

SUMMARY STATEMENT OF JONATHAN CLEAVE ON BEHALF OF KĀINGA ORA – HOMES AND COMMUNITIES

1. INTRODUCTION

1. Tēnā koutou katou, my name is Jonathan Cleave and I am a Partner at Planz Consultants Limited. My qualifications and experience are outlined in paragraphs 2.1.to 2.6 of my evidence.

Trees are important elements in urban environments

- 1.1. I readily agree that trees are important features in urban environments and add a number of benefits for amenity, ecology, air quality, mitigating urban heat islands etc. Kāinga Ora recognise the importance of carefully incorporating appropriately designed landscaping into their residential developments and have an extensive in-house landscaping design guide and robust internal design approval processes.
- 1.2. My evidence is not about the benefits of trees in urban environments – these are accepted. My evidence instead is focussed on whether the proposed Tree Financial Contribution (Tree FC) is the most effective and efficient tool in delivering a level of landscaping appropriate to a medium density residential environment.

What is an appropriate target (if any)?

- 1.3. Like any rule, the effectiveness of the rule's design necessarily starts with a clear understanding of the issue or effect the rule is seeking to address.
- 1.4. The Tree FC is sought to be introduced via a plan change whose wider purpose is to implement MDRS and the NPS-UD. The extent of canopy cover sought therefore needs to be aligned with the amenity outcomes appropriate to medium-density residential environments, to address the effects of that change.
- 1.5. In my view the target should properly have been based on what an appropriate level of canopy cover is for medium density residential environments. Council's assessment identifies that the only

Christchurch suburbs with more than 20% canopy cover are Cashmere (including the bike park forest) and Fendalton. In short, the only suburbs that hit the target are two of the oldest with a disproportionate number of large mature sections. They are not close to medium density urban environments. In my view it is not appropriate to use a large lot, 'leafy suburb' outcome as your starting point when assessing appropriate outcomes for medium density environments.

- 1.6. The fact that just two suburbs currently meet the 20% target, when most of those suburbs are long-established, low density suburban density environments, indicates that it is challenging to concurrently deliver both a medium density outcome and 20% canopy cover. The target of 20% cover is significant and in my experience is generally only able to be delivered in practice on large suburban sections with stand-alone dwellings.

What is the effect the rule is seeking to mitigate?

- 1.7. Financial Contributions are rules. As such they must be designed to manage an adverse effect of an activity on the environment.
- 1.8. In my view the role of residential intensification as a leading cause of canopy loss has not been made out by Council on a city-wide basis. The programmed harvesting of plantation forest and the Port Hills wildfires appear in Council's s32A reports to have had a much larger role in the decline in city-wide canopy cover than intensification. I accept that when suburban style properties are redeveloped for multi-unit housing typologies, there is generally a reduction in canopy cover as mature trees are removed and smaller replacement trees are added. But on a city-wide basis these changes are in the margins.
- 1.9. There is no nexus between the 20% canopy requirement and the cover necessary to deliver appropriate amenity outcomes in a medium density residential context. The MDRS policy outcomes for medium density residential environments are instead set out in Schedule 3A of the legislation:

Policy 3 – Encourage development to achieve attractive and safe streets and public open spaces, including by providing for passive surveillance.

Policy 4 – Enable housing to be designed to meet the day-to-day needs of residents.

Policy 5 – provide for developments not meeting permitted activity status, while encouraging high-quality developments.

- 1.10. NPS-UD Objective 4 and Policy 6(b) likewise address the changes that are likely to occur to status quo amenity outcomes as a result of intensification.
- 1.11. The MDRS standards go on to include a landscaping rule as the key tool for implementing these policy outcomes:

Schedule 3A, Clause 18 – Landscaped area

(1) A residential unit at ground floor level must have a landscaped area of a minimum of 20% of a developed site with grass or plants, and can include the canopy of trees regardless of the ground treatment below them.

(2) The landscaped area may be located on any part of the development site, and does not need to be associate with each residential unit.

- 1.12. It is important to emphasise that there is a significant difference between a 20% landscaping requirement and a 20% canopy cover requirement.
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- 1.13. Compliance with the density standard, as a permitted activity under the Plan, means that there is no adverse effect related to landscaping that could require mitigation via a financial contribution.
- 1.14. Non-compliance with the density standard triggers a restricted discretionary rule. The matters of discretion proposed in PC14 in my view address the sorts of issues that you would expect to be in play i.e. appropriate levels of amenity for occupants and streetscapes.
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- 1.15. The effects of non-compliance are able to be assessed. If the effects of a landscaping short-fall are nonetheless found to be acceptable, then consent can be granted authorising that shortfall (and there is no effect that requires mitigation via a FC). Conversely, if the effects are found to be unacceptable, then consent can be declined, in which case again there is no need for the Tree FC.
- 1.16. Either way, the delivery of a level of landscaping appropriate to medium density zones is already managed by the landscaping standard.
- 1.17. The integration of landscaping with buildings is also a matter that is able to receive careful consideration via the 'urban design rule' that enables an overall assessment of the design merit of proposals for more than three units.
- 1.18. The Tree FC is a rule in itself. As such, not meeting the rule triggers the need for consent (rather than just payment). Applicants will have the opportunity to demonstrate why there are no effects arising from the shortfall, and therefore the FC does not need to be paid. I would expect applicants to point to compliance (or an approved consent) with the landscaping rule as clear justification that the effects are acceptable.

What does it cost?

- 1.19. The cost of imposing a FC will be approximately \$50,000 per tree.¹ This excludes the costs of input from specialist experts and legal advisors.
- 1.20. To put the Tree FC dollar amount into context, Development Contributions (DCs) are typically around \$10,000 per unit. The cost of being one tree short in a development is therefore some five times the DCs payable per residential unit, with the DC covering the costs of all of the following matters: three waters reticulation, roading upgrades, public transport, cycleways, community facilities, regional parks, and local parks.
- 1.21. The total cost associated is also not limited to direct costs imposed by the rule itself. There is also a significant opportunity cost in terms of lost development potential, both for the applicant/developer, and as

¹ See para 4.66 in my EiC

importantly for the wider community whereby fewer houses will be delivered.

How does the rule work?

- 1.22. The challenges with clear and certain rule interpretation are significant. The rule as drafted is ambiguous, time consuming to assess, costly to process, delivers uncertain outcomes, and will be challenging to monitor. Given the significant dollar sums involved, it in practice requires the owners of every residential development site to engage a landscape architect, land valuer, surveyor (for the necessary subdivision consent) and lawyer, whether the site meets 20% canopy cover or not. The rule requires that a consent notice be entered onto the title for all new residential sites for the foreseeable future i.e. literally thousands of consent notices every year.

Are there other/ more effective and efficient methods?

- 1.23. No other tier 1 Councils engaged in the IPI processes have sought to introduce a Tree FC. Whilst there is no barrier to Christchurch being unique, it is telling that no other Council has deemed a Tree FC to be a necessary, effective, or efficient method.
- 1.24. Council has a number of tools available to increase tree canopy on a city-wide basis. It could:
- a) increase provision in the LTP for increased planting on Council-held land such as parks and roads;
 - b) utilise some of the reserve component that is already taken through Development Contributions for planted open space;
 - c) investigate development bonuses or DC remissions for sites that provide more than the required landscaping percentage; and/or
 - d) if it was found that the MDRS landscaping standard did not address tree canopy, then an additional tree-planting rule might be able to be justified. The Operative Plan has long managed tree planting in medium density zones in this way with a simply requirement to include 1 tree per 250m² net site area, with at least one of these trees to be planted

adjacent to the road boundary (rule 14.5.2.2). This rule is simple to administer and in my view is effective at delivering a level of tree planting commensurate with medium density outcomes.

Overall conclusion

- 1.25. I conclude that the starting point for assessing appropriate canopy outcomes for medium density environments is flawed. The legislation already has an explicit rule to manage landscaping outcomes, and the imposition of a Financial Contribution rule to manage similar effects (if legally permissible) does not meet the tests in s 32 of the RMA. As such I recommend that the Tree Financial Contribution and all associated provisions be deleted.

ATTACHMENT 1: SECTION 32AA ASSESSMENT

This assessment compares the Tree FC recommended by Council compared with an alternative of no FC and reliance instead on the MDRS Landscaping standard.

If the need for additional tree planting was able to be justified as not making the legislated MDRS landscaping rule less enabling, then an alternative option would be to simply introduce a tree planting rule. The Operative Plan contains a well-established requirement for 1 tree/ 250m² site area in the Medium Density Residential Zone. This rule is clear, unambiguous, and has been successfully implemented for a number of years. I have not assessed this option in detail as I consider the introduction of such a rule would constitute a change to the MDRS landscaping rule that would be less enabling.

<p>Effectiveness and efficiency</p>	<ul style="list-style-type: none"> • The MDRS landscaping rule provides a clear mechanism for delivering a level of landscaping deemed appropriate for medium density residential environments. As such it is both effective and efficient. It is easy to administer, compliance is readily able to be determined and enforced, and there are clear matters of discretion to guide an assessment of any shortfall. • The alternative of a Tree FC is grounded first on an uncertain premise that 20% canopy cover is an appropriate metric for medium density residential environments. It is ambiguous and challenging to determine compliance. It requires a consent notice on the title. It is not designed to mitigate effects but instead is designed to deliver an aspirational target. As such it is not effective in managing effects as those effects are already managed through the MDRS landscaping rule. • The Tree FC drives outcomes that are not compatible with the delivery of the density and housing choice sought through the NPS-UD and MDRS. As such it is not effective as part of a suite of provisions that are required to deliver the wider strategic outcomes sought.
<p>Costs/Benefits</p>	<ul style="list-style-type: none"> • The Tree FC imposes significant process costs. Give the sums involved it is likely that applicants will need to engage a landscape architect (to assess existing tree canopy and to calculate proposed

	<p>canopy cover), a land valuer to determine land cost/ m² in the area, a surveyor to prepare a subdivision consent application in order to introduce a consent notice, and a lawyer to input into the consent order. These direct process costs are in addition to the time-cost of project delays generated by the time taken to assess the extent to which a tree FC is payable.</p> <ul style="list-style-type: none"> • The Tree FC imposes direct costs on applicants in terms of tree + land components in the order of \$50k per 1 tree shortfall (depending on land value). These costs are considered to be starkly disproportionate to the benefits derived from a single additional tree. • The Tree FC imposes significant opportunity costs to both the site owner and the community in terms of lost housing capacity through having land taken up by trees over and above that sought to be enabled by MDRS. • The Tree FC imposes costs in terms of a potential reduction in property value through the imposition of a consent notice and associated obligations in contrast to the value of the same site without such an encumbrance. • The benefits of the Tree FC over and above the effects deemed appropriate by the MDRS landscaping standards are minimal. • Reliance instead on the MDRS landscaping standards enable a clear, affordable, pathway for determining compliance and the delivering of a level of landscaping deemed by the legislation as being appropriate. There is likewise a clear consenting pathway available for assessing effects where compliance is not met. The landscaping rule therefore deliver benefits in terms of a simple, unambiguous regulatory framework, benefits in terms of delivering an appropriate level of amenity, and benefits in enabling sites to be developed to a density that is commensurate with delivering MDRS outcomes.
<p>Risk of acting or not acting</p>	<ul style="list-style-type: none"> • The risk of not acting (not including a Tree FC) is that intensification or redevelopment opportunities occur subject to the MDRS

	<p>landscaping requirements. There is minimal risk that unanticipated environmental outcomes occur given the legislated provisions are deemed to be effective.</p> <ul style="list-style-type: none">• The risk of acting (introducing a Tree FC) is that significant additional costs and uncertainty are introduced to the land development process with the effect that fewer homes are built and the costs of those houses increases.
Decision about more appropriate action.	<ul style="list-style-type: none">• I consider deletion of the Tree FC in its entirety and reliance on the MDRS landscaping standard is the more appropriate action.