

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 4 –REQUEST BY DAVID LAWRY TO DECLINE PROPOSED PLAN CHANGE 4

Introduction

1. David Lawry is a Further Submitter (FS01) to proposed Plan Change 4 (PC4) in opposition to the submission of Christchurch International Airport Limited (CIAL) (S101).
2. Since closing of the further submission period, Mr Lawry has been in communication with the Council on a number of occasions regarding his concerns about PC4. Some of these have been brought to my attention at Mr Lawry's request, as follows:
 - (a) On 6 May 2021, Mr Lawry emailed the Council regarding the lack of personal notification of CIAL's submission to persons living under the 50dBA air noise contour and the need for a delay to the PC4 hearing until those landowners are personally notified. He asked that his concern be raised directly with the Commissioners for their decision. Mr Lawry's email was provided to me on 6 May, along with earlier correspondence from Mr Lawry to the Council on this matter.
 - (b) On 9 May, Mr Lawry filed two documents with the Council. The first was titled "*Submission to Plan Change 4 Hearing Commissioners - That they recommend that Plan change 4 be Declined*" and was accompanied by a document setting out Mr Lawry's qualifications. The email accompanying Mr Lawry's documents asked that they be communicated to the Commissioners, which they were on

10 May.

- (c) On 13 May, the Council received a Memorandum from Mr Lawry seeking the Panel's feedback on his request to decline PC4¹. This was accompanied by his submission on Plan Change 5 (PC5)². These documents were provided to me by the Council and I forwarded them to the other Commissioners on 13 May. It is Mr Lawry's Memorandum that is the principal focus of this Minute.

Panel's Response to Mr Lawry's Concerns regarding Feedback on his Previous Requests

3. Mr Lawry's Memorandum of 13 May specifically seeks feedback from the Panel regarding his previous requests. In particular, he states that his request to the Commissioners to decline PC4 has not received proper consideration. The Panel responds as follows.
4. With respect to Mr Lawry's concern regarding lack of personal notification of CIAL's submission to landowners within the 50dBA air noise contour and the associated need for a delay to the PC4 hearing, this was considered by the Commissioners on 9 and 10 May. The Commissioners' response was provided to Mr Lawry on 10 May by email from Ms Scully, the Council's Statutory Administration Advisor, City Planning. The Commissioners did not consider it was necessary to recommend the Council delay the hearing because of this matter.
5. Mr Lawry's second matter consisted of two documents filed with Ms Scully on 9 May. Ms Scully is the Council officer charged with managing the PC4 hearing and is the officer with whom all reports, evidence and submissions are directed to be filed³. Mr Lawry's documents were received during the time period when rebuttal evidence was directed to be filed⁴. Ms Scully provided the documents to me on 10 May. On reviewing them, I considered the documents to be in the nature of rebuttal evidence or submissions to be presented by Mr Lawry at the forthcoming PC

¹ Memorandum of David Lawry Seeking Independent Panels Feedback on request to Decline Plan Change 4, dated 13 May 2021

² The Commissioners appointed to the Hearing Panel for PC4 have not been appointed to the Hearing Panel for PC5.

³ PC4: Short-Term Accommodation, Hearing Procedures and Panel Directions, 26 March 2021

⁴ By 14 May

hearing⁵. I asked Ms Scully to treat them as such. On 10 May, they were accordingly provided to all the Commissioners, as requested by Mr Lawry, and put on to the Council's PC4 website.

6. Mr Lawry's 13 May Memorandum expresses his concern that his request of 9 May to decline the plan change had not received proper consideration by the Commissioners. He also expresses concern at the lack of communication in relation to his 9 May request.
7. It appears Mr Lawry may have intended his request of 9 May to be considered by the Commissioners immediately, prior to receiving his presentation at the PC4 hearing. He appears to have anticipated an early recommendation from the Commissioners to decline PC4. This was not clear to me from his Submission document of 9 May. We have addressed this matter further below, in response to his subsequent Memorandum of 13 May.

Panel's Consideration of Request to Decline PC4

8. Mr Lawry's Memorandum states that "*a halt should be called*" to PC4 and requests the Commissioners do this. He requests the Commissioners make "*A bold move to decline this plan change*" in a timely manner. Mr Lawry supports his request with explanations as to why he considers PC4 "*is flawed*" and the RMA processes "*not fit for purpose*". We have taken this to mean Mr Lawry is requesting the Commissioners determine that PC4 be declined, or at least withdrawn, immediately, without going through the hearing process.
9. The Commissioners have considered Mr Lawry's request and the matters set out in his Memorandum of 13 May. We respond as follows.
10. The Commissioners are appointed as a three person hearings panel for the purposes of PC4. It is notable that our appointment is as a "Hearings" Panel - to conduct the hearing and make recommendations to the Council on PC4. We are required to review proposed PC4, all background information, all submissions and further submissions received, and all reports, evidence and submissions prepared

⁵ At that time, the hearing was set down for 17 May

for and presented at the hearing. Having attended the hearing and heard the matters raised, the Commissioners are then required to deliberate and recommend to the Council on the proposed plan change and the decisions sought in the submissions. The Panel does not have delegated authority to make a recommendation to decline, or withdraw, PC4 prior to a hearing being held.

11. Schedule 1 of the Resource Management Act (RMA) sets out the requirements and procedures for plan changes. Where submissions or further submissions have been received on a plan change and submitters have indicated they want to be heard, a hearing is required to be held. This is the case with submissions and further submissions on PC4. The Hearings Panel cannot bypass this requirement of Schedule 1 and make a recommendation to decline PC4 without hearing from the submitters.
12. There are a range of submitters and further submitters on PC4, some of whom oppose all or parts of the proposed plan change, and others who support it. Approximately 40 submitters have asked to attend the hearing and make presentations to the Hearings Panel. Some of those submitters have already filed evidence in advance of the hearing⁶. The Commissioners want to hear from all these submitters and ask them questions. Similarly, the Council, as proponent of PC4, has opportunity at the hearing to address the Commissioners on its pre-circulated report and evidence. The Commissioners will also want to question the Council's representatives.
13. Commissioners come to a hearing process with an open mind. We are assisted by the evidence, presentations and answers to questions from the Council and submitters attending a hearing. To ensure we have a good understanding of the Council's position; the evidence of expert witnesses; and all matters raised by submitters, the Commissioners need to hear from (and question) all parties at the hearing (as well as considering all other submissions received).
14. Not only is the hearing necessary for Commissioners to come to well-informed

⁶ Given the recent adjournment of the hearing, opportunity will be provided for filing of additional evidence prior to a reconvened hearing.

recommendations, it is also the corner-stone of a proper and fair plan change process. All submitters (and Council representatives) need to have an opportunity to explain their positions. They can also hear presentations from other parties, hear the lines of questioning from Commissioners, and respond accordingly in their own presentations.

15. The Commissioners note that Mr Lawry was allocated 40 minutes for his presentation to, and questioning by, the Hearings Panel for the hearing scheduled on 17 May. This time is likely to be made available for a reconvened hearing. As explained earlier, Mr Lawry has filed a written statement and he will have the opportunity to present that⁷ 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.

Panel's Determination

16. The Panel refuses Mr Lawry's request to recommend to the Council that PC4 be declined immediately.

Sarah Dawson (Chair)

17 May 2021

⁷ Or an updated statement prior to a reconvened hearing