

Before the Independent Hearings Panel

In the Matter of the Resource Management Act 1991

And

In the Matter of the Canterbury Earthquake (Christchurch Replacement
District Plan) Order 2014

And

In the Matter of the Proposed Christchurch Replacement Plan (**Chapter
14: Residential (Part) and Chapter 8: Subdivision
Development and Earthworks (New Neighbourhood
Zones)**)

**Closing Legal Submissions on behalf of
Ngāi Tahu Property Limited [840 and FS
1375]**

Dated: 22 April 2015

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INTRODUCTION

1. These closing submissions are filed on behalf of Ngāi Tahu Property Limited (**Ngāi Tahu Property**).
2. Ngāi Tahu Property filed comprehensive evidence and opening legal submissions on the Residential Proposal in relation to:
 - (a) Deletion of the 40% site coverage standard in the RMD zone and retention of the operative residential floor area ratio as a means of providing for greater flexibility and choice;
 - (b) The NNZ provisions being overly complex and prescriptive;
 - (c) That controlled activity status could be used effectively for NNZ subdivision in accordance with an ODP (which gives effect to Policy 6.3.3 of the RPS);
 - (d) The rezoning of all of the existing Living 3 Wigram land to RMD (ie part of the Living 3 zoned land at Wigram was inadvertently zoned RS instead of RMD);
 - (e) The use the Wigram Control Tower and Hangars for non-residential activities to better reflect their scale and form and to ensure their longevity;
 - (f) The deferral until Stage 2 of the land at Wigram and Prestons that is zoned Living G in the operative plan and that was included in Stage 1 as RS; and
 - (g) The deletion of the life-stage and adaptive design standards on the basis that they are *ultra vires* and are otherwise not for a valid resource management purpose.
3. These submissions accordingly focus only on three matters as follows which arose in the course of the hearing and are to be read in conjunction with those opening submissions:
 - (a) Mr Macloed's revised NNZ provisions as put forward in his supplementary evidence of 16 April;

- (b) The activity standards for retail and warehousing activities at Wigram control Tower and Hangars; and
- (c) The land at Prestons and Wigram that is zoned Living G under the operative plan and was proposed to be zoned Residential Suburban under the Replacement Plan, and that the parties are agreed should be deferred until Stage 2.

MR MACLEOD'S REVISED NNZ PROVISIONS

4. In short, Ngāi Tahu Property agree with Mr Macloed's approach to simplify the NNZ framework but consider some changes are required as follows.

Over prescribed standards can stifle choice and diversity

5. Site coverage should be increased to 60% in line with the existing Living G operative framework. In my submission, such a site coverage is more reflective of denser typologies and on the evidence of Mr Jones, it remains an appropriate starting point for greenfields which are targeting a net density of 15hh/ha. It would enable the flexibility required to achieve that target density¹.
6. In terms of the effect a lower level of site coverage could have on zones such as those at Prestons and Wigram Living G, the findings in Mr Jones' Report are telling². The Report indicates that the average site coverage for lots of the size anticipated in the NNZ is above 40% (in fact over 80% of the Density B lots at Wigram and about half of those at Prestons would breach the 40% site coverage). If such a standard is maintained in the NNZ and people wish to continue to develop homes to the current size trends (or undertake additions), this will mean increased consent requirements in the future³.
7. Mr Jones' also recommends that to encourage an overall, broader range of lot sizes and a greater range of design responses in achieving that target density, lots sizes of less than 300m² should be provided for. The Council have responded to this with a 10% allowance for lots less than 300m²

¹ See paras 92 – 96 and 112 – 118 of Mr Jones' evidence which discusses the minimum lot size and site coverage requirements

² See attachment 2 to Mr Jones' evidence and in particular at pages 10 - 13

³ *Ibid*

however there does not appear to be any evidence to justify a 10% cap and that figure remains arbitrary.

8. There is however the evidence of Mr Jones' which shows that a greater spectrum of lot sizes can create greater choice and diversity⁴.
9. In my submission there is a real conflict or confusion in the direction being proposed by the Council which is to encourage a range of densities and housing choice on the one hand, but on the other, in drafting prescriptive rules which will stifle innovative ways in which to achieve that⁵.
10. The same can be said for the minimum outdoor living space requirements, which in my submission and on the evidence of Mr Jones, should be simplified by removing the requirement that all outdoor living spaces occupy a minimum of 50% of the entire site, *in addition to* being a minimum of 30m² in area and 4m in width⁶. Mr Jones instead proposes a simple minimum area and dimension of 50m² and 4m⁷. That is the same approach used in the RS and RSTZ zones.

Road Setback

11. In my submission, the road setback standard although somewhat improved by Mr Macleod, remains complex with its variable standards. Mr Jones' evidence is that the road setback standard should be a flat 3m setback for all NNZ sites⁸.
12. By way of comparison to existing Living G zoned areas, Mr Jones' report shows that for Prestons Density B and C sites where the existing setback is 3m, that:
 - (a) For Density B sites, the non-compliance would jump from 0% under the operative standard to 64% had those sites been subject to the notified 4.5m setback standard; and

⁴ See paras 92 – 96

⁵ See for example paras 92 to 96 of Mr Jones' evidence which addresses this

⁶ See Rule 14.6.3.4

⁷ See paras 119 – 121 of Mr Jones' evidence

⁸ See para 122 of Mr Jones' evidence

- (b) For Density C sites, the non-compliance would jump from 2.6% under the operative standard to 57.9% had those sites been subject to the notified 4.5m setback standard⁹.
13. Although that analysis does not extend to the number of sites that would breach Mr Macloed's new version of the rule (given that proposal was only available last week and well after the filing of Mr Jones' evidence) the Report still demonstrates there would be a large number of sites that would breach that part of Mr Macloed's rule which retains a 4m or 4.5m road setback.
14. In my submission, that is in direct contrast to the expectation the Replacement Plan will reduce the number, extent and prescriptiveness of controls and reliance on resource consent processes.

Minimum lot length and minimum lot frontage

15. Messrs Jones¹⁰ and Blair¹¹ agree there is confusion between the two standards which deal with "minimum lot length" and "lot frontage"¹². This is due in part to the definition of "frontage" which also includes "road boundary".
16. The same standards also do not exempt rear lots and in my submission they should, given they have no logical application to rear lots.¹³
17. Mr Blair's evidence was that the widespread use of rear lots could lead to issues such as unsafe urban environments or inefficient design¹⁴. However, in questioning, Mr Blair confirmed that rear lots were uncommon in newer greenfield developments and there was no evidence to suggest that the purported safety and inefficiency issues existed in such developments¹⁵. Accordingly, it is my submission that rear lots should be exempt from these standards.

⁹ See attachment 2 to Mr Jones' evidence and in particular at pages 11 - 13

¹⁰ At para 97 of Mr Jones' evidence

¹¹ See Transcript dated 31 March 2015, line 27 on page 243 to line 8 on page 242

¹² Clauses 7 and 12 of Mr Macloed's new Rule 8.4.2.5 as contained in Appendix 1A to his supplementary evidence of 16 April

¹³ As per the evidence of Mr Jones at 98 - 100

¹⁴ See para 2.15 of Mr Blair's second rebuttal statement

¹⁵ See Transcript dated 31.03.15 at page 242 lines 10-45 and 243 lines 1 - 5

Level of detail for an ODP – and requirement for housing typologies

18. Ngai Tahu Property's primary issue with Mr Macleod's revised provisions is Rule 8.4.2.5 clause 3(a) and (b) Housing Typologies.
19. That requires, at subdivision stage, identification of the type of unit that will be on each lot and that no single typology make up more than 80% of the total number of residential units.
20. In my submission, these standards create a cumbersome consent process and introduce future compliance and enforcement difficulties.
21. Furthermore, the standards overshoot the expectations of the CRPS and the Strategic Directions Chapter. There is no policy support for the level of prescriptiveness of either clause (a) or (b) of 8.4.2.5(3).
22. Policy 6.3.3 of the CRPS anticipates that the ODP will provide a distribution of different densities in accordance with Policy 6.3.7 but it is flexible as to how that might be achieved. For example, through a range of lots sizes or a range of housing types, or a combination of the two. Nowhere in either Policy 6.3.3 or 6.3.7 does it state a preference and nor does it require the degree of prescriptiveness that is envisaged by Mr Macleod.
23. If there is any risk of a "gap" in the framework as to how the ODP will give effect to the CRPS policies on the ground, then in my submission, it would be more appropriate to deal with that at a policy level rather than through a rigid rule which seeks to direct only one way in which Policy 6.3.3 and 6.3.7 could be implemented.
24. To that end, I agree with Mr Carranceja's suggestion that the Replacement Plan provide some policy guidance regarding the level of detail required for an ODP¹⁶.
25. In addition to achieving the net density of 15hh/ha the other role of the distribution of densities is to support increased housing choice, and in turn affordability. Policy 6.3.7(6) is clear that it is the combined role of intensification areas and new greenfields to collectively provide for multiple densities and lot sizes to enable a broad array of typologies across the City

¹⁶ See page 1348 of the Transcript dated 31.03.15 and the Closing Submissions for the Crown at para 39(a)

as a whole. It does not require each individual greenfield to provide a minimum of four housing typologies to be provided, nor does it set a maximum number for any one typology.

26. Policy 6.3.7(6) signals that the development controls that are to be used in tandem with the range of densities should be 'appropriate', and this in my submission dovetails with the aim of addressing affordability issues. It is therefore incumbent upon the Council to demonstrate in its s32 evaluation that the development controls proposed will have a positive impact on housing affordability in order for the expectations of the CRPS to be satisfied. The Council has failed to provide any evidence linking the standards proposed to improved affordability outcomes.
27. Within the strategic context now established by Chapter 3, the proposed standards fail to implement the aims of minimising reliance on the resource consent process and the prescriptiveness and extent of development controls. Accordingly, they should be removed from the subdivision rule.
28. Overall, and in accordance with the Statement of Expectations, Ngāi Tahu Property would prefer to see more enabling provisions for the NNZ to encourage greater innovation and choice and that is their evidence.

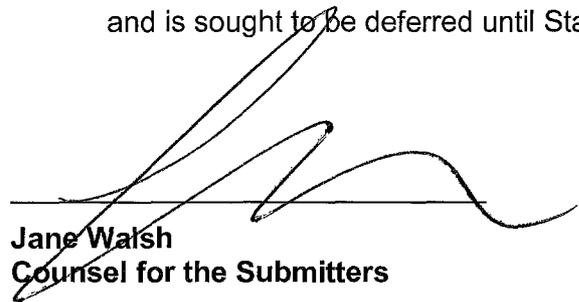
RETAIL AND WAREHOUSING ACTIVITIES AT WIGRAM CONTROL TOWER AND HANGARS

29. Ngāi Tahu Property presented evidence at the hearing as to the need for flexibility in the rules to reflect the heritage value, scale and form of the Wigram Control Tower and Hangars.
30. Ngāi Tahu Property and the Council are agreed as to the range and scale of non-residential activities that can be provided for in these buildings and this is outlined along with a revised rule in the Joint Memorandum of counsel¹⁷.

¹⁷ See Joint Memorandum of Counsel for the Christchurch City Council and Ngāi Tahu Property Ltd dated 22 April 2015

DEFERRAL OF WIGRAM AND PRESTONS LIVING G REZONING UNTIL PHASE 2

31. Around one third of the Wigram and Prestons Living G zones were included in Stage 1 as RS zone.
32. Both Ngāi Tahu Property and the Council agree that RS is inappropriate for this land¹⁸ and that this land should be deferred until Stage 2 when all of the Living G zones are dealt with.
33. **Attached** to these submissions are three maps which identify the land at Wigram and Prestons that is zoned Living G that was included in Stage 1 and is sought to be deferred until Stage 2.



Jane Walsh
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¹⁸ See Mr Blair's second rebuttal statement at paras 2.1 – 2.2