

**BEFORE INDEPENDENT HEARING COMMISSIONERS
IN CHRISTCHURCH**

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

IN THE MATTER of the 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

(LAY) EVIDENCE OF DAVID TOWNSHEND (submitter #599)

31st October 2023

Introduction

- 1 My name is David Townshend, the opinions presented here are my own.
- 2 This evidence relates to one matter only, that is, 'Christchurch City Council's (CCC's) creation of the 'Sunlight Access Qualifying Matter' (SAQM) which the proposed plan change 14 applies to all high density and medium density residential zoned sites in the city.
- 3 I feel privileged to live in a house that I own, in the Belfast suburb of Christchurch.
- 4 I also feel privileged to own a property investment company which purchases, develops and owns residential rental properties. I have been doing this for the past 30 years.
- 5 My experience running a company that provides residential rental properties, albeit at a small scale, qualifies me to give an opinion on the commercial and practical viability of developing and owning affordable, warm and efficient rental housing. There will be others in the community doing the same scale of development as me for the same market.
- 6 My company is currently focused on build to rent projects. Approximately 50% of the residential rental properties it owns, it built in the last 10 years. It has owned rental properties in the suburbs of Woolston, Riccarton, Upper Riccarton, Bryndwr, St Albans, Edgeware and Belfast.
- 7 I acknowledge I have some bias brought about from my background and experiences. I have attempted to rationally consider any such bias and provide an objective opinion of the issues in dispute, from the perspective of what is best for the whole community now and into the future¹.

¹ RMA & LGA focus on the wellbeing of the community

- 8 This submission is not presented on behalf of or in support of my company, or any particular property, but rather from a member the community with two distinctly different and sometimes competing perspectives, due to my personal home ownership and my consideration of those in the community who don't own property (renters and future homeowners).
- 9 The first perspective, my personal home ownership, allows me to appreciate the privilege and benefits that come from home ownership, the concerns homeowners have around change, and the fears they have around losing existing amenity and/or personal autonomy.
- 10 The second perspective, stemming from my long-term engagement with the more vulnerable people in our community (renters and future property owners), allows me to appreciate and empathise with the lack of security and choice in housing for them, and the myriad of economic and social impacts that stem from that.

Summary Statement

- 11 I am concerned that the fear of a loss of sunlight amenity for existing property owners could so easily overshadow the negative effects on the community due to less intensification should the SAQM be allowed. This issue has become less about presentation and discussion of real economic evidence² and more about a misinformed fear of missing out, stirred up by local politicians and supported by Council staff.
- 12 My interest in this matter began when the amendment to the RMA was first proposed, and then introduced³. I thought it was groundbreaking for politicians

² Central governments produced the CBA (refer paragraph 14), CCC have produced no economic (counter) evidence specifically relating to the SAQM.

³ Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021

to look so far into the future, beyond the current political term, and work together⁴ to attempt to solve the housing affordability problem.

13 I put it that the 2021 amendment to the RMA was nationally significant. It took the decision making away from local communities which exceeded a certain size⁵ as to the minimum 'Medium Density Residential Standards' (MDRS) they must apply in every residential zone.

14 The lawmakers reflected on the likely costs and benefits⁶ (to the whole community) due to the introduction of the MDRS which shows that the net economic benefit⁷ to Christchurch over the next 20 years is approximately \$1.3B and the internal (between groupings within the community) flow of equity from existing property owners to first time buyers over the next 20 years more significantly, is \$21.7B.

15 I noted with interest when by late August 2022, that every (required) local authority proposed to adopt MDRS across most of their city⁸.

16 I was surprised when Christchurch city councillors voted to break the law⁹ by not notifying the plan in the required time frame. This was clearly politically motivated with a local election looming¹⁰.

17 I was further surprised when Christchurch City Council then voted to notify a revised plan which avoids implementing MDRS on any site in the city. They

⁴ All political parties but one voted to support the Bill – Hansard Parliamentary Record

⁵ Called Tier 1 cities of which Christchurch is classified.

⁶ <https://environment.govt.nz/assets/publications/Cost-benefit-analysis-of-proposed-MDRS-Jan-22.pdf> (CBA)

⁷ CBA, Table 3

⁸ Refer Appendix A – Legal Synopsis for CCCs initial interpretation of the RMA Amendment

⁹ <https://newline.ccc.govt.nz/assets/GeneratedPDFs/Letter-from-Mayor-Lianne-Dalziel-to-Hon-David-Parker-Minister-for-the-Environment-re-Proposed-Plan-Change-14-Housing-and-Business-Choice-2022-09-20.pdf>

¹⁰ "Phil Mauger is willing to defy the government - <https://thespinoff.co.nz/local-elections-2022/22-09-2022/phil-mauger-is-ready-to-roll-up-his-sleeves-for-christchurch>

are the only authority in the country to propose to restrict intensification in this way¹¹.

18 CCCs change in position was seated in the proposition of sunlight “inequity caused by latitude”¹² between residents in Christchurch and residents in Auckland”.

19 Christchurch City Council concludes¹³ they are justified in applying the exception that qualifying matters allow, to fix the proposed ‘inequity’.

20 Contrary to what CCC has found, the CBA shows¹⁴ that Christchurch will likely have more dwellings built relative to population than any other urban area in the country. This results in a comparative gain (compared to Auckland), rather than CCCs narrow view of a net loss (‘inequity caused by latitude’ due to MDRS).

21 I reflect that the lawmakers intentionally set a minimum level of intensification, by prescribing minimum density standards within the Act itself, after considering CCCs perspective¹⁵ that sunlight amenity value would be lost by varying amounts due to different geographic locations, and that a one size fits all approach was not appropriate.

22 Though they are required to under the Act¹⁶, CCC has produced no evidence that disputes the central governments experts net effect (costs and benefits) on the community, or the projected transfer of equity within the community following their proposed 5% restriction of capacity¹⁷.

¹¹ refer Appendix A – Legal Synopsis for more detail

¹² email of David Hattam, CCC, #599 submission, attachment ‘DT Submission_1_Communication_combined.pdf’ page 23

¹³ ‘05-Ike-Kleynbos-Section-42A-Report-final.pdf’, 11 August 2023

¹⁴ <https://environment.govt.nz/assets/publications/Cost-benefit-analysis-of-proposed-MDRS-Jan-22.pdf>, page 63

¹⁵ CCC submitted at the select committee stage on behalf of their residents, and central government relaxed the Height in relation to boundary standard as a result, refer paragraph 18 of Appendix A – Legal Synopsis

¹⁶ RMA s32 (2) & s77J(3)(c)

¹⁷ CCCs identified 5% reduction in capacity.

- 23 CCCs evidence supporting the SAQM ignores the costs to those in the community who don't own property.
- 24 CCCs evidence ignores that the community is compensated under the MDRS scenario, by a better functioning, more efficient city.
- 25 I go further and observe that CCCs adopted method has significantly biased the results of their investigations, interpretation and evidence to favour those in the community who value sunlight amenity above the other amenities that the SAQM reduces. Instead of questioning the proposition pushed by some residents and Councillors and objectively analysing the issue, CCC has accepted the hypothesis that an 'inequity' exists and set out to show it. The only way the argument can be justified, is to ignore the evidence relating to the benefits of intensification.
- 26 According to the economic evidence presented by CCCs own experts¹⁸, the SAQM will reduce housing affordability. Whilst this might not be a bad thing for those who value their current sunlight access, it is not a good thing for those in the community who don't own property (more than 37% of households¹⁹).
- 27 I propose CCC have not met the evidential burden they have under the RMA and on that basis the SAQM should be removed from PC14.
- 28 Additionally, as outlined in the attached legal synopsis, I propose that the SAQM is illegal on the basis that it does not meet the intent of the (amendment to the) RMA. The use of a Qualifying Matter to prevent any site in the city from ever having MDRS applied, is an attempt to avoid the law, rather than comply with it, and as CCC succinctly admit, it "is not what the Act envisaged"²⁰.

¹⁸ CBA & CCCs economic experts acknowledgement when questioned by the IHP,

¹⁹ Representing 37.5% in 2024 and projected to increase to 41.4% by 2051, refer table 5 of <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/41-Ian-Mitchell-Statement-of-Evidence-final.PDF>

²⁰ Refer paragraph 33

What is in dispute?

29 The primary issue for the IHP to assist in resolving is²¹; should CCC include the Sunlight Access Qualifying Matter in PC14?

30 Two sub-questions that stem from that are:

(1) Is the SAQM legal when measured against the intent of the Act²²?

(2) If it is legal, has CCC shown²³ is it a legitimate qualifying matter²⁴?

31 The first sub-question, is considered at 'APPENDIX A - Legal Synopsis of Christchurch City Councils 'Sunlight Access Qualifying Matter' (SAQM) proposed in PC14.'

32 The synopsis presents the intent of the lawmakers, the involvement of CCC in the lawmaking process, the wording of the Act, CCCs own interpretation at the time the Act came into effect, and the practical effect of the CCCs SAQM to draw its conclusion.

33 The conclusion formed is:

“A qualifying matter which reduces the RMAs explicitly defined density standards for every relevant residential site in a territorial authority goes far beyond the intent of the RMA amendment, which was to allow intensification with limited ability for local authorities to restrict it.

The Sunlight Access Qualifying Matter is therefore illegal on the basis it does not meet the intent of the RMA.

²¹ Recognising the IHP are not limited in their decision making to only supporting or objecting, but they may also provide other recommendations to solve the issues in dispute.

²² Where intent can be somewhat interpreted by the wording of the legislation and the words of the lawmakers during the lawmaking process.

²³ Burden of evidence imposed by s 77J of the RMA requiring an evaluation report

²⁴ Per ss 32, 77I, 77J, 77L of the RMA

This conclusion has been formed without any need for an analysis of any of CCCs reasons for its proposal, or the effects of it, because:

- a. The lawmakers understood CCCs concerns around lower sunlight angles effect on sunlight, and accommodated those concerns in the Act, by significantly reducing the height in relation to boundary below what was initially proposed; and
- b. The wording of the Act and the lawmakers discourse shows the intent that at least some residential sites (if not the majority) in an authority's region would have the density standards defined in Schedule 3A implemented.
- c. The practical effect of CCCs proposal is that not one site in the city will have the default density standards of Schedule 3A applied (as CCC helpfully acknowledged²⁵, "is not what the Act envisaged"); and
- d. CCC has used the qualifying matters mechanism which was created to be an exception to the rule, as a replacement for the rule, which they are not entitled to do."

34 Turning now to the second sub-question at paragraph 30(2), I note that of those in the community who submitted on this matter, there are three distinct groups, there are those who support the SAQM, those who oppose the SAQM on the basis that the density standards defined in the RMA should instead be used, and those who oppose the SAQM on the basis that it doesn't go far enough²⁶.

35 CCC have discarded the views of those who submitted that the SAQM doesn't go far enough on the basis that it is not supported by the intent of the legislation. I agree with that position.

²⁵ 1ST March 2023 CCC Public Meeting, <https://councillive.ccc.govt.nz/meeting/01-03-23-christchurch-city-council/>

²⁶ Refer CCC s42A report of Ike Kleynbos, dated 11 August 2023, <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/05-Ike-Kleynbos-Section-42A-Report-final.PDF>

36 The dispute between the two remaining groups within the community is a dispute around competing property rights which can be valued²⁷, where one is claiming CCCs reduction of the height in relation to boundary for Christchurch is appropriate, and where the other is claiming the legislators view of the appropriate height in relation to boundary is correct:

(1) Those who support CCCs SAQM, must value the benefit of an increase in access to direct sunlight above the resultant costs (to the community) of implementing more restrictive density standards.

(2) Those who oppose CCCs SAQM, must value the benefits of the more enabling density standards defined in the RMA over the cost of reduced access to direct sunlight.

37 The answer to this dispute will not satisfy every individual in the community. It is necessary for an arbitrator to resolve what is best for the community, by balancing the costs and benefits.

38 Reflecting on the numbers²⁸ of submitters in support of the SAQM (19) reduced density standards versus those who support what the RMA provides (195), there appears to be a clear mandate from the community to remove the SAQM from PC14.

39 Incidentally, this majority support for MDRS is not represented by Residents groups and associations, nor is it the position taken by CCC in its recommendation²⁹. It appears none of these groups have successfully captured and/or respected the significant alternative (to the proposition of 'sunlight inequity due to latitude') perspective that exists.

40 To return to the question at 30(2), to resolve the dispute between the groups the IHP must determine if CCC has shown that the benefits of implementing

²⁷ As the governments evidence referred to in para 14

²⁸ Authors analysis of CCCS s42A summary of submissions

²⁹ Refer CCC s42A report of Ike Kleynbos, dated 11 August 2023

the SAQM outweigh the costs due to less intensification. To decide, they must look at:

- (1) What costs and benefits to the community has CCC considered when deciding the SAQM is justified³⁰?; and
- (2) What costs and benefits to the community has CCC considered when deciding what proposal best fits the need?;

41 An ancillary question which I believe the IHP should also consider, is:

- (1) Has CCC acted as an impartial player³¹, by equally representing the whole community in its considerations and decision making?

42 I propose that the questions posed in 41 can be answered by reflecting on the answers to the questions at 40.

43 Appendix B – Synopsis of CCCs ‘Sunlight Access Qualifying Matter’, examines what CCC defines ‘Sunlight Access’ as, what CCC determined the need was for it (who does it help?), what costs and benefits CCC have and have not considered, any limitations of CCCs approach and whether they have acted as an impartial player representing the community now and into the future.

44 It concludes³² that CCC in creating the SAQM:

- a. Have defined ‘Sunlight Access’ in such a specific way as to exclude most sites from their evidence, (even those who have pushed to protect their current level of sunlight); and
- b. Have not identified how ‘Sunlight Access’ affects the wellbeing of the community now and into the future, when compared to the benefits of intensification under the MDRS scenario; and

³⁰ RMA s77G

³¹ Required by the LGA and RMA

³² At paragraph 59 of Appendix B - Synopsis of SAQM

- c. Have acted with favour towards those in the community who value sunlight amenity over the other amenities that the SAQM reduces, thereby not acting impartially to consider the people and the wider communities social and economic wellbeing now and into the future.

Is CCCs claim of sufficient urban capacity relevant?

- 45 Capacity on its own is not a good measure for house affordability for many community participants if that capacity is not available at a price where they can afford to buy it or rent it.
- 46 The important measure is useful capacity, which is capacity at the right price that will be used for its intended purpose. The basic economic theory is that more supply (available for that use), will lower the cost (of that use).
- 47 The view that there is sufficient capacity, ignores the recent increasing relative level of renter housing stress between 2001 and 2018 identified by one of CCCs economic experts^{33 34}.
- 48 The available total capacity has not prevented an average capital growth of 5.7% in Christchurch City over the last 30 years³⁵, or a much higher recent growth rate of 42%³⁶ in the last approximately three and a half years.
- 49 The excess available capacity CCC talks about, has not benefitted those who currently do not own property, who are more likely to value housing choice, availability and affordability above sunlight amenity.

³³ 'Housing Demand and Need in Greater Christchurch', July 2021, Ian Mitchell, at Table 1.5.

³⁴ <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/41-Ian-Mitchell-Statement-of-Evidence-final.PDF> at paragraphs [61] & [62]

³⁵ <https://www.opespartners.co.nz/property-markets/christchurch>

³⁶ <https://www.qv.co.nz/price-index/>, \$516,838 (Apr 2020) vs \$734,681 (Sep 2023).

Final words – from a ‘build to rent’ property developer/owner who also values their sunlight amenity in their own home

50 I have determined that CCCs proposed SAQM makes it more difficult, more time consuming and more costly for my company to build rental accommodation. This will come at a cost to those who rent and for future property owners.

51 The more restrictive building envelope proposed by CCCs restrictive ‘Height in relation to boundary’, reduces choice of construction (orientation, size, placement, style), increases costs, increases building risk, and reduces built capacity. It is telling that CCC has needed to model covered roofing to justify its proposed restrictions and to reduce the capacity restriction effect of the SAQM³⁷.

52 A development will be more financially feasible without CCCs SAQM. This will mean that some developments will not proceed if it exists. This will come at a cost to those who don’t own property, by reducing the supply of new affordable properties.

53 I own the property that I live in, where I admit, I feel somewhat entitled to the sunlight I currently receive and my first (gut) reaction of fear of potentially giving some of that away exists.

54 However, when I balance that feeling against the wider good of intensification for the community, I don’t see any valid reason to protect sunlight amenity for myself, at the expense of those who currently don’t own property. Especially recognising the CBA identifies that existing property owners (like myself) are immediately compensated for the loss in sunlight amenity by an uplift in their

³⁷ CCC used covered roofing and upper floor setbacks for its reduced recession plane examples (compared to MDRS where coving was not used), in its reduction of capacity assessment. (refer CCC released information “Recession Planes - Effects on Capacity.doc”).

land value due to rezoning³⁸, albeit at the cost of “prevented transfers of wealth to property owners that would otherwise occur due to rapid growth in housing prices”³⁹ in the future.

55 I propose that CCC erred in their duty of impartiality, and due consideration of the community, by using the same planning experts who created the SAQM, to also present independent expert evidence to the IHP. Those experts are likely to have confirmational bias given their involvement in the creation of the SAQM, without ever questioning the initiating proposition of ‘sunlight inequity due to latitude’, where the SAQM benefits only those who value the (individual) benefits of sunlight over the net benefit of intensification (to the community). CCC should have used independent and objective experts to assess the SAQM in a neutral and objective way.

56 I ask that the IHP interrogate CCC about how, during the creation of the SAQM and the evidence presentation, they have considered, supported or acted in the interest of those in the community who value the benefits of intensification over the cost of lost sunlight.

57 These members of the community are represented by the submitters who opposed the SAQM and supported the MDRS as enacted. These members of the community are more likely to not own property and are more likely to rent. This portion of the community is soon to exceed 40% (currently at 37.5% refer paragraph 26) of the population of Christchurch on a per residence basis.

³⁸ CBA page 64

³⁹ CBA page 15

APPENDIX A - Legal Synopsis of Christchurch City Councils ‘Sunlight Access Qualifying Matter’ (SAQM) proposed in PC14

1. The legal dispute can be considered by asking the following questions:
 - a. Does a qualifying matter that is used to restrict intensification for every residential site in its city that (MRZ & HRZ), with the practical effect that MDRS applies nowhere in the city meet the intent of the RMA and is it legal? and;
 - b. Does a qualifying matter that applies to every residential site in its city that are subject to s77H (HRZ), which includes rules that regulate to the same effect as a density standard set out in Part 2 of Schedule 3A, but that are less lenient than provided for by MDRS, meet the intent of the RMA and is it legal?

2. I observe that the aim of the Resource Management Act 1991⁴⁰ (RMA) is to ensure that activities won't harm our neighbors or communities, or damage the air, water, soil and ecosystems that we and future generations need to survive by setting out how we should manage our environment based on the idea of sustainable management of our resources. The RMA generally leaves decision making in the hands of local communities represented by local authorities. There are exceptions to that for matters of national significance where central government directs how environmental resources will be used.

3. I put it that the 2021 amendment to the RMA was nationally significant. It took the decision making away from local communities which exceeded a certain size⁴¹ as to the minimum density standards they should apply in every residential zone.

⁴⁰ [About the Resource Management Act and why we need one | Ministry for the Environment](#)

⁴¹ Called Tier 1 cities of which Christchurch is classified.

4. CCC propose to restrict a Schedule 3A requirement, 12. Height in relation to boundary to be less enabling of development⁴².
5. The legal dispute to be resolved is not a question of whether qualifying matters are legal in themselves, as they are clearly allowed in the RMA, but rather it is about if CCCs method of using them, with clear practical implications, is legally justified.
6. This can be interpreted without looking at any evidence. It is important when doing so to understand the full context of the lawmaking process which provides an insight to the lawmakers reasons and the information they considered along with CCCs involvement.

The relevant (to CCCs application of SAQM to all residential zones) wording of the RMA.

7. The duty to incorporate the MDRS is found in s77G(1) “Every relevant residential zone of a specified territorial authority must have the MDRS incorporated into that zone.”
8. ‘MDRS’ is defined in s2 Interpretation as “the requirements, conditions and permissions set out in Schedule 3A”.
9. Schedule 3A, clause 12 “Height in relation to boundary”, is one of the permissions or requirements (one of nine standardised density standards).
10. s77G(6) provides an exception to the duty to incorporate MDRS, by providing “a specified territorial authority may make the requirements set out in Schedule 3A or policy 3 less enabling of development than provided for in that schedule, if authorised to do so under section s77I” (Qualifying matters).

⁴² PC14 - Sunlight access qualifying matter

11. s77I provides that “a specified territorial authority may make the MDRS and the relevant building height or density requirements under policy 3 less enabling of development in relation to an area within a relevant residential zone only to the extent necessary to accommodate 1 or more of the qualifying matters that are present”.
12. The duty to “incorporate the MDRS” in the planning instrument is found in s80E(1)(a)(i).
13. S80E(1)(b)(iii) also allows an exception to the duty to incorporate MDRS, by the allowance of qualifying matters per s77I.

Has CCC breached their legal duty?

14. CCC is duty bound to incorporate MDRS in all its relevant residential zones. This is a mandatory legal duty, given by the word ‘must’.
15. If CCC applies the SAQM, they would not incorporate MDRS on any site in the city.
16. By not applying MDRS to any site in its city, CCC is in breach of its fundamental legal obligation to incorporate MDRS in its city given in ss 77G and 80E.

Reasoning

17. The primary duty to incorporate MDRS clearly exists.
18. There is a mechanism to reduce the application of MDRS to a limited extent by using qualifying matters.
19. The wording of the RMA (duty and exclusion clause) does not support an interpretation that has the practical effect that no site within a tier 1 authority will ever be able to have MDRS applied as of right.

20. The definition of MDRS does not include qualifying matters, since they are not a requirement, condition or permission set out in Schedule 3A.
21. This interpretation of MDRS is supported by the wording of policy 2 of Schedule 3A (an obligation to publish the policy in the plan) which says: “apply the MDRS across all relevant residential zones in the district plan except in circumstances where a qualifying matter is relevant”.
22. This wording shows where a site has a qualifying matter applied which modifies any of the requirements, conditions or permissions set out in Schedule 3A, then it is incorrect to say it has MDRS incorporated. They are mutually exclusive.
23. For that reason, given CCCs SAQM applies restrictive qualifying matters to all sites, no site in the city has MDRS incorporated.
24. CCC has proposed a loose interpretation⁴³ of ‘area’ to support their position that avoiding MDRS being applied to any site in the city is a legitimate application of a qualifying matter, and therefore legal.
25. The law interprets the meaning of the words, by the relevant context of their use.
26. For CCCs SAQM to be allowed under the Act, presuming it satisfies the conditions of s77I(j) to support the extent (which would be the subject of a separate analysis of the evidence), the words ‘an area within a relevant residential zone’ must be able to be interpreted as ‘the whole area within every relevant residential zone’ since that is the full extent of the restriction on the Height in relation to boundary density standard imposed by the SAQM.

⁴³ Proposed by counsel for CCC at IHP 2023 pre-hearing meeting.

27. If the lawmakers had intended for the Act to work that way, they could have made that allowance in the primary duty clauses of s77G(1) & s80E(1)(a)(i) and/or in the other wording of the Act, by including qualifying matters in the definition of MDRS. That way, both the primary duty to incorporate MDRS and the exception allowing a reduction in the density standards could both be met by a density standard restrictive city-wide qualifying matter.
28. It cannot be that the primary duty to incorporate MDRS given by the wording of s77G(1), which uses the modal verb 'must', meaning it is a necessity, can be overridden by the exception clause of s77G(6), which uses the modal verb 'may', meaning it is a possibility.
29. An interpretation for 'area within a relevant residential zone', which fits with the context of the other wording in the Act, is one that allows MDRS to be incorporated somewhere in the city. This would allow qualifying matters to work as they are written, as an exception to the duty of s77G(1), for some but not all sites, rather than a full replacement of the duty of s77G(1) for all sites in the city.
30. If CCC had incorporated MDRS on at least one site, it would have arguably met its legal duty, primarily by s77G(1), to incorporate MDRS, subject to the evidential requirement to justify the extent of its application.
31. Whilst it is proposed that this reasoning on its own shows that the SAQM is illegal, additional context relating to the lawmakers' relevant considerations and CCCs involvement in the lawmaking process may be helpful to cement this view. It continues further below from paragraph 44.

Have CCC erred by not giving the density standards that are not been restricted immediate legal effect?

32. Section 86BA lays out the timing of the legal effect of the density standards in schedule 3A.

33. Per 86BA(4)b, density standards that are not the subject of a qualifying matter should have had immediate legal effect when the plan was notified in March of 2023.
34. CCCs advice to developers is that they cannot review resource consents against the density standards contained in schedule 3A (that are not subject to a qualifying matter, namely, all except '12. Height in relation to boundary'). They are advising they can only review against the existing plans density standards.
35. CCC is in breach of s86BA(4), for every density standard in schedule 3A, except 'height in relation to boundary'.
36. This breach has caused all developments in the city that propose to use the new density standards to be stalled. My company has one such example of a build to rent development in Riccarton. The resource consent for this development was applied for in June 2022 in anticipation of MDRS having immediate legal effect, once the plan was notified⁴⁴. CCC has yet to formerly respond to the Resource Consent Application. This delay will result in a more costly development.

The relevant (in relation to CCCs application of the SAQM to the 'High Density residential Zone' (HRZ)) wording of the RMA.

37. s77H(1) allows a greater level of development than MDRS enables in two ways:

- a. Omitting 1 or more density standards set out in Part 2 of Schedule 3A:

⁴⁴ CCC confirmed to my planner in writing in May 2022, that "only the MDRS standards within schedule 3A of the Act will have immediate legal effect."

- b. Including rules that regulate to the same effect of a density standard set out in Part 2 of Schedule 3A, but that are more lenient than provided for by the MDRS.

38. s77H(2) clarifies, “to avoid doubt, more lenient means the rule (including a requirement, condition or permission) permits an activity that the MDRS would restrict.”

39. s77H(3) says “A specified territorial authority is considered to have met its obligations under s77G(1) by acting in accordance with subsection (1) of this section.” (where s77G(1) explained at paragraph 7 above, is the primary duty to incorporate MDRS).

40. S77H(4) says “A specified territorial authority may choose not to incorporate 1 or more density standards set out in Part 2 of Schedule 3A into its district plan, but, in that case, the authority may not (in its district plan) regulate the same effect as the density standard.”

Has CCC breached their legal duty by applying the SAQM to HRZ?

41. CCC has breached s77H(1)(b), by applying the SAQM to all HRZ sites which makes the height in relation to boundary less lenient than MDRS. This has the effect of restricting an activity that MDRS would permit.

Reasoning

42. CCCs use of SAQM in HRZ results in the height in relation to boundary restricting activities that MDRS would allow for many (if not all) sites.

43. The method CCC have used, which is the blanket application of the SAQM to all High Density Residentially Zoned sites, puts them in breach of the RMA in relation to the density standard that the SAQM restricts.

The intent from the perspective of the lawmakers and consideration of CCCs involvement in the lawmaking process

44. One of the main intentions of the Act was to enable more housing supply and “provide homeowners a choice to have a more affordable home”⁴⁵.

45. The legislators signalled a fundamental shift in central government policy, by:

- a. explicitly defining minimum density standards in the legislation⁴⁶ which gave existing property owners an increased ability to intensify, as of right. This shifted property rights towards a property owner who develops, away from its neighbour.
- b. Mandating that every Tier 1 authority incorporates the density standards⁴⁷.
- c. Providing limited ability for communities to reduce the defined density standards by use of ‘Qualifying Matters’⁴⁸.
- d. Providing a mechanism to significantly reduce local authorities involvement in the consenting process to standardise it across the country, to reduce unnecessary cost and unnecessary delays.

46. On behalf of the residents of Christchurch, CCC took part in the lawmaking process by submitting⁴⁹ to the Select Committee where the issues raised were considered and some changes were made:

⁴⁵ Hansard parliamentary record, the Minister for the Environment Hon David Parker, in committee, on the 8/12/2021

⁴⁶ RMA, Schedule 3A

⁴⁷ RMA, SS 80E & 77G

⁴⁸ RMA, S77L

⁴⁹ CCC submission to Select Committee, <https://ccc.govt.nz/assets/Documents/The-Council/Request-information/2021/Christchurch-City-Council-submission-on-the-Resource-Management-Enabling-Housing-Supply-and-Other-Matters-Amendment-Bill.pdf>

- a. the issue of lower sunlight angles disproportionately affecting sunlight angles and shading; and,
- b. the issue of a one size fits all approach; and,
- c. the lawmakers changed the density standard, height in relation to boundary, by a significant amount reducing it from 6m to 4m at the boundary, recognising better shading outcomes⁵⁰.
- d. the lawmakers decided that Christchurch's lower sunlight angles was not sufficient reason to create bespoke standards for different regions, nor include Sunlight Access as a Nationally Significant Matter⁵¹.

47. In the first version of CCCs plan change when the sunlight access issue was well known to them, they interpreted the amendment to the RMA as making the MDRS mandatory for them to incorporate, with no right to avoid it on every site in the city⁵².

48. CCCs head of planning and consent, John Higgins, comments to the media provides further insight into their interpretation⁵³:

“the medium density standards and increasing development in business areas were not optional, and the council was legally required to implement the new laws.

Legislation says we cannot be more restrictive [in permitting development], we can only be more lenient.”

⁵⁰ Ref Hansard parliamentary record, Minister for the Environment, Hon David Parker, Second reading of the Bill, 7th December 2021.

⁵¹ Ref Hansard parliamentary record

⁵² 'What we can influence'... <https://ccc.govt.nz/the-council/haveyoursay/show/531>

⁵³ <https://www.stuff.co.nz/the-press/news/129758826/call-for-christchurch-councillors-to-vote-against-extra-housing-density>

49. Minister for the Environment, Hon David Parker commented⁵⁴ on the limited nature of qualifying matters, which gives insight into their view of how 'area within a relevant residential zone' should be interpreted:

"I should also say it's not the intention to allow overlays on a whole suburb that aren't related to a matter of real import."

"for other matters like heritage, a site-by-site analysis is required by the council, whereas, for the other listed matters, they can rely on more general overlays."

Summary of the legal synopsis

50. To answer the two questions posed in paragraph 1:

- a. CCCs SAQM which is used to restrict intensification for every residential site in its city (MRZ& HRZ), with the practical effect that MDRS applies nowhere in the city, does not meet the intent of the RMA and is not legal.
- b. CCCs SAQM that applies to every residential site in its city that are subject to s77H (HRZ), which includes rules that regulate to the same effect as a density standard set out in Part 2 of Schedule 3A, but that are less lenient than provided for by MDRS, does not meet the intent of the RMA and is not legal.

51. This interpretation is supported by:

- a. The wording of the RMA; and
- b. The words used by the lawmakers when the law was created; and

⁵⁴ Hansard Parliamentary record, 8/12/2021, In committee part 1.

- c. The considerations made by the lawmakers when the law was created; and
- d. The involvement of CCC in the lawmaking process; and
- e. CCCs initial interpretation of the RMA, shown in their original proposed plan (following their involvement in the lawmaking process) where they proposed to incorporate MDRS to large areas of the city.

(For completeness, it is noted that CCCs initial interpretation was not motivated by trying to please those members of the community who felt the impacts to them of lost sunlight amenity outweighed the benefits of intensification for the wider community.

CCCs modified interpretation came about after CCC decided to support that view after its Councillors voted to not notify the plan change⁵⁵. CCC called their new interpretation a “creative solution that was not what the Act envisaged”⁵⁶)

Conclusion

52. A qualifying matter which reduces the RMAs explicitly defined density standards for every relevant residential site in a territorial authority goes far beyond the intent of RMA amendment, which was to allow intensification, with limited ability for local authorities to restrict it.

53. The Sunlight Access Qualifying Matter is therefore illegal on the basis it does not meet the intent of the RMA.

54. This conclusion has been formed without any need for an analysis of any of CCCs reasons for its proposal, or the effects of it, because:

⁵⁵ September 8th 2022, CCC public meeting

⁵⁶ 1ST March 2023 CCC Public Meeting, <https://councillive.ccc.govt.nz/meeting/01-03-23-christchurch-city-council/>

- a. The lawmakers understood CCCs concerns around lower sunlight angles effect on sunlight, and accommodated those concerns in the Act, by significantly reducing the height in relation to boundary below what was initially proposed; and
- b. The wording of the Act and the lawmakers discourse shows the intent that at least some residential sites (if not the majority) in an authority's region would have the density standards defined in Schedule 3A implemented.
- c. The practical effect of CCCs proposal is that not one site in the city will have the default density standards of Schedule 3A applied (as CCC helpfully acknowledged⁵⁷, "is not what the Act envisaged"); and
- d. CCC has used the qualifying matters mechanism which was created to be an exception to the rule, as a replacement for the rule, which they are not entitled to do.

⁵⁷ Refer paragraph 51 above

APPENDIX B – Synopsis of ‘Sunlight Access Qualifying Matter’ (SAQM), what is it, why was it created, and is it justified?

1. This synopsis is created after review of CCCs released information relating to the creation of the SAQM⁵⁸ and CCC s32 and 42A reporting⁵⁹.
2. This examination is necessary to determine the scope of the investigations and decision making on behalf of the community, and how that relates to its duties⁶⁰ and obligations in an RMA/Plan change process.
3. First we examine CCCs duties (set by the RMA and LGA as they relate to the SAQM).
4. Next we examine why CCC created the SAQM, and how it represents the interests of the community. This requires a detailed teardown of what SAQM is, described in detail in CCCs evidence.
5. Then we examine any limitations of the approach CCC has taken.
6. Comparing the duty against what CCC have done and weighing up any limitations will give insight into whether CCC has met its respective duties by the creation of the SAQM.

CCCs Duties

7. CCC has a duty under the LGA to “act prudently and in a manner that promotes the current and future interests of its community”⁶¹. This essentially means CCC needs to objectively consider the interests of all members of the community, now and into the future.

⁵⁸ Refer #599 submission of David Townshend,

⁵⁹ In evidence – revised plan after 8th Sep 2022, <https://chch2023.ihp.govt.nz/evidence/>

⁶⁰ Provided by the ‘Local Government Act 1991’ (LGA) and RMA

⁶¹ https://www.localcouncils.govt.nz/lqip.nsf/wpg_url/About-Local-Government-Local-Government-In-New-Zealand-How-councils-should-make-decisions

8. CCC has a duty under the RMA to intensify by incorporating MDRS⁶².
9. CCC has an obligation under the RMA to consider the people and their communities social, economic, and cultural wellbeing now and into the future⁶³ when assessing the need for and the justification of a qualifying matter exclusion.
10. In respect of the SAQM, this includes all members of the community, whether they value sunlight amenity over other forms of amenity, or not. It also means any other adverse effect of the SAQM needs to be fully considered.

CCCs changed position on MDRS – Why did it change?

11. CCC changed its stance on MDRS and the need to adopt it, following the 'no' vote by CCC Councillors at a public meeting on the 8th September 2022. Prior to that meeting, it had adopted MDRS in its proposed plan.
12. Following that meeting, CCC managers decided to adopt the views of some in the community, being pushed by Councillors⁶⁴, that there is an 'inequity in sunlight access' for Christchurch, when compared to north island cities.

Whose interests does the SAQM represent?

13. Sunlight is an amenity has different value to different people in the community⁶⁵, which is highly dependent on their personal circumstances and individual considerations.

⁶² RMA s77G & s80E

⁶³ RMA, s5 Purpose, s32

⁶⁴ #599 submission attachment, Ike Kleynbos email to other staff, 2 December 2022 which states "The unique shading effects of ChCh continues to be a point of contention, which has been raised by Councillors".

⁶⁵ Ref paragraph 38 of the main section of this document.

14. Some (whose point of view the Councillors were pushing), value the existing sunlight amenity above the costs of intensification to the community.
15. For example, someone who has lived in their house for many years who values the sunlight entering their home, may become quite distressed at the prospect of potentially losing some of that, even if they have more than the average sunlight available at their property. Alternatively, someone who rents, who finds house prices rising so fast that they cannot afford to own, has many other financial and social pressures that would make them wish that they had an equivalent level of sunlight access, or even, they were in a position to be able to value that over other (in their minds) more pressing matters.
16. The SAQM was created on the premise that the participating (up to that point) residents' concerns were valid and representative. That the community generally values the benefits the SAQM creates (benefit in sunlight amenity) above the other costs it reduces (loss of intensification/affordability⁶⁶).
17. CCC did not question the proposition by looking for the alternative perspective that existed within the community⁶⁷ nor to the counter evidence that existed⁶⁸.
18. CCC did not clarify for the residents (who passionately petitioned them) that CCC had already submitted to central government and successfully gained a significant reduction⁶⁹ in the proposed 'Height in relation to boundary' density standard.

⁶⁶ Less intensification results in less affordability, CCC economics expert response to IHP questions, 11 October 2023.

⁶⁷ Refer number of submissions against SAQM vs for

⁶⁸ CBA <https://environment.govt.nz/assets/publications/Cost-benefit-analysis-of-proposed-MDRS-Jan-22.pdf>

⁶⁹ 6m at the boundary reduced to 4m – refer paragraph 46 of Appendix A – Legal Synopsis

What modelling of the effects of shading did CCC use in their evidence to establish the need for the SAQM?

19. CCC modelled the shading effects under MDRS in Christchurch compared to Auckland for an identical built form scenario⁷⁰. The model in the scenario refers to a ‘typical’ shade giver and a ‘typical’ shade receiver.
20. Reporting done for CCC in 2022 shows that the ‘typical’ scenario used by CCC in its shading analysis is not in fact typical. The evidence shows that infill housing is predicted to account for 35% of the 58,811 projected feasible capacity⁷¹ under the MDRS density standards. This infill housing is not depicted in CCCs ‘typical’ shading scenario.
21. Sunlight energy entering at least half of a set dimensioned and located window, on one side of a central unit of an existing ‘typical’ multiunit dwelling was modelled.
22. CCC have used the model to confirm their presumption of ‘inequity in sunlight access’ is true. They then use model to predict the most appropriate restriction in ‘Height in relation to the boundary’ density standard, to match the amount of sunlight energy (in the modelled scenario) between Christchurch and Auckland.
23. The two variables considered⁷² between the two locations, are the latitude, resulting in a different sun angle at different times of the day for each region and the average (or median) winter temperatures.

Limitations of CCCs approach to the problem definition

24. CCCs conclusions rely on the following assumptions (and/or omissions):

⁷⁰ CCC s42A evidence of David Hattam, planning expert, dated 11 August 2023

⁷¹

https://christchurch.infocouncil.biz/Open/2022/03/UDATC_20220331_AGN_7556_AT_files/UDATC_20220331_AGN_7556_AT_Attachment_35318_19.PDF at table 8.

⁷² CCC s42A evidence of John Liley, solar modelling expert, dated 11 August 2023

- a. The effect of shading (in isolation) due to differences in latitude, is causal and proportional to the wellbeing of the community; and
 - b. Christchurch shading (in isolation) compared to Auckland is a valid measure of the relative wellbeing of the respective communities that determines (on its own) if the SAQM is justified; and
 - c. The same 'typical' built form can be used for a shading comparison, where housing densities are significantly different in Christchurch and Auckland⁷³; and
 - d. Choosing one 'typical' built form for the shading scenarios which does not reflect the spectrum of built form throughout Christchurch where the SAQM is applied.
 - e. Other proposed plan changes (for Christchurch but not Auckland) won't affect the results of the modelling (trees and higher heights in HRZ).
 - f. Temperature differences between the regions have been used as supporting evidence as to the need to match sunlight shading.
25. Those assumptions (and/or omissions) severely limit CCCs choice of problem definition and subsequent evidence gathering to support its proposed SAQM.

CCCs technical evidence

26. CCCs technical evidence is in the s42A reporting of David Hattam (CCC planning expert) and Ben Liley (NIWA scientist).

⁷³ <https://datafinder.stats.govt.nz/layer/111270-functional-urban-area-2023-generalised/> (excluding 'hinterland') Christchurch population density of 984 people/ km² (population 384,800/area 390.9 km²), Auckland population density of 1,973 people/km² (population 1,478,800/area 749.4 km²)

27. CCCs technical evidence models a specific shading scenario that only looks at 'sunlight access' bound to a specific built form, a centre unit in a multiunit block, which only represents a small portion of Christchurch housing stock. CCC has provided no empirical evidence as to its models prevalence across the city for all of the sites which are affected by the SAQM (every site in all relevant residential zones).
28. The conclusion formed by Ben Liley⁷⁴:
- “The latitude and climate differ from Auckland and other North Island cities to the extent that modification of recession plans is necessary to achieve a comparable effect on sunlight access and solar heating of the intended densification of housing”, is limited by the model CCC provided and by his area of expertise and needs to be interpreted with caution.
29. Ben Liley is not an expert in economics, so cannot possibly comment on the comparable effect on the community, considering all of the costs and benefits as the RMA requires⁷⁵.
30. Ben Liley has relied on the models provided by CCC, which are only representative of the built-form of a small proportion of Christchurch housing stock (centre unit of a multiunit block). This limits the conclusions that can be formed both around shading, and any proposed benefits of the SAQM.
31. Ben Liley has relied on CCCs proposal that the built form shading scenario between Auckland and Christchurch are identical, when they are not⁷⁶.
32. David Hattam is not an economics expert and has not considered all of the costs and benefits as the RMA requires⁷⁷.

⁷⁴ <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/35-Ben-Liley-Statement-of-evidence-final.PDF> at [67]

⁷⁵ RMA s32(2)(a)

⁷⁶ Refer paragraph 1.c & 41 in this Appendix

⁷⁷ RMA s32(2)(a)

33. Ike Kleynbos is not an economics expert and has not considered all of the costs and benefits as the RMA requires⁷⁸.
34. CCC has chosen to instruct its economics experts to not specifically comment in their evidence on the SAQM, though they did in the justification of the first version of their plan that justified the implementation of MDRS.
35. CCC has not considered its economics experts evidence around future worsening of housing affordability in its consideration of the effects of the SAQM. Refer paragraph 47 of the main body of this document.

Wellbeing - what does the evidence actually show?

36. There are many inputs into a community's wellbeing⁷⁹, of which housing is just one subgrouping, of which housing quality is just one part, of which sunlight availability into a specific window in the middle unit of a multi-unit development would represent a very small percentage of the population.
37. The results of CCCs shading modelling, whilst admittedly intricate and detailed, simply cannot indicate a change in wellbeing of the community due of MDRS or SAQM. This is because there are so many other factors (resulting in costs and benefits) at play that CCC have not modelled or considered.
38. Conveniently, the effects have been assessed and whilst MDRS does increase shading in the areas where it is used, when the cost of shading is combined with the other relevant costs and benefits to the community, there is projected to be a significant net benefit⁸⁰.

Is sunlight angles between two different regions a viable method to determine comparative wellbeing?

⁷⁸ RMA s32(2)(a)

⁷⁹ <https://www.stats.govt.nz/information-releases/wellbeing-statistics-2021/>

⁸⁰ CBA

39. Additionally, it is a questionable proposition that more sunlight shading in Christchurch compared to Auckland has a net negative effect on the wellbeing of the community, without providing evidence of that.
40. A single variable comparison between two cities is problematic, to quote CCCs economic expert, “Christchurch is not Auckland, and the Christchurch urban fabric and functioning of the city’s urban economy is very different to that of Auckland”⁸¹.
41. Auckland is on average denser than Christchurch before MDRS is applied⁸². In terms of shading effect after MDRS is applied, on a per population (or per residence) basis, shading will be more in Auckland than in Christchurch (before considering any difference in latitude). When the more variable topography and more green space of Auckland (compared to Christchurch) are accounted for, it is not reasonable to rely on the same shading model using the same built form density to conclude that Christchurch would be more negatively affected.
42. The observation by many submitters, that European cities have similar or worse shading effects due to latitude, with far greater housing density and well-functioning cities, with exceptional wellbeing. The primary point made here, is that low sun angles and shading does not cause poor wellbeing. This point has been lost on CCC planning experts, who deflect and raise differences⁸³ between NZ and European cities, rather than acknowledge that wellbeing might not be as connected to sun angles as they have

⁸¹ Paragraph 9-12 of Tim Heaths rebuttal evidence, dated 9th Oct 2023 <https://chch2023.ihp.govt.nz/assets/Rebuttal-Council/27.-Rebuttal-Evidence-Tim-Heath.pdf>

⁸² Paragraph 9 of CCCs expert, Tim Heaths rebuttal evidence, dated 9th Oct 2023 <https://chch2023.ihp.govt.nz/assets/Rebuttal-Council/27.-Rebuttal-Evidence-Tim-Heath.pdf> shows a difference in density, though the figures quoted with a non-specific reference to ‘google’ can’t be confirmed. Refer to paragraph 1.c of this Appendix for a discussion of an effect of the difference in density referencing stats nz data.

⁸³ <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/25-David-Hattam-Statement-of-evidence-final.PDF> [94]

assumed (original proposition of “Inequity due to latitude”, refer paragraph 18 of the main body of this document).

Does the ‘typical shading scenario’ even adequately represent Christchurch built form, and/or test CCCs representation of ‘inequity’ pushed by one view in the community?

43. Furthermore, the specific way CCC have chosen to model the shade receiver (middle unit in a multi-unit development), does not represent the average built form of Christchurch and particularly the community who pushed for the sunlight protection in the first place.

44. Those residents who support the SAQM, have (on average) far superior sunlight access to CCCs chosen model. They reside in (on average) lower density neighbourhoods with (on average) much larger inherent sunlight protections like increased distance to boundaries and much lower surrounding density.

45. This means that CCCs stated shading effects on its community of affected residents are overstated.

Are lower temperatures in winter in Christchurch relevant?

46. CCC have compared the average temperature between Christchurch and Auckland and concluded that more shading in Christchurch would have a greater reduction in wellbeing. This view is limited as it does not take into account Christchurch’s history in handling lower temperatures, and the subsequent higher insulation levels that exist⁸⁴. Insulation standards applied over the years in Canterbury have been higher, the large amount of insulation upgrading in the region due to earthquake repairs and rebuilding over the last 13 years is real. Ignoring these factors, introduces

⁸⁴ Canterbury has had historically higher insulation standards imposed by the building code, and by homeowner preference (authors experience).

bias into any conclusion that Christchurch is more affected by a loss of sunlight due to lower winter temperatures.

47. Another (less contentious way) of looking at this is, if lower sunlight angles, resulting in more shading effects, coupled with colder temperatures in winter meant less wellbeing as CCCs experts propose, no-one would choose to live in Queenstown due to its colder winter temperatures, far more shading (due to mountains and scarcity of unshaded land). This is clearly not the reality.

48. Furthermore, CCC have not reflected on the higher temperatures that can overheat dwellings in summer in Christchurch, due to more sunlight entering windows, when compared to Auckland. The cost of cooling is becoming more relevant during Canterbury summers, in part due to the better insulation levels, relative high summer temperatures (compared to many North Island cities), increasing temperature extremes, smaller eaves on buildings and better alignment of living areas to prevailing sunlight. CCC have not considered this in their conclusions of the effects due to the SAQM.

Specific observation of SAQM application to the HRZ

49. CCCs proposal to apply SAQM to HRZ is confused. CCCs stated intent for the SAQM is to protect sunlight for neighbouring residents, however, for the first 20m of a street adjoining site, sunlight access is restricted to a far greater extent than an Auckland under MDRS.

50. For any site in the HRZ that is more than 20m from a street frontage, of which there are many, the SQAM matter applies and the site will be less enabled than MDRS would allow.

The enigma of the proposed Tree Canopy Cover that undermines CCCs stated value of sunlight amenity

51. More trees means more shade.
52. Tree canopy cover has the potential to shade neighbours sunlight far beyond MDRS.
53. There are no controls as to location, types, heights and numbers of trees residents can plant, nor any consideration of the cost of the consequential shading on others in relation to the assessment of the SAQM.
54. It could be proposed that CCCs SAQM is needed to counter the effects of shading due to their proposed tree canopy cover, rather than due to the effects of MDRS.

To be clear, this is not a proposition I would support, but rather put it this way to show the inconsistency in CCCs valuing of 'sunlight access' depending on what it is attempting to promote.

Does the CCCs evidence meet the burden of the RMA?

55. For a qualifying matter to be legally justified under section 77I, CCC need to provide evidence that shows the restriction is limited only to the extent necessary⁸⁵ to accommodate the criteria the qualifying matter addresses.
56. CCC have provided no evidence that adequately shows 'sunlight access', as they have modelled it, is necessary to prevent intensification, as they have not considered the corresponding benefits that intensification brings.
57. CCC have not provided evidence⁸⁶ that justifies the criteria they have narrowly defined, 'sunlight access', which applies to only a centre unit in a line of multi-units, should apply to all residential sites. They have not provided evidence of shading effects on a site by site basis. Most of the

⁸⁵ S77I of the RMA, at <https://www.legislation.govt.nz/act/public/1991/0069/latest/LMS633683.html>

⁸⁶ Required by RMA s77L

sites in Christchurch are not assessed by CCCs evidence, since CCCs definition of 'sunlight access', applied by their model doesn't apply to them.

58. CCC has not shown why their characteristic of 'sunlight access' as defined by their model as the shading on a centre unit in a line of multi-units, makes the level of development inappropriate (across the city) in light of the national significance of urban development and the objectives of the NPS-UD.

Conclusion on the SAQM – what is it, what does the evidence show, and has CCC acted impartially for the benefit of the community?

59. CCC in creating the SAQM:

- a. Have defined 'Sunlight Access' in such a specific way as to exclude most sites from their evidence, (even those who have pushed to protect their current level of sunlight); and
- b. Have not identified how 'Sunlight Access' affects the wellbeing of the community now and into the future, when compared to the benefits of intensification under the MDRS scenario; and
- c. Have acted with favour towards those in the community who value sunlight amenity over the other amenities that the SAQM reduces, thereby not acting impartially to consider the people and the wider communities social and economic wellbeing now and into the future.