

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

**Legal submissions on behalf of Kauri Lodge Rest Home 2008 Limited
(Submission ID: 2059)**

8 November 2023

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 These submissions are provided on behalf of Kauri Lodge Rest Home 2008 Limited (**the Submitter**) on Plan Change 14 (Housing and Business Choice **PC14**) to the Christchurch District Plan (**CDP**).
- 2 The Submitter made a Further Submission on PC14 supporting:
 - (a) retention of the Accommodation and Community Facilities Overlay;
 - (b) high density around commercial centres, specifically in Riccarton;
 - (c) deletion or reduction in size of the Qualifying Matter: Airport Noise Influence Area; and
 - (d) deletion or reduction in size of the Qualifying Matter: Riccarton Bush Interface Area.
- 3 The planning evidence of Ms Seaton is provided in support of this Submission.
- 4 The Submitter operates a retirement village at 148 Riccarton Road,¹ utilising 17 Kauri Street for access (**the Retirement Village**).
- 5 The property at 144 Riccarton Road is used for car parking for the Retirement Village and 156 Riccarton Road and 1/7 Kauri Street are utilised for staff accommodation. 146 Riccarton Road, 7B, 9A, 11A and 19 Kauri Street contain a total of seven residential units that are currently tenanted (**Related Landholdings**).²
- 6 In these submissions the Retirement Village and Related Landholdings are referred to collectively as the **Submitter's Properties**. Figure 1 of Ms Seaton's evidence shows the properties that comprise the Retirement Village and Related Landholdings.
- 7 In my submission the changes sought in the evidence of Ms Seaton³ clearly support the application of the Medium Density Residential Standards (**MDRS**), while also giving effect to the National Policy Statement-Urban Development 2020 (**NPS-UD**).

¹ 144, 148A, 148B, 152, 150 Riccarton Road.

² Evidence of Kim Seaton, dated 20 September 2023, Attachment 1: Figure 1.

³ Evidence of Kim Seaton, dated 20 September 2023, Attachment 2.

Structure of submissions

- 8 These legal submissions address the following matters:
- (a) Planning context
 - (i) Operative District Plan;
 - (ii) PC14 – proposed changes;
 - (b) Side boundary setbacks within the Riccarton Bush Interface Area overlay;
 - (c) MRZ provisions for retirement villages; and
 - (d) Airport Noise Contour.

Planning context

Operative District Plan

- 9 In the operative Christchurch District Plan (operative **CDP**), the Retirement Village is mostly zoned Residential Medium Density (**RMD**), with the exception of 17 Kauri Street which is zoned Residential Suburban (**RS**). The Related Landholdings are zoned RS.⁴
- 10 Parcels adjoining Riccarton Road are currently within the Accommodation and Community Facilities Overlay (**ACF Overlay**), as shown in Figure 3 of Kim Seaton's evidence.⁵ The ACF Overlay recognises areas along high-capacity urban roads and within Residential Zones that are considered suitable for medium density residential development (and for community facility or guest accommodation), given their close proximity to district centres and public transport.
- 11 The Submitter's Properties are currently not subject to the Airport Noise 50 dB Ldn Air Noise Contour (**Airport Noise Contour**) in the operative CDP.

PC14 – proposed changes

⁴ Evidence of Kim Seaton, dated 20 September 2023, Attachment 1: Figure 2.

⁵ Evidence of Kim Seaton, dated 20 September 2023, Figure 3 of Attachment 1.

- 12 PC14 proposes to change the zoning of the Submitter's Properties to Medium Density Residential Zone (**MRZ**), as shown in Figure 4 of Ms Seaton's evidence.⁶
- 13 The proposed Qualifying Matters (**QM**) are set out below, with the affected parts of the Submitter's Properties noted, along with any changes between the notified version and 42A recommendation:
- (a) Riccarton Bush Interface Area overlay (applies to Submitter's Properties);
 - (b) Water Body Setback (Notified: Retirement Village, parts of 154 and 148 Riccarton Road. Section 42A: Water Body Setbacks deleted);⁷
 - (c) Airport Noise Influence Area (Notified: 19 Kauri Street, northern part of the property. Section 42A: Extended to cover the Submitter's Properties in response to the submission by CIAL).⁸
- 14 Ms Seaton's evidence⁹ contains a detailed comparison of the operative CDP and the notified PC14 standards resulting from a combination of the zoning change to MDR and application of the Riccarton Bush Interface Area. This demonstrates that PC14 as notified is less enabling than the operative CDP across a number of standards, particularly within the current RMD Zone and ACF Overlay, which has not been carried over to the notified PC14 provisions.
- 15 Ms Seaton recommends that the following should remain as per the operative CDP:
- (a) height limit, minimum site area, minimum density, permitted site coverage and boundary setback provisions in respect of the current RMD;
 - (b) the height limit in respect of the ACF Overlay (non-residential activities); and
 - (c) internal boundary setback in the RS.

⁶ Evidence of Kim Seaton, dated 20 September 2023, Attachment 1: Figure 4.

⁷ Evidence of Kim Seaton, dated 20 September 2023, Attachment 1: Figure 4.

⁸ Evidence of Kim Seaton, dated 20 September 2023, Attachment 1: Figure 4. Section 42A report of Sarah Oliver at [12.23].

⁹ Evidence of Kim Seaton, dated 20 September 2023, at [19] – [22]

- 16 Through rebuttal evidence, Dr Hoddinott recommends a number of amendments to the standards applying within the Riccarton Bush Interface Area.¹⁰
- 17 Mr Kleynbos advises that he accepts Dr Hoddinott's recommendations and, as a result, the only proposed standard which is more restrictive than the operative standards is the standard for internal boundary setbacks.¹¹
- 18 Given the complexity involved with aligning the operative CDP and proposed PC14 provisions, we suggest that directions be made for the relevant planners to confer and confirm revised MRZ provisions.
- 19 As a result of the Officers' revised recommendations, the remaining areas in contention are:
- (a) Side boundary setback standards within the Riccarton Bush Interface Area; and
 - (b) Rules and standards applicable to retirement villages in the MRZ.

Side boundary setbacks

- 20 The proposed side boundary setback standards, of 1m and 3m on either side of the building, are more restrictive than the current standards. We address this in terms of scope and merits below.

Scope

- 21 The purpose of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 was to set more permissive land use regulations to enable intensification of housing development. Section 77I enables Council to identify QMs which make the MDRS less enabling. The intent is to prevent the full MDRS from being applied to a relevant residential zone to further enable intensification in circumstances where this is inappropriate. Section 77I does not enable application of a QM to make existing Plan provisions less enabling.
- 22 In *Waikanae Land Company Limited v Heritage New Zealand Pouhere Tāonga*, the Environment Court essentially found that imposing more restrictive activity status through an IPI process disenables or removes the

¹⁰ Rebuttal evidence of Dr Wendy Hoddinott, dated 9 October, at [11], [17], [18], [20], [21] and [23].

¹¹ Rebuttal evidence of Ike Kleynbos, dated 16 October 2023, at [20].

rights held under the operative district plan and goes beyond the scope of an IPI. It held:¹²

Inclusion of the Site in sch 9 does not support the MDRS. It actively precludes operation of the MDRS on the Site. Nor do we consider that inclusion of the Site in the Schedule is consequential on the MDRS which sets out to impose more permissive standards relating to the nine defined matters.

Changing the status of activities which are permitted on the site [relating to earthworks and fencing] goes well beyond just making the MDRS and relevant building height or density requirements less enabling as contemplated by s 77I. By including the Site in Schedule 9, PC2 "disenables" or removes the rights which WLC presently has under the District Plan to undertake various activities identified in para 55 as permitted activities at all, by changing the status of activities commonly associated with residential development from permitted to either restricted discretionary or non complying.

We find that amending the District Plan in the manner which the Council has purported to do is ultra vires. The Council is, of course, entitled to make a change to the District Plan to include the new sch 9 area, using the usual RMA, sch 1 processes.

- 23 It is not accepted, as submitted for the Council, that "QMs that amend the status quo can and do fall for consideration under section 80E, including where existing development rights are constrained".¹³ Council goes on to say that how the Council proposes for the QMs to reduce development is a matter for Council as this is not prescribed in the Amendment Act.¹⁴ It is submitted that while the Amendment Act is not prescriptive on that point, this does not provide Council with unbounded discretion. Section 80E must be read together with section 77I which clearly states that QMs may make the MDRS less enabling only to the extent necessary to accommodate the QM. The overarching consideration for Council must be to give effect to the MDRS and the NPS-UD. The MDRS and NPS-UD are clearly enabling of development and there is no suggestion that this includes constraining existing development rights.

¹² *Waikanae Land Company Limited v Heritage New Zealand Pouhere Tāonga* [2023] NZEnvC 56 at [30]-[32].

¹³ Opening legal submissions for CCC, dated 3 October, at [2.64].

¹⁴ Opening legal submissions for CCC, dated 3 October, at [2.68].

24 For the Submitter's Landholdings, more onerous side boundary setbacks do not support and are not consequential on application of the MDRS (as required by s80E), because they are not applied to restrict further intensification through application of the MDRS – they instead disenable operative CDP provisions for development.

Merits

25 Ms Strachan has given evidence that the proposed additional controls are overly restrictive and would have limited ability to provide any further protection for the landscape values of Riccarton Bush.¹⁵

26 As Commissioner McMahon has identified,¹⁶ there is no control on planting within side boundary setbacks, and it is therefore possible that the intended view shafts could be blocked with vegetation.

27 We also observe that in many cases there are two (or more) lots located between the road and Riccarton Bush (ie a front lot and a rear lot), and no requirement for consistent application of the 3m setbacks across those lots to maintain an uninterrupted viewshaft. Further, in some cases (for example 1/7 Kauri Street) a view along the side boundary may not be oriented towards Riccarton Bush.

28 The Submitter maintains that the side boundary setback controls are not effective, and are therefore inappropriate.

Provisions for retirement villages in MRZ

29 Ms Seaton also identifies an area of omission or uncertainty in the retirement village provisions in the MRZ, which refer to application of rules for the RSZ and RNN zone as they would apply at 16 March 2023. Those rules do not apply in the RMD zone which covers the majority of the Retirement Village.¹⁷ Mr Kleynbos' rebuttal evidence acknowledges this point and agrees that the provisions are inadequate.¹⁸

30 Ms Seaton also identifies that it is likely to be difficult for the reader to need to refer to an earlier version of the CDP for the applicable rule, and is preferable for the applicable rule to be stipulated in the current version of the CDP. She proposes a number of amendments to the MRZ built form

¹⁵ Evidence of Sophie Strachan, dated 20 September 2023, at [3.14].

¹⁶ In questioning of Mr Kleynbos

¹⁷ Evidence of Kim Seaton, dated 20 September 2023, at [27].

¹⁸ Rebuttal Evidence of Ike Kleynbos, dated 16 October 2023, at [112] – [113]

standards, and the additional Area-specific activity standards applying within the Riccarton Bush Interface Area, to incorporate appropriate provisions for retirement villages. These are based on the current rules for retirement villages in the RS zone, which is the most permissive regime across the various applicable zones and overlays.

- 31 Mr Kleynbos acknowledges that the majority of activities contained within a retirement village are residential, serving residential needs. While he does not consider that enabling retirement villages is within the scope of an IPI, he agrees that maintaining the operative residential approach creates an unnecessarily complex framework.¹⁹ Should the Panel accept it has scope to make the changes, he provides further assessment of how retirement villages could be considered within the MRZ framework. Mr Kleynbos says he would support consolidating how retirement villages are captured in MRZ through a partial application of MDRS while making particular elements more lenient, to reflect the particular characteristics of the activity and the way it is developed.²⁰
- 32 We understand that conferencing of the relevant planners is being arranged to progress this matter.

Airport Noise Contour

- 33 Christchurch International Airport Limited's (CIAL) submission²¹ seeks to increase the spatial extent of the Airport Noise Contour through the PC14 process. As Ms Oliver acknowledges, this remodelled contour extends significantly beyond the spatial extent of the notified Airport Noise Contour and has a corresponding significantly greater impact on development capacity.²²
- 34 Ms Seaton has not considered the QM: Airport Noise Influence Area in detail. She does not consider this QM appropriate should it result in additional restrictions on existing development rights.²³ Her conclusion is consistent with *Waikanae* and the position that a QM cannot disenable existing ability to develop.

¹⁹ Rebuttal evidence of Ike Kleynbos, dated 16 October 2023, at [114], [118].

²⁰ Rebuttal evidence of Ike Kleynbos, dated 16 October 2023, at [121].

²¹ CIAL Submission #852.

²² Section 42A Report of Sarah Oliver at [10.40].

²³ Evidence of Kim Seaton, dated 20 September 2023, at [25].

35 The Submitter also supports the conclusion reached by Acoustic Consultant Mr Styles, that "...it is worth investigating a more refined approach that investigates any opportunities to encourage an improvement of the existing situation and to allow some degree of intensification while managing the effects on future development".²⁴

Conclusion

36 The Submitter seeks:

- (a) Amendment to standards to ensure these are no more restrictive than those which currently apply, particularly within the current RMD zone and ACF Overlay; and
- (b) Appropriate rules for retirement villages, within the MRZ, which are no more restrictive than those which currently apply under the operative CDP.

Dated 8 November 2023



Sarah Eveleigh / Sarah Schulte
Counsel for Kauri Lodge Rest Home 2008 Limited

²⁴ Evidence of Jon Styles at [12.3].