

Canterbury Regional Council (Environment Canterbury)

Proposed Plan Change 7 to the Canterbury Land and Water Regional Plan and

Proposed Plan Change 2 to the Waimakariri River Regional Plan

DECISION OF THE HEARING COMMISSIONERS

on a request by the Christchurch City Council for adjournment of hearings

[Decision 4]

Background

[1] On 20 July 2019 the Canterbury Regional Council (Environment Canterbury) acting under the Resource Management Act 1991 (the RMA) publicly notified two proposed plan changes: Change 7 to the Canterbury Land and Water Regional Plan and Change 2 to the Waimakariri River Regional Plan. On 29 August 2019 the Council appointed three independent hearing commissioners to hear, consider and report on submissions on those plan changes.

[2] After the periods for lodging submissions had closed, on 3 March 2020 the hearing commissioners published Minute 1 giving dates and places for hearings of the submissions on the plan changes.

[3] Due to restrictions imposed in respect of the pandemic Covid-19, on 24 March 2020 by Minute 2 the hearing commissioners revoked those hearing dates.

[4] On 8 June 2020 the hearing commissioners published Minute 6 prescribing a revised timetable for events in preparation for the hearing of submissions; and on 5 August 2020 the commissioners published Minute 8 directing revised dates and places for hearing the submissions.

[5] On 3 August 2020 certain new instruments were made under the RMA:

- The Resource Management (National Environmental Standards for Freshwater) Regulations 2020 [the NES-F]
- The Resource Management (Stock Exclusion) Regulations 2020
- The National Policy Statement for Freshwater Management 2020 (replacing National Policy Statement for Freshwater Management 2014 as amended in 2017) [the NPSFM 2020]

[6] Those instruments come into force on 3 September 2020 (except for certain provisions of the National Environmental Standards Regulations, for which other commencement dates are prescribed).

The City Council's adjournment proposal

[7] On 20 August 2020 counsel for the Christchurch City Council lodged with the hearing commissioners a memorandum by which he referred to the making and coming into force of the NES-F and the NPSFM 2020. In his memorandum, counsel submitted that those instruments make fundamental changes to higher order objectives, policies and rules within which the hearing commissioners will be making decisions, in particular a new national bottom line for nitrate toxicity in rivers and freshwater priorities and requirement for giving effect to Te Mana o te Wai.

[8] In his memorandum counsel requested that the commissioners invite submissions on implications of those instruments for the plan change process, including withdrawal of the changes or parts of them; reassessment of certain policies and rules; and adjourning the hearing to allow time for the Regional Council to obtain officers' reports and reassess the proposed provisions, and possible variation of the plan changes with consequent further notification and exchange of evidence statements. Counsel remarked that there is not time for those actions within the current hearing timetable. Counsel also submitted that leaving those matters to be addressed at the hearing would not be a reasonably feasible option, citing fairness of knowing what is to be proposed, and publishing of supplementary reports and evidence.

The Regional Council's response

[9] On 31 August 2020 counsel for the Regional Council lodged a memorandum for the hearing commissioners in response. By it, counsel submitted that it would not be appropriate to recommend to the commissioners any actions (such as withdrawal or variation of part of the plan changes) that would be beyond the scope of the functions that had been delegated to them. They also observed that the City Council could not expect to deprive the Regional Council of its freedom to exercise such powers up to the time of formal approval of the plan changes.

[10] Further, Counsel for the Regional Council cited clause 4.1(1) of the NPSFM 2020, which directs every local authority to give effect to it as soon as reasonably practicable. They submitted that application of that direction is a legal question; and that the Regional Council's authority to do so by decisions on the plan changes would be confined by the scope of the submissions that had been lodged on them. Counsel also cited section 80A(4)(b) of the RMA, by which the Regional Council would be required to give effect to the NPSFM 2020 by 31 December 2024.

[11] Counsel advised that they intend to address in their opening legal submissions the extent to which it would be reasonably practicable for the plan changes to give effect to the NPSFM 2020. Those legal submissions would be made available to submitters by 22 September, a week before the start of the hearing of submitters. Counsel did not agree it would be appropriate to adjourn the hearing as proposed

by the City Council; and remarked that when presenting their cases at the hearing, submitters would be able to invoke the provisions of the NPSFM 2020 and address the extent to which amendments to the plan changes are required so as to give effect to that instrument.

[12] Finally, counsel for the Regional Council advised that the Council is assessing the NES-F and its implications on the plan changes; and a further memorandum is to be lodged on or around 3 September 2020 with the results of that assessment.

The hearing commissioners' decision

[13] In considering the adjournment proposal, we have in mind that more than a year has passed since the plan changes were published for submissions; and nearly a year since the period for lodging original submissions closed. But for the pandemic, the commissioners would have completed hearing the submissions by now. So we certainly owe it to the submitters and to the public generally to hear the submitters' cases as soon as is reasonably practicable.

[14] We also have in mind that the plan changes are designed for improvement to the environment. Whatever improvements to the plan changes result from our consideration of the submissions, the goal of environmental improvements will remain. The earlier that advancement towards achievement of the goal is in practice achieved, the better.

[15] Of course the three new instruments are specifically designed for the same general purpose. It may well turn out that amendments to the plan changes within the scope of decisions requested by the submissions lodged a year or so ago will give effect in part to the new instruments as well. We see no need to adjourn the forthcoming hearings to allow for that. We expect that some submitters may choose to invoke provisions of the new instruments to justify improvements they have requested. Others may cite provisions in the new instruments to oppose amendments already sought; or perhaps to modify what they originally requested in light of the new 'higher documents'. All of those options are realistically available to submitters in taking part in the current hearing schedule.

[16] At least in theory the instruments may require other measures in the regional plans that are outside the scope of the Regional Council's authority to make on these plan changes. If any such requirement is identified by the assessment referred to by counsel, the Council would have to make a judgement on what action would be appropriate: by withdrawal, variation, change etc. It would not be fair to the submitters who have been waiting for a year now, to adjourn the hearing of their cases against the possibility that such a course may be seen as a necessary consequence of instruments made within a couple of months of the revised hearing timetable.

[17] In summary, we are not persuaded that the City Council has raised sufficiently persuasive reasons for setting aside the revised hearing schedule; and accepting the Regional Council's submissions, we decline the proposed adjournment.

For the Hearing Commissioners:

A handwritten signature in black ink, appearing to read "D. Sheppard", with a stylized flourish at the end.

David F Sheppard

Chair

2 September 2020.