

**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 IN  
RESPONSE TO MINUTE 31 OF THE PANEL**

5 January 2024

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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:**

### **Introduction**

1. This memorandum of counsel for Christchurch City Council (**Council**) responds to Minute 31 of the Panel, in which the Council was invited to comment on legal advice received by the Independent Hearings Panel (**Panel**) from Brookfields regarding whether the Panel has the power to adjourn or suspend the Plan Change 14 (**PC14**) hearings.
2. This memorandum:
  - (a) reports briefly on the steps taken to serve Minute 31 and counsel's memorandum of 22 December 2023 (which contained the Council's request for an adjournment) on submitters;
  - (b) explains why counsel respectfully disagree with Brookfields' view that the Panel is unable to "*suspend or delay*" its hearing, insofar as that view may apply to the Council's request that the Panel reschedule the remaining hearing days;
  - (c) comments on assumptions that appear to underpin Brookfields' advice, including that an indefinite or lengthy delay is sought, and that rescheduling the remaining hearing days to later dates might lead to PC14 coming into effect later than "*as soon as practicable*"; and
  - (d) reiterates the Council's request that the Panel reschedule the remaining PC14 hearing days pending further direction from the Minister for the Environment.

### **Service of Minute 31 and Council request**

3. In accordance with paragraph [10] of Minute 31, counsel confirm that:
  - (a) their memorandum of 22 December 2023 and Minute 31 were duly served on all submitters by 5pm on 28 December 2023; and
  - (b) the Council followed up individually with submitters and further submitters who are scheduled to be heard in weeks 9 and 10. This consisted of a separate email requesting confirmation of receipt and, where receipt was not confirmed, subsequent emails and phone calls to advise them of the adjournment request, the opportunity to comment, and the urgent consideration by the Panel.

## The Panel has the power to adjourn the hearing

4. Counsel are grateful for the opportunity to read and comment on Brookfields' advice dated 13 November 2023, which was prepared in somewhat different circumstances to the present, including that it preceded:
  - (a) the Council's request that the remaining hearing days be rescheduled; and
  - (b) the new Government's advice that within its first 100 days in office it intends to *"Begin work to enable more houses to be built, by implementing the Going for Housing Growth policy and making the Medium Density Residential Standards optional for councils"*.<sup>1</sup>
5. As an initial point, counsel respectfully disagree with Brookfields that the Panel does not hold the powers set out in section 37 of the Resource Management Act 1991 (**RMA**) to waive requirements or extend time periods. While section 37 is not specifically listed among the powers given to an independent hearings panel considering an intensification planning instrument by clause 98 of schedule 1 to the RMA, clause 98 does not preclude the Panel being given additional powers (noting that the definition of *"necessary functions"* in clause 96 is framed broadly). In this case, the Council's delegations register records that hearing panels holding a delegation from the Council (such as the Panel) may exercise powers under section 37.
6. Counsel accept, however, that the Panel's powers under section 37 likely do not enable it to extend the statutory deadline by which the Council must complete the PC14 process (which is currently 12 September 2024); section 80N requires this.
7. However, this point is moot because granting the Council's request would not engage section 37 in any way. That is because rescheduling the remaining hearing days (while still allowing for the Council to make decisions on PC14 by 12 September 2024) would not involve any *"[extension of] a time period specified in this Act or in regulations"* or any *"[waiver of] a failure to comply with a requirement under this Act"*.

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<sup>1</sup>

[https://assets.nationbuilder.com/nationalparty/pages/18468/attachments/original/1701229692/100\\_Day\\_Plan.pdf?1701229692](https://assets.nationbuilder.com/nationalparty/pages/18468/attachments/original/1701229692/100_Day_Plan.pdf?1701229692)

8. Rather, the Council simply asks that the Panel hold the remaining hearing days on later dates than currently scheduled.
9. The power to set hearing dates, and to amend them if necessary or expedient, is fundamental to the ability of delegated hearings commissioners to conduct hearings under the RMA.
10. In this case the Panel was established to conduct a hearing of the submissions on PC14 and delegated all necessary functions to do so, in accordance with clause 96 of schedule 1 to the RMA (which include the powers expressly given under clause 98). That delegation was made under section 34A of the RMA, and the Panel holds all relevant powers delegated to a "*hearing panel*" as set out in the Council's delegations register.
11. In counsel's view, an appointment to "*conduct a hearing*" (which is the term used in both clause 96 of schedule 1 and section 39 of the RMA (by reference to section 34A)) clearly – albeit implicitly – authorises appointees to hold the hearing on appropriate dates, including to reschedule hearing days as appropriate.
12. This view accords with the standard practice, observed throughout New Zealand, of councils and delegated hearings panels / commissioners exercising duties under the RMA. It also accords with the practice of the independent hearings panel considering Auckland's intensification planning instrument (Plan Change 78), which suspended and rescheduled hearings as part of its process (albeit once advised of the Minister's agreement to allow additional time for that process to be completed).<sup>2</sup>
13. In the Christchurch context, this Panel exercised the relevant power in scheduling the hearing originally and remains able to do so in conducting the balance of the hearing.
14. Brookfields accept, at paragraph 13 of their advice, that the Panel has the power to accommodate certain matters such as illness, "*as part of its day-to-day functions*". Brookfields consider this ability falls under the Panel's powers to conduct hearings set out in clause 98. Counsel share the view that the Panel has the power to change hearing dates but do not consider that power to be confined to circumstances of illness (or other similar matters

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<sup>2</sup> See for example its directions of 19 May 2023: <https://www.aucklandcouncil.govt.nz/have-your-say/hearings/types-of-hearings/npsud-independent-hearings/LegalGuidelinesAndProcedure/npsud-pc78-dir-2023-05-19.pdf>

not specified by Brookfields). Clause 98 does not provide any such limitation, and nor does any other provision in the RMA (noting that there are no express powers in the RMA for local authorities or their delegates to schedule or reschedule hearing dates).

**The requested rescheduling is relatively brief and will not delay implementation of PC14**

15. Brookfields note that clause 4.1 of the National Policy Statement on Urban Development 2020 (**NPS-UD**) requires the Council to *"amend its (...) district plan to give effect to the provisions of this National Policy Statement as soon as practicable"*.
16. Given that this generic provision is specifically qualified in respect of policies 3 and 4 of the NPS-UD (by a two-year requirement, since extended for the Council), Brookfields express the view that the Panel must make its recommendations on PC14 *"within sufficient time for the Council to meet the NPS-UD deadline in September 2024"*.
17. Counsel agree, but note again that Brookfields' advice predated the Council's request for an adjournment, so did not have the benefit of Council's advice, set out at paragraph 13 of counsel's memorandum of 22 December 2023, that the contingencies built into the PC14 timetable mean that the Panel can deliver its recommendations later than 30 April 2024 – such as by the end of May or even into June<sup>3</sup> – and the Council could still complete the process by 12 September 2024. The Council highlighted these contingencies to the previous Minister for the Environment in a letter dated 7 June 2023, when requesting additional time (to 12 September 2024) for the Council to complete the PC14 process.
18. Brookfields' advice also appears to be premised on an assumption that a delay would be *"for a lengthy period"*,<sup>4</sup> which is not what the Council now seeks.
19. As such, the *"delays by the IHP"* noted at paragraph 15 of Brookfields' advice would not contravene the Council's obligations under clause 4.1.

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<sup>3</sup> A key variable is the extent of spatial mapping changes required and the timing of that work.

<sup>4</sup> Paragraph 23 of the advice.

20. Counsel also disagree with Brookfields' view (to the extent that it applies to the current circumstances) that a delay would be "*unjustifiable*", for the reasons set out in our memorandum of 22 December 2023.
21. The Council would welcome an opportunity to work through the relevant dates with the Panel, depending on the Panel's availability for rescheduled hearing days. The Council respectfully seeks that the Panel reschedule the remaining hearing days approximately 6 to 8 weeks after the dates on which they are currently scheduled.
22. In any event, it cannot be assumed that PC14 would come into effect any earlier or later than the statutory deadline (currently 12 September 2024), irrespective of when the Panel holds the remaining days of the hearing. Ultimately, it is for Council to determine the timeframe required after receipt of the Panel's recommendations to enable Council to meet the deadline.
23. As such, rescheduling the remaining PC14 hearing days, as requested by the Council, need not offend against clause 4.1 or delay the implementation of PC14.

### **Conclusion**

24. The Council maintains its request for the remaining hearing days to be rescheduled, for the reasons set out in counsel's memorandum of 22 December 2023.
25. The Panel has the power to conduct the balance of the PC14 hearing on the dates it considers appropriate. In the current circumstances, it would accord more with the purpose of the RMA and the interests of all parties for the hearing days in weeks 9 and 10 to be rescheduled for a short time thereafter (such as 6 to 8 weeks later), pending a response by the Minister (anticipated upon the Minister's return in late January or February).

Date: 5 January 2024



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