

**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

25 March 2024

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 INDEPENDENT HEARINGS PANEL:

Introduction

1. As previously advised, Christchurch City Council (**Council**) asked the Government to extend the timeframe for completing the Plan Change 14 (**PC14**) process, in light of a signalled law change to make optional the implementation of medium density residential standards (**MDRS**). Hon Chris Bishop advised the Mayor of Christchurch, by letter sent on 29 February 2024, that:

"I do not support a further extension of time for the council to complete the [National Policy Statement on Urban Development 2020 (NPS-UD)] aspects of PC14. As such, these aspects should be completed by the current deadline of 12 September 2024."

"I will work with my officials to continue to consider an appropriate extension for the [MDRS] components of PC14".

2. Counsel are instructed that, based on this letter and subject to the precise form of the *Gazette* notice to follow, the Council seems likely to resolve to:
 - (a) make a decision on the NPS-UD aspects of PC14 by the due date of 12 September 2024; and
 - (b) defer any decisions on other aspects of PC14 until a later date.
3. In paragraph [9] of its Minute 34, the IHP signalled its current intention, subject to any further Ministerial directions and views of the Council or submitters, to issue a recommendations report on the whole of PC14. The IHP expressed concern that:

"there may be both legal and practical difficulties in being able to extract matters that are solely related to the MDRS and those matters solely related to the implementation of the NPS-UD given the Plan Change and much of the evidence and submissions address the issues as an integrated package".

4. At paragraph [10] the IHP advised, however, that in making its recommendations it *"would still endeavour, wherever possible, to identify matters that are solely related to the implementation of the MDRS to assist the Council with its decision-making"*.
5. The Council acknowledges that the Government's intention to make MDRS optional, while requiring completion of decision-making on NPS-UD aspects

of PC14, creates complexities for the IHP and submitters (as well as for the Council itself) in progressing PC14. The Council is grateful to the IHP for indicating that it will endeavour to identify matters in its recommendations to assist Council to stage its decision-making.

6. Because time is short before the Council is required to make its initial decision, informed by the IHP's recommendations, by 12 September 2024, practically speaking it will be difficult for the Council to act on the IHP's recommendations in a timely way **unless** they are tailored to identify matters that can assist Council to make that initial decision. Further, the more tailored the IHP's recommendations are, the less reliance the Council would likely then need to place on the process of seeking clarifications from the IHP, under clause 101(4)(c) of schedule 1 to the RMA, in order to make its decisions.
7. While the evidence necessary to support recommendations and decision-making on the whole of PC14 is already before the IHP, the Council will do what it can to assist the IHP to differentiate between the matters that could be subject to a Council decision by 12 September 2024, and those could be deferred to a (potential) later decision.
8. Council officers have been considering the implications of making decisions on PC14 in stages and have identified those aspects of PC14 that the IHP can identify when making its recommendations to help achieve this. The purpose of this memorandum of counsel is to summarise that work briefly and respectfully suggest ways in which the IHP can helpfully inform how Council implements staged decision-making for PC14.

Proposed way forward

9. As noted above, counsel are instructed that the Council seems likely to resolve to make an initial decision only on the aspects of PC14 that give effect to the NPS-UD, and defer decision-making on other aspects of PC14.
10. The IHP's signalled intention to "*identify matters that are solely related to the implementation of the MDRS*" is appreciated. However, the Council respectfully requests that the IHP identifies additional matters that can further assist the Council to ascertain how it might make its initial decision.
11. In particular, it would greatly assist the Council if the IHP also:

- (a) spatially identifies the intensification 'sphere of influence' under policies 3 and 4 of the NPS-UD;
- (b) utilises colour-coding in its recommended provisions of PC14 so that the provisions are categorised as follows:
 - (i) provisions solely related to the implementation of the MDRS (including qualifying matters (**QMs**) relating to MDRS) outside areas affected by (a) above;
 - (ii) provisions solely related to the implementation of policies 3 and 4 of the NPS-UD (i.e. intensification under policy 3 and any QMs under policy 4) in areas affected by (a) above; and
 - (iii) provisions that are not (i) or (ii) above. This category would include:
 - (1) any provisions that involve an integrated implementation of, or are influenced by, both MDRS and policies 3 and 4 of the NPS-UD (for example, as the IHP will recall, MDRS are not only proposed outside policy 3 areas, but also within them and forming the starting-point intensification response in some of those policy 3 areas); and
 - (2) any financial contribution provisions.

12. These matters are discussed in turn below.

Assistance with identifying spatial extents of policy 3 & 4 intensification areas

- 13. Spatially identifying the intensification 'sphere of influence' under policies 3 and 4 of the NPS-UD can help inform an initial September 2024 decision because it represents the potential maximum spatial extent of the areas of Christchurch that might be affected by a decision implementing NPS-UD aspects of PC14.
- 14. Spatial identification of the intensification sphere of influence under policies 3 and 4 would involve the IHP considering:
 - (a) the classification of Christchurch's centres into the various types of centre zones described in policy 3, being City Centre Zones (**CCZ**), Metropolitan Centre Zones (**MCZ**), Neighbourhood Centre Zones (**NCZ**), Local Centre Zones (**LCZ**) and Town Centre Zones (**TCZ**);

- (b) the areas constituting a "walkable catchment" around the CCZ and MCZs (if any) for NPS-UD policy 3(c) intensification; and
 - (c) the areas constituting what is "adjacent" around NCZs, LCZs, and TCZs for NPS-UD policy 3(d) intensification.
15. As the IHP will recall, the spatial extent of intensification under policies 3 and 4 was the subject of submissions, evidence and legal argument considered under the Central City and Commercial Zones topic in weeks 3 and 4 of the hearing, and the Residential Zones topic in weeks 4 to 6. The Council's position can be summarised as follows:¹
- (a) Policies 3(a), 3(b), 3(c)(ii) and 3(c)(iii) only apply to CCZ, MCZ (if any; the Council's position is that there are no metropolitan centres), and at least a walkable catchment around those zones. The spatial extent of the CCZ is shown on the PC14 maps and described as "*a large zone where the broadest range and scale of activities is enabled (...) the primary commercial node for the City, where many of the country's most high profile legal, financial and other firms are located*".² The walkable catchment for this zone is at least 1,200m.³
 - (b) Policy 3(d) applies "*within and adjacent to*" NCZ, LCZ, and TCZ. In this regard:
 - (i) The scale and spatial extent of any intensification of building heights and densities in residential areas 'adjacent' to these centres should increase based on the level of commercial and community services enabled within each NCZ, LCZ or TCZ (i.e. each centre).
 - (ii) The residential s32 analysis⁴ and the subsequent evidence of Mr Kleynbos⁵ evaluates the most appropriate adjacent intensification catchment for centres and the latter concluded that 800m for

¹ Although policy 3(c)(i) of the NPS-UD also refers to a walkable catchment around existing and planned rapid transit stops, none exist in the Christchurch context.

² Section 32: Commercial Appendix 2: Approach to alignment with National Planning Standards, pp 8 and 9, section 4.2.8: <https://www.ccc.govt.nz/assets/Documents/The-Council/Plans-Strategies-Policies-Bylaws/Plans/district-plan/Proposed-changes/2023/PC14/Section-32-Appendices-1/Appendix-2-Commercial-Technical-Report-Centres-Approach-to-Alignment-with-National-Planning-Standards-FINAL.PDF>

³ Section 42A report of Ike Kleynbos, pp 37-39, sections 6.1.39 to 6.1.52: <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/05-Ike-Kleynbos-Section-42A-Report-final.PDF>

⁴ PC14 Housing and Business Choice Part 3 - Residential Section 32 Report, pp 49 to 72: <https://www.ccc.govt.nz/assets/Documents/The-Council/Plans-Strategies-Policies-Bylaws/Plans/district-plan/Proposed-changes/2023/PC14/Section-32/Plan-Change-14-HBC-NOTIFICATION-Section-32-Residential.pdf>

⁵ Section 42A report of Ike Kleynbos, pp 48 and 49, sections 6.1.79 to 6.1.81: <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/05-Ike-Kleynbos-Section-42A-Report-final.PDF>

Large TCZs, 600m for TCZs, and between 200m and 400m for certain LCZs (depending on scale and function) is an appropriate starting-point for identifying the spatial extent of intensification under policy 3(d) of the NPS-UD in respect of those centres.

- (iii) No associated spatial extent of intensification analysis under policy 3(d) was required for NCZs and small LCZs, many being very small commercial areas (e.g. dairies) that enable the same activity mix as other LCZs but at more restricted scales. That is because the implementation of MDRS (subject to QMs) directed under the law as it stands resulted in at least a commensurate intensification response throughout the surrounding areas, irrespective of the level of commercial and community services within the NCZs and small LCZs.

16. As the IHP will recall, some submitters have expressed different views (to those of Council officers) regarding, for example, walkable catchments. Those matters can influence the spatial extent of intensification under policies 3 and 4 and require determination by the IHP.
17. The Council intends to assist the IHP in identifying the spatial extent of intensification under policies 3 and 4 in four ways:
 - (a) Firstly, Council could (on request by the IHP) provide mapping that spatially identifies where intensification is proposed by Council officers pursuant to policies 3 and 4 of the NPS-UD. It is currently envisaged that mapping would show the spatial extent (with zoning and the zoning pattern) of policy 3 and 4 intensification, proposed by officers in consideration of the wider NPS-UD, particularly policy 1 (including to better align with the likes of property and road boundaries). It is within this area that may be the subject of the Council's initial decision (and so could be provided to the IHP on request).
 - (b) Secondly, Council could (on request by the IHP) provide the IHP with a tabular overview of the spatial split of QMs as divided across MDRS areas, and policy 3 intensification areas.
 - (c) Thirdly, the IHP will recall that the Council has prepared an online tool which allows different scales of walkable catchments to be observed.⁶

⁶ Walking catchments map:

<https://christchurchcity.maps.arcgis.com/apps/interactivelegend/index.html?appid=54c7459e60c54ec99a85a870c732d0e1>

This is intended to assist in visualising different potential spatial extents for policy 3 and 4 intensification.

- (d) Fourthly, Council officers can supply the IHP with any additional mapping on request. That can include (for example) any mapping of spatial extents of policy 3 and 4 intensification that have different distances, or different alignment with road and property boundaries, from what Council officers have recommended.

Assistance with identifying different categories of provisions

- 18. The colour-coding of the IHP's recommended PC14 provisions into the categories described at paragraph 11(b) above can better inform how Council might make an initial September 2024 decision because it will assist in identifying which provisions might be able to be the subject of that decision.
- 19. The Council intends to assist the IHP in differentiating the provisions into the three identified categories by providing the IHP with the provisions recommended by officers using colour-coding and/or block shading, to differentiate between the PC14 objectives, policies, and rules in accordance with the categories described at paragraph 11(b).
- 20. The Council would be grateful for the IHP to adopt the same approach. That is, the Council asks that the IHP be mindful of the category differentiation of provisions and apply colour-coding accordingly when it makes its recommendations.
- 21. While it is noted that the IHP itself is not required to make recommendations that deal with each submission individually,⁷ Council officers are also preparing a table of recommendations to accept / reject submissions (and further submissions), using the same colour-coding, to be provided through the Council's reply.

Conclusion

- 22. Counsel will update the IHP further once a *Gazette* notice relating to PC14 is issued, including with any more specific information regarding the decision the Council intends to make by September 2024.

⁷ Clause 100(5), Schedule 1, RMA.

23. The Council trusts that the information provided in this memorandum assists the IHP and submitters, in the meantime, to understand the Council's intentions for progressing PC14 in light of the Minister's letter.

Date: 25 March 2024

A handwritten signature in blue ink, appearing to be 'D G Randal / C O Carranceja', written in a cursive style.

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