

**BEFORE INDEPENDENT HEARING COMMISSIONERS
AT CHRISTCHURCH**

**I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHAKE
KI ŌTAUTAHI**

UNDER the Resource Management Act 1991

IN THE MATTER of submissions and further submissions on Proposed Plan Change 14 to the Christchurch District Plan (PC14)

SUBMITTER **Danne Mora Limited/ MILNS PARK LTD**
Submitters #903/ 916

**SUPPLEMENTARY LEGAL SUBMISSIONS ON BEHALF OF DANNE MORA
LIMITED/ MILNS PARK LIMITED**
11 April 2024

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INTRODUCTION

- 1.1 The hearing of submissions and evidence on behalf of Danne Mora Holdings Limited and Milns Park Limited took place on 22 November 2023. Further supplementary submissions were requested, the expectation being that these submissions would be provided prior to a resumption of the hearings into PC14 in January 2024. As resumption of the hearing has been delayed because of uncertainty regarding the progress of PC14, until recently it has been unclear whether these supplementary submissions would be required. That issue has now been clarified given the direction by Government that the Council is required to proceed with giving effect to Policy 3 of the NPS-UD.
- 1.2 By way of brief recap, our clients opposed the extent of High-Density Residential zoning (HRZ) proposed in PC14 as notified for the North Halswell ODP area (NHODP). Mr. Kleynbos has recommended that the HRZ be extended in his s 42A Report, a recommendation which is also opposed.
- 1.3 The position taken by my clients at the hearing was that the extent of HRZ proposed for the NHODP area was not the most appropriate zoning to give effect to the NPS-UD 2020. This position was based on the following reasons:
 - (a) Zoning is unlikely to be commercially feasible, a view shared by the economic experts;
 - (b) The infrastructure is not available to sustain the proposed zoning. There is no expert infrastructure evidence before the Panel to suggest otherwise.
 - (c) No analysis has been undertaken as to whether the level of HRZ proposed is commensurate with the level of commercial and community activity proposed for the North Halswell Town Centre Zone (TCZ).
- 1.4 The relief sought of a reduced HRZ combined with MRZ for the balance of the North Halswell ODP area (NHODP) was regarded as the most appropriate for the reasons stated in evidence on behalf of Danne Mora.
- 1.5 Rezoning land to HRZ in the NHODP to the extent shown either in the Proposed Plan as notified, or in Mr. Kleynbos's s 42A Report, relies on Policy 3 (d) of the NPSUD.¹

Policy 3: *In relation to tier 1 urban environments, regional policy statements and district plans enable:*

¹ The extent of HRZ for the NHODP and adjacent land is inconsistent with the boundaries of the smaller Commercial Centre Walkable Catchment recommended for the North Halswell area under Policy 3 (c) of NPSUD:
<https://christchurchcity.maps.arcgis.com/apps/instant/interactivelegend/index.html?appid=54c7459e60c54ec99a85a870c732d0e1> (March 2024)

- (a) *in city centre zones, building heights and density of urban form to realise as much development capacity as possible, to maximise benefits of intensification; and*
- (b) *in metropolitan centre zones, building heights and density of urban form to reflect demand for housing and business use in those locations, and in all cases building heights of at least 6 storeys; and*
- (c) *building heights of at least 6 storeys within at least a walkable catchment of the following:*
 - (i) *existing and planned rapid transit stops*
 - (i) *the edge of city centre zones*
 - (ii) *the edge of metropolitan centre zones; and*
- (d) *within and adjacent to neighbourhood centre zones, local centre zones, and town centre zones (or equivalent), building heights and densities of urban form commensurate with the level of commercial activity and community services.*

1.6 During the hearing, a question posed by the Panel was whether a rezoning of land to HRZ under Policy 3(d) had to be "infrastructure ready", as that term is defined in Clause 3.4 (3) the NPS-UD².

1.7 Furthermore, the Commissioners referred to the case for the City Council being that the existing District Plan provides at least sufficient development capacity, so meets the requirement of Policy 2 of the NPS-UD:

Policy 2: *Tier 1, 2, and 3 local authorities, at all times, provide at least sufficient development capacity to meet expected demand for housing and for business land over the short term, medium term, and long term.*

1.8 Indeed, the Council's position is that excess or surplus capacity will be provided well beyond the 30-year planning horizon set out in the NPS-UD. The proposition advanced through questioning was whether this surplus (as opposed to **sufficient**) capacity is required to be infrastructure ready?

1.9 The reality of course is that should the extent of HRZ sought by the Council in PC14 as notified and as recommended to be expanded by Mr. Kleynbos, be accepted by the Panel, this zoning will have legal effect once the Council accepts the Panel's recommendations i.e. it will become a live zoning. Accordingly, from that point in time any landowner

² (3) Development capacity is **infrastructure-ready** if:

(d) *in relation to the short term, there is adequate existing development infrastructure to support the development of the land*

(e) *in relation to the medium term, either paragraph (a) applies, or funding for adequate development infrastructure to support development of the land is identified in a long-term plan*

(f) *in relation to the long term, either paragraph (b) applies, or the development infrastructure to support the development capacity is identified in the local authority's infrastructure strategy (as required as part of its long-term plan).*

within the North Halswell ODP area (NHODP) can immediately seek to develop land rezoned as HRZ in accordance with its provisions. The HRZ becomes plan enabled capacity. This is different to surplus capacity which is the subject to other provisions that dictate when it can occur, and the circumstances under which it can occur.

ANALYSIS

Does a rezoning of land to HRZ under Policy 3(d) equate to "Development Capacity"?

- 1.10 The proposed HRZ falls within the first component of the definition of "Development Capacity" in the NPSUD.

Development capacity means the capacity of land to be developed for housing or for business use, based on:

- (a) *The zoning, objectives, policies, rules and overlays that apply in the relevant proposed and operative RMA planning documents; and*
- (b) *The provision of adequate development infrastructure to support the development of land for housing or business use*

- 1.11 The HRZ is a particular form of zoning supported by associated objectives, policies and rules. Accordingly, while Policy 3(d) does not specifically refer to "development capacity" as included in Policy 3 (a) in respect of city centre zones, it is submitted the application of a zone and supporting provisions to provide for "*building heights and densities of urban form*" to give effect to Policy 3 (d) must mean this is enabling of (or purporting to enable) "development capacity" within and adjacent to the Town Centre Zone (TCZ) in North Halswell.
- 1.12 Policies 3(a), (b) and (d) all refer to buildings heights and density, a distinction between (d) and the others is that (d) refers to density in the plural rather than the singular i.e. densities rather than density. This suggests that a mixture of densities is contemplated by Policy 3(d) within or adjacent to a neighbourhood centre zones, local centre zones and town centre zones. Policy 3 (c) omits any reference to density, referring solely to building heights.
- 1.13 There are further contrasts between the various sub-policies in Policy 3. For example, a contrast between Policy 3 (a) and 3 (d) is that the former requires "as much development capacity as possible" whereas the latter requires a level of development capacity that is commensurate with the level of commercial activity and community services. Relatively speaking, Policy 3(a) can be read as being significantly more directive in enabling development capacity.
- 1.14 The mechanisms for enabling development capacity in Policy 3(a) are "*building heights and density of urban form*", as expressed in the zone provisions for the City Centre. It must logically follow that adopting the same mechanisms to give effect to Policy 3 (d)

means that the intended outcome for Policy 3 (d) is the same i.e. the enablement of development capacity. As such, correctly interpreted, Policy 3 (d) and indeed Policies 3(b) and 3 (c) must be read as meaning that enabling *building heights and density* [or densities] *of urban form* for these Policies is synonymous with "development capacity". The fact that Policy 3 (d) does not explicitly refer to "development capacity" is therefore of limited, if any, significance from an interpretative point of view.

1.15 Accordingly, if PC14 purports to provide development capacity within the NHODP area via HRZ rezoning), it necessarily follows, in my submission, that this "plan enabled" development capacity must also be supported by existing or planned infrastructure. It must be "infrastructure ready" in accordance with the NPSUD.

1.16 Looking beyond Policy 3, the immediate context is Policy 4 of the NPSUD:

Policy 4: *Regional Policy Statements and district plans applying to tier 1 urban environments modify the relevant building height or density requirements under Policy 3 only to the extent necessary (as specified in subpart 6) to accommodate a qualifying matter in that area.*

1.17 As is evident from a reading of PC14 and supporting documents/evidence, the lack of adequate infrastructure to support an "upzoning" of land to MRZ has been applied by the Council as a qualifying matter. Put another way, upzoning to MRZ is not considered to be "infrastructure ready" for the purposes of the NPS-UD in certain locations of the City.

1.18 There is no logical reason why the absence of adequate infrastructure should not apply, where relevant, to an upzoning of land to give effect to any component of Policy 3. Indeed, this is specifically recognised in the Implementation Clause 3.33: *Requirement if qualifying matter applies:*

(1) *This clause applies if a territorial authority is amending its district plan and intends to rely on Policy 4 to justify a modification of the direction in Policy 3 in relation to a specific area.*

(2) *The evaluation report prepared under section 32 of the Act in relation to the proposed amendment must:*

(a) *Demonstrate why the territorial authority considers that:*

(i) *the area is subject to a qualifying matter; and*

(ii) *the qualifying matter is incompatible with the level of development directed by Policy 3 for that area; and*

(b) *assess the impact that limiting development capacity, building height or density (as relevant) will have on the provision of development capacity; and*

(c) *Assess the costs and broader impacts of imposing those limits*

.....

- 1.19 I have highlighted sub-clause 33 (2)(b) as providing further support for the submission above that building heights and density of urban form in Policy 3 (d) are synonymous with "development capacity". Simply put, the sub-clause establishes a clear link between building height and density and development capacity. In other words, it says that if building heights and density are limited, this may affect the provision of development capacity.
- 1.20 Should the Panel be so minded, the acknowledged absence of adequate infrastructure can however be looked at through the lens of a qualifying matter for the specific NHODP area.
- 1.21 It is submitted that when considering the impact the alternative proposed by Danne Mora/ Milns Park may have on development capacity within the NHODP area, it can readily be concluded that such a impact is either minimal or non-existent. This is because the development capacity that can be realised for this area is fundamentally constrained by the infrastructure that has been designed, planned and installed for a particular level of development. In addition, there is an absence of any viable proposal or funding to augment this infrastructure to accommodate extensive HRZ within the NHODP area.
- 1.22 As to whether adopting infrastructure constraints as a qualifying matter is incompatible with the level of development directed by Policy 3 (d) for the NHODP area, this is difficult to assess if, as pointed out in submissions and evidence, the Council's supporting analysis has failed to consider what is commensurate with the commercial/community activity within the TCZ, and failed to take into account the fact that residential development has long been contemplated for this Zone. As set out in evidence, the latter is a consequence of the scale of the TCZ and the cap on commercial activity, which will result in a surplus of land to be used for residential development within the TCZ.

Other Relevant Provisions of the NPS-UD – Objectives and Policies

- 1.23 Looking beyond the immediate context of Policy 3, other provisions of relevance to the question addressed here include Objective 6 of the NPSUD, which was specifically referred to by Commissioner Robinson at the hearing. Objective 6 is to be implemented by the subordinate policies, Policy 3 included.
- 1.24 Objective 6 provides:

Objective 6: *Local authority decisions on urban development that affect urban environments are:*

- (a) *integrated with infrastructure planning and funding decisions; and*
- (b) *strategic over the medium term and long term; and*

(c) *responsive, particularly in relation to proposals that would supply significant development capacity.*

- 1.25 Local authority decisions for the purposes of Objective 6 include decisions on Plan Change 14 i.e the decisions fall within the definition of a "planning decision" in the NPS UD. For present purposes, it includes a decision as to the zoning of land within the NHODP area in accordance with Policy 3(d) of the NPSUD.
- 1.26 All three requirements or criteria in Objective 6 must be met in any decision; therefore a rezoning which fails to meet one or more of the requirements does not implement/is not the most appropriate for achieving Objective 6.
- 1.27 The case for my clients is that the rezoning it seeks is directly integrated or co-ordinated with the infrastructure planning for all the NHODP area, planning that has taken place in conjunction with the Council. This is evidenced by, for example, the cost sharing agreement entered into by Danne Mora and the Council which provides for stormwater management of not just development within the NHODP area, but a wider catchment³. The Joint Witness Statement of the Infrastructure Experts dated 05 October 2023 records agreement that this infrastructure does not support high density re-zoning within the North Halswell ODP area.
- 1.28 The alternative HRZ proposed in either PC14 as notified, or in the S42A Report, is not supported by any evidence of co-ordinated landuse/infrastructure planning to facilitate or enable development in accordance with the extent of HRZ proposed.
- 1.29 Further, there are no funding decisions in any relevant annual plan, long term plan or the Council's 30-year infrastructure strategy which identify planned infrastructure upgrades to enable the extent of HRZ development proposed by the Council/ s 42A Reporting Officer. While it may be accepted that certainty is not necessarily required, it becomes a purely speculative exercise to suggest that the infrastructure funding required to enable the extent of HRZ proposed will become available during the lifetime of the District Plan or beyond. Other funding priorities, such as the renewal of existing aged infrastructure (as referred to by Mr. Verstappen at the hearing), may well take precedence.
- 1.30 In terms of Objective 6 (b), this relates to the medium and long term, temporal periods defined in the NPSUD. Quite what strategic decision making in accordance with Objective 6 (b) would entail is not made clear, however it can be interpreted as meaning that decisions must be made with the achievement of a particular goal in mind. In that respect, if the goal of the extended HRZ is to achieve a greater level of intensification adjacent to the TCZ in both the medium and long term then the means of achieving this goal, including how to overcome barriers such as infrastructure provision, should be made clear to the Panel. If we consider the relief sought by Danne Mora/Milns Park within that context, there is an obvious case for concluding that it can more readily implement

³ See evidence of Jamie Verstappen at paragraphs 4.2-4.4

Objective 6(b) in the sense that the zoning sought by my clients represents an achievable goal with no obvious barriers.

- 1.31 Objective 6 (c) is likely to be of most relevance to private plan changes – see Policy 8 of the NPSUD. To the extent it may be relevant to the respective positions of my clients and the Council/S 42A Reporting Officer, it is submitted that the zoning sought by the latter does not supply significant additional development capacity for the reasons stated above i.e. it is not infrastructure ready.
- 1.32 It is also noted that Policy 10 (b) also adopts the approach of integrated planning:

Policy 10: *Tier 1, 2, and 3 local authorities:*

(b) Engage with providers of development infrastructure and additional infrastructure to achieve integrated land use and infrastructure planning.

- 1.33 For present purposes, beyond the formal submission/hearing process no engagement has taken place with landowners within the NHODP area that are responsible, through agreement with the Council, for providing all of the infrastructure to support development, and which will subsequently be vested in the Council as network infrastructure.
- 1.34 Beyond the above-mentioned objectives and policies, other objectives refer to enablement including, for example, Objective 3 which requires District plans to enable more people to live areas of the urban environment where one or more factors apply such as within or near a centre zone. Enable or "make possible" goes beyond, in my submission, simply providing for plan enabled capacity via a rezoning; rather, it extends to a requirement that development in accordance with zone provisions are infrastructure ready.

Closing Comment

- 1.35 It is stressed once again that the relief sought by our clients is based on considerations that are very specific to the NHODP area, and is supported by expert opinion filed on behalf of, in particular, the infrastructure experts. The relief sought is not a fundamental challenge to PC14 itself, and should not have wider implications for the balance of recommendations the Panel may make to give effect to Policy 3 of the NPSUD. Different circumstances may well apply to other long-established centres, meaning they are in a better position to support a rezoning which enables greater levels of intensification, this being a matter of evidence.

G J Cleary

11 April 2024.