Summary Statement - Andrew McCarthy - Submitter #681 - PC14

Introduction

1. Thank you for hearing me today.

2. I had previously advised that I would have expert legal, transport, planning and infrastructure advisors with me at today's hearing in line with the evidence already presented to the Panel. However, the impending change of government and National's pre-election promise to scrap the 'sausage flat law' has tempered my willingness to keep spending money on what most likely will be a fruitless exercise. I've already spent nearly $30,000 of my own money on experts and a further $30,000 on building plans expecting that the Council would enact PC14 per the Resource Management (Enabling Housing Supply & Other Matters) Amendment Act 2021 (RMAA).

3. That said, I do think it's important that the opportunity to put my case is not lost, hence I'm here. I beg the indulgence of the Panel to talk to the evidence prepared by my experts. I have been briefed by each of them prior to appearing today, but the words I speak are my own. I will attempt to speak to my expert's evidence but if you do find that you have specific questions you would like them to answer I am sure I can arrange for this to be done in writing. This is my first ever time before such a panel so please be gentle and forgive any misunderstandings of procedure I might display.

4. Despite not being an expert in town planning, I have read many of the reports submitted by Council experts and watched many hours of the hearings to date, watching some of them even twice. I refer to those throughout this summary statement.

5. But before I get into the meat of my statement, I wish to talk about the context in which we are here today, the genesis of matters. I believe the RMAA is the single most consequential piece of town planning legislation in two generations, quite possibly longer. It came about because the Government, with cross party support, recognised that existing planning legislation was entrenching urban sprawl and having enduring negative effects on housing affordability by making it difficult to provide a truly competitive housing development market that provided for a range of housing types within existing living areas. I believe that this genesis should remain at the fore when the Panel decides on the recommendations it will make to Council, should you actually reach that point before the rug is swept from beneath you by impending legislative changes.

6. I mainly wish to talk about intensification on the Port Hills, but only because I don't have the bandwidth to deal with what I believe to be the multitude of missteps the CCC has made with PC14 across the City. I have found CCC's response to the Act to be a source of immense frustration. Having first notified a sensible response to the Act, this was rejected by Council elect. Subsequently, and in light of this rejection, we now find ourselves watching the same officers who wrote the original, sensible, proposed Plan Change twist themselves into knots to try and justify what is really just an expressed intention to enshrine many of the old planning rules over much of the City, i.e. the very rules that gave rise to the need for the Amendment Act in the first place.

7. It is instructive, I believe, no other Tier 1 Council in NZ has a public transport qualifying matter. Certainly not to the extent proposed by CCC. It also beggars belief that Parliament somehow forgot that Christchurch is on a different latitude to other Tier 1 Councils when legislating to set recession planes. Council's position on these matters is clearly absurd. I believe that many of the changes suggested by CCC have the effect of

thwarting the Act's intent and direction rather than giving effect to a plan change that faithfully administers the law as Parliament intended.

Matters Legal

8. Essentially, the RMAA was a directive piece of legislation. In terms of existing residential zones, my interpretation is that it **requires** intensification to be allowed everywhere, except where there is very good reason not to intensify, and those very good reasons are subject to a prescriptive process before they will be accepted to be appropriate constraints on intensification.

9. My argument is that the City Council has done and is doing all that it can to thwart intensification by grasping onto matters that Parliament would never have contemplated when enacting the RMAA. Not only has Council done this through its notified QMs, it has gone further in the hearings process by seeking to expand the restrictions during the IPI process. I will talk to these later on.

10. The single most important legal point I would make is a concurrence with Mr Matheson who represented Kainga Ora. He stated that objectives and policies in all the relevant Acts, Policy Statements and Plans cannot be used to write down a clearly expressed legal instruction and intention, such as one that intensification to *at least* MDRS levels should now be the baseline in all residential zones.

The Importance of Site Specific Analyses

11. Very clearly, no 'other' qualifying matter, per s77I(j) may be introduced to restrict intensification without identifying a specific characteristic *and then* conducting a site specific analysis to determine whether or not the proposed QM is appropriate before it can be deployed and then *only to the extent necessary*. The stringent bar that Parliament has required, use of the word 'only' and the repeated uses of the word 'specific' are a clear indication that Parliament expected QMs to be used sparingly and not to a great geographic extent. I find it hard to believe that the law's drafters would have intended that no intensification shall proceed as a permitted activity on Christchurch's Port Hills, which the CCC is now saying that it supports, on several fronts.

12. On the very meaning of '*site specific*', My Kleynbos before the Panel said that he took heart from Mr Matheson of Kainga Ora's comments on the meaning of this term, essentially concluding from Mr Matheson's remarks that CCC's approach was ok.

13. I rewatched KO's presentation after hearing this from Mr Kleynbos, and do not agree with his conclusion at all. Mr Matheson's exact words were that "*context in law is everything*". This is clearly open to interpretation, but he went on to say that:
    "You can't use an aggregated site analysis in order to try and argue 'well it's justified generally across everything' because I don't think that is consistent with the requirement to restrict it to the least extent practicable".

14. Yet this is precisely what CCC has sought to do with the LPTAQM, the sunlight access QM and now Port Hills Stormwater QM. I took Mr Matheson's comment on the meaning of site specific and the rest of his submission to mean that he clearly thinks CCC has gone well beyond its remit with the generous interpretation it has afforded itself as to the meaning of 'site specific'. My Kleynbos wants to have you believe that no intensification

is practicable on the Port Hills as a permitted activity. This just doesn't meet the sniff test as being a restriction to the least extent practicable.

The Importance of Policy 1 of the NPS UD

15. I watched the presentation of Kainga Ora to the Panel and I generally support Kainga Ora's contention that CCC is not doing enough to allow intensification in Christchurch. Mr Liggett for KO put it rather well when he said:

> *"Whilst CCC has taken some steps to allow intensification, they have taken many, many more to constrain that advancement."*

16. I noted that there was considerable discussion between the Panel and Mr Matheson around the importance of Policies 3 and 4 of the NPS-UD as they relate to Christchurch. But I feel the importance of Policy 1 has been missed in a few key aspects as they relate to the QMs proposed by CCC, especially that of the LPTAQM and now the dreaded Port Hills Stormwater QM.
17. The key phrases and words from Policy 1 are, I believe:

> "*as a minimum*"; and
> "*Variety of homes that: meet the needs in term of type, price and location*" ; and
> "*Support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets*;"

18. Very, very clearly the Council does not consider MDRS development appropriate for all of the Port Hills. So:

> a) the *minimum* of having the *variety* that MDRS standards would provide in *this* location is not met; and
> b) the proposed preclusion of MDRS standards from the Port Hills *does not* support competitive operation of markets in this location; and
> c) does not in any way *limit* possible adverse effects on competitive operations.

19. In simple terms, CCC is seeking to remove the *choice* that MDRS standards would have afforded homeowners and developers over all of the Port Hills. Removing choice clearly has an adverse effect on the ability of competition to flourish in this location and also limits the opportunity for communities to exercise self-determination and thereby maximise their well-being, which is a key element of Objective 1 of the NPS UD.

20. Ms Oliver in her evidence made the point that despite three storey (or higher?) building heights being permitted for some time in the central city, there has not been much take-up of this until recently. This may well be true, but it's not an argument that supports restricting such an opportunity from happening elsewhere. The law clearly intends that such an opportunity be available in **all** residential zones, and as attested by Ms Oliver, we now have evidence from the Central City that, when permitted, such an intensification may establish over time.

21. Council's own economics expert, Ian Mitchell, had this to say before the Panel:

> *"The more you restrict development capacity, the more likely you are to create upward pressure on housing costs. The more flexibility you give a housing market to grow supply the less likely you are to have an adverse impact on housing costs."*

22. You have read my original submission, which makes very clear just how much more expensive houses are (and by extension, land is) on the Port Hills, when compared to other Christchurch suburbs. Price, as we all know, is a reasonable proxy for demand when considering house prices, especially when considered in aggregate. The most desirable locations get the highest prices. CCC has considered demand in the aggregate, but has made no analysis that I could find regarding likely demand for a variety of housing types on the Port Hills, despite it clearly being an area of relatively high demand for housing.

23. Objective 3 of the NPS UD requires that the CCC's district plan enables *more* people to live in areas of high demand, yet CCC seeks to enshrine rules remarkably similar to the status quo and has recently proposed new rules that are even *more* restrictive than is currently permitted. CCC's position regarding the Port Hills is thus clearly contrary to Objective 3.

The Relative Unimportance of 'Plan-Enabled'

24. I noted some discussion between the Panel and witnesses regarding the meaning of 'enabled' in terms of the NPS-UD. Without wanting to teach the sucking of eggs, I want to make the point that the MDRS does not make provision for counting restricted discretionary activities as enabled. Schedule 3A of the RMAA is clear - MDRS intensification must be allowed as *permitted* activities. The consideration of whether a piece of land is enabled for development per the NPS UD *only* relates to the requirement that Tier 1 Councils must provide for housing development capacity. A council cannot comply with the MDRS baseline by creating zones that are then subject to restricted discretionary consents and attest that it has complied with the Act.

The Port Hills Stormwater QM

25. ECan has requested via the evidence of Ms Newlands that a new QM be established for the Port Hills, seeking to preclude all permitted intensification, and this is now supported by CCC. Ms Newlands for ECan described the reason for this at para 17 of her evidence as being:

> *"Increase in the discharge of sediment…this will contribute to an ecological decline of natural waterways and coastal estuary systems"*

26. Ms Newlands further states at para 33b that there are potential flooding impacts caused by an increase in stormwater quantity generated on the Port Hills.

27. My response to each of these broad statements is how much? How different will it be to the status quo? How important is it? What effects will occur? How big will they be?

28. Regarding stormwater volumes, Ms Newlands' evidence was directly contradicted by CCC's own stormwater expert, Brian Norton, who noted that for critical duration storms on the Heathcote/Opawaho (but also Halswell River) runoff volume from hills can be relatively easily captured by tanks as discharges from the hills have a much shorter critical duration than the wider river catchments. Council already has the ability to require - and does - the provision of retention tanks for hillside developments.

29. No attempt has been made in ECan's s32 report to quantify the effects of intensification, some intensification or the status quo, i.e. a range of possible solutions has not been considered. ECan's analysis can be summarised as hills runoff is bad, and there will be more, so it will be worse. How bad? We don't know. How much worse? We don't know. What would be the effect of greenfield building on the flat vs intensifying on the Hills? We don't know. What would be the effect of intensifying in already developed areas of Christchurch vs the Hills? We don't know.

30. The Port Hills has a variety of catchments with a variety of characteristics. Some are exclusively rural. Some are highly urbanised. Some are undergoing development and some parts even redevelopment. ECan asserts that development and building is poorly managed, increases sedimentary discharges and that these discharges are damaging, yet provides no observational data to show that this is the case. It may well be the case that rural discharges far outweigh the effects of redevelopment but we just don't know, or if ECan do, they certainly haven't told us by how much and then what those effects are. It should be borne in mind that rural sedimentary discharges are ongoing, whereas redevelopment discharges are much shorter in duration and over a much smaller geographic area.

31. Furthermore, no consideration has been given to differing points of discharge. Port Hills waterways discharge into at least four different receiving environments.

    a. Upstream waterways, like the Cashmere Stream, that are tributaries of the main rivers.
    b. Direct to the main river Heathcote/ Opawaho.
    c. Direct to the Avon/Heathcote Ihutai estuary.
    d. Direct to the ocean, east of Redcliffs.

32. One might reasonably consider that such different points of discharge would likely have different effects, but any such discussion is absent from the s32 report.

33. It is my contention that ECan, and by extension CCC, have failed to even establish that there is a problem to be addressed regarding sedimentation from intensification activities on the Port Hills. I also consider that the analysis provided is far too rudimentary to meet the regulatory tests necessary for the lawful establishment of a qualifying matter. It should be shown the door.

The LPTAQM Across The City

34. The whole basis for the LPTAQM is flawed. Council's argument is essentially this: It would be inefficient to allow apartment living, especially three storey apartment living, more than 800m from a busy bus line as any more than this is too far to walk. Setting

aside efficiency (aka density done well, or as I now think of it, the new amenity value), such an argument rests on several flawed assumptions. These seem to be:

a. People who want to live in apartments must have frequent bus services nearby; and/or
b. People who live in apartments don't have cars; and/or
c. No one would be willing to walk more than 800m to a bus stop so there is and will be no demand for apartments in these locations; and/or
d. No one could possibly find any other way to get to the bus stop other than walk; and/or
e. If apartment occupiers would have cars, we shouldn't allow intensification here because they will have to use fossil fuels to drive those cars around which wouldn't happen if they lived in an apartment close to a busy bus line (even if they had a car); and/or
f. Cars will remain fossil fuel based for the foreseeable future; and/or
g. Mobility solutions are likely to remain static for the foreseeable future.

35. Clearly, most of these assumptions are hare-brained and do not withstand simple logic or comparison to other Tier 1 cities. I note that total suburban apartments now outnumber CBD apartments in Auckland. It is unlikely that all of these are well serviced by nearby high frequency bus routes, yet demand for these apartments clearly exists or developers would have long since stopped building them.

The LPTAQM on the Hills

36. Mr Kleynbos, before the panel, asserted that matters raised by submitters opposed to the LPTAQM fell into two camps, being:
    a. That such a restriction would increase housing price; and
    b. That the QM represented a static view of public transport accessibility

37. My own submission did no such thing. Rather, it contended that Council hadn't followed due process in attempting to establish the LPTAQM, that the LPTAQM failed to give effect to the RMAA, and it removed the choice of apartment living over most of the Hills for those who would or could have made that choice. Not only did Council conveniently ignore what I thought were pretty reasonable arguments against the LPTAQM, lo and behold, the rules got more restrictive through the s42A process.

38. Council promulgates the argument that city wide capacity enabled is far in excess of that likely under any reasonable growth scenario, and thus restrictions via QMs are unlikely to have adverse effects on the competitive functioning of development markets. This seems fine at first glance but this ignores the particularly large effect of the LPTAQM on the hill suburbs. The LPTAQM as notified removed about ¾ of the geographic intensification that would have been possible had MDRS been enacted per Schedule 3A. It got worse once the s42A reports came out, as noted, and worse again now that the Port Hills Stormwater QM is proposed.

39. Walking catchments on the hills are now proposed to be a paltry 400m, presumably because most people's hearts stop after walking 401m on a hill, whether uphill or down. It beggars belief that few citizens would be willing to walk more than 400m to the bus on a hill, noting that if they live on a hill they can probably walk down the hill to a bus stop, and then downhill to their house (apartment, perhaps?) on the way home simply by getting off the bus after it has passed their house.

40. My Kleynbos seeks *further* restrictions to hill areas in his evidence, suggesting "removing the operative additional 10% site coverage consent pathway, and removing the earthworks exemption for consented building works on the hill". These changes would have the effect of reducing existing property rights without even going through the full truncated IPI plan change process, as they were not originally notified. The Environment Court has already ruled against removing existing building rights per Waikanae, and I expect that the High Court will confirm such an approach as dodgy in due course. The truncated planning process required by the IPI sensibly restricts such a process's ability to erode existing property rights for reasons already canvassed by Mr Matheson for Kainga Ora.

The Effects of Proposed Rules - Building Height

41. The rules proposed for the Residential Hills Precinct completely remove the ability to develop 3 storey buildings as a permitted activity. Yet the reason(s) for this are not clearly spelt out in Council's respective s32 and s42A reports. It is left unclear why a 12m height restriction would have been unsuitable for the Port Hills and the damage that having one would cause. CCC must have concluded that it would be damaging, or else there is no legislative basis to preclude it.

42. If my reading of the proposed District Plan is correct, in the Residential Hills precinct, any buildings over 9m in height will be a non complying activity. Council considers this to be so important, it is the very first rule listed in the Non-Complying section. Thus, there is no much vaunted restricted discretionary pathway proposed here. It is a complete affront to Schedule 3 of the RMAA that requires 3 storey buildings to be permitted in all living zones. This rule, it seems, would apply even were no qualifying matters present on any given site. CCC is taking a truly belt and braces approach to ensuring the land development standards of old continue to apply in the Port Hills, and thus thwart Parliament's clear direction. Nowhere in the s32 or s42A reports could I find quite why, via an analysis of any substance, the Port Hills has been singled out for such special treatment in relation to height. Why did the Council consider that to exceed two stories on the hill would be so much more damaging than to allow it on the flat? Why would it be possible via restricted discretionary consent on the flat but not on the Hills?

43. In the absence of a robust analysis that considers all of the possible options available to Council, and then justifies why the chosen one is best, I am left concluding that the proposed height limits for the Residential Hills precinct are unlawful.

Infrastructure Demands as Support for the LPTAQM

44. Ms McDonald, as CCC's Three Waters Infrastructure Expert, seeks to use the LPTAQM to exclude areas from "uncontrolled intensification". She is concerned that MDRS throughout the City:

    "does not enable the degree of growth certainty that is needed to guarantee cost-effective and efficient infrastructure development."

45. I agree that allowing MDRS intensification across the City will create uncertainty for infrastructure planners, and may - may - result in more costly infrastructure solutions than the corollary. But these changes will take place over a long period of time and afford

the opportunity for planning years and quite probably decades in advance, thereby allowing infrastructure plans to be responsive to actual demand as it emerges. Furthermore, Parliament knew this when it legislated, obviously accepting it as an inevitable consequence of the broader changes it mandated.

The Importance of Site Size

46. My submission requested that Port Hills minimum site size requirements be reduced in proportion with that the CCC has proposed on the flat. I am unsure why this has not been addressed. Surely, if Christchurch is seeking to allow more people in areas of high demand and allow intensification generally, a reduction in minimum site size is appropriate. I note that even with the change I have sought to 575m2 per standard hill site, this would still be 44% larger than a corresponding site on the flat. CCC do not appear to have produced a robust justification for keeping minimum hill site sizes at 650m2, nor considered a range of options, as they are mandated to do by the relevant legislation.

Proposed Rules Regarding Fire Access

47. The proposed rules in the s42A report for Transport (Appendix 7.5.7 of the Transport Chapter) now require an increase to 7.5m minimum width for rear sites, which is 4.5m more than existing requirements. 7.5m is far in excess of what even the Fire Service requested (4m). This is a change of dubious necessity and merit, gobbling up to potentially 20%(!!!) of developable land area compared to the existing rules.

48. If a driveway were, for example, 25m long, the extra 4.5m width shaves 112.5m2 off site area available for development. On a 650sqm site this is a reduction of 17%, or 20% on 575m2 site. This is an enormous change, especially given that the overall direction is one requiring intensification, not restriction, on development. The economic cost of a foregone 112.5sqm is approximately $100,000 per site affected, based on typical hill land values. One wonders (because no data has been supplied) what the extra insurance cost would be per site to forgo the supposed benefits. Nothing like $100,000, we can quite be sure of that.

49. Once again, the level of analysis performed by the submitter, and CCC as supporter, is sadly lacking. It is left to me to quantify such effects because no numbers have been supplied to attest to the supposed benefits, nor the resultant costs of the proposed rules. These rules simply have not been examined with sufficient rigour to allow them to pass. Please bin them.

Conclusion

50. No regard seems to have been given to the huge effects of rules like this. I am left with this as an instructive example of the cavalier attitude CCC seems to have taken to implementing the RMAA and its attempts to shoehorn what it thinks are good ideas into the planning regime without normal proper public consultation. Despite the ongoing proclamations of Council officers, I have reached the sad and frustrated conclusion that CCC's version of PC14 isn't density done well, it's town planning done shoddily. I implore the Panel to recommend to Council a Plan Change that is much more in keeping with the RMAA as written.

Andrew McCarthy