

# **CHRISTCHURCH CITY COUNCIL AGENDA**

**THURSDAY 23 AUGUST 2012**

**9.30AM**

**COUNCIL CHAMBER, CIVIC OFFICES,  
53 HEREFORD STREET**



# AGENDA - OPEN

## CHRISTCHURCH CITY COUNCIL

**Thursday 23 August 2012 at 9.30am**  
**in the Council Chamber, Civic Offices, 53 Hereford Street**

**Council:** The Mayor, Bob Parker (Chairperson).  
Councillors Peter Beck, Helen Broughton, Sally Buck, Ngaire Button, Tim Carter, Jimmy Chen,  
Barry Corbett, Jamie Gough, Yani Johanson, Aaron Keown, Glenn Livingstone, Claudia Reid and  
Sue Wells.

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**COUNCIL 23. 8. 2012****1. APOLOGIES**

Councillor Claudia Reid.

**2. CONFIRMATION OF MINUTES:  
COUNCIL MEETINGS OF 26.7.2012, 9.8.2012 AND 15.8.2012**

Attached.





**MINUTES OF A MEETING OF THE CHRISTCHURCH CITY COUNCIL  
HELD AT 9.30AM ON THURSDAY 26 JULY 2012**

**PRESENT:** The Mayor, Bob Parker (Chairperson).  
Councillors Peter Beck, Helen Broughton, Ngaire Button, Tim Carter, Jimmy Chen, Barry Corbett, Aaron Keown, Glenn Livingstone, Yani Johanson, Claudia Reid and Sue Wells.

**1. APOLOGIES**

Apologies for absence were received from Councillors Sally Buck and Jamie Gough.

It was **resolved** on the motion of the Mayor, seconded by Councillor Button, that the apologies be accepted.

**2. CONFIRMATION OF MINUTES**

**COUNCIL MEETINGS OF 28 JUNE 2012 AND 12 JULY 2012**

It was **resolved** on the motion of Councillor Button, seconded by Councillor Keown, that the open minutes of the Council meetings held on Thursday 28 June 2012 and Thursday 12 July 2012 be confirmed.

**3. DEPUTATIONS BY APPOINTMENT**

- 3.1 Lindsay O'Donnell and Ken Jones addressed the Council regarding item 9 on the recommendation on the request by Amherst Properties Limited to the Earthquake Recovery Minister to Use Section 27 of the Canterbury Earthquake Recovery Act to amend the City Plan to enable Office Development at the corner of Riccarton Road and Deans Avenue.
- 3.2 Mike Mora, Chairperson of the Riccarton Wigram Community Board addressed the Council regarding item 9.
- 3.3 Jarrod True from the New Zealand Racing Board addressed the Council regarding item 6.2, the review of the Totalisator Agency Board Venue Policy.

**4. PRESENTATION OF PETITIONS**

Nil.

Item 9 was taken at this stage of the meeting.

**9. RECOMMENDATION ON REQUEST BY AMHERST PROPERTIES LIMITED TO THE EARTHQUAKE RECOVERY MINISTER TO USE SECTION 27 OF THE CANTERBURY EARTHQUAKE RECOVERY ACT TO AMEND THE CITY PLAN TO ENABLE OFFICE DEVELOPMENT AT THE CORNER OF RICCARTON ROAD AND DEANS AVENUE**

Councillor Wells moved, that the Council:

- (a) *Advise Amherst Properties Limited that the Christchurch City Council's position is that it will not consider asking the Minister for Earthquake Recovery to use Section 27 of the Canterbury Earthquake Recovery Act to amend the Christchurch City Plan to enable an office development at 4 Riccarton Road and 159 Deans Avenue, or support the use of Section 27 of the Canterbury Earthquake Recovery Act to amend the District Plan in this instance.*

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**9 Cont'd**

(b) Notes:

- (i) *that Amherst Properties Limited is entitled in law to request a Privately Initiated Plan Change in respect of the site*
- (ii) *that Amherst Properties Limited is entitled to submit a revised Resource Consent for the site and proposed development*
- (iii) *that the Minister is able to direct to Council to amend its District Plan, irrespective of the Council's position on such action.*

The motion was seconded by Councillor Reid.

Councillor Broughton moved by way of amendment:

1. *That the Council advise Amherst Properties and the Minister that the Council does not oppose the Minister using Section 27 of the Canterbury Earthquake Recovery Act 2011 to enable office development on the subject with the conditions **attached**, recommendations by the Planner at the original hearing.*
2. *That the second condition regarding the Deans Avenue/Riccarton Road signalisation is removed.*

The motion was seconded by Councillor Keown.

The amendments were put to the meeting separately.

Clause 1 when put to the meeting was declared **carried** on electronic vote No. 1 by 10 votes to 2, the voting being as follows:

**For (10):** The Mayor and Councillors Beck, Broughton, Button, Carter, Chen, Corbett, Johanson, Keown and Livingstone.

**Against (2):** Councillors Reid and Wells.

Clause 2 when put to the meeting was declared carried on electronic vote No. 2 by 8 votes to 4, the voting being as follows:

**For (8):** Councillors Beck, Broughton, Button, Carter, Chen, Corbett, Keown and Livingstone.

**Against (4):** The Mayor and Councillors Johanson, Reid and Wells.

The substantive motion was then put and declared **carried**.

Item 6 was taken at this stage of the meeting.

**6. REPORT OF THE REGULATORY AND PLANNING COMMITTEE: MEETING OF 4 JULY 2012**

**1. WEATHERTIGHT HOMES CLAIMS IN CHRISTCHURCH**

It was **resolved** on the motion of Councillor Wells, seconded by the Mayor, that the Council receive this report.

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**6 Cont'd**

**2. REVIEW OF THE 2009 TOTALISATOR AGENCY BOARD (TAB) VENUE POLICY**

It was **resolved** on the motion of Councillor Wells, seconded by Councillor Button, that the Council retain the current Totalisator Agency Board Venues Policy without amendment.

**3. STRATEGY AND PLANNING 2012/13 WORK PROGRAMME**

It was **resolved** on the motion of Councillor Wells, seconded by Councillor Beck, that the Council:

1.
  - (a) Adopt the 2012-2013 work programme outlined in this report for the District Plan and City and Community Long Term Policy and Planning Activities.
  - (b) Ask staff to present to the Planning Committee a proposed scoping paper for a Revitalisation Plan for the eastern part of the city at the end of August Planning meeting and the implications thereof.
  - (c) Receive from the General Manager Strategy and Planning report bi-monthly on the time, cost, and staff allocation of Strategy and Planning requirements supporting the Canterbury Earthquake Recovery Authority (CERA) work programme, including any implications on approved Christchurch City Council work programmes.
  - (d) Note the work done by this, or other Committees, may necessitate a review of prioritisation of this work programme by the Planning Committee.
  - (e) Ask staff to present to the Planning Committee as a matter of urgency the scope and implications of a revision of Chapter 8 of the Infrastructure Design Standard.
  - (f) Confirm that the timetable and sequence of the review of the District Plan will be considered as part of the 2013/22 Long Term Plan.
  - (g) Ask the General Manager City Environment to discuss with the Planning Committee the overarching planning framework, and implementation of open space in the City.
2. Extend an invitation, via the Planning Committee to Diane Turner (CERA) to discuss Canterbury Earthquake Recovery Authority/Christchurch City Council planning issues, including future Red Zone issues at an upcoming Planning Committee meeting.

It was **resolved** on the motion of Councillor Wells, seconded by Councillor Beck, that the report as a whole be accepted.

**5. LOCAL GOVERNMENT ACT 2002 AMENDMENT BILL - CHRISTCHURCH CITY COUNCIL SUBMISSION**

It was **resolved** on the motion of Councillor Button, seconded by Councillor Wells, that the Council:

- (a) Adopt the draft submission as amended.
- (b) Nominate the Mayor and Councillor Wells to present the Council's submissions to the Local Government and Environment Select Committee.
- (c) Ask staff to notify the Councillors of the date and venue of the hearing of the Council's submission on the bill.

Councillor Keown asked that this vote against the resolution be recorded.

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The meeting adjourned at 12.30 and resumed at 1pm.

**7. PLAN CHANGE 58 WRIGHTS ROAD – FINAL APPROVAL**

It was **resolved** on the motion of Councillor Wells, seconded by Councillor Broughton, that the Council:

- (a) Approve, pursuant to clause 17(2) of the Resource Management Act 1991, the changes to the District Plan introduced by its decision on Plan Change 58 Wrights Road.
- (b) Authorise the General Manager, Strategy and Planning to determine the date on which the changes introduced by Plan Change 58 become operative.

**8. SELWYN STREET SHOPS MASTER PLAN – ADDINGTON**

It was **resolved** on the motion of Councillor Corbett, seconded by Councillor Wells, that the Council adopt the Selwyn Street Shops Master Plan.

**10. INFRASTRUCTURE REBUILD MONTHLY REPORT**

It was **resolved** on the motion of Councillor Corbett, seconded by Councillor Button, that the Council receive the Infrastructure Rebuild Monthly Report for July 2012.

**11. 69 ARMAGH STREET – PROPOSED OFF STREET COUNCIL OPERATED PARKING FACILITY**

It was **resolved** on the motion of Councillor Broughton, seconded by Councillor Reid:

- (a) That, in accordance with clause 5(1) of the Christchurch City Council Traffic and Parking Bylaw 2008, Lot 1 DP 413237 at 69 Armagh Street be approved as a restricted parking area and be a Council operated car parking facility.
- (b) That, in accordance with clause 5(2) of the Christchurch City Council Traffic and Parking Bylaw 2008:
  - (i) Two parking spaces restricted for the use of disabled motorists be installed at the car parking facility; and
  - (ii) The remaining parking spaces be divided between casual and long term (monthly) parking with the ratio of each to be determined and adjusted by the Parking Business Manager according to demand;
  - (iii) This is a Pay and Display area.

**12. REPORT OF A MEETING OF THE METROPOLITAN FUNDING COMMITTEE: MEETING OF 13 JULY 2012**

It was **resolved** on the motion of Councillor Corbett, seconded by Councillor Button, that the amended minutes of the meeting be received.

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**13. HERITAGE REINSTATEMENT PROGRAMME – JUBILEE CLOCK TOWER**

It was **resolved** on the motion of Councillor Broughton, seconded by Councillor Chen, that the Council:

- (a) Approve the reinstatement / repairs for Victoria Clock Tower with a total budget of \$741,086.
- (b) Approve the option for repairing the Clock Tower to a 67 per cent New Building Standards.
- (c) Review at a later date the option of one face of the clock being permanently set at 12.51 pm.

**19. REPORT OF THE HEARINGS PANEL ON THE ALCOHOL RESTRICTIONS IN PUBLIC PLACES AMENDMENT BYLAW 2012**

Councillor Corbett moved, that the Council:

1.
  - (a) *Resolve to adopt the Christchurch City Council Alcohol Restrictions in Public Places Amendment Bylaw 2012 with the changes noted below to come into effect on 9 September 2012.*
  - (b) *Amend the table describing the Papanui Alcohol Ban Area (in Schedule 1 of the Bylaw) by inserting the words “the cycle-walkway and” immediately after the words “inclusive of all, or the relevant parts of,”.*
  - (c) *Move the phrase “Schedule 1” to immediately above the two tables detailing the Merivale Alcohol Ban Area and the Papanui Alcohol Ban Area.*
  - (d) *Make the following change to the table describing the times, days or dates during which alcohol restrictions apply in Schedule 1 of the Bylaw by replacing the words “Wednesday, Thursday, Friday and Saturday nights” with the words “seven nights a week” where they occur in both the Papanui and Merivale Alcohol Ban Areas.*
  - (e) *Give public notice as soon as practicable, that the Christchurch City Council Alcohol in Public Places Amendment Bylaw 2012 has been made by the Council, that it comes into effect on (9 September 2012) and that copies of the bylaw may be inspected and obtained at the Council’s offices or on its website, without payment.*
2. *Resolve to undertake an additional piece of work to impose temporary liquor bans on Christmas Eve, New Year’s Eve, New Year’s Day, Cup Day and St Patrick’s Day in each of those areas which have liquor bans not currently covering those days and times.*

The motion was seconded by Councillor Keown and on being put to the meeting was declared **carried** on electronic vote No. 3 by 10 votes to 2, the voting being as follows:

**For (10):** The Mayor and Councillors Beck, Broughton, Button, Carter, Chen, Corbett, Keown, Livingstone and Reid.

**Against (2):** Councillors Johanson and Wells.

**14. NOTICES OF MOTION**

Nil.

**15. RESOLUTION TO EXCLUDE THE PUBLIC**

At 1.25pm it was **resolved** on the motion of the Mayor, seconded by Councillor Button, that the resolution to exclude the public set out on pages 263 and 264 of the agenda be adopted.

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**20. CONCLUSION**

The meeting concluded at 2.25pm.

**CONFIRMED THIS 23<sup>RD</sup> DAY OF AUGUST 2012**

**MAYOR**



## CONDITIONS

1. Except as modified by the following conditions, the development shall proceed in accordance with the information submitted with the application on 21 July 2011, additional information submitted on 25 August 2011 and 27 October 2011, and the plans (including landscape plan and site plan showing signalisation of the intersection) entered into Council records as RMA92018510 (154 pages).
- ~~2. Activities on site shall not commence until the Deans Avenue / Riccarton Road intersection is signalised. [Deleted by Council Resolution - 26 July 2012.]~~
3. The proposed landscaping shall be established in accordance with the landscaping plans submitted and now labelled RMA92014430/10-11 in Council records.
4. In the future the landscaping on the corner of Riccarton Road and Deans Avenue may need to change subject to the future signalisation and layout design of the intersection. At that time a further landscape plan shall be submitted to the Council for the approval of Council's Senior Landscape Architect to establish similar landscaping to that shown on the landscape plan by Goom Landscapes approved in this consent.
5. Proposed planting of specimen trees and large shrub species shall be as per the landscape plan submitted and now labelled RMA92018510/approved plan 13 and once established must be allowed to grow to their full natural height.
6. Low level planting near the intersection of Riccarton Road and Deans Avenue is to be maintained at a max height of 1m to maintain visibility for motorists at the intersection.
7. An additional Fastigated Tulip Tree shall be provided along the northern boundary adjacent the Deans Avenue access along the common boundary with 161 Deans Avenue. The Fastigated Tulip Trees in this location shall number three in total and shall be planted at 4 metres spacings. Shrubs capable of growing to 2.5m in height at maturity shall be interplanted between the trees along the length of this boundary.
8. All required landscaping shall be provided on site within 6 months of the construction work being completed on site.
9. All landscaping required for this consent shall be maintained. Any dead, diseased, or damaged landscaping is to be replaced immediately with plants of a similar species.
10. Landscaping strips or planting protection areas adjacent to or within a car parking area shall be provided with wheel stop barriers to prevent damage from vehicles. Such wheel stop barriers shall be located at least 1 metre from any tree.
11. The car parking on the site shall be marked out as per the site plan numbered RMA92018510/approved plan 13 and in full accordance with Standard AS/NZS2890:1:2004.
12. Car parking spaces for the exclusive use of staff employed on the site are to be permanently marked and signed on site for staff use only. Tandem spaces on site are to be marked out for staff use only and associated with the same site occupant.
13. The disabled parking as shown on the site plan numbered RMA92018510/approved plan 10 shall be permanently marked and signed on site for disabled use only.
14. Two cycle parking spaces should be provided adjacent to the café.
15. The two car parking spaces towards the northwest corner of the site adjacent the entrance from Darvel Street shall be removed in order to provide increased queuing space and shall be marked out on site as no parking areas or alternatively additional landscaping can be provided in space of these two car spaces.
16. An easement shall be created in favour of Council for rights of access by public on foot and network utilities, including street lights, as a result of the footpath alignment being located on private property.

17. The café shall operate only between the hours of 0700 to 2300 Monday to Friday and 0800 to 2300 Saturday, Sunday and public holidays, with the exception of after hours cleaning and maintenance.
18. There shall be no sale of liquor from the café unless further resource consent is granted for the sale of liquor from the café.
19. Deliveries and rubbish removal from the site shall be restricted to the hours of 0700 to 2200.
20. All security lights shall be directed into the site and away from neighbouring properties, and shall comply with the Council's City Plan glare standards Volume 3, Part 11, Section 2.3.2.
21. A 2 metre high acoustic fence of solid construction is to be constructed along the full length of the northern boundary of the properties at 4 Riccarton Road and 159 Deans Avenue prior to occupation of any of the buildings.
22. All construction work on the site shall be designed and conducted to ensure that construction noise from the site does not exceed the noise limits in the following table. Sound levels shall be measured and assessed in accordance with the provisions of NZS 6803:1999 Acoustics – Construction noise.

Time Period	Weekdays (dBA)		Saturdays (dBA)		Sundays and Public Holidays (dBA)	
	L <sub>eq</sub>	L <sub>max</sub>	L <sub>eq</sub>	L <sub>max</sub>	L <sub>eq</sub>	L <sub>max</sub>
0630 – 0730	60	75	45	75	45	75
0730 – 1800	75	90	75	90	55	85
1800 – 2000	70	85	45	75	45	75
2000 – 0630	45	75	45	75	45	75

#### Advice Notes:

(i) Monitoring

- The Council will require payment of its administrative charges in relation to monitoring, as authorised by the provisions of section 36 of the Resource Management Act 1991. At present the monitoring charges include:
- A monitoring fee of \$137.00 to cover the cost of setting up a monitoring programme and carrying out two site inspections to ensure compliance with the conditions of this consent; and
- Time charged at an hourly rate where additional monitoring is required.

(ii) Development Contribution

Please note that a development contribution will be required under the Development Contributions Policy 2009-19 (DCP). The Council requires Development Contributions to be paid prior to the issue of the Code Compliance Certificate for a building consent, the commencement of a resource consent, the issue of a section 224 certificate for a subdivision consent, or authorisation of a service connection. The contributions are defined in the **Council's Development Contributions Policy 2009-19**, which has been established under the Local Government Act 2002, and is included in the Long Term Council Community Plan (LTCCP). If you have any queries in relation to this matter, please contact one of our Development Contribution Assessors: Emily Taylor on 941-8158 or Tracey Atherton on 941-6272.

(iii) The proposal shall comply with the Council's Proposed City Plan noise standards Volume 3, Part 11, Section 1.3 in relation to any air-conditioners and associated equipment on site.

**MINUTES**

**MINUTES OF A MEETING OF THE CHRISTCHURCH CITY COUNCIL  
HELD AT 9.30AM ON THURSDAY 9 AUGUST 2012**

**PRESENT:** The Mayor, Bob Parker (Chairperson).  
Councillors Peter Beck, Helen Broughton, Sally Buck, Ngaire Button, Tim Carter,  
Jimmy Chen, Barry Corbett, Jamie Gough, Aaron Keown, Glenn Livingstone,  
Yani Johanson, Claudia Reid and Sue Wells.

**1. APOLOGIES**

Apologies for absence were received from The Mayor and Councillor Wells.

It was **resolved** on the motion of Councillor Keown, seconded by Councillor Buck, that the apologies be accepted.

Apologies were also noted from Community Board Chairpersons Bob Todd, Val Carter, Phil Clearwater and Mike Mora.

**19. RESOLUTION TO BE PASSED - SUPPLEMENTARY REPORT**

This item was taken at this part of the meeting.

It was **resolved** on the motion of Councillor Carter, seconded by Councillor Broughton, that the report be received.

**2. DEPUTATIONS BY APPOINTMENT**

Kim Preston, Simon Langer, Mark Coulter and Philip Elmev addressed the Council about the upcoming zoning decisions by the Canterbury Earthquake Recovery Authority on the remaining homes zoned white on the Port Hills. They argued that the best outcome for the Council and for residents currently white-zoned is for rock protection and mitigation to occur in the area, rather than the zoning of the homes to red, and asked the Council to support this view.

**3. REPORT OF A MEETING OF THE SHIRLEY/PAPANUI COMMUNITY BOARD:  
MEETING OF 4 JULY 2012**

Chris Mene, Chairperson, joined the table for discussion of this item.

It was **resolved** on the motion of Councillor Keown, seconded by Councillor Button, that the report be received.

**4. REPORT OF A MEETING OF THE SHIRLEY/PAPANUI COMMUNITY BOARD:  
MEETING OF 18 JULY 2012**

Chris Mene, Chairperson, joined the table for discussion of this item.

It was **resolved** on the motion of Councillor Keown, seconded by Councillor Button, that the report be received.

**COUNCIL 23. 8. 2012**  
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**5. REPORT OF A MEETING OF THE SPREYDON/HEATHCOTE COMMUNITY BOARD:  
MEETING OF 3 JULY 2012**

Phil Clearwater, Chairperson, tendered his apologies for this item.

It was **resolved** on the motion of Councillor Corbett, seconded by Councillor Reid, that the report be received.

**6. REPORT OF A MEETING OF THE AKAROA/WAIREWA COMMUNITY BOARD:  
MEETING OF 20 JUNE 2012**

Pam Richardson, Chairperson, joined the table for discussion of this item.

It was **resolved** on the motion of Councillor Reid, seconded by Councillor Corbett, that the report be received.

**7. REPORT OF A MEETING OF THE BURWOOD/PEGASUS COMMUNITY BOARD:  
MEETING OF 16 JULY 2012**

Linda Stewart, Chairperson, joined the table for discussion of this item.

It was **resolved** on the motion of Councillor Livingstone, seconded by Councillor Beck, that the report be received.

**8. REPORT OF A MEETING OF THE BURWOOD/PEGASUS COMMUNITY BOARD:  
MEETING OF 2 JULY 2012**

Linda Stewart, Chairperson, joined the table for discussion of this item.

**1. ASCOT GOLF COURSE – PROPOSED PUMP STATION 63 RELOCATION**

It was **resolved** on the motion of Councillor Reid, seconded by Councillor Beck, that the Council:

- (a) Adopt Option C in accordance with the details submitted (noting the change in position of the entrance off Beach Road), and further resolves to set apart approximately 2,000 square metres of the land currently known as Ascot Golf Course being part of Lot 1 Deposited Plan 10381: 11.0327 hectares (contained in Certificate of Title CB439/74) for public utility purposes under section 52 of the Public Works Act 1981; all areas being subject to survey.
- (b) Request that the Council's Chief Executive sign a request to the Minister of Land Information to gazette that portion of the land described in (a) above for public utility purposes.
- (c) Note that staff will continue to deliver the agreed level of service for the existing utility on Travis Wetland frontage.

It was **resolved** on the motion of Councillor Beck, seconded by Councillor Livingstone, that the report as a whole be adopted.

**COUNCIL 23. 8. 2012**  
**CHRISTCHURCH CITY COUNCIL 9.8.2012**

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**9. REPORT OF A MEETING OF THE FENDALTON/WAIMAIRI COMMUNITY BOARD:  
MEETING OF 2 JULY 2012**

Val Carter, Chairperson, tendered her apologies for this item.

It was **resolved** on the motion of Councillor Buck, seconded by Councillor Gough, that the report be received.

**10. REPORT OF A MEETING OF THE FENDALTON/WAIMAIRI COMMUNITY BOARD:  
MEETING OF 17 JULY 2012**

Val Carter, Chairperson, tendered her apologies for this item.

It was **resolved** on the motion of Councillor Buck, seconded by Councillor Gough, that the report be received.

**11. REPORT OF A MEETING OF THE HAGLEY/FERRYMEAD COMMUNITY BOARD:  
MEETING OF 4 JULY 2012**

Bob Todd, Chairperson, tendered his apologies for this item.

It was **resolved** on the motion of Councillor Carter, seconded by Councillor Johanson, that the report be received.

**12. REPORT OF A MEETING OF THE HAGLEY/FERRYMEAD COMMUNITY BOARD:  
MEETING OF 18 JULY 2012**

Bob Todd, Chairperson tendered his apologies this item.

It was **resolved** on the motion of Councillor Carter, seconded by Councillor Johanson, that the report be received.

**13. REPORT OF A MEETING OF THE LYTTTELTON/MT HERBERT COMMUNITY BOARD:  
MEETING OF 3 JULY 2012**

Paula Smith, Chairperson, joined the table for discussion of this item.

It was **resolved** on the motion of Councillor Reid, seconded by Councillor Corbett, that the report be received.

**14. REPORT OF A MEETING OF THE LYTTTELTON/MT HERBERT COMMUNITY BOARD:  
MEETING OF 17 JULY 2012**

Paula Smith, Chairperson, joined the table for discussion of this item.

It was **resolved** on the motion of Councillor Reid, seconded by Councillor Corbett, that the report be received.

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**15. REPORT OF A MEETING OF THE RICCARTON/WIGRAM COMMUNITY BOARD:  
MEETING OF 3 JULY 2012**

Mike Mora, Chairperson, tendered his apologies this item.

It was **resolved** on the motion of Councillor Chen, seconded by Councillor Broughton, that the report be received.

**16. REPORT OF A MEETING OF THE RICCARTON/WIGRAM COMMUNITY BOARD:  
MEETING OF 17 JULY 2012**

Mike Mora, Chairperson, tendered his apologies for this item.

It was **resolved** on the motion of Councillor Chen, seconded by Councillor Broughton, that the report be received.

The meeting adjourned at 10.37am and resumed at 10.52am.

**17. CHRISTCHURCH EARTHQUAKE MAYORAL RELIEF FUND: APPLICATIONS FOR GRANTS**

It was **resolved** on the motion of Councillor Corbett, seconded by Councillor Reid, that the Council approve the following grant allocations from the Christchurch Earthquake Mayoral Relief Fund:

- (a) \$9,007.95 to the Whitewings Charitable Trust to assist with the replacement of their damaged hot water cylinder and associated works.
- (b) \$9,909.50 to the Contemporary Circus Trust to assist with the development and renovation of their Circus Workshop at the Friendship Centre in Opawa subject to a lease term of at least two years being renegotiated.
- (c) \$14,425.00 to the Ferrymead Park Limited to assist with the costs of the repairs for their damaged underground services.

**18. NOTICES OF MOTION**

Pursuant to Standing Order 3.10.1, Councillor Carter submitted the following notice of motion:

- (a) That the Council writes to the Minister and Chief Executive of the Earthquake Commission requesting that they publically identify how EQC are prioritising the processing of claims and repairs.
- (b) That the Council requests that EQC prioritize the processing of claims and repairs for the elderly, vulnerable, families with young children and most severely damaged houses as their highest priorities.

It was **resolved** on the motion of Councillor Carter, seconded by Councillor Livingstone, that the Council:

- (a) *Write to the Minister and Chief Executive of the Earthquake Commission (EQC) requesting that they publically identify how EQC are prioritising the processing of claims and repairs.*
- (b) *Requests that EQC prioritize the processing of claims and repairs for the elderly, vulnerable, families with young children and most severely damaged houses as their highest priorities.*

Pursuant to Standing Order 3.10.4, the consent of the meeting was sought and gained for the addition of the words "families with young children" to be added to clause (b) above to the original notice of motion.

The clauses were put separately and were both declared carried.

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**CHRISTCHURCH CITY COUNCIL 9.8.2012**

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**20. REPORT BY THE CHAIRPERSON OF THE CORPORATE AND FINANCIAL COMMITTEE:  
MEETING OF 3 AUGUST 2012**

It was **resolved** on the motion of Councillor Broughton, seconded by Councillor Johanson, that the Council:

- (a) Seek a detailed report from staff on the apportionment of the Council's rockfall costs.
- (b) Note the legal letter from Duncan Cotterill Lawyers on behalf of residents in the Port Hills and deputation received and ask Council staff to work with CERA and respond with urgency, ideally prior to any land announcements, around the possibility of greater collaboration and transparency over the issues raised.

**21. CONCLUSION**

The meeting concluded at 11.49am.

**CONFIRMED THIS 23RD DAY OF AUGUST 2012**

**MAYOR**





## MINUTES

**MINUTES OF A MEETING OF THE CHRISTCHURCH CITY COUNCIL  
HELD AT 1.00 PM ON WEDNESDAY 15 AUGUST 2012**

**PRESENT:** The Mayor, Bob Parker (Chairperson).  
Councillors Peter Beck, Helen Broughton, Sally Buck, Ngaire Button, Tim Carter, Jimmy Chen, Barry Corbett, Aaron Keown, Glenn Livingstone, Yani Johanson, Claudia Reid and Sue Wells.

**1. APOLOGY**

An apology for absence was received from Councillor Jamie Gough.

It was **resolved** on the motion of the Mayor, seconded by Councillor Button, that the apology be accepted.

**2. RESOLUTION TO EXCLUDE THE PUBLIC**

Councillor Button moved that the resolution to exclude the public set out in the agenda be adopted.

The motion was seconded by Councillor Keown and when put to the meeting was declared **carried** on electronic vote No. 1 by 9 votes to 4 the voting being as follows:

**For (9):** The Mayor and Councillors Beck, Broughton, Buck Button, Corbett, Keown, Reid and Wells.

**Against (4):** Councillors Carter, Chen, Johanson and Livingstone.

**20. CONCLUSION**

The public was readmitted to the meeting at 2.28 pm. The meeting concluded at 2.28 pm.

**CONFIRMED THIS 23<sup>RD</sup> DAY OF AUGUST 2012**

**MAYOR**



**3. DEPUTATIONS BY APPOINTMENT**

- Suky Thompson of Rod Donald Banks Peninsula Trust regarding Clause 8.4.

**4. PRESENTATION OF PETITIONS**



**5. REPORT OF THE PLANNING COMMITTEE:  
MEETING OF 25 JULY 2012**

Attached.



## COUNCIL 23. 8. 2012

PLANNING COMMITTEE  
25 JULY 2012

A meeting of the Planning Committee  
was held in Committee Room 1, Civic Offices, 53 Hereford Street  
on Wednesday 25 July 2012 at 9.15am.

**PRESENT:** Councillor Sue Wells (Chairperson),  
Councillors Peter Beck, Jimmy Chen, Aaron Keown, Glenn Livingstone and  
Claudia Reid.

**APOLOGY:** Councillor Sally Buck.

The Committee reports that:

## PART A - MATTERS REQUIRING A COUNCIL DECISION



## 1. CONSENTING REBUILD MONTHLY REPORT

<b>General Manager responsible:</b>	General Manager Regulation & Democracy Services, DDI 941-8462
<b>Officer responsible:</b>	Unit Manager Building Operations
<b>Author:</b>	Ethan Stetson, Unit Manager Building Operations and John Higgins, Resource Consents Manager

## PURPOSE OF REPORT

1. To provide the Council with a monthly update on the consenting rebuild.

## EXECUTIVE SUMMARY

2. The Council has agreed that the Chief Executive would report regularly to the Council on progress with regard to the consenting rebuild work.
3. The report (**Attachment 1**) is the regular monthly report that is provided to both the Council and the Canterbury Earthquake Recovery Authority (CERA).
4. The Council considered the information in the report at its meeting of 2 February 2012. Staff are continually seeking to improve the information provided and welcome feedback and direction from the Council.

## STAFF RECOMMENDATION

That the Council receives the Consenting Rebuild Monthly Report.

## COMMITTEE CONSIDERATION

The Committee, as part of this item, discussed the following:

- The need to identify better ways in which to get across information to the public in a manner easily interpreted
- Provide a list, like a Frequently Asked Questions, for work that requires a Resource Consent, for example cladding, foundations
- Issues around TC3; the number of consents received and granted; issues surrounding drilling and foundations.

## COMMITTEE RECOMMENDATION

That the Council receives the Consenting Rebuild Monthly Report and notes that it has asked staff to develop some Frequently Asked Questions around building consents, particularly in TC3 zones.

**COUNCIL 23. 8. 2012****Planning Committee 25. 7. 2012**

- 2 -

**2. DEPUTATIONS BY APPOINTMENT**

The Committee received a deputation from Colin Stokes providing clarity for the Committee regarding information he believes the Council did not have when it made its resolution at the Council meeting of 22 March 2012.

**COMMITTEE RECOMMENDATION**

That the Council in response to the deputation from Mr Stokes, review the documents provided to Simpson Grierson for the Noble Subdivision judicial review, particularly with regard to whether or not Simpson Grierson was in possession of all relevant information and reviewed it (refer **attached** 2009 December variation documents).

**PART B – REPORTS FOR INFORMATION****3. REQUEST FOR INFORMATION PROCESS BRIEFING**

The Unit Manager Building Operations provided the Committee with a briefing on the Request for Information (RFI) process for Building and Resource Consents which was followed by a discussion. Staff requested the Committee provide direction to them as to what information the Councillors would like to receive on this topic which included:

- The number of applications over 15 days
- Of these, how many are old versus new applications
- The challenges faced by staff which would hold up applications, for example engineering services.

Staff indicated they encourage off-line requests for further ideas so that staff may respond.

The Committee noted that it is important for the Community Board members to also receive this information so that they can be informed as to the work being undertaken.

The meeting concluded at 10.34am.

**CONSIDERED THIS 23RD DAY OF AUGUST 2012**

**MAYOR**



## CONSENTING REBUILD MONTHLY REPORT

### INTRODUCTION

The purpose of this report is to provide the Committee with relevant information on the performance of the earthquake related building and resource consents as considered in the report to the Council at its 2 February 2012 meeting. This report covers activity in the month of June 2012.

### PRE-APPLICATION MEETINGS

The promotion of the pre-application meetings continues to be successful with 80 meetings undertaken in June 2012.

### BUILDING CONSENTS

There were 20 working days in June with 627 building applications received = 29.9 per day. In May there were 23 working days with 722 received = 31.4 applications received per day.

The teams are adjusting to the new measures but we have had to deploy manual data gathering as the existing GEMS system is not well enabled to report.

### BUILDING INSPECTIONS

100% of requested inspections were completed within three days of booking. Inspection requests for the Month remain at 2,000 - this is 200 above the previous year's average of 1,800. The team has resource to undertake this amount of inspections and have capacity to achieve 2,500 inspections per month.

As there is additional capacity in the inspection team, three inspectors have been assigned to process and inspect Certificate of Acceptance applications. This frees up resources in the consenting team and also allows Building Inspectors to gain experience in other areas.

### CODE COMPLIANCE

The Code Compliance team issued 462 Code Compliances and 25 Certificates of Public Use in June. Five team members are now working in Build Express with a total of 550 jobs allocated across the team. It is expected by September 2012 we will be issuing the first Code Compliance Certificates on jobs fully integrated in Build Express.

### CUSTOMER COMMUNICATIONS

- The temporary Go Ahead billboards have come to an end, and their success will be reviewed through the post campaign analysis. New bill boards are likely to be placed around the City in a few months.
- The first trade store board display is now installed at the Ferrymead Mitre 10 store, and other stores are working with the Council to also install Go Ahead information boards.
- A media briefing took place 18 June 2012 and five journalists attended to learn about the end-to-end consenting process and get an insight into the rebuild of our city.
- The Temporary Accommodation brochures and web link has been supplied to Hospitality New Zealand (HANZ) to distribute through their network, and hard copies of the two hints and tips brochure has been supplied to Recover Canterbury.

### RESOURCE CONSENTS

Please note that the figures in the table below have been modified from previous reports to the Council to reflect data currently available from GEMS reporting. It is hoped that tables can be modified over time to provide a more complete and clearer picture of resource consent processing times. The numbers include both earthquake and non-earthquake applications. The first table includes temporary accommodation approvals as well as resource consent applications. The latter tables exclude temporary accommodation approvals hence the different number of applications.

As can be seen, a high compliance with the statutory timeframes for processing resource consent applications continues. In June 95% compliance was achieved.

In the tables below, numbers relating to total elapsed days and Central City approvals is now included. With respect to the elapsed day's numbers, this includes total processing time and includes the time when an application was put on hold for further information being requested.

**NUMERICS****All Consents**

Month	Building Applications Received	Building Consents Granted	Building Consent Value Granted
April	572	502	\$59,878,918
May	722	676	\$100,301,960
June	627	655	\$101,318,580

**Building Consents – Requests for Information (RFI)**

Month	Build Granted	No RFI Required	RFI 5 days or less	RFI after 5 days	RFI after 20 days or more
April	502	224 45%	188 37%	91 18%	-
May	676	302 45%	244 36%	140 21%	-
June	655	296 45%	192 29%	167 25%	27 4%

**Non-Earthquake Related Building Consents**

Month	Type	Building Consents Granted	Granted in <20 days	Granted in >20 days
April	All	287	278 97%	9 3%
	Residential	253	249 98%	4 2%
	Commercial	34	29 85%	5 15%
May	All	350	331 95%	19 5%
	Residential	278	267 96%	11 4%
	Commercial	72	64 89%	8 11%
June	All	360	333 93%	27 7%
	Residential	268	257 96%	11 4%
	Commercial	92	76 83%	16 17%

**Earthquake Related Building Consents**

Month	Type	Building Consents Granted	Granted in <20 days	Granted in >20 days
June	All	295	280 95%	15 5%
	Residential	252	247 98%	5 2%
	Commercial	43	33 77%	10 23%

**Building Consents Received per TC Zone**

Month	Type	TC1	TC2	TC3
April	Residential	75	262	47
	Commercial	0	14	3
May	Residential	61	266	60
	Commercial	3	17	4
June	Residential	54	188	47
	Commercial	4	15	2

**Building Consents Pre-application/Concept Stage Meetings**

Month	Total Consents Received	Meetings Booked
April	572	27
May	722	66
June	627	63

**All Building Inspections**

Month	Inspections Booked and Achieved	EQ Inspections Booked and Achieved	Target	% Achievement
April	1493	231	3 w/days	All inspections 100% achieved within 3 days
May	2113	314	3 w/days	All inspections 100% achieved within 3 days
June	1517	208	3 w/days	All inspections 100% achieved within 3 days

**Code Compliance Certificates**

Month	Target	CCC All Types	EQ CCC Applications Granted	EQ CCC Applications Processed within 20 working days	% Achievement
April	20 w/d	-	61	61	100%
May	20 w/d	474	76	76	100%
June	20 w/d	445	Unavailable	Unavailable	100%

**RESOURCE CONSENTS**

Month	RMA applications received	RMA applications granted
March	154	131
April	106	113
May	221	156
June	179	125

**Resource consent pre-application/concept stage meetings**

Month	Total applications received	Meetings booked
April	106	27
May	221	34
June	179	21

**Resource consents (all consents)**

Month	Applications issued	No RFI required	RFI 0-9 working days	RFI 10 working days and after	RFI Over 20 working days	Processed within 20 working days
April	93	69	14	10		86
May	129	82	24	23	0	125 (97%)
June	103	69	21	13	0	98 (95%)

Month	Type of Consent	Applications with no RFI required %	RFI 0-9 working days	RFI ≥10 working days	Total
April	Land use consents	74%	14%	12%	100%
	Subdivision consents	77%	23%	0%	100%
May	Land use consents	63%	19%	18%	100%
	Subdivision consents	70%	15%	15%	100%
June	Land use consents	68%	21%	11%	100%
	Subdivision consents	61%	17%	22%	100%

Total elapsed days (working days)							
	0-5	6-10	11-20	21-30	31-50	51-100	100+
Land use	2	14	25	22	9	6	7
Subdivision	2	10	2	0	0	1	3
Total	4	24	27	22	9	7	10
Percentage	4%	23%	26%	21%	9%	7%	10%

**Temporary accommodation approvals**

There were 22 temporary accommodation approvals in June.

**RMA discount requirements for applications exceeding statutory timeframes**

No applications were discounted under the RMA discount requirements. While 5 applications exceeded the statutory timeframe, those applications were received before 1 April 2012.

**Central City resource consents approved**

12 out of 103 applications approved were within the Central City area.

Information provided by CCC staff  
to Simpson Grierson to review

APPLICATIONS

PROVIDED  
BY CCC  
STAFF

COUNCIL FILE  
PROVIDED  
BY CCC STAFF

**ORIGINAL APPLICATION**

COMPLYING ROADS

median, cycle lanes, safety buildouts

YES

YES

"ENTIRE  
COUNCIL FILE"

**2009 "1st" VARIATION APPLICATION**

a typo correction Aug 2009

IDENTICAL TO THE ORIGINAL ABOVE

YES

YES

"ENTIRE  
COUNCIL FILE"

**2009 Dec VARIATION APPLICATION**

Non-complying Narrow Roads

median eliminated, cycle lanes eliminated,  
safety buildouts eliminated

cyclists merge into traffic lane

sites reduced min 250m<sup>2</sup> down to 85m<sup>2</sup>

NO

NO

after 17 months, & CCC staff permitting illegal,  
unconsented and non-complying roads and  
subdivision works, (pre-earthquakes)  
further information was provided late

**2011 May FURTHER INFORMATION**

referred as 2nd VARIATION APPLICATION

identical to above with further information

median eliminated, cycle lanes eliminated,  
safety buildouts eliminated

cyclists merge into traffic lane

sites reduced min 250m<sup>2</sup> down to 85m<sup>2</sup>

YES

NO





It is accepted by all traffic engineers that "yielding" will be required to accomodate normal traffic flows & to prevent "squeezing" cyclists. One of the applicant traffic reports states a centreline will not be marked so as to allow vehicles to "cross the centreline" so as "squeezing" will be less, however opposing Traffic Engineer Paul Durdin states centrelines **must** be marked on Collector roads.

The safety median disappears causing additional yielding due to right turning traffic having no place to wait. Traffic will que behind, or squeeze left close to the footpath if space is available.

The required cycle lanes deadend when Delamains spine road meets Nobles subdivision. Cycle lanes eliminated plus vehicle travel lane reduces from 3.5m to 3.25m

The City Plan and Environment Court zone change requirement for a median & cycle lanes are proposed to be deleted & the land required for these community amenities is proposed to be gifted to the developer for private profits & counter to the benefits of Christchurch.

The max. speed "encouragement" width for the non-complying narrow featureless road = **\*11.5m** {also = pedestrian crossing dist.} (in non peak parking periods the appearance of wider carriageway widths encourages speed- all traffic engineers agree with this)

Median & kerb buildouts make pedestrian crossing safer - encourages community walking & cycling

ATTACHMENT 1 TO CLAUSE 2 PLANNING COMMITTEE 25.7.2012 36

## Cycle Lanes Eliminated from Loop Road also

kerb parking



concrete path proposed  
with no planting strip

✚ Common conflict with this type of main road design where cyclists coming from behind vehicles, as opposed to in cycle lanes, are not seen by drivers opening car doors. Evasive action has led to recent deaths.

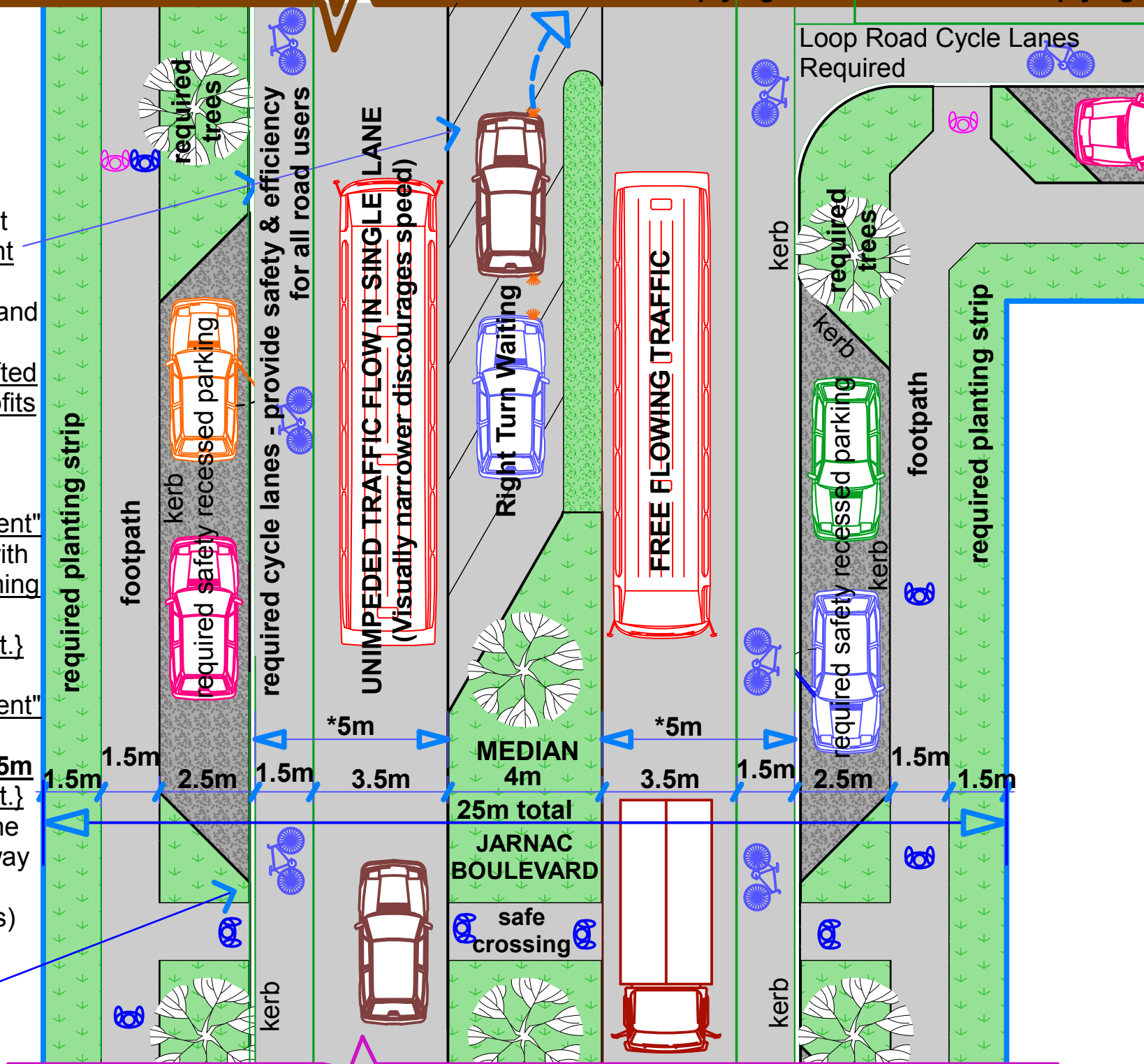
Two storey units built up to the road boundary, zero setback.  
3m required & 2m landscaping.  
Reversing onto narrow Collector road. No queuing space for multi-unit lanes, blind garage egress at intersection = traffic conflicts on Collector road.  
Reduced sites to 85m<sup>2</sup>  
(min 250m<sup>2</sup> required)  
Different zone outcome &  
no consultation undertaken.

**BOTTLE NECKS OCCUR AT 3 PLACES** where complying roads meets non-complying

The City Plan and Environment Court zone change requirement for a median & cycle lanes are proposed to be deleted & the land required for these community amenities is proposed to be gifted to the developer for private profits & counter to the benefits of Christchurch.

The max. speed "encouragement" width for the non-complying narrow featureless road = **\*11.5m** {also = pedestrian crossing dist.} (in non peak parking periods the appearance of wider carriageway widths encourages speed- all traffic engineers agree with this)

Median & kerb buildouts make pedestrian crossing safer - encourages community walking & cycling











EXTREME CARE  
CYCLISTS MERGING







**DuncanCotterill**  
LAWYERS

24 July 2012

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Nelson

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Via e-mail: stokes@xtra.co.nz

Dear Mr Stokes

**Judicial Review of subdivision and land use consents RMA92009135**

1. You have advised that you are appearing before the Christchurch City Council on Wednesday 25<sup>th</sup> July 2012 in respect of the non-notification of applications/variations of resource consents by Noble Investments Limited in respect of a subdivision at 473 Yaldhurst Road. You have provided us with a copy of the Simpson Grierson opinion dated 15 March 2012 and a copy of your review dated 16 April 2012. Whilst we have examined some of the background documentation supporting these two reviews we have not had time to exhaustively peruse all relevant documentation. We therefore confine our comments below to major points.

**Allegation that failure to decide the application in 10 working days is a ground of review**

2. The RMA does not expressly provide that a failure to comply with the time limit to determine an application can be the basis for judicial review. Nor does it expressly provide that if a decision is not made within the timeframe an application must be notified.
3. There is however case law which has held that a breach of the statutory time frame for notification can be judicially reviewed: *North Holdings Ltd v Rodney DC* [2004] NZRMA 76 (HC). We note that since this decision the RMA has been amended so that the default provision has been reversed – the presumption now is that notification is not required. However the case is important in indicating that judicial review can arise due to non-compliance with the Council's statutory time frame for deciding whether or not to notify.
4. Based on this case we consider there would be jurisdiction for the Court to consider a judicial review on the ground of a failure to comply with the statutory time limit. Whether this would be successful would come down to the Court's assessment of the circumstances of the case.

**Allegation that failure to comply with the RFI in the timeframe is a ground of judicial review**

5. Section 95A provides (in summary) that a consent authority must publicly notify an application for a resource consent if:
  - (a) It has not already decided whether to give public or limited notification of the application; and

- (b) It requests further information on an application under section 92(1), but the applicant does not provide the information before the deadline (or refuses to supply the information).
6. Therefore for this section to apply it must be established that:
- 6.1 There was one or more Requests for Further Information (RFI's) issued to the applicant; and
- 6.2 The applicant did not respond by the statutory deadline/s.
7. The required timeframe is set out in section 92A of the RMA which provides that:
- (1) *An applicant who receives a request under section 92(1) must, within 15 working days of the date of the request, take 1 of the following options:*
- (a) *Provide the information; or*
- (b) *Tell the consent authority in a written notice that the applicant agrees to provide the information; or*
- (c) *Tell the consent authority in a written notice that the applicant refuses to provide the information.*
- (2) *A consent authority that receives a written notice under subsection (1)(b) must –*
- (a) *Set a reasonable time within which the applicant must provide the information; and*
- (b) *Tell the applicant in a written notice the date by which the applicant must provide the information.*
- (emphasis added)
8. Based on the information supplied to us we understand that there were RFIs made. For example the Cardno letter encloses further information; and in addition an email from Sean Ward (Christchurch City Council) refers to:
- ... long running requests for changes and plan information to make clear how the proposal will work. As I noted I still don't have all the information that has been asked for ...*
9. In addition in your email to us you refer to further information being provided late around 27 May 2011. You advise that you had been asking for this "further information" regarding the combined land use breaches as evidenced in your email to CCC's Sean Ward since 13 September 2010. You have advised that this has been due since December 2009 and was requested by Graham Taylor in processing the December 2009 variation as seen in the invoice (dated May 2011).
10. We specifically note that although the time limit of 15 working days in section 92A(1) is precise, the section then descends into a more fluid timeline, with the concept being that the applicant will have time to provide certain information, as long as the Council knows when that information is to be provided. In fact, it is the Council's statutory duty to specify the time by which the information must be provided. Questions of what is a reasonable time given the size and complexity of the application will arise, as will whether the Council ever gave written notice of a time or times by which the information was to be provided. We understand it did, and that the deadlines were not met over a period of some 17 months.



11. We consider this is a ground for judicial review.

*The Simpson Grierson opinion of 15 March 2012*

12. Simpson Grierson states that:

*We note that we have only taken the Council's 2009 file into consideration in our review of the first notification, original and first variation decisions.*

13. The first notification and the original decision are in relation to the application dated 2007, and the first variation is in relation to an application to amend condition 26 of the original consent. That variation was dated August 2009. We pause to note that the Simpson Grierson opinion is respectfully not as clear as it might be regarding the dates of the various applications and how they relate to the descriptors (eg 'first variation') used in its opinion.

14. What Simpson Grierson describe as the 'second variation' is:

*"... the substantive decisions (second variation decision) on Noble Investments application for a variation of land use and subdivision consents in 2011."*

15. However chronologically this was not the second variation, and the true second variation, dated December 2009, appears to have been omitted in the review that Simpson Grierson undertook. The second variation application was dated December 2009, and sought a change to the subdivision consent, particularly with regard to the spine and loop road construction standards. Simpson Grierson has apparently not received this file and thus its review does not assess the procedure followed by the Council in respect of this variation.

16. We have considered whether this apparent omission has been 'solved' by Simpson Grierson having seen the May 2011 application/variation. I.e: could this be seen as a replacement for the earlier December 2009 variation? We have concluded it quite clearly cannot be considered to be a duplicate or outdated variation later replaced by the May 2011 application. Whereas the May 2011 variation seeks changes to the land use consent, the December 2009 variation sought changes to the subdivision consent. The 2009 December contains relevant assessment of effects which was not contained in the May 2011 application. Most relevantly the 2009 application contains a section on 'road layout amendments' which details the specific amendments proposed, and a section on traffic effects which assesses the proposed reduction in the width of the spine road. These sections are not contained in the later 2011 application. In addition the 2011 application (Appendix D) assesses the relevant residential standards in the Plan (contained in part 2 of the Plan). In comparison the 2009 application assesses the rules relating to subdivisions in part 14 of the Plan, including traffic.

17. We are supported in this conclusion by the Council staff, who have clearly treated the December 2009 and May 2011 variations as two separate documents that stand side by side. See for example the notification decision, which lists the "Application dated December 2009" and the "Amended application dated May 2011" as being documents received and perused.

18. See further the section 42A report, which stated:

*The application for change of conditions of the subdivision consent was lodged in December 2009. Since then it has been subject to a number of amendments relating to the proposed lot sizes and layout and spine road width. The latest subdivision plans on which this application has been assessed were received on 27 May 2011.*

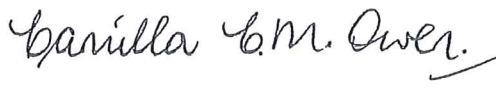
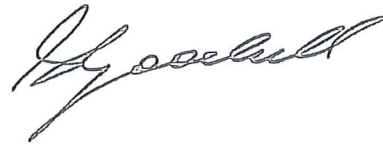
*A separate application for change of conditions for the land use consent was applied for on 27 May 2011.*

...

*The application to change the subdivision consent condition was lodged in December 2009 ... It was subsequently deemed that these lot layout and area amendments would necessitate further changes to the approved land use which had not been sought. A separate application to change the land use consent was lodged on 27 May 2011, along with further amended subdivision scheme plans. (emphasis added)*

19. The fact that Simpson Grierson was not provided with any information relating to the December 2009 variation is a matter of concern. Their advice appears to be based solely on a review of expert evidence before the Commissioner, but does not appear to consider the processing of the December 2009 variation, which we understand to be of critical concern to you.
20. As Simpson Grierson did not review the file relating to the December 2009 variation, they would not be aware of any breach/es of the timeframes for responding to Requests for Further Information which should have triggered mandatory notification. Their advice in respect of the risk of judicial review has therefore not addressed this issue.

Yours sincerely

Camilla Owen/Shoshona Goodall  
Partner/Associate

s.goodall@duncancotterill.com

**Colin Stokes**

---

**From:** Camilla Owen [C.Owen@DuncanCotterill.com]

**Sent:** Tuesday, 24 July 2012 4:57 p.m.

**To:** Colin Stokes (stokesy@xtra.co.nz)

**Subject:** Can Council's judicially review themselves?

Hello Colin,

Our apologies, we put this heading in the letter but did not address it. I can advise that the case cited by Simpson Grierson was one where I was counsel for the Department of Corrections. We did not wish the council to review its grant of consent to the Department of Corrections but the Council went ahead and filed for judicial review. The review was abandoned because we agreed to seek a declaratory judgment from the Environment Court, which later was appealed to the High Court. The best we can say is that as Councils have a variety of 'hats' that they wear it is far more likely that the court would accept it was not an abuse of process for a council to review itself than if it were a body other than a council. The correct analogy we consider is with the Council being able to prosecute itself under the RMA – again, unusual, but allowed because it is in the public interest to have the Council hold itself accountable. Thus we consider the analogy would hold for review as well. However we accept here is no case law on it. As far as the argument that there is no two sides and the Council would have to face off against itself we do not consider that is correct. Like the Department of Corrections case there would be a party defending the decision to grant consent – in this case it would be Noble Investments Limited. Also note that on appeals of a consent the Council can alter its opinion eg to no longer defend its grant of consent, so that this also points to the ability of a council in rare cases to have the freedom to alter its position regarding the grant of a resource consent.

Regards,

Camilla

**Camilla C M Owen**

Partner

**DuncanCotterill**

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24/07/2012




- 40 For the council to commission a report (they commissioned two) all the above needed to apply in (a),(b)&(c). Therefore, as per (a), the council had to have the “opinion the activity for which the resource consent was sought may, have a significant adverse environmental effect;” (traffic experts both prior and post the decision confirm it does).
- 41 As the council had this opinion that the activity may have a **significant adverse affect**, they must certainly have considered that the activity is “**likely to have**” “**more than minor**” adverse effects. “**More than minor**” is the threshold under section 95A whereby the council must publicly notify the application. The council therefore should have publicly notified the application.
- 42 The threshold for **limited notification** is an even lower bar to cross, whereby the council must give limited notification if the adverse effects on the person are “**minor**”. Locals who have to use these roads would certainly be affected in at least a “**minor**” way, whether by congestion in cars or buses, or by being “squeezed” if cycling (them or their children).
- 43 The *Simpson Grierson legal review* at 72 (e) agrees with the above as to the requirement of **public notification when further information has not been provided as requested**; and I would also suggest 92(2)(a) adds considerable weight in relation to the commissioned reports for **grounds for Judicial Review**.

 Simpson Grierson

72. In summary, public notification is required when:

- (e) further information has been requested or the applicant has been advised that the consent authority wishes to commission a report, and the applicant does not respond before the deadline or refuses to provide the information or agree to the commissioning of a report (section 95C(1)).

 Simpson Grierson

- 44 Effectively, council staff agreed behind doors to permit the developer to “**radically**” depart from the provisions of the City Plan and to start and continue the illegal construction of it without a consent and engineering approval (“at the developers risk”) with the mindset to retrospectively consenting it when the developer was ready in his own time to provide the radical final design of it (It took 17 months for the developer to belatedly produce the further information for it).
- 45 It is essential that the retrospective “**not an orthodox process**” [“55. of the legal review”] conjured by the council staff and legal unit is judicially reviewed to prevent this abuse of power escalating.
- 46 **Grounds for Judicial Review based on “unreasonableness”:**

 Simpson Grierson

**Test for unreasonableness**

22. The well accepted test for judicial review of local authority decisions on the basis of unreasonableness was set out by the Court of Appeal in *Wellington City Council v Woolworths New Zealand Limited (No 2)* [1996] 2 NZLR 537, at 545:


*Even though the decision maker has seemingly considered all of the relevant factors and closed its mind to the irrelevant, if the outcome of the exercise of the discretion is irrational or such that no reasonable body of persons could have arrived at the decision, the only proper inference is that the power itself has been misused.*

 Simpson Grierson

- 47 Applying the test for **unreasonableness** as per *Simpson Grierson 22.* above:-




- 48 **Could** a “***reasonable body of persons have arrived at the decision***” to narrow a main collector status road by 6.2m, plus a main secondary road, that forms part of and integrates an entire community within a new Living G zone ***that:-***
- does NOT safely integrate existing roads (dangerous bottlenecks, dead end cycle lanes),
  - does NOT provide required cycle lanes for “safe & efficient” sustainable travel modes,
  - does NOT comply with the requirement to “ensure efficient bus movement with minimal impact on traffic and cyclist flows”,
  - does NOT comply with New Zealand Standards (NZS4404) for road design,
  - does NOT comply with New Zealand LTSA (Land Transport Safety Authority) Guidelines,
  - does NOT comply with Austroads Standards,
  - does NOT comply with the Statutory City Plan zone rules **or** lesser general rules,
  - does NOT comply with the Council's own Infrastructure Design Standards (IDS),
  - eliminates the central median required for cars to wait safely on the busy road prior to turning right, and to provide planting;
  - has insufficient width requiring “yielding/squeezing” as *accepted by supporting evidence*;
  - requires remediation to improve safety after the decision would be made,
  - has no future proofing ability for future generations and growth,
  - encumbers future ratepayers with remedying the traffic environment,
  - will put the safety and welfare of the public at risk,
  - will cause liability risks to Council due to **preventable** injury and death,
  - will cause costs to public, business, due to congestion, delays, fuel, pollution, accidents, **over road designs that DO comply with all of these standards, provides all of these things, and provides them all to the Council and to the ratepayers at no cost???**
- 49 Surely the answer is **NO!** “***No reasonable body of persons could have arrived at the decision***” for congested non-complying unsafe roads as above over complying roads. This **would** be completely “***irrational***” and “***defy logic***”. Why would they?  
Surely the “***test***” for “***unreasonableness***” has been met.
- 50 The “***notification***” decision “***unreasonableness***” **test**: would have a lower bar to cross. “***No reasonable body of persons could have arrived at the decision***” to not at least allow those affected by roads that don't meet safety standards their legal right to make submissions against them. There is no “***just***” or “***rational***” reason not to.

 Simpson Grierson

**Test for unreasonableness**

23. That test has been adopted in the context of notification in *Fullers Group Ltd v Auckland Regional Council* [1999] NZRMA 439 (CA).
24. The Court in *Woolworths* further accepted that to prove a case of unreasonableness requires “something overwhelming” (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223, 230 per Lord Greene MR). For an ultimate decision to be invalidated as “unreasonable”, the Court held that it must be so “perverse”, “absurd” or “outrageous in defiance of logic” that Parliament could not have contemplated such decisions being made by an elected council.

 Simpson Grierson

- 51 **Applying the test's for unreasonableness as per Simpson Grierson 24. above:-**

- “**something overwhelming**” :-

- 52 To decide upon a busy **collector** road that is to accommodate buses, trucks, vehicles and cyclists that is so grossly non-complying and that it will require, as per the “***accepted supporting traffic evidence***”, that “***...it is expected that at least one direction of traffic / cycle movement will yield to oncoming traffic as required rather than be squeezed***”, **IS “overwhelming”**:- this is dangerous! Why would someone chose this?
- 53 The accepted “material of fact” to “yield” to “***oncoming traffic***” is explained elsewhere in the evidence that would be before an “***elected council***” in completing this **test**; in that cars and buses need to “***cross the centreline***” of the collector road and secondary loop road to pass cyclists when cyclists are passing parked cars.