**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

---

# LEGAL SUBMISSIONS FOR THE CHRISTCHURCH CITY COUNCIL ON PROPOSED PLAN CHANGE 14:

## RESIDENTIAL ZONES

Dated: 26 October 2023

---

BUDDLE FINDLAY

Barristers and Solicitors
Wellington

Solicitors Acting: **Dave Randal / Cedric Carranceja**
Email: david.randal@buddlefindlay.com / cedric.carranceja@buddlefindlay.com
Tel 64 4 462 0450 / 64 3 371 3532
Fax 64 4 499 4141 PO Box 2694 DX SP20201 Wellington 6011

**MAY IT PLEASE THE PANEL:**

## 1. INTRODUCTION

### Overview of legal submissions

1.1 These legal submissions on behalf of the Christchurch City Council (**Council**) provide a high-level overview of the Council's approach to the Residential zones, addressing the following subtopics:

(a) the Medium Density Residential zone (**MRZ**) and the High Density Residential zone (**HRZ**);

(b) the sunlight access qualifying matter (**QM**);

(c) residential heritage areas QM (**RHAs**);

(d) residential character areas QM (**RCAs**);

(e) the Riccarton Bush interface QM;

(f) the low public transport accessibility area (**LPTAA**) QM;

(g) the Port Hills stormwater constraints QM (proposed by a submitter);

(h) the residential / industrial interface QM;

(i) the residential Future Urban Zone and outline development plans (**ODPs**); and

(j) proposed rezoning of residential zones and other zones to residential (proposed by submitters).

1.2 These legal submissions adopt the following structure:

(a) This **Part 1** contains an introduction and presents an overarching summary of the Council's approach to giving effect, through PC14, to national direction as it relates to residential activities.

(b) **Part 2** briefly comments on the applicable legal framework and re-introduces the set of legal tests to be applied by the Panel (which has been updated, as requested, from the extract from the Environment Court's decision in *Colonial Vineyard*[1] appended to counsel's submissions for the strategic overview hearing).

(c) **Part 3** addresses key issues relating to the residential topic (other than those relating to QMs and future urban zones).

[1] *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [17].

(d) **Part 4** addresses the QMs that solely relate to residential zones, listed above.

(e) **Part 5** addresses issues relating to future urban zones and ODPs.

(f) **Part 6** comments on matters of scope relevant to residential zones.

(g) **Part 7** introduces the 19 witnesses giving evidence for the Council at the Residential Zones hearing.

**How PC14 enables housing development and choice**

1.3 As counsel explained in the opening legal submissions for the strategic overview hearing (**strategic submissions**), the operative District Plan already provides capacity for many more new houses to be built in Ōtautahi Christchurch than are projected to be required over the long-term.

1.4 PC14 will nonetheless deliver the fundamental change directed by central government in the residential areas of the city, such that economically feasible, plan-enabled capacity will exceed 85,500 new homes in residential zones (notwithstanding the difficult current market conditions).[2] The District Plan theoretically enables many more homes, sufficient for over a century of growth.

1.5 This has been achieved by PC14 incorporating the Medium Density Residential Standards (**MDRS**) into all *"relevant residential zones"* and giving effect to policy 3 of the National Policy Statement on Urban Development 2020 (**NPS-UD**) by allowing for further medium- and high-density residential living in and around centres.[3]

1.6 The Council has done so in a way that makes sense for Christchurch, considering the various 'discretionary levers' available to it, including by:

(a) identifying locations where enabling higher density would be inappropriate due to QMs, reflecting the prevailing environmental values and characteristics;

(b) setting walkable catchments and identifying areas *"adjacent to"* centres in a logical way;

(c) providing for density and height commensurate with the activities in nearby centres; and

[2] Evidence of John Scallan dated 11 August 2023; table 1. This figure does not include various other capacity such as in commercial centres, greenfield developments, or apartment buildings above six storeys.
[3] Counsel note that the residential zones in the operative Plan already support a centres-based approach, with medium-density housing provided for around a number of centres.

(d) proposing related provisions that support or are consequential on the MDRS, and policies 3 and 4 of the NPS-UD.

1.7 The 'density done well' factors derived from the higher-order planning instruments and the Resource Management Act 1991 (**RMA**), identified in the strategic submissions,[4] have been considered in evaluating the merits of those QMs and in applying the other discretionary elements.

1.8 Some submitters seek that PC14 enable even greater levels of intensification, and some seek the enablement of specific activities of relevance to them. A number of those requests are not matters for an intensification planning instrument or are outside the scope of PC14 as notified, as discussed below. In any event, even greater intensification is unnecessary for achieving a well-functioning urban environment and may instead risk misalignment with higher-order directives.

1.9 Other submitters seek less intensification. With some notable exceptions (such as submitters seeking additional QMs, also discussed below), the Council is unable to recommend that outcome because it is obliged to implement the MDRS and policy 3 through PC14.

1.10 While the witnesses for the Council have highlighted potential areas of fine-tuning, at a more general level the Council has developed PC14 in a way that meets the legal requirements, supports housing supply and choice by providing for significant further urban intensification, and encourages positive outcomes for Christchurch and its communities.

## 2. LEGAL FRAMEWORK

2.1 The legal framework outlined at part 2 of the strategic submissions is also applicable to this hearing and is not repeated here. We outline some further legal commentary in relation to specific issues below.

2.2 The strategic submissions appended an extract from the Environment Court's decision in *Colonial Vineyard Ltd v Marlborough District Council*,[5] containing a comprehensive summary (as at the date of that judgment) of the mandatory requirements for district plan decisions.

2.3 The Panel requested an updated summary, factoring in the relevant changes made to the RMA in 2013, 2017, and 2021. This is set out in the **Appendix** to these submissions.

[4] Paragraph 3.19: https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/00-Opening-Legal-Submissions-for-CCC.pdf
[5] [2014] NZEnvC 55 at [17].

## 3. KEY RESIDENTIAL ISSUES

### Introduction

3.1 The section 42A reports of Mr Kleynbos, Ms Dixon (RHAs), Ms White (RCAs), Ms Ratka (residential / industrial interface QM), and Mr Bayliss (future urban zone, ODPs, and rezonings) collectively identify and respond to issues raised by submitters in relation to residential zones and the QMs specific to them. These legal submissions do not intend to duplicate their coverage of the issues raised and their responses. Instead, below we provide a broad overview and legal context for some of the key issues arising.

### Enabling residential intensification through MRZ and HRZ zoning

*Residential 'reach' of PC14*

3.2 As noted in the strategic submissions,[6] the MDRS are required to be incorporated into every *"relevant residential zone"*. That term is defined in section 2(1) of the RMA by reference to the zone framework standard in the National Planning Standards.

3.3 The MDRS are set out in Schedule 3A to the RMA. They are prescriptive, including in specifying:

(a) activity status: it is permitted to construct or use a building in compliance with the density standards, a restricted discretionary activity in cases of any non-compliance with such standards, and a controlled activity to effect associated subdivision (clauses 2, 3, 4, and 7);

(b) notification requirements (clause 5);

(c) mandatory objectives and policies (clause 6); and

(d) the density standards themselves.

3.4 In addition, PC14 provides for intensified residential development in and around centres as part of giving effect to policy 3 of the NPS-UD. PC14 thus expands what was known as the Residential Central City Zone, to be renamed HRZ, which also incorporates the MDRS and uses 'intensification precincts' (as necessary) to provide for greater building heights in response to policy 3.

[6] At paragraph 2.25.

3.5 To answer a query by Commissioner McMahon, the Residential Hills zone (in the operative District Plan) qualifies as a *"relevant residential zone"* because the nearest equivalent zone in the National Planning Standards is a *"low density residential zone"*, described as: *"Areas used predominantly for residential activities and buildings consistent with a suburban scale and subdivision pattern, such as one to two storey houses with yards and landscaping, and other compatible activities."*

3.6 The Residential Hills zone meets this description based on the lot sizes and building densities provided for in the operative Plan, which can be contrasted with the densities allowed in the Residential Large Lot zone and Residential Small Settlement zone, both of which are considered equivalent to *"large lot residential zone"* in the National Planning Standards.

3.7 A *"low density residential zone"* is a *"relevant residential zone"* according to the RMA definition.

3.8 Counsel understand that Hutt City Council took a different approach, based on the minimum lot sizes and other standards in its Plan, of considering its 'Hill Residential Zone' to be equivalent to a *"large lot residential zone"*, which is excluded from the definition of *"relevant residential zone"*.

3.9 More generally, the zones within the influence of PC14 are proposed to be renamed in line with the National Planning Standards (unless a QM applies and is proposed to be given effect by retaining the existing operative zoning). As such:

(a) the Residential Medium Density zone is being renamed MRZ (and significantly extended);

(b) as noted above, the Residential Central City zone is being renamed HRZ (and significantly extended); and

(c) areas zoned Residential New Neighbourhood zones are generally becoming MRZ, where already developed or consented, or renamed Future Urban Zone (in line with the National Planning Standards), where development has not yet occurred.

*Objectives and policies in the residential chapter*

3.10 The MDRS are defined to mean the requirements, conditions, and permissions set out in Schedule 3A to the RMA, which include the two mandatory objectives and five mandatory policies in clause 6. All but mandatory objective 1 ('well-functioning urban environment'), which is

proposed to sit in the strategic directions chapter (chapter 3), are proposed to be included in the residential chapter (chapter 14) of the District Plan.

3.11 PC14 also incorporates a number of additional policies in chapter 14 to support implementation of the MDRS, including to differentiate between the built form anticipated in MRZ and HRZ[7] and to clarify the expected outcomes in each zone. Section 77G(5)(b) of the RMA allows this by enabling the Council to:

> *"include objectives and policies in addition to those set out in clause 6 of Schedule 3A, to (…) provide for matters of discretion to support the MDRS; and (…) link to the incorporated density standards to reflect how the territorial authority has chosen to modify the MDRS in accordance with section 77H [to make the MDRS more enabling of development]."*

*"Enabling" residential development*

3.12 Counsel's submissions for the central city and commercial zone hearing explained how the Council has sought, in the context of those zones, to *"enable"* particular heights and densities in giving effect to policy 3.[8]

3.13 As required by Schedule 3A, PC14 permits construction and residential use of a building that fully complies with the density standards in the MDRS. Where a standard is breached and consent is required, restricted discretionary activity status generally applies (as mandated by clause 4).

3.14 The Council has been careful to ensure that PC14 provides a clear consenting pathway for such residential developments through its policy framework and rules regarding notification, and has tested its controls – primarily the Residential Design Principles in rule 14.15.1 – using input by independent consultants and the Council's consents team (the latter demonstrated through the evidence of Hermione Blair for the Council).

**PC14 does not specifically enable care / custodial activities**

3.15 Some submitters seek to enable, in residential zones, particular activities that involve people living in accommodation under care or custodial supervision. For example:

(a) Ara Poutama Aotearoa / the Department of Corrections (submitter #259) seeks to amend the existing Plan definition of *"residential activity"* to remove the exclusion currently provided for *"the use of*

[7] Policies 14.2.3.6 and 14.2.3.7.
[8] From paragraph 3.3.

*land and/or buildings for custodial and/or supervised living accommodation where residents are detained on the site"*; and

(b) the Retirement Villages Association (submitter #811) and Ryman Healthcare Limited (submitter #749), among other submitters, seek a more enabling Plan framework for retirement villages, including in residential zones.

3.16 The Council does not consider that such changes to its District Plan are mandated by section 80E of the RMA, which instead requires incorporation of the MDRS (to apply to residential units and buildings) and enabling greater building heights and densities in giving effect to policy 3.

3.17 While individual units in a retirement village complex may meet the definition of *"residential units"* in section 2 of the RMA,[9] and could therefore avail themselves of the MDRS,[10] villages as a whole are quite different in nature; they are commercial enterprises which typically have numerous employees, a large, centralised building, and various care facilities. The Council does not consider that an intensification planning instrument is the appropriate vehicle for changing the Plan to enable these specific activities within MDRS areas; rather, that should be done through a Schedule 1 process.

3.18 Likewise, the District Plan deliberately distinguishes residential activity, on the one hand, from custodial and supervised living accommodation (where residents are detained on the site), on the other. Section 80E does not direct the enablement of the latter.

3.19 Moreover, the relief sought in respect of retirement villages (for example) is clearly outside the scope of PC14, evidenced by the extensive changes proposed through the evidence of Mr Turner for the Retirement Villages Association and Ryman Healthcare Limited. A wide-ranging set of new provisions, from higher- to lower-order, for a category of activity already regulated deliberately by Plan provisions that are not amended by PC14, must logically be outside the scope of the plan change.

3.20 Rather, PC14 is specifically directed at incorporating the MDRS and giving effect to policies 3 and 4 of the NPS-UD, which do not contain any specific provision for the activities of interest to these submitters.

---

[9] Section 2 of the RMA: residential unit *"(a) means a building or part of a building that is used for a residential activity exclusively by 1 household; and (b) includes sleeping, cooking, bathing, and toilet facilities"*.

[10] Likewise, buildings developed by these submitters may benefit from more accommodating built form standards in policy 3 areas.

## 4. QUALIFYING MATTERS SPECIFIC TO RESIDENTIAL ZONES

### Introduction

4.1 QMs are a primary tool provided by the legislation and the NPS-UD to direct, limit, and restrict intensification in a way that better gives effect to the higher-order planning instruments and promotes sustainable development.

4.2 The Council has a wide discretion to identify QMs – including by reference to *"any other matter"* that makes higher density inappropriate in an area[11] – but QMs must be properly evaluated and justified on their merits.

4.3 The Council has identified a range of QMs that, while varied in character, all relate solely to residential areas and are therefore addressed in this hearing. They are addressed in turn below.

### Sunlight access QM

4.4 Applying the 'off the shelf' MDRS recession planes in Christchurch would lead to around 6-8% more 'shading loss' than taking the same planning approach in Auckland. In the context of Christchurch's colder climate and greater reliance on direct sunlight for 'passive heating',[12] this is a significant reduction.

4.5 The sunlight access QM is thus an important response to the specific latitudinal and climatic characteristics of Ōtautahi Christchurch.

4.6 The sunlight access is an 'other matter' QM subject to the additional evaluation and justification required under section 77L. Key features of this work by the Council are:

(a) detailed modelling and other evaluation of the potential effects on sunlight access, sufficient to understand those effects at a site-specific level; and

(b) the evaluation of an appropriate range of options to achieve the greatest heights and densities permitted by the MDRS, while reducing the amount of ground-level shading (noting that a greater level of enablement is provided in HRZ).

4.7 The relevant Council witnesses are Ike Kleynbos (planning), David Hattam (urban design), and Ben Liley (atmospheric science).

[11] Section 77I(j).
[12] Statement of evidence of David Hattam at [74].

**Residential heritage areas**

4.8 RHAs relate to the protection of areas within residential environments that have collective heritage values identified as significant and distinctive. RHAs are a new concept in the District Plan, introduced through PC13 and PC14.

4.9 RHAs relate to the protection of historic heritage from inappropriate subdivision, use, and development, a matter of national importance that decision-makers are required to recognise and provide for under section 6(f). As Ms Dixon explains, section 6(f) (and, by extension, s77I(a)) does not require a heritage matter to be of 'national significance' before it can be afforded consideration under this section; rather, it is the protection of historic heritage as a resource that is a matter of national importance.

4.10 RHAs were identified following a rigorous assessment process carried out in accordance with proposed policy 9.3.2.2.2, which relates to the identification, assessment and scheduling of heritage areas. This process considered over 90 candidate areas, distilling these down to 11 proposed areas. Within the proposed RHAs, each property has been identified either as defining, contributory, neutral, or intrusive based on its particular heritage values and features and contribution to that RHA's heritage value overall.

4.11 These categories provide the basis for the applicable activity rules. Demolition of properties rated as defining and contributory requires restricted discretionary consent, whereas demolition of the neutral or intrusive buildings is permitted. With some exceptions, new buildings and alterations to building exteriors are restricted discretionary activities under Rule 9.3.4.1.3 RD6.

4.12 The Council also proposes an RHA interface QM. This would require consent as a restricted discretionary activity for any new building over 5m on a site zoned HRZ or Residential Visitor Accommodation Zone which shares a boundary with an RHA. The matters of discretion (rule 9.3.6.6) relate to the effects of the proposal on heritage values within the adjacent RHA, and whether the proposal would visually dominate the adjacent sites in an RHA. In practice, the interface areas proposed are primarily around the Chester St East RHA, with just a handful of sites around some of the other RHAs.

4.13 Having considered submissions and following evidence exchange and expert conferencing, Ms Dixon recommends certain changes to the RHA provisions as notified.

**Residential character areas**

4.14 RCAs are neighbourhoods that are distinctive from their wider surroundings, and which are considered to have a special character in the context of Ōtautahi Christchurch that, on the whole, is worthy of retention. The character of these areas contributes to the identity of the area and makes a place appealing and attractive, and therefore has a positive effect on social and cultural well-being.

4.15 The development of PC14 has involved reviewing and revising the existing RCAs, as well as investigating whether there are new areas which have a level of character worthy of retaining. This exercise has been undertaken in accordance with the methodology set out in the evidence of Ms Rennie.

4.16 RCAs are an 'other matter' in terms of section 77I(j), meaning that the further evaluation requirements in section 77L, including a site-specific analysis, was undertaken.

4.17 As a result of these exercises and evaluation, Ms White has recommended removal of two current RCAs (Beverley and Ranfurly); and the reduction in the size of another (Dudley). In these instances, Ms White considers the objectives of the NPS-UD are better met by removing these areas as RCAs or reducing their extent.

4.18 A number of submissions sought the inclusion of additional areas as RCAs. These were investigated by Ms Rennie, and based on that analysis, Ms White recommends that one new RCA is included (Cashmere View).

**Riccarton Bush interface QM**

4.19 Riccarton Bush is a unique place within the urban fabric of Christchurch. This podocarp forest is the last remaining remnant on the low Canterbury Plains and is one of the oldest and best documented protected natural areas in New Zealand.

4.20 Intensified development in the currently low-density residential area near the Bush would be inappropriate on a number of grounds; relevant are each of:

(a) section 6(b) of the RMA, because the Bush is a scheduled Outstanding Natural Feature / Landscape;

(b) section 6(c), due to habitat values (with the Bush area containing various 'Significant Individual Trees' and making up a 'Significant Trees Area');

(c) section 6(e), given the site's cultural importance (including its identification among Ngā Tūranga Tūpuna); and

(d) section 6(f), as it is an important part of the city's historic heritage (and contains multiple 'Heritage Items' and 'Heritage Settings').

4.21 Riccarton Bush is close to the Riccarton centre, and so within the influence of policy 3 – and thus policy 4 – of the NPS-UD.

4.22 Mindful of the need for the building height and density requirements to be modified only to the extent necessary to accommodate the QM, the Council has evaluated various potential controls, which have been refined further through rebuttal evidence, following witness conferencing.[13] These refinements have reduced the controls that would otherwise have affected *status quo* development rights, which could have given rise to *Waikanae*[14] issues; the only proposed control now that is somewhat more stringent than the operative provision relates to a side yard setback, which is considered important to ensure that viewshafts to the Bush down residential driveways remain possible.

4.23 Irrespective of that, there now appears to be broad agreement between the landscape experts (Dr Hoddinott for the Council and Ms Strachan for Kāinga Ora) regarding the merits and details of the QM.

**Low public transport accessibility area (LPTAA) QM**

4.24 The LPTAA QM is proposed as an 'other matter' QM (under section 77I(j)); the relative lack of accessibility by public transport is a matter *"that makes higher density, as provided for by the MDRS (…) inappropriate in an area"*.

4.25 As noted in the strategic overview hearing submissions, such QMs are subject to more the stringent evaluation requirements in section 77L, including site-specific analysis that:

(a) identifies the site to which the matter relates;

[13] Statement of Evidence of Ike Kleynbos at [18] – [20], Statement of Evidence of Wendy Hoddinott at [9] – [24 ], and Joint witness statement of landscape experts re Pūtarikamotu Riccarton Bush interface area: Joint-Expert-Witness-Statement-of-Landscape-Experts-Putarikamotu-Riccarton-Bush-Interface-Area-27-September-2023.pdf (ihp.govt.nz)

[14] *Waikanae Land Company Limited v Heritage New Zealand Pouhere Tāonga* [2023] NZEnvC 56.

(b) evaluates the specific characteristic (that makes the level of development provided by the MDRS inappropriate in the area) on a site-specific basis to determine the geographic area where intensification needs to be compatible with the specific matter; and

(c) evaluates an appropriate range of options to achieve the greatest heights and densities permitted by the MDRS or as provided for by policy 3, while managing the specific characteristics.

4.26 The Panel will no doubt test whether this rigorous standard has been met. For its part, the Council has been very mindful of the need to carry out site-specific analysis, which it has duly done through an exercise made simpler by the fact that the *"specific characteristic"* making MDRS development in an area inappropriate stems from the physical proximity of each site in the area to public transport routes, and so can be discerned from a spatial mapping exercise (as opposed to requiring more detailed site investigations such as have been carried out for some other QMs). Through that exercise, every site to which the QM applies has been identified.

4.27 The QM restricts development in what would otherwise be MRZ areas to those with the highest accessibility to core public transport corridors, or where public transport connects high employment centres together. There is no restriction on the high-density residential zone. It seeks to ensure that intensification is delivered efficiently, aligning infrastructure investment and reducing greenhouse gas emissions and thus providing realistic expectations for long-term delivery of assets and the ability to intensify. As notified, the effect of the LPTAA QM was to retain operative zoning, although this mechanism is now proposed to be amended (as discussed below).

4.28 Expert evidence for the Council relating to the LPTAA QM is provided by Chris Morahan and Michele McDonald, as well as Mr Kleynbos, who consider that better concentrating development along core public transport corridors increases efficiency of infrastructure delivery, reduces costs of development servicing, and increases the business case for future investment in public transport.

4.29 A number of submitters do not support the QM approach or seek further modifications, including to the extent of the QM. Opposition is mainly based on:

(a) a concern that the QM will limit growth across Ōtautahi Christchurch – again, housing capacity is not a pressing issue for the city; and

(b) a fear that the QM represents a static view of public transport accessibility without an ability to be able to respond to future changes to the network. That is not the case, because District Plans are frequently reviewed and can be changed at any time.[15]

4.30 In his section 42A report, Mr Kleynbos recommends reducing the extent of the LPTAA QM in some areas by acknowledging more bus routes with good accessibility (ie the Orbiter and the full number 7 line), and increasing it in others where bus frequency is insufficient (such as Cashmere Hills).

4.31 Moreover, to address the 'static' concern raised by submitters, Mr Kleynbos proposes a re-configuration of the LPTAA provisions to include the introduction of MRZ zoning, removal of the LPTAA overlay, and a new precinct approach.

4.32 The evidence of Mr Osborne highlights that the LPTAA approach better delivers efficiencies, helping to focus development in the 'right' areas; the evidence of Ms Foy reinforces this approach, stating that this concentrated approach increases the positive social impacts of intensification.

4.33 The remaining issues are evidential and relate to those submissions that seek the removal of the LPTAA QM as well as substantive changes to LPTAA controls that have not been accepted by Mr Kleynbos, for the reasons explained in his section 42A report, supplementary and rebuttal evidence.

**Proposed Port Hills stormwater constraints QM**

4.34 A further development, however, is the evidence provided by the Canterbury Regional Council (**CRC**) in support of a new QM to address stormwater constraints particular to areas of loess soils in the Port Hills. Development at MDRS densities in those areas has the potential to exacerbate the sedimentation of waterbodies.

4.35 Mr Kleynbos and Mr Norton have since met with CRC to discuss this; Mr Kleynbos signals that further conferencing on this topic could be warranted;

[15] The NPS-UD itself envisages such changes, such as in response to updated Housing and Business Capacity Assessments showing a capacity shortfall (where RMA planning documents cause or contribute to the insufficiency), or in response to planned rapid transport stops.

if a QM is justified, it would most efficiently and effectively be provided for through the LPTAA QM mechanism.

**Residential / industrial interface QM**

4.36 Some MDRS areas and some policy 3(c) and (d) areas – ie the areas within walkable catchments or adjacent to the relevant centres – intersect with industrial zones, which will enable a greater density of residential development at greater building heights in close proximity to industrial activities. This has the potential to give rise to effects on future occupants of the residential development, as well as reverse sensitivity effects on established industrial activities. Noise is a particular issue, with modelling suggesting that there is potential for greater noise exposure at the third storey level of a residential development, resulting in new non-compliances for existing industrial activity with noise rules in the District Plan.

4.37 In response, PC14 includes a residential / industrial interface QM, which proposes a 8m building height and two-storey limit on residential development enabled under MDRS and policy 3 within 40m of an industrial zone. Where this is not achieved, resource consent would be required as a discretionary activity. This QM is discussed in detail in section 7 of Ms Ratka's section 42A report.

4.38 Managing reverse sensitivity is an important facet of RMA planning. The concept of reverse sensitivity does not originate directly from the provisions of the RMA, but instead has evolved through case law.[16] Reverse sensitivity responds to the need to consider existing activities when assessing the effects of introducing a new and potentially conflicting activity into the environment.

4.39 A number of submissions were received on the residential / industrial interface QM. Some submitters seek the removal of the QM because they consider, for example, that the QM would create a burden on residential activities to mitigate industrial noise effects and is unnecessary because other controls are sufficient to address reverse sensitivity.

[16] Judge Thompson in *Affco New Zealand Ltd v Napier City Council* EnvC W082/04, 4 November 2004, found the following definition of 'reverse sensitivity' helpful:
"*Reverse sensitivity can be understood as the legal vulnerability of an established activity to complaint from a new land use. It arises when an established use is causing adverse environmental impact to nearby land, and a new, benign activity is proposed for that land. The 'sensitivity' is this: if the new use is permitted, the established use may be required to restrict its operations or mitigate its effects so as to not adversely affect the new activity."*

4.40 Conversely, one submitter seeks additional controls through this QM so that the height limits of buildings on rear properties, for example, are also constrained.

4.41 Submitters seek that the QM is removed from, or reduced on, specific properties (for example, Greg Olive, The Catholic Diocese of Christchurch and Lyttelton Port Company Limited).

4.42 Other submitters such as Ravensdown seek the re-zoning of land adjacent to industrial heavy zoned land from HRZ to MRZ to address concerns about residential intensification near industrial sites, as well as additional controls in areas between the industrial and residential interface and a larger interface buffer of 240m.

4.43 Having considered the advice and evidence of Dr Trevathan, Ms Ratka has assessed these requests. Her section 42A report sets out her reasons for recommending, effectively, that the provisions as notified be implemented with minor policy changes and other minor changes to ensure PC14 is not more onerous that the operative Plan.

## 5. FUTURE URBAN ZONES AND OUTLINE DEVELOPMENT PLANS

5.1 The existing Residential New Neighbourhoods (**RNN**) Zone provisions are designed to manage greenfield areas where large-scale urban development is planned to occur.

5.2 ODPs and RNN zoning are removed in the notified provisions of PC14 where the areas to which they apply are no longer greenfield development sites, in that they have been fully or substantially developed, or consents are being implemented, such that mechanisms to manage large-scale greenfield development are not required.

5.3 For the remainder, the ODPs and RNN zoning and associated provisions are to be retained but renamed in accordance with the National Planning Standards as the Future Urban Zone (**FUZ**).

5.4 As explained in the Central City and Commercial hearing, the National Planning Standards contain the zone framework which must be used within District Plans. This framework includes the FUZ, which identifies areas that are suitable for urbanisation in the future and for activities that do not compromise future urbanisation. The FUZ is a good match with the RNN Zone.

5.5 The FUZ (like the RNN Zone before it) enables and manages development within areas suitable for urbanisation in the future through a number of provisions including an overall minimum density requirement, a controlled activity framework for comprehensive residential developments, and the application of a series of ODPs. ODPs set out, in map form and supporting text, what will likely need to be addressed for urban development to be achieved.

5.6 The relevant planning issues raised in submissions are discussed by Ian Bayliss in his section 42A report, including possible changes to the objectives, policies and rules and re-zoning requests (such that MRZ or HRZ zoning is applied instead of the FUZ).

5.7 As explained by Mr Bayliss, rather than simply rezone the land to MRZ or HRZ, the RNN Zone framework is retained in a number of areas because these provisions are specifically designed to manage greenfield development. Such provisions are necessary for the integrated management of the effects of these types of development, such as to ensure that key roading and other connections are made to adjoining land, and reserves and other green infrastructure are included and appropriately located in new greenfield developments.

## 6. SCOPE ISSUES

### Introduction

6.1 Many submissions seek re-zoning of residential land, totalling 292 MRZ-related requests, 421 HRZ-related requests, and 181 requests relating to other zones. The Council's section 42A reports identify a range of scope matters for the Panel's consideration, and we outline some key issues below.

### Requests to re-zone rural, peri-urban, or non-urban zones

6.2 A number of submissions have requested that rural and other non-residential areas are re-zoned to MRZ or HRZ, or in some cases MUZ or other commercial/industrial zones, including the proposed re-zoning of Whisper Creek Golf Course in Spencerville (submission #826) and to enable development of Princess Margaret Hospital (#67).

6.3 Several submitters have also made specific requests to intensify outside of centres catchments.

6.4 The Council considers these re-zoning requests to be out of scope of PC14. They do not address the extent of any proposed re-zoning in the notified version of PC14, but rather seek to introduce an entirely new matter. Because the re-zonings were not considered in preparing PC14, there is an absence of any section 32 evaluation to support them.

6.5 Further, such re-zonings would introduce changes not reasonably foreseen by those potentially affected, meaning that they have been denied an opportunity to respond to the change through a submission.

6.6 Additionally, the scope of the IPI is restricted in its ability to consider these requests because the spatial scope of an IPI is limited. An IPI has the ability to only consider intensification within relevant residential zones only (in accordance with section 77G) and within policy 3 catchments contained within the urban environment.

**Requests to reduce intensification or impose additional controls**

6.7 Submitters have made several other requests which are considered not to be *"on"* the plan change and therefore beyond scope, as set out in the section 42A report of Mr Kleynbos at paragraph 8.1.4 and in his Appendices A, D, E and F.

6.8 This relief includes requests to reduce development rights from those currently provided for under the operative District Plan, such as through reductions in building heights, and the introduction of additional controls to better respond to the current and future effects of climate change (such as carbon footprint calculations, rainwater storage, alternative energy and green roofs).

6.9 While the Council had a discretion to propose provisions that would support implementation of the MDRS and policies 3 and 4, scope issues arise where submitters seek to amend other parts of the District Plan unaffected by PC14.

**Requests regarding Future Urban Zoned land**

6.10 The RNN Zone is not a *"relevant residential zone"*, so the MDRS need not apply there. As noted above, however, the Council has taken the position that areas of RNN Zone:

(a) that have been developed or are consented should be rezoned MRZ, while remaining greenfield areas should be renamed FUZ to align with the National Planning Standards terminology; and

(b) residential zoning can be applied in policy 3 areas.

6.11 As a result, through PC14, extensive areas of RNN Zone are proposed to be zoned MRZ and HRZ and a number of ODP constraints are to be removed.

6.12 Some submitters have sought the re-zoning of land from Rural Urban Fringe and FUZ (ie undeveloped greenfield areas) to MRZ. Such requests are not *"on"* the plan change and not therefore within the scope of PC14. Those areas are not relevant residential zones, nor policy 3 areas, and the Council has not proposed any change (other than the naming of FUZ in those areas). People potentially affected by such upzoning may reasonably have assumed that rural areas would not be subject to change through PC14.

**Potential implications of *Waikanae Land Company* decision**

6.13 The implications of the recent Environment Court decision, *Waikanae Land Company v Heritage New Zealand Pouhere Taonga* [2023] NZEnvC 056 (***Waikanae***), are discussed in the strategic submissions. In short, the Council's position is that the Environment Court's reading of section 80E is unduly narrow, and PC14 is able to change the *status quo* where that supports or is consequential on implementation of the MDRS and policies 3 and 4.

6.14 The following provisions are potentially affected by *Waikanae*, because they impose additional controls or restrictions that affect pre-existing development rights:

(a) Riccarton Bush interface QM. As noted above, recommended refinements to this QM would reduce the controls that would otherwise have affected *status quo* development rights. The only proposed control now that is somewhat more stringent than the operative provision relates to a side yard setback, to ensure that viewshafts to the Bush down residential driveways remain possible.[17]

(b) All new RHAs including their associated rules. These rules change the activity status for building, altering buildings or demolishing in RHAs from permitted in the operative District Plan, to restricted discretionary, and include some building height and density

[17] Similarly, a potential issue regarding St Teresa's school is now proposed to be addressed by retaining the operative zoning of and controls on that site. Likewise, recommendations by Ms Ratka to change the residential / industrial interface QM controls ensure that *status quo* rights are retained.

requirements that are less enabling than the MDRS for the relevant residential zones. The provisions at issue are listed at paragraph 10.1.5 of Ms Glenda Dixon's section 42A report. While the relevant provisions have taken immediate legal effect under both PC13 and PC14,[18] and it would be possible to consider the RHA provisions that are not directly density-related in PC13 rather than PC14, Council's preference is that the RHA provisions are considered by this Panel as an integrated whole.

(c) Provisions relevant to RCAs including those related to:

(i) application of an RCA to new or extended areas to which the current Character Area Overlay does not apply (all of Bewdley, Roker and Ryan RCAs and parts of the Beckenham and Lyttelton RCA);

(ii) the activity status applying to building works within all RCAs, which in most cases will change from controlled to restricted discretionary (in particular, amendments to 14.5.3.1.2 C1 and introduction of 14.5.3.1.3 RD14); and

(iii) the built form standards proposed, which in several cases are reduced (to be more restrictive) from those applying under the current underlying residential zone, and the addition of new standards (Rules in 14.5.3.2.1).

(d) Proposed provision 8.6.2 provides 'no minimum net site area for allotments with existing or proposed buildings zoned RNNZ'. PC14 proposes to remove this provision which means that additional controls or restrictions that affect *status quo* / pre-existing development rights (as per the Operative District Plan) will be imposed.

6.15 Again, the Council considers that these provisions properly support or are consequential on implementation of the MDRS and policies 3 and 4, and are thus permissible facets of PC14.

[18] Section 86B(3)(d).

## 7. WITNESSES FOR THE COUNCIL

7.1 The Council is calling 19 witnesses for the Residential zones hearing:

(a) Ike Kleynbos (s42A report in relation to residential zones, QMs for Riccarton Bush, sunlight access, and low public transport accessibility, and rezonings);

(b) Glenda Dixon (s42A report relating to RHAs);

(c) Liz White (s42A report regarding RCAs);

(d) Brittany Ratka (s42A report addressing the residential / industrial interface QM);

(e) Ian Bayliss (s42A report on the Future Urban Zone, outline development plans, and rezonings);

(f) Marcus Langman (addressing the Council's submission as relevant to residential matters);

(g) Hermione Blair (resource consent implementation matters);

(h) Mike Green (meteorology and wind effects);

(i) David Hattam (urban design for residential zones);

(j) Tim Heath (economics);

(k) Dr Wendy Hoddinott (heritage landscape for the Riccarton Bush interface QM);

(l) Ben Liley (atmospheric scientist, in relation to the sunlight access QM);

(m) Michele McDonald (water and wastewater infrastructure for low public transport accessibility QM areas);

(n) Dr Ann McEwan (RHAs);

(o) Chris Morahan (transport for low public transport accessibility QM);

(p) Brian Norton (stormwater benefits of low public transport accessibility QM areas);

(q) Phil Osborne (economics for the residential / industrial interface and low public transport accessibility QMs);

(r) Jane Rennie (urban design for RCAs); and

(s) Dr Jeremy Trevathan (acoustics for residential / industrial interface QM).

**DATED** 26 October 2023

.....
**D G Randal / C O Carranceja**
**Counsel for the Christchurch City Council**

## APPENDIX – STATUTORY FRAMEWORK TO BE APPLIED BY THE PANEL

1. Counsel's legal submissions for the strategic overview hearing appended an extract from the Environment Court's decision in *Colonial Vineyard Ltd v Marlborough District Council*,[19] containing a comprehensive summary (as at the date of that judgment) of the mandatory requirements for district plan decisions.

2. The Panel requested an updated summary, factoring in the relevant changes made to the Resource Management Act 1991 in 2013, 2017, and 2021. This is set out below, adopting a similar style to the extract from *Colonial Vineyard* (but with simplified numbering), and showing the updates in tracked changes.

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

*A. General requirements*

*1. A district plan (change) should be designed to* ***accord with****,[20] and assist the territorial authority to* ***carry out*** *– its functions[21] so as to achieve the purpose of the Act.[22]*

*2. The district plan (change) must be prepared* ***in accordance with*** *any regulation[23] (there are none at present) and any direction given by the Minister for the Environment;[24]*

*3. When preparing its district plan (change) the territorial authority* ***must give effect to*** *any national policy statement or New Zealand Coastal Policy Statement and any national planning standard.[25]*

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

*(a) have regard to any proposed regional policy statement;[26]*

*(b) give effect to any operative regional policy statement.[27]*

*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;[28] and*

*(b) the district plan (change)* ***must have regard to*** *any proposed regional plan on any matter of regional significance etc;[29]*

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

[19] [2014] NZEnvC 55, at [17].
[20] Section 74(1).
[21] As described in section 31.
[22] Sections 72 and 74(1).
[23] Section 74(1).
[24] Section 74(1), added by section 45(1) of the Resource Management Amendment Act 2005.
[25] Section 75(3).
[26] Section 74(2)(a)(i).
[27] Section 75(3)(c), as substituted by section 46 of the Resource Management Amendment Act 2005.
[28] Section 75(4), as substituted by section 46 of the Resource Management Amendment Act 2005.
[29] Section 74(2)(a)(ii).

- ***have regard to***[30] *any relevant management plans and strategies under other Acts, ~~and to~~ any relevant entry in the New Zealand Heritage List/Rārangi kōrero, ~~Historic Places Register and to~~ various fisheries regulations and any relevant project area and project objectives (if section 98 of the Urban Development Act 2020 applies) 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,*[31] *and to any emissions reduction plan and any national adaptation plan made under the Climate Change Response Act 2002;*[32]
- ***take into account*** *any relevant planning document recognised by an iwi authority*[33]*; and*
- *not have regard to trade competition*[34] *or the effects of trade competition;*

7. *The formal requirement that a district plan (change) must*[35] *also state its objectives, policies and the rules (if any) and may*[36] *state other matters.*

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

8. ***Examine*** *the extent to which the ~~Each proposed~~ objectives of the proposal being ~~in a district plan (change)~~ **~~is to be evaluated~~** ~~by the extent to which it is~~ are the most appropriate way to achieve the purpose of the Act.*[37]

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;*[38]

10. *Examine whether the proposed provisions (the policies, rules or other methods) ~~Each proposed policy or method (including each rule) is to be examined~~ are the most appropriate way to achieve the purpose of the district plan change and the objectives of the District Plan by:*[39] ~~*having **regard to its efficiency and effectiveness**, as to whether it is the most appropriate method for achieving the objectives of the district plan **taking into account***~~*:*

    (i) *identifying other reasonably practicable options for achieving the objectives;*[40] *and*

    (ii) *assessing the efficiency and effectiveness of the provisions in achieving the objectives, including by:*[41]

        (1) *identifying and assessing the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for:*

[30] Section 74(2)(b).
[31] Section 74(2)(c).
[32] Section 74(2)(d) and (e).
[33] Section 74(2A).
[34] Section 74(3), as amended by section 58 of the Resource Management (Simplifying and Streamlining) Act 2009.
[35] Section 75(1).
[36] Section 75(2).
[37] Section 74(1) and section 32(1)(a).
[38] Section 75(1)(b) and (c) (also section 76(1)).
[39] Section 32(1)(b).
[40] Section 32(1)(b)(i).
[41] Section 32(1)(b)(ii).

A. *Economic growth that are anticipated to be provided or reduced;[42] and*

B. *Employment that are anticipated to be provided or reduced;[43] and*

(2) *if practicable, quantifying the benefits and costs;[44] and*

(3) ~~*proposed policies and methods (including rules); and*~~ ~~*a*~~*assessing 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;[45] and*

(iii) *if a national environmental standard applies and the proposa~~led rule~~ will impose a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances.[46]*

D. *Rules*

11. *In making a rule the territorial authority must* ***have regard to*** *the actual or potential effect of activities on the environment[47].*

12. *Rules have the force of regulations[48] .*

13. *Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive[49] than those under the Building Act 2004.*

14. *There are special provisions for rules about contaminated land[50].*

15. *There must be no blanket rules about felling of trees[51] in any urban environment[52].*

E. *Other statutes*

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

*F. Key features of an IPI*

17. *The matters that may be included in an IPI are described in section 80E of the RMA. Unlike a standard plan change or variation, the IPIs:*

(i) *must contain the mandatory matters set out in section 80E;*

(ii) *may contain the discretionary matters set out in section 80E; and*

(iii) *may not be used for any purpose other than the uses specified in section 80E.[53]*

[42] Section 32(2)(a)(i).
[43] Section 32(2)(a)(ii).
[44] Section 32(2)(b).
[45] Section 32(2)(c).
[46] Section 32(4), added by section 13(3) Resource Management Amendment Act 2005.
[47] Section 76(3).
[48] Section 76(2).
[49] Section 76(2A).
[50] Section 76(5) as added by section 47 Resource Management Amendment Act 2005 and amended in 2009.
[51] Section 76(4A) as added by the Resource Management (Simplifying and Streamlining) Amendment Act 2009.
[52] Section 76(4B) — this 'Remuera rule' was added by the Resource Management (Simplifying and Streamlining) Amendment Act 2009.
[53] Section 80G(1)(b).

*G. Specific requirements relating to Medium Density Residential Standards (**MDRS**)*

18. *Every relevant residential zone of a specified territorial authority must have the MDRS incorporated into that zone[54] except to the extent that a qualifying matter is accommodated.[55]*

*H. Specific requirements relating to Policy 3 of the NPS-UD*

19. *Every residential zone in an urban environment of a tier 1 specified territorial authority must give effect to policy 3 in that zone,[56] and every tier 1 specified territorial authority must ensure that the provisions in its district plan for each urban non-residential zone within the authority's urban environment give effect to the changes required by policy 3[57] except to the extent that a qualifying matter is accommodated.[58]*

*I. Discretionary amendments under the Amendment Act.*

20. *An IPI may also amend or include the following provisions:[59]*

    (i) *provisions relating to financial contributions if the Council chooses to amend its district plan under section 77T;*

    (ii) *provisions to enable papakāinga housing in the district.*

    (iii) *related provisions, including objectives, policies, rules, standards and zones, that support or are consequential on the MDRS or policies 3 and 4 of the NPS-UD. "Related provisions" expressly includes (but is not limited to) provisions that relate to district-wide matters, earthworks, fencing, infrastructure, qualifying matters, stormwater management and subdivision of land.*

*J. Additional requirements for qualifying matters*

21. *In relation to a proposed amendment to accommodate a qualifying matter,[60] the specified territorial authority must:*

    (i) *demonstrate why the territorial authority considers—*

        (1) *that the area is subject to a qualifying matter;[61] and*

        (2) *in residential zones that the qualifying matter is incompatible with the level of development permitted by the MDRS (as specified in Schedule 3A of the RMA) or policy 3 for that area[62] or in non-residential zones that the qualifying matter is incompatible with the level of development as provided for by policy 3 for that area;[63] and*

    (ii) *assess the impact that limiting development capacity, building height, or density (as relevant) will have on the provision of development capacity;[64] and*

---

[54] Section 77G(1).
[55] Section 77G(6).
[56] Section 77G(2).
[57] Section 77N(2).
[58] Sections 77G(6) and 77N(3)(b).
[59] Section 80E(1)(b).
[60] As defined in sections 77I(a)-(i) and 77O(a)-(i).
[61] Sections 77J(3)(a)(i) and 77P(3)(a)(i).
[62] Section 77J(3)(a)(ii).
[63] Section 77P(3)(a)(ii).
[64] Sections 77J(3)(b) and 77P(3)(b).

(iii) assess the costs and broader impacts of imposing those limits.[65]

(iv) describe in relation to the provisions implementing the MDRS—

(1) how the provisions of the district plan allow the same or a greater level of development than the MDRS;[66]

(2) how modifications to the MDRS as applied to the relevant residential zones are limited to only those modifications necessary to accommodate qualifying matters and, in particular, how they apply to any spatial layers relating to overlays, precincts, specific controls, and development areas, including—

A. any operative district plan spatial layers; and

B. any new spatial layers proposed for the district plan.[67]

K. Alternative process for existing qualifying matters

22. When considering existing qualifying matters,[68] the specified territorial authority may:

(i) identify by location (for example, by mapping) where an existing qualifying matter applies;[69]

(ii) specify the alternative density standards proposed for the area or areas identified;[70]

(iii) identify why the territorial authority considers that 1 or more existing qualifying matters apply to the area or areas;[71]

(iv) describe in general terms for a typical site in those areas identified the level of development that would be prevented by accommodating the qualifying matter, in comparison with the level of development that would have been permitted by the MDRS and policy 3 in residential zones[72] and by policy 3 in non-residential zones.[73]

L. Further requirements for 'other' qualifying matters under section 77I(j)/77O(j)

23. A matter is not a qualifying matter under section 77I(j)/77O(j) unless an evaluation report:

(i) identifies for residential zones the specific characteristic that makes the level of development provided by the MDRS (as specified in Schedule 3A) or as provided for by policy 3 inappropriate in the area[74] or for non-residential zones identifies the specific characteristic that makes the level of urban development required within the relevant paragraph of policy 3 inappropriate;[75] and

[65] Sections 77J(3)(c) and 77P(3)(c).
[66] Section 77J(4)(a).
[67] Section 77J(4)(b).
[68] Being a qualifying matter referred to in sections 77I(a)-(i) and 77O(a)-(i) that is operative in the relevant district plan when the IPI is notified.
[69] Section 77K(1)(a)/77Q(1)(a).
[70] Section 77K(1)(b)/77Q(1)(b).
[71] Section 77K(1)(c)/77Q(1)(c).
[72] Section 77K(1)(d).
[73] Section 77Q(1)(d).
[74] Section 77L(a).
[75] Section 77R(a).

(ii) *justifies why that characteristic makes that level of development inappropriate in light of the national significance of urban development and the objectives of the NPS-UD;*[76] *and*

(iii) *includes a site-specific analysis that—*

(1) *identifies the site to which the matter relates;*[77] *and*
(2) *evaluates the specific characteristic on a site specific basis to determine the geographic area where intensification needs to be compatible with the specific matter;*[78] *and*
(3) *evaluates an appropriate range of options to achieve the greatest heights and densities permitted by the MDRS (as specified in Schedule 3A)*[79] *or as provided for by policy 3* [80] *while managing the specific characteristics.*

*M. key modifications made by the Amendment Act to the RMA statutory tests*

24. *The requirement to give effect to the regional policy statement under section 75(3)(c) and the matters to be considered as part of the section 32 evaluation. In particular:*

(i) *Section 77G(8) provides that the requirement to incorporate the MDRS into relevant residential zones prevails over the requirement to give effect to a regional policy statement, in the event of any inconsistency.*

(ii) *Sections 77J, 77K and 77L (relating to residential zones) and sections 77P, 77Q and 77R (relating to non-residential zones) set out additional requirements for the evaluation of QMs under section 32. For instance, the evaluation report must assess the impact that limiting development capacity, building height, or density (as relevant) in accordance with a QM will have on the provision of development capacity, as well as the costs and broader impacts of imposing those limits via a QM.*

[76] Sections 77L(b) and 77R(b).
[77] Sections 77L(c)(i) and 77R(c)(i).
[78] Sections 77L(c)(ii) and 77R(c)(ii).
[79] Section 77L(c)(iii).
[80] Sections 77L(c)(iii) and 77R(c)(iii).