

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 5 – REQUEST FOR CONFIRMATION OF DIRECTIONS REGARDING HEARING
ADJOURNMENT, AIRBNB AUSTRALIA PTY LIMITED**

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 week prior to the hearing**.
3. The Minute went on to state that, once a new hearing date is determined, further

¹ Minute 3 – Request for Hearing Adjournment, Christchurch City Council

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

directions would be made specifying the timetable requirements.

4. On 21 June, the Panel received a Memorandum³ from Ms JM Appleyard and Ms A Hill, counsel for Airbnb Australia Pty Limited (Airbnb) (Submitter S112 / FS04) in relation to the adjournment of the PC4 hearing. The Memorandum from Airbnb seeks confirmation from the Panel that the Council is only given leave to produce additional economics evidence. In addition, directions are sought regarding the manner in which that evidence (and any associated amendments to the planning evidence) are to be prepared, in particular, directions regarding expert conferencing and preparation of joint witness statements.

Airbnb's Position

5. The Memorandum from Airbnb raises, in general terms, matters of prejudice to it as a result of the adjournment and the additional time allowed for the Council to prepare an economic assessment. Airbnb wishes to reserve its ability to raise any issues of prejudice to it at a later date. It also seeks to reserve its position on the justification for PC4 until it has seen the economic evidence to be put forward by the Council.
6. Airbnb seeks confirmation that the Council is being provided with further time only to provide additional economic assessment, and not any further assessment from any other discipline to belatedly justify the decision the Council has already made to notified PC4. The Memorandum states that it would put submitters at an unfair disadvantage to have to respond to anything more than economics evidence.
7. In addition, Airbnb seeks that the Council be required to address the prejudice arising to Airbnb by having its economics and planning experts iteratively conference with the Council's economics expert and planning officer during the preparation of the further economics evidence and s.42A report, in order to assist in narrowing the issues ahead of a resumed hearing. The Memorandum refers to the requirements of the Environment Court's Code of Conduct for Expert Witnesses and instructions for conferencing of experts in the Environment Court practice note. Formal facilitated expert conferencing is also suggested, if necessary.

Directions Sought

8. The Airbnb Memorandum seeks the following directions from the Panel:
 - (a) confirmation from the Panel by way of further direction that the Council is only given leave to produce additional economics assessment;

³ Memorandum of counsel in relation to adjournment of Plan Change 4 Hearing, 21 June 2021

- (b) that the Council's economics expert is directed to prepare its evidence in accordance with the Environment Court's Code of Conduct for expert witnesses and is expected to make contact with Airbnb's economics expert in the course of preparing their economics assessment and if necessary to formally conference to produce a joint witness statement before any further production of additional evidence; and
- (c) that the Council officer is similarly directed to conference with Airbnb's planning expert in the course of preparing any revision to the proposed provisions in light of the economics assessment.

The Panel's Consideration

9. The Commissioners have considered the matters set out in the Memorandum from Airbnb of 21 June and respond as follows.
10. We first addressed the nature of the additional assessment the Council is given leave to produce within the extended timeframe. The Commissioners consider it should be self-evident from our Minute 3 that the Council is only directed to file and serve an economic assessment of PC4. Minute 3 does not give additional leave to provide further assessments from other disciplines. On this matter, the Commissioners agree with Airbnb. Together with the economics assessment, Minute 3 does enable the filing of a s.42A report. It is likely the previous s.42A report will require updating as a result of the economics assessment, as may the recommendations in the s. 42A report regarding the proposed PC4 provisions. The Commissioners acknowledge it may be possible for our direction regarding the s.42A report to be construed as enabling a more widely updated report, beyond economics considerations. This was not our intention in Minute 3 and for clarification we have included an amended direction below.
11. We then considered the requests from Airbnb regarding the manner in which the economics assessment (and any associated amendments to the s.42A report) are to be prepared.
12. As its reason for seeking directions on this matter⁴, Airbnb claims a need for the Council to address the prejudice arising to Airbnb from the adjournment and the Council's ability to provide an economics assessment and updated s.42A report. No detail is provided as to the nature of the prejudice involved. As acknowledged in our Minute 3, there may be negative impacts for many parties to the PC4 hearing process

⁴ Memorandum of counsel in relation to adjournment of Plan Change 4 Hearing, 21 June 2021, paragraph 7.

in terms of delay, inconvenience and potential additional costs. It is not clear to the Commissioners how this amounts to a prejudice to the position of Airbnb as a submitter on PC4. We have directed that there be 4 weeks between the filing of the Council's updated material and the submitters' filing of any expert evidence responding to that new information. We purposefully allowed 4 weeks as a reasonable and sufficient time period for submitters to respond to the Council's additional material. However, we acknowledge Airbnb may wish to raise relevant arguments about prejudice at the hearing, which we will consider at that time.

13. The Commissioners do not consider it is necessary to direct that the economics assessment is prepared in accordance with the Environment Court's Code of Conduct for Expert Witnesses⁵. We expect adherence to the conduct set out in the Court's Code from all expert witnesses and generally expect that to be stated in expert evidence or reports. We do not consider it is necessary to direct it in this instance.
14. We can see no requirement in the Code of Conduct that expert witnesses should confer with other similar experts in the preparation of their evidence or report. We note the Court's Protocol for Expert Witness Conferences⁶, being a process in which expert witnesses confer and attempt to reach agreement on issues, or at least to clearly identify the issues on which they cannot agree and the reasons for that disagreement. We note the Protocol identifies that "*In most cases the parties should be able to make the arrangements without Court intervention*" (in the case of PC4 without direction from the Panel); and that "*The general expectation of the Court is that the conference will occur after exchange of evidence-in-chief*".
15. The Commissioners do not consider it is necessary or appropriate for us to direct the Council's economics expert and/or s.42A planning officer to confer (or conference) with the equivalent experts acting for Airbnb in the course of preparing the economics assessment or updated s.42A report. We leave it to the parties to make any arrangements to do this themselves if they should wish to do so. In terms of any directions for more formal expert witness conferencing, we do not expect to turn our minds to the need for this until we have seen the additional assessments from the Council and any responses to that from submitters. At that stage, if we consider it would be helpful for the Panel, we may direct expert witness conferencing and the preparation of joint witness statements. Several weeks are available prior to the hearing for this to occur.

⁵ Environment Court's Expert Witnesses Code of Conduct (Part 7, Environment Court Practice Note 2014)

⁶ Protocol for Expert Witness Conferences (Appendix 3, Environment Court Practice Note 2014)

Direction

16. That Direction 15(c) of Minute 3 (12 May 2021) be amended 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.

Sarah Dawson (Chair)

28 June 2021