

**BEFORE THE INDEPENDENT HEARING PANEL AT CHRISTCHURCH  
TE MAHERE Ā-ROHE I TŪTOHUA MŌ TE TĀONE O ŌTAUTAHI**

**In the matter of** Resource Management Act 1991

**And**

**In the matter of** the hearing of submissions on Plan Change 14  
(Housing and Business Choice) (PC14) to the  
Christchurch District Plan.

**Synopsis of legal submissions on behalf the Riccarton House and Bush  
Pūtaringamotu Trust Board (submitter #44 and #2085)**

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## May it please the Commissioners

### Introduction

1. The Riccarton Bush Trust Board (**Board**) submitted on Plan Change 14 (Housing and Business Choice) (**PC14**) to the Christchurch District Plan (**District Plan**) in respect of, in particular, the protections that are necessary for Riccarton Bush Pūtaringamotu (**Pūtaringamotu**<sup>1</sup>).
2. The Boards submission acknowledged and expressed appreciation that the notified version of PC14 included a new qualifying matter the Riccarton Bush Interface (**RBI**). The Boards submission supports the RBI and the imposition of a 8m height limit and 35% site coverage rule for the Residential suburban zoned land within the RBI.
3. However, the Board is mindful that the extent of the interface area has lead to some opposition. That opposition has raised issues with the scope of the qualifying matter in light of the Environment Court authority in *Waikanae Land Co Ltd v Heritage NZ Pouhere Taonga (Waikanae)* <sup>2</sup>.
4. The Board is concerned that, should doubt be cast on whether the RBI can be applied, that existing protections might be affected.

### The Board's submission and current position

5. As the Board's submission and Ms Willis' statement make clear the focus of the Board is on the health and integrity of Pūtaringamotu. Therefore, overall, if any changes to the status quo, or the notified provisions, are made, in terms of greater intensification on surrounding land up to the existing buffer, then for the reasons outlined in the submission, the evidence of Professor Norton and agreed in the joint witness statement, an addition to the buffer area is warranted if the change to the status quo might adversely affect Pūtaringamotu<sup>3</sup>.
6. In addition, if the RBI in its current guise (including either its extent and constituent controls, or both), is found not to be within scope *on particular sites*, such as sites in which the RBI controls place restrictions on what has been achievable on those sites under the District Plan, then those sites can be

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<sup>1</sup> The Board notes that its spelling of Pūtaringamotu differs from that used by Ngāi Tūāhuriri (Pūtārikamotu). No disrespect is intended. The spelling has been maintained for consistency with the Boards previous submission and further submission.

<sup>2</sup> [2023] NZEnvC 056

<sup>3</sup> This position appears consistent with the rebuttal evidence for the Council of Brittany Olivia Ratka dated 9 October 2023, at paragraph 42.

severed from the RBI with the *status quo* protection (i.e. the existing 10m buffer) remaining in place.

7. The Boards submission also includes the relief that the existing exception (referring to the property at 48 Rata Street) be maintained. That position has not changed.
8. Finally, the Board's submission also sought to include a provision that would enable it to be notified, on a limited basis, if development the exceeded the status quo was to be considered. This approach is still supported, and such a notification provision is not considered to offend the denial of development rights under the status quo basis of the *Waikanae* decision (discussed below).

### **The status quo**

9. The Board had prepared comments for the Christchurch City Council on its proposal for including the Medium Density Residential Standards (**MDRS**) under the Resource Management Act (Enabling Housing and Other Matters) Amendment Act 2021 (**EHA**).
10. The basic thrust of the Boards comments was that the District Plan protections were considered the minimum necessary to ensure the health and viability of Pūtaringamotu. The Board's comments indicated that if the potential level of development that had been indicated in the Council's consultation document, in particular the potential high-density zoning, was pursued, then an increased buffer area would be necessary.
11. The Council listened and introduced the RBI as a qualifying matter. Arguably the Council went further than the Board had expected in some respects. However, there was a remaining concern in that the status quo protection, in respect of the 10m buffer from the base of the predator proof fence that surrounds Pūtaringamotu was not carried through.
12. Once the Council was advised of that omission, it lodged its own submission that, amongst other things, confirming that the use of the predator proof fence as the measuring point for the buffer was never meant to have been deleted.
13. In basic terms, the Board's understanding is that the RBI was intended to preserve the status quo protections by maintaining permissible development to current levels, which is a limitation to the MDRS. That outcome was what the Board's, submission seeks to preserve.

14. However, to the extent that the status quo (pre EHS) cannot be preserved, for example if submissions seeking the removal of the RBI are accepted, the Board’s view is that the concerns over the impacts on Pūtaringamotu from the increased potential for development mean that an enlarged buffer area would be warranted.

### **Are protections justified?**

15. The Board’s firm position is that there is no doubt whatsoever that protecting Pūtaringamotu is not only justified but is essential and undeniable. Of the matters that can justify a qualifying matter under s. 77I the first listed is:

- (a) a matter of national importance that decisions makers are required to recognise and provide for under section 6:

16. Pūtaringamotu, “the sole remnant of the ancient podocarp forest that one characterised much of Kā Pākiri-whakatekateka-a-Waitaha/Canterbury Plains”<sup>4</sup> and its setting in urban Christchurch, has been recognised under the District Plan as an outstanding natural feature (s.6(b)), a area of significant indigenous vegetation significant habitat of indigenous fauna (s.6(c)), as a site of importance to the relationship of Māori with their ancestral lands, sites and other Taonga (s.6(e)), and as a historic heritage site to be protected (s.6(f))

17. Pūtaringamotu is “a significant cultural landscape<sup>5</sup>... and, a prized taonga of Ngāi Tūāhuriri”<sup>6</sup>. It is also home to species including kererū, pīwakakwaka and at times kiwi, and while<sup>7</sup>:

Contemporary utility of Pūtaringamotu as a mahinga kai is limited by conservation legislation that prohibits customary harvest of protected species, and by general fragmentation and degradation of surrounding ecosystems... the historic role of Pūtaringamotu as a mahinga kai for Ngāi Tūāhuriri tūpuna (ancestors) connects manawhenua in the present to the landscape and their whakapapa associations with it.

18. And as such, and for its inherent ecological significance, the position of Pūtaringamotu has been confirmed and reinforced under the Riccarton Bush Act 1914, and the District Plan (for example, via Plan Change 44 to the previous City Plan and the District Plan Review).

19. The Council has included emphasis of the landscape values of Pūtaringamotu, including in relation to views of the site. This is clearly yet another value worth protection but is secondary in the Board’s view to the protection of

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<sup>4</sup> From: Statement of manawhenua values: Pūtaringamotu, December 2022, page 1, 1<sup>st</sup> paragraph under heading “Manawhenua Values associated with Pūtaringamotu”.

<sup>5</sup> Ibid

<sup>6</sup> Ibid, page 2, final paragraph.

<sup>7</sup> Ibid, page 2, penultimate paragraph.

Pūtaringamotu, and maintaining ecological links to it, for its own sake and inherent ecological and cultural values.

### **The ecological position**

20. Professor Norton's evidence<sup>8</sup> summarises the potential harm that could occur if higher density development were enabled near Pūtaringamotu. Professor Norton will speak to his evidence for the panel.

21. Professor Norton also engaged in caucusing with Andrew Benson, the arboricultural expert for the Council, in which it was agreed that<sup>9</sup>:

“The simplest approach to ascribing a setback from Riccarton Bush is to establish a setback from the predator proof fence; and that setback should be 15m.”

22. This then is the ecological position, which the Board advocates for, should an ability to develop more intensely than the status quo be determined. The Board would ideally like the imposition of this setback to be the overall outcome (except as agreed with 48 Rata St). But the Board recognises that additional controls, such as an increased set-back, may be beyond the scope of PC14, at least if the status quo is otherwise being maintained.

### **The Board's view of the interface area**

23. The interface, while a response to the issues raised by the Board, was not its suggestion. However, the Board considers that it makes perfect sense in terms of demarking the area in which the status quo for development opportunity is maintained despite the advent of the MDRS.

24. This appears to also be the opinion generally of the Council's experts. However, there is also the suggestion in the *Riccarton Bush interface conclusion* to the section 42A report<sup>10</sup> that:

“In the event that the Panel accepts the case of the [Airport Noise Influence Area] being extended [the] recommendation would be to remove the Riccarton Bush Interface Area in its entirety as its intended outcomes (and greater would be achieved by the updated ANIA.”

25. The approach is not favoured by the Board for two reasons. The first is that while an acceptance of the currently recommended change to the ANIA might see Pūtaringamotu included in that Influence Area, a future revision might not,

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<sup>8</sup> Statement of Evidence of Emeritus Professor David Andrew Norton on behalf of Riccarton Bush (Pūtaringamotu) Trust dated 20 September 2023.

<sup>9</sup> Joint Statement of Arboricultural Experts, dated 2 October 2023.

<sup>10</sup> Planning officer's report of Ike Kleynbos under section 42A, dated 11 August 2023, paragraphs 7.1.34 – 7.1.37.

which is considered a risk. And second, the Board is firmly of the belief that Pūtaringamotu deserves its own recognition in the District Plan, in this instance as a qualifying matter. The Board's view is that it was the previous 'treatment' of Pūtaringamotu in the class of "open space natural" sites, without further recognition of its special status (under those provisions at least) that resulted in the draft proposal, that would have seen high density development near to the boundary of Pūtaringamotu.

26. Accordingly, the Board considers appropriate recognition and accommodation of Pūtaringamotu needs to be made by way of its own qualifying matter (that few submissions oppose outright), and not for it to be 'captured' under a more generic (even if more restrictive) influence area. If that inclusion, for as long as it is maintained, means greater scrutiny of proposed developments, the Board is comfortable with that outcome. But the underlying protection of specific provisions directed at Pūtaringamotu should also be maintained.
27. Finally on this point, it is noted that any concern that more than one set of controls might apply to a proposal would be misplaced. Already under the District Plan individual sites can find themselves subject to multiple overlays with their own requirements and controls<sup>11</sup>. Such an outcome is reflective of different issues and values that need to be accommodated, and one set of controls does not relegate another. It can add to complexity but that should be proportionate to the importance of those issues and values.

### **The Council's final (?) position**

28. The rebuttal evidence from the Council's experts recognises issues raised in submissions, these are discussed next.
29. The Board accepts the changes proposed by Ms Hoddinot for the Council (and agreed in caucusing<sup>12</sup> with Ms Strachan, and endorsed by Mr Kleynbos), in respect of the site(s) already zoned Residential Medium Density (RMD) in the District Plan, including Kauri Lodge Rest Home. Such changes appear to seek to maintain the pre-MDRS status quo which, if achieved (and as noted above), the Board supports.
30. The Board also accepts and is supportive of Ms Hoddinot's position on the points of disagreement.

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<sup>11</sup> For example, a single site on Kaitorete Spit could be subject to coastal, landscape, ecological and cultural overlays.

<sup>12</sup> Joint Statement of Landscape Experts Pūtaringamotu Riccarton Bush Interface Area, dated 2 October 2023.

## Affected submitters?

31. The Council's evidence and caucusing unsurprisingly appears to have focused on the evidence lodged by Kainga Ora and Kauri Lodge, in relation to issues with the RBI.
32. The Board respectfully agrees with the responses to that evidence set out in the Mr Kleynbos' rebuttal evidence<sup>13</sup>. In particular:
  - 32.1. To the extent that the controls in the RBI affect the site(s) already zoned Residential Medium Density (RMD) under the District Plan, including Kauri Lodge, and the ability to develop in accordance with the status quo, the proposed changes seem to represent a consistent approach, and a level of development that was already authorised. Whether that should also be extended to other properties that were not zoned RMD (but had different controls for retirement villages<sup>14</sup> like Kauri Lodge) the Board's view is neutral, unless any proposed carve out would intensify development from the status quo (as previously stated).
  - 32.2. In respect of the basis for the RBI qualifying matter, as raised in the evidence of Kainga Ora<sup>15</sup>, the Board agrees with Mr Kleynbos' conclusion. Pūtaringamotu is a qualifying matter because it must be recognised and provided for under s.6 of the RMA, as a matter of national significance. In addition, insofar as Kainga Ora seeks simply to revert to the existing tree setbacks, the Board notes that the ecological evidence supports a greater setback of intensification beyond the status quo is intended. Therefore, the "existing tree setbacks" plus intensification beyond the status quo will not adequately recognise and provide for Pūtaringamotu, as required of the Council.
  - 32.3. The Board also notes the submission in respect of the Trust that owns 48 Rata Street. The Board's understanding is that the submitter also supports the retention of the status quo. On that basis, that is that the status quo includes the exemption in respect of 48 Rata Steet that was included in the District Plan, the Board and the submitter are understood to be in agreement.

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<sup>13</sup> Statement of Rebuttal Evidence of Ike Kleynbos on behalf of the Council dated 16 October 2023 paragraphs [14] – [20].

<sup>14</sup> For example, the rules controlling minimum density – 14.4.2.1, and maximum site coverage – 14.4.2.4, from the Statement of Evidence of Kim Marie Seaton on behalf of Kauri Lodge Rest Home (#2029) dated 20 September 2023, Table 2 at page 8.

<sup>15</sup> Statement of Evidence of Tim Joll on behalf of Kainga Ora dated 20 September 2023, paragraph 6.2-6.3

32.4. In respect of the remainder of the submissions, the Board accepts the recommendations of the Councils experts, while sympathising with those landowners who might wish to be part of the RBI and thereby maintain a link to Pūtaringamotu. In terms of the directive nature of the MDRS and the process for implementing them, the RBI may be as far as the Council can go, and the Board supports that it has chosen, rightly, to do so.

### **The *Waikanae* decision**

33. It would be remiss of these submissions not to comment on the outcome of the *Waikanae* decision of the Environment Court<sup>16</sup>, and it may not be entirely academic, as the Board has also sought the ability to be limited notified of resource consent applications that seek to develop near, and could therefore potentially affect, Pūtaringamotu.
34. As should be apparent from the Board's comments on other submissions and the changes suggested to provisions by Council experts, the Board accepts the position that there are limits to what an IPI plan change to give effect to the MDRS can achieve. Such changes should support or be consequential to the MDRS.
35. The Court in *Waikanae* was plainly of the view that a change that disenables existing rights and would have a 'draconian' effect, would be unlikely to satisfy those requirements.
36. At [30] the Court concurs with counsel for the applicant that the change in question "...actively precludes the operation of the MDRS on the site." This might suggest that a change that was due to a qualifying matter which simply maintained the status quo could also be challenged. However, counsel for the applicant had also conceded at [14] that "*the term less enabling could mean not enabling development at all.*" Given the ultimate finding in that case, which was that it would be *ultra vires* to amend the plan, under the IPI, to remove rights that exist presently to undertake various activities as permitted activities and instead change their status to restricted discretionary or non-complying, what is "*not enabled at all*" would be additional intensification development under the MDRS.
37. In other words, a plan change to introduce greater restrictions than presently exist would be inappropriate in an IPI that was intended to be generally enabling.

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<sup>16</sup> Fn. 1 above.



38. It is notable that the finding is essentially factual. The powers s.80E are acknowledged to be broad, in particular in light of the ability of the Council to identify appropriate qualifying matters. *Waikanae* also speaks of rights, and clearly if a resource consent would have already been required, then unless it was for a controlled activity, it would be difficult to say there was a right to that development. Accordingly, the test (if that is the correct description) should relate to the permitted baseline.
39. In this light, the additional relief sought by the Board, to be notified of applications that could impact the Bush may be acceptable from a Waikanae perspective. The applications themselves would already be for restricted discretionary consents that might impact a legitimate qualifying matter. To include a rule that enables only limited notification to an identified party can hardly be considered draconian in those circumstances.
40. There still remains the need to support, or be consequential on, the MDRS, so the Panel may consider that such a rule could only be introduced if some additional intensification was being introduced. However, the Board would still like the possibility of it being given greater visibility on resource consent applications, which are intended to modify the applicable standards (even where the opportunity to seek a consent previously existed), and which could impact on Pūtaringamotu, considered by the Panel.

### **Conclusions**

41. The treatment of Pūtaringamotu as a qualifying matter is plainly justified.
42. The use of the RBI to effectively maintain the status quo and limit intensification that may be detrimental to Pūtaringamotu is equally justified.
43. However, where the RBI introduces elements that disenable existing permitted development rights, the decision in *Waikanae* suggests that those elements may be *ultra vires*.
44. If that is the case such elements should be severable and do not affect the overall *vires* of the RBI to restrict the application of the MRDS over the area identified.
45. If this is not the case, and additional intensification is able to be permitted, the Board considers that, as a consequence, an additional 5m should be added to the buffer zone, measured from the predator proof fence, to protect the ecological integrity, health and cultural values of Pūtaringamotu.

46. Thank you for the opportunity to be heard.

Dated: 15 November 2023



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