

**BEFORE THE INDEPENDENT HEARING COMMISSIONERS
IN CHRISTCHURCH**

TE MAHERE Ā-ROHE I TŪTOHUA MŌ TE TĀONE O ŌTAUTAHI

IN THE MATTER OF Resource Management Act 1991

AND

IN THE MATTER of the hearing of submissions on Plan Change 14 (Housing and Business Choice) to the Christchurch District Plan

**JOINT STATEMENT OF PLANNING EXPERTS ON PORT HILLS STORMWATER
QUALIFYING MATTER**

24 April 2024

INTRODUCTION

1. This joint witness statement relates to expert conferencing on the topic of the Port Hills Stormwater Qualifying Matter (**QM**) proposed by Canterbury Regional Council (**CRC**) and accepted by Christchurch City Council (**CCC**) through PC14.
2. This represents the **second conferencing** on this topic, following conferencing that was undertaken on 22 November 2023.
3. The expert conferencing was held on 19 April 2024 via video conferencing.
4. Attendees at the conference were:
 - (a) Ike Kleynbos is the author of a s42A Report dated 11 August 2023 and **rebuttal evidence** dated 16 October 2023 and submitter evidence addressing the **Residential** provisions and related QM's;
 - (b) Meg Buddle is the author of **evidence** for CRC (#689) in relation to residential proposals and related QMs, including the proposed Port Hills Stormwater QM, dated 20 September 2023;
 - (c) Marcus Langman is the author of evidence for CCC (#751) in relation to **Council's submission** on PC14 dated 20 September 2023; and
5. Experts involved in the primary conferencing were approached to participate in the second series on conferencing. However, all the following experts chose not to participate and **withdrew from proceedings**:
 - (a) Tim Joll is the author of evidence for Kāinga Ora – Homes and Communities (KO #834) in relation to residential QM's dated 20 September 2023. Mr Joll stated that Kāinga Ora was reluctant to commit further to the QM proposal, noting that it (the QM) is likely best addressed via a forthcoming plan change Council intends to promulgate (PC17).
 - (b) Fiona Aston is the author of a submission (#881) and evidence for Red Spur Limited in relation to Redmund Spur dated 20 September 2023. Ms Aston also stated the reluctance of Red Spur to continue to commit to this QM and supporting the Kāinga Ora position that this is likely best address through the forthcoming PC17.

- (c) Pia Jackson is the author of a submission (#257) and evidence for Cashmere Land Developments Ltd (CLDL) in relation to the Cashmere Estate and Cashmere Worsley ODP dated 19 September 2023. Ms Jackson stated that CLDC no longer wished to commit to further conferencing.

CODE OF CONDUCT

6. This joint statement is prepared in accordance with sections 9.4 to 9.6 of the Environment Court Practice Note 2023.
7. We confirm that we have read the Environment Court Practice Note 2023 and agree to abide by it.
8. Mr Langman notes that he is a resident and property owner in the Residential Hills Zone. He does not consider this a conflict and accepts that the Panel may choose to weigh any views or opinions expressed by him accordingly.

PURPOSE AND SCOPE OF CONFERENCING

9. The purpose of conferencing was to seek input from other planning experts on two proposed alternative means to address the proposed Port Hills QM put forward in the primary JWS. An agenda was pre-circulated to attendees and agreed upon, which was as follows:
 - (a) Proposed certified permitted pathway (CCC):
 - i. Mr Joll had put forward an alternative approach to the QM as part of discussions held in the primary JWS, being a certified permitted pathway to apply specifically where loess soils were located (rather than a whole of zone response). In Mr Joll's absence, Mr Kleynbos developed a proposed framework which was pre-circulated to participants on 15 April 2024.
 - ii. The framework was informed by geospatial data on loess soil locations provided to Mr Kleynbos on 28 March 2024 by Ms Buddle through the CRC soil science department. The spatial data was based on the S-map dataset.
 - (b) Proposed impervious surface control (CRC):
 - i. Ms Buddle had put forward a further alternative approach to the QM as part of the primary JWS.

- ii. This framework was conceptually discussed via email following the primary JWS, however no framework was provided prior to this JWS for discussion.
10. Attendees reviewed relevant s32 reports, evidence, s42A reports, other reports in advance of the conferencing.
 11. **Annexure A** records the agreed issues, areas of disagreement and the reasons, along with any reservations – specifically in regard to the certified permitted pathway approach.
 12. **Annexure B** records the agreed issues, areas of disagreement and the reasons, along with any reservations – specifically in regard to the impervious surface approach.
 13. **Annexure C** details the draft certified permitted pathway from Mr Kleynbos that was pre-circulated.

Date: 24 April 2024

Ike Kleynbos



Meg Buddle



Marcus Langman



ANNEXURE A – EXPERT CONFERENCING ON PORT HILLS STORMWATER QUALIFYING MATTER DATED 19 APRIL 2024: CERTIFIED PERMITTED PATHWAY APPROACH (CCC)

Participants: Ike Kleynbos (IK) and Marcus Langman (ML) for CCC #751, and Meg Buddle (MB) for CRC #689.

Issue	Agreed Position	Disagreements or reservations with reasons
Overall concept for framework	ML noted that if the QM is to apply over Lyttelton, then the density trigger should relate to what is permitted. IK stated this would be one unit per 400m ² and agreed with such a change. MB supported the approach.	<p>MB questioned whether it would be possible to charge for the evaluation of compliance with a certified permitted activity and its monitoring. IK stated that the approach had been drafted around exiting certified permitted pathways contained in the District Plan and that these are sometimes still involved processes that were on-charged and monitoring was a responsibility held by the associated expert. Examples provided were the Heritage Works Plan (9.3.4) which links to a defined heritage professional term, Minimum Floor Level Certificate (5.4.1), and the felling of significant tree (9.4.4) which links to a defined technical arborist term. IK did not believe that a permitted status would mislead Plan users.</p> <p>ML stated that the QM approach should not restrict existing permitted activities. IK responded that the approach was centred on current permitted density, however that Council is yet to give effect to the NPS-FM and is required under s74(1) to develop the plan change in accordance with any NPS, which is supported by s771(B). IK therefore considered there may be grounds for more onerous controls. ML noted that s771 only relates to the MDRS and relevant building height or density requirements under Policy 3, and does not extend to existing zone provisions.</p>
Permitted standard	IK noted that it may be appropriate for a monitoring standard to be contained within the certified permitted standard, to the effect of: <i>the suitably qualified soil professional shall monitor TSS on a weekly basis and have records available upon inspection by Council on site</i> . MB supported this approach, further stating that the standard should require additional monitoring after a rainfall event. ML stated that this if the discharge is to the Council network, it will be subject to an	<p>MB questioned whether the ESCP submitted should require the statement of qualifications. IK stated that this would be considered alongside the material presented as it was captured in the proposed definition of “suitably qualified soil professional”.</p> <p>MB questioned the ability to enforce a permitted activity and ability to charge for monitoring. She questioned whether enforcement could be undertaken through s15 of the Act. IK noted that any</p>

Issue	Agreed Position	Disagreements or reservations with reasons
	<p>authorisation in any case from Council's stormwater team under the Stormwater bylaw, potentially duplicating monitoring requirements. If the discharge is to the Council's reticulated system, it will require an authorisation from Council's stormwater team which may include conditions for monitoring, which may conflict with permitted standards.</p> <p>MB questioned whether the TSS level was practically achievable considering that treatment often required the use of chemicals, requiring further regional consent, which could be potentially difficult for infill development. IK agreed that practicality and efficiency were important for any prospective framework to consider.</p> <p>IK stated that there is likely to be overlap between s30/31 responsibilities under the Act as the NPS-FM made both parties responsible for water quality outcomes. ML agreed, acknowledging that this was captured in clause 3.5(4) of the NPS-FM.</p>	<p>measure/standard contained within the District Plan that was breached could be enforced, however s15 was a matter that related to Regional Councils. ML agreed, noting that enforceability is the most important element over monitoring. ML raised concern regarding cost for monitoring if included as part of a permitted standard. ML does not support a monitoring requirement for a permitted standard if monitoring requires water quality testing to confirm compliance with proposed permitted standard 1.a., noting that this may conflict with stormwater authorisations if the discharge is to the Council network.</p> <p>ML stated that the LWRP (Land and Water Regional Plan) already contained various earthwork controls and questioned whether the QM would be duplicating these, also noting there is no monitoring requirement for the regional plan permitted standards. MB stated that she would further consider the LWRP and the balance of responsibilities across s30/31 of the Act.</p>
RD activity standard	<p>IK sought to reconsider the notification exclusion, stating that there may be neighbouring parties affected by works whereby limited notification under s95B may be warranted. MB supported this intent, stating that tangata whenua may have an interest in effects on waterway. ML questioned whether this was somewhat already addressed by recognition of sites of Ngāi Tahu cultural significance including the Ngā Tūranga Tūpuna overlay in the operative Plan. However, all agreed that this was primarily addressing the potential for archaeological discovery and separate consideration. IK noted that given the QM was premised on the NPS-FM, reflecting cultural values was of primary importance.</p>	

Issue	Agreed Position	Disagreements or reservations with reasons
Matters of discretion	<p>In light of the change in notification exclusions, all agreed that matters of discretion needed to include cultural effects on waterways.</p> <p>MB also stated that temporary and cumulative effects should be considered. ML noted that 'effects' included this. MB said it was useful to be clear about how consent officers should audit consent applications.</p> <p>MB said that there could be some duplication in matters. Potentially .f and .g could be merged, and/or "method" could move to .f. IK agreed.</p>	
Policies	<p>MB stated that more could be added on cumulative and cultural effects. IK agreed, considering proposed further changes to matters of discretion.</p> <p>ML stated that 'medium density' should be reflected in the type of residential development that was sought to be managed as to not affect all residential development within the overlay.</p>	
Modification of 8.9.3.a.iv	All agreed.	
Suitably qualified soil professional definition	<p>All agreed.</p> <p>MB sought to check whether sub-part 3 was not overly onerous. ML said to check whether the term is 'certified' rather than 'registered'. IK checked this after the close of conferencing and found the term is rather "Chartered Professional Engineer" and is managed through the Chartered Professional Engineers Act 2002.</p>	
General framework approach		<p>MB stated that the approach still did not capture some water quantity issues associated with the Port Hills. Further, the overlay approach did not cover all the residential hill areas and unaffected areas outside this could have stormwater runoff that follows over loess soil areas would promote the sediment migration of loess.</p>

Issue	Agreed Position	Disagreements or reservations with reasons
		<p>IK stated that the latter was more about adequate stormwater management and enforcement of stormwater controls and Bylaws. He further noted that there were larger contiguous areas that were unaffected by the overlay and it would be inappropriate to have an all of zone approach.</p>

**ANNEXURE B – EXPERT CONFERENCING ON PORT HILLS STORMWATER QUALIFYING MATTER DATED 19 APRIL 2024:
IMPERVIOUS SURFACE APPROACH (CRC)**

Participants: Ike Kleynbos (IK) and Marcus Langman (ML) for CCC #751, and Meg Buddle (MB) for CRC #689.

Issue	Agreed Position	Disagreements or reservations with reasons
<p>Controls for new greenfield development:</p> <ul style="list-style-type: none"> • Would be able to treat stormwater at scale and could be MRZ accordingly, subject to ESCP and localised stormwater facilities being available to discharge into. 		<p>MB mentioned that some greenfield sites (being Redmund Spur and Worsleys Spur) discharge into newer stormwater facilities, which could potentially cater for greater densities. IK noted that larger vacant areas further down the catchment should not be discounted as rebuttal evidence noted there was upwards of 3,000 commercially feasible residential units possible. Further, new stormwater detention areas were likely sized on operative density as their design preceded the promulgation of PC14.</p> <p>ML noted that these larger sites would likely trigger regional consents anyway. Further, the focus should be on medium density development, rather than subdivision.</p>
<p>Controls for infill development:</p> <ul style="list-style-type: none"> • Proposal is to introduce a 50% impervious surface control. • The intention is to align with both the MDRS density standard and CCC assumptions in stormwater modelling¹ for residential hill areas 	<p>MB was unsure whether a 50% threshold was practically feasible. IK agreed, stating that hilled areas are more constrained and almost always likely to have driveways, retaining, and other features to make ingress/egress possible over a steeper terrain. These would all add to the impermeability of the site. ML noted that most hilled sites contained a two storey dwelling, so the footprint may be lesser than flatter areas, meaning sites were more open to innovation. He considered that 50% impermeable surface on sites for multi-unit development was not unnecessarily onerous.</p>	<p>IK considers that this approach still only largely considers water quantity effects, not quality. MB stated that it was assumed that developers would only turnover land in the 50% of land designed to be impervious. IK stated that that was an unrealistic expectation and there was nothing under such a control that prevented an entire site being exposed, disturbing loess soils.</p>

¹ Table 21-6 of [Section 21](#) of the CCC [Waterways, Wetlands and Drainage Guide](#) details that the assumed imperviousness of residential hill areas is 45%.

Issue	Agreed Position	Disagreements or reservations with reasons
Would apply to all current RH zone.		
Activity status	MB asked IK and ML's opinion on whether a breach to the standard should be CA or RDA. IK stated that CA requires approval of consent, questioning whether a stepped approach may be more suitable. He concluded that an RDA status would be more suitable. ML did not see value in CA and supported an RDA escalation of the rule, due to the 10 working day timeframe for controlled activity consents, and consistency with other built form control infringements.	
Both the certified permitted pathway and the impervious surface control being applied	IK stated that it seemed both approaches dealt with different stormwater components. He stated that if there was no overlap then there should be no reason for why both measures could be applied (noting the reservations for greenfield controls). Both MB and ML agreed that both approaches could be applied to collectively manage stormwater effects on the Port Hills.	

ANNEXURE B – PRE-CIRCULATED DRAFT PROPOSED CERTIFIED PERMITTED PATHWAY APPROACH (CCC)

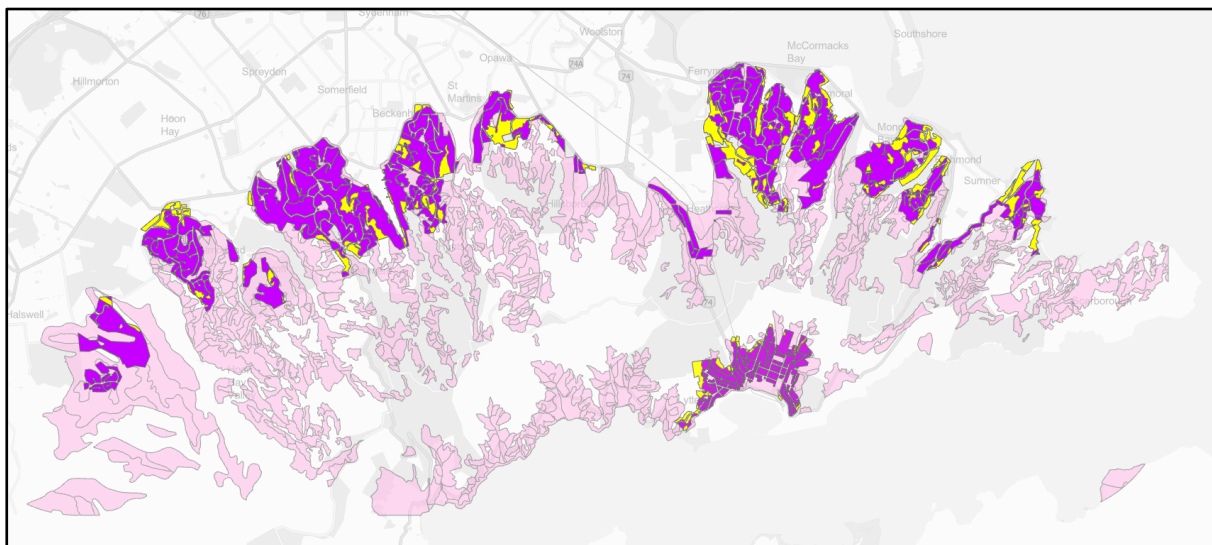
Further changes discussed in conferenced as shown in red non-italicised underlined text with removed text in struck out in ~~red strike through non-italicised text~~.

DRAFT – Port Hills QM permitted pathway framework

Concept for framework to apply Port Hills QM Permitted pathway:

1. Within the overlay area, any development creating allotments of less than 650m²:
 - a. Is subject to a permitted activity certification pathway; and
 - b. The earthwork exemption is subject to achieving a.; and
 - c. If a. is not met, subject to an RDA consent and the earthworks exemption does not apply.
2. The QM seeks to manage earthworks across land with specific characteristics and could therefore be positioned under rule 8.9 in the Plan. Would be called the “Loess Soil Management Area”.
3. A new definition is needed to improve clarity of who a qualified expert is for the certification pathway.

The Loess Soil Overlay covers just over 80% of the operative Residential Hills zone and almost 85% of the operative Residential Banks Peninsula zoning within the Lyttelton Township.



In the above:

- Pink = Loess Soils layer from S-Map, as provided by CRC.
- Purple = overlap with RH and RBP (Lyttelton only) zones
- Yellow = above zones unaffected by loess soils

The use of 650m² is centred on the density expectations of the Residential Hill Zone and the underlying premise that the logic of the density in the operative plan relates to (amongst other things) the topography of residential hill areas and the appropriateness of greater density given these localised constraints.

Permitted pathway

Within the **Loess Soil Management Area**, development at a density greater than one residential unit per 650m² net site area, or one residential unit per 400m² south of the Summit Road, is a permitted activity subject to the following standards:

1. An Erosion and Sediment Control Plan produced by a **suitably qualified soil professional** is provided to Council and implemented on site prior to work beginning. The plan must be drafted in accordance with Environment Canterbury's Erosion and Sediment Control Toolbox for Canterbury <http://esc.canterbury.co.nz/>:
 - a. The control of run-off to prevent water with a total suspended solid (TSS) content greater than 50mg/L flowing, or earth slipping, onto neighbouring properties, legal road (including kerb and channel), or into a river, stream, drain or wetland. Any such water intended to be discharged to Council's stormwater system must be treated, using at a minimum the erosion and sediment control measures detailed in the site specific Erosion and Sediment Control Plan.
2. All earthworks shall be carried out in accordance with a site specific Erosion and Sediment Control Plan, which follows the best practice principles, techniques, inspections and monitoring for erosion and sediment control contained in Environment Canterbury's Erosion and Sediment Control Toolbox for Canterbury <http://esc.canterbury.co.nz/>.
3. The Erosion and Sediment Control Plan measures shall be maintained over the period of the construction phase, until the site is stabilised (i.e. no longer producing dust or water-borne sediment).
4. All disturbed surfaces shall be adequately topsoiled and vegetated or otherwise stabilised as soon as possible to limit sediment mobilisation.
5. Any change in ground levels shall not cause a ponding or drainage nuisance to neighbouring properties.
6. The suitably qualified soil professional shall be responsible for monitoring the site during construction phase against sub-standards 1. To 5. and keep such monitoring records available on-site for inspection of Council officers. The suitably qualified soil professional shall be responsible for compliance with sub-standard after rainfall events.

RDA Activity standard

1. Within the **Loess Soil Management Area**, development at a density greater than ~~one residential unit per 650m² net site area that the standard permits~~ or does not comply with the standards in Rule XXX [above] is a restricted discretionary activity.
2. Any application arising from this rule shall not be ~~limited or~~ publicly notified.

Matter(s) of discretion

The Council's discretion is limited to the following matters:

- a. effects, including temporary and cumulative, of sediment migration on people, property, and waterways;
- b. stormwater management, specifically in relation to measures to reduce hill erosion;
- c. location, size and design of allotments, structures, roads, access, services or foundations in relation to loess soils;
- d. location, scale and design of buildings in relation to the effect on and resulting presence of loess soils;
- e. clearance or retention of vegetation or other natural features that exacerbate the sedimentation of loess soils;
- f. timing, location, scale, method and nature of earthworks;
- ~~g. earthworks method;~~
- h. potential for the proposal to exacerbate the erosion of, and sediment migration from, loess soils; and
- i. mitigation of erosion and sediment migration effects from loess soils.

New policy

Proposed new Policy 8.2.4.5 – Management of Loess Soils in Port Hill residential areas

Identify loess soil areas and manage medium density residential development within these areas to restrict sediment migration and the erosion of such soils and consequential effects on people, property, nga wai, and the natural environment, and their cumulative effects.

Proposed new Policy 8.2.4.6 – Certified development pathway within identified loess soil areas

Permit residential development within the **Loess Soils Management Area** where it can be demonstrated by a suitably qualified soil professional that erosion and sediment is appropriately managed prior to the commencement of site works.

Modification of 8.9.3.a.iv

- a. *The following earthworks are exempt from the activity standards set out in Rule 8.9.2.1 P1 and P2:*

[...]

- iv. Any earthworks subject to an approved building consent where they occur wholly within the footprint of the building, **except where located within the Loess Soil Management Area and requires consent under [insert restricted discretionary rule number]**. For the purposes of this rule, the footprint of the building extends 1.8m from the outer edge of the wall. This exemption does not apply to earthworks associated with retaining walls/structures which are not required for the structural support of the principal building on the site or adjoining site.

New definition

Suitably qualified soil professional:

In relation to Chapter 8, means a person who:

1. Has been awarded a recognised science or engineering degree; and
2. Has experience in engineering geology or soil science; and
3. Is a ~~certified member~~ registered Chartered Professional Engineer of Engineering New Zealand under the Chartered Professional Engineers Act 2002.