

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

CIV-2016-409-

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

IN THE MATTER of an appeal under clause 19 of the Order

BETWEEN **CHRISTCHURCH CITY COUNCIL**, a territorial authority
constituted by the Local Government (Canterbury
Region) Reorganisation Order 1989

APPELLANT

AND **CHRISTCHURCH CITY COUNCIL**, a territorial authority
constituted by the Local Government (Canterbury
Region) Reorganisation Order 1989

RESPONDENT

**NOTICE OF APPEAL
Dated 7 November 2016**



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NOTICE OF APPEAL

TO: The Registrar of the High Court at Christchurch

AND TO: The Christchurch City Council

AND TO: All submitters on Topic 9.3 of the Christchurch Replacement District Plan

This document notifies you that –

1. At the first available sitting after the expiration of 10 working days from the service of this notice, or as soon as counsel may be heard, counsel for the appellant will move the High Court at Christchurch on appeal from parts of Decision 45 made by the Christchurch Replacement District Plan Independent Hearings Panel (**Panel**) and publicly notified on 7 October 2016 (**Decision 45**) on the grounds that the Panel made errors of law and upon the further grounds set out below.

The parts of the decision appealed

2. This appeal relates to parts of Decision 45, namely the parts of the decision that relate to Objective 9.3.2.1(a)(i)(C) and the introductory wording to Policy 9.3.2.9 of the proposed Christchurch Replacement District Plan (**pCRDP**) as shown in context below (emphasis added):

9.3.2.1 Objective – Historic heritage

- a. The overall contribution of historic heritage to the District's character and identity is maintained through the protection and conservation of significant historic heritage across the district in a way which:
 - i. enables and supports:
 - A. the ongoing retention, use and adaptive re-use;
 - B. the maintenance, repair, upgrade, restoration and reconstruction; and
 - C. in some situations, the demolition; of historic heritage; and
 - ii. recognises the condition of buildings, particularly those that have suffered earthquake damage, and the effect of engineering and financial factors on the ability to retain, restore, and continue using them.

9.3.2.9 Policy - Demolition of heritage items

- a. When considering the appropriateness of the demolition of a scheduled heritage item have regard to the following matters:
 - i. whether there is a threat to life and/or property for which interim protection measures would not remove that threat;
 - ii. whether the extent of the work required to retain and/or repair the heritage item is of such a scale that the heritage values and integrity of the heritage item would be significantly compromised;
 - iii. whether the costs to retain the heritage item (particularly as a result of damage) would be unreasonable;
 - iv. the ability to retain the overall heritage values and significance of the heritage item through a reduced degree of demolition; and
 - v. the level of significance of the heritage item.
3. The appeal does not relate to any other provisions or appendices in Chapter 9.3 of the pCRDP.

Errors and questions of law

4. The appellant alleges that, in its decision on Objective 9.3.2.1(a)(i)(C) and Policy 9.3.2.9, the Panel erred in law by:
- (a) incorrectly interpreting the provisions of the Canterbury Regional Policy Statement (**CRPS**) relating to historic heritage;
 - (b) failing to observe the statutory requirement in section 75(3) of the RMA to give effect to the CRPS;
 - (c) incorrectly interpreting section 6(f) of the RMA; and
 - (d) failing to observe the statutory requirement in section 6(f) of the RMA to recognise and provide for the protection of historic heritage from inappropriate subdivision, use, and development.
5. The questions of law to be answered are whether the Panel erred in the manner outlined in paragraph 4 above.

Grounds of appeal

The grounds of appeal are:

6. Section 6(f) of the RMA provides:

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

...

- (f) the protection of historic heritage from inappropriate subdivision, use, and development

7. Section 75(3) of the RMA provides:

- (3) A district plan must give effect to—

...

- (c) any regional policy statement.

8. Chapter 13 of the CRPS relates to Historic Heritage. The objectives in Chapter 13 of the CRPS seek the protection, conservation and maintenance of historic heritage and do not anticipate (and are not consistent with) the enabling and supporting of demolition.

9. Objective 13.2.1 of the CRPS provides:

Objective 13.2.1 — Identification and protection of significant historic heritage

Identification and protection of significant historic heritage items, places and areas, and their particular values that contribute to Canterbury's distinctive character and sense of identity from inappropriate subdivision, use and development.

10. Objective 13.2.2 of the CRPS provides:

Objective 13.2.2 – Historic cultural and historic heritage landscapes

Recognition that cultural and heritage values are often expressed in a landscape setting and to make provision for the protection of such landscapes from inappropriate subdivision, use and development.

11. Objective 13.2.3 of the CRPS provides:

Objective 13.2.3 Repair, reconstruction, seismic strengthening, on-going conservation and maintenance of built historic heritage

The importance of enabling the repair, reconstruction, seismic strengthening, and ongoing conservation and maintenance of historic heritage and the economic costs associated with these matters is recognised.

12. The policies in Chapter 13 of the CRPS are directive and prescriptive, setting out the manner in which the identification, assessment, recognition and protection of historic heritage are to be carried out. The policies are directive as to the appropriate management of historic heritage, including direction that activities are to be carried out in a manner that is sensitive to the historic values of historic buildings. The policies do not anticipate (and are not consistent with) the enabling and supporting of demolition of historic heritage.

13. Policy 13.3.1 of the CRPS implements Objective 13.2.1, and provides:

Policy 13.3.1 — Recognise and provide for the protection of significant historic and cultural heritage items, places and areas

To recognise and provide for the protection of the historic and cultural heritage resource of the region from inappropriate subdivision, use and development by:

- (1) identifying and assessing the significance of the historic and cultural heritage resource according to criteria based on the following matters:
 - (a) Historic
 - (b) Cultural
 - (c) Architectural
 - (d) Archaeological
 - (e) Technological
 - (f) Scientific
 - (g) Social
 - (h) Spiritual
 - (i) Traditional
 - (j) Contextual
 - (k) Aesthetic
- (2) work with Ngāi Tahu to identify items, places or areas of historic heritage significance to them.
- (3) having regard to any relevant entry in the Historic Places Register in the process of identifying and assessing the historic heritage resource.
- (4) considering historic heritage items, places or areas of significance or importance to communities in the process of identifying and assessing the historic heritage resource.

- (5) recognising that knowledge about some historic heritage may be culturally sensitive and support protection of those areas through the maintenance of silent files held by local authorities.

14. Policy 13.3.2 of the CRPS implements Objective 13.2.1, and provides:

Policy 13.3.2 – Recognise places of cultural heritage significance to Ngāi Tahu

To recognise places of historic and cultural heritage significance to Ngāi Tahu and protect their relationship and culture and traditions with these places from the adverse effects of inappropriate subdivision, use and development.

15. Policy 13.3.3 of the CRPS implements Objectives 13.2.2 and 12.2.2, and provides:

Policy 13.3.3 – Historic cultural and historic heritage landscapes

Significant historic cultural and historic heritage landscapes are to be protected from inappropriate subdivision, use and development. When determining the significance of values of historic cultural or historic heritage landscapes, the following matters will be considered:

- (1) Heritage fabric
- (2) Time depth
- (3) Natural science value
- (4) Tāngata whenua value
- (5) Cultural diversity
- (6) Legibility and evidential value
- (7) Shared and recognised value
- (8) Aesthetic value
- (9) Historic or cultural importance

In relation to their management, and determining the appropriateness of scale, form and location of development in these areas, the following matters will be considered:

- (a) Cultural sensitivity of the proposal
- (b) Integrity or intactness of the landscape, items, features or linkages
- (d) Vulnerability to change or modification
- (e) Recognition of boundaries
- (f) Opportunities for maintaining values

16. Policy 13.3.4 of the CRPS implements Objectives 13.2.1 and 13.2.3, and provides:

Policy 13.3.4 Appropriate management of historic buildings

Recognise and provide for the social, economic and cultural well-being of people and communities by enabling appropriate repair, rebuilding, upgrading, seismic strengthening and adaptive re-use of historic buildings and their surrounds in a manner that is sensitive to their historic values.

17. In reaching its decision on Objective 9.3.2.1 and Policy 9.3.2.9, the Panel incorrectly interpreted section 6(f) of the RMA and the objectives and policies of the CRPS by:
- (a) interpreting section 6(f) of the RMA as enabling the Panel to make a choice as to the method of protection from inappropriate subdivision, use and development,¹ when the CRPS is directive as to the method of protection and appropriate management of historic heritage;
 - (b) using section 6(f) of the RMA to read down the provisions of Chapter 13 of the CRPS;
 - (c) finding that the CRPS is not prescriptive of how protection of historic heritage is to occur;²
 - (d) concluding that what is inappropriate subdivision, use and development is to be considered in the context of the evidence and submissions the Panel heard,³ rather than with reference to the directions in the CRPS; and
 - (e) finding that there is, or should be, no presumption that demolition of historic heritage is inappropriate or that it must only be allowed in limited circumstances,⁴ when:
 - (a) both the CRPS and section 6(f) of the RMA direct the protection of historic heritage from inappropriate subdivision, use and development;
 - (b) the CRPS prescribes and enables particular activities as being appropriate management of historic heritage where they are carried out in a manner that is sensitive to the historic values of historic buildings;

1 Decision 45, paragraph 15.

2 Decision 45, paragraph 24.

3 Decision 45, paragraph 15.

4 Decision 45, paragraph 99.

- (c) the CRPS does not prescribe or enable the demolition of historic heritage as being appropriate management of historic heritage; and
- (d) demolition, as defined in the pCRDP, cannot be carried out in a manner that is sensitive to the historic values of historic buildings.

18. The definition of “demolition”, as confirmed in Decision 45, provides:

Demolition

in relation to a heritage item, means permanent destruction in whole, or of a substantial part which results in the complete or significant loss of the heritage form and fabric.

19. With the inclusion of clause (a)(i)(C), Objective 9.3.2.1 requires among other things the “*protection and conservation of significant historic heritage across the district in a way which ... enables and supports ... in some situations, the demolition ... of historic heritage*”.

20. The inclusion of wording that enables and supports the demolition of historic heritage in some situations in Objective 9.3.2.1(a)(i)(C) and a demolition policy that does not discourage demolition of historic heritage or provide that demolition must only occur in limited circumstances:

- (a) is logically at odds with the protection and conservation of significant historic heritage;
- (b) is unsupported by and logically at odds with the objectives and policies in Chapter 13 of the CRPS;
- (c) does not give effect to the CRPS as required by section 75(3) of the RMA; and
- (d) does not recognise and provide for the protection of historic heritage from inappropriate subdivision, use, and development as required by section 6(f) of the RMA and as particularised in Chapter 13 of the CRPS.

Relief sought

21. The appellant seeks the following relief:
- (a) that its appeal be allowed;
 - (b) that the matter be referred back to the Panel for reconsideration of Objective 9.3.2.1 and Policy 9.3.2.9 in order to recognise and provide for the protection of historic heritage from inappropriate subdivision, use, and development as required by section 6(f) of the RMA, and in order to give effect to the CRPS, correctly interpreted;
 - (c) any further or other order as the Court sees fit.

DATED this 7th day of November 2016



M G Conway / C G Coyle / C J McCallum
Counsel for appellant

This document is filed by CATHERINE JANET MCCALLUM, solicitor for the above named appellant, of the firm Simpson Grierson. The address for service of the appellant is at the offices of Simpson Grierson, Level 24, HSBC Tower, 195 Lambton Quay, Wellington. Documents for service on the filing party may be left at that address for service, or may be posted to the solicitor at PO Box 2402 Wellington, or left for the solicitor at a document exchange for direction to DX SX 11174, or emailed to the solicitor at matt.conway@simpsongrierson.com.