

**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  
RESPONDING TO PRELIMINARY ISSUES RAISED BY  
MR DAVID TOWNSHEND (SUBMITTER #599)**

4 September 2023

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**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:**

1. This memorandum of counsel for Christchurch City Council (the **Council**) responds to Minute 7 of the Panel, in which the Panel invited the Council's comment on two preliminary matters raised by Mr David Townshend, submitter #599, by way of two emails sent on 25 August 2023.
2. Counsel understand that Mr Townshend wishes the Panel to make preliminary directions in respect of the points he has raised.
3. Both points relate to the Sunlight Access Qualifying Matter (**QM**) provided for in Plan Change 14 (**PC14**), and can be summarised as follows:
  - (a) assertions relating to the section 42A report of Mr Ike Kleynbos, which evaluates submissions on the Sunlight Access QM (among other matters), including as to his impartiality and the way in which he discusses *pro forma* submissions seeking removal of the QM; and
  - (b) a request that the Council release legal advice it has received regarding the Sunlight Access QM.
4. These matters are addressed in turn below.

### **Section 42A report of Mr Kleynbos**

5. There are two initial points that may assist Mr Townshend's understanding of Mr Kleynbos' section 42A report and planning processes under the Resource Management Act 1991.
6. The first is that the section 42A reports prepared on behalf of the Council are part of a wider suite of information to be considered by the Panel, which also includes other expert evidence, lay evidence, representations of submitters, and legal argument, through the PC14 hearing process. While section 42A reports are typically prepared by experts (in this case, planners) acting in accordance with the Environment Court's code of conduct for expert witnesses,<sup>1</sup> which includes an overriding duty to assist the Panel impartially on matters within the expert's area of expertise, the reports do not bind the Panel or have any particular weight or status in the process.
7. As Mr Kleynbos' report records, at paragraph 2.1.20:

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<sup>1</sup> Set out in the Court's 2023 practice note.

*The discussion and recommendations included in this report are intended to assist the IHP and submitters on PC14. Any conclusion and recommendations made in this report are my own and are not binding upon the IHP or the Council in any way. The IHP may choose to accept or reject any of the conclusions and recommendations in this report and may come to different conclusions and make different recommendations, based on the information and evidence provided to them by persons during the hearing.*

8. This is relevant because, to the extent that Mr Townshend disagrees with the content of any section 42A report (or any other evidence filed for the Council or another submitter), he is able to address those matters in any evidence and/or representation he provides to the Panel as part of the process. The Panel of course may ask questions of Mr Townshend and any relevant witness about those matters too.
9. Second, it is entirely orthodox for planners who were involved in preparing a plan change (including by examining the appropriateness of the provisions put forward, in terms of section 32 of the RMA) then to prepare a section 42A report that considers whether changes requested by submitters have merit. Central to the expert discipline of planning are the skills and judgement necessary to develop policy in an iterative way to factor in new evidence, and expert planners are well qualified to consider such evidence and advise on planning matters impartially.
10. As such, no issue arises as to Mr Kleynbos' ability to comment impartially on submissions relating to the Sunlight Access QM.
11. In summary, the concerns expressed by Mr Townshend regarding the content of Mr Kleynbos' report are not matters that need to or should be addressed by the Panel on a preliminary basis, but instead can and should be the subject of evidence and questioning through the PC14 process. The Council therefore respectfully asks the Panel not to make any of the directions sought by Mr Townshend regarding the section 42A report of Mr Kleynbos, as they are unnecessary.
12. For the record, counsel consider none of the criticisms made of Mr Kleynbos' report to have any merit, including because:
  - (a) the report contains a full explanation of Mr Kleynbos' role in PC14, in section 2; and

- (b) the characterisation of submissions as "*pro forma or similar*", as well as being accurate, was clearly done for administrative purposes and to assist in the readability of the section 42A report, rather than influencing the analysis of such submissions in the report.

**Request for disclosure of legal advice**

13. Mr Townshend has previously asked the Council directly, on 24 February and 1 March 2023, to disclose the relevant legal advice and associated instructions, under the Local Government Official Information and Meetings Act 1987 (**LGOIMA**). The Council chose to withhold the legal advice and associated brief, pursuant to section 7(2)(g) of LGOIMA, on the basis that they are subject to legal professional privilege (which privilege has not been waived). The Council's decisions were upheld by the Chief Ombudsman on review.<sup>2</sup>
14. In those circumstances, with respect, the Panel has no power to direct the Council to disclose legally privileged information.
15. Stepping back, counsel understand Mr Townshend to take issue with the legal basis on which PC14 includes the Sunlight Access QM. The Council's position on that matter is summarised in the section 32 and section 42A reporting; again, that is an issue that the Panel is able to consider and test through evidence and legal argument during the hearing process.
16. For the above reasons, the Council asks the Panel to decline to make the directions sought by Mr Townshend.

Date: 4 September 2023



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

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<sup>2</sup> By decision dated 1 June 2023; this can be made available to the Panel if necessary.