

**BEFORE INDEPENDENT HEARING COMMISSIONERS
IN CHRISTCHURCH**

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

UNDER the Resource Management Act 1991 (RMA)
IN THE MATTER of the hearing of submissions on Plan Change 14
(Housing and Business Choice) to the Christchurch
District Plan

AND

IN THE MATTER of Canterbury Regional Council (submitter 689)

**MEMORANDUM OF COUNSEL FOR CANTERBURY REGIONAL COUNCIL
IN RESPONSE TO MEMORANDUM OF COUNSEL FOR CASHMERE LAND
DEVELOPMENTS LIMITED REGARDING SCOPE OF CANTERBURY
REGIONAL COUNCIL'S SUBMISSION AND THE PORT HILLS
STORMWATER QM**

16 May 2024

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MAY IT PLEASE THE PANEL

Introduction

- 1 Counsel has reviewed the memorandum of counsel on behalf of the Cashmere Land Development Limited (**CLDL**) as to the scope of the Canterbury Regional Council's (**Regional Council**) submission on the Port Hills Stormwater Qualifying matter dated 7 May 2024.
- 2 Counsel considers it necessary respond to and clarify three matters raised in that Memorandum:
 - (a) That the Regional Council's submission is "on" the plan change;
 - (b) The relevant scope test for an intensification planning instrument (**IPI**);
 - (c) Whether CLDL was identified in evidence for the Regional Council; and
 - (d) CLDL's opportunity for effective participation in the PC14 process.

Regional Council's submission is "on" the plan change

- 3 Counsel for CLDL has acknowledged that the Amendment Act provides the IHP with much wider powers to make recommendations than the typical Schedule 1 plan change process but states that submissions must still be "on" the plan change.¹
- 4 Submissions do need to be "on" the plan change and the Regional Council did not understand there to be any dispute as to whether its submission was "on" the plan change.
- 5 The Regional Council's submission, like many others on PC14, sought to exclude or restrict areas from the further subdivision and development that was being proposed by PC14. It identified sedimentation risks with medium or high density development on the Port Hills and that most of the Port Hills are inside the High Soil Erosion Risk Zone under the Canterbury Land and Water Regional Plan. The submission addressed stormwater infrastructure generally and noted that inadequate stormwater infrastructure has not been included as a qualifying matter under PC14. It expressed its concern about reliance on the

¹ Memorandum of counsel on behalf of CLDL as to scope of the Canterbury Regional Council's submission on the Port Hills Stormwater Qualifying Matter dated 7 May at [10].

Christchurch City Council Bylaw and building consent process for the management of stormwater. It also raised concerns that intensification on the Port Hills would result in higher quantities of water entering the stormwater system and the Heathcote/Ōpāwaho River. The submission clearly addressed a change to the status quo that was being advanced by PC14 and fairly and reasonably raised risks of medium and high density development on the Port Hills.

- 6 Counsel for CLDL contends that the Regional Council's submission did not propose a QM for stormwater matters in the Port Hills.² The Regional Council's submission did not expressly seek a stormwater 'qualifying matter' for the Port Hills like it did for the upper Halswell River catchment areas. When PC14 was notified the Low Public Transport Accessibility QM covered parts of the Port Hills.
- 7 A Port Hills Stormwater QM is a mechanism to address the issues raised and relief sought in the Regional Council's submission regarding intensification on the Port Hills. It is an extension of the Low Public Transport Accessibility QM in the notified version of PC14 (and the subsequent Suburban Hills Density Precinct proposed in Mr Kleynbos' s42A recommendations). It would be contrary to the well-established principle that the scope of a submission should be approached in a realistic workable fashion rather than from the perspective of legal nicety, with consideration of the whole relief package detailed in submissions³, if a qualifying matter was only considered to be within the scope of a submission if the submission expressly uses the words "qualifying matter". Further, there is no requirement in the RMA for the necessary assessment under sections 77I, J and L to be included in a submission as suggested by Counsel for CLDL.⁴

Relevant scope test for an IPI

- 8 Clause 99(2) of Schedule 1 provides that the recommendations made by Hearings Panel:

² Memorandum of counsel on behalf of CLDL as to scope of the Canterbury Regional Council's submission on the Port Hills Stormwater Qualifying Matter dated 7 May 2024 at [24].

³ *General Distributors Ltd v Waipa District Council* (2008) 15 ELRNA 59 at [58]-[60].

⁴ Memorandum of counsel on behalf of CLDL as to scope of the Canterbury Regional Council's submission on the Port Hills Stormwater Qualifying Matter dated 7 May 2024 at [24].

- (a) Must be related to a matter identified by the panel or any other person during the hearing; but
 - (b) Are not limited to being within the scope of submissions made on the IPI.
- 9 This acknowledges that as the hearings process progresses issues may arise that warrant a response by way of amendment to the IPI that is not within the scope of submissions on the plan change.
- 10 If the Hearings Panel finds that the Port Hills Stormwater QM is not within the scope of the Regional Council's submission, or any other submission on PC14⁵, the Panel still has jurisdiction to include the QM if it is satisfied that it is related to a matter identified by the panel or any other person during the hearing.
- 11 The restriction of intensification on the Port Hills for stormwater quality and quantity reasons has been identified at various stages throughout the hearing as set out in the chronology attached as Appendix 1 to Ms Buddle's Summary Statement⁶.
- 12 Ms Buddle's Statement of Evidence responded to the City Council's s42A recommendations to include a Suburban Hill Density Precinct for the Port Hills area covered by the Low Public Transport Accessibility QM and recommended that it be extended to all other areas of the Port Hills suburbs zoned Residential Hills.⁷ Mr Kleynbos then proposed a different Port Hills Stormwater QM response in his rebuttal evidence which has been further developed through expert conferencing of planning experts.
- 13 The Hearings Panel will also need to be satisfied that any recommendation that is not within the scope of a submission but relates

⁵ At paragraph [2.83] of the Opening Legal Submissions for Christchurch City Council, Strategic Overview Hearing, Counsel stated that "Appendix C of Ms Oliver's section 42A Report summarises relief sought by "whole of plan" submissions. These include submissions which are generally in support of PC14, and generally opposed to PC14. Accordingly, there is scope within the submissions for the Panel to make changes that are generally somewhere in between the existing District Plan provisions, and the changes proposed by PC14 as notified.

⁶ Summary of Statement of Evidence of Meg Buddle on behalf of Canterbury Regional Council dated 22 April 2024.

⁷ Statement of Evidence of Meg Buddle on behalf of Canterbury Regional Council dated 20 September 2023.

to a matter identified during the hearing is still “on” the plan change.

That is:⁸

- (a) Does the Port Hills Stormwater QM reasonably fall within the ambit of PC14 by addressing a change to the status quo advanced by PC14; and
 - (b) Is there a real risk that persons potentially affected by the Port Hills Stormwater QM have been denied an effective opportunity to participate in the hearing process.
- 14 The Port Hills QM seeks to restrict intensification proposed by PC14 and therefore does address a change to the status quo advanced by PC14.

CLDL opportunity for effective participation in the PC14 process

- 15 In response to Counsel for CLDL’s concerns that CLDL has not been given a real opportunity to participate in relation to the Port Hills Stormwater QM, counsel wishes to clarify two aspects that are not addressed in Appendix A to the Memorandum:
- (a) The identification of CLDL land in the evidence of Ms Buddle; and
 - (b) The response of Regional Council experts to the Statement of Mr Glatz.

Identification of CLDL land in Regional Council evidence

- 16 Counsel for CLDL notes in the Memorandum that Ms Buddle’s appendices included high level maps and planning analyses, but none specifically in relation to the CLDL.⁹ Ms Buddle’s appendices clearly identified that she was recommending “extending the Suburban Hill Density Precinct to cover all areas of the Port Hills suburbs (being areas zoned Residential Hills Zone under the operative District Plan) that are not currently covered by the low public transport qualifying matter”.¹⁰ This was based on Ms Newland’s evidence which addressed development in the Residential Hills Zones. If the CLDL site includes

⁸ *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290 at [90]; *Clearwater Resort Limited v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003.

⁹ Memorandum of counsel on behalf of CLDL as to scope of the Canterbury Regional Council’s submission on the Port Hills Stormwater Qualifying Matter dated 7 May, Appendix A, p 8.

¹⁰ Statement of Evidence of Meg Buddle on behalf of Canterbury Regional Council dated 20 September 2023, Appendix 1.

land that was zoned Residential Hills in the Operative District Plan then it was clear that Ms Buddle was recommending that this land be covered by a qualifying matter. If the site is not zoned Residential Hills then it is not recommended by Ms Buddle to be covered by a qualifying matter.

Regional Council expert response to Mr Glatz statement


- 17 CLDL has filed a Statement from Mr Glatz. That statement was filed with CLDL's legal submissions prior to the expert conferencing of planning experts that took place on 19 April 2024 which CLDL's planning expert Ms Jackson was invited to but chose not to attend. Ms Jackson had the opportunity to participate in expert conferencing informed by Mr Glatz's statement.
- 18 Experts for the Regional Council have directly responded to Mr Glatz's statement in their summary statements filed prior to the Regional Council's attendance at the hearing.
- 19 Ms Newlands summary statement addressed matters raised in Mr Glatz's statement at her paragraphs [23] to [29] and agreed that the stormwater generated from the Cashmere Estate site can be managed via:¹¹
- (a) The Cashmere Worsleys flood storage basin (provided that this basin was designed for the expected imperviousness),
 - (b) For stormwater discharged during the subdivision earthworks, the existing resource consents held for the site, and
 - (c) For stormwater discharged during the subdivision earthworks, Cashmere Land Development's ability to treat construction phase stormwater via sediment retention ponds and the application of water treated chemicals.
- 20 Ms Buddle also directly addressed this by recommending a permitted activity rule allowing more impervious surface for greenfield developments if the following standards are met:
- (a) Either stormwater is discharged to a stormwater facility with enough capacity to accommodate the additional discharge (above existing imperviousness), or stormwater is discharged into coastal waters; and

¹¹ Summary of Statement of Evidence of Jessica Newlands dated 22 April 2024.

- (b) The discharge is approved by the owner of the reticulated system (the Council); and
- (c) Stormwater is conveyed to the stormwater facility via an appropriately-sized stormwater network.

21 Mr Glatz's statement has been considered by Ms Newlands and Ms Buddle and has informed Ms Buddle's recommendations.

Dated this 16th day of May 2024



M A Mehlhopt

Counsel for the Canterbury Regional Council