

**BEFORE INDEPENDENT HEARING COMMISSIONERS
APPOINTED BY THE CHRISTCHURCH CITY COUNCIL**

UNDER the Resource Management Act 1991 (RMA)

IN THE MATTER of a request pursuant to section 73(2) of the RMA to
change a district plan

AND

IN THE MATTER of Proposed Plan Change 4 to the Christchurch District
Plan

BETWEEN **REEFVILLE PROPERTIES LIMITED**
Applicant

AND **CHRISTCHURCH CITY COUNCIL**
Territorial Authority

JOINT WITNESS STATEMENT - PLANNING
8 October 2021

JOINT WITNESS STATEMENT

Witnesses	For
Ian Bayliss (IB)	Christchurch City Council
Matt Bonis (MB)	Airbnb Australia Pty Ltd
Brett Giddens (BG)	Hospitality NZ

1. Environment Court Practice Note

- 1.1 It is confirmed that the signatories to this Joint Witness Statement have read the Environment Court Consolidated Practice Note 2014 Code of Conduct for expert witnesses and the Protocol for Expert Witness Conferences (Appendix 3) and agreed to abide by them in the production of this Statement.
- 1.2 The witnesses met online on Tuesday 28 September and briefly on the 6th and 8th of October

2. ISSUES AGREED, NOT AGREED AND REASONS

2.1 Economic effects

- 2.1.1 **MB** and **IB** agree, based on the Economic JWS that short-term accommodation does not result in material direct effects on housing affordability and the vitality and viability of centres. They agree that reference to housing affordability, the viability of centres, or recovery of the Central City are not matters that should be identified in Objective 14.2.9 as being appropriate to achieve the Act, nor notified Policy 14.2.9.1(c) as being appropriate to implement the Objective.
- 2.1.2 **MB** further identified that should the Panel consider regulation was necessary to manage environmental effects, that the Economic JWS provided further support for a CON or RDA status, with tightly confined assessment matters excluding economic matters.
- 2.1.3 **BG**: Mr Giddens disagrees in part, and considers that the economic evidence and JWS oversimplify the issue. He considers there could be localised effects on housing affordability and demand in centres from a predominance of unhosted short-term accommodation if the Plan provides an overly permissive pathway. An example where this might occur would be around the central city (Residential Central City Zone). Whilst accepting the views expressed in the Economic JWS, he retains concerns as to economic issues over the life of the District Plan.

2.2 **Scale and Significance of the Issue**

2.2.1 **MB** identified that he understands that the activity relates to only 2.9% of district housing stock, with unhosted HSA representing only 1.3% of district housing stock. He notes the Economic JWS that records that the HSA market had started to plateau prior to Covid 19 after several years of strong growth¹. He acknowledges that the proportion of housing stock in HSA may change in some locations and that HSA representation will change as entrants leave or entre the market, but that issues that do not appear to be widespread, nor likely to substantially change in future. This goes to the 'efficiency' of provisions and regulation introduced through PC4, and a careful consideration of evidence as to social costs, and whether proposed regulation is also 'effective'.

2.2.2 **BG** and **IB** are of the view that regulation remains able to be imposed where there are significant localised social costs where targeted controls are both effective and efficient even if these issues is not widespread. They consider that post Covid it is not foreseeable whether HSA has plateaued or substantial growth is likely.

2.2.3 **BG** considers that economic effects and the impact on district housing stock are not the only, or main issues for PC4 when it comes to evaluating the scale and significance of the issues, and social effects need to be given full consideration. He understands from his reading of submissions that there are likely to be other submitters who are presenting at the hearing on the social effects of HSA that will need to be factored into the overall considerations.

2.3 **Is short-term accommodation in residential homes a commercial or residential activity**

2.3.1 **BG**: Considers that unhosted visitor accommodation is a non-residential activity, particularly where the accommodation business is operating for more than a small number of days a year. Removing the residential activity from a residential unit is a key driver in this. Accepts that hosted visitor accommodation can be predominantly a residential activity but that is directly dependent on limiting scale and frequency for this to be the case. He does not consider that the limit on the number of persons undertaking HVA is an effective tool in itself to maintain a predominance of residential activity within a residential unit in a residential zone.

2.3.2 **MB**: Considers that the features (scale, built form and activities) of hosted accommodation in terms of character and amenity is more akin to residential activity than commercial activity. Even for unhosted accommodation, the prevailing characteristics are residential,

¹ Economic JWS [2.2]

with the extent by which social costs associated with HSA (such as noise, disruption and litter) are not clarified in the s32 material beyond that associated with the broad range of effects from the residential community.

2.3.3 **IB:** Agree that short-term accommodation in homes is predominantly a residential activity but it can have commercial characteristics that the plan seeks to limit or avoid in residential and rural areas. Because it involves letting the property for a tariff it is technically a commercial activity albeit one with largely residential effects.

2.4 **Effectiveness and efficiency of provisions**

2.4.1 **ALL:** Hard to establish the effectiveness of the status quo provisions to compare with PC4, given the extent to which it appears that large numbers of short-term accommodation providers are infringing rules in the plan and operating without consent. Panel will have to consider PC4 against a “scenario” where the ODP provisions are implemented, a scenario with more restrictive controls as sought by some submissions, and a more permissive scenario (represented by the relief sought by short-term accommodation providers, and to some extent the “real world” pre-covid situation of the activity growing substantially and with the ODP provisions not being consistently enforced).

2.4.2 **BG** considers that a difficulty with the evaluation exercise is that we have not been able to see the true effects on centres, and other zones that specifically enable VA, because of the significant extent of unlawful activity that has been allowed to occur under the ODP framework. It is uncertain in his opinion whether, for example, there may have been more uptake on hotels and motels in the commercial centres (including the Central City) if the ODP was enforced as it should have been.

2.4.3 **ALL agree** that there are some issues of arbitrariness associated with any threshold / metric to be used for establishing a regulatory threshold. **All agree** that under the regulatory approach associated with the ODP or PC4 (as recommended by Mr Bayliss, 1 September) there are some issues of enforceability that go to the effectiveness of provisions in terms of s32. **BG** considers that these issues in his opinion are mostly limited to the rules around hosted HSA.

2.5 **Building Act**

2.5.1 **BG:** The Plan needs to make it clear that the Building Code also applies and that complying with the Plan is only part of what needs to be addressed in considering a short-term accommodation proposal. He considers that this is consistent with other parts of the District Plan that refer to Building Act and Building Code compliance. The Plan should drive processes and procedures that ensure one part of Council isn't authorising

development (through the district plan) that is highly problematic for another process (Building Act compliance). This goes to his question of ‘when is a residential unit no longer a residential unit’ as that has a direct bearing on whether a change of use under the Building Act has occurred. He considers that a ‘belts and braces’ approach should be taken given the interrelationship between the RMA and Building Act, particularly around the safe use of buildings (including means escape), addressing the endangerment of occupants, and accessibility. Reference to the Building Act for requirements should be affixed to any CON or RDA provisions in terms of assessment matters (where such activity statuses are adopted by the Panel). He also wishes to see that any definition of HSA (and related definitions) includes an advisory note associated with requirements of the Building Act, and policy to help inform conditions that can be imposed under s108 of the RMA.

2.5.2 **IB and MB: Agree** that the Building Act needs to be complied with irrespective of what the district plan says², and question why this would need to be highlighted in relation to visitor accommodation and not other activities? Nothing wrong with aligning RMA Plans with other legislation but they shouldn’t require consents under separate legislation. Both oppose the requirements of the Building Act being ascribed through provisions (Objectives, Policies, Rules or assessment matters) in the Plan. Whilst both consider it unnecessary, neither has an objection should the Panel consider it necessary to include an advice note about the need to meet Building Code requirements. Both question whether having building act requirements as matters for discretion and control over building code compliance were vires.

3. PROVISIONS AGREED, NOT AGREED AND REASONS

3.1.1 **BG:** Experience with CDP permitted activity standard for billboards would suggest that a requirement to inform Council that visitor accommodation is happening is a workable standard for a PA, CA or RDA.

3.1.2 **IB MB:** agree. Not unusual to require information about commencing short-term accommodation activity for rates purposes (e.g. Auckland and QLDC).

3.1.3 **ALL: Agree** that provisions be inserted (under either a permissive or more restrictive approach) that *‘The Christchurch City Council is notified in writing prior to the commencement of the Home Sharing Activity’*.

² Note the QLDC PDP has “compliance with the Building Code” as a matter of control for CA’s and as a matter for discretion for RDA’s in relation to homestay’s and residential visitor accommodation. The definition of homestay and residential visitor accommodation also include this advice note: “Additional requirements of the Building Act 2004 may apply”. These provisions are subject to appeals.

3.2 **Are the controls and standards appropriately targeted to the effects**

- 3.2.1 **IB:** As above, any metric will be somewhat arbitrary, but this is unavoidable but agree that having Council arbitrate over incidental activities should be minimised where possible. E.g. can't support requiring consent to have additional guests visit someone staying at a home share. However, frequent arrivals and departures at night seems likely to cause adverse effects derived from this activity so is of the view that the hours of operation rule is appropriate. Plan standards are an important backstop.
- 3.2.2 **BG:** Prefer clear controls/triggers. Preference is that PC4 should limit the number of nights for hosted VA if it is going to have a permitted component. Could be 60 nights but needs to be a limit. The issue with the rule as it is currently framed is that the residential component is enabled to be a significant minority versus the number of guests (i.e. one resident to 6 guests 365 days per year as a permitted activity in a residential zone), and this could be subject to abuse resulting in the activity being more akin to an unhosted VA activity in a residential zone.
- 3.2.3 **MB:** Again, would question what are the additional effects for hosted VA for 180 days a year over and above unhosted VA for 365 days a year that justify the need for a controlled activity consent for letting out a house while on holiday and a discretionary activity if the owner can't guarantee the guests will turn up before 10pm.

3.3 **Potential to make the controls more targeted**

- 3.3.1 **MB:** Don't agree with the need for four tiers of activity status and discretionary activity default framework. Council concern appears to be in relation to the extent by which a residential area is predominantly used for HSA (and accordant concerns as to residential character and coherence). This does not appear to be borne out by the current distribution or extent of HSA. If that is the Council's concern presumably a spatial control that triggered the requirement for consent (and consideration of cumulative effects) if there was significant accumulation of home sharing in an area could be the more appropriate. However, remains of the view that a prescriptive approach is unwarranted and inappropriate in terms of s32.
- 3.3.2 **IB and BG:** Discretionary activity sends an appropriate signal that the activity could challenge whether the plans objectives and policies will be achieved. Think its helpful to ensure those objectives and policies are considered given the nature of the effects. Effects and individual situations can vary widely which makes it less suitable for RDA. DA allows benefits as well as policies in further detail.

4. KEY FACTS AND ASSUMPTIONS INCLUDING PRIMARY DATA AND REPORTS IN SUPPORT OF OPINIONS

- 4.1.1 **MB:** Key considerations include the Christchurch recovery context that frames the CDP, specifically: minimising reliance on resource consent process, and minimising the number, extent, and prescriptiveness of development controls and standards as per Objective 3.3.1 and 3.3.2.
- 4.1.2 **IB:** Noted. My view is PC4 is not detrimental to recovery outcomes. Section.32 tests on how best to achieve the relevant objectives still important.
- 4.1.3 **BG:** Economic efficiency is important but it is equally as important not to overlook the social dimension that these provisions effect.

5. ISSUES NOT ADEQUATELY ADDRESSED BY AVAILABLE EVIDENCE AT THIS POINT




- 5.1.1 **MB:** Survey and feedback sessions used to justify PC4 in s32 didn't clearly distinguish between hosted and unhosted home sharing, nor seek to quantify the extent of social disruption over and above typical and broad range of residential effects anticipated within Zones.
- 5.1.2 **BG:** Believes social effects have been raised by submitters and this will be useful to help inform overall considerations.

6. RESERVATIONS, QUESTIONS OF LAW AND PROCEDURAL MATTERS

- 6.1.1 **IB and BG:** acknowledge the fear that discretionary activities rely on good practise where there is a lack of certainty over what is relevant for a consent authority to exercise discretion over, and to determine what is acceptable and unacceptable. Clear objectives and policies can assist and also note this issue can even occur with controlled activity and restricted discretionary activities with things like CPTED assessments.
- 6.1.2 **MB:** Where the Panel to consider that a more prescriptive consenting framework is required to manage the actual or potential effects from HSA, based on the s32 and the Economic JWS Mr Bonis is of the view that any residential effects are narrowed such that a Discretionary or Non-Complying Activity status would not be the more appropriate in terms of providing clarity, and achieving **Objective 3.3.1** and **Objective 3.3.2**.
- 6.1.3 **ALL: Agree** that there are two limbs to PC4; the first being to address the recognised lacuna in terms of the management of HSA; the second being the manner in which regulation is framed being categorised as either a light regulatory approach (Mr Bonis) or a more moderate consenting framework (Mr Bayliss).

- 6.1.4 **MB and IB agree** that the ODP provisions are not appropriate, that a lacuna exists and is to be rectified by PC4.
- 6.1.5 However, given the Economic JWS, the residual issue turns on the Panel's consideration of the Council's contention that unregulated HSA can lead to material adverse effects on localised residential character and amenity. If the Panel, after hearing the evidence and submitters agrees that that threshold of demonstrable social costs is not attained, or is not effectively resolved through the regulation proposed – MB/IB agree that a light approach such as that in Mr Bonis' supplementary evidence (dated 24 September) would be appropriate; in the converse MB/IB agree that Mr Bayliss presents an appropriate framework, albeit with Mr Bonis' reservations as RDA being the more appropriate status, the removal of check-in and check-out times in terms of determining consent status for the reasons expressed in his EIC, in greater clarity as to assessment matters.
- 6.1.3 All agree as to being willing to refine provisions further based on direction from the Panel.

Signed

Witness	Signature	Date
Ian Bayliss		8 October 2021
Matt Bonis		8 October 2021
Brett Giddens		8 October 2021