

Before an Independent Hearings Panel
appointed by Christchurch City Council

under: the Resource Management Act 1991

in the matter of: the hearing of submissions on Plan Change 14 (Housing
and Business Choice) to the Christchurch District Plan

and: **LMM Investments 2012 Limited**
Submitter 826

Legal Submissions on behalf of LMM Investments 2012
Limited

Dated: 10 November 2023

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MAY IT PLEASE THE INDEPENDENT HEARINGS PANEL

SUMMARY OF POSITION

- 1 These legal submissions are presented on behalf of LMM Investments 2012 Limited (*LMM Investments*) (submitter #826).
- 2 LMM Investments has interests in the land zoned Specific Purpose (Golf Resort) Zone – Whisper Creek Golf Resort (*Whisper Creek Site*), which is located at 240 Spencerville Road, north of the recently developed 'Prestons' subdivision in the suburb of Marshlands and east of the established Belfast area.
- 3 LMM Investments' submission sought the rezoning of the Whisper Creek Site to Medium Density Residential Zone (*MRZ*), with an appropriate Outline Development Plan (*ODP*) and associated amendments to the policy and rule framework.
- 4 As explained in the evidence for LMM Investments, this position has since been refined (or reduced) so that:
 - 4.1 No zoning change is sought, but instead the Medium Density Residential Standards (*MDRS*) would apply to the parts of the Whisper Creek Site where residential development is already anticipated under the operative District Plan. This includes the areas shown as "Resort Community" and "Activity Areas A, A1 and A2" on the existing ODP for the site.
 - 4.2 A maximum number of 350 residential units are enabled on the Whisper Creek Site. Again, this is no change from what is currently allowed under the operative District Plan, but is allocated to different housing typologies than what is currently provided for.
- 5 The intent of the refined relief is to bring the zoning of the Whisper Creek Site into alignment with the planning framework that will apply in Christchurch following the implementation of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (*Amendment Act*).
- 6 In our submission, the refined relief sought by LMM Investments is both within scope and supported from an evidential perspective.

EVIDENCE

- 7 Evidence for LMM Investments has been provided by:
 - 7.1 **Mr Jonathan Clease** - Planning;
 - 7.2 **Mr Andrew Hall** – Infrastructure; and

7.3 Mr Fraser Colegrave - Economics.

- 8 **Mr Clease** and **Mr Hall** will provide summary statements at the hearing. **Mr Colegrave's** evidence is brief and, as such, he will not provide a summary statement but will be available to answer the Panel's questions, if any.
- 9 **Mr Hall** has been in contact with the Council's infrastructure team and will be able to give an update on those discussions at the hearing.
- 10 As **Mr Clease's** evidence outlines, LMM Investments also sought the deletion of the Tree Canopy Financial Contributions and the qualifying matters relating to Tsunami Risk and Public Transport accessibility. For clarity, that relief is still being sought although these submissions focus on the application of the MDRS to the residential parts of the Whisper Creek Site.

LEGALITY OF THE REFINED RELIEF

- 11 The statutory framework has been well traversed for (and by) the Panel in previous hearing sessions to date. These submissions accordingly focus on the key legal issue raised by the Council in respect of the relief sought by LMM Investments – scope.
- 12 The Council's position, as outlined in Mr Kleynbos' section 42A report¹ and confirmed in his rebuttal evidence (in response to the refined relief)² is that the Whisper Creek Site is located outside of the urban environment and is therefore outside the of scope of PC14. The Council's legal submissions characterise the relief sought as an "entirely new matter", not able to be foreseen by those potentially affected and beyond the spatial limitations of an Intensification Planning Instrument (*IPI*) (that is, relevant residential zones and Policy 3 catchments within the urban environment).³
- 13 In our submission, the submission (and in particular, the refined relief) is within scope because:
- 13.1 As a starting point, the "urban environment" for the purposes of PC14 was determined by Council itself (see Sarah Oliver's section 42A report, paragraph 5.18 and the corresponding image) to be "*Christchurch City excluding the Banks Peninsula ward, except for Lyttelton*". The Whisper Creek Site is clearly within Christchurch City and therefore the urban environment for the purposes of PC14. Furthermore, in terms of the NPS-

¹ Paragraphs 6.1.112 and 6.1.113 and Page 1 of Appendix D.

² Paragraphs 140-142.

³ Paragraphs 6.2-6.6.

UD, the Whisper Creek Site is clearly an area that is intended to be urban in character and forms part of a housing and employment market of more than 10,000 people.

- 13.2 It is acknowledged that section 77G(1) requires the MDRS to be incorporated into “relevant residential zones” and that the Specific Purpose (Golf Resort) Zone is unlikely to fall within the definition of a relevant residential zone, albeit this is not clear cut.
- 13.3 However, section 77G(4) enables the Council to create *new* residential zones. It was therefore open, through PC14, for the Council to propose the rezoning of the Whisper Creek Site to MRZ (which was the basis for LMM Investments’ submission as lodged). As a matter of logic, it is therefore open to Council, through PC14, to apply the MDRS to new areas, such as the Whisper Creek Site.
- 13.4 Section 77G(4) also allows the Council to amend existing residential zones. It is submitted that the Specific Purpose (Golf Resort) Zone already contemplates a certain level of residential activity, and applying the MDRS to the Whisper Creek Site could be viewed as an amendment to the existing planning framework. This is demonstrated by the operative District Plan objective and policies of the Specific Purpose (Golf Resort) Zone which provide for residential development where it complements the recreational function of the zone.⁴
- 13.5 In addition, Policy 3(d) of the National Policy Statement on Urban Development 2020 must be considered. Policy 3(d) requires, “*within and adjacent to neighbourhood centre zones, local centre zones, and town centre zones (or equivalent), building heights and densities of urban form commensurate with the level of commercial activity and community services.*” The proposed building heights and densities that will be enabled through the refined relief are entirely appropriate as they are essentially a continuation of what currently exists in the District Plan. This means they are necessarily commensurate with the level of commercial activity and community services, having already been assessed as appropriate through an earlier Schedule 1 process. The only change is the different housing typology

⁴ Christchurch District Plan Objective 13.9.2.1 – Golf resort development “... *and to provide other recreational opportunities, and limited residential development, within extensive open space and lake or riparian settings, with no significant adverse effects on the natural or adjoining rural environments.*” Policy 13.9.2.1.2 also provides that urban development should be complementary and subsidiary to the primarily recreational function of resorts. Residential activity is permitted to a degree in the rule framework.

mix, which aligns with the intent of the Amendment Act (i.e. the MDRS) and is supported by **Mr Colegrave's** economics evidence.

- 13.6 LMM Investments' submission (and in particular, the refined relief) is therefore clearly "on" PC14 and the first limb of *Clearwater* and *Motor Machinists* is met.⁵ In *Clearwater* terms, the management approach for the Whisper Creek Site could conceivably have involved rezoning the site, upon notification, to a residential zone.
- 13.7 As to the second limb of *Clearwater* and *Motor Machinists*, given that the land use of the Whisper Creek Site is not fundamentally changing from what is currently enabled under the operative District Plan, there are unlikely to be any affected parties. Even if there were, given the possible rezoning outcome under the Amendment Act outlined above, any affected parties would have been able to comment on these proposed changes by way of further submissions.
- 13.8 With reference to the Council reliance on *Clearwater*, the above analysis outlines that the two *Clearwater* limbs have been met in respect of the Submitters' submissions. We also add (as noted in previous legal submissions for the Central City and Commercial Zones hearing topic):
- (a) The *Clearwater* line of cases generally concerned relatively discrete changes or variations to planning documents. In these cases, submissions that were considered out of scope were generally "me too" type submissions seeking, for example, a geographical extension to a change or variation. In the *Albany North Landowners* case, the High Court considered scope in the context of the Auckland Unitary Plan.⁶ The Court indicated that a full district plan review context would necessarily result in a broader lens when it came to scope. In particular, a section 32 report will not fix the final frame of the instrument as a whole, and is not therefore determinative of scope. While PC14 is not (and should not be considered) a full district plan review, in our submission it is considerably further along the continuum than the traditional *Clearwater*-type scenario. It may assist the Panel to consider scope in that light.

⁵ *Clearwater Resort Ltd v Christchurch CC* HC Christchurch AP34/02, 14 March 2003 and *Palmerston North CC v Motor Machinists Ltd* [2013] NZHC 1290.

⁶ *Albany North Landowners v Auckland Council* [2017] NZHC 138.

- (b) Clause 99(2), Schedule 1 of the Resource Management Act 1991 enables the Panel to make recommendations that are not within the scope of submissions made on PC14. This clause refers to scope of decision-making , rather than scope of submissions. However, ultimately, it enables the Panel to make broad recommendations based on what it has heard at the hearings and indicates that the Panel should not apply a narrow lens to the issue of scope.

13.9 In our submission, the refined relief sought by LMM Investments is within the scope of PC14.

13.10 We note that the Council’s legal submissions for this hearing topic address (in Part 5), the existing Residential New Neighbourhood Zone provisions, which the Council has replaced with either Residential or Future Urban zoning. Residential zoning in PC14 has been implemented in such areas that have been fully or substantially developed or where consents being implemented. Whereas Future Urban zoning has been applied in areas suitable for urbanisation in future. This demonstrates that Council has turned its mind to zoned, but unbuilt, areas as needing to be addressed in PC14. In our submission, the Special Purpose (Golf Resort) Zone and the associated provisions fall within this ambit; it is a special purpose zone which already provides for residential development. On this basis, the refined relief sought by LMM Investments is an appropriately tailored zone-specific response which aligns with the broad need to consider the treatment of the residential components of Special Purpose zones as advanced by Council.

MERITS OF THE REFINED RELIEF

- 14 The evidence of **Mr Clease**, **Mr Hall** and **Mr Colegrave** addresses the technical merits of the refined relief in detail. These submissions accordingly leave the merits of the refined proposal to these experts to discuss at the hearing.
- 15 However, it is worth noting that the refined relief will not result in a fundamental change to the land use that is already authorised for the site. There will accordingly be no associated effects on the environment, rather a change in housing typologies on the Whisper Creek Site which better aligns with the Amendment Act and which is supported by **Mr Colegrave’s** economics evidence.

CONCLUSION

- 16 In our submission, the changes sought to PC14 by LMM Investments are within scope and would enable the most appropriate outcomes for the Whisper Creek Site. The revised relief should accordingly be accepted.

Dated 10 November 2023



J Appleyard / A Hawkins / A Lee
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