

APPENDIX F – RESPONSE TO REQUESTS 37 TO 40

1. The Panel's requests 37 to 40 are:
 37. *Explain the operation of the multiple restricted discretionary activities (RD7 and RD8) in rule 14.6.1.3 in Plan Change 14 as notified*
 38. *Advise whether the rules in the residential chapter requiring limited or non-notification are likely to lead to those outcomes, notwithstanding other activities requiring consent (such as earthworks).*
 39. *Confirm whether various references in the residential chapter to "sunlight" and "daylight" deliberately refer to different things.*
 40. *Regarding the sunlight access qualifying matter, advise whether potential health effects associated with sunlight were factored into the Council's section 32 evaluation*
2. The Council's response is **overleaf**.

Council responses to IHP information requests #37 to #40

Information request #37 – Explain the operation of the multiple restricted discretionary activities (RD7 and RD8) in rule 14.6.1.3 in Plan Change 14 as notified.

As notified, the HRZ is proposed to apply across residential areas where at least six storey development is enabled. Building heights of up to 14m are enabled as a Permitted Activity. A series of HRZ centre Precincts (High Density Residential Precinct, Large Local Centre Intensification Precinct, or Town Centre Intensification Precinct) are also proposed and detail the NPS-UD Policy 3 (c) or (d) genesis of intensification around specific centres. These Precincts are used to limit enabled buildings to 20m as a restricted discretionary activity. Only around the City Centre Zone (**CCZ**) is there no Precinct and building heights of up to 32m are enabled in this area.

Notified rule 14.6.1.3 RD7(a) provides for building heights of 14m to 20m subject to a specific standard relating to communal ground floor outdoor living space, while RD7(b) provides for between 20m to 32m outside of the HRZ centre Precincts, subject to additional standards (buildings setback 6m from internal boundaries, setback 3m from road boundary, and previous communal outdoor living standard). The matters of discretion for RD7(a) or RD7(b) are: Impacts on neighbouring property – Rule 14.15.3.a.

The framework intends for RD8 to capture non-compliances with building heights and standards detailed in RD7. In doing so, the associated matter of discretion is Impacts on neighbouring property – Rule 14.15.3.c, rather than 14.15.3.a. This is purposefully a more onerous consenting threshold.

Under both RD7 and RD8, applications are open to a full s95 assessment and may be limited or publicly notified.

However, the notified framework has the following issues:

- RD8 (a) does not specify that the 32m threshold only applies to areas outside of HRZ Precincts.
- RD8 does not capture breaches of the performance standards specified in RD7.
- Due to the omission of breaches of the RD7 performance standards being captured by RD8, the default rules D2 or D3 apply, meaning that the activity is considered as a Discretionary Activity. This is not the intention as Restricted Discretionary Activity should be the highest activity status, as per Clause 4 of MDRS and section 3.4 of the NPS-UD.
- Matter of discretion 14.15.3.c only stipulates that it captures buildings that exceed either 14m in MRZ or 32m in HRZ, thereby buildings in HRZ that breach the 20m threshold within Precincts are omitted from consideration.

The recommended s42A approach is to simplify the provisions and address these issues by removing the notified HRZ centres Precincts approach, instead permitting building height of 22m across the zone. One new Precinct is proposed to only apply around CCZ, with a building height of 39m permitted. Most of the aforementioned standards (with some modification) are included alongside the permitted height standard as a performance standard that must be met to be permitted. The notification threshold has also been recommended to be changed to preclude public notification for any building height breach.

Information request #38 – Advise whether the rules in the residential chapter requiring limited or non-notification are likely to lead to those outcomes, notwithstanding other activities requiring consent (such as earthworks).

The ultimate notification decision will depend on the nature of non-compliance with other rules for a development. A typical multi-unit development may also trigger earthworks, transport, or other qualifying matter rules.

Earthworks may be limited notified, but shall not be publicly notified (rule 8.9.1), so there will be a s95 assessment required for affected persons only.

In regard to transport, any development at or greater than 60 units falls under the High Trip Generator (rule 7.4.3.10). The rule exempts any form of limited or public notification where the activity is otherwise permitted in the zone, provided that access is not from a State Highway or crossing a railway line (and no written approval has been obtained from NZTA and KiwiRail). A 60 unit development would not be permitted in a residential zone so notification would not be precluded under this rule. A number of other technical standards¹ also exempt any form of notification. Rules that do not exempt notification include parking (car, cycle and mobility), loading, Central city vehicle access and Central City Lane formation and co-location of vehicle crossings.

If an activity is subject to multiple rules, Council can only apply the non-notification clauses where all the rules share that clause². As soon as any rule is triggered that does not preclude notification, that opens up the application to a s95 assessment (as limited by the relevant matters of discretion, if all activities have an activity status of Restricted Discretionary or lower).

Information request #39 – Confirm whether various references in the residential chapter to "sunlight" and "daylight" deliberately refer to different things.

The term 'daylight recession planes' is a term used within the operative Plan and is the name of the rule that related to recession planes (now proposed under MDRS as 'height to boundary control'). Some rules that are either out of scope or proposed to be unchanged via PC14 continue with this terminology. For example, operative matter of discretion 14.15.28 (updated to 14.15.31 in PC14, as recommended) still uses this term; the name has simply been updated to reflect the change of zone name.

Within the Residential Matters of Control and Discretion (14.15) the use of terms is more diverse.

The term "daylight" is used within the following:

- 14.15.1 – Residential Design Principles: under e. Built form and appearance, ii.e.
 - ... blocks of units are separated with setbacks to allow access to **daylight** between buildings and to provide privacy between blocks.

¹ Examples include: Gradient of parking and loading areas; design of parking and loading; access design; vehicle crossings (when not on State Highway and not without written approval from NZTA); location of access and buildings in relation to rail crossings (when not crossing a railway line and with written approval of KiwiRail).

² s95A(5), s95B(6)

- 14.14.3 – Impact on neighbouring properties: under c.x.
 - ... effects on outlook and access to ***sun and daylight*** within the development site and on neighbouring properties.
- 14.15.22 – Outlook space occupation: under a.
 - ... while providing an open site outlook with access to ***daylight*** from the windows of habitable rooms.
- 14.14.23 – Street-facing glazing: under e.
 - ... to maintain privacy while still providing for outlook and access to ***sun and daylight***.
- 14.15.38 – Comprehensive residential development in the Future Urban Zone: under b.
 - ... residential unit will experience appropriate levels of ***sunlight, daylight***, privacy, outlook and access to outdoor open space and overall a high level of amenity for the development.

The term “sunlight” is used within the following – where not stated above:

- 14.15.1 – Residential Design Principles: under f. Residential environment, ii.a.
 - ... provides for outlook, ***sunlight*** and privacy through the site layout, and orientation and internal layout of residential units.
- 14.15.10 – Retirement Villages: under a.vi.
 - ... residential amenity for neighbours, in respect of outlook, privacy, noise, odour, light spill, and access to ***sunlight***, through site design, building, outdoor living space...
- 14.15.21 – Outdoor living space: under a.
 - The extent to which outdoor living spaces provide useable space, contribute to overall on-site spaciousness and provide ***sunlight*** access for occupants.
- Ibid, under c.
 - Whether the size, ***sunlight*** access and quality of on-site communal outdoor living space or other open space amenity compensates for any reduction in private outdoor living space.

The intention is that the split in nomenclature in the above matters of discretion relate to direct or indirect light. When the term ‘daylight’ is used, it seeks to consider indirect light (i.e. through an external window), and when the term ‘sunlight’ is used, it seeks to consider direct light from the sun (i.e. an outdoor area that ensures that direct sunlight is achievable).

Information request #40 – Regarding the sunlight access qualifying matter, advise whether potential health effects associated with sunlight were factored into the Council's section 32 evaluation.

The Council’s section 32 evaluation³ factored potential health effects associated with sunlight as outlined below.

³ See the [s32 on qualifying matters](#) from page 354.

In the section 32 evaluation (“Part 2 – Qualifying Matters (District Plan Chapters 6, 8, 9, 13, 14, 18) (Part 3)” at paragraph 6.30.21, a table is provided that assesses compliance of the proposed sunlight access QM against Objective 1 of the NPS-UD, which requires consideration of people’s health and safety. The right hand column records that *“Better providing for sunlight access is likely to improve overall wellbeing and health”*.

At paragraph 6.30.33, a table introduces the s32 evaluation for Option 1 (reducing all height and angle metrics relative to MDRS. The assessment of social benefits states *“Increasing sunlight access positively increases people's wellbeing, particularly in the winter.”*

In the same table, on page 372, within the concluding “Risk of Acting or Not Acting” assessment, the report states: *“The impact depends on site orientation but can be an extra two months without ground floor sun for some sites (being almost half the year) and risks reducing community wellbeing and resilience to the current effects of climate change, increasing the potential for greenhouse gas emissions.”*

On page 375, the table assesses social benefits for Option 3 (reducing height and introducing oriented-based approach relative to MDRS) and states: *“Increasing sunlight access positively increases people's wellbeing. Providing a level of sunlight across each level of a residential unit ensures greater social equity across a building block, potentially reducing conflict.”*

In the same table, the “Risk of Acting or Not Acting” assessment states: *“Not applying a Sunlight Access QM results in an extra two months of shaded area associated with complying MDRS units and risks reducing community wellbeing and resilience to the current effects of climate change, increasing the potential for greenhouse gas emissions.”*