

**IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

CIV 2016-

UNDER the Resource Management Act 1991 and
the Canterbury Earthquake (Christchurch
Replacement District Plan) Order 2014

IN THE MATTER of a determination of the Independent Hearings
Panel of the Residential (part) Stage 2 proposal

BETWEEN **GRAEME ALAN MCVICAR** of Christchurch,
Company Director, and **JOY YVONNE MCVICAR**
of Christchurch, Retired

Appellants

AND **CHRISTCHURCH CITY COUNCIL** of
Christchurch, Territorial Authority

Respondent

NOTICE OF APPEAL

Dated: 18 April 2016

**Harmans
Lawyers**

PO Box 5496, Christchurch 8542
DX WP24506
Telephone: (03) 352 2293, Facsimile: (03) 352 2274
Solicitor: B R D Burke
Counsel: B R D Burke

Brian.burke@harmans.co.nz

NOTICE OF APPEAL

Decision Appealed Against

1. Take notice that Graeme Alan McVicar and Joy Yvonne McVicar, the appellants in the proceeding identified above, give notice that they are appealing to the High Court against part of the decision in Decision 17, Residential (Part) (and Relevant Definitions and Associated Planning Maps) of the Independent Hearings Panel ("the Panel") on behalf of the respondent declining the request in their submission dated 15 June 2015 that part of Lots 10, 11, 12, 13, 14 and 15 on Worsleys Road, Christchurch legally described in deposited plan 26575 be rezoned from a Rural Port Hills (RuPH) zone to a Residential zone which permits the erection of one residential dwelling per lot.

Background

2. The appellants own Lot 12 on deposited plan 26575, Christchurch. The property is part of a historical 15 lot subdivision. The notified Proposed Christchurch Replacement District Plan ("the replacement plan") zones the upper portion of Lots 1 – 9 as Residential Large Lot ("RLL"). The balance of Lots 1 – 9 is zoned RuPH in the replacement plan. The permitted minimum allotment size for the erection of a residential dwelling in the RLL zone is 3000m². The replacement plan zones Lots 10 - 15 RuPH. The permitted minimum allotment size for the erection of a residential dwelling in the RuPH zone is 100ha.
3. The appellants lodged a submission dated 15 June 2015 with the respondent which requested a decision from the Panel that the replacement plan be amended to provide for a zoning of Lots 10 – 15 to a RLL zone. In submissions, the appellants clarified that their request for a residential rezoning was only for the top portion of each lot in a like manner and to the same extent as the RLL zone for Lots 1 – 9.
4. In the alternative, the appellants requested that the replacement plan be amended to provide for a residential zone for the top portion of

Lots 10 – 15 which permits the erection of one residential dwelling on each lot.

5. This appeal is in relation to the appellant's alternative request for relief only.

Error of Law Alleged

6. The appellant alleges that the decision of the Panel is erroneous in point of law in that:
 - (a) The Panel failed to consider the appellants' alternative rezoning request;
 - (b) In the alternative, if the Panel did consider the appellants' alternative rezoning request, the Panel erroneously concluded that the appellants' alternative rezoning request was an urban activity and was contrary to Strategic Direction Objective 3.3.7(c) of the replacement plan and the policies in Chapter 6 and to Map A in the CRPS.

Question of Law to be Resolved

7. The appellants intend to ask the Court to resolve the following questions of law:
 - (a) Did the Panel fail to consider the appellants' alternative rezoning request;
 - (b) If the Panel did consider the appellants' alternative rezoning request, was the Panel in error in concluding that the appellants' alternative rezoning request was an urban activity and contrary to Strategic Direction Objective 3.3.7(c) of the replacement plan and the policies in Chapter 6 and to Map A in the CRPS.

Grounds

8. The grounds on which the appeal is brought are:
 - (a) Objective 6.2.1(3) of the CRPS provides that its objective is that recovery, rebuilding and development are enabled within Greater Christchurch through a land use and infrastructure framework that avoids urban development outside existing urban areas or greenfield priority areas for development, unless expressly provided for in the CRPS.
 - (b) Policy 6.3.1(1) of the CRPS provides that in relation to recovery and rebuilding for Greater Christchurch its policy is to give effect to the urban form identified in Map A, which identifies the location and extent of urban development that will support recovery, rebuilding and planning for future growth and infrastructure delivery.
 - (c) Policy 6.3.1(4) of the CRPS provides that in relation to recovery and rebuilding for Greater Christchurch its policy is to ensure new urban activities only occur within existing areas or identified greenfield priority areas as shown on Map A, unless they are otherwise expressly provided for in the CRPS.
 - (d) Policy 6.3.7 of the CRPS provides that in relation to residential development opportunities in Greater Christchurch its policy is that residential greenfield priority area development shall occur in accordance with Map A.
 - (e) Strategic Direction Objective 3.3.7(c) of the replacement plan gives effect to policies in Chapter 6 and in particular policy 6.3.1(4) of the CRPS and provides that its objective is to ensure new urban activities only occur within existing urban areas or identified greenfield priority areas as shown on Map A of Chapter 6 of the CRPS.
 - (f) "Urban Activities" are defined in the glossary and definitions section of the CRPS as meaning activities of a size, function, intensity or character typical of those in urban areas and

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includes residential units (except rural residential activities) at a density of more than one household per 4ha of site area.

- (g) "Urban Activities" are defined in the replacement plan as meaning activities of a size, function, intensity or character typical of those in urban areas and includes residential units at a density equivalent to more than one residential unit per 4ha of site area.
 - (h) Each of lots 10 to 15 are over 4ha. A residential zone which permits the erection of one residential dwelling per lot is not an urban activity within the urban boundary in Planning Map A.
9. The Panel's error has resulted in the Panel failing to consider the appellants' alternative request for a residential rezoning on its merits.

Relief Sought

10. The appellants seek judgment from the Court:
- (a) Quashing the Panel's decision in relation to the appellants' alternative submission;
 - (b) Remitting the decision back to the Panel to reconsider its decision;
 - (c) Directing the respondent to pay the appellants' costs of this appeal.
11. The appellant is not legally aided.

Dated: 18 April 2016



B R D Burke

Counsel for the Appellants

This Notice of Appeal is filed by **BRIAN RICHARD DENNIS BURKE** solicitor for the above named appellants of the firm of Harmans. The address for the service of the appellants is at the offices of Harmans Lawyers, 485 Papanui Road, Papanui, Christchurch.

Documents for service on the appellants may be left at that address for service or may be:

1. posted to the solicitor at PO Box 5496, Christchurch 8053; or
2. transmitted to the solicitor by facsimile to +64 3 352 2274; or
3. transmitted to the solicitor by electronic mail addressed to brian.burke@harmans.co.nz