

Before the Independent Hearing Panel
Appointed by the Christchurch District
Council

Under the Resource Management Act 1991
In the matter of a hearing of submissions on Plan Change 14 (Housing and
Business Choice) to the Christchurch District Plan
Topic: Residential Zones

Memorandum of counsel for Red Spur Limited (Submission ID: 881)

30 April 2024

Submitter's solicitors:

Sarah Eveleigh | Sarah Schulte
Anderson Lloyd
Level 3, 70 Gloucester Street, Christchurch 8013
PO Box 13831, Armagh, Christchurch 8141
P: + 64 3 379 0037
E: sarah.eveleigh@al.nz | sarah.schulte@al.nz

**anderson
lloyd.**

May it please the Commissioners

- 1 This memorandum is filed on behalf of Red Spur Limited (**Red Spur**). Red Spur's submission relates to the PC14 provisions to be applied to the Redmund Spur subdivision, located on the Port Hills at Cashmere Road, between Halswell Quarry and Westmorland.

Further response filed

- 2 In accordance with the IHP's request during presentation of Red Spur's submission, recorded in Minute 29, a further table prepared by Ms Aston is attached to this memorandum. The table sets out the zoning and related provisions applied to the site under the operative District Plan, and as recommended or sought through PC14 as notified, Red Spur's submission, the s42A report, rebuttal evidence, and the final preferred relief.

Port Hills Stormwater QM

- 3 Red Spur also wishes to take this opportunity to confirm its position in respect of the proposed Port Hills Stormwater QM, given the way in which this has developed during the hearing.
- 4 In legal submissions for the Residential hearing, we noted that the Port Hills Stormwater QM as proposed at that time had only arisen through evidence for Canterbury Regional Council (**CRC**), and that Red Spur has not been in a position to provide evidence in response, noting that the proposal for a Port Hills Stormwater QM over the majority of the Port Hills was not anticipated from CRC's submission, and was not apparent to Red Spur until it reviewed the rebuttal evidence of Mr Kleynbos. While acknowledging that the Panel has the ability to make recommendations on any matter identified during the hearing and is not limited to being within the scope of submissions,¹ Red Spur is concerned that the timing of introduction of the Port Hills Stormwater QM has not enabled it to be appropriately tested, and is in conflict with the Hearing Procedures (at [72]) which direct that submitters must not extend beyond the scope of their original submissions in terms of the alterations to the proposed plan change that they seek in their evidence.
- 5 Ms Buddle has now outlined a chronology of events relating to the Port Hills Stormwater QM.² That confirms that the timeline outlined above. Red Spur maintains its procedural concerns about the late introduction of this

¹ RMA Schedule 1, clause 99

² Summary statement of evidence of Meg Buddle, presented at hearing on 24 April 2023, Appendix 1

proposed QM and the prejudice to it and to other landowners (across extensive areas of the Port Hills) that would be affected by it.

- 6 On behalf of Red Spur, Ms Aston took part in the first round of planners' conferencing on the Port Hills Stormwater QM. However, Red Spur does not consider that it is appropriate to pursue conferencing of planners to reach a conclusion on application of the Port Hills Stormwater QM, when parties have not had a sufficient opportunity to provide technical expertise and evidence on the qualifying matter itself, being the quality and quantity of stormwater generated during and post construction of dwellings on the Port Hills, and the management and effects of that stormwater generated. These are complex matters that need careful evaluation. The evidence that has been available on this matter is that of the CRC and Council witnesses and is "broad brush" in relation to hill suburbs generally. This falls short of the standard necessary to justify a qualifying matter, as was foreshadowed by Mr Norton in his evidence, when he identified that a reason a stormwater qualifying matters was not proposed as part of PC14 was because "the extent of hydraulic modelling that would be required to support the evidential threshold for a Qualifying Matter across the whole network could not be prepared in time for the plan change".³
- 7 Red Spur's position is that proceeding to develop a planning response in reliance on this evidence is inappropriate in the absence of robust technical assessment, is prejudicial to Red Spur and other landowners who have not had an opportunity to seek their own technical advice or provide expert evidence on stormwater management, and incurs further cost to Red Spur in participating in the process. For these reasons, Red Spur requested that Ms Aston not take part in the second round of planners conferencing on the Port Hills Stormwater QM.
- 8 Having reviewed the second planning Joint Witness Statement in relation to the Port Hills stormwater QM, Red Spur remains concerned that the proposed provisions are not sufficiently grounded in technical evidence and will be difficult to administer.
- 9 Red Spur has reviewed the evidence of civil engineer for Cashmere Land Developments Ltd, Mr Michal Glatz, dated 11 April 2024 and appended to the legal submissions for Cashmere Land Developments Ltd. Red Spur agrees with and supports that evidence, and notes that the Redmund Spur subdivision is similar to that of Cashmere Land Developments, being:

³ Statement of evidence of Robert Brian Norton on behalf of Christchurch City Council – Stormwater and Low Public Transport Accessibility Area, dated 11 August 2023, at [55].

- (a) On land with a similar slope, aspect and topography. Red Spur therefore expects similar engineering assessment with regard to the quantity and quality of stormwater generated from its site;
 - (b) A greenfield subdivision, where there is the ability to comprehensively manage both construction phase and post-development stormwater;
 - (c) Subject to resource consent and engineering requirements which require approval of stormwater management. The discharge of construction phase stormwater from Redmund Spur utilises the best practicable erosion and sediment control measures, and Red Spur has been recognised for its exemplary performance in respect of stormwater management (as addressed through earlier legal submissions and at the hearing);
 - (d) Located above existing stormwater management areas, namely the extensive Sutherlands Basins and the older Eastman Wetlands area.
- 10 For these reasons, Red Spur maintains its view that it is not necessary or appropriate to apply the Port Hills Stormwater QM to restrict application of the MDRS to Redmund Spur. The merit of this position appears to be recognised by Ms Buddle in the latest Joint Witness Statement, which records her view that "some greenfield sites (being Redmund Spur and Worsleys Spur) discharge into newer stormwater facilities and could potentially cater for greater densities".⁴

Dated 8 November 2023



Sarah Eveleigh
Counsel for Red Spur Limited

⁴ Joint statement of planning experts on Port Hills stormwater qualifying matter, Annexure B, 24 April 2024

Appendix 1

Red Spur Limited (Submission 881) – Operative District Plan Status & Alternative Zoning/Precinct Options under PC14 – Response prepared by Fiona Aston

As requested by the Hearings Panel, below is a table outlining the various zoning and associated precinct/overlay ‘options’ for Redmund Spur which have been put forward as part of the PC14 hearings process, in comparison with its planning status under the Operative Christchurch District Plan.

The most critical concern with PC14 for Red Spur Ltd regards interpretation and application of the Operative District Plan rules and how they may be ‘carried over’ and applied in PC14. This is addressed in Footnote 8 and reproduced below:

The Operative District Plan Redmund Spur Mixed Density Overlay is unique. It is the only location zoned Residential Hills where there is no minimum residential density standard (Chapter 14) for lots under 1500m². This has enabled development of the smaller sites (under 650m²) where a building consent is obtained ahead of subdivision consent, and the dwelling is built to ‘lock up’ stage before the certificate of title is issued. It is critical that these provisions are retained in PC14 (if not rezoned MRZ with the MRS applying which specifies no minimum lot size) as this is essential to achieving the mixed density character anticipated for the Spur. As an example, a cluster of appx 9-10 medium density houses (with site sizes small as 270m²) are proposed around the neighbourhood centre as part of Stage 6 (the current stage of development).

The Council planner interpretation of the above subdivision (8.6.2) and residential density (14.7.2.1) rules are that a minimum net site area of 650m² applies for subdivision around existing and proposed buildings; and the minimum residential density standard is 650m². This is contrary to CCC implementation of these rules to date and is strongly opposed.

	Operative District Plan (ODP)	Notified PC14	Red Spur submission if LTPA QM retained	Red Spur submission if LTPA QM not retained	PC14 – s42A report	PC14 – Council planner rebuttal	Red Spur – response to s42A report & rebuttal if PHs SW QM accepted	Red Spur – response to s42A & rebuttal if LTPA QM is accepted	Red Spur – response to s42A & rebuttal if LLR is accepted
Zoning & Overlay/precinct	Residential Hills (RH), Redmund Spur Mixed Density Overlay (RS MDO)	Large Lot Residential (LLR), RS MDO	Residential Hills, RS MDO	Medium Density Residential	LLR with RS MDO or if Panel considers Redmund Spur is a relevant residential zone: MRZ, with Suburban Hill Density Precinct through applying the LPTAA QM	If Port Hills Stormwater (PH SW) QM accepted retain Operative zoning and associated controls i.e. Residential Hills Zone, RS MDO but potentially with additional restrictions relating to site coverage + earthworks to give effect to NPS-Freshwater	Residential Hills Zone, RS MDO but with QM restrictions only to the extent necessary to address the SW QM i.e. effects of intensification on potential for sedimentation of waterways and flooding (due to increased soil disturbance and increased quantity of stormwater runoff).	MRZ, with RS Mixed Density Overlay but with QM restrictions only to the extent necessary to address the LPTA QM	LLR RS MDO
	Operative District Plan (ODP)	Notified PC14 (LLR, RS MDO)	Red Spur submission if LTPA QM retained (RH, RS MDO)	Red Spur submission if LTPA QM not retained (MRZ)	PC14 – s42A report (LLR, RS MDO or MRZ Suburban Hill Density Precinct)	PC14 – Council planner rebuttal (PH SW QM applies, RH RS MDO)	Red Spur – response to s42A report & rebuttal if PHs SW QM accepted (RH, RS MDO)	Red Spur – response to s42A & rebuttal if LTPA QM is accepted (MRZ,RS MDO)	Red Spur – response to s42A & rebuttal if LLR is accepted (LLR, RS MDO)
Zone objectives & policies	14.2.1.1 Policy - Housing distribution and density: Residential Hills (RH) Zone Covers all the living environments that are located on the slopes of the Port Hills from Westmorland in the west to Scarborough in the east. It provides principally for low density residential development that recognises the landscape values of the Port Hills, including opportunities for planting and landscaping, and control of reflectivity of roof finishes in order to blend buildings into the landscape. Provision is made for a range of housing options that will enable a typical family home	14.2.1.1 Policy - Housing distribution and density: Residential Large Lot Zone Covers a number of areas on the Port Hills where there is an existing residential settlement that has a predominantly low density or semi-rural character as well as the Akaroa Hillslopes and rural residential areas of Samarang Bay and Allandale on Banks Peninsula, <u>and a low density hamlet centred on the northern part of Gardiners Road, Redmund Spur, and 86 Bridle Path Road.</u> <u>14.2.5.11 Policy – Managing site-specific Residential Large Lot development</u>	14.2.1.1 Policy - Housing distribution and density: Residential Hills Zone Covers all the living environments that are located on the slopes of the Port Hills from <u>Westmorland Quarry Hill</u> in the west to Scarborough in the east. (Policy 14.2.5.11 no longer applies)	14.2.1.1 Policy - Housing distribution and density: Medium Density Residential Zone: The zone includes the activities described in objective 14.2.6 and is used predominantly for residential activities with moderate concentration and bulk of buildings, such as detached, semi-detached and terraced housing, low-rise apartments, and other compatible activities	As per notified PC14; or policy for MRZ (no recommended policy changes referencing the Suburban Hill Density Precinct) ¹	As for ODP i.e. 14.2.1.1 RH zone policy; and new policy regarding risk to water quality posed by increased density in the Port Hills residential areas.	As per RS submission ie amended 14.2.1.1 RH Zone policy (zoned Residential Hills RS MD Precinct); and potentially new policy regarding risk to water quality posed by increased density in the Port Hills residential areas.	MRZ, with RS Mixed Density Overlay 14.2.1.1 MR Zone policy (RS Mixed Density Precinct)	14.2.5.11 Policy – Managing site-specific Residential Large Lot development a. Enable development within mixed density precincts in a way that: i. Within the Rural Hamlet area, avoids reverse sensitivity to airport activities and surrounding rural environment; ² ii. Within the Redmund Spur area, provides for a mixture of <u>medium</u> , low-density and <u>large lot residential</u> and rural residential living opportunities; and iii. Within the 86 Bridal Path Road area, limits the

	to be retained, but also provide greater housing stock for dependent relatives, rental accommodation, and homes more suitable for smaller households (including older persons). Provision is also made for a range of appropriate non-residential activities	a. Enable development within mixed density precincts in a way that: i. Within the Rural Hamlet area, avoids reverse sensitivity to airport activities and surrounding rural environment; ii. Within the Redmund Spur area, provides for a mixture of low-density residential and rural-residential living opportunities; and iii. Within the 86 Bridal Path Road area, limits the overall scale of development across the site to be consistent with the rural-residential setting across the foothills of Heathcote Valley							overall scale of development across the site to be consistent with the rural-residential large lot residential setting across the foothills of Heathcote Valley
	Operative District Plan (ODP)	Notified PC14 (LLR, RS MDO)	Red Spur submission if LTPA QM retained (RH, RS MDO)	Red Spur submission if LTPA QM not retained (MRZ)	PC14 – s42A report (LLR, RS MDO or MRZ Suburban Hill Density Precinct)	PC14 – Council planner rebuttal (PH SW QM applies, RH RS MDO)	Red Spur – response to s42A report & rebuttal if PHs SW QM accepted (RH, RS MDO)	Red Spur – response to s42A & rebuttal if LTPA QM is accepted (MRZ, RS MDO)	Red Spur – response to s42A & rebuttal if LLR is accepted (LLR, RS MDO)
Lots sizes Chapter 8 Subdivision	Min 30% - min 1500m ² Balance – min 650m ² No minimum where lot is around existing or proposed building which either meets all relevant standards for a permitted activity in relation to the proposed allotment boundaries, or has been approved through a resource consent in relation to any standards that are not met, except that minimum lot sizes in Table 6 apply. No minimum specified in Table 6 for RHZ including RS MDO (Rule 8.6.2)	As for Operative District Plan (ODP)	Min net site area lot size 650m ² , except and that a maximum of 15% of lots in the entire Redmund Spur Precinct area shall have a min net site area of 400m ² . No minimum where lot is around existing or proposed building.	As per Schedule 3A MDRS including subdivision is a controlled activity, but with: a) minimum vacant lot size of 400m ² for a maximum of 15% of lots for the entire Redmund Spur; and b) for the balance lots, a minimum vacant lot size of 650m ² c) No minimum where lot is around existing or proposed building.	As for notified PC14 ODP; or if Panel considers Redmund Spur is a relevant residential zone: MRZ, with Suburban Hill Density Precinct through applying the LPTAA QM ie min lot size 650m ² . ⁷ No min. where lot is around existing or proposed building	As for Operative District Plan ³	MDRS; or if Panel considers within scope and necessary: a minimum vacant lot size of 400m ² for a maximum of 15% of lots for the entire Redmund Spur ⁴ ; and for the balance lots, a minimum vacant lot size of 650m ² No min where lot is around existing or proposed building	MDRS; or if Panel considers within scope and necessary: a minimum vacant lot size of 400m ² for a maximum of 15% of lots for the entire Redmund Spur; and for the balance lots, a minimum vacant lot size of 650m ² No min where lot is around existing or proposed building	Min lot size 650m ² , except and that if the Panel considers necessary – 30% - min 1200m ²⁵ No minimum where lot is around existing or proposed building: Or less preferred as per ODP

	Operative District Plan (ODP)	Notified PC14 (LLR, RS MDO)	Red Spur submission if LTPA QM retained (RH, RS MDO)	Red Spur submission if LTPA QM not retained (MRZ)	PC14 – s42A report (LLR, RS MDO or MRZ Suburban Hill Density Precinct)	PC14 – Council planner rebuttal (PH SW QM applies, RH RS MDO)	Red Spur – response to s42A report & rebuttal if PHs SW QM accepted (RH, RS MDO)	Red Spur – response to s42A & rebuttal if LTPA QM is accepted (MRZ, Suburban Hill Density Precinct)	Red Spur – response to s42A & rebuttal if LLR is accepted (LLR, RS MDO)
Residential Density Chapter 14 Residential)	Max. no. of lots 400 A minimum of 30% of sites shall have a minimum net site area of 1500m ² Balance of sites – no min site area ⁶ RDA – any activity not meeting above density standards by up to 10%; over 10% DA.	Max. no of lots 400 Min net site area 650m ² except that 30% of lots - min net site area 1500m ² Where site density standards exceeded by up to 10% - RD; over 10% DA.	No minimum	No minimum	As for notified PC14; or if MRZ Suburban Hill Precinct: Min net site area 650m ² .	As for Operative District Plan	Max no. of lots 400	Max. no. of lots 400 All other controls as per MDRS	Maximum no. of lots 400 and if the Panel consider necessary – 30% min 1200m ² ⁷ Balance of sites – no minimum lot size RDA – any activity not meeting above density standards Or less preferred as per ODP
Other Relevant rules	For sites greater than 1000m ² – max site coverage 25% or 250m ² of ground floor area to a max of 350m ² in total floor area. For sites less than 450m ² the max site coverage shall be 45% All other sites – max 35% site coverage RDA - the creation of any attached residential units where the total floor area is greater than 500m ² .	Site coverage - As for LLRZ ie max 40% or 300m ² , whichever is the lesser, except that: For sites greater than 1000m ² - 25% or 250m ² of ground floor area to a maximum of 350m ² in total floor area. For sites less than 450m ² the max site coverage shall be 45%	For sites less than 650m ² – 50% site coverage, otherwise 35% (ie. standard ODP site coverage for Residential Hills zone).	As per Schedule 3A MDRS and for lots under 650m ² net site area, a maximum site coverage of 50%	As for notified PC14; or if MRZ Suburban Hill Precinct: Max site coverage 35%; max height 8m; min front yard 4.5m. 5.5m for garage door facing street, otherwise MDRS	As for Operative District Plan ⁷	MDRS & sunlight QM applies; or if Panel considers within scope and necessary: for lots 650m ² or greater, a max site coverage of 35% or 350m ² whichever is the lesser ⁸ ; and for lots under 650m ² net site area, a maximum site coverage of 50% ⁹ . Site coverage excludes permeable decks i.e. decks which allow water to pass through and do not concentrate runoff. RDA – where site coverage exceeds permitted standards. Matter of discretion: <i>the effectiveness and appropriateness of proposed mitigation measures in managing the effects of additional stormwater runoff on stormwater quantity and quality and the impact on downstream flooding</i>	MDRS except that maximum height is 8m & sunlight QM applies ¹⁰ . RDA where max height 9m + non complying over 9m ¹¹ + potentially amend matters of discretion to address LTPA QM for RDAs. ¹² NB do not oppose CCC planner rebuttal recommendation for front yard 4.5m. 5.5m for garage door facing street but do not consider that this is related to the LTPA QM	For sites less than 450m ² – 45% site coverage, otherwise max site coverage 35%. If the Panel considers necessary & within scope: For sites over 1000m ² : -max site coverage 35% or max GFA for buildings on each site 500m ² , whichever is the lesser ⁵ Or less preferred as per ODP

¹ See Ike Kleynbos s42A paragraph 10.1.455

² Rural Hamlet area is not a mixed density precinct

³ Expert stormwater engineering evidence for CCC and ECAN recommends more restrictive controls which are ultra vires (Waikanae case) including removing 10% additions to site coverage standards as RDA, removing earthworks exemption for earthworks subject to an approved building consent where they occur wholly within the footprint of the building; and notes there is no existing ODP control over impervious surface coverage. A principle concern appears to be intensification within existing urban areas where infrastructure is not 'sized' to accommodate intensification. Greenfield development can be sized for this. In the case of Redmund Spur retaining the ODP limit of max 400 lots overcomes any such concerns.

⁴ A significant portion of Redmund Spur is flatter north facing land well suited to medium density housing. Retaining the ODP existing upper limit of 400 lots for Redmund Spur as a whole will limit the number of lots and potential for site disturbance to the 'status quo' consistent with Waikanae (see also comments re site coverage rules)

⁵ If operative Residential Hills Redmund Spur Mixed Density Overlay Zone is not considered to be relevant residential zone, then it may be outside scope to amend the applicable Operative District Plan rules as requested

⁶ The Redmund Spur Mixed Density Overlay is unique. It is the only location zoned Residential Hills where there is no minimum residential density standard (Chapter 14) for lots under 1500m². This has enabled development of the smaller sites (under 650m²) where a building consent is obtained ahead of subdivision consent, and the dwelling is built to 'lock up' stage before the certificate of title is issued. It is critical that these provisions are retained in PC14 (if not rezoned MRZ with the MRS applying) as this is essential to achieving the mixed density character anticipated for the Spur. As an example, a cluster of appx 9-10 medium density houses (with site sizes small as 270m²) are proposed around the neighbourhood centre as part of Stage 6 (the current stage of development). The Council planner interpretation of the above subdivision (8.6.2) and residential density (14.7.2.1) rules that a minimum net site area of 650m² applies for subdivision around existing and proposed buildings; and the minimum residential density standard is 650m². This is contrary to CCC implementation of these rules to date and is strongly opposed.

⁷ Council Planner recommended further discussion through expert conferencing, which took place in December 2024. A Joint Witness Statement (JWS) was in preparation at time of finalising this advice (mid February 2024).

⁸ The ODP limit of maximum site coverage 250m² for 1000m²+ sites is unreasonable, too restrictive and not warranted to mitigate effects of the SW-QM given as a greenfield area infrastructure can be sized to manage stormwater effects; appropriate mitigation is already provided for by the Te Kura (Sutherlands) Stormwater Facility for the 64% of the Redmund Spur sites which are within the Heathcote catchment and other mitigation options exist for the remaining 36% of sites within the Halswell catchment; and the ODP 25%/max 250m² site coverage rule is designed to manage visual effects, not stormwater effects. 350m² max site coverage is consistent with the maximum permitted for sites up to 1000m² i.e. 35% and is a more reasonable upper limit which enables a reasonable sized house including accessory buildings on a larger site. Excluding permeable decks addresses one of the problems with the existing 25% site coverage rule which captures many hillside decks which are often higher than the current DP exclusions allow i.e. higher than 800mm, and larger than the maximum excluded size (6m²).

⁹ The amount of site disturbance on smaller sites will be the same or less with a higher site coverage than on a larger site with a lower site coverage. e.g. 50% of 400m² is 200m² compared with 35% of 1500m² which is 525m², or under ODP provisions maximum site coverage 250m² for sites 1000m²+.

¹⁰ Max height limit of 8m restricts potential for more than one household unit per site and is consistent with the ODP height limit in the RPH Zone ie the status quo. Buildings up to 9m high must be RDA to retain the status quo. The alternative method of restricting development to one residential unit per site would exceed the ODP standards i.e. inconsistent with Waikanae.

¹¹ Consistent with status of height rules in ODP.

¹² This is potentially problematic as it is difficult to envisage circumstances where consent would be granted i.e. how the low PT accessibility constraint could be overcome on a case by case basis. ODP defines RDAs as require resource consent and are subject to standards and provisions specified in the District Plan. The Council will assess only the matters of non-compliance and may grant or refuse consent. If granting consent conditions may be imposed. The alternative of a non complying activity is with Waikanae: They require resource consent and are those that cannot comply with a standard in the District Plan or which are specified as non-complying because the District Plan has anticipated that they would normally be inappropriate.