

**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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**MEMORANDUM OF COUNSEL FOR CHRISTCHURCH CITY COUNCIL  
REGARDING INITIAL CLARIFICATIONS SOUGHT**

2 August 2024

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## **MAY IT PLEASE THE INDEPENDENT HEARINGS PANEL:**

1. Christchurch City Council (**Council**) thanks the Panel for its recommendations on Plan Change 14 (**PC14**), received on 29 July 2024.
2. The Council is working through the recommendations and is likely to seek clarification from the Panel of various matters in order to assist in its decision-making on PC14, as envisaged by clause 101(4)(c) of Schedule 1 to the Resource Management Act 1991.
3. The purpose of this memorandum is to seek the Panel's early clarification of a number of initial urgent matters relating to what the Council understands to be a direction by the Panel, in paragraph [70] of Part 1 of the Recommendations Report, that Council officers revisit the drafting of Chapter 14 of the District Plan in its entirety.<sup>1</sup>
4. The matters on which the Council seeks clarification, which will inform that redrafting exercise, are set out below.

### **Clarification of intended outcomes revised Chapter 14 and associated mapping**

5. The Council respectfully seeks clarification regarding whether a redrafted Chapter 14 that achieves the following would implement the Panel's recommendations (footnotes are used to refer to passages from the Recommendations Report that are understood to support the following):
  - (a) The three consent pathways are to be provided for only in respect of land zoned Medium Density Residential (**MRZ**) or High Density Residential (**HRZ**) through PC14. Paragraph [61] of Part 4 of the Recommendations Report recommends providing landowners or developers with three consent pathways to choose from "*on residential-zoned land that is subject to PC14*". This is understood to be a short-hand term, however, as the description of the three pathways (Pathways A, B and C) indicates that they are intended to be provided only on that land that the Panel recommends being zoned MRZ or HRZ.<sup>2</sup>

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<sup>1</sup> [Part 1 of the Recommendations Report](#).

<sup>2</sup> Paragraph [64] of [Part 4 of the Recommendations Report](#) also links the use of a Pathway A to an overlay where *MRZ or HRZ* is proposed, which is understood to mean that Pathway A and an overlay would not apply to residential zones that are not MRZ or HRZ.

- (b) The three consent pathways on land zoned MRZ or HRZ would involve the following:
- (i) A map overlay that would identify what the (previous) Operative District Plan (**ODP**) zoning was before being zoned MRZ or HRZ through PC14.<sup>3</sup>
  - (ii) To provide for Pathway A, Chapter 14 would contain all of the existing ODP Chapter 14 objectives, policies, rules and other provisions to enable permitted activities and provide consenting paths for all of the (previous) ODP residential zones identified in the map overlay, which plan users could choose to pursue under Pathway A.<sup>4</sup> For example, an owner of land zoned MRZ through PC14, but with an overlay showing that the land was previously zoned Residential Suburban (**RS**), could choose to continue to rely on the ODP RS provisions not only for permitted activities but also as a consenting path, and thus be able to apply for consent to be assessed under the ODP Chapter 14 objectives, policies, rules and other provisions including activity statuses, built form and activity standards, matters of control and discretion, and any associated definitions.
  - (iii) To provide for Pathways B and C, Chapter 14 would also contain the PC14 MRZ and HRZ sub-chapter provisions (along with all other PC14 sub-chapter provisions including objectives and policies) as recommended by the Panel in Appendix G of Part 8 of the Recommendations Report.<sup>5</sup> Thus an owner of land zoned

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<sup>3</sup> Paragraph [64] of [Part 4 of the Recommendations Report](#).

<sup>4</sup> Although the title description of Pathway A as "*Existing enablement that complies with the ODP Development Standards*" in paragraph [61] of [Part 4 of the Recommendations Report](#) suggests Pathway A is only concerned about permitted activities that are compliant with ODP development standards, it is understood from descriptions of Pathway A elsewhere in the Recommendations Report that Pathway A is also intended to preserve all ODP provisions (including objectives, policies, rules and associated definitions) that provide for the controlled, restricted discretionary, discretionary and non-complying activity consenting pathways. For example:

- [Part 4](#) paragraphs [8] and [62] refer to reinstating the ODP definitions in some cases. This is understood to be needed to preserve the meaning and application of ODP provisions by ensuring they continue to apply ODP definitions, rather than any definitions amended by PC14.
- [Part 4](#) paragraph [61](a) refers to "*including activity status, built form standards and the existing suite of restrictions in matters of discretion (or reservations of control where an application be controlled activity)*".
- [Part 4](#) paragraph [61](d) mentions that re-introducing the necessary Plan provisions to provide for Pathway A "*may need to include some of the ODP objectives and policies as appropriate*".
- [Part 4](#) paragraph [63] anticipates the three pathways would have "*different standards, activity classifications, and assessment matters that would apply between the different pathways*". This is understood to suggest that Pathway A is to provide both a permitted activity and consenting path that differs from Pathways B and C.
- Paragraph 3(a) of the Panel's recommended provisions for [Chapter 14.5 in Part 8 Appendix G of the Recommendations Report](#) mentions that for "*Pathway A enablements*" the Panel recommends that "*the Council reverts to the relevant status quo objectives, policies and standards*".

<sup>5</sup> It is understood from the title description of Pathway B "*Development that complies with the Activity and Development standards proposed for the MRZ or HRZ as the case may be*" in paragraph [61] of [Part 4 of the](#)

MRZ but with an overlay showing that the land was previously zoned RS could choose to rely on the Panel's recommended MRZ provisions not only for permitted activities but also as a consenting path, and thus be able to apply for consent to be assessed under the Panel's recommended Chapter 14 objectives, policies, rules and other provisions including activity statuses, built form and activity standards, matters of control and discretion, and any associated definitions (in Chapter 2).

(iv) To assist plan users, the MRZ and HRZ sub-chapters would include a section that explains the ability for plan users to choose between the pathways, and which provisions would then apply (with cross-referencing) depending on the pathway chosen.<sup>6</sup> In essence:

- (1) Plan users seeking to utilise Pathway A would be directed to consider the map overlay identifying the (previous) ODP zoning of their property, then apply what is effectively the (previous) Operative Chapter 14 objectives, policies, rules, provisions and associated definitions. Plan users could thus undertake permitted activities or seek resource consents under the provisions that apply under Pathway A.
- (2) Plan users seeking to utilise Pathways B or C would be directed to apply the Panel's recommended MRZ or HRZ sub-chapter (and the Panel's other recommended residential sub-chapters as relevant such as those containing the Panel's recommended objectives and policies). Plan users can undertake permitted activities under the provisions that apply under Pathway B, or seek

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[Recommendations Report](#) that Pathway B is only concerned about activities permitted under the MRZ / HRZ standards, while the title description of Pathway C applies to development that does not comply with the MRZ / HRZ development standards. It is understood from the descriptions of Pathways B and C in both instances of paragraphs [61](b) and [61](c) beneath their title descriptions that Pathways B and C would be subject to all PC14 provisions as proposed by Council except as recommended by the Panel, with such provisions including PC14 Chapter 14 objectives, policies, rules and associated definitions (in Chapter 2). Thus, while Pathways B and C represent two different paths, they would apply one set of Chapter 14 provisions (being the Panel's recommended PC14 Chapter 14 provisions in Appendix G of Part 8 of the Recommendations Report). It is understood this is also consistent with the Panel's Further Instructions and Explanations for Council in paragraph 3(a) of the Panel's recommended provisions for [Chapter 14.5 in Part 8 Appendix G of the Recommendations Report](#) which is that:

- The Panel findings and evaluations with respect to MRZ and HRZ objectives, policies and standards are that those provisions apply only to Pathways B and C.
- For Pathway A, the Council reverts to the relevant status quo objectives, policies and standards.

<sup>6</sup> Paragraph [63] of [Part 4 of the Recommendations Report](#) recommends that in providing for Pathway A, Council should have regard to overall useability of the chapter so as to make navigation between the three pathways as simple as possible.

resource consent under the provisions that apply under Pathway C.

- (3) Plan users would also be advised that Pathway A is a separate and **independent pathway** to Pathways B and C. Thus, a plan user could choose either the consenting path under Pathway A (i.e. assess under previous residential zoning Operative Provisions) or under Pathway C (i.e. assess under the Panel's recommended MRZ / HRZ and other related PC14 chapter 14 provisions such as objectives and policies). In other words, the two different consenting paths would not apply at the same time to the same activity sought to be consented.<sup>7</sup>

- (c) In all cases where the Panel has recommended that land would be zoned residential other than as MRZ / HRZ (e.g. zoned RS instead), then the provisions for that residential zone (as contained in the applicable sub-chapter provisions as recommended by the Panel in Appendix G of Part 8 of the Recommendations Report) would apply.

6. If any aspect of the above would not implement the Panel's recommendations, then the Council respectfully requests further clarification from the Panel regarding what outcomes a redrafted Chapter 14 should achieve.

### **Clarification of intent for orange and purple text in recommended provisions**

7. The preface to the various chapter and sub-chapter provisions as recommended by the Panel in Appendix G of Part 8 of the Recommendations Report mentions that orange text in the Council's 'Reply Provisions' have been removed. However, there are instances where the provisions as recommended by the Panel in Appendix G of Part 8 of the Recommendations Report still contain orange text.

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<sup>7</sup> Paragraph [173] of [Part 1 of the Recommendations Report](#) describes the pathways as "alternative" pathways for development to overcome the *Waikanae* scope issue. Paragraph [104] of [Part 4 of the Recommendations Report](#) anticipates that:

- Some persons may wish to develop land within existing ODP entitlements and not take advantage of the new MRZ or HRZ provisions; and
- Council would retain provisions that are already operative in the form of one development pathway that persons may take, without setting aside the new MRZ or HRZ provisions as the case may be.

Accordingly, it is understood that the pathways are alternatives to be offered, with plan users able to select which pathway to pursue. Thus, if an applicant chooses Pathway A and breaches an applicable Pathway A ODP standard, then resource consent should be sought under Pathway A, not Pathway C. Alternatively, if an applicant pursues Pathway B but breaches an applicable PC14 MRZ / HRZ standard, then consent must be sought under Pathway C, not Pathway A.

8. The Council respectfully requests clarification about whether the Panel intends that orange text and purple text is to be accepted or rejected as part of its recommendations on PC14. Particular instances of orange text and purple in the sub-chapters of Chapter 14 that the Council seeks clarification on are:
- (a) 14.4.1.3 RD34
  - (b) 14.5.1.3 RD1 [including s42A purple text]
  - (c) 14.5.1.3 RD2, RD14, RD23, RD26, RD32
  - (d) 14.5.2.4 – Building Coverage
  - (e) 14.5.2.6 – Height in relation to boundary [including bold underlined black text]
  - (f) 14.5.2.7.a.i – Minimum building setbacks [relating to porches]
  - (g) 14.5.2.9 – Fencing and screening [multiple]
  - (h) 14.5.2.10.e.iii – Windows to street [retirement village exemption]
  - (i) 14.5.2.5.2.13.c - Service, storage and waste management spaces
  - (j) 14.5.2.15 – Garaging and carport building location [including s42A purple text]
  - (k) 14.5.2.17 – Location of outdoor mechanical ventilation [including s42A purple text]
  - (l) 14.5.2.19 – Building length [including s42A purple text]
  - (m) 14.5.3.1.1 P3
  - (n) 14.6.1.1 P7, P8, P9, P17-P25
  - (o) 14.6.1.2 C1
  - (p) 14.6.1.3 – Restricted discretionary activities [numerous]
  - (q) 14.6.1.4 D1-D2
  - (r) 14.6.1.5 – Non-complying activities [numerous]
  - (s) 14.6.2.4.i.i – Outlook space
  - (t) 14.6.2.5 – Building separation

- (u) 14.6.2.6 – Fencing and screening
- (v) 14.6.2.8 – Windows to street [including s42A purple text]
- (w) 14.6.2.9 – Ground floor habitable space [including s42A purple text]
- (x) 14.6.2.11 – Service, storage and waste management
- (y) 14.6.2.12 – Building coverage
- (z) 14.6.2.14 – Garaging and carpark location
- (aa) 14.6.2.15 – Location of outdoor mechanical ventilation
- (bb) 14.6.2.18 – Building length
- (cc) 14.6.2.20 – Minimum building setbacks from railway lines
- (dd) 14.6.3 – Area-specific rules – High Density Residential Zone [all]
- (ee) 14.15.9 – Wind

#### **Clarification regarding use of defined terms in recommended provisions**

9. The preface to the various chapter and sub-chapter provisions as recommended by the Panel in Appendix G of Part 8 of the Recommendations Report mentions that where the Panel recommends that **green** definitions are accepted, they remain unchanged. However, there are instances where the Panel's recommended provisions contain text from the Council's 'Reply Provisions', but without retaining **green** text for defined terms.
10. The Council respectfully requests clarification about whether the Panel intends that in all instances where **green** text for defined terms has been omitted when the Panel has accepted text from the Council's 'Reply Provisions', that the **green** text be reinstated for defined terms.

#### **Process matters**

11. Council officers intend to carry out the Panel's direction to revisit the drafting of Chapter 14 of the District Plan in its entirety as quickly as possible.<sup>8</sup>
12. The Council may then **seek further clarification** from the Panel regarding whether the Panel's recommendations are reflected in the officers' redrafted Chapter 14, in order to assist Council to make a decision on the Panel's

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<sup>8</sup> Paragraph [70] of [Part 1 of the Recommendations Report](#).

recommendations.<sup>9</sup> The Council would be grateful for an indication from the Panel members as to their availability and timing to provide such clarification over the next two months.

13. The Council seeks urgent clarification of these initial matters because they relate to additional steps to be taken before the Council can make its initial decision on PC14, currently due to occur by 12 September 2024.

**Dated:** 2 August 2024



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<sup>9</sup> Pursuant to clause 101(4) of the First Schedule to the RMA.