

## APPENDIX E – RESPONSE TO REQUEST 22

3. The Panel's request is:

*Please explain how the heritage rules in PC14 work, including by reference to:*

- *the operative rule framework for management and the use of discretionary and non-complying activity status (in light of the Forest & Bird decision encouraging less restrictive status to be applied) – Ms Richmond; and*
- *activity status in the context of Residential Heritage Areas, and any implications of the Waikanae decision – Ms Dixon.*

4. As recorded in the table in Appendix A, an initial explanation was provided by Ms Dixon on 1 November 2023, and a further explanation was provided by Ms Richmond at the hearing on 28 November 2023 relating to heritage – a link to her summary statement will be added to the table once available.

5. Otherwise, Ms Dixon's supplementary statement is **overleaf**.

**BEFORE INDEPENDENT HEARING COMMISSIONERS  
IN CHRISTCHURCH**

**TE MAHERE Ā-ROHE I TŪTOHUA MŌ TE TĀONE O ŌTAUTAHI**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of the hearing of submissions on Plan Change 14 (Housing and Business Choice) to the Christchurch District Plan

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**SUPPLEMENTARY STATEMENT OF EVIDENCE OF GLENDA DIXON ON  
BEHALF OF CHRISTCHURCH CITY COUNCIL**

**RESIDENTIAL HERITAGE AREAS**

Dated: 29 November 2023

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## INTRODUCTION

1. My name is Glenda Dixon. I am employed as a Senior Policy Planner by Christchurch City Council.
2. I have previously prepared statements of primary and rebuttal evidence on behalf of the Christchurch City Council (the **Council**) in respect of Plan Change 14 to the Christchurch District Plan (the **District Plan**; **PC14**).
3. My evidence addressed the topic of the Residential Heritage Areas (**RHAs**) as a Qualifying Matter. Specifically, it related to the District Plan provisions proposed for the 11 new Residential Heritage Areas identified and assessed by Dr Ann McEwan, heritage consultant, for inclusion in the District Plan. RHAs are intended to protect residential areas which have collective heritage values as distinctive and significant residential environments.
4. I have prepared this supplementary statement of evidence in respect of issues raised at the PC14 hearing in relation to RHAs. This statement responds to the points raised for RHAs in Task #22 as recorded in the Memorandum of Counsel for Christchurch City Council Regarding Panel Requests for Further Information dated 10 November 2023, and provides the following further information:
  - (a) An explanation of how the RHA rules work;
  - (b) A description of the operative rule framework for RHAs for the management of heritage, including the use of discretionary and non-complying activity status;
  - (c) Commentary on activity status in respect of RHAs and any implications of the Environment Court's *Waikanae Land Company* decision.<sup>1</sup>
5. Ms Suzanne Richmond has responded to these questions in respect of heritage items, in her summary statement presented at the PC14 hearing on 28 November.
6. I am authorised to provide this evidence on behalf of the Council.

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<sup>1</sup> [2023] NZEnvC 056.

## **Qualifications and experience**

7. My qualifications and experience are set out at paragraphs 2.1.2 and 2.1.3 of my primary statement of evidence.

## **Code of conduct**

8. While this is a Council hearing, I have read the Code of Conduct for Expert Witnesses (contained in the 2023 Practice Note) and agree to comply with it. Except where I state I rely on the evidence of another person, I confirm that the issues addressed in this supplementary statement of evidence are within my area of expertise, and I have not omitted to consider material facts known to me that might alter or detract from my expressed opinions.

## **HOW THE RHA RULES WORK**

9. Within the proposed RHAs, Dr McEwan has rated the individual properties as defining, contributory, neutral, or intrusive, based on their particular heritage values and features and their contribution to that RHA's heritage value overall<sup>2</sup>.
10. Defining buildings are those that are of primary importance to the heritage area and establish its heritage values and significance. They retain a high level of authenticity and integrity. Any building that is individually scheduled in the District Plan is automatically considered to be making a defining contribution to the area.
11. Contributory buildings are those that support and are consistent with the heritage values and significance of the heritage area. They may be either modified or modern buildings, structures and features that are in sympathy with the design and typology of their neighbours.
12. Neutral buildings or sites do not establish, support or detract from the heritage values and significance of the heritage area. They may be modern buildings of a new typology (for example a cluster of flats or townhouses) or a "new" pattern of land development (eg cross-leasing). They generally respect the overall scale and density of the area.
13. Intrusive buildings or sites are those which detract from and are inconsistent with the heritage values and significance of the heritage area. These are

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<sup>2</sup> These descriptions of categories include additional explanatory material from Dr McEwan's overall Heritage Area reports, which will be appended to sub-chapter 9.3.

developments and typologies that are inconsistent with the historic heritage values of the area, including but not limited to non-residential uses, high rise buildings and vacant lots, which are considered to be intrusive to the streetscape of the area.

14. These categories provide the basis for the activity rules which apply. There is no consent category more stringent than Restricted Discretionary Activity (**RDA**).
15. RDA is the entry level for consents in RHAs. All new buildings, and alterations to building exteriors of defining and contributory buildings, are proposed to be Restricted Discretionary Activities under Rule 9.3.4.1.3 RD6, with some exceptions e.g. for alterations to exteriors of neutral or intrusive buildings, and buildings of less than 5m in height located behind the main residential unit on the site. New road boundary fences and walls over 1.5m in height, and alterations to these fences so that they are more than 1.5m in height, also require consent under RD6. Heritage records for the individual properties within the RHAs make reference to the current fences to provide a baseline. Where buildings are already scheduled heritage items, they are not subject to RD6 but are instead subject to heritage item RDA or other status consents.
16. In my view identifying RHAs without imposing demolition restrictions would likely be ineffective in protecting heritage values. Therefore demolition of defining and contributory buildings is proposed to be subject to RDA status under Rule 9.3.4.1.3 RD7. However it will remain permitted to demolish a neutral or intrusive building.
17. There are additional rules for RHAs which do not depend on the building contribution rating. All new buildings in RHAs are also subject to the built form standards included in Rule 14.5.3.2 (area specific built form standards in the Medium-Density Residential (**MRZ**) zone); RHA subdivision activity standards (minimum net site areas) in Rule 8.6.1; and the density built form rule in Rule 14.5.3.2.7<sup>3</sup>. All these categories of rules are in most cases more restrictive than MRZ rules, although in some cases they are more enabling than, or equivalent to, operative District Plan rules. This is because the Council considers that the MRZ rules (which essentially implement the medium density residential standards (**MDRS**)) would not adequately protect

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<sup>3</sup> The individual standards are shown in the 'more enabling, equivalent or less enabling' table for RHAs also being provided to the Panel, in response to its request 42.

the heritage values of RHAs in a full intensification scenario, and would likely result in development that is not in keeping with these values. The potential impacts of intensification include loss of original buildings, much larger scale of development and dominance from new and additional buildings, significantly increased site coverage, and loss of space and vegetation.

18. The built form standards for RHAs match some of the built form standards for Residential Character Areas (**RCAs**): minimum net area for subdivision, number of units per site, and basic building envelope rules relating to height, road and internal boundary setbacks, building coverage and outdoor living space per unit. The subdivision and density rules for RHAs also match the rules for RCAs. This is because the most practical response to the geographic overlap between 6 RHAs and RCAs is to make these rules match, otherwise there would be unnecessary confusion for property owners.
19. Any breach of these rules for development proposals would independently trigger the need for an RDA consent, irrespective of the need for an RDA activity consent otherwise. In the case of an application for what is an RDA anyway, this group of RDA rules, if breached, act only as guidelines or starting points for assessment of these breaches. In a few situations such as alterations to neutral or intrusive buildings, which are themselves a permitted activity, the RHA built form standards would apply as rules.
20. A third category of rule relates not to the RHAs themselves but to sites in High-Density Residential zones (**HRZ**) sharing a boundary with the RHAs<sup>4</sup>. These 'interface areas' are primarily around the Chester St East RHA, with a few sites around some of the other RHAs (Englefield, Inner City West, Heaton Street, and Piko/Shand RHA if an HRZ zone ultimately adjoins it to the east). Rule 9.3.6.4 RD8 requires an RDA consent for proposals on these sites where the buildings proposed are more than 5m in height. Matters of discretion are limited to whether the building's location, design, scale and form would impact on the heritage values of the site or RHA generally, and whether the proposed building would visually dominate the site or RHA or reduce the visibility of the site(s) from a road or other public space. The HRZ or Residential Visitor Accommodation-zoned sites retain that zoning with the other rules of that zone.

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<sup>4</sup> There is one site in Kilmore Street with a Residential Visitor Accommodation zoning which is also subject to this rule.

## OPERATIVE RULE FRAMEWORK FOR HERITAGE AREAS

21. Operative Subchapter 9.3 of the District Plan includes Policy 9.3.2.2.2 – Heritage Areas, which relates to identifying and scheduling heritage areas, and introduced the Heritage Area concept into the District Plan at the last District Plan review. Policy 9.3.2.2.11– Future Work Programme includes mention of the Council facilitating further identification and assessment of heritage areas for inclusion in the District Plan over time.
22. Policy 9.3.2.2.2 provides the policy basis for Appendix 9.3.7.3.1, which is a map of the Akaroa Heritage Area. Matters of Discretion 9.3.6.3 for the Akaroa Heritage Area is the only “rule”-like provision for this area. Providing for these matters does not result in any additional resource consent trigger. Instead, matters of discretion were added to relevant zone rules (eg for the Commercial Banks Peninsula zone at 15.6.1.3 RD3 (to be renumbered to 15.7.1.3 in PC14)) so that, if an activity already requires consent, the heritage values of the area would have to be considered.
23. Decision 45 of the previous Independent Hearings Panel records that these provisions came about via submissions to the District Plan review, by the Akaroa Civic Trust and Rod Donald Banks Peninsula Trust, and by mediation between the parties. Council initially opposed the provisions, due to a lack of assessment to support the definition of the area concerned, but the Panel favoured inclusion of the area. It remains the case that there has been no site-by-site assessment in the intervening years.
24. It can be noted that the map at Appendix 9.3.7.3.1 covers both residential and commercially zoned areas. There is also an Akaroa Character Area, and a separate Heritage NZ Historic Area for Akaroa. It is my understanding that none of these correspond exactly with each other. In summary the Akaroa HA needs complete review and is a different type of heritage area to those RHAs proposed in PC14 in response to residential intensification. The work on reviewing the Akaroa Heritage Area was not undertaken for PC14 because Akaroa is outside the Christchurch urban area.
25. Policy 9.3.2.2.2 has however been proposed to be amended in PC14 so that it more accurately reflects the process of identification and assessment of residential and potentially other heritage areas which could be scheduled in the Plan in the future. It has been kept as a general heritage area policy, although the PC14 work related only to the introduction of RHAs, because other sorts of heritage areas could be added to the Plan in the future.



26. All of the rules and matters of discretion relating to RHAs are new to the District Plan in PC14.
27. There are no rules with fully discretionary or non-complying activity status for RHAs. I do not consider that controlled activity status is appropriate for heritage matters for reasons set out in my s42A report (eg paragraph 6.2.6). I do not consider there are any grounds to review the activity status of RDA consistently used for RHAs, eg in light of the *Forest and Bird* decision<sup>5</sup>.

### **IMPLICATIONS OF THE WAIKANAE DECISION**

28. All new RHAs with their associated rules impose restrictions on the *status quo* by changing the activity status for all new buildings, and for altering and demolishing defining and contributory buildings, in RHAs from permitted in the operative District Plan to RDA. They also include some new building height, density and subdivision requirements that are less enabling than those in the operative District Plan zones.
29. Conversely, the table separately provided of 'more enabling, equivalent or less enabling' for RHA provisions (in response to Panel request 42) indicates that the exceptions to this are the provision for 2 units per site, which is more enabling than the previous zoning (eg Residential Suburban / Residential Suburban Density Transition where only 1 unit per site was provided for); coverage and outdoor living space rules which are generally more enabling; and other general MRZ zone standards that would apply to RHAs, such as the MRZ recession plane rule, which is more enabling than the operative recession plane.
30. I do not consider that there is any '*Waikanae* light' option which might apply to RHAs, for example on the basis of the more enabling rules quoted above. In and of themselves they would not constitute appropriate protection of the collective heritage values of these areas.
31. In my view there would also be little point in identifying RHAs eg by mapping, without providing rules with protective effect eg demolition rules. Non-statutory design guidance in itself would have no protective effect.
32. That said, I understand that the RHA provisions in PC14 differ from those at issue in *Waikanae*, because the relevant RHA rules have taken immediate

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<sup>5</sup> *Royal Forest and Bird Protection Society of NZ Inc v Whakatane District Council* [2017] NZEnvC 51.

legal effect, upon notification of PC13 under the RMA Schedule 1. This is a legal matter.

Date: 29 November 2023

**Glenda Dixon**