

BEFORE THE ENVIRONMENT COURT  
I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No. [2019] NZEnvC 207

IN THE MATTER of the Resource Management Act 1991  
AND of an appeal pursuant to s 120 of the Act  
BETWEEN PHILIPPA ARCHIBALD  
(ENV-2019-CHC-098)  
Appellant  
AND CHRISTCHURCH CITY COUNCIL  
Respondent

Court: Environment Judge J E Borthwick  
Environment Commissioner C J Wilkinson  
Environment Commissioner A P Gysberts

Hearing: at Christchurch on 4 December 2019

Final submissions: 13 December 2019

Appearances: G Todd & L Pankhurst for the appellant  
B Pizzey for the respondent

Date of Decision: 20 December 2019

Date of Issue: 20 December 2019

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DECISION OF THE ENVIRONMENT COURT

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A: Appeal is upheld and the resource consent is granted subject to the revised conditions marked Annexure "A" and the plans marked "1", "2", "3" and "4", attached to and forming part of this decision.

B: Costs are reserved, but not encouraged.

REASONS



## Introduction

[1] This appeal concerns the Christchurch City Council's decision to decline an application for resource consent to authorise guest accommodation proposed for the suburb of Ilam.

[2] The decision to decline the application turns on the interpretation of a policy in the operative District Plan. While this is a discretionary activity, the Commissioner appointed to hear the application interpreted the policy as effectively preventing the activity. Whether he was right to do so is a matter of some moment not only for the parties to this appeal, but to other people who may be seeking to establish similar guest accommodation within the residential zones.

## Issues for determination

[3] We paraphrase next the issues identified for determination:<sup>1</sup>

- (a) what is the meaning of the term "restrict" in objective 14.2.6 and policy 14.2.6.4;
- (b) whether the proposal is consistent with the relevant objectives and policies of the District Plan; and
- (c) whether the grant of consent would undermine the integrity of the plan thereby setting precedent.

## Description of the proposal

[4] The proposal is for land use consent to establish guest accommodation within an existing dwelling at 52A Creyke Rd. Evidently, the applicant has been renting the dwelling through Airbnb without consent and, as a result of a complaint by a neighbour, has filed this application. The dwelling is a two-storey home with four bedrooms located on the ground floor and two on the first floor, together with three living areas and a games room. The proposal is to rent out the dwelling to accommodate up to 12 guests at any one time. The property has five car parks onsite.




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<sup>1</sup> Planners' agreed statement of facts and issues dated 2 August 2019 at 41-44.

[5] The existing vehicle access is via a shared right-of-way from Creyke Road. The co-owners of the shared right-of-way have given approval to this application. We note that the formed driveway here does not comply with the relevant standards in the plan, and consent is also required for this aspect of the proposal.

[6] The guest accommodation is to be managed by a property management company. Guests may use the property's pool, grounds and tennis court, but the tennis court lights are to be disabled during this time. All guests would be subject to certain conditions of stay that do not permit the playing of outdoor music between the hours of 9 pm – 8 am. While 12 guests may seem a large number of people to be accommodated, the dwelling and property are substantial.<sup>2</sup>

### **The environment**

[7] We draw upon the agreed statement of facts and issues prepared by the planning witnesses to describe the site within the wider environment.

[8] This property, together with several other substantial homes also located down long accessways off Creyke Road, is bounded in the north and east by the Waimairi Stream. Along the Creyke Road frontage the housing styles and densities are of a mixed character. Three townhouses immediately adjoin the western side of the driveway with a single dwelling to the east. These dwellings are zoned Residential Suburban Density Transition. Properties within the Residential Suburban Density Transition zone have been infilled or redeveloped in response to student demand for accommodation and other university related housing needs.

[9] The University of Canterbury is located across the road. Nearby, the other places of note are Medbury School to the east and a small commercial development (cafes, petrol station and offices) to the west.

[10] While the immediate area is dominated by the University of Canterbury campus with its associated higher density of residential development, the surrounding Residential Suburban Zone is lower density, predominantly residential in character.

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<sup>2</sup> Being 3931 m<sup>2</sup> contained within three parcels of land the property is legally described as Lot 3 DP 14296 and Lots 1 and 3 DP 397744.



[11] Creyke Road is classified a minor arterial road in the District Plan and carries around 14,000 vehicles per day.

### **Status of the application**

[12] The site is located within the Residential Suburban Zone. The proposal is a discretionary activity under the District Plan.<sup>3</sup> We note that a restricted discretionary activity rule for access design is also contravened.<sup>4</sup>

### **The law**

[13] Section 104 of the Resource Management Act 1991 (RMA or Act) provides that when considering the application for resource consent and any submissions received, the court must, subject to Part 2, have regard (relevantly) to:

- any actual and potential effects on the environment of allowing the activity;
- the relevant provisions of the Christchurch District Plan; and
- any other matter we consider relevant and reasonably necessary to determine the application.

[14] The decision whether to grant or refuse an application for a discretionary activity is made under s 104B of the Act and entails a judgment that is informed by the matters set out in s 104.<sup>5</sup>

[15] We understand from their agreed statement that the planning witnesses are of the view that the operative District Plan gives effect to the Canterbury Regional Policy Statement and the Greater Christchurch Regeneration Act 2016 (and associated plans) and so we have had no regard to their provisions.<sup>6</sup> They also agree the Strategic Directions in Chapter 3 of the District Plan are given effect to by the balance of the plan's objectives and policies and that there are no matters of uncertainty that would require recourse to the same.<sup>7</sup> The planners conclude none of Strategic Directions provide any additional guidance as to how non-residential activities in residential zones should be

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<sup>3</sup> Rule 14.4.1.4 D1.

<sup>4</sup> Rule 7.4.2.3 RD1.

<sup>5</sup> *Stirling v Christchurch City Council* [2011] 16 ELRNZ 798 (HC) at [53].

<sup>6</sup> Planners' Agreed Statement of Facts and Issue at [39].

<sup>7</sup> Planners' Agreed Statement of Facts and Issue at [40].



treated.<sup>8</sup>

### Decision of the City Council

[16] As required by s 290A RMA, we have had regard to the decision of the Commissioner appointed to hear the application for resource consent.<sup>9</sup> As we will come to shortly, we do not demur from his assessment of the effects of the proposal on the environment.

[17] Guest accommodation is not “residential activity” as defined by the District Plan, therefore this proposal requires resource consent. In his decision, the Commissioner refers to the Environment Court decision of *Fright v Christchurch City Council*<sup>10</sup> wherein the court accepted within the context of policy 14.6.2.4 “restrict” means “to limit” rather than to “prevent”. Even so, the Commissioner remained troubled by the meaning of “restrict” in this policy. He found it unhelpful to equate “restrict” to “limit”, as both words are subjective and therefore do not assist in determining “how much of the activity should be restricted or limited”. He resolved that “restrict” does mean prevent where an applicant cannot bring themselves within the proviso for activities with a strategic or operational need to locate within a residential zone.<sup>11</sup>

[18] As he could find no strategic nor operational need to locate within the residential area, he concluded the proposal would be contrary to objective 14.2.6 and policy 14.2.6.4.<sup>12</sup> That said, he was also troubled by this outcome given that the proposal while not a “residential activity” bore strong similarities to the same.

### Effects of the proposal on the environment

[19] All those persons potentially affected by the proposal have given approval to the same and so we have not had regard to the effect of the proposal on them (s 104(3)).<sup>13</sup>

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<sup>8</sup> Joint statement of planners’ expert conferencing at [14].

<sup>9</sup> While dated 1 May 2018, we assume this is in error and the correct date of the decision is 2019.

<sup>10</sup> *Fright v Christchurch City Council* [2018] NZEnvC 111.

<sup>11</sup> Decision of the Hearing Commissioner at [27]-[29].

<sup>12</sup> Decision of the Hearing Commissioner at [27].

<sup>13</sup> Transcript (Blair) at 97. Neighbours’ approvals were received from the owners and/or occupiers of 52B Creyke Road, 46A Creyke Road, 60A Creyke Road, 2/54 Creyke Road, 54B Creyke Road and 41 Hamilton Avenue.



[20] Having had the advantage of viewing the site, we agree with the planners that the effects of the proposal will be less than minor. The proposal is comparable to the residential use of the site over the last 50 years. The only difference being what is proposed now is the use of the site for transient guest accommodation.

[21] For completeness, resource consent is also required in relation to the formed driveway that does not comply with two standards in the District Plan. Firstly, driveways providing access for "all other activities"<sup>14</sup> must have a minimum formed width of access of 4.0m whereas the access for the proposed activity is formed to 3.5m. Further, any driveway longer than 50m must have a parking bay provided at some point along its length in order to facilitate traffic movements.<sup>15</sup> Rule 7.4.2.3 RD1 specifies that any activity that does not meet any one or more of the transport standards in Rule 7.4.3 shall be a restricted discretionary activity. We are satisfied that while not provided for, at worst, this will give rise to inconvenience for the residents sharing the driveway.

### District Plan Provisions

[22] The provisions in contention are objective 14.2.6 and policy 14.2.6.4, which are set out below noting that the words underlined are defined in the District Plan:

#### 14.2.6 Objective – Non-residential activities

- a. Residential activities remain the dominant activity in residential zones, whilst also recognising the need to:
  - i. provide for community facilities and home occupations which by their nature and character typically need to be located in residential zones; and
  - ii. restrict other non-residential activities, unless the activity has a strategic or operational need to locate within a residential zone or is existing guest accommodation on defined sites.

#### 14.2.6.4 Policy – Other non-residential activities

- a. Restrict the establishment of other non-residential activities, especially those of a commercial or industrial nature, unless the activity has a strategic or operational need to locate within a residential zone, and the effects of such activities on the character and amenity of the residential zones are insignificant.

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<sup>14</sup> Christchurch District Plan, Appendix 7.5.7, Table 7.5.7.1.

<sup>15</sup> Christchurch District Plan, Rule 7.4.4.10, Vehicle Access Design.



[23] For those words and phrases not defined in the District Plan, their ordinary dictionary meaning is to be used.<sup>16</sup>

[24] What is meant by “residential activities” is important to this appeal. “Residential activity” is defined in the District Plan and means:

- ... the use of land and/or buildings for the purpose of living accommodation. It includes:
- a. residential unit, boarding house, student hostel or a family flat (including accessory buildings);
  - b. emergency and refuge accommodation; and
  - c. sheltered housing; but  
excludes:
  - d. guest accommodation;
  - e. the use of land and/or buildings for custodial and/or supervised living accommodation where the residents are detained on the site; and
  - f. accommodation associated with a fire station.

[25] The definition of residential activity includes “residential unit” which means:

- ... a self-contained building or unit (or group of buildings, including accessory buildings) used for a residential activity by one or more persons who form a single household. For the purposes of this definition:
- a. a building used for emergency or refuge accommodation shall be deemed to be used by a single household;
  - b. where there is more than one kitchen on a site (other than a kitchen within a family flat or a kitchenette provided as part of a bed and breakfast or farm stay) there shall be deemed to be more than one residential unit;
  - c. a residential unit may include no more than one family flat as part of that residential unit;
  - d. a residential unit may be used as a holiday home provided it does not involve the sale of alcohol, food or other goods; and
  - e. a residential unit may be used as a bed and breakfast or farm stay.

[26] Several types of “residential activities” involve the charging of a tariff for accommodation. The definitions of bed and breakfast, farm stay and boarding house each refer to the provision of accommodation at a tariff, with bed and breakfast and farm stays being for the provision of transient accommodation at a tariff.

[27] The definition of residential activity does not include “guest accommodation”.

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<sup>16</sup> District Plan, Chapter 2.



Guest accommodation is defined and means:

... the use of land and/or buildings for transient residential accommodation offered at a tariff, which may involve the sale of alcohol and/or food to in-house guests, and the sale of food, with or without alcohol, to the public. It may include the following ancillary activities:

- a. offices;
- b. meeting and conference facilities;
- c. fitness facilities; and
- d. the provision of goods and services primarily for the convenience of guests.

Guest accommodation includes hotels, resorts, motels, motor and tourist lodges, backpackers, hostels and camping grounds. Guest accommodation excludes bed and breakfast and farm stays.

[28] The notable features of this definition is that the activity also concerns the provision of transient residential accommodation at a tariff. The definition lists activities that are “guest accommodation”, the scale of which would be generally incommensurate with a proposal for the use of a dwelling.

[29] Objective 14.2.6 and policy 14.2.6.4 are particularly important to this appeal and planners addressed these provisions. Mr Pizzey, in legal submissions and through cross-examination traversed other provisions in the District Plan. We were not however aided in the construction of objective 14.2.6 and policy 14.2.6.4 by having regard to the objective and policies for housing distribution and density or the role of the Commercial Central Business City Centre Zone.<sup>17</sup>

[30] We find the provisions for housing distribution and density to be of contextual relevance only insofar as they make provision for guest accommodation for sites that were previously zoned or scheduled for guest accommodation prior to the notification of the District Plan.

[31] We have noted the provisions for the Commercial Central Business City Centre Zone.<sup>18</sup> The objective for this zone – that it re-develops as the principal commercial centre and is attractive for a range of purposes – is implemented by a policy that would ensure the zone provides for the widest range of activities including guest accommodation and residential activities (policy 15.2.6.1). Indeed, the plan encourages

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<sup>17</sup> Objective 14.2.1, policy 14.2.1.1 and Table 14.2.1a. Objective 15.2.6 and policy 15.2.6.1.

<sup>18</sup> Objective 15.2.6 and policy 15.2.6.1.





development of guest accommodation in this zone<sup>19</sup> and in other zones through the activity status for guest accommodation activities, whereas the objectives and policies relevant to the Residential Suburban Zone would restrict, not encourage, guest accommodation.

[32] In that regard, provisional leave was granted by the court for Ms Blair to file a supplementary brief identifying zones and overlays in the District Plan for which there is provision for guest accommodation. We surmise that the purpose of this evidence was to demonstrate that from a strategic perspective the District Plan has made adequate provision for guest accommodation in a variety of locations<sup>20</sup> and on this basis we now admit the evidence. We have no difficulty, in principle, that provision has been made for guest accommodation in particular locations around the City.<sup>21</sup> Our view is that this is simply an application for an out-of-zone activity. While the framework of the plan is for guest accommodation to be provided in certain parts of the district, the District Plan's enabling provisions do not purport to prohibit guest accommodation in any other part of the district. Instead, each application must be considered having regard to the matters in s 104 RMA.

### Interpretation of plan provisions

[33] When interpreting the District Plan we are to consider s 5 of the Interpretation Act 1999 applying, as it does, to the interpretation of subordinate statutory instruments. Section 5 provides that the meaning of an enactment must be ascertained from its text and in light of its purpose. This principle has been applied and expanded on in relation to the interpretation of district plans (*Powell v Dunedin City Council*).<sup>22</sup>

[34] Returning to policy 14.2.6.4, the Commissioner has interpreted "restrict" as meaning prevent. An activity not able to bring itself within the proviso within this policy is to be prevented. In coming to this conclusion, he may have overlooked three matters.

[35] First, the policy does not say "restrict ... unless" but directs attention onto particular types of activity thus, "restrict .... activities, especially those of a commercial or industrial nature ...". The term "especially" is a comparator and means "principally,

<sup>19</sup> By 'zone' we also include the Accommodation and Community Facilities Overlay.

<sup>20</sup> See Blair, EIC at [50].

<sup>21</sup> See Blair, EIC at [49].

<sup>22</sup> *Powell v Dunedin City Council* [2005] NZRMA 174 (CA) at [35].



chiefly”<sup>23</sup> or “more with one person, thing, etc. than with others, or more in particular circumstances than in others”.<sup>24</sup> An adverb, the term admits to the possibility that some non-residential activities more so than others are to be restricted. These words do not support the Commissioner’s strict “restrict ... unless” interpretation. Ms Blair implicitly acknowledges this when – not accepting the Commissioner’s interpretation of “restrict” – she says:<sup>25</sup>

... the extent of restriction required may be different depending upon the non-residential activity in question, its effects, and its consistency or otherwise with the other objectives and policies in the Plan.

[36] That said, we can well understand the Commissioner’s interpretational dilemma. But rather than define “restrict” as meaning “prevent” we would say where an applicant cannot bring themselves within the proviso for non-residential activities then it is open to the consent authority to decline the application.<sup>26</sup> Whether the proposal is to be restricted by not allowing its establishment, is a matter of judgement informed by the circumstances of the case. Our approach is consistent with a definition of “restrict” as meaning to “limit” and is, in our view, to be preferred.

[37] Secondly, the plan does not restrict “commercial activities” or “industrial activities”.<sup>27</sup> Rather policy 14.2.6.4 talks about restricting non-residential activities that have a commercial or industrial nature. Because of that we did not find relevant the discussion about commercial activities in the Environment Court decision of *Rogers v Christchurch City Council*.<sup>28</sup> In that decision the court was considering the ordinary dictionary meaning of commercial activity finding a company carrying on the business of renting vehicles to the general public, was engaged in commercial activity.<sup>29</sup> *Rogers v Christchurch City Council* turns on its own facts. It is not particularly insightful to say because the appellant is carrying on a business supplying guest accommodation at a tariff therefore the activity is commercial in nature. The same can be said for bed and breakfast, farm stays and boarding houses and yet these activities are defined in the District Plan as “residential activities” and permitted within zone.

<sup>23</sup> Oxford English Dictionary (Online).

<sup>24</sup> Oxford Learner’s Dictionary (Online).

<sup>25</sup> Blair, EIC at [56].

<sup>26</sup> Decision of the Hearing Commissioner at [27]-[29].

<sup>27</sup> No-one suggested activities of an industrial nature were of relevance in this appeal.

<sup>28</sup> *Rogers v Christchurch City Council* [2019] NZEnvC 119.

<sup>29</sup> *Rogers v Christchurch City Council* at [29].



[38] Moreover, we agree with counsel for the appellant,<sup>30</sup> *Rogers v Christchurch City Council* is distinguishable because the court there was considering a policy that is to avoid (not restrict) the establishment of commercial and industrial activities unless they have a strategic or operational need to locate in the rural area. Indeed, the City Council's planning witness, Ms H Blair, sensibly advises that for the District Plan to function as a coherent, internally consistent document, the terms "restrict" and "avoid" are to be interpreted differently. She says, commensurate with their discretionary activity status, the term "restrict" allows for the circumstances of a particular proposal for a non-residential activity to be considered.<sup>31</sup> We agree in principle.

[39] Thirdly, policies are to implement the objectives of the District Plan (s 75(1)). The objective also restricts other non-residential activities and while ordinarily we would interpret "restrict" in the same way as the policy (unless the text clearly indicated otherwise), it is not so straightforward with these provisions. Objective 14.2.6 is for residential activities to remain the dominant activity in residential zones, whilst – i.e. at the same time – recognising for the need to provide for community facilities and home occupations and secondly, restricting certain other non-residential activities. In *Fright v Christchurch City Council*, the Environment Court introduced the same provisions of the District Plan making the following observation at paragraph [46]:

First, where, as we think is the case here, a District Plan contains a mix of drafting styles, the interpretation of the relevant provisions may prove challenging. The relevant provisions include a mix of both activity focused policies and more traditional effects-based provisions. Second, the objective (14.2.6a(ii)) and policy (14.2.6.4) both exempt certain activities from their ambit, however the exemptions made are not the same. The reason for this difference is not clear<sup>32</sup> and this has impacted on the interpretation of the objective and policy suite.

[Footnote omitted].

[40] Finding that the intent of objective 14.2.6(ii) is to restrict non-residential activities unless otherwise provided for in the policies,<sup>32</sup> the court in *Fright v Christchurch City Council* goes on to note policies for various non-residential activities including community activities and community facilities (14.2.6.2); existing non-residential activities (14.2.6.3); small scale retailing (14.2.6.5); non-residential activity with frontage to Memorial Avenue

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<sup>30</sup> Archibald, opening submissions at [20].

<sup>31</sup> Blair, EIC at [62]-[63].

<sup>32</sup> At [52].



and Fendalton Road (14.2.6.6); non-residential activity within Central City residential areas (14.2.6.8), guest accommodation (14.2.6.7) and finally yet 'other' non-residential activities (14.2.6.4).

[41] Returning to this appeal, the City Council submits that guest accommodation is not provided for in the Residential Suburban Zone under one of the above policies and therefore is to be assessed under policy 14.2.6.4.<sup>33</sup> Under policy 14.2.6.4 the difference between residential activities and non-residential activities such as the proposed guest accommodation, is not whether the activities are commercial activities, as clearly both can be. Rather the enquiry in policy 14.2.6.4 is whether the proposed activity is commercial in *nature*. As a noun "nature" concerns the "the physical strength or constitution of a thing, especially a natural substance"<sup>34</sup> or its "basic or inherent features, character, or qualities of something".<sup>35</sup>

[42] Mr Pizzey submits because the activity would charge a tariff it is commercial in nature. Ms Blair, expressing a similar opinion, seemed to give weight not to the activity's residential nature – she agrees the activity is very much like a residential activity – but to the fact that it does not fall within the definition of "residential activity".<sup>36</sup> We find this distinction between substance and form illusory. Having regard to the ordinary usage of the term "residential", in substance the activity is residential in nature albeit that the proposal is for transient accommodation. The occupation of a residential dwelling by fee paying guests is no different in substance to bed and breakfast, farm stays or boarding houses.

[43] We considered also Ms Blair's evidence that in each instance of bed and breakfast, farm stays or boarding houses, a permanent resident is required to be in occupation of the site.<sup>37</sup> Extrapolating from the definitions of these activities, it was her opinion (and indeed that of her counsel)<sup>38</sup> that in order for a proposal to be residential in nature the transient accommodation must be "subservient" to the permanent occupation of the dwelling by another resident. As we said in *Fright v Christchurch City Council*,<sup>39</sup> the problem with using rules and methods to inform the resource management outcomes

<sup>33</sup> Transcript (Pizzey) at 109.

<sup>34</sup> Oxford English Dictionary (Online).

<sup>35</sup> Lexico (Online).

<sup>36</sup> Transcript (Blair) at 110.

<sup>37</sup> Transcript (Blair) at 110-112.

<sup>38</sup> City Council, submissions at [39].

<sup>39</sup> *Fright v Christchurch City Council* at [47].



under the District Plan’s objectives, is that it risks confirmation bias. To illustrate, in giving this evidence Ms Blair does not consider the District Plan’s definition of “guest accommodation” in common with “bed and breakfast”, as meaning “transient residential accommodation... at a tariff.”

[44] We find guest accommodation in this existing dwelling is residential in nature. That is so notwithstanding that a tariff is charged. The proposal is not an activity that is of a type that the policy is “especially” concerned to restrict. That said, for guest accommodation to be contemplated within the Suburban Residential Zone, there must also be an operational need to locate within a residential zone. If ‘operational’ concerns the activities employed in doing or producing something, per Cambridge Dictionary,<sup>40</sup> then we find the particular proposal being residential in nature, and of a scale consistent with the outcomes for the Residential Suburban Zone, has an operational need to locate within a residential zone and that need (meaning “requirement”)<sup>41</sup> arises from the character and amenity afforded by residential zones. Further, as we are satisfied that the effects of the proposal on the character and amenity of the residential zone will be insignificant, we find the application falls under the exception for non-residential activities created by the objective and the policy.

[45] Given this, we do not need to decide the alternative proposition whether the application has a strategic need to locate within a residential zone.

### Temporal or spatial restrictions

[46] A curious feature of the application before us is that the proposal was amended to limit the operation of guest accommodation to six months per year. For the balance of the year, the dwelling would provide charitable accommodation. This was not a feature of the notified application and this aspect of the proposal was not, therefore, able to be considered by neighbouring persons who have given their approval to the application.

[47] “Charitable accommodation” is not defined in the District Plan. As the matter stands we are not satisfied with the description of the activity in the evidence from the

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<sup>40</sup> City Council, submissions at [55].

<sup>41</sup> City Council, submissions at [54], citing Oxford English Dictionary definition of “need”. Mr Pizzey also referred to need as meaning “necessity” or “something that is unavoidable”. The District Plan distinguishes between “need” and “necessity” in other provisions, see for example policies 17.2.2.1 and 17.2.2.5. We do not accept, therefore, an interpretation that “need” means “necessity” in every case.



appellant's planner, Mr J Cook<sup>42</sup> as we have no sense of the activities that may emerge on this site. That said, counsel for the appellant, Mr G Todd, advised that as it was intended to use the dwelling for the balance of the year for permitted activities (including the occupation of the dwelling by the owner), it was not necessary to refer to "charitable accommodation" in the draft conditions of consent. We agree.

[48] The purpose in amending the application in this way was not clearly spelt out in the evidence of Mr Cook. The restriction talked about in policy 14.2.6.4 is as to the establishment of the proposed activity and not as to its operation. In finding that, the issues of concern for the City Council under policy 14.2.6.3 do not arise.

### **Outcome**

[49] No other basis was advanced upon which we could decline the appeal and uphold the decision of the Commissioner. That being the case, we allow the appeal and pursuant to s 104B of the Act will grant resource consent subject to the proposed conditions of consent.

[50] In so doing we record our agreement with the planning witnesses that the District Plan's strategic directions do not provide us any additional (or different) guidance on this particular interpretational matter.

[51] A precedent upon which others would seek to rely may well be created based on the court's interpretation. The issue for the City Council, however, is not that a precedent is created but that the use of existing dwellings for guest accommodation, including accommodation marketed through Airbnb, was not identified in the proposed plan as being a significant resource issue for the district. Consequently, the plan provisions may not adequately respond to the demand for this activity. Rather than applying a strained application of the plan's provisions, the City Council may consider front-footing the issue meeting the demand through initiating a plan change that responds directly to any issue created by the same.

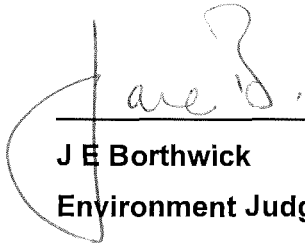


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<sup>42</sup> Cook, EIC at [5.7]-[5.10].

[52] We will reserve costs but note that costs are not encouraged. As we have said on another previous occasion, these provisions bring with them interpretational challenges.

For the court:

  
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**J E Borthwick**  
**Environment Judge**



**Archibald v Christchurch City Council revised conditions**

1. The development shall proceed in accordance with the information and plans submitted with the application, except as amended by the conditions of this consent. The Approved Consent Plans have been entered into Council records as RMA/2018/3096 (4 pages).
2. Pursuant to section 123(b) of the Resource Management Act, the duration of this consent ends at five (5) years from the date of this consent.
3. The guest accommodation activity shall only be undertaken in the six month period of 1 November of one year to 30 April of the following year, for the duration of the consent.
4. The guest accommodation activity shall be limited to a maximum of 12 guests at any one time.
5. All sleeping facilities shall be limited to within the existing residential unit as shown on the approved floor plans (pages 2-3 of the Approved Consent Plans).
6. The maximum number of guest and visitor motor vehicles permitted to be onsite at any time shall be five (5).
7. Any existing outdoor lighting and sound systems installed as part of the existing tennis court and outdoor swimming pool facilities shall be disconnected or otherwise disabled so as not able to be used by guests for the duration of this consent.
8. No excessive noise that has the potential to disturb neighbours shall be made at any time. Between the designated "quiet hours" of 9 pm and 8 am:
  - a. there shall be no outdoor music;
  - b. any outdoor noise shall be limited to that associated with coming or going from the property, which shall be minimised to the best extent practicable;
  - c. there shall be no use of the swimming pool or tennis court;
  - d. any indoor noise shall not be discernible beyond the boundaries of the subject site; andthe noise limit for noise emitted from the site in the designated "quiet hours" shall be 40dB LAeq and 50dB LAFmax measured in accordance with NZS 6801:2008





“Acoustics – Measurement of environmental sound”, and assessed in accordance with NZS 6802:2008 “Acoustics-Environmental noise”. Note: this does not detract from the requirement to comply with conditions 8.a-d in the first instance.

9. There shall be no party, or any similar social event, hosted from the property at any time. For the purposes of this condition any gathering of more than 20 persons in total (including guests and visitors) shall be considered to be a party.
10. Vegetation along the accessway to the site shall be maintained on an ongoing basis to ensure a minimum width clearance of 3.5m and a minimum 4m height clearance, and the accessway shall be maintained in a pothole-free state, for emergency service vehicle access.
11. The consent holder, or a property manager(s) acting on their behalf, shall ensure the following for all guest accommodation bookings:
  - a. that guests are provided with, and sign, a copy of the ‘Terms of Conditions of Stay’ as submitted with this land use consent application or similar; and
  - b. that a register of the following guest details be maintained:
    - i. names of guests staying on any given night;
    - ii. their periods of stay including dates;
    - iii. motor vehicle registration numbers; and
    - iv. copies of the “Terms of Conditions of Stay” document signed by the guests.
12. A copy of the register required by Condition 11.b shall be made available to the Christchurch City Council upon request.
13. The consent holder, or a property manager(s) acting on their behalf shall provide a 24-hour contact phone number and email address to the following:
  - a. The Christchurch City Council’s Compliance and Investigations Team (via [rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz)); and
  - b. The immediate adjoining neighbours to the subject property for the purposes of making any noise or nuisance complaint.

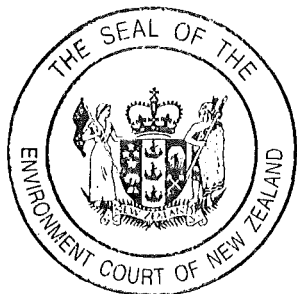
Pursuant to Section 128 of the Resource Management Act 1991, the Council may review the conditions of this consent by serving notice on the consent holder within a period of one month of any six (6) month period following the date of this decision, in

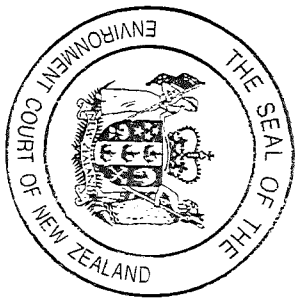


order to deal with any adverse effects on neighbours' amenity which may arise from the exercise of this consent and which it is appropriate to deal with at a later stage.

### **Advice Notes**

- The Council will require payment of its administrative charges in relation to monitoring of conditions, as authorised by the provisions of section 36 of the Resource Management Act 1991. The current monitoring charges are:
  - i. a monitoring fee of \$277.50 to cover the cost of setting up a monitoring programme and carrying out one inspection to ensure compliance with the conditions of this consent; and
  - ii. time charged at an hourly rate if more than one inspection, or additional monitoring activities (including those relating to non-compliance with conditions), are required.
- The monitoring programme administration fee and initial inspection fee will be charged to the applicant with the consent processing costs. Any additional monitoring time will be invoiced to the consent holder when the monitoring is carried out, at the hourly rate specified in the applicable Annual Plan Schedule of Fees and Charges.
- No signage is authorised by this consent. Any future signage will therefore need to comply with the relevant District Plan rules or obtain a separate resource consent.
- This resource consent has been processed under the Resource Management Act 1991 and relates to planning matters only. You will need to comply with the requirements of the Building Act 2004. For more information about the building consent process please contact our Duty Building Consent Officer (phone 941 8999) or go to our website <https://ccc.govt.nz/consents-and-licences/>





BOUNDARY - 26.760m

BOUNDARY - 16.670m

BOUNDARY

85 percentile design motor car



Tennis Court

SHADED AREAS INDICATE AREAS OF EXTENSION / ALTERATION

**LEGAL DESCRIPTION**

52a CREYKE ROAD  
 LOT 1,3 DP 397744 & LOT 3 DP 14296

NET SITE AREA: 3931m<sup>2</sup>  
 LIVING ZONE: L1  
 WINDZONE: MEDIUM  
 EARTHQUAKE ZONE: B

**SITE COVERAGE:**

407.38/3931  
 = 10.36%

Ph. 2

Ph. 3

Ph. 4

Ph. 5

Ph. 1

Ph. 6

Ph. 7

BOUNDARY - 35.800m

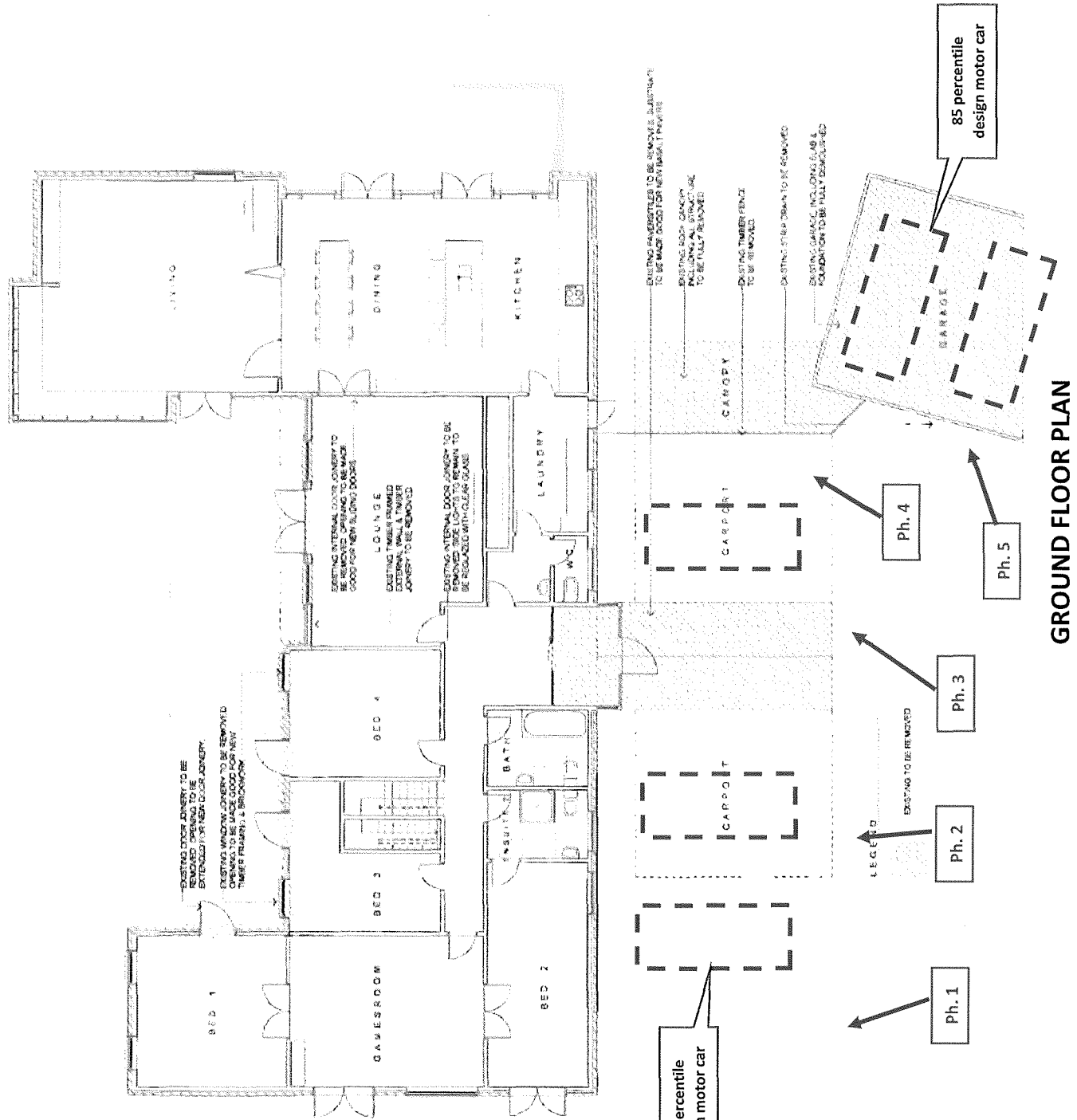
BOUNDARY - 6.300m

BOUNDARY - 32.140m

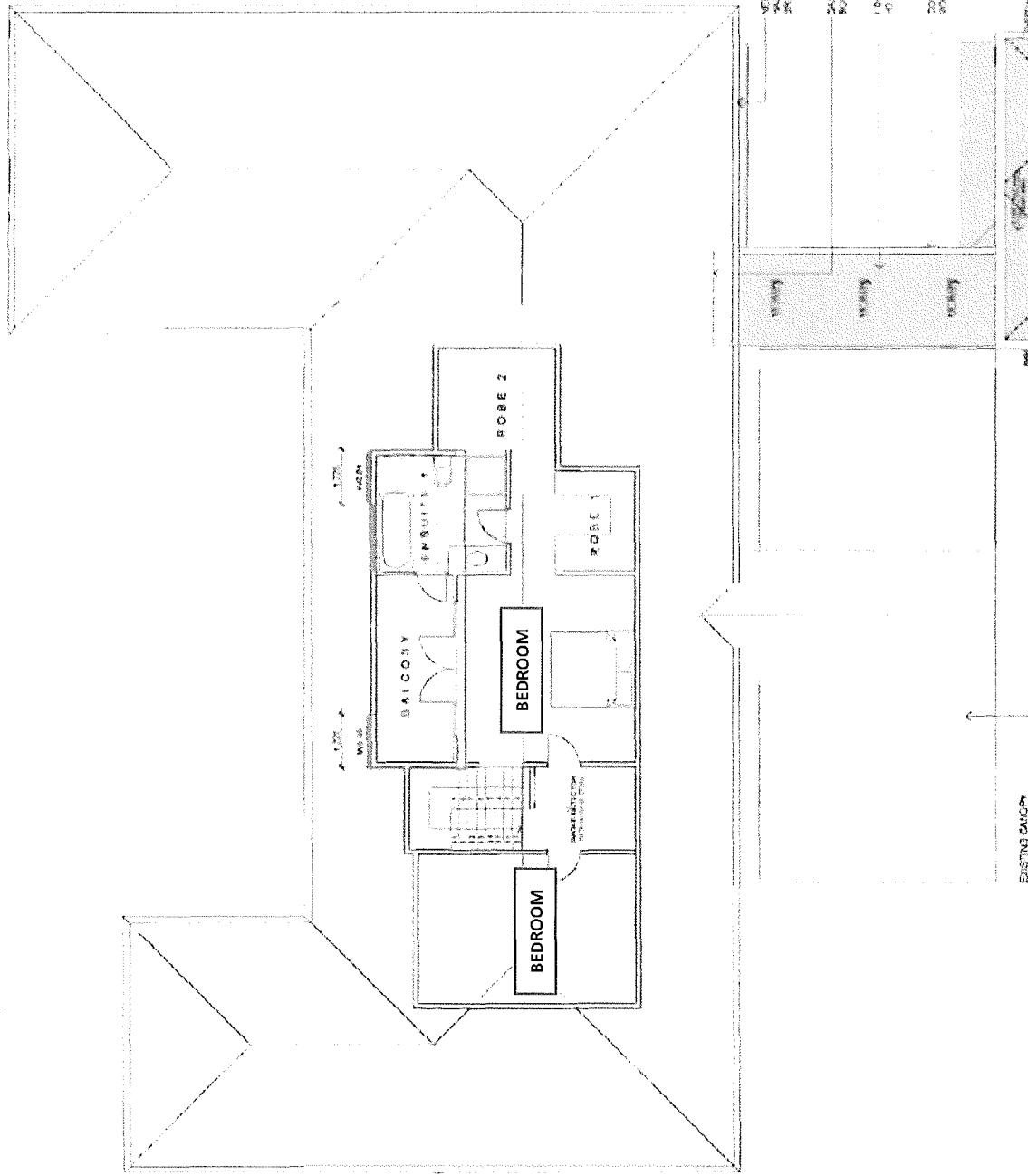
BOUNDARY - 20.340m

To Creyke Road

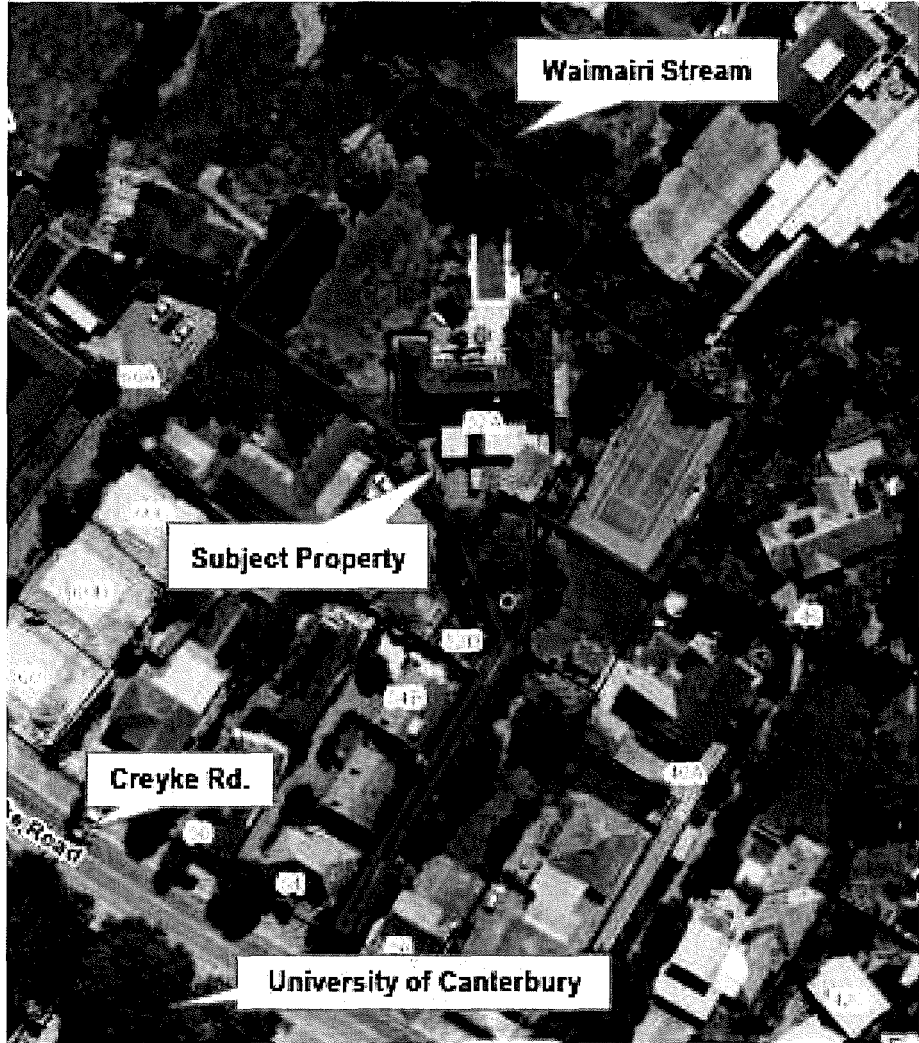
**SITE PLAN**



GROUND FLOOR PLAN



**UPPER FLOOR LEVEL**



Aerial Image of the Subject Property and its Surroundings. (Source: 'Canterbury Maps').

