

BEFORE THE INDEPENDENT HEARING PANEL

APPOINTED BY HUTT CITY COUNCIL

IN THE MATTER

of the Resource Management
Act 1991

AND

IN THE MATTER

of Private Plan Change 58:
12 Shaftesbury Grove, Stokes
Valley - Rezoning to Medium
Density Residential Activity
Area

**ADDENDUM TO THE STATEMENT OF EVIDENCE
OF CORINNA TESSENDORF (FOR THE REQUESTOR)
ALIGNMENT OF PC58 WITH MDRS REQUIREMENTS**

18 SEPTEMBER 2024

1 PURPOSE

(1) This addendum has been prepared in response to Minute #2 of the Hearing Panel requesting further information. In summary the hearing panel has asked for clarification on how the proposed plan change incorporates and gives effect to the Medium Density Residential Standards (MDRS) requirements of the Resource Management Act 1991 (RMA). The hearing panel has outlined the requirements for MDRS in general and the accommodation of qualifying matters in particular and asked the following questions:

1. *Are the proposed rules for the site in respect of subdivision for residential development less enabling than the MDRS rule for subdivision under Schedule 3A RMA?*
2. *If yes:*
 - a. *are the requirements necessary to accommodate any of the qualifying matters (a) to (i) under section 77I, and if so why, and*
 - b. *if required to accommodate qualifying matter s77I(j), has an evaluation been undertaken in accordance with sections 77J to 77L?*

(2) This addendum outlines the relevant sections of the RMA and evaluate how PC58 aligns with and gives effect to the applicable requirements.

2 DISCUSSION

(3) In response to the question from the Commissioners, I can confirm that the proposed subdivision rule is less enabling than the MDRS requirement for subdivision under Schedule 3A of the RMA. Below I outline the relevant RMA sections and the rationale for the proposed rule framework.

(4) In this context I consider Schedule 3A, Section 77I, Section 77J and Section 77L of the RMA to be the most relevant provisions.

(5) **Schedule 3A** of the RMA identifies the MDRS that must be incorporated by specified territorial authorities. The MDRS include not only density standards relating to build

development density (e.g. building height, setbacks, site coverage) but also introduce subdivision requirements. Schedule 3A prescribes that subdivision must be provided for as a controlled activity where it is for the purpose of the construction of residential units in accordance with the schedule.

- (6) **Section 77I** contains a list of qualifying matters that allow territorial authorities to make the MDRS less enabling.
- (7) **Section 77J** contains the additional evaluation requirements for the implementation of MDRS and the accommodation of qualifying matters.
- (8) **Section 77L** contains further requirements that other matters described in s77I (j) need to comply with to be a qualifying matter. It is noted that qualifying matters not only relate to density standards but also to subdivision requirements.
- (9) The MDRS were incorporated into the Hutt City District Plan by Plan Change 56 (PC56) using the Intensification Streamlined Planning Process. PC56 became fully operative on 21 September 2023. I note that PC56 used several qualifying matters to limit density requirements and subdivision requirements for identified areas. By way of example the subdivision of a site in the MDRAA containing a heritage structure or located in a heritage area is not a controlled activity but has a discretionary activity status.
- (10) Private Plan Change 58 (PC58) seeks the rezoning of the site at 12 Shaftesbury Grove from Hill Residential Activity Area and General Recreation Activity Area to Medium Density Residential Activity Area and proposes site specific subdivision provisions.
- (11) PC58 does not propose any changes to the building density standards for the Medium Density Residential Activity Area introduced by PC56. PC58 also does not seek any changes to the subdivision provisions that apply to the Medium Density Residential Activity Area in general and that make subdivision within this zone a controlled activity.
- (12) PC58 proposes the addition of a site specific rule that makes subdivision of the site at 12 Shaftesbury Grove a restricted discretionary activity rather than retaining the zone wide controlled activity status. The restricted discretionary subdivision status applies to the entire site. The private plan change also proposes a new site specific

standard that requires all earthworks, building platforms, roads, private accesses and utility structures to be located within the identified development area. Only where any of these activities or structures are located outside the development area the activity status is elevated to a fully discretionary activity status.

- (13) The restricted discretionary starting point is proposed in response to characteristics, challenges and limitations of the site that were identified during the preparation of the private plan change request. It is considered that these special characteristics can be best addressed at the subdivision stage under a site specific restricted discretionary subdivision framework. The subdivision would then allow for the future development of the site under the general land use and development provisions of the Medium Density Residential Activity Area.
- (14) While the site specific characteristics, challenges and limitations were not labelled as qualifying matters in the s32 evaluation they were applied in an equivalent way. Below I provide an assessment of the proposed provisions against the relevant sections of the RMA which confirms that the site specific provisions of PC58 align with and give effect to the MDRS.
- (15) **Section 77I** provides a list of qualifying matters as follows:

77I Qualifying matters in applying medium density residential standards and policy 3 to relevant residential zones

A specified territorial authority may make the MDRS and the relevant building height or density requirements under policy 3 less enabling of development in relation to an area within a relevant residential zone only to the extent necessary to accommodate 1 or more of the following qualifying matters that are present:

- (a) *a matter of national importance that decision makers are required to recognise and provide for under section 6:*
- (b) *a matter required in order to give effect to a national policy statement (other than the NPS-UD) or the New Zealand Coastal Policy Statement 2010:*

...

(j) any other matter that makes higher density, as provided for by the MDRS or policy 3, inappropriate in an area, but only if section 77L is satisfied.

(16) Plan Change 58 identifies the following site specific characteristics and challenges that require further assessment at the subdivision stage:

- Ecology
- Infrastructure Capacity
- Stormwater management
- Geotech
- Landscape and Visual

(17) To appropriately address the above matters the plan change proposes the introduction of additional information requirements and a restricted discretionary subdivision status that allows for a full assessment of potential adverse effects.

(18) I consider the most relevant subsections of s771 to be s771 (a), s771 (b) and s771 (j).

(19) Under s771 (a) matters of national importance under section 6 (s6) of the RMA are qualifying matters. I consider s6 (a) relating to protection of rivers and their margins, s6 (c) requiring the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna and s6 (h) relating to the management of significant risks from natural hazards to be of relevance to PC58. The restricted discretionary activity status combined with the additional information requirements in relation to Ecology, Stormwater Management and Geotechnical Engineering seek to provide a framework that allows for the appropriate protection of streams and significant biodiversity on the site and for the management of potential geohazards on the site.

(20) Section 771 (b) lists matters required in order to give effect to a national policy statement as qualifying matters. I consider the National Policy Statement for Indigenous Biodiversity (NPS-IB) and the National Policy Statement for Freshwater Management (NPS-FM) to be of relevance. The restricted discretionary activity status combined with the additional information requirements in relation to Ecology and

Stormwater Management seek to provide a framework that allows for the appropriate consideration of and alignment with the NPS-IB and NPS-FM at the time of subdivision.

- (21) Section 77I (j) allows for the consideration of other matters. I do not consider the natural landscape values of the site to be a relevant s6 matter since the site was not identified as containing or being part of an Outstanding Natural Landscape or Feature or a Special Amenity Landscape by a recent city-wide landscape assessment.
- (22) I also note that the provision of sufficient infrastructure capacity is not a matter of national importance under s6 or addressed by a National Policy Statement.
- (23) Nevertheless, I consider these matters to be relevant as qualifying matters under s77I (j) that require additional assessment and consideration and make the application of a controlled activity status for subdivision as required by the MDRSS inappropriate.
- (24) The additional requirements for s77I (j) matters are addressed below.
- (25) **Section 77J** lists the additional s32 requirements for implementing the MDRS and accommodating qualifying matters.

77J Requirements in relation to evaluation report

...

- (3) *The evaluation report must, in relation to the proposed amendment to accommodate a qualifying matter,—*
- (a) *demonstrate why the territorial authority considers—*
- (i) *that the area is subject to a qualifying matter; and*
- (ii) *that the qualifying matter is incompatible with the level of development permitted by the MDRS (as specified in Schedule 3A) or as provided for by policy 3 for that area;*
and
- (b) *assess the impact that limiting development capacity, building height, or density (as relevant) will have on the provision of development capacity; and*
- (c) *assess the costs and broader impacts of imposing those limits.*
- (4) *The evaluation report must include, in relation to the provisions implementing the MDRS,—*

- (a) *a description of how the provisions of the district plan allow the same or a greater level of development than the MDRS:*
- (b) *a description of how modifications to the MDRS as applied to the relevant residential zones are limited to only those modifications necessary to accommodate qualifying matters and, in particular, how they apply to any spatial layers relating to overlays, precincts, specific controls, and development areas, including—*
 - (i) *any operative district plan spatial layers; and*
 - (ii) *any new spatial layers proposed for the district plan.*

...

- (26) Based on the site specific characteristics, challenges and limitations outlined in more detail in the experts' assessments and the s32 evaluation, I consider the site at 12 Shaftesbury Grove to be subject to qualifying matters that are incompatible with the controlled activity status for subdivision as prescribed by Schedule 3A. Yet, making the subdivision a restricted discretionary activity does not limit the actual development capacity of the site as it allows for the requested zone change and consequentially the future development of the site at a medium density level that would not be achievable under the current partial Hill Residential zoning. At the same time the restricted discretionary starting point and the related site specific information requirements, matters of discretion and standard allow for the consideration and management of site specific qualifying matters. While there may be additional costs for the preparation of additional information and the protection and management of identified matters, they are outweighed by the benefit of the rezoning and the resulting additional development capacity.
- (27) The proposed modifications to the MDRS are limited to the plan change site and the degree of limitation is based on the sensitivity of the environment. PC58 therefore seeks the introduction of a development area overlay to show the most appropriate area for medium density residential development in alignment with the MDRS.
- (28) **Section 77L** outlines further requirements for the application of other matters under s77I (j) as qualifying matters.

77L Further requirement about application of section 77I(j)

A matter is not a qualifying matter under section 77I(j) in relation to an area unless the evaluation report referred to in section 32 also—

- (a) identifies the specific characteristic that makes the level of development provided by the MDRS (as specified in Schedule 3A or as provided for by policy 3) inappropriate in the area; and*
- (b) justifies why that characteristic makes that level of development inappropriate in light of the national significance of urban development and the objectives of the NPS-UD; and*
- (c) includes a site-specific analysis 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.*

(29) I consider that the initial site investigation and the preparation of several expert reports to inform the provisions of the private plan change request align exactly with the requirements of s77L.

(30) In relation to 77L (a) - expert assessments were commissioned in relation to Ecology, Infrastructure, Geotechnical Engineering, Landscape and Visual, and Transport. These assessments identified the site specific characteristics and limitations that required a particular planning response. The s32 report summarised the findings of these assessments and provided an evaluation of the proposed provisions.

(31) In summary:

- Parts of the site contain steeper slopes with streams and potentially significant biodiversity;
- There are geotechnical constraints especially along the steeper slopes of the site; and

- There are restrictions in relation to three waters infrastructure, especially concerning water supply and stormwater.

(32) In relation to s77L (b) - it was considered (and evaluated in the s32) that the best way to respond to and provide for the identified matters was by way of introducing a restricted discretionary activity status for subdivision of the site. No changes to the density standards enabled by the MDRAA, such as building height or setbacks, were considered necessary.

(33) The more restrictive subdivision starting point allows for the consideration of and response to identified characteristics and may result in changes to the extent and design of the subdivision which then enables residential development of identified areas in accordance with the MDRS. It is considered that a private plan change request seeking the rezoning of the site to MDRAA with a controlled starting point and no site specific provisions to manage identified characteristics and limitations would not have been acceptable to Council since it would not have given effect to and aligned with higher order documents.

(34) In relation to s77L (c) - this analysis has been provided in detail by the s32 evaluation, the s42A report and the hearing evidence of the requestor. The relevant site is 12 Shaftesbury Grove in Stokes Valley. In summary most of the identified characteristics, challenges and limitations (i.e. qualifying matters) apply across the site, being less dominant along the ridgeline within the identified development area and more prevalent along the lower steeper slopes, therefore requiring stronger restrictions in these areas.

(35) Several options for a planning framework have been considered in the preparation of the plan change and the most relevant options have been discussed in the s32 evaluation. Alternative approaches considered during the preparation of the private plan change request and the drafting of the site specific provisions covered a range of options, including but not limited to:

- A controlled activity status across the entire site (with or without site specific standards);
- A controlled activity status for the identified development area;

- A restricted discretionary activity status for subdivision across the entire site with no additional standard;
- A non-complying activity status for subdivision that does not comply with the proposed standard.

(36) In light of the findings of the experts' assessments, the potentially extended timeframes until subdivision may be realised and development can occur (mainly due to the current lack of water supply) and the constantly changing higher order policy framework, it was considered most appropriate to set a restricted discretionary starting point for subdivision of the site, combined with extensive further information requirements that allow for additional assessment, evaluation and management of site specific characteristics (qualifying matters) at the time of subdivision.

3 SUMMARY

(37) In summary I would like to provide the following responses to the questions posed by the Hearing Panel:

1. Yes, the proposed site specific rules for the site at 12 Shaftesbury Grove are less enabling than the MDRS requirements for subdivision under Schedule 3A. While Schedule 3A requires the subdivision of land for the purpose of the construction and use of residential units to be a controlled activity, the private plan change proposes a restricted discretionary starting point for subdivision of the site and requires all earthworks, building platforms, roads, private accesses and utility structures to be located within the identified development area on the site. Any subdivision that proposes these activities/structures to be located outside the development area becomes a discretionary activity.
2. The more restrictive subdivision framework is considered necessary and appropriate to accommodate qualifying matters under sections 77I (a), (b) and (j). While the initial s32 evaluation report refers more broadly to site specific characteristics, issues, challenges and limitations these align with the qualifying matters under s77I. In addition to the broader more general evaluation

provided by the s32 report, a more specific and detailed assessment and evaluation has been provided above.

- (38) The rezoning of the site to Medium Density Residential Activity Area with a site specific restricted discretionary starting point for subdivision would allow for a greater development density than the current Hill Residential zoning of the site.
- (39) The restricted discretionary subdivision status is considered necessary and appropriate to address site specific characteristics and qualifying matters. The rezoning of the site to MDRAA with a controlled starting point for subdivision would not allow for the appropriate consideration and management of identified matters, and a private plan change request would potentially have been declined.
- (40) Since the current zoning of the site does not allow for the application of the MDRS, the restricted discretionary starting point for subdivision of the site does not reduce the density or development potential of the site but allows for the rezoning of the site to medium density residential while addressing specific characteristics, challenges and limitations (qualifying matters).
- (41) Therefore, proposed rezoning and site specific provisions will enable increased development capacity while allowing for the management of site specific characteristics.



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