

**MEMORANDUM OF CLARIFICATION**  
**29 NOVEMBER 2012**

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**HAGLEY OVAL**

**Community Recreation and Culture Committee**

1. At its meeting on 30 October 2012 the Community, Recreation and Culture Committee considered a report from staff with regard to Hagley Oval. The Committee resolved to:  
  
"seek written clarification from CERA and the Minister for Canterbury Earthquake Recovery with regard to the impact of the Christchurch Central Recovery Plan on the Hagley Park Management Plan and other relevant legislation, and the intentions of CERA in including an international cricket ground in the plan".
2. This memorandum is in response to that resolution. It has been prepared in conjunction with the CERA's Legal Team, which agrees with its contents. It is not intended that there be any other written response to the resolution from CERA or the Minister.

**Response**

3. CERA has advised that including the enhancement of Hagley Oval in the Christchurch Central Recovery Plan was meant to assist the Council, should Christchurch be granted hosting rights for any of the games to be played in the 2015 World Cup one-day cricket tournament. Australia and New Zealand are co-hosting this event.
4. CERA's approach was that by doing this it might be possible to reduce the number of processes for dealing with the necessary consents and approvals required by other legislation, such as the Reserves Act 1977 and the Resource Management Act 1991. If the city was successful in its bid for games, then these processes would need to be completed by October 2013 and, if the project was to proceed, facilities put in place by the end of 2014.
5. Councillors have already been briefed by CERA staff who have advised that they will "await the decisions of the Council before further discussion on the cricket oval project". These decisions are discussed below.

**Background**

6. One of the anchor projects in the Christchurch Central Recovery Plan is:  
  
"the enhancement of Hagley Oval at Hagley Park as a venue capable of hosting domestic cricket matches and international tests. Additions will include a grass embankment, lighting and a replacement pavilion. Full public access to the cricket oval will be maintained during non-event days. The essential village green character of Hagley Park will also be kept."

7. The Recovery Plan states that the cricket oval will provide:
  - (a) a domestic and international purpose built cricket venue;
  - (b) grass embankments with spectator capacity of 15,000 with ability to expand to 20,000 using temporary seating;
  - (c) training and coaching facilities with indoor and outdoor nets;
  - (d) sports lighting to international broadcast standards;
  - (e) pavilion with lounge and media facilities.
8. The Recovery Plan could have directed changes to the City Plan that were relevant to Hagley Park or the Cricket Oval. However, Section 23 of the Canterbury Earthquake Recovery Act 2011 does provide that those making decisions under the Resource Management Act “must not make a decision ... that is inconsistent with the Recovery Plan”.
9. Hagley Park is vested in the Council as a reserve for recreation purposes. The Council is responsible for administering the park and prepares management plans in accordance with procedures set out in the Reserves Act. The latest is the Hagley Park Management Plan 2007, which is a plan approved under section 41 of the Act.
10. Recovery Plans are approved by the Minister for Canterbury Earthquake Recovery in accordance with the Canterbury Earthquake Recovery Act. Section 26 of that Act requires that certain instruments must not be inconsistent with a Recovery Plan. One of these is an approved management plan. To comply with section 26 the Christchurch Central Recovery Plan is to be read with and forms part of the Hagley Park Management Plan and will prevail where there is any inconsistency between the two documents.
11. In other words, the Hagley Park Management Plan now includes the enhancement of Hagley Oval as a venue capable of hosting domestic cricket matches and international tests, comprising the facilities referred to above.
12. Section 26 also identifies Annual Plans and Long Term Plans under the Local Government Act 2002, except a funding impact statement in an Annual or Long Term Plan. Again, as the Recovery Plan did not require an amendment to these instruments, the Recovery Plan is to be read with and forms part of these Local Government Act instruments.

## **Decisions to be made by the Council**

### **Scope of Work:**

13. The Council has yet to decide whether or not it will approve the scope of the work proposed for Hagley Oval (resolution of the Council at its meeting 25-26 June 2012). Details of the proposal will become clear when Canterbury Cricket lodges its application for resource consent, and will be confirmed if resource consents are granted.
14. The Council will need to consider that the Recovery Plan is part of the Long Term Plan and Annual Plan and address this in its decision making. A decision not to approve the work may mean withholding the \$1.65 million set aside in the 2012-13 Annual Plan for embankments and practice wickets. This might put financial pressure on Canterbury Cricket, but the decision will not have any effect on whether or not resource consent is granted or the Council agrees to a lease to Canterbury Cricket.
15. The Council is not bound to make this payment. A resolution to adopt a Long Term Plan or an Annual Plan does not constitute a decision to act on any specific matter included in the plan (section 96(1) Local Government Act 2002). Nor can the Council be required to implement the provisions of an LTP or Annual Plan (section 96(4)).

### **Application for Resource Consent:**

16. The Council is a body exercising functions or powers under the Resource Management Act. It will be required to deal with Canterbury Cricket's application for resource consent in respect of the proposed pavilion, embankments and lighting towers in accordance with the provisions of the Act. The application is expected to be lodged within the next 1-2 weeks.
17. It will be recommended that the application is referred to an independent Commissioner and be notified. This will enable the public to make submissions and to be heard. There is also a right of appeal to the Environment Court.
18. In 2009 the Resource Management Act was amended to allow for an alternative process that would reduce the time taken for a notified consent application to be granted or declined. Once the period for public submissions has closed the applicant may seek to have the matter referred directly to the Environment Court. The effect of this is that there would only be one hearing, in front of the final decision-maker.
19. Even if the applicant seeks direct referral, the Council must agree to the use of this procedure. If this occurs, submitters will have the right to participate in the Environment Court hearing. If the application can be dealt with by the Court in a timely manner and if consent is granted, it is possible that Canterbury Cricket could get started on the project by October 2013.

### **Proposed Lease:**

20. The third decision to be made by the Council is whether or not to grant a lease to Canterbury Cricket in respect of the land on which the pavilion will be built and the lighting towers installed. The granting of a lease would be subject to the resource consent application being successful.
21. The process to be followed before the decision is made is set out in section 54 of the Reserves Act. This requires the Council to give public notice of the proposed lease and to consider any objections and submissions lodged in response.
22. However section 54(2A) contains an exception to this requirement. The public notice provisions do not apply where the lease proposal is made following the granting of a notified application for resource consent. This recognises that there will already have been a public process undertaken in respect of matters that will be relevant to both the consented activity and to the proposed lease.
23. The Council is to comply with the Hagley Park Management Plan in exercising this function (section 41(11) Reserves Act). As noted above, that Plan has to be read with the Recovery Plan and so an international cricket venue is now provided for as an activity which can occur within the Hagley Park Cricket Oval.
24. The Reserves Act also requires the Council to obtain the consent of the Minister of Conservation.

### **Legal Issues**

25. The application for resource consent lodged by Canterbury Cricket will be processed as a discretionary activity. All possible environmental effects of the activity will be relevant considerations under section 104 of the Resource Management Act. The Recovery Plan is something that the decision maker is to have regard to under that section. Any decision must not be inconsistent with the Christchurch Central Recovery Plan, although if the application does not meet Resource Management Act requirements then it can be declined.
26. If the decision maker is the Council (or a Commissioner appointed by the Council) section 23(2) of the Canterbury Earthquake Recovery Act does enable a request to be made to the

Minister to consider and decide whether a decision would be inconsistent with the Recovery Plan. The Minister's decision can itself be appealed to the High Court. This provision does not apply if the decision-maker is the Environment Court.

27. If the resource consent application is granted conditions may be imposed that would regulate the playing of international games, including the use of lights, or protect public access to Hagley Oval. Imposing such conditions would not be inconsistent with the Recovery Plan, but (as with all resource consents) they must not undermine the resource consent granted.
28. For completeness it is noted that if an application was made for an activity that is incompatible with the playing of domestic cricket matches and international tests at Hagley Oval then this is likely to be inconsistent and granting such an application would be a breach of section 23(1) of the CER Act.
29. There is also the matter of a lease between the Council and Canterbury Cricket to be dealt with. The Council will be required to turn its mind to a number of relevant factors, including the Hagley Park Management Plan (of which the Recovery Plan now forms part) and the outcome of the resource consent process. The public has freedom of entry and access to Hagley Oval, but this is subject to the specific provisions of section 54 of the Reserves Act. These give the Council the power to grant a lease in respect of the land required for a pavilion and other structures associated with and necessary for the playing of outdoor sport and games.

### **Legal Risks**

30. Inevitably there are risks associated with any decision-making process undertaken by local or central Government. They might include an application to the High Court for judicial review or a declaration in respect of any of the following:
  - (a) the decision to include the enhancement of Hagley Oval as an anchor project in the Christchurch Central Recovery Plan;
  - (b) the legal effect of sections 23 and 26 of the Canterbury Earthquake Recovery Act;
  - (c) the Court's interpretation of the words "not inconsistent with" in Sections 23 and 26;
  - (d) the exercise of any of the powers in the Act available to the Minister for Canterbury Earthquake Recovery;
  - (e) the decision-making process.

### **Consultation**

31. A proposal to develop Hagley Oval as a test cricket venue was consulted on as part of the decision-making process undertaken by the Council prior to it including the proposal as a project in the 2009-19 LTCCP and 2012-13 Annual Plan.
32. The Council would have sought the views of its community before deciding whether or not the additional facilities required for all forms of international cricket (additional seating capacity and lighting towers) should be provided for in the Hagley Park Management Plan. By operation of section 26 of the Canterbury Earthquake Recovery Act, they are, in fact, now provided for.
33. However, there is still the opportunity for the community to have its say when the application for resource consent being lodged by Canterbury Cricket is notified.
34. If it follows a successful outcome of the application, the proposal that the Council grants a lease to Canterbury Cricket would not have to be publicly notified. However, the Community, Recreation and Culture Committee has recommended that the matter come before an open,

ordinary meeting of the Council. This will enable information about the matter to be publicly available and the opportunity for any deputations to be made.

35. By using the powers available to it in the Canterbury Earthquake Recovery Act, the Minister has made it possible for a streamlined consent and approvals process to be undertaken. This would be necessary if there was any chance of Hagley Oval being ready for the 2015 World Cup. It does not, however, mean that any particular application has to be granted irrespective of the environmental effects.

#### **Conclusions:**

36. CERA staff have advised that they will await the decisions of the Council before further discussion on the cricket oval project.
37. The decisions to be made are:
  - (a) whether or not the Council approves the scope of the work proposed for Hagley Oval. This decision will not have any effect on the outcome of the resource consent application to be lodged by Canterbury Cricket or any lease negotiations;
  - (b) whether or not Canterbury Cricket's application for resource consent is granted. The application will be referred to an independent Commissioner, will be notified and is likely to go to the Environment Court either by direct referral or on appeal;
  - (c) whether or not to grant a lease to Canterbury Cricket if the resource consent application is successful.
38. The Christchurch Central Recovery Plan is to be read with and forms part of the Hagley Park Management Plan, the Long Term Plan and the Annual Plan. It will prevail where there is any inconsistency between the documents.
39. Effectively that means that the Hagley Park Management Plan now includes the enhancement of Hagley Oval as a venue capable of hosting domestic cricket matches and international tests. There is also some reinforcement of the provision for test cricket at Hagley Oval, contained in the Long Term Plan and Annual Plan.
40. The application for resource consent will be processed as a discretionary activity. All possible environmental effects of the activity will be relevant in accordance with the Resource Management Act. Unless it is found that there are adverse actual and potential effects on the environment which cannot be appropriately mitigated by conditions, it is unlikely that the application will be declined.
41. The consenting authority must not make a decision that is inconsistent with the Christchurch Central Recovery Plan.
42. The process for considering whether or not to grant a lease to Canterbury Cricket is governed by the Reserves Act.
43. The public has freedom of entry and access to Hagley Oval but this is subject to the Council having the power to grant a lease in respect of the land required for a pavilion and other structures associated with and necessary for the playing of outdoor sport and games.
44. In exercising this function the Council must comply with the Hagley Park Management Plan. It is now possible to grant a lease for international cricket purposes.

**Michael Aitken**  
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