BEFORE THE CHRISTCHURCH CITY COUNCIL
HEARINGS COMMISSIONERS

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER proposed Plan Change 4 (Short-term accommodation) to the Christchurch District Plan

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LEGAL SUBMISSIONS FOR THE CHRISTCHURCH CITY COUNCIL ON PROPOSED PLAN CHANGE 4

Dated: 8 October 2021

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1. INTRODUCTION

1.1 There has been a rapid increase in the use of residential dwellings for visitor accommodation activities since the Christchurch District Plan (**District Plan**) was last reviewed.[1] This has given rise to concerns about the effects of these activities on neighbours and the surrounding area, particularly in terms of adverse impacts on residential amenity, coherence and character. There are also concerns about the existing District Plan provisions not adequately responding to the demand for visitor accommodation activities, and a lack of evidence to justify the existing policy framework and rules.

1.2 At present, the District Plan distinguishes between two types of visitor accommodation activities in residential units (henceforth referred to as **visitor accommodation**):

(a) "Bed and breakfast" and "farm stay" activities where a host is required to be present for the stay; and

(b) "Guest accommodation" which does not have that host requirement.

1.3 "Bed and breakfast" and "farm stay" activities for up to 6 or 10 guests do not require resource consent in residential, papakāinga and rural zones, while "guest accommodation" generally requires resource consent as a discretionary activity.

1.4 The existing District Plan provides a limited objective and policy framework to enable the Council to approve visitor accommodation, even where adverse environmental effects are shown to be less than minor.[2] Hearing commissioners on resource consent applications for visitor accommodation have noted that the existing policy framework for non-residential activities did not give scope to approve the applications.[3]

1.5 In *Archibald v Christchurch City Council*[4] the Environment Court noted the interpretational challenges regarding how the existing District Plan objective and policy framework would apply to visitor accommodation. The Court suggested the Council initiate a plan change, following its observation that:[5]

[1] Property Economics report attached to Mr Osborne's brief of evidence dated 27 August 2021, at paragraphs 1.1.1, 3.2.1 to 3.2.3 and Figure 1.
[2] Ibid, at paragraph 2.3.3.
[3] Ibid, at paragraph 2.3.4.
[4] *Archibald v Christchurch City Council* [2019] NZEnvC 207].
[5] Ibid at [51].

"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".

1.6 The Council developed Proposed Plan Change 4 (**PC4**) to strike a balance between enabling business and tourism activities in Christchurch, including allowing the more flexible use of homes, while maintaining a pleasant neighbourhood feel in residential areas and supporting strong and resilient communities. PC4 seeks to bring greater clarity to the provisions, while providing Council an ability to grant resource consent where adverse impacts on residential amenity, coherence and character are appropriately addressed.

1.7 The key changes proposed by PC4 as notified (**Notified PC4**) were:

Residential zones

(a) Introduce objective and policies to manage visitor accommodation in residential zones so as to minimise adverse effects on residential character, coherence and amenity, while also directing them to be consistent with other objectives such as housing supply, revitalisation of commercial centres, and protecting strategic infrastructure.

(b) Alter resource consent requirements for un-hosted visitor accommodation so that:

(i) Up to 60 nights per year is a controlled activity.

(ii) Between 61 and180 nights per year is a discretionary activity.

(iii) Over 180 nights per year is a non-complying activity.

(c) For heritage buildings protected under the District Plan:

(i) Up to 10 guests is permitted if hosted;

(ii) Up to 10 guests is a controlled activity if unhosted;

(iii) Between 11 and 20 guests is a discretionary activity;

(iv) Above 20 guests is a non-complying activity.

Rural and papakāinga zones

(d) Un-hosted visitor accommodation is permitted up to 180 nights per year, but is a discretionary activity for more than 180 nights per year.

(e) Changes to rules for visitor accommodation associated with farms or recreation/conservation activities including restrictions on visitor accommodation within airport noise areas.

Other

(f) Remove the existing definitions of "bed and breakfast", "farm stay" and "guest accommodation" and introduce the National Planning Standard's (**NPS**) definition of "visitor accommodation".[6]

(g) Clarify the definition of "residential activity" to differentiate between living and transient accommodation in situations such as home exchanges, house-sits and serviced apartments.

(h) Limiting arrival/departure hours and sizes of events for hosted visitor accommodation.

(i) Reduce requirements for small scale visitor accommodation in residential units to comply with commercial car parking standards.

1.8 Following receipt and consideration of submitter evidence in May 2021, particularly from economist Ms Natalie Hampson for Airbnb Australia Pty Limited (**Airbnb**), the Council accepted that the economic component of the section 32 assessment was likely to be insufficient to allow a plan change decision to be made on the merits. To address this, Council applied for an adjournment and amended timetabling directions. This was granted by the Panel, with directions that Council file and serve:

(a) An economic assessment of PC4.

(b) An updated section 42A report and section 32AA evaluation to take account of the economic assessment.[7]

1.9 Leave was then granted for Council's new planner, Mr Ian Bayliss, to amend the Council's section 42A report and section 32 assessment to record any

[6] Under section 58I of the RMA the Council must amend the District Plan to ensure consistency with the NPS, and make any consequential amendments to avoid duplication or conflict with the NPS without using he Schedule 1 RMA process. Implementation Standard 17(6)(b) requires implementation of the Definitions Standards within nine years (i.e. 2028).
[7] Panel Minute 5.

material matters where his expert planning opinion differs from that of the original section 42A report writer.[8]

Council's current position

1.10 The Council has filed a brief of evidence of Mr Philip Osborne providing an economic cost benefit assessment for PC4. Mr Osborne concludes that there is not a compelling economic rationale for PC4,[9] as there does not seem to be any likely material, demonstrable net economic position (either significantly negative or positive) for PC4.[10] This remains Mr Osborne's view following expert witness conferencing, and this is agreed by Ms Natalie Hampson.[11]

1.11 Having considered Mr Osborne's evidence, Council's new planner, Mr Ian Bayliss considers that some of the Notified PC4 provisions are not the most appropriate, and recommends some refinements to address this. The key changes recommended by Mr Bayliss in his evidence are:

(a) Amend the notified PC4 objective and policies by:

(i) Removing direction that visitor accommodation be of a scale consistent with meeting economic outcomes such as sufficient and affordable housing supply, and the revitalisation of the Central City and commercial centres.

(ii) Focusing the direction to enable visitor accommodation in residential zones provided it is compatible with:

(1) residential activity being the predominant activity on sites;

(2) maintaining residential character;

(3) minimal disturbance to neighbours;

(4) protection of strategic infrastructure from reverse sensitivity;

(5) high quality residential neighbourhoods and a high level of amenity.

[8] Panel Minute 7.
[9] Mr Osborne's brief of evidence dated 27 August 2021, at paragraph 10.
[10] Property Economics report attached to Mr Osborne's brief of evidence dated 27 August 2021, at paragraph 8.1.2.
[11] Joint Witness Statement (Economics) at paragraphs 2.11 and 2.15.

(b) Change the status of unhosted visitor accommodation for more than 180 nights per year from a non-complying to a discretionary activity.

(c) Remove proposed constraints on guests holding functions where the number of additional attendees exceed the number of paying guests staying overnight.

(d) Remove controls on the maintenance of the exterior of the property;

(e) Add a further permitted activity standard in rural zones requiring guests to be provided with wayfinding, hazards and other information.

1.12 Mr Osborne and Ms Hampson support the removal of economic outcomes from the provisions.[12]

1.13 Following participation in planning expert witness conferencing and consideration of evidence filed by submitters, Mr Bayliss has agreed to some additional amendments which he considers to be most appropriate in terms of section 32 of the RMA. Mr Bayliss explains these amendments in his rebuttal evidence and marks up his additional amendments in annexure A to that evidence.

1.14 The Council supports and recommends to the Panel the revised version of PC4 now proposed by Mr Bayliss following joint witness conferencing and as now set out in his rebuttal (**Revised PC4**). Overall, Revised PC4 is more permissive than the existing District Plan provisions and Notified PC4, while still providing appropriate controls to manage and minimise the potential adverse effects of visitor accommodation in residential units.

1.15 These submissions:

(a) outline the legal framework to be applied when considering a plan change, including the role of section 32 of the RMA and higher order planning documents;

(b) address scope issues;

(c) comment on the proposed approach to managing short-term accommodation and the adverse impacts PC4 seeks to address;

[12] Joint Witness Statement (Economics) at paragraph 2.16.

(d) comment on why, in light of Council's expert evidence, the provisions of Revised PC4 are the most appropriate compared to alternatives.

2. LEGAL FRAMEWORK

2.1 This section mentions the provisions in the RMA that are relevant to the consideration of district plan changes. It does so only briefly because the principles are well established in case law.

Resource Management Act 1991

2.2 The purpose of the RMA, and therefore of this exercise, is, under section 5 of the Act, to promote the sustainable management[13] of natural and physical resources. Under section 6, identified matters of national importance[14] must be recognised and provided and, under section 7, particular regard is to be had to the "other matters" listed there which include kaitiakitanga, efficiency, amenity values and ecosystems. Under section 8, the principles of the Treaty of Waitangi are to be taken into account.

2.3 Section 31 provides that a function of territorial authorities is, through the establishment of objectives, policies and methods, to achieve integrated management of the effects of the use, development or protection of land and natural and physical resources.

2.4 Under section 32, an evaluation report must examine whether purpose of the plan change is the most appropriate way to achieve the purpose of the Act, and whether the provisions are the most appropriate way of achieving that purpose. This requires identifying reasonably practicable options, and assessing the efficiency and effectiveness of the provisions through identifying the benefits and costs of the environmental, economic, social and cultural effects including opportunities for economic growth and employment. I comment further on the application of section 32 to this plan change below.

2.5 When preparing or changing a district plan a territorial authority, in terms of section 74, *shall have regard to* the instruments listed there, which include any proposed regional policy statement, a proposed regional plan and

[13] As that phrase is defined in s 5(2) of the RMA.
[14] Relating to the natural character of the coastal environment, the protection of outstanding natural features and landscapes, significant indigenous vegetation and habitats, the maintenance and enhancement of public access to the coastal marine area, lakes and rivers, the relationship of Maori and the culture and traditions with their ancestral lands, Waters, sites, waahitapu and other taonga and the protection of historic heritage and customary rights.

management plans and strategies prepared under other Acts. It *must take into account* any relevant planning document recognised by an iwi authority.

2.6 Under section 75, it *must give effect to* any national policy statement, any New Zealand coastal policy statement and any regional policy statement and *must give effect to* a water conservation order or a regional plan (for any matter specified in subsection 30(1)).

2.7 Finally, under section 75(1), district plan policies must *implement* objectives, while any rules must *implement* the policies. Section 76 requires rules to achieve the objectives and policies of a plan.

2.8 The Environment Court gave a comprehensive summary of the mandatory requirements for district plans in *Colonial Vineyard Ltd v Marlborough District Council,*[15] the content of which is set out in Schedule 1 to these submissions.

3. SCOPE TO CHANGE PC4

3.1 The Panel has scope to consider changes to PC4 that fairly and reasonably fall in the union of three sets of possibilities:

(a) the plan change; and

(b) the operative district plan to the extent it deals with the resources the subject of, and the issues raised in respect of them, by the plan change; and

(c) submissions on the plan change, but noting that this set is limited to submissions that are "on" the plan change.[16]

Whether submissions are "on" the plan change

3.2 The Council received 133 submissions, attracting further submissions from 18 submitters.

3.3 In ascertaining whether the submissions are "on" the plan change, the Courts have required that:

(a) First, the submission must reasonably fall within the ambit of the plan change by addressing a change to the status quo advanced by the proposed change.

[15] [2014] NZEnvC 55, at [17].
[16] *Cook Adam Trustees Limited v Queenstown Lakes District Council* [2013] NZEnvC 156, at [30].

(b) Second, the decision-maker should consider whether there is a real risk that persons potentially affected by changes sought in a submission have been denied an effective opportunity to participate in the decision-making process.[17]

3.4 Table 1 of the Original s42A Report summarises the issues raised in submissions considered to be "on" the plan change.[18] These include submissions which are generally in support of PC4, and generally opposed to PC4. Accordingly, there is scope for the Panel to make changes that are generally somewhere in between the existing District Plan provisions, and the changes proposed by Notified PC4.

3.5 Table 2 of the Original s42A Report lists the submission which are considered outside the scope of matters that can be addressed by the Panel under PC4. Some of these are not "on" PC4, while others raise issues that cannot be addressed in this forum.

Submissions not "on" PC4

3.6 Christchurch International Airport Limited (**CIAL**) has lodged a submission seeking changes to the provisions to the visitor accommodation provisions of the Specific Purpose (Golf Resort) Zone. This relief is not "on" the plan change because, as clearly noted in the Explanation on the front page of Notified PC4:

> "This Plan Change does not address the standards for visitor accommodation activities in the Specific Purpose (Golf Resort) Zone."

3.7 If the effect of treating CIAL's submission as being "on" PC4 would be to permit PC4 to be appreciably amended without any real opportunity for participation by those potentially affected, then that is a "powerful consideration" against finding that the submission was truly "on" the PC4.[19]

3.8 In the present case it is submitted there is a real risk that treating CIAL's submission as being on the variation would result in provisions of the Specific Purpose (Golf Resort) Zone being appreciably amended without any real opportunity for participation by those affected because, as mentioned above, Notified PC4 clearly notes that it does not address the Specific Purpose (Golf Resort) Zone. Furthermore the Council's public notices for PC4 do not

[17] *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290 at [90]; *Clearwater Resort Limited v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003.
[18] Original s42A Report, pages 22 to 30.
[19] *Clearwater Resort Limited v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003, at [66].

provide any indication that the Specific Purpose (Golf Resort) Zone would be affected by PC4.[20] Accordingly, there is a real risk persons reading the public notice and/or notified PC4 would reasonably apprehend that the Specific Purpose (Golf Resort) Zone is unaffected by PC4 and choose not to participate on that basis.

3.9 Similarly, and to the extent that CIAL's submission seeks relief in relation to activities that are not visitor accommodation in residential units (e.g. hospitals, health care facilities), these too fall outside the scope of PC4 which does not address such activities.

Submissions raising issued that cannot be addressed in this forum

3.10 Table 2 of the Original s42A Report lists submissions seeking relief on matters that cannot be addressed as part of the Panel's powers to make recommendations on PC4, as they are not part of a plan change process:

(a) taxation and rating;

(b) resourcing and methods for enforcement;

(c) resource consent processing fees and timeframes.

Changes proposed in Revised PC4 within scope

3.11 The submissions provide broad scope to make changes to PC4, with numerous submissions broadly supporting or broadly opposing PC4. Furthermore there are submissions seeking:

(a) a more enabling and less constraining framework for visitor accommodation;[21]

(b) stronger restrictions on unhosted visitor accommodation in residential areas;[22]

(c) rural zones having the same protections from unhosted visitor accommodation as other zones.[23]

[20] https://ccc.govt.nz/the-council/haveyoursay/show/337 and https://ccc.govt.nz/assets/Documents/The-Council/Plans-Strategies-Policies-Bylaws/Plans/district-plan/Proposed-changes/2020/PC4/PC4-Notification-Public-Notice-Advert.pdf
[21] For example, Airbnb (s112), Bachcare (s119) and Bookabach (s100).
[22] For example, Hospitality NZ (s123), various community boards (s21, s36, s85, s102, s103 and s110), neighbourhood associations (s87, s90) and community submissions (s18, s106).
[23] For example, Michele McConnochie (s13).

3.12 All changes proposed by Mr Bayliss in Revised PC4 fall within the scope of permissible changes.

4. RELEVANT PLANNING DOCUMENTS

4.1 The Section 32 Report and the Original Section 42A Report provide an analysis of the relevant higher order planning documents to consider when evaluating PC4. Other than in respect of the NPS-UD, Mr Bayliss adopts the earlier analyses.[24] Mr Bayliss concludes that Revised PC4 is the most appropriate way to achieve the relevant direction provided in the higher order documents.[25]

The NPS-UD and adverse effects on amenity values

4.2 Messrs Bayliss and Bonis both refer to Policy 6 of the NPS-UD, and agree that it provides direction that urban amenity is not to be protected in a fixed state, and that changes in amenity values do not represent an adverse effect.

4.3 However, it is submitted that this should not be taken as a licence to permit visitor accommodation in urban areas even if that would have adverse effects on amenity values. Policy 6 is concerned about amenity values arising from changes to "*planned urban built form"* in planning documents, not changes in activity. The relevant part of policy 6 states:

> **Policy 6:** When making planning decisions that affect urban environments, decision-makers have particular regard to the following matters:
>
> (b) that the planned urban built form in those RMA planning documents may involve significant changes to an area, and those changes:
>
> (i) may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities, and future generations, including by providing increased and varied housing densities and types; and
>
> (ii) are not, of themselves, an adverse effect
>
> [our underlining for emphasis]

[24] Mr Bayliss' section 42A report dated 1 September 2021, at paragraph 2.3.1. See also Section 5.1.1 of 42A report and paragraphs 2.1.7 to 2.1.10 of s32 report.
[25] Mr Bayliss' rebuttal evidence at paragraph 7.12.

4.4 PC4 is not seeking to change the planned urban built form.[26] It is seeking to manage a particular type of activity (visitor accommodation) which can occur within a given urban built form.

4.5 Accordingly, Policy 6 of the NPS-UD does not alter the Panel's ability to consider adverse effects on amenity values arising from visitor accommodation activities.

5. THE APPROACH TO MANAGING SHORT-TERM ACCOMMODATION

5.1 As Council's planner Mr Bayliss explains, the main reason the Council is proposing PC4 is not to address economic impacts, but to address gaps in the District Plan addressing short-term accommodation, and a disconnect between the methods of addressing short-term accommodation and their adverse effects on amenity.[27]

5.2 Amongst other things, Mr Bayliss will comment on how evidence compiled from stakeholder meetings, public feedback, drop-in sessions, and surveys clearly demonstrate that:

(a) short term accommodation can have differing effects in different areas and zones;

(b) different types of short term accommodation can have different adverse effects;

(c) these effects can be more than minor, and even significant in some contexts;

(d) there is a need for focused objectives, and specific policies and rules, to manage the effects efficiently and effectively in different areas and zones.[28]

The adverse effects of visitor accommodation

5.3 There does not appear to be any dispute between the planning witnesses that visitor accommodation has the potential to have adverse effects on amenity and residential coherence, and that such effects have the potential to be greater than those anticipated from typical residential activity.[29]

[26] This captures matters such as scale, height, setbacks and site coverage.
[27] Mr Bayliss' section 42A report dated 1 September 2021, at paragraph 2.2.1.
[28] Ibid, at paragraphs 2.2.5 and 2.2.6.
[29] Supplementary statement of evidence of Matthew Bonis dated 24 September 2021, at paragraph 41.

However, there is a difference in views regarding the extent and degree of those effects and how those effects should be managed.

5.4 It is submitted that visitor accommodation, if left unregulated, has the potential to give rise to significant adverse social and amenity effects, particularly in the absence of any limits on the scale/intensity of the activity.

5.5 Visitor accommodation, if unregulated by the District Plan, could also lead to permitted baseline arguments for "traditional" visitor accommodation (motels, hotels etc) and other non-residential activities seeking to establish in residential, papakāinga and rural zones. This is not something that can be addressed by methods or controls outside of the District Plans such as Airbnb behavioural, party or event policies.

5.6 The need for appropriate conditions or controls on short-term visitor accommodation through the RMA framework has been acknowledged by the Environment Court as a method for ensuring adverse effects are appropriately managed to be minor (and even insignificant) in differing environmental and zoning contexts.

5.7 For example, in *Archibald v Christchurch City Council*[30] the Environment Court granted a resource consent for guest accommodation in a large 6 bedroom dwelling with 3 living areas and a games room on a substantial (3931m^2) property in Ilam on Creyke Road, subject to conditions to manage the adverse effects of that particular activity. In determining that the adverse effects of the proposal on the character and amenity of the residential zone would be "insignificant"[31], the Court imposed a comprehensive set of conditions to manage effects.[32] Restrictive conditions included a maximum of 12 guests, the guest accommodation operating 6 months per year, no parties, limiting sleeping facilities to within the existing residential unit, a maximum of 5 vehicles, the disabling of outdoor lighting and sound systems, no outdoor music or use of swimming pool/tennis court between 9pm and 8am, a requirement to maintain a guest register with copies of a "terms and conditions of stay" document signed by the guests.

5.8 It is submitted that the imposition of a wide variety of conditions demonstrates that guest accommodation can have adverse effects on character and amenity, and that appropriate controls for a given proposal

[30] *Archibald v Christchurch City Council* [2019] NZEnvC 207.
[31] Ibid, at [44].
[32] Ibid, at annexure A.

may not be limited to just restricting the maximum number or guests, or the maximum number of days per year.

5.9 There is no one-size-fits-all set of standards that can be prescribed in advance to ensure that short-term visitor accommodation will be appropriate in each and every case, in each neighbourhood or zone. Nor can it be assumed that it is appropriate to permit visitor accommodation in each and every case. As the Court observes, "each application must be considered having regard to the matters in s 104".[33] In other words, it cannot be assumed that effects will be insignificant in every case. There is a need for controls, and that will differ depending on the particular nature of a proposal, and the relevant environment and zone.

5.10 In *Verseput v Tauranga City Council* the Environment Court considered a more traditional visitor accommodation proposal involving a holiday camp with 34 self-contained log-cabins in a suburban residential zone at Mt Maunganui/Papamoa.[34] The case illustrates how concerns from visitor accommodation can vary depending on type and locale, and the difference having a permanent onsite manager can make.

5.11 One of the major concerns of submitters in *Verseput* was the potential for mismanagement of the site in terms of noise, the potential for criminal activity entering and leaving the site across fences, and generally causing a nuisance in the neighbourhood. The Court noted that although use for residential activity is no guarantee of good behaviour, it accepted that visitor accommodation, particularly over the holiday periods, does need particular control at Mt Maunganui/Papamoa.[35]

5.12 The Court granted resource consent, but noted the importance of having a permanent on-site manager to ensure that no more than the maximum number of persons are permitted, that guests behave in such a way as not to create a nuisance to nearby neighbours, not cause damage, or otherwise cause a nuisance to the neighbourhood.[36] A wide range of conditions were imposed, including noise and luminescence limits, 6 guests per unit, and requiring a site operation plan that would regulate visitor accommodation use, guest behaviour, rubbish, hours for using the pool and communal areas, vehicle parking, and requiring a manager who lives on-site permanently.

[33] Ibid.
[34] *Verseput v Tauranga City Council* [2013] NZEnvC 251, at [15].
[35] Ibid, at [67].
[36] Ibid, at [68].

5.13 In a rural context, the Environment Court in *Cassidy v Queenstown Lakes District Council* considered that while the proposed use of a re-oriented historic cottage for a residential activity or a visitor accommodation activity for up to six paying guests might be aurally perceived by neighbours, the changes would not necessarily amount to a reduction of rural amenities.[37] The Court found that the proposed setbacks from property boundaries would avoid, remedy or mitigate the potential effects, and that any aural clues of the occupation of the site would not reduce the rural amenity of the site. Again, this is an example of the Environment Court considering the specific elements of proposed visitor accommodation against the backdrop of the surrounding environment and zone, to determine any adverse effects.[38]

5.14 Accordingly, it is submitted that it is both appropriate and necessary for PC4 to propose rules seeking to manage the adverse effects of visitor accommodation in a manner that recognises differing types of visitor accommodation and contexts in which it can occur.

The distinction between hosted and un-hosted visitor accommodation

5.15 PC4 is concerned about managing two types of short-term visitor accommodation occurring in residential units:

(a) "Hosted visitor accommodation"; and

(b) "Un-hosted visitor accommodation".

5.16 Common to the proposed definitions for these terms is that the visitor accommodation occurs in a residential unit but not a family flat, and individual bookings are for less than 28 days each. Both definitions exclude other types of visitor accommodation such as hotels, resorts, motels, backpackers, hostels, farm stays and camping grounds.

5.17 However, PC4 draws a distinction between hosted and un-hosted visitor accommodation in residential units because the potential adverse effects of these activities on neighbours and the surrounding area differ, particularly in terms of adverse impacts on residential amenity, coherence and character.

[37] *Cassidy v Queenstown Lakes District Council* (C039/2006) at [3], [122] and [193].
[38] At [122].

5.18 As discussed in the Section 32 Report[39], the Original Section 42A Report[40] and the Amended Section 42A Report[41], the effects hosted and unhosted visitor accommodation in residential units are different because:

(a) An on-site host can provide supervision, address issues quickly, and provide an accessible and identifiable point of contact for neighbours.

(b) Guests in a supervised situation are more likely to constrain behaviour that could otherwise lead to noise and other adverse amenity impacts.

(c) Hosted accommodation still provides a residence for the host, reducing adverse impacts on residential coherence.

(d) Hosted accommodation provides additional social and cultural benefit (e.g. reduced loneliness in rural areas, opportunities for cultural exchange between host and guests).

5.19 Hosted visitor accommodation would still be used as a residential activity, with a permanent resident providing supervision while continuing to contribute to residential cohesion. While hosted visitor accommodation can still result in adverse effects on residential amenity greater than that anticipated by residential activities (particularly if large scale with high occupancy levels), these can be managed with appropriate and effective controls to be similar to residential activities (e.g. maximum of 6 guests, and controls on check-in and check-out times).

5.20 By contrast, with un-hosted visitor accommodation, short-term guests can come and go on a repeatedly changing basis with no ongoing residential activity occurring at the same time. If permitted in an unrestrained manner at any scale, frequency and location, there is potential for adverse effects for neighbours in terms of noise, traffic, access and parking difficulties, with general intrusion and disturbance from frequently changing visitors coming and going throughout the year. These effects require management through a tiered resource consenting path with standards correlating to the quantum of use of a residential unit for visitor accommodation.

5.21 Mr Bayliss discusses the differing management approaches to hosted and un-hosted visitor accommodation in his evidence, and explains the reasons for these differences.

[39] At paragraph 2.2.71.
[40] At paragraph 7.4.2.
[41] At paragraph 2.2.6.

The distinction between residential zones and other zones

5.22 PC4 also seeks to manage effects of visitor accommodation in other, non-residential zones. These other zones retain the distinction between hosted and un-hosted visitor accommodation, and also have a different approach to visitor accommodation according to the environmental context of the relevant zones.

5.23 The Papakāinga/Kāinga Nohoanga Zone and Rural zones (Banks Peninsula, Urban Fringe, Waimakariri, Port Hills) have a common approach – visitor accommodation of up to 6 guests is a permitted activity (provided unhosted visitor accommodation is less than 180 nights in a calendar year and information requirements are met). Mr Bayliss has removed the proposed standards relating to restrictions on functions and events.[42] There are additional requirements on visitor accommodation (hosted or unhosted) that is within the 50dB Ldn Air Noise or Engine Testing Contours. Visitor accommodation that does not come within the permitted activity standards is discretionary.

5.24 In these zones, the activities relating to visitor accommodation that is accessory to farming, conservation and rural tourism are separated out. This is a necessary ancillary change resulting from the rationalisation of the "farm stay" and "guest accommodation" into the one definition for "visitor accommodation" with the hosted vs unhosted distinction. The activity specific standards for accommodation that is accessory to farming, conservation and rural tourism relate to those specific activities.

5.25 The Specific Purpose (Flat Land Recovery) Zone and Industrial General Zone (Waterloo Park) also have a common approach – hosted visitor accommodation of up to 6 guests with no check in/out between 10pm and 6am is a permitted activity, and unhosted visitor accommodation of up to 6 guests with no check in/out between 10pm and 6am is a controlled activity with matters of control relating to provision of information to the neighbours and guests, record keeping, managing outdoor entertainment/recreation facilities, management of solid waste, number and size of vehicles, building access/wayfinding (exterior property maintenance removed).

[42] See 42A Addendum report at 2.4.2 and 2.4.5.

Discretionary vs restrictive discretionary activity status

5.26 In the economic joint witness statement, the economist experts consider that provisions seeking to manage economic effects are neither effective nor efficient. While they support the amendments Mr Bayliss has made to PC4 to remove economic outcomes from some provisions (objectives), they go on to suggest that retaining discretionary or non-complying status in PC4 is at odds with the narrow scope of effects that Council seeks to manage.[43] This appears to suggest a preference by the economists toward the use of restricted discretionary activity status.

5.27 However, the removal of economic outcomes does not, of itself, justify the use of restricted discretionary activity status. Even if economic effects are removed from consideration, the nature of the activity, effects, and/or the relevant zone can be such that full discretionary activity status remains appropriate.

5.28 The Environment Court in *Lakes District Rural Landowners Society Incorporated v Queenstown Lakes District Council* mentions three reasons for classifying an activity as fully discretionary, noting these reasons are not exhaustive:

(a) where the activity is not suitable in all locations in a zone;

(b) where the effects of the activity are so variable that it is not possible to prescribe standards to control them in advance;

(c) where an activity defaults to discretionary because it cannot meet all the site standards for a permitted activity.[44]

5.29 In the present case, Mr Bayliss considers that while economic considerations have been removed from the objectives and policies, the use of discretionary activity status remains the most appropriate for a variety of reasons, including because of the difficulty of prescribing effective and flexible matters of discretion to facilitate assessment of the wide range of effects that arise from visitor accommodation.[45] The Environment Court in *Edens v Thames-Coromandel District Council* confirmed this approach stating:[46]

> ""*We conclude that* [the subdivision rule in issue in the case] *should remain discretionary. The matters identified as relevant to the*

[43] Economic joint witness statement, at paragraphs 2.16 and 2.17.
[44] *Lakes District Rural Landowners Society Incorporated v Queenstown Lakes District Council* (C75/2001) at [43].
[45] Mr Bayliss' rebuttal evidence at paragraph 4.19.
[46] *Edens v Thames-Coromandel District Council* [2020] NZEnvC 13 at [127]

assessment of such applications are too extensive and the range of possible circumstances are too broad to ensure discretion can be restricted on a principled basis, as required by ss 87A(3) and 104C. The consequences of classifying the activity as discretionary rather than restricted discretionary, whether for notification purposes or consenting purposes, are not nearly so great as to outweigh those factors."

Permitted activity notice standard

5.30 Following consideration of evidence provided by Mr Giddens for Hospitality NZ, Mr Bayliss considers it is appropriate to add a standard to all permitted visitor accommodation provisions requiring that notice in writing be given to Council prior to commencing the activity.

5.31 A standard requiring the giving of notice to the Council for a permitted activity has been confirmed by the High Court to be lawful as a matter of administrative convenience, as it would provide a basis for the Council to "*ensure that the work, when carried out, is done so that the parameters of the permitted activity are not exceeded*".[47]

5.32 Such as standard is not unusual. For example, regulation 10 of the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 requires written notice to be given to both the regional council and territorial authority at least 20 and no more than 60 working days before afforestation begins.

6. MOST APPROPRIATE OBJECTIVES AND PROVISIONS

6.1 The legal test for ascertaining what is the "most appropriate" under section 32 of the RMA, whether for objectives, policies or other provisions, requires a comparison to be made between at least two options. The Courts have often described the comparative test by asking which is the "better" option or outcome.[48]

6.2 It is submitted that retention of the status quo is not the most appropriate outcome. As noted above, the existing District Plan provides a limited objective and policy framework to enable the Council to approve visitor accommodation, and the Environment Court has suggested the initiation of a plan change.

[47] TL & NL Bryant Holdings Limited v Marlborough District Council [2008] NZRMA 485, at [49].
[48] See for example *Griffiths v Auckland Council* [2013] NZEnvC 203 at [26].

6.3 While Notified PC4 was proposed to improve the framework for visitor accommodation than the status quo, it is submitted that Revised PC4 is now the "most appropriate" option in terms of objectives, policies and other provisions for managing visitor accommodation. This is due to Revised PC4 being informed and refined following a consideration of submissions and evidence received, including the economic joint witness statement.

6.4 Mr Bayliss provides evidence explaining the reasons why Revised PC4 now represents the most appropriate (or better) option. In doing so, he considers and responds to submitter requests seeking comparatively more stringent or lenient provisions, and explains why those requests are not considered to be most appropriate.

7. OVERALL RECOMMENDATION

7.1 It is recommended that the Panel accepts Revised PC4 as set out in Appendix 1 of Mr Bayliss' rebuttal evidence.

DATED 8 October 2021

……
Cedric Carranceja / Sophie Meares
Counsel for the Christchurch City Council

APPENDIX 1: CASE EXTRACT

Colonial Vineyard Ltd v. Marlborough District Council [2014] NZEnvC 55 at [17] (bolded emphasis original):

A. General requirements

*1. A district plan (change) should be designed to **accord with**[49], and assist the territorial authority to **carry out** – its functions[50] so as to achieve, the purpose of the Act[51].*

*2. The district plan (change) must be prepared **in accordance with** any regulation[52] (there are none at present) and any direction given by the Minister for the Environment[53];*

*3. When preparing its district plan (change) the territorial authority **must give effect to** any national policy statement or New Zealand Coastal Policy Statement[54].*

4. When preparing its district plan (change) the territorial authority shall:

(a) have regard to any proposed regional policy statement[55];

(b) give effect to any operative regional policy statement[56].

5. In relation to regional plans:

*(a) the district plan (change) must **not be inconsistent** with an operative regional plan for any matter specified in section 30(1) or a water conservation order[57]; and*

*(b) **must have regard to** any proposed regional plan on any matter of regional significance etc[58];*

6. When preparing its district plan (change) the territorial authority must also:

- ***have regard to** any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations[59] to the extent that their content has a bearing on resource management issues of the district, and to consistency with plans and proposed plans of adjacent territorial authorities[60];*

[49] Section 74(1) of the Act.
[50] As described in section 31 of the Act.
[51] Sections 72 and 74(1) of the Act.
[52] Section 74(1) of the Act.
[53] Section 74(1) of the Act added by section 45(1) Resource Management Amendment Act 2005.
[54] Section 75(3) Act.
[55] Section 74(2)(a)(i) of the Act.
[56] Section 75(3)(c) of the Act [as substituted by section 46 Resource Management Amendment Act 2005].
[57] Section 75(4) of the Act [as substituted by section 46 Resource Management Amendment Act 2005].
[58] Section 74(2)(a)(ii) of the Act.
[59] Section 74(2)(b) of the Act.
[60] Section 74(2)(c) of the Act.

- ***take into account*** *any relevant planning document recognised by an iwi authority[61]; and*
- *not have regard to trade competition[62] or the effects of trade competition;*

7. *The formal requirement that a district plan (change) must[63] also state its objectives, policies and the rules (if any) and may[64] state other matters.*

B. *Objectives [the section 32 test for objectives]*

8. *Each proposed objective in a district plan (change) **is to be evaluated** by the extent to which it is the most appropriate way to achieve the purpose of the Act.[65]*

C. *Policies and methods (including rules) [the section 32 test for policies and rules]*

9. *The policies are to **implement** the objectives, and the rules (if any) are to **implement** the policies[66];*

10. *Each proposed policy or method (including each rule) is to be examined, having **regard to its efficiency and effectiveness**, as to whether it is the most appropriate method for achieving the objectives[67] of the district plan **taking into account**:*

    (i) the benefits and costs of the proposed policies and methods (including rules); and

    (ii) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods[68]; and

    (iii) if a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances[69].

D. *Rules*

11. *In making a rule the territorial authority must **have regard to** the actual or potential effect of activities on the environment[70].*

12. *Rules have the force of regulations[71] .*

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[61] Section 74(2A) of the Act.
[62] Section 74(3) of the Act as amended by section 58 Resource Management (Simplifying and Streamlining) Act 2009.
[63] Section 75(1) of the Act.
[64] Section 75(2) of the Act.
[65] Section 74(1) and section 32(3)(a) of the Act.
[66] Section 75(1)(b) and (c) of the Act (also section 76(1)).
[67] Section 32(3)(b) of the Act.
[68] Section 32(4) of the Act.
[69] Section 32(3A) of the Act added by section 13(3) Resource Management Amendment Act 2005.
[70] Section 76(3) of the Act.
[71] Section 76(2) Act.

13. *Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive[72] than those under the Building Act 2004.*

14. *There are special provisions for rules about contaminated land[73].*

15. *There must be no blanket rules about felling of trees[74] in any urban environment[75].*

E. *Other statutes:*

16. *Finally territorial authorities may be required to comply with other statutes.*

[72] Section 76(2A) Act.
[73] Section 76(5) as added by section 47 Resource Management Amendment Act 2005 and amended in 2009.
[74] Section 76(4A) as added by the Resource Management (Simplifying and Streamlining) Amendment Act 2009.
[75] Section 76(4B) — this 'Remuera rule' was added by the Resource Management (Simplifying and Streamlining) Amendment Act 2009.