

**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 October 2024

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MAY IT PLEASE THE INDEPENDENT HEARINGS PANEL:

1. This memorandum on behalf of Christchurch City Council (**Council**) seeks the Panel's clarification of several final aspects of its recommendations on Plan Change 14 (**PC14**).
2. The clarifications sought are described in the table in **Appendix 1**, prepared by Council officers. Some clarifications relate to the proposed qualifying matter for radiocommunications pathways, in respect of which the Council has received a letter from counsel for the Ministry of Justice, attached as **Appendix 2**.
3. Council officers are conscious that the Panel is separately considering the memorandum of counsel dated 18 October 2024 regarding the redraft of Chapter 14: Residential. In the meantime, officers have been addressing the Panel's clarifications in Minute 55 and the associated second addendum to Part 5 of its Recommendations Report, including in relation to Residential Character Areas and the Styx River setback. Several questions have arisen in relation to this task, which the Council considers most efficient to address when it provides the redrafted Chapter 14: Residential for the Panel's endorsement (so the Panel can consider them in the context of the updated provisions).
4. Counsel acknowledge that their memorandum dated 20 September 2024 set out what were understood (at that time) to be the final clarifications sought by the Council. As the Panel will understand, some of the matters described in **Appendix 1** flow from Minute 55, issued since that memorandum, and more generally the issues relating to PC14 are complex. Council staff thank the Panel for its forbearance in this regard.

Dated: 25 October 2024



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

APPENDIX 1 – FINAL CLARIFICATIONS SOUGHT


#	Key Theme	Chapter/ Provision	Previous Minute (s)	Panel Recommendation Part #	Matter for Panel clarification
1.	Specific Purpose (Hospitals) Zone provisions	13.5.4.2.3 and 13.5.4.2.4	Minute 51	Part 7, paragraph 227.	<p>The Southern Cross Hospital and the former Pegasus Health 24-hour site are located on the north side of Bealey Avenue and were identified these health facilities as a “Larger inner urban site” and a “Smaller inner urban site” respectively.</p> <p>PC14 had sought to apply the Policy 3 catchment to land north of Bealey Ave, including HRZ around both of these sites. PC14 proposed that the height of buildings be increased from 11m to 14m at a distance of 10m from a boundary. Subsequent Council evidence recommended increasing that height to 22m (at 10m from a boundary) for both larger and smaller inner urban hospital sites, to provide for development at a more HRZ-comparable level of intensification. That increased height in the provisions, along with other changes to the proposed provisions, were accepted in Part 7 of the Panel recommendations. However, the Part 3 recommendations from the Panel have recommended a significantly smaller walking catchment around CCZ, extending only to the south side of Bealey Ave. This resulted in the Southern Cross Hospital and former Pegasus Health 24-hour sites no longer being within the Policy 3 catchment and being instead surrounded by MRZ. The height limit of 22m now no longer appears to be commensurate with the development potential of the surrounding residential zone.</p>

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					Can the Panel please confirm its recommendations for the Southern Cross and the former Pegasus Health 24-hour sites as to whether a height of 14m or 22m, at 10m from a boundary, is recommended given the changes to Policy 3 catchments? Should provisions instead apply as per their MRZ counterparts (such as those captured as ‘Smaller inner urban sites’ in 13.5.4.2.4)?
2.	Coastal Hazards – Residential Intensification definition	Chapter 5.2 and Chapter 14	Minute 53, Appendix 1 (#3)	Part 5, section 9	<p>Council sought clarification on how the Tsunami Risk Management Area (TRMA) should apply to Commercial and Industrial zones via its 23 August memorandum, which the Panel responded to in Minute 53. Council has interpreted the practical application of this response to be that the TRMA has no rule influence in commercial or industrial zones, and that commercial and industrial zones are renamed in accordance with recommendations for Chapter 15.</p> <p>Part 5, section 9, of the Panel’s recommendations details recommendations for Coastal Hazards and TRMA. The recommendations support the approach whereby if >30% of a site is covered by the relevant overlay, the operative zoning should hold. The Panel also recommended the acceptance of the ‘Residential Intensification’ definition to manage development within overlays. The definition makes a direct link to 14.4 – Residential Suburban Zone (RS) and Residential Suburban Density Transition Zone (RSDT). However, the overlays approach also retains other operative residential zones, such as Residential Medium Density (RMD) and Residential</p>


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					<p>Hills (RH). This appears to be an omission in the definition and rule framework associated with overlays.</p> <p>If the Panel did intend for the residential intensification definition to apply to RMD, then the Council has the following queries:</p> <ul style="list-style-type: none"> <li data-bbox="1256 683 2002 770">i. How does the coastal hazard (5.2.2.5.1 b.) policy work for RMD given the “residential intensification” definition is limited to RS/RSDT zones? <li data-bbox="1256 794 2002 1129">ii. The TRMA policy 5.2.2.5.2 b. refers to sites in the MDR and/or RH precinct (noting that the name “precinct” needs to be struck through as the recommendation is to reject the precinct). For sites zoned RMD prior to the operative date of PC14, residential intensification is provided for in accordance with the MDR zone. This does not appear to consider sites that have retained their RMD zoning as a result of the Panel’s recommendations on this QM (and, as noted above, the definition of residential intensification does not currently refer to RMD). Please could this be clarified. <li data-bbox="1256 1153 2002 1361">iii. How do the coastal hazard rules work for RMD, given the rule is limited to RS/RSDT zones? If the intent is that these be permitted in accordance with 5.4A1, then Council considers that the policy needs to be changed to avoid confusion and issues with discretionary or non-complying activities (or even RD activities where the hazard is a relevant matter of discretion).

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					<p>Subject to the above, the recommended policy 5.2.2.5.2.b.ii appears unclear as to what the Panel intends the management of development should be within MRZ or RMD zoned sites. This could be further clarified by splitting the subclause to manage both zone outcomes, noting the Panel's confirmation in Minute 53 of the zone clarifications within the TRMA impacted areas. Please clarify.</p> <p>In relation to the response provided in Minute 53 regarding commercial and industrial zones, what changes are required for the commercial and industrial areas impacted by the TRMA? Council's interpretation is that there is, in effect, no impact of the TRMA on the rules for commercial and industrial zones. An overview of Chapter 15 is that residential activity/intensification is restricted to above ground floor in commercial zones as per the Operative District Plan. The only aspects of PC14 providing for residential intensification in commercial zones relate to increases to the permitted height standards. The table below shows the difference between the Part 3 Commercial Recommendation and the Panel's response contained in Minute 53. The Minute 53 response outlined that the TRMA and residential intensification restrictions apply to Commercial and Industrial Zones.</p> <table border="1" data-bbox="1227 1281 1989 1441"> <tr> <td data-bbox="1227 1281 1462 1441">Centre</td> <td data-bbox="1462 1281 1720 1441">IHP Part 3 Commercial Recommendation</td> <td data-bbox="1720 1281 1989 1441">IHP Minute 53 Response to Mapping Clarifications Appendices 30</td> </tr> </table>	Centre	IHP Part 3 Commercial Recommendation	IHP Minute 53 Response to Mapping Clarifications Appendices 30
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3.	Central City Building Heights Map	Chapters 15.12, 15.13, Central City Mixed Use (South Frame) Zone and Health Precinct area	Minute 51	Part 3	<p>Council sought clarification from the Panel regarding the Central City building heights map in Minute 51 – item 21.</p> <p>Within the Panel's Recommendations it is unclear what the recommendation is for the Central City Mixed Use (South Frame) (CCMU(SF)) zoned sites in the area shown as the 'Health Precinct' on the <i>Central City Core, Frame, Large Format Retail, Innovation, Retail and South Frame Pedestrian Precincts Planning Map</i>¹ in the operative Plan as shown in the snip below.</p>  <p>The area outlined in blue is the 'Health Precinct' in the block of St Asaph Street, Hagley Avenue, Cambridge Terrace and Montreal Street.</p>

¹ https://districtplan.ccc.govt.nz/linkedcontent/planningmaps/PlanningMaps_CC.pdf

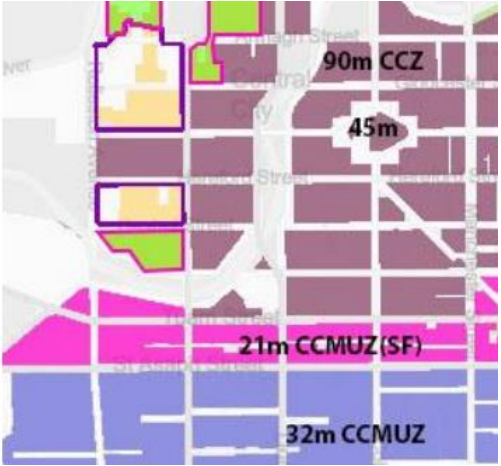
#	Key Theme	Chapter/ Provision	Previous Minute (s)	Panel Recommendation Part #	Matter for Panel clarification
					<p>The blocks highlighted in green and orange are the areas subject to this matter for the Panel's clarification.</p> <p>In the operative Plan, the area in green has a height limit of 28m and the area in orange has a 30m height limit. Therefore, a building height limit of 21m for these areas, if the broad CCMU(SF) zone height limit recommendation is applied, would be less enabling than the operative Plan.</p> <p>The remaining unhighlighted block within the blue area has a height limit of 17m in the operative Plan, and the Council does not have concerns regarding the recommended CCMU(SF) height limit of 21m.</p> <p>These areas were shown in the notified Central City Building Height Map with height limits as noted below.</p> <p>Purple being the 90m height overlay, yellow being the 32m overlay, and pink being the 21m overlay.</p> 

#	Key Theme	Chapter/ Provision	Previous Minute (s)	Panel Recommendation Part #	Matter for Panel clarification
					<p>In the s42A Report of Mr Andrew Willis², no specific reference is made to the recommended building height limit for the Health Precinct area. Mr. Willis does show the PC14 notified Central City Maximum Building Height Planning Map³ as Appendix C of his evidence which shows the correct overlay for this area and the 90m height limit.</p> <p>The evidence of Ms. Nicola Williams⁴ also remains silent on the specific building height for the Health Precinct area. However, she includes a map of the Central City at page 2. This map shows the zoning for the area as CCMU(SF) but does not show a 'spot height' for this specific area.</p>

² <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/02-Andrew-Willis-Section-42A-Report-final.PDF>

³ https://www.ccc.govt.nz/assets/Documents/The-Council/Plans-Strategies-Policies-Bylaws/Plans/district-plan/Proposed-changes/2023/PC14/Maps/PC14_CCBuildingHeights_2023.pdf

⁴ <https://chch2023.ihp.govt.nz/assets/Council-Evidence-11-August-2023/58-Nicola-Williams-Statement-of-Evidence-final.PDF>

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					 <p>The Council position is that the 90m building height overlay shown in the notified Central City Building Height Map is correct. No submissions on the building height for the Health Precinct or for sites within this specific area were received.</p> <p>As the Panel recommended no height limit for the 90m building height overlay area, Council understands that the part of the Health Precinct area subject to the 90m notified overlay should now have no building height limit, whilst the other parts of the Health Precinct would retain their 32m and 21m building height limits as shown in the notified Central City Building Height Map.</p> <p>The Council position is that all other rules for the CCMU(SF) area would apply, including a 17m building base height. No changes would be needed to the rule framework, only an update</p>

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					<p>to include the height for these specific areas on the Central City Building Heights Planning Map.</p> <p>Can the Panel please clarify its recommendations on this matter?</p> <p>Further to the above, it is noted that at Part 3, paragraph [290] the Panel recommended consequential changes to Rules 15.12.1.3 RD2 and 15.12.1.3 RD5, for consistency reasons, to provide that buildings up to 17m in height are permitted. However, these rule references relate to the Central City Mixed Use Zone where buildings up to 17m are already provided for as permitted activities.</p> <p>Did the Panel mean for these rules to be those at 15.13.1.3 RD2 and 15.13.1.3 RD5 for the Central City Mixed Use Zone (South Frame)?</p> <p>Could the Panel please clarify what was meant by these consequential changes?</p>
4.	Radiocommunication pathways	Chapter 6.13	Minute 52 Minute 55	Part 3, section 3	<p>Council has considered the clarifications provided by the Panel in various minutes regarding this proposed qualifying matter. Council has further received correspondence from the Ministry of Justice regarding this matter, as attached.</p> <p>The letter affirms the serious concerns that the Ministry has, which are shared by the Council, regarding the Panel's recommendations regarding this qualifying matter.</p>

#	Key Theme	Chapter/ Provision	Previous Minute (s)	Panel Recommendation Part #	Matter for Panel clarification
					<p>By reference to the Ministry’s letter, can the Panel please further clarify how it has considered:</p> <ul style="list-style-type: none"> i. the NPS-UD, specifically clause 3.4(2) regarding direction on activity status - i.e. whether enabling greater building heights is likely to lead to larger developments that might infringe on the radiocommunication pathways; ii. likewise the influence of the NPS-UD objectives and policies on the intensification direction recommended for the CCMUZ and South Frame equivalent; iii. Policy 4 of the NPS-UD; iv. the comparable differences between the operative and recommended rule frameworks, specifically regarding building height for the area affected by the proposed qualifying matter v. conversely, the application of matters of discretion to consider effects on emergency communications within the radiocommunication pathway? <p>Both Council and the Ministry remain concerned that the Panel may have misconstrued aspects of the evidence before it regarding this qualifying matter.</p>

APPENDIX 2 – LETTER FROM WYNN WILLIAMS

[Overleaf]

25 October 2024

Attention: Ike Kleynbos

By email to: Ike.Kleynbos@ccc.govt.nz

Dear Ike Kleynbos

Plan Change 14 – Errors and oversights identified with respect to the Panel’s recommendations on the radiocommunication pathways

1. We represent the Ministry of Justice, Te Tāhū o te Ture (**Ministry**) who were a submitter on the Christchurch City Council’s (**Council**) proposed Housing and Business Choice Plan Change (**PC14**). The Ministry’s submission and evidence supported sub-chapter 6.12 of PC14 which related to radiocommunication pathways.
2. On 20 September 2024, the Council sought clarifications from the Independent Hearings Panel for PC14 (**Panel**) in its memorandum of counsel for Christchurch City Council regarding final clarifications sought (**Council’s Memorandum**). The clarifications sought in the Council’s Memorandum included clarifications relating to the radiocommunication pathways.¹
3. On 7 October 2024, the Panel responded to the Council’s Memorandum in Minute 55, including responding to the clarifications in relation to the radiocommunication pathways.²
4. The purpose of this letter is to indicate to the Council officers the issues identified in the Panel’s Recommendations on PC14 related to the approach to qualifying matters, and the radiocommunications pathway that need to be addressed before the Council makes any substantive decision on the relevant provisions. These issues are set out in detail in **Table 1** of this letter.

Background

5. PC14 as notified included sub-chapter 6.12 on radiocommunications pathways. Sub-chapter 6.12 included an objective, a policy and rules, which were supported by tables setting out three radiocommunication pathway protection corridors.
6. The provisions of sub-chapter 6.12 sought to protect radiocommunications pathways from the Christchurch Justice & Emergency Services Precinct (**CJESP**) to three key radiocommunication sites (Cashmere/Victoria Park, Sugarloaf and Mt Pleasant) in Christchurch. These radiocommunication pathways are important for the effective functioning of emergency and day-to-day services provided by the agencies operating from the CJESP.³
7. The section 32 report prepared for PC14 considered the radiocommunication pathways as a qualifying matter (**QM**).⁴ The section 32 report considered the radiocommunications pathway

¹ Memorandum of counsel for Christchurch City Council regarding final clarifications sought dated 20 September 2024, Appendix 3, items 8 and 9.

² Minute 55: Response to Council regarding final clarifications sought dated 7 October 2024, Appendix 2, items 8 and 9.

³ See the sub-chapter 6.12 as notified at 6.12.1 Introduction.

⁴ See discussion of the radiocommunication pathway in Part 2 - Qualifying Matters (District Plan Chapters 6, 8, 9, 13, 14, 18) (Part 2) at [6.21].

QM in detail including setting out an evaluation of different options. The section 32 report author considered that the most appropriate way to achieve the applicable statutory requirements (including giving effect to the objectives of the District Plan and higher order direction) was to implement Policy 3 of the NPS-UD with a QM for radiocommunication pathways.⁵

8. In its submission on PC14, the Ministry supported the provisions in sub-chapter 6.12 (radiocommunication pathway protection corridors) and the associated changes to the definition of height and the Planning Maps as notified.⁶ The submission suggested slight amendments to the notified version of sub-chapter 6.12 to delete references to removed Appendices. The following agencies (collectively, the **Agencies**) also made the same submissions on PC14:
 - (a) Fire and Emergency New Zealand (Submitter 842, in respect of Submission points 842.1-10 only);
 - (b) New Zealand Police (Submitter 2005);
 - (c) Hato Hone St John (Submitter 909); and
 - (d) Canterbury Civil Defence and Emergency Management Group (Submitter 912).
9. These Agencies also operate out of the CJESP.
10. No submissions were received in opposition to the provisions. Nor were any further submissions lodged in opposition to the Agencies' submissions on these provisions.
11. As part of the hearing process for PC14, the Ministry (supported by the Agencies) provided legal submissions to the Panel,⁷ as well as evidence from Ms Fiona Small (planning)⁸ and Mr Richard Smart (telecommunications engineering).⁹ Further detail of this evidence, as relevant to the present issues, is discussed in Table 1.
12. Ms Small and Ms Holly Gardiner (author of the s 42A report on Central City provisions) also participated in joint witness conferencing on the radiocommunication pathway protection corridors to identify, discuss, and highlight points of agreement and disagreement on relevant issues.¹⁰ There were no points of disagreement or reservations noted in the joint witness statement prepared by these two witnesses, and the witnesses agreed on changes to be made to the provisions in sub-chapter 6.12.¹¹

Relief sought and reasons

13. Suffice to say that the Ministry remains very concerned that the IHP has not appreciated the impact of the new height limits enabled by PC14 (and the fact that resource consent applications to exceed those limits can be sought as a restricted discretionary activity), with the follow-on direct implications for the radiocommunications network within Christchurch. Given that PC14 directly concerns building height limits (being the very thing that affects the pathways), it seems to be a very anomalous outcome that those pathways cannot be protected.
14. As has been explained previously, it is accepted that the operative District Plan does not provide this protection, but in the context of an operative height limit of 17m, it is

⁵ Part 2 - Qualifying Matters (District Plan Chapters 6, 8, 9, 13, 14, 18) (Part 2), Table 28 at 145.

⁶ Submission on Plan Change 14 to the Christchurch District Plan – Business and Housing Choice Plan Change on behalf of the Ministry of Justice dated 1 May 2023 at [5].

⁷ Legal Submissions on behalf of the Ministry of Justice (Submitter 910) dated 18 October 2023.

⁸ Evidence of Fiona Small on behalf of the Agencies dated 19 September 2023.

⁹ Evidence of Richard Gary Smart on behalf of the Agencies dated 19 September 2023.

¹⁰ Joint Witness Conferencing Statement of Planners on Radiocommunication Pathway Protection Corridors dated 14 November 2023.

¹¹ Joint Witness Conferencing Statement of Planners on Radiocommunication Pathway Protection Corridors dated 14 November 2023, Annexure B.

understandable, given that it was never anticipated in the earthquake recovery context, the building heights would actually risk intruding into the pathways.

15. It was inconceivable that status quo development rights would have enabled building of a 28m plus building encroaching on the pathway. The whole premise of PC14 is to increase intensification as part of the Policy 3 response.
16. Whilst the now recommended height limits only directly intercept the pathway on one site, parties will be able to seek resource consent for height rule breaches which put new buildings in conflict with the pathway. The suggestion at paragraph 163 of the Part 3 Recommendations, that it is not clear in a real-world sense that development enabled by the response to Policy 3 would breach the pathway, completely overlooked:
 - (a) sites where the pathway sits at 32m (and therefore will be impacted by the plan enabled height limits); and
 - (b) the fact that resource consent can be sought to breach the height limits and would need to be considered under the more enabling PC14 framework. The relief sought in this regard is akin to the relief which is a control of intensification which the panel has accepted as being within scope of recommendations.¹²
17. In particular, on the basis of the errors and oversights set out in Table 1, we disagree with, and are concerned about the lawfulness of, the Panel's recommendation that the radiocommunication pathway QM be deleted from PC14 for the following reasons:
 - (a) The Panel wrongly considered that the radiocommunication pathway QM would not "bite" under PC14.
 - (b) The Panel wrongly considers that the radiocommunications pathway QM affects status quo development rights under the Operative District Plan.
 - (c) The Panel has failed to consistently apply the principles from *Waikanae* to QM within its recommendations on PC14.
 - (d) The Panel has acknowledged the merit of the radiocommunications pathway QM.
18. The protection of radiocommunication pathways is of significance to the CJESP, the Council, and Christchurch as a whole. On that basis and in light of the errors and oversights of the Panel, we consider that protection of the radiocommunications pathways should be included in PC14. The Council should consider all options in deciding how to include this protection, however, given the agreement reached between the Ministry and the Council in the joint witness conferencing, we suggest that the provisions in sub-chapter 6.12 as agreed in that conferencing remain the appropriate starting point.
19. We are happy to discuss the contents of this letter further if that would assist.

Yours faithfully
Wynn Williams



Lucy de Latour
Partner

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¹² Recommendations Report: Part 1 - Introduction, Legislative Requirements and Scope Issues, General Themes and Submissions at [210].

Appendix

Table 1: Clarifications sought

	Submitter's position	Council's position	Panel's recommendation	Clarification sought by Council	Clarification provided in Minute 55	The error / oversight
Radio-communications pathways provisions	<p>Ms Small gave evidence for the Ministry that clarified the height limits set out in the radiocommunication pathway QM. Ms Small clarified that the height limits were set out in metres above mean sea level rather than existing ground level.¹</p> <p>In her evidence, Ms Small sets out what the radiocommunication pathway QM height limits would be when converted to height above</p>	<p>Mr Willis, s 42A author for the Council, supported the radiocommunication pathway QM.³</p> <p>Beyond this, no specific mention was made of this element of the QM.</p>	<p>The Panel recommended that the radiocommunication pathway QM be deleted.⁴</p> <p>The Panel stated that “new buildings, additions or alterations which have a building height of between 40 – 79m (the height varies depending on site location and distance from the Justice and Emergency Precinct) is a non-complying activity.”⁵</p>	<p>The Council sought clarification in relation to the Panel's consideration of the height limits proposed by the radiocommunication pathway QM.</p> <p>The Council sought to clarify the Panel's understanding of the height limits in terms of where they were measured from i.e. above mean sea level vs above ground level (specifically</p>	<p>The Panel recorded their specific discussion with counsel for the Agencies during the hearing, and that they understood that “the Radiocommunications rules wouldn't bite under PC 14”. The Panel considered that “the provisions were being requested out of convenience as this was a matter that had been the subject of a proposed plan change (PC 15)”.</p>	<p>The radiocommunication pathway rules would “bite” under PC14 for the following reasons.</p> <p>The radiocommunication pathway height limits could be intruded at one site in the CCMU (where the height limit recommended by the Panel is 32m, and the radiocommunication pathway height limit is 32m).</p> <p>Further, the radiocommunication pathway QM will allow radiocommunications to be considered in resource consent applications for heights to exceed those in PC14. PC14 as recommended by the Panel provides for breaches of the height limits in the relevant zones as a restricted discretionary activity. None of the matters of discretion would enable effects on the radiocommunication</p>

¹ Evidence of Fiona Small on behalf of the Agencies dated 19 September 2023 at [30].

³ Statement of primary evidence of Andrew Peter Hewland Willis on behalf of Christchurch City Council dated 11 August 2023 at [12].

⁴ Recommendations Report: Part 3 – Central City, Commercial, Mixed Use and Industrial Zones dated 29 July 2024 at [155] and [164].

⁵ Recommendations Report: Part 3 – Central City, Commercial, Mixed Use and Industrial Zones dated 29 July 2024 at [158].

	<p>existing ground levels.² A table comparing the notified height limits, with the pathway, and recommendations is set out below in Table 2 (as taken from evidence).</p>		<p>“In accordance with our findings in Part 1 at [210], and in light of the High Court findings in <i>Waikanae</i>, we find that despite the obvious merit of including provisions in the plan to identify the pathway, this is not a matter we can accommodate via an IPI, in this way, that is because it affects status quo development rights. To the extent that it may be able to be accommodated without affecting such rights is moot because it is not clear that in a real world sense a development enabled in response to Policy 3(a), (c)ii) or (d) would breach the radio communication signal plan in any event.”⁶</p>	<p>in relation the quote on the previous column). The Council noted that as a building within the Central City Mixed Use Zone could breach the enabled building height in the zone, any height restriction must be justified as a qualifying matter under Policy 4 of the National Policy Statement on Urban Development.⁷</p>	<p>The Panel referred the Council to the recording for the morning session 1 on Thursday 26 October 2023 ~ 20mins onwards.⁸</p>	<p>pathways to be considered. Given the more enabling framework under PC14 to increased heights in general (for example, noting the Policy changes), providing for breaches of the height limit within the radiocommunication pathway QM as discretionary or non-complying would allow the pathway to be considered and, in this way, mean the rules “bite” under PC14.</p>
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² Evidence of Fiona Small on behalf of the Agencies dated 19 September 2023 at [33]-[34] and Figure 1.

⁶ Recommendations Report: Part 3 – Central City, Commercial, Mixed Use and Industrial Zones dated 29 July 2024 at [163].

⁷ Memorandum of counsel for Christchurch City Council regarding final clarifications sought dated 20 September 2024, Appendix 3, item 8.

⁸ Minute 55: Response to Council regarding final clarifications sought dated 7 October 2024, Appendix 2, item 8.

<p>Qualifying matter jurisdictional issue</p>	<p>The Ministry adopted the position of the Council in relation to the <i>Waikanae</i> decision (set out in the next column).⁹ The Ministry considered that if the Panel did wish to apply <i>Waikanae</i>, the decision did not prevent the radiocommunication pathway QM from being included in the scope of an IPI because the proposed height limits were not less enabling or more restrictive than the status quo (see Appendix A of the submissions for a table comparison of height limits).¹⁰</p> <p>The Ministry's position was that</p>	<p>The Council's position on the <i>Waikanae</i> decision was that the Environment Court took a very narrow reading of s 80E in that case, that QMs that amend the status quo can and do fall for consideration under s 80E (including where existing development rights are constrained) and that the panel is not bound by the Environment Court decision.¹²</p> <p>The Council noted that the s 41A report authors would identify any PC14 provisions or submission</p>	<p>The Panel's general position on scope of issues relating to qualifying matters was that "To the extent that QMs <u>proposed by submitters</u> give rise to <i>Waikanae</i> issues, those aspects are out of scope (as not being 'on' the plan change, because that relief does not fall between the status quo and that notified)."¹⁴</p> <p>The Panel found that, in light of that general position and the decision in <i>Waikanae</i>, and despite the merits of including the QM, it could not be accommodated in the IPI because it affects status quo development rights.¹⁵</p>	<p>The Council noted that the Panel had stated that the Panel had not simply extrapolated the factual circumstances in <i>Waikanae</i> and had instead applied the Act to the issues before it.</p> <p>The Council queried the Panel's consideration that the radiocommunication pathway QM constrained activity permitted by the District Plan, as the QM is no more restrictive than the status quo.</p> <p>The Council requested that the</p>	<p>The Panel understood that counsel for the Agencies had conceded that providing for the radiocommunication pathway was not a QM (as it did not restrict heights proposed by PC14 as notified, or indeed as recommended by the Panel), however, Counsel for the Agencies argued it was a related provision.</p> <p>The Panel did not find that the Radio Communications Pathway provisions were related to the Policy 3 height enablements.</p> <p>The Panel referred back to the Recommendation</p>	<p>We also refute any suggestion that there was a concession that providing for the radiocommunication pathway was not a QM during the hearing. We maintain that the radiocommunication pathway is a related or consequential matter as a "fallback" position, but this is not the primary position.</p> <p>It is noted that the radiocommunication pathway QM height limits (starting from 28-30m) would have intruded the height limit in the Central City Mixed Use Zone (South Frame) as notified in PC14 (32m).</p> <p>As set out in the Submitter's position column, the Ministry maintains that the radiocommunication pathway QM is not more restrictive than the status quo under the Operative District Plan (other than potentially in relation to it imposing non-complying activity status, noting our comments below).</p> <p>The Ministry agrees with the Council's comments that the Panel has taken two very different approaches to applying the principles</p>

⁹ Legal Submissions on behalf of the Ministry of Justice (Submitter 910) dated 18 October 2023 at [22].

¹⁰ Legal Submissions on behalf of the Ministry of Justice (Submitter 910) dated 18 October 2023 at [18]-[24].

¹² Opening Legal Submissions for Christchurch City Council – Strategic Overview Hearing dated 3 October 2023 at [2.64].

¹⁴ Recommendations Report: Part 1 - Introduction, Legislative Requirements and Scope Issues, General Themes and Submissions at [210].

¹⁵ Recommendations Report: Part 3 – Central City, Commercial, Mixed Use and Industrial Zones dated 29 July 2024 at [163].

	<p>the provisions in sub-chapter 6.12 were within the scope of an intensification planning instrument (IPI) (and PC14) as they are "related provisions" that "support or are consequential on" the Council's obligations to give effect to Policies 3 and 4 of the NPS-UD.¹¹</p>	<p>requests that they considered had the potential to be impacted by <i>Waikanae</i>.¹³ The provisions in sub-chapter 6.12 were not identified by Ms Oliver or Mr Willis (s 42A report authors who dealt with the radiocommunication pathway QM).</p>	<p>Further, the Panel considered that it was "not clear that in a real-world sense a development enabled in response to Policy 3(a), (c)(ii) or (d) would breach the radio communication signal plane in any event."¹⁶</p> <p>However, the Panel also accepted in the table at [210] that "additional controls on intensification (as consequential provisions) were within the scope of an IPI.</p>	<p>Panel clarify how it has applied the Resource Management Act 1991 to the proposed radiocommunication pathways QM and detail any changes required to its recommendations.¹⁷</p>	<p>Report where the Panel stated that provisions cannot be part of the intensification streamlined planning process unless they are related to and are supportive and consequential to the mandatory requirements of an IPI.¹⁸</p>	<p>from <i>Waikanae</i>.¹⁹ For example, the Ministry notes the inconsistent application of <i>Waikanae</i> to the radiocommunication QM compared to the coastal hazards QM. In relation to the coastal hazards QM, the Panel recommended that the activity status of subdivision and "residential intensification" be elevated to non-complying, from restricted discretionary or discretionary in the Operative District Plan. The radiocommunication pathway QM involves a similar activity status change from discretionary (in the Operative District Plan) to non-complying.</p> <p>Both QM do not alter status quo permitted activities, but rather propose more stringent activity statuses in response to the QM. There is no clear reason why the Panel supported the coastal hazards QM but rejected the radiocommunication pathway QM on the basis of <i>Waikanae</i>.</p> <p>The radiocommunications pathway (and its need) are directly related to</p>
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¹¹ Legal Submissions on behalf of the Ministry of Justice (Submitter 910) dated 18 October 2023 at [17].

¹³ Opening Legal Submissions for Christchurch City Council – Strategic Overview Hearing dated 3 October 2023 at [2.76].

¹⁶ Recommendations Report: Part 3 – Central City, Commercial, Mixed Use and Industrial Zones dated 29 July 2024 at [163].

¹⁷ Memorandum of counsel for Christchurch City Council regarding final clarifications sought dated 20 September 2024, Appendix 3, item 9.

¹⁸ Minute 55: Response to Council regarding final clarifications sought dated 7 October 2024, Appendix 2, item 9.

¹⁹ Memorandum of counsel for Christchurch City Council regarding further clarifications sought dated 19 August 2024 at [28]. See [37a] for a discussion of the Panel's application of *Waikanae* in relation to the radiocommunication pathway QM.

						<p>the increased height limits enabled by PC14 (albeit that in many instances, the pathway would only be considered in the context of resource consent applications made to exceed the height limit).</p> <p>The Ministry is concerned that the IHP's approach does not properly take into account the impact of increased heights on this regionally significant infrastructure and has failed to take into account all relevant considerations and/or is taking an inconsistent position on the application of qualifying matters.</p>
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Table 2: Height limits affected by radio communications quaifying matter

	ODP height limit	PC14 notified height limit	Radio communications heights (from actual ground level at lowest point)²⁰	IHP recommended height limits
CCMU (South Frame)	17m	32m	28m-32m	21m
CCMU	17m	32m	32m-40m	32m

²⁰ See Evidence of Fiona Small on behalf of the Agencies dated 19 September 2023, Figure 1 (noting the height limits in sup-chapter 6.12 are stated in metres above mean sea level instead).