

**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

**MEMORANDUM OF COUNSEL FOR CHRISTCHURCH CITY COUNCIL
REGARDING MATTERS ARISING AT THE HEARING ON 15 APRIL 2024**

17 April 2024

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MAY IT PLEASE THE INDEPENDENT HEARINGS PANEL:

Introduction

1. This memorandum addresses three matters arising at the hearing of submissions into Plan Change 14 (**PC14**) on 15 April 2024. The matters are as follows:
 - (a) In response to questions from the Panel a witness for Christchurch City Council (**Council**), Ms Rebecca Foy, referred to an Australian report by Deloitte evaluating the economic cost of the social impact of natural disasters. Ms Foy was asked whether the evaluative material she had prepared regarding PC14 had referred to the report by Deloitte.
 - (b) On 11 April 2024 the Council provided various responses to information requests made by the Panel, and indicated which requests remain outstanding. At the hearing the Panel asked the Council to respond promptly on an issue relevant to the following outstanding requests:
 - (i) Address the lawfulness of proposed rules controlling demolition of buildings within residential heritage areas (**RHAs**) (and associated interface areas) and residential character areas (**RCAs**).¹
 - (ii) A proposed standard may offend against *Waikanae* but that provision could be redrafted as a matter of discretion or an assessment matter to avoid that potential issue. Can Council suggest to the Panel a process by which provisions identified as potentially offending against *Waikanae* are redrafted in accordance with the 'cascade'?²
 - (iii) With respect to Riccarton Bush, the Council is to consider and advise of the option of the 10m setback being a non-prescribed setback, that is, rather than a standard, a matter of discretion for four or more units.³

In short, the Panel asked whether, if it is not persuaded by a particular proposal by the Council to extend protections in a way that would reduce *status quo* development rights, options are nonetheless

¹ Part of request number 42.

² Request 67.

³ Request 74.

available to change the District Plan to require regard to be had to the relevant matter.

- (c) Mr Christian Jordan, submitter number 737, considers that the special character of a number of areas in Christchurch warrants their protection from intensification. The Panel asked the Council to identify which of those areas are or contain RCAs proposed by the Council through PC14.

2. These matters are addressed briefly in turn below.

Deloitte report referred to by Ms Foy

- 3. In answers to questions from the Panel, Ms Foy referred to a Deloitte study published in Australia regarding the economic cost of the social impact of natural disasters. The report was prepared in 2016 by Deloitte Access Economics for the Australian Business Roundtable for Disaster Resilience and Safer Communities, and can be accessed at the link in the footnote.⁴
- 4. A key finding of the report, based on analysis of a number of natural disasters that took place in Australia in 2015, was that *"the intangible costs of natural disasters are at least as high as the tangible costs. Significantly, they may persist over a person's lifetime and profoundly affect communities"*.⁵
- 5. The Panel asked Ms Foy whether the evaluative material she had prepared regarding PC14 had referred to the report by Deloitte, and she confirmed that to have been the case.
- 6. Ms Foy's primary evidence dated 11 August 2023 was based on a draft social impact assessment (**SIA**) regarding the proposed coastal hazard qualifying matters contained in PC14. That draft SIA was not finalised and appended to Ms Foy's evidence in full for reasons of economy, but can be made available to the Panel; on reflection the draft SIA may be of interest to the Panel, including because it refers to the Deloitte report in various places.⁶

⁴ <https://www.deloitte.com/content/dam/assets-zone1/au/en/docs/services/economics/deloitte-economics-the-economic-cost-of-the-social-impact-of-natural-disasters-2016.pdf>

⁵ Executive summary.

⁶ Namely, sections numbered Section 4.2.1 Health and Safety considerations, Section 4.3.1 Livelihood considerations, and 4.41 Social equity considerations.

Lawfulness of proposed demolition rules and related questions

Introduction

7. The Panel explained that the information requests set out above are underpinned by a desire to explore potential 'workarounds' regarding provisions in PC14 that propose to constrain *status quo* development rights currently enabled by the operative District Plan for Christchurch. This is in case the Panel considers the decision in *Waikanae Land Company Limited v Heritage New Zealand Pouhere Tāonga*⁷ (**Waikanae**) to have been correctly decided.

Waikanae was wrongly decided

8. To address first the Panel's specific question regarding the proposed rules controlling demolition of buildings within RHAs (and associated interface areas) and RCAs, those provisions are lawful for a number of reasons set out below. These reasons draw on various relevant principles set out in the opening legal submissions for the Council dated 3 October 2023,⁸ from paragraphs 2.48 to 2.78.
9. The first reason, in summary, is that *Waikanae* was wrongly decided, as considered to be the case by the independent hearing panels considering the intensification planning instruments in Kāpiti⁹ and Wellington¹⁰ (for example).
10. That is, section 80E of the Resource Management Act 1991 (**RMA**) allows a council to amend or include "*related provisions that support or are consequential on*" the medium density residential standards (**MDRS**) or policy 3. "*Related provisions*" may relate, without limitation, to qualifying matters or various other listed matters.
11. Consequential on having identified a matter that makes higher density inappropriate in an area (ie a qualifying matter), a Council is able to include or amend other "*related provisions*" where necessary and appropriate to achieve sensible planning outcomes, further higher-order objectives (including a well-functioning urban environment under objective 1 of the National Policy Statement on Urban Development), and promote the purpose

⁷ [2023] NZEnvC 56.

⁸ <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/00-Opening-Legal-Submissions-for-CCC.pdf>

⁹ As noted at paragraph 2.74 of counsel's opening legal submissions for the Council dated 3 October 2023.

¹⁰ See the discussion from paragraph 105 of Recommendation Report 1A: <https://wellington.govt.nz/-/media/your-council/plans-policies-and-bylaws/district-plan/proposed-district-plan/files/decision-making-process-on-the-proposed-district-plan/briefing-1/ihp-recommendation-report-1a.pdf>

and principles in Part 2 of the RMA. This includes provisions that constrain *status quo* development rights.

12. Natural justice considerations do not arise where such provisions were clearly included in the plan change and therefore specifically advised to affected landowners.
13. That is a general reason why provisions in PC14 that seek to constrain *status quo* development rights (including the proposed rules controlling demolition of buildings within RCAs) are lawful.

Heritage protections took immediate legal effect on notification of PC13

14. There is an additional reason specific to provisions in PC14 that protect **historic heritage**, such as the proposed rules controlling demolition of buildings within RHAs and associated interface areas. That is, section 86B(3) of the RMA provides that a rule in a proposed plan has immediate legal effect if the rule protects historic heritage.
15. Plan Change 13 (**PC13**) contains provisions duplicating the heritage-related provisions in PC14, including the proposed rules controlling demolition.
16. PC13 was notified at the same time as PC14. At that time, the proposed rules controlling demolition took immediate legal effect, thus altering the previous *status quo* development rights insofar as they related to demolishing buildings in RHAs and associated interface areas.
17. The heritage-related demolition provisions therefore do not give rise to any *Waikanae*-related issue in **PC14**, because the PC14 provisions do not impose any additional restrictions on *status quo* development rights (as those rights were altered on notification of PC13).

Other options for recognising constraints

18. Turning to the Panel's more general questions, in some cases it may well be possible, technically speaking, to redraft proposed provisions seeking to extend qualifying matter protections to impose a (new) firm constraint on development, so that they become a matter of discretion or assessment matter, potentially with additional policy support.
19. In other cases that may be more difficult, such as the proposed provisions requiring consent to demolish a 'primary' or 'contributory' building within an RCA, which is currently a permitted activity under the operative District Plan.

20. Either way, counsel respectfully agree with Commissioner Munro that drafting options would fall to be considered on an issue-by-issue basis, which the Panel has been exploring with witnesses both in the context of *Waikanae*-related issues (including the RCAs) and more generally (such as in respect of the Low Public Transport Accessibility Area Qualifying Matter¹¹).
21. The Council officers' final recommendations in respect of each topic will be explained fully in the Council's reply; in the meantime, as explained above, the provisions put forward by the Council through PC14 are all lawful, notwithstanding the Environment Court's decision in *Waikanae*, as well as meritorious and supported by the evidence before the Panel.

Question 74 regarding setback from Riccarton Bush predator-proof fence

22. In addition to the points set out above, Ms Ratka addressed the Panel on question 74 relating to Riccarton Bush when she appeared at the hearing of 16 April 2024.

Overlap between areas identified by Mr Jordan and proposed RCAs

23. Mr Jordan considers that the special character of a number of areas in Christchurch warrants their protection from intensification. The areas listed in his submission (number 737) are as follows:

"All of the Special Amenity Areas from the 1995 City Plan not already character areas including in particular:

Fendalton SAM 8 and 8A

Deans Bush SAM 7 and [7A]

Opawa SAM 5

St James SAM 16 (plus Windermere Rd)

Also the following larger areas which were not SAMs:

- *Knowles, Rutland, Papanui, Dormer*
- *Normans, Papanui, Blighs, railway line*
- *Gloucester, Woodham, Trent, England"*

¹¹ See the Council's response to request number 55, which is Appendix F to this memorandum: <https://chch2023.ihp.govt.nz/assets/Council-Memo/Correspondence/Memorandum-of-Counsel-for-Christchurch-City-Council-11-April-2024-Information-requests.pdf>

24. The Panel asked the Council to identify whether any of those areas are or contain RCAs proposed by the Council through PC14.
25. The answer is that none of them are or contain RCAs. Ms Rennie's supplementary evidence dated 28 November 2023¹² contains a table correlating the Special Amenity Areas (**SAMs**) with the RCAs in PC14. That table is reproduced in an **appendix** to this memorandum.
26. The bottom part of the table lists the SAMs that are not proposed by the Council to be RCAs. The SAMs referred to specifically in Mr Jordan's submission (listed above) are highlighted in yellow in the **appendix** for ease of reference.
27. Further, the primary evidence of Ms Jane Rennie for the Council addressed Mr Jordan's submission at paragraphs 67 and 68, as follows:

*"67. **Submitter 737**¹³ requested that all the previous SAMs from the 1995 City Plan be reinstated with particular focus on:*

- (a) Totara/Hinau/Puriri – SAM 7 and 7A;*
- (b) Opawa - SAM 5;*
- (c) St James – SAM 16 (plus Windermere Road); and*
- (d) Fendalton – SAM 8.*

68. At the time of the Christchurch Replacement District Plan (RDP) 2015 process, many SAMs lost their Character Area status following a desktop review of 'resource consents and visual assessment'¹⁴ due to a higher threshold of primary and contributory buildings required to become a Character Area. This RDP methodology was endorsed by the Independent Hearings Panel at the time. As such, any further assessment during the PC14 process, and in response to submissions, has not been undertaken as it considered that the review undertaken, and decision made in 2015 remains relevant."

¹² <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/49-Jane-Rennie-Supplementary-Statement-of-Evidence-28-November-2023.pdf>

¹³ Submitter 737 Christian Jordan. Page 24.

¹⁴ Appendix 19 of the s32 Report for Residential Chapter 14, notified 2 May 2015. Background Report on Character Areas, Christchurch City Council.

28. In respect of the larger areas referred to by Mr Jordan, Ms Rennie discussed those areas from paragraph 57 of her primary evidence (and in the associated technical assessment, as referred to throughout that evidence).¹⁵

Date: 17 April 2024



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¹⁵ <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/49-Jane-Rennie-Statement-of-Evidence-final.PDF>

Appendix – table of SAMs and relationship with RCAs

City Plan 2005 (notified 1995 and updated 2016) - SAMs	Operative District Plan 2017 (IHP) – Character Area	PC14 As Notified - RCA
SAM 18	CA1 Esplanade	-
SAM 35	CA2 Clifton	-
SAM 17/17a	CA3 Cashmere	Cashmere
SAM 2	CA4 Beckenham Loop	Beckenham
SAM 3	CA5 Tainui/Moana	Tainui
SAM 6	CA6 Piko/Shand	Piko
SAM 11	CA7 Heaton/Circuit	Heaton
SAM 28	CA8 Beverley	Beverley
SAM 29	CA9 Ranfurly	Ranfurly
SAM 12	CA10 Massey	Massey
SAM 14	CA11 Malvern	Malvern
SAM 15	CA12 Severn	Severn
SAM 13	CA13 Francis	Francis
SAM 10/10a	CA14 Dudley	Dudley
SAM 21	CA15 Englefield	Englefield
-	CA17 Lyttelton	Lyttelton
-	-	Roker
-	-	Ryan
-	-	Bewdley
-	-	Cashmere View (recommended via submissions)
SAM 1 Heathcote Valley		
SAM 4 Aynsley Terrace		
SAM 5 Cholmondeley/Ford		
SAM 7 Totara/Hinau/Puriri		
SAM 8 Fendalton		
SAM8a Bradnor		
SAM8b Heathfield		
SAM 9 River Road		
SAM 16 St James Avenue		
SAM 19 Church Square		
SAM 20 Rastrick/Tonbridge		
SAM 22 Gloucester/Montreal		
SAM 23/23a Salisbury Street		
SAM 24 Avon Loop		
SAM 25 Gracefield Avenue		
SAM 26 Peacock/Beveridge/Conference		
SAM 27 Otley/Ely		
SAM 30 Chester Street East		
SAM 31 Park Terrace/Rolleston Avenue		
SAM 32 Cranmer Square		
SAM 33 Latimer Square		
SAM 34 Auburn Ave		
SAM 36 St Andrews Square		
SAM 37 Emmett Street		
SAM 38 Clissold Street		
SAM 39 Mays/Chapter/Weston/Knowles		

SAM 40 Hawkesbury Avenue		
SAM 41 Naseby Street		