

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 Red Spur Limited (Submission ID: 881)

8 November 2023

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**anderson
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May it please the Commissioners

- 1 These submissions are provided on behalf of Red Spur Limited (**Red Spur**) on Plan Change 14 (Housing and Business Choice **PC14**.) to the Christchurch District Plan (**CDP**).
- 2 Red Spur is developing the Redmund Spur subdivision, located in the Halswell hills. An associated company has also completed the Quarry Hill development which is a neighbouring Upper Kennedys Bush subdivision, comprising 100 sections.
- 3 The Redmund Spur development is proceeding at a moderate pace and in a bespoke way, considering what is best suited to the land form and features of the site, and what will best meet the needs of the future residents. In developing land that has been in the family for approaching 100 years, the directors have a unique appreciation of the legacy that the management and development of land creates.
- 4 As detailed in the evidence of Ms Aston, Red Spur has sought over time to include greater provision for mixed density development, with smaller lot sizes and greater site coverage in those parts of the site suited to such development. In other parts of the site Red Spur identifies that larger lot sizes, or exclusion of undevelopable land, is the appropriate response. This approach is reflected in the Residential Hills Mixed Density Overlay provisions that were carefully crafted alongside Council officers through the Replacement District Plan process and currently apply to the site.
- 5 Red Spur considers that areas of the site are suited to and provide opportunity for further development meeting this higher density typology. While this is not particularly directed to achieving a greater number of lots within the development area, it does provide improved housing choice that better meets the market. As part of the process of evaluating housing choice and capacity, Red Spur has also identified further areas that could be developed to connect the Red Spur and Quarry Hill subdivisions, subject to approval through future planning processes.
- 6 Against that background, the submission by Red Spur is directed towards:
 - (a) Retaining recognition of the mixed density character of the current development which enables a range of lot sizes, including smaller lots with higher site coverage;
 - (b) Recognising the site's suitability and potential for further development at this higher density in appropriate locations; and

- (c) Avoiding planning decisions and appellations that would divert away from the current direction towards increasing density provided, and may make any future planning process more challenging.
- 7 A number of alternatives for the PC14 proposal for hill suburbs have been proposed through PC14 as notified, the Officers s42A reports/ evidence and now Officers' rebuttal evidence. In response, Ms Aston's evidence has proposed various alternative forms of relief, depending on the overarching framework adopted. Ultimately, the submitter is seeking provisions which achieve its objectives set out in paragraph 6 above.

Structure of submissions

- 8 These submissions address:
- (a) Application of the National Planning Standards zone descriptions and identification of relevant residential zones;
 - (b) Qualifying matters and modification of the MDRS; and
 - (c) *Waikanae* matters.

Application of National Planning Standards zone descriptions

- 9 Ms Aston's evidence includes her assessment of whether application of National Planning Standards (**NPStds**) zone descriptions is within the scope of an IPI. I agree with her assessment that renaming zones to comply with the NPStds is not, of itself, within the scope of an IPI as prescribed by s80E.
- 10 I am of the view that application of the NPStds would be within scope where it supports application of the MDRS across the City (s80E(b)(iii)) by applying the equivalent NPStds zoning to determine whether the zone is a "relevant residential zone". However, it is my submission, and Ms Aston's evidence, that the LLRZ is not the equivalent zoning.

National Planning Standards - Large Lot Residential Zone

- 11 PC14 as notified proposes that the site be renamed as the Large Lot Residential Zone (**LLRZ**) with a Residential Mixed Density Precinct applied.
- 12 Ms Aston identifies that:
- (a) Lot sizes enabled and anticipated within the site do not reflect the LLRZ – for 70% of lots, the minimum lot size is 650m²; there is no minimum lot size around an existing building; and site coverage

standards include provision for lots less than 450m². Ms Aston assesses that the average lot size is likely to be in the order of 900m²;

- (b) The Redmund Spur site is not of the same character as other areas identified as LLRZ; and
 - (c) The assessment of the site as LLRZ is inconsistent with the classification of other similar hill zones as MRZ (as recommended by Mr Kleynbos in his Evidence in Chief).
- 13 In my submission the Redmund Spur site is more appropriately categorised as General Residential, or Low Density Residential, and is therefore a relevant residential zone.
- 14 The rebuttal evidence of Mr Kleynbos identifies that, subject to acceptance of the proposed Port Hills Stormwater QM, he would recommend that the site retain its operative zoning and associated controls.¹ While that is not Red Spur's preferred outcome (as discussed further below), it is supported over renaming of the zoning to LLRZ.

Qualifying matters

- 15 Council had a broad discretion to identify qualifying matters (**QM**) to be applied to make the MDRS less enabling. These may relevantly include:
- (a) "New" qualifying matters that fall into one of the categories in section 77I, evaluated under section 77J; and
 - (b) Any "other" qualifying matter in accordance with sections 77I(j), evaluated under section 77J and fulfilling the site-specific requirements under 77L.
- 16 Potential qualifying matters to be applied to the site include the:
- (a) Low Public Transport Accessibility Area QM (**LPTAA**) (renamed as the Suburban Hill Density Precinct in the s42A recommendations); and
 - (b) Port Hills Stormwater QM (proposed in the evidence of Canterbury Regional Council (**CRC**)).
- 17 Red Spur accepts that it may be appropriate to apply a QM to the site, and considers that this is a more accurate and appropriate way to limit

¹ Rebuttal evidence of Ike Kleynbos at [150]

application of the MDRS to the site, rather than through renaming the site zoning to LLRZ.

- 18 In terms of the statutory requirements for testing and application of QMs, importantly the Amendment Act requires that:
- (a) For "new" QMs which fall within one of the categories in s77I, modifications to the MDRS must be limited to only those necessary to accommodate the QM (s77J(4)(b)); and
 - (b) For "other" QMs which do not fall within one of the categories in s77I, evaluation of the QM must include a site-specific analysis (s77L(c)) that:
 - (i) identifies the site to which the matter relates; and
 - (ii) evaluates the specific characteristic on a site-specific basis to determine the geographic area where intensification needs to be compatible with the specific matter; and
 - (iii) evaluates an appropriate range of options to achieve the greatest heights and densities permitted by the MDRS (as specified in Schedule 3A) or as provided for by policy 3 while managing the specific characteristics.
- 19 Red Spur considers that there is potential for application of more enabling standards than those provided by the operative zoning, particularly across flatter areas of the site as identified in the evidence of Ms Aston.²
- 20 Red Spur has not provided any specific evidence on the merits of the proposed QMs. It has expressed that it is neutral as to the LPTAA, and supports application of a site-specific Density Precinct to manage density within the MRZ.
- 21 The Port Hills Stormwater QM as now proposed has only arisen through the evidence for CRC and the rebuttal evidence of the Council Officers. CRC's submission sought:
- (a) a Stormwater QM in relation to the upper Halswell River catchment, on the basis of inadequate downstream infrastructure and downstream flooding effects; and

² Evidence of Fiona Aston at [61] and [65]

- (b) the exclusion of "severe" erosion class land from further subdivision and development.

22 CRC's submission also noted that (my emphasis):

CRC consider that medium or high density development on the Port Hills would result in increased stormwater runoff as there is little attenuation capacity in some catchments. This could lead to more sediment loss...Most of the Port hills are inside the High Soil Erosion Risk Zone under the Canterbury Land and Water Regional Plan. If such development occurs on these hills, there will be a need to require on site attenuation...

23 Red Spur has not been in a position to provide evidence in response, noting that the proposal for a Port Hills Stormwater QM over the majority of the Port Hills was not anticipated from CRC's submission, and was not apparent to Red Spur until it reviewed the rebuttal evidence of Mr Kleynbos, dated 16 October 2023. While acknowledging that the Panel has the ability to make recommendations on any matter identified during the hearing and is not limited to being within the scope of submissions,³ Red Spur is concerned that the timing of introduction of the Port Hills Stormwater QM has not enabled it to be appropriately tested, and is in conflict with the Hearing Procedures which direct that submitters must not extend beyond the scope of their original submissions in terms of the alterations to the proposed plan change that they seek in their evidence (at [72]).

24 It is proposed that areas within the Port Hills Stormwater QM retain the operative zoning controls. Red Spur's position is that a Stormwater QM is not required as there are alternative methods to manage stormwater effects.⁴ If the Port Hills Stormwater QM is accepted, Red Spur considers that retention of operative zoning controls exceeds the amendments necessary to the MDRS to accommodate the QM and unnecessarily precludes housing development.

25 I note that Red Spur has recently been awarded recognition as a "Stormwater Superhero" by a joint committee of CRC, Council and the West Melton Zone Committee. It recognises Red Spur's efforts and achievements in erosion and sediment control. Red Spur maintains that, at least with respect to its site, there are alternative methods to avoid or

³ RMA Schedule 1, clause 99

⁴ Consistent with the Evidence of Brian Norton

mitigate *potential*⁵ stormwater quantity and quality issues that *could*⁶ be created by intensification on the Port Hills.

- 26 The rebuttal evidence of Mr Kleynbos addresses alternative responses to application of a Port Hills Stormwater QM, including application of a Port Hills Density Precinct which would enable some further development, or retention of the operative controls. If the Port Hills Stormwater QM is accepted, Red Spur continues to prefer application of an appropriately enabling Port Hills Density Precinct.
- 27 The purpose of the MDRS is to enable housing capacity *and* choice. When undertaking the required assessment of whether the limits on application of the MDRS are the minimum necessary to address the QM, specific consideration should be given to the element of housing choice. The operative Residential Hills – Redmund Spur Mixed Density Overlay includes a cap of a total of 400 lots to be provided within the development. That could be retained whilst also enabling provision of smaller lots, as proposed at paragraph 65 of Ms Aston's evidence. That would continue to improve housing choice within the development, to better meet the needs of different households, consistent with the NPS-UD direction for a well-functioning urban environment.

Waikanae matters

- 28 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.
- 29 Section 77I does not enable application of a QM to make existing Plan provisions less enabling. In *Waikanae Land Company Limited v Heritage New Zealand Pouhere Tāonga*,⁷ the Court confirmed that amending the District Plan through an IPI to disenable activities that were previously permitted was ultra vires.
- 30 As noted in Ms Aston's evidence, the operative Residential Hills Mixed Density Overlay includes specific provisions relating to site density, minimum lot sizes and site coverage which have been utilised to enable

⁵ Evidence of Meg Buddle at [69]

⁶ Evidence of Meg Buddle at [70]

⁷ *Waikanae Land Company Limited v Heritage New Zealand Pouhere Tāonga* [2023] NZEnvC 56

some smaller lot development at Redmund Spur. These should as a minimum be retained the final provisions to ensure no disablement as a result of PC14. More generally, the final provisions should only restrict MDRS to the extent necessary to be compatible with the specific matter addressed by a QM.

Dated 8 November 2023

A handwritten signature in black ink, appearing to read 'S Eveleigh', written in a cursive style. The signature is positioned above a horizontal line.

Sarah Eveleigh
Counsel for Red Spur Limited