

BEFORE THE CHRISTCHURCH CITY COUNCIL

UNDER

The Resource Management Act 1991

IN THE MATTER OF

Submissions on Proposed Plan
Change 13 to the Christchurch District
Plan

**MEMORANDUM OF COUNSEL AND APPLICATION ON BEHALF OF
CANTERBURY RUGBY FOOTBALL UNION REQUESTING A WAIVER
OF TIME TO FILE A FURTHER SUBMISSION IN RESPECT OF
PROPOSED PLAN CHANGE 13 (HERITAGE)**

20 DECEMBER 2024

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MAY IT PLEASE THE COUNCIL:

- 1 The Canterbury Rugby Football Union (**CRFU**) seeks a waiver of time to lodge a further submission on proposed Plan Change 13 (Heritage) to the operative Christchurch District Plan (**PC13**) out of time.
- 2 Enclosed as **Appendix A** is a copy of the further submission that CRFU seeks a waiver for.
- 3 CRFU has not previously lodged a submission on PC13, or on Plan Change 14 (Housing and Business Choice) to the operative Christchurch District Plan (**PC14**).

Background

- 4 PC13 and PC14 were both notified on 17 March 2023. Submissions on both plan changes initially closed on 3 May 2023, and were later extended to 12 May 2023. The summary of submissions, on both PC13 and PC14, were notified on 30 June 2023 and the period for lodging further submissions closed on 17 July 2023.
- 5 Regretfully, CRFU only recently became aware of the PC13 and PC14 restrictions and mapping overlays applying to its properties.
- 6 CRFU owns the following properties in the St Albans suburb:
 - 6.1 The land and sports facilities at 3 Malvern Street (or 178 Innes Road), legally described as Part RS 324, being approximately 2.6582 hectares held in Record of Title CB420/226. This property contains the rugby field, training areas, grandstands, high performance facility buildings and offices, utilities, jubilee gates and associated carparking areas known as **Rugby Park**.
 - 6.2 Two residential properties:
 - (a) 6 Malvern Street, legally described as Lot 1 DP 6614, being approximately 604 m² held in Record of Title CB414/147.
 - (b) 12 Malvern Street, legally described as Lot 29 DP 6614, being approximately 604 m² held in Record of Title CB369/294.

(together, **the Sites**).

- 7 Rugby Park is zoned Open Space Metropolitan Facilities Zone and is not listed as a Category 1 or 2 listing with Heritage New Zealand Pouhere Taonga (**HNZPT**). It is not recorded as a Heritage Area, Heritage Item or Heritage Setting in the Operative District Plan.
- 8 The Sites are zoned Residential Suburban Density Transition Zone and are usually tenanted by players contracted to the CRFU academy, employees of the CRFU or external individuals known to the CRFU. The Sites are also not listed with HNZPT and are not recorded as a Heritage Area, Heritage Item or Heritage Setting in the Operative District Plan.
- 9 The Sites and Rugby Park are all affected by the proposed Residential Heritage Area (**RHA**) HA3, known as the Church Property Trustees North St Albans Subdivision (1923). Dr McEwan (heritage expert for the Christchurch City Council (**Council**)) rated Rugby Park and the Sites as each having 'defining' individual contribution to the HA3 RHA¹, although the Heritage Area Record Form is somewhat contradictory with respect to Rugby Park.²
- 10 Attached as **Appendix B** is an affidavit of Tony Smail (CEO) explaining how the CRFU was not aware of the proposed HA3 from the Council's pre-notification consultation or the dual-notification of PC13 or PC14, and therefore CRFU was not live to the need to make a submission or further submission on PC13 or PC14.
- 11 After having sought legal advice, CRFU recognises that PC14 is proceeding as an intensification planning instrument (**IPI**) in accordance with subpart 3 of the RMA. That IPI process is well advanced, with hearings taking place in 2023 and 2024 (and part-decisions released since then) and CRFU acknowledges that it would be inappropriate to attempt to join in the IPI proceedings at this late stage.
- 12 On the other hand, PC13 has been paused and sidelined while the PC14 process runs its course.
- 13 In July 2023 Council indicated that should the Independent Hearing Panel convened to hear PC14 (**Panel**) make recommendations that any heritage provisions in PC14 are outside the scope of an IPI, then its intention was that

¹ CPT North St Albans Subdivision (1923) Residential Heritage Area Record Form: pages 14-15.

² Ibid: "Malvern Park" (of which Rugby Park is half), is rated as having 'defining' contribution in the *Schedule of Individual Items to be included in the HA* section (at page 15), whereas later in the *Inventory of Public Realm Features* section (at page 17), the "open space" of Malvern Park is rated as having 'defining' contribution and the "Malvern Park buildings" (the majority being situated on Rugby Park) are 'contributory'.

those provisions would be considered later as part of PC13's First Schedule process.³ Since then, in its recommending report issued on 29 July 2024, and part-accepted by Council on 18 September 2024, the Panel indeed recommended that RHA matters be determined via PC13:

[379] ... we conclude that the Council does not have scope to introduce new RHA or Interface Overlay controls under an IPI mechanism...

...

[391] The Panel observes, to the extent that PC 14 proposed amendments to heritage policies, rules and methods that may have the same overall effect of introducing new restrictions or limitations on the status quo [...] PC 13 provides an immediate opportunity for the Council to pursue these changes and reiterate our view that a Schedule 1 process is the more appropriate pathway in that regard.⁴

- 14 In its decisions on PC14 (publicly notified on 12 December 2024), Council accepted the Panel's recommendations to remove five RHA's as Qualifying Matters within PC14. HA3 was not one of the areas removed.
- 15 CRFU therefore wishes to make this application for a waiver of time to lodge a further submission on PC13 and in particular in relation to HA3.

Request for waiver of time to lodge further submission

- 16 Section 37(1)(b) of the Resource Management Act 1991 (**RMA**) provides that a local authority may waive a failure to comply with a requirement under the RMA, regulations, or a plan for the time or method of service of documents, such as the timeframe to lodge a further submission. Any waiver of compliance may only be granted if the local authority has taken into account the following criteria in s37A(1) RMA:

- (a) *the interests of any person who, in its opinion, may be directly affected by the extension or waiver; and*
- (b) *the interests of the community in achieving adequate assessment of the effects of a proposal, policy statement, or plan; and*
- (c) *its duty under section 21 to avoid unreasonable delay.*

³ Memorandum of Counsel for the Christchurch City Council in relation to PC14, dated 28 July 2023, at paragraph 58.

⁴ Panel Recommending Report, dated 29 July 2024, Part 5 at [152].

The waiver will not adversely affect the interest of any other parties

- 17 CRFU intends to submit a further submission only, which is in support of an existing original submission on PC13 made by Melissa Macfarlane (#1003) (**the Submitter**).
- 18 The provisions CRFU has supported in its further submission are only those provisions that were notified in PC13, and particularly focusses on the confined issue of whether the extent of HA3 and related controls are appropriate for the St Albans area.
- 19 The CRFU's proposed further submission supports or supports in part a number of aspects of the Submitter's original submission. Therefore granting the waiver will not add any new requests for relief and no other person or private property would be directly affected by the grant.
- 20 Put simply, there are no 'new' submission points or requests for relief being added to the mix and any parties who opposed the Submitter's original requests for relief had an opportunity to submit their further submission(s) on same some time ago.

Community interest in achieving adequate assessment

- 21 It is crucial that CRFU's further submission is accepted so that an adequate assessment of the effects of PC13 are taken into account. The proposed RHA area over CRFU's land, including Rugby Park in the Open Space Metropolitan Facilities Zone, will have implications for CRFU's use of the land.
- 22 As observed by the Environment Court in *Omaha Park Limited v Rodney DC*⁵, public participation is a cornerstone of the RMA:

"encourages participation (in an orderly way, certainly) in the decision-making process, with the general philosophy that the possible inconvenience, delays and costs caused are hopefully outweighed by better informed decision-making and better environmental outcomes".
- 23 To allow the CRFU to be involved in the evidence and hearing process will result in more robust and better informed decision making. This is particularly crucial in light of recent comments from the Panel regarding the appropriateness of the RHAs generally:

⁵ A46/08; quoted with approval in *Royal Forest & Bird Protection Society Inc v Southland DC* [2015] NZ EnvC 60.

[375] *We also remain doubtful that the RHA provisions appropriately support the protection of ‘historic heritage’ from inappropriate use, subdivision and development as a matter of national importance under section 6(f) of the RMA, which remained the Council’s position at the close of the hearing.*

[376] *In this respect, we do not take issue with Ms Dixon’s contention that ‘historic heritage’ does not have to be of ‘national significance’ to make the grade under s6(f). Rather, we more fundamentally disagree with the Council’s position that the areas to which RHA would be applied constitute ‘historic heritage’ in the first instance.*

...

[378] ... *In seeking to identify areas as RHA alongside, in some cases, Interface Overlays, we consider (notwithstanding Ms Dixon’s assertion to the contrary) that the Council has conflated what are at most s7(c) ‘amenity values’ to the level of s6(f) ‘historic heritage’, without significant foundation. [...] We agree with Mr Philips that the ODP provisions already provide a suitable means for managing the effects of new builds on at least the character (if not heritage values per se) of residential areas. No further overlay of additional regulatory control is warranted or required, in our view. In practice, this goes to our findings with respect to both scope and merit.*

...

[389] *Overall, we remain unconvinced about the merits of the RHA and Interface Overlay approach, given issues with:*

- (a) *the formulation and application of Council’s methodology that we have been alerted to by expert witnesses,*
- (b) *the apparent conflation or ‘standing in’ of character for heritage,*
- (c) *the not insignificant impost of the provisions on property owners and developers, and*
- (d) *our conclusion that, to the extent that character is something to be maintained and enhanced, the role that existing, ODP provisions will continue to play in that regard.* ⁶

...

[391] *The Panel observes, that to the extent that the proposed controls (or similar) relating to RHA are relevant resource management issues for the protection of heritage values, then PC 13 contains mirroring provisions*

⁶ Panel Recommending Report, dated 29 July 2024, at Part 5.

relating to same, and these will be tested in due course through the initiated Schedule 1 process.

- 24 The Submitter and CRFU both dispute whether the notified HA3 is an appropriate overlay in this area.
- 25 The CRFU is in the unique position of owning residential housing properties and open space facilities subject to the proposed RHA restrictions. Its future evidence is therefore uniquely placed to respond to the appropriateness or otherwise of the notified PC13 proposals and best equip the decision makers to test the proposals and make robust and informed recommendations.
- 26 It is further submitted that where there is a very real possibility that a local authority has overreached, and that overreach has in large part led to or caused the submitter (CRFU) not being aware of the implications of PC13 and its introduction of HA3 over the CRFU's property, then the balance of prejudice and fairness ought to fall in the CRFU's favour.

Duty to avoid unreasonable delay

- 27 It is submitted that allowing the waiver would not cause any additional delay to the PC13 process.
- 28 While the waiver of time sought appears large on its face (approximately 18 months), PC13 has remained on hold for a significant portion of, if not the entire, time. No timeframes have been set down for evidence preparation, exchange, hearing or eventual issue of recommendations and decision.⁷
- 29 Once CRFU became aware that its properties were affected by RHA HA3, it sought advice from first the Council and then from professional advisors as to how the provisions of PC13 and PC14 affected the properties and to understand what stage each plan change was at in the plan change process.
- 30 The Panel's Recommendations report (issued on 29 July 2024 – passages reproduced above in paragraph 23 above), left open the possibility that the Council may abandon some or more of the RHAs and not pursue them in PC13. The Council has since recently notified its part-decision on PC14, which deletes five of the RHAs around the city from being qualifying matters under PC14. The

⁷ While s42A Officers' Reports have been issued in relation to PC14 and those reports commented on a number of provisions contained in PC13, it is unclear whether those reports will be adopted or repackaged for the PC13 process.

part-decision otherwise does not amend or delete HA3 affecting CRFU's property.

- 31 Once these matters were understood, in consultation with Tavendale and Partners, CRFU has prepared its further submission in respect of PC13 and this application for a waiver of time.
- 32 In any event, to the extent that allowing CRFU's waiver will result in additional detailed evidence being presented on RHA HA3, Counsel considers this will not cause additional or undue delay to Council. Council did propound a number of PC13 matters during the PC14 evidence process, (including relating to the nature and extent of the RHA mapping and PC13 provisions), and therefore that evidence can to an extent be adopted or repackaged by those experts.

Conclusion

- 33 CRFU seeks a waiver of time to lodge a further submission on PC13.
- 34 CRFU is uniquely affected by the provisions of PC13, in that it owns both residential property and open space facilities that are within the proposed RHA HA3 over the Church Property Trustees North St Albans Subdivision (1923).
- 35 Granting the waiver would enable CRFU to provide evidence at the PC13 hearing, albeit such evidence would be limited to the confined issues already before the decision-making authority (per the original submission CRFU seeks to support). CRFU's participation in the evidence and hearing process would better equip the future hearing commissioner(s) to assess the original submission and the PC13 proposals, particularly the nature and extent of proposed RHA HA3, under the RMA.
- 36 Granting the waiver would not disadvantage any party and would not cause any additional delay to the PC13 proceedings timeline (which has remained on hold following the close of further submissions and is yet to be revived).

Dated this 20th day of December 2024



J R King
Counsel for Canterbury Rugby Football Union