

BEFORE THE INDEPENDENT HEARINGS PANEL

UNDER

the Resource Management Act 1991
and the Canterbury Earthquake
(Christchurch Replacement District
Plan) Order 2014

IN THE MATTER OF

**THE PROPOSED CHRISTCHURCH
REPLACEMENT DISTRICT PLAN –
STAGE 1 - RESIDENTIAL**

SUBMITTER

**HOUSING NEW ZEALAND
CORPORATION (SUBMITTER
495)**

LEGAL SUBMISSIONS

Dated: 8 July 2016

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MAY IT PLEASE THE PANEL

- 1 We represented Housing New Zealand Corporation (Housing New Zealand) in relation to the Stage 1 Residential Proposal, as part of the Crown submission (Submitter 495). We also represent Housing New Zealand with respect to its submission on the extant Residential Medium Density Proposal (RMD Proposal).

HOUSING NEW ZEALAND'S POSITION

- 2 Housing New Zealand's position, as set out the memoranda dated 31 May 2016 and 8 June 2016, is that:
 - (a) Although a Lower Height Overlay was referenced in notified Rule (now) 14.3.3.3 (previously 14.3.3.2) entitled "Central Riccarton Residential Medium Density Zone and Medium Density lower height limit overlay area", no such Lower Height Limit Overlay was ever depicted on any of the planning maps produced by the Council during the Stage 1 notification and hearing process;
 - (b) The first time the Council produced any planning maps showing the extent of the Lower Height Overlay sought was after the issue of Decision 10 ("2016 maps").
 - (c) It was not clear to Housing New Zealand and would not have been clear to any other reasonable person viewing the notified provisions or participating in the Stage 1 hearing process (including during mediation, caucusing and the exchange of evidence) that the Council was pursuing the application of the Lower Height Limit Overlay over all Residential Medium Density zoned land previously Zoned Living 1 and Living 2 outside of the Central Riccarton area;
 - (d) Had Housing New Zealand been aware that an overlay of the extent shown by Council in the 2016 planning maps was being pursued, Housing New Zealand would have strongly opposed such a Lower Height Limit Overlay and called evidence to that effect;

- (e) The Council appears to place some reliance on the fact that no submitter opposed the Lower Height Overlay by way of further submission. It is noted that the Crown's submission dated 8 October 2014 (of which Housing New Zealand's submission points formed part) stated clearly that it supported an 11m height limit in the RMD Zones:

*"For some building typologies, the height limit of 9m in most of the RMD zone will only enable 2-storey units, severely limiting flexibility for increased density to meet intensification targets and for variety and choice in housing typologies. This constraint is further exacerbated by non-complying activity status for exceedance of the standard. Provision for an 11m height limit, regardless of roof pitch, and providing greater flexibility for exceedance would provide greater potential to achieve intensification targets."*¹

- (f) The Crown made a considered decision (noting the extent of its original submission), that it would not lodge a further submission in respect to matters already addressed in its original submission. In any event, the repeated reference in the Council's submission to the rule heading (Central Riccarton Area) did not make clear the extent of the overlay sought;
- (g) The only evidence called by the Council in support of the Lower Height Limit Overlay in Stage 1 appears to consist of 2 paragraphs in Mr Blair's evidence which supports the existence of the overlay without additional justification. This evidence produced appeared at the time commensurate with the focus being only on Central Riccarton;
- (h) In particular, no urban design evidence was called in support of the Lower Height Limit Overlay in Stage 1;
- (i) The legal submissions for the Council, (both opening and closing) failed to mention that the Lower Height Limit Overlay was being pursued at all, let alone confirming the extent of it; and

¹ All of Government submission on Stage 1, 8 October 2014, page 223 and 224

- (j) It is unclear from our review whether the modelling carried out by Dr Fairgray took into account a reduced development capacity in the relevant RMD areas as a result of any Lower Height Overlay. Counsel for the Council may be able to address this matter for the assistance of the Panel.
- 3 The Crown's submission and further submission make it abundantly clear that the Crown and Housing New Zealand considered the development capacity enabled by the notified provisions was insufficient. It is not clear on what basis the Council would consider that reducing that capacity further would not be opposed. An example of the commentary included in the Crown's further submission states:

"4.3 The Crown seeks the following decisions:

(a) Amend the proposals to:

(i) enable increased residential development capacity in appropriate locations based on a realistic, market-based assessment of the development potential of sites that provides a realistic estimate of available development capacity;

(ii) provide greater flexibility for development of individual sites and for comprehensive development across multiple or amalgamated sites in appropriate locations;

(iii) remove additional restrictions that have been imposed on measures that were introduced through the LURP, to avoid inconsistency with the LURP; and

(iv) focus development standards and assessment matters more clearly on addressing material environmental effects of activities, and reduce their complexity."

- 4 The memorandum of the Council dated 22 June 2016 highlights the lack of evidence called by the Crown and Housing New Zealand in relation to the Lower Height Limit Overlay. Housing New Zealand accepts that no evidence was called on this point, principally because it was unaware that the Council was pursuing this matter. As previously noted, the matter was referenced in only a cursory

manner in evidence and no maps were produced showing the overlay. Had it been clear that this matter remained in contention we are instructed that evidence would certainly have been called on this matter.

JURISDICTION

- 5 If the Council is seeking that the Panel make a decision to include the Lower Height Limit Overlay as part of the minor corrections decision to Decision 10 then that is strongly opposed by Housing New Zealand.
- 6 There are 2 clauses that allow the Panel to make amendments to decisions that have already been made:
 - (a) Clause 13(5) allows the Panel to *"reconsider any decision it has already made on another proposal if it considers it is necessary or desirable to do so to ensure that the replacement district plan is coherent and consistent"*. If after reconsidering the previous decision the Panel decides change is needed then it may direct the Council to either make changes of **"no more than minor effect"**, or prepare and notify a new proposal.
 - (b) Schedule 3, clause 16 allows the Panel at any time to issue and amendment to a decision that is needed to correct a **"minor mistake or defect in a decision of the panel"**.
- 7 It is submitted that the inclusion of a Lower Height Limit Overlay over all areas of the notified RMD zone that were previously zoned Living 1 or Living 2 is significantly more than minor and therefore the Panel does not have jurisdiction to use either clause to make such a change to Decision 10.
- 8 The Minute from the Panel dated 9 June 2016 agrees that a decision relating the such a wide overlay would not be minor stating *"A change as suggested by the Council would not be of minor effect"*².
- 9 Clause 13(4) of the OIC applies where the Panel considers a change to the notified proposal is needed to deal with matters that are materially outside the scope of the notified proposal and sought in a

² Minute of the Chair, 9 June 2016, paragraph 6

submission. In this instance the Panel, **if it considers the change is needed**, may direct the notification of a new proposal in accordance with what the Council sought in its submission on Stage 1.

- 10 In my submission if the Council continues to seek the application of the Lower Height Limit Overlay to the relevant areas then re-notification is the only option open to the Panel, provided it agrees the changes are needed or that the matter should be tested.
- 11 Moreover, it is submitted that should any minor correction be made, it should be an amendment to clarify the application of Rule 14.3.3.3 to more appropriately align it with Decision 10.
- 12 To that extent Housing New Zealand suggest that Rule 14.3.3.3(2) be amended to state "Central Riccarton Residential Medium Density Lower Height Limit Overlay (as shown on Maps 31 and 38).

A CHANGE TO INCLUDE THE LOWER HEIGHT LIMIT OVERLAY IS NOT NEEDED

- 13 It is submitted that there is very little evidence from Stage 1 on which the Panel could base a decision that a change to the provisions is needed under clause 13(4). Further, the higher order documents seek that housing development and in particular intensification of housing, be promoted³.
- 14 The evidence for the Council on this point has been light at best. Mr Blair in Stage 1 included 2 paragraphs in his evidence in chief simply noting that the rationale is to "*control the rate of change in height related amenity effects on the transitioning zones from the change in built form from the former lower density zone to the higher density zone*"⁴.
- 15 There was no further evidence called in support of the Lower Height Limit Overlay. In particular urban design evidence might have been expected to support such a limitation to development given the emphasis the higher order documents place on the importance of

³ For ease of reference and to avoid repetition the section of Housing New Zealand's legal submissions that addresses the higher order documents in relation to intensification is included as appendix 1 to these submissions.

⁴ Evidence in Chief of Adam Scott Blair, 12 March 2015, paragraphs 6.17 and 6.18

housing growth through intensification. No such evidence was called.

- 16 Similarly, in the recent hearing on additional RMD areas the evidence of the Council experts on the Lower Height Limit Overlay has not been extensive. Ms Oliver differs from Mr Blair in explaining she supports the lower height limit as a means of incentivising amalgamation of larger sites⁵. Ms Schroeder suggests the lower height limit will "*ensure a more compatible form of development to that existing, and to lessen potential adverse amenity effects on neighbours.*"⁶.
- 17 It is submitted that the built form standards of the RMD zone already provide a measure of control to lessen adverse effects on neighbouring properties that are not RMD. Mr Jolly for the Council agreed that the built form standards and in particular the requirement for resource consent for multi-unit developments will allow for some Council control over what is developed in the RMD area⁷.
- 18 It is also submitted that the built form standards will already act as an incentive for amalgamation given development to 3 storeys is unlikely to be feasible on small or narrow sites. Mr Jolly agreed that this was the case in response to Panel questions⁸.
- 19 Housing New Zealand called evidence in the recent RMD hearing from the following witnesses who addressed the Lower Height Limit Overlay:
- (a) Ms Stephanie Styles;
 - (b) Ms Jane Rennie; and
 - (c) Mr Philip Osborne.
- 20 Ms Styles set out:
- "In relation to capacity and development opportunity, the additional 3m or one storey is one of the few key differences between the RMD*

⁵ Evidence of Sarah Oliver, 9 June 2016, paragraph 7.36

⁶ Evidence of Josephine Schroeder, 9 June 2016, paragraph 18.13

⁷ Transcript of Hearing – Additional RMD areas, 5 July 2016, page 206 - 207

⁸ Transcript of Hearing – Additional RMD areas, 5 July 2016, page 206 - 207

zone and the RSDT zone and one of the key factors in achieving greater floor area within the RMD zone.”⁹

and

“A limit to 8m or 2 storeys in height would appear to me to be likely to have a noticeable impact on the ability to develop these RMD areas to achieve increased residential capacity. This would also impact on the ability to realise the growth anticipated to occur and the achievement of the intensification goals within the higher order documents”¹⁰

- 21 Ms Rennie’s urban design evidence was confined to the Linwood and Hornby areas specifically and she agreed, noting that that if the 11m height limit only applies to amalgamated sites it will likely result in incremental development, leaving the sites that are not amalgamated undeveloped. Ms Rennie considers that the RMD provisions are able to control any potential for adverse effects:

“The intent of the RMD Zone is to provide for medium density housing and the inability to provide three-storey development limits the typologies that are possible in the zone and the anticipated uplift that is expected. It is appropriate for there to be a subtle step-up in height between the zones. I appreciate that in some instances where take-up is slow, and where an area is dominated by single storey housing, that this will create some variance in the scale of development within neighbourhoods zoned for intensification.

However, I consider that the RMD provisions provide sufficient comfort to address site-specific issues, including character and amenity.”¹¹

- 22 Mr Osborne’s evidence highlighted the lack of consideration that had been given to the potential adverse effects of the Lower Height Limit Overlay:

“The Lower Height Limit overlay effectively reduces the density of development available within a zone. As outlined previously a

⁹ Evidence of Stephanie Styles, Additional RMD areas, 16 June 2016, paragraph 9.4

¹⁰ Evidence of Stephanie Styles, Additional RMD areas, 16 June 2016, paragraph 9.5

¹¹ Evidence of Jane Rennie, Additional RMD areas, 16 June 2016, paragraph 9.8 and 9.9

potential cost associated with reduced density in existing urban areas is the increased requirement for residential greenfield development at the urban rural interface around Christchurch, which is basically representative of increased urban sprawl. This outcome has the potential to significantly elevate costs to the community and will require significant increases in Council capital expenditure to fund the infrastructure required to service this growth. These increased capital expenditure costs are not 'one offs' but ongoing costs due to the perpetual maintenance required to keep the infrastructure in appropriate 'working order'.

This more fulsome picture of potential costs of Council's proposed RMD overlay at Papanui, Linwood and Hornby does not appear to have been undertaken or even considered in Council's analysis to date, masking the 'true' net cost benefit position of Council's approach. As such Council's proposed approach is without substance and falls well short of what I would consider the requisite."¹²

- 23 It is submitted that this evidence is equally applicable to the matters at issue in Stage 1.
- 24 Moreover, neither the Section 32 report for Stage 1 nor the Section 32 report for the additional RMD areas provides any rationale for the restriction on development in the RMD areas that were previously zoned Living 1 or Living 2. Certainly there has been no cost benefit analysis undertaken in respect of the application of the Lower Height Limit Overlay despite the clear implications of the Lower Height Limit Overlay and the directions contained in the higher order documents.

¹² Evidence of Philip Osborne, Additional RMD areas, 16 June 2016, paragraph 10.5

CONCLUSION

- 25 Housing New Zealand strongly opposes the application of a Lower Height Limit Overlay to areas of RMD zoning in areas outside of Central Riccarton that were previously zoned Living 1 or 2.
- 26 There is no jurisdiction for the Panel to amend Decision 10 to include such an overlay as it does not constitute a minor change or correction. If the Council wished to challenge the Panel's finding it should have done so by way of appeal.

DATED this 8th day of July 2016

A handwritten signature in blue ink that reads "L J Semple .". The signature is written in a cursive style with a large initial 'L'.

L J Semple / H G Marks

Counsel for Housing New Zealand Corporation