such conferencing at that stage and left it to the parties to make any arrangements to do this themselves if they should wish to do so. We indicated that we would turn our minds to the need for expert conferencing once we had seen the economic assessment and updated s.42A report from the Council and any additional expert evidence in response from the submitters. Minute 3 stated that we may direct expert witness conferencing and the preparation of joint witness statements at that stage, if we consider it would be helpful to the Panel.
7. In order to provide some more guidance on this matter, the updated Hearing Procedures and Panel Directions attached to this Minute have been expanded. They

³ Minute 5 – Request for Confirmation of Directions regarding Hearing Adjournment, Airbnb Australia Pty Limited, dated 28 June 2021

⁴ Memorandum of counsel in relation to adjournment of Plan Change 4 Hearing, 21 June 2021

⁵ Memorandum of counsel in relation to adjournment of Plan Change 4 Hearing, 21 June 2021

state that the Commissioners will make any directions regarding expert conferencing after receipt of expert evidence from submitters responding to the new information from the Council, with a view to conferencing occurring prior to the filing of expert rebuttal evidence.

The Council's Request for Change of Directions regarding Amended Section 42A Report

8. The Panel has now received a Memorandum from Mr Brent Pizzey, counsel for the Council, requesting a change to the directions in the Panel's Minutes 3 and 5 concerning the content of the Council's amended s.42A report and the content of the submitters' evidence in response⁶. This has resulted from the Council's engagement of a new planner to provide the Council's planning input for PC4. The Memorandum does not seek any change to the timetable in those directions.
9. The Council provided its Memorandum directly to all submitters at the same time as lodging it with the Panel. Prior to the Panel considering the Council's request, it provided submitters on PC4 with the opportunity to comment on this request, in particular the practical consequences of the request⁷. Two responses were received. One response was from Mr David Lawry who is a further submitter (FS01) to PC4 in opposition to the submission of Christchurch International Airport Limited (CIAL) (S101). The second response was from the Waikura Linwood-Central-Heathcote Community Board (S85) and (FS5). We refer to these responses further below.

The Council's Memorandum

10. The Council's earlier request for an adjournment to the hearing of PC4 was for the Council to produce an economic assessment of PC4 for the purposes of s.32. However, the length of the adjournment requested took into account that the Council needed to engage a new planner and for that new planner to have time to update the previously circulated s.42A Report in response to the economist's assessment. As noted in the Panel's Minute 3, "*... the Council planner who has been leading the preparation of PC4 is taking up other employment at the end of May. The Council will need to appoint a new planner to lead this proposed plan change and it will take time for that to occur*".
11. The Council's 2 August Memorandum explains that the Council has now engaged a consultant planner, Mr Ian Bayliss of Barker and Associates, to provide all planning

⁶ Memorandum of Counsel for Christchurch City Council regarding Amended Officers' Report and Economic Evidence dated 2 August 2021

⁷ Minute 6 – Request for Change of Directions regarding Amended Section 42A Report, Christchurch City Council – Opportunity for Submitter Comment, dated 2 August 2021

input for PC4. He will be providing a planning assessment of the implications of the economist's assessment and will providing the updated Council report under s.32 and s.42A as authorised by the Panel's Minute 5.

12. The Council's Memorandum points out that Mr Bayliss will be providing his expert assistance to the Panel in accordance with the Code of Conduct for expert witnesses in the Environment Court. This means Mr Bayliss has a duty when preparing the updated s.42A report to explain to the Panel any matters on which his opinion might differ from that in the original report. He has an obligation under the Code of Conduct to not only amend the s.42A report where appropriate to respond to the new economics evidence, but also to amend the s.42A report wherever his impartial opinion differs from that expressed in the original report.
13. The Memorandum indicates it is possible Mr Bayliss' opinion might be different on matters in the s.42A report and s.32 assessment that are more extensive than solely responding to the economic analysis. In order to accommodate this possibility and to avoid any doubt, the Council seeks a minor amendment to the Panel's direction on the content of the amended Council reports and submitter's evidence in response.
14. The Panel's direction⁸ currently requires the Council to file and serve "*an economic assessment of PC4 for the purposes of s.32 together with an updated s.42A report and s.32AA evaluation to take account of the economic assessment*" and that submitters file and serve "*any expert evidence responding to that new information from the Council.*" In order that the Council's new planner can comply with the Code of Conduct and address any wider differences between his professional opinion and that contained in the original s.42A report and s.32 assessment, the Council seeks amended direction on this matter from the Panel.

Directions Sought by the Council

15. The Council's Memorandum seeks that direction (c) of the Panel's Minutes 3 and 5 be amended as follows (change shown as **bold underlined**):

*(c) The Council is to file and serve an economic assessment of PC4 for the purposes of s.32 together with an updated s.42A report and s.32AA evaluation to take account of the economic assessment, seven weeks prior to the hearing. For clarification, this direction does not provide leave for the Council to file or serve any other expert assessments of PC4 **but does provide leave for the new planner engaged by the Council to amend the Council's s.42A report and***

⁸ Minute 5

s.32 assessment to record any material matters where his expert opinion differs from that of the original report writer. We direct the Council to clearly and specifically identify each matter on which he expresses a different opinion from that in the original report.

16. Counsel also submits that this does not require any change to the timeframes in the existing timetable which provides submitters four weeks from receipt of the new Council report to prepare and lodge planning and economic evidence in response to the new information and evidence from the Council. Counsel submits that four weeks remains an appropriate timeframe for submitters to also include planning evidence in response to any amendments to the s.42A report and s.32 assessment prepared by Mr Bayliss.

Comments from Submitters

17. The Panel received a response to its Minute 6 from Mr David Lawry (FS01)⁹. This expressed Mr Lawry's frustration at the Council's requests to revisit its economic assessment and associated s.42A report and s.32 assessment and now further revisiting of wider planning matters in these documents. He questioned why the Council had not summonsed its original planner irrespective of her new role, or why a more senior planner within the Council, who had approved the original planning assessment, should not step in now. Mr Lawry also referred to the time and cost placed on lay submitters having to respond to additional economics and planning evidence, when they had already prepared for the May hearing on the basis of the evidence at that time¹⁰. Mr Lawry expressed his view that allowing the Council to continue to produce more evidence for PC4 is very one sided and unjustifiable.
18. Aspects of Mr Lawry's response to Minute 6 refer to matters beyond those on which we requested comment, such as the notification process for PC4 and its submissions, withdrawal of the Plan Change and District Plan enforcement. The Panel's Minute 4¹¹ previously addressed some of these concerns and others fall outside the scope of our response to the Council's current Memorandum. As expressed in Minute 4, Mr Lawry will have the opportunity to present written material and explain his concerns to the Commissioners at the hearing itself. This will be taken into account by the Commissioners, alongside all other information available to us, prior to making our recommendations on PC4.

⁹ Response to Minute 6: By submitter David Michael LAWRY

¹⁰ The Council's request to adjourn the original hearing date was received less than a week prior to the starting date for the hearing.

¹¹ Minute 4 –Request by David Lawry to Decline Proposed Plan Change 4, dated 17 May 2021

19. Another response to Minute 6 was received from Waikura Linwood-Central-Heathcote Community Board (S85) and (FS5), supporting the request contained in the Council's Memorandum¹².

The Panel's Consideration

20. In Minute 3, the Commissioners acknowledged the Council had expressed its regret that it needed to seek a substantial adjournment for the PC4 hearing in order that it could prepare additional economics and planning assessment. The Commissioners noted, however, that this is likely to have negative impacts for many parties to the PC4 hearing process, including the numerous submitters preparing for the hearing the following week. At that time, the Council foreshadowed a need to appoint a new planner to lead the ongoing PC4 process. The Council did not identify or seek leave to update the s.42A report and s.32 assessment as a result of a new planner holding differing expert planning opinions from the original PC4 planner.
21. The Commissioners acknowledge the frustrations expressed by Mr Lawry at the Council's further request to revisit wider planning matters in the s.42A report and s.32 assessment. We note his suggestion that the Council recall the original PC4 planner or the senior Council planner who approved the original s.42A report. However, it is not the Panel's role to determine who any party calls to represent them. We acknowledge the Council's latest request may result in additional time and cost for both lay submitters and submitters calling expert evidence.
22. Despite the additional costs and inconvenience for submitters, we agree with Council's counsel that Mr Bayliss must provide his impartial expert assistance to the Panel in accordance the code of conduct for expert witnesses contained in the Environment Court's Practice Note¹³. As a result, he has a duty to express his own expert professional opinion and inform the Panel where this differs from the views contained in the original s.42A report.
23. One option would be to continue with the original s.42A report and for Mr Bayliss to inform the Panel verbally at the hearing where he holds differing views (as he must do). We consider it would be considerably more helpful for the Panel and all parties to PC4 if Mr Bayliss' professional opinions were known in advance of the hearing - not only in relation to the economic assessment but also where his expert planning views differ from those of the original s.42A report planner. We consider that this will

¹² Email to Lloyds Scully from Liz Beaven, Community Board Advisor, on behalf of Waikura Linwood-Central-Heathcote Community Board

¹³ Environment Court of New Zealand, Practice Note, 2014

provide for more efficient and effective use of all participants' time and effort prior to and at the hearing, and better enable a fair and well-informed hearing process.

24. In order to save unnecessary time for submitters checking the updated s.42A report, the Commissioners agree Mr Bayliss should clearly and specifically identify each matter on which he expresses a different opinion from that in the original report.
25. The Commissioners note there is no need to amend the direction regarding expert evidence responses from submitters. The direction already refers generally to this evidence "*responding to the new information from the Council*". We consider this is sufficient to enable expert planning evidence on behalf of submitters to respond where Mr Bayliss' planning opinions differ from the Councils previous planner.
26. In terms of timeframes, consistent with our view in Minute 5, the Commissioners consider the 4 weeks currently set down is a reasonable and sufficient time period for submitters filing expert evidence to respond to any differing planning views contained within an updated s.42A report. A further three weeks is available prior to the hearing for submitters not calling expert evidence, providing reasonable and sufficient time for these submitters to prepare.

Directions

27. That direction 15(c) of Minute 3 (12 May 2021), as previously amended by Minute 5 (28 June), be further amended to read as follows (additional text in **bold and underlined**):
 - (c) The Council is to file and serve an economic assessment of PC4 for the purposes of s.32 together with an updated s.42A report and s.32AA evaluation to take account of the economic assessment, **seven weeks prior to the hearing**. For clarification, this direction does not provide leave for the Council to file or serve any other expert assessments of PC4. **This direction also provides leave for the new planner engaged by the Council to amend the Council's s.42A report and s.32 assessment to record any material matters where his expert planning opinion differs from that of the original report writer. The Council's planner is to clearly and specifically identify each matter on which he expresses a different opinion from that in the original report.**
28. That the Hearing Procedures and Panel Directions for Plan Change 4: Short-Term Accommodation dated 26 March 2021 be updated and replaced with those attached to this Minute and dated 10 August 2021. These incorporate the directions contained in the Panel's Minutes 3 and 5 and in paragraph 25 above. They also provide some

more guidance on expert conferencing arrangements.

Sarah Dawson (Chair)

10 August 2021