

IN THE MATTER OF Resource Management Act 1991

AND

IN THE MATTER OF Proposed Plan Change 14 Housing and
Business Choice pursuant to Part 5, subpart
5A and Part 6 of Schedule 1 of the Resource
Management Act 1991

MINUTE 29: HEARING UPDATE

[1] This is the twenty-ninth (29) procedural Minute to be issued by the Independent Hearings Panel (IHP) established by the Christchurch City Council (the Council) to conduct the hearing of submissions on proposed Plan Change 14 Housing and Business Choice (PC 14) notified by the Council and to make recommendations to the Council, after the hearing of submissions is concluded, pursuant to Part 5, subpart 5A and Part 6 of Schedule 1, of the Resource Management Act 1991 (RMA).

[2] The purpose of this Minute is to:

- (a) set out the IHP understanding and approach to the hearing of PC 14 following Council's decision to seek further directions from the Minister for the Environment regarding the continuation of PC 14 hearings in light of the new government's signal of a change of policy direction regarding medium density housing standards; and
- (b) request information from the Council on a number of matters following the conclusion of week 8 matters, to be actioned either as part of the Council's right of reply or earlier; and
- (c) provide a record of various requests by the IHP of submitters, their experts or legal counsel for further information during the hearing and their status.

[3] The matters raised below should not be read as suggesting any preliminary or interim findings on the part of the IHP; the request we are making is intended to assist the IHP in its inquiry.

Understanding the effect of government announcement of agreement to make 'MDRS' optional for Councils.

[4] The IHP acknowledges that at various stages of these proceedings some submitters and a group who did not make a submission requested us to pause hearings on PC 14 in light of the possibility of a change in government and anticipated changes in government policy direction.¹

¹ Waipuna Halswell-Hornby-Riccarton Community Board #902 and Riccarton Bush Kilmarnock Residents' Association #188 and the presentation by Tim Preston in support of #188, although they accepted that adjournment was unlikely at this stage and a letter from the Combined Residents Association responded to in Minute 12.

- [5] The Riccarton Bush Kilmarnock Residents Association who appeared before the IHP in week 5 also created an online petition which also requested that PC 14 be paused.²
- [6] The IHP sought independent legal advice as to our powers pending clarification of the incoming coalition governments intentions. The outcome of that advice is that we do not possess the powers to suspend hearings and must therefore continue to work towards meeting the existing legislative requirements and associated Ministerial direction, until such time as we receive specific directions to do otherwise in the event of any changes to the legislative framework.
- [7] We have now received a memorandum from Counsel for the Council³ advising that the Council has resolved to request that the Minister for the Environment give urgency to issue a Gazette Notice under section 80M of the Resource Management Act 1991 requiring that the PC 14 hearing not recommence until after a date set by the Minister, and extending the 12 September 2024 date by which the Council must make a decision on the Independent Hearing Panel recommendations. The Council has said it will keep the Panel and submitters updated regarding the request and the Minister's Response.
- [8] The Council has advised that in the meantime it will continue to work on PC 14 in accordance with the Panel's directions.
- [9] The IHP remains unclear as to whether the government's intention to amend the mandatory requirements of the Medium Density Residential Standards to make them optional for Councils is intended to also include the policy direction in the National Policy Statement on Urban Development 2020 (NPS-UD); namely policies 3 and 4. We do not know whether those changes will take the form of legislative amendment or further direction to Councils or directly to the IHP from the Minister. Nor do we know whether and at what point the Council would exercise a discretion if offered and what flow on implications that has on PC 14 as notified or to the hearing of submissions received and the IHP process generally.

² [Petition Save Riccarton - Pause Plan Change 14 Change.org](#). We note the introductory narrative which describes the rationale for the call to pause PC 14 does not accurately reflect the current circumstances by suggesting the Council has changed the Plan Change to increase heights without notification. The petition does not explain that the increase in height from that notified is a recommendation from Council staff arising from their consideration of submissions on the notified plan change; a recommendation which the IHP may or may not accept, having considered all submissions on PC 14. Mr Simons' advised during his presentation that this was an error that had been corrected before the petition went live, however, our reading of the online petition following his presentation is that the error remained and as such we have placed little weight on the petition.

³ Memorandum of Counsel for the Christchurch City Council, 6 December 2023

- [10] We adjourned the hearings on Thursday 30 November 2023 for an eight week period, as originally scheduled, and note that we are scheduled to resume on 30 January to 1 February and then from 13 to 16 February 2024.
- [11] The IHP acknowledges the uncertainty that all participants in PC 14 are currently experiencing and hope that the position can be clarified well before the hearing is scheduled to resume in order to enable fairness and, if necessary, effective preparation time for everyone involved. However, until such time as the IHP receives further directions parties should continue to prepare for the resumed hearings until otherwise advised.
- [12] The IHP has carefully considered what matters, if any, we should continue to progress so that if the Council's request for a pause is not agreed to by the Minister for the Environment, the IHP can be ready to resume as scheduled. We have determined that until we receive clarity regarding the Minister's directions the IHP should pause our preparations for the time being. However, if we have not heard further from the Council by 15 January 2024, the IHP will need to recommence preparations for the resumed hearing if we are to meet the current timeframes.
- [13] As soon as the IHP receives directions from the relevant Minister(s) and/or the Council, we will issue a further Minute with any amended directions.

Clarification of matters from Council

- [14] To assist the Council, if we are required to resume hearings as scheduled in the new year, we record that the IHP would be assisted if Council could, as part of their right of reply include in Table G (Sarah Oliver Strategic overview and mechanics document) updated in Appendix 1 to Council Memorandum of 31 October 2023, the following additional matters:
- (a) Identify any plan provisions proposed in PC 14 as notified, and separately reference any recommended changes in s42A Reports, rebuttal evidence and summaries, of any kind (if any) that have the effect of removing an enablement in the operative district plan or has the effect of making an activity less enabling than it currently is. This includes:
 - (i) any additions or changes to existing plan activity status and built form standards, or definitions that would limit what may be undertaken by way of permitted activity or require higher activity status or additional resource

consent(s) to be obtained over and above that required in the operative district plan;

- (ii) any change in applicable resource consent activity status that could be less enabling than at present (including changes from permitted to controlled; permitted and controlled to restricted discretionary; or permitted, controlled or restricted discretionary to discretionary; or permitted, controlled, restricted discretionary, discretionary to non-complying; and/or
- (iii) any additional reservations of control or matters of discretion that could limit or prevent matters that are not currently within the purview of the Council to reserve, limit or prevent.

[15] Can the Council please also clarify and review the second column of Table G, to ensure that the references to 'existing' are references to qualifying matters in s77I(a) to (i) which are subject to s77K evaluations, and do not refer to a proposed s77I(j) QM, which are required to be assessed under either s77J or s77L. For example, Residential Character Areas which, may be existing Operative District Plan planning constructs, are proposed under s77I(j) which would seem to be correct.

Requests for further information and evaluation from submitter expert witnesses and legal counsel.

[16] During the last eight weeks of hearing, we have requested a number of matters of clarification and further 'homework' from a number of submitters, expert witnesses and legal counsel. We thank submitters for their co-operation in providing for those matters in a timely way. Attached in **Appendix A** to this minute is a list of IHP member requests of submitters, witnesses and of legal counsel and a record of material that we have received so far in response to our requests.

[17] If the hearings resume, as currently scheduled in the new year, the IHP directs those responses be received by the IHP secretariate by Friday 16 February 2024.

[18] We wish to thank Council representatives, and Council staff, and submitters for their assistance with the first eight weeks of IHP hearings and wish you all a safe and restful holiday period.

Dated 14 December 2023

A handwritten signature in black ink, appearing to read 'Cindy Robinson', with a long, sweeping flourish extending to the right.

Cindy Robinson

Chair

for Independent Hearings Panel

Appendix A

IHP requests of submitters – Hearings weeks 1 to 8

| Hearing date | Submitter Number | Submitter | Witness | Request | Received |
|-----------------|------------------|--|--------------------------------|--|------------------|
| 12 October 2023 | #354 | Waimāero Fendalton-Waimairi-Harewood Community Board | Bridget Williams | Community board information and demographics | 1 November 2023 |
| 12 October 2023 | #288 | Waipapa Papanui-Innes-Central Community Board | Emma Norrish | Community Board information and demographics | 30 October 2023 |
| 12 October 2023 | #804 #1077 | Waihoru Spreydon-Cashmere Heathcote Community Borad | Callum Ward/Keir Leslie | Community Board information and demographics | 9 November 2023 |
| 12 October 2023 | #902 #1090 | Waipuna Halswell-Hornby-Riccarton Community Board | Helen Broughton Debbie Mora | Community Board information and demographics | 3 November 2023 |
| 19 October 2023 | #91 #2070 | Glenara Family Trust | David Mountford | Requested discuss with Council and respond to IHP regarding references that may not be correct under the 'restricted discretionary' criteria. | |
| 25 October 2023 | #823 #2044 | Catholic Diocese of Christchurch (appearance related to both Carter Group and Diocese) | Jeremy Phillips | Provide clarification regarding section 77 with regard to rezoning. Related to paragraph 33 of evidence in chief. Undertaking to combine Attachment 2 and 3 by incorporating Attachment 2 as a fourth column in Attachment 3 | |
| 25 October 2023 | #705 #2057 | Foodstuffs South Island Limited and Foodstuffs (South Island) Properties | Alex Booker | Details of Enabling Act reference referred to in presentation | 25 October 2023 |
| 26 October 2023 | #910 #2012 | Ministry of Justice Te Tāhū o te Ture | Fiona Small | That joint witness conferencing take place | 21 November 2023 |

| Hearing date | Submitter Number | Submitter | Witness | Request | Received |
|-----------------|------------------|---|-------------------|---|------------------|
| | | | | regarding radio communication pathways. <i>Request also directed to Council.</i> | |
| 26 October 2023 | #740 | Woolworths New Zealand Limited | Matt Bonis | Provide copy/link to the Auckland IHP zone guidance referred to in evidence | |
| 26 October 2023 | #740 | Woolworths New Zealand Limited | Matt Bonis | Hearing Procedures requirements to provide marked up version of plan change with a S32AA assessment. Requested to provide this based on the updated provisions from Council. Suggestion of table format for this information. | |
| 26 October 2023 | #917 | Belfast Village Limited | Catherine Boulton | Provision of S32AA re request for rezoning of approx. 1 hectare of land sought over 40b John's Road from residential new neighbourhood zone under the ODP. | |
| 31 October 2023 | #2077 | Christchurch Casinos Limited | Anita Collie | Request to provide IHP with any changes that have been made regarding standards that apply to the interface under the ODP compared to standards that apply to the interface under PC 14 | |
| 31 October 2023 | #855 | Lendlease New Zealand Limited | Mark Arbuthnot | Request copies of documents referred to in evidence. Comparison of provisions (MCZ compared to TC provisions) Update to s32AA analysis | 27 November 2023 |
| 7 November 2023 | #61 | Victoria Neighbourhood Association | Geoff Banks | Request clarification of what parts of book "The Blessings of Disaster" may be relevant to PC 14 | 8 November 2023 |
| 8 November 2023 | #188 | Riccarton Bush Kilmarnock Residents Association | Tony Simonds | In response to query requested to resubmit petition summary with updated text from document tabled at hearing | 8 November 2023 |

| Hearing date | Submitter Number | Submitter | Witness | Request | Received |
|------------------|------------------|---|---|---|------------------|
| 8 November 2023 | #699 | Christ's College Canterbury | Catherine Boulton | Regarding figure 3 of Evidence in Chief (HA6 over ODP) request to provide similar extract from PC 14 as a comparative | |
| 8 November 2023 | #699 | Christ's College Canterbury | Catherine Boulton | Request for zoning map from PC14 with the HA's and the SPS is overlaid by the material that is in Figure 4 of the SOE. | |
| 9 November 2023 | #915 | 23 KBR Limited | Patricia Harte | Section 32AA Assessment framework regarding site | 14 November 2023 |
| 14 November 2023 | #762 | New Zealand Institute of Architects Canterbury | Daniel Sullivan (speaking on behalf of Daniel Crooks) | Asked if had considered S42A reports and if Institute's issues have been addressed. Recommended he speak with Council (Mr Kleynbos) regarding any outstanding matters. | |
| 14 November 2023 | # 593 #2009 | Cashmere Park Ltd, Hartward Investment Trust and Robert Brown Cashmere Park Ltd. Hartward Investment Trust and Robert Brown | Sarah Everleigh | Regarding map (Appendix A of Proposed ODP from evidence of Jade McFarlane). Request for simplified map. | |
| | | Cashmere Park Ltd, Hartward Investment Trust and Robert Brown Cashmere Park Ltd. Hartward Investment Trust and Robert Brown | Jade McFarlane – request to Sarah Everleigh | Reference to planning and legal issues, qualification regarding outline development plan. Request for legal and planner to come back to IHP on this matter. | |
| 14 November 2023 | # 593 #2009 | Cashmere Park Ltd. Hartward Investment Trust and Robert Brown | Bryon McGillan – stated by Sarah Everleigh | Noted changes required to the provisions arising from conferencing - matters/water supply, intention to package up as one set of amended provisions and provide that to the IHP. Request to provide analysis against the Objectives and Policies of the CRPS (particularly Policy 6.3.1 and clause). | |

| Hearing date | Submitter Number | Submitter | Witness | Request | Received |
|------------------|--------------------------------|---|--------------------|--|------------------|
| 14 November 2023 | # 593 #2009 | Cashmere Park Ltd. Hartward Investment Trust and Robert Brown | To Sarah Everleigh | Request would be assisted by supplementary submissions: <ul style="list-style-type: none"> - Stepping through us through the NPS for highly productive land, revisit document in entirety regarding clients proposal RUFZ. - Revisit section 32 assessment for proposal (Council appendix reference to requirements amendment Act) - set out how ODP qualifies the MDRS, requirements s77 Amendment Act | |
| 14 November 2023 | #749 #811 #2063 #2064 | Retirement Villages Association of New Zealand Inc and Ryman Healthcare Ltd | Richard Turner | Request a table of retirement provisions in commercial zones | |
| 15 November 2023 | #881 #2068 | Red Spur Ltd | Fiona Aston | Request for factual information tabular format, reference to terms, simple table shows for this site the zoning and overlay for the following: <ul style="list-style-type: none"> - ODP - PC 14 - Client's submission - S42A - Rebuttal situation - Final situation, in terms of preferred relief What zone is and what any overlay applying to that is. | |
| 15 November 2023 | #259 | Department of Corrections Ara Poutama Aotearoa | Maurice Dale | Reference to evidence in chief paragraph 7.16/attachment B. Provide panel with alternative wording from corrections legislation around custodial facilities | 23 November 2023 |
| 15 November 2023 | #763 | Dr Christina Stachurski | | Relating to article in evidence, requested to send through the definition of 'high rise' | 15 November 2023 |

| Hearing date | Submitter Number | Submitter | Witness | Request | Received |
|------------------|------------------|------------------------------------|----------------|--|----------|
| 15 November 2023 | #2059 | Kauri Lodge Rest Home 2008 Limited | Sarah Eveleigh | <p>The law as it relates to QMs, and if Council wants to make something less enabling than status quo. Whether within the scope of matters for IHP/lawful.</p> <p>Request to think about further, provide something specific on this. Further detail to request look at the three scenarios:</p> <ul style="list-style-type: none"> - All in - All out - Something recognises status quo | |
| 15 November 2023 | #2059 | Kauri Lodge Rest Home 2008 Limited | Kim Seaton | <p>Request to report back factually regarding understanding of permitted fencing entitlements along fence boundaries in terms of height and solidity in operative district plan and proposed PC 14 version.</p> <p>Asked to confirm extent fencing permitted, does that extend to gates across the frontage as part of continuous front fence, set back and other controls? Request this information includes coverage to retirement activity and standard residential development and distinguishes between standard dwelling and multi-units.</p> <p>How the plan deals with side yards and rear yards, sections behind front/road boundaries (rear allotments and corner allotments), reference to 1 meter and 3 meter side boundaries.</p> <p>Requested simple tabulation presentation of requested material with any clarification notes.</p> | |

| Hearing date | Submitter Number | Submitter | Witness | Request | Received |
|------------------|------------------|------------------------------|---------------------|--|------------------|
| 15 November 2023 | #243 | Ravensdown Limited | Stephen Christensen | Questions re glazing (technical area). Options available, and a description of each option, activity status. Consider during conferencing between Ravensdown and Council regarding residential industrial interface QM. Would assist if could take place before Christmas | |
| 16 November 2023 | #826 | LMM Investments 2012 Limited | Jo Appleyard | Jurisdiction in the Act for the relief being sought – detail discussed. Request provide answer in writing that sets out reasons and principles. <i>Noted legal counsel's evolving thinking on matter of scope and IHP jurisdiction across clients.</i> | |
| 16 November 2023 | #826 | LMM Investments 2012 Limited | Jo Appleyard | Further to above - provide joint memo on behalf of all clients who have a scope issue (combined advice). Requested to liaise with Mr Hinchey and Counsel for Department of Corrections. Requested by second week December 2023 | |
| 16 November 2023 | #826 | LMM Investments 2012 Limited | Jo Appleyard | Full NPS UD analysis including 3(d) - provide combined advice | |
| 16 November 2023 | #826 | LMM Investments 2012 Limited | Jo Appleyard | Reference in legal submissions paragraph 4, client's position refined (or reduced). Following questioning, undertook to put client's instructions in writing. | |
| 16 November 2023 | #826 | LMM Investments 2012 Limited | Jonathan Cleese | Evidence filed missing Appendix 1 – to provide corrected version to the panel | 16 November 2023 |
| 16 November 2023 | #89 | Andrew Evans | | Suggest discussion with submitter, Council and Institute of Architects and report back to IHP following | |

| Hearing date | Submitter Number | Submitter | Witness | Request | Received |
|------------------|--------------------------------|-------------------------------|----------------------------------|---|---|
| 22 November 2023 | #105 | Te Whare Roimata | Jenny Smith Dr Susan Vallance | Request research studies from students provided to the IHP. Request to provide specific definition of what affordable housing means to submitter. | 4 December 2023 |
| 22 November 2023 | #916 #2073 #903 #2066 | Milns Park Limited/Danne Mora | Gerard Cleary | To put in writing how he sees that the NPSUD tells us to interpret Policy 3 (a) – (d) | |
| 22 November 2023 | #916 #2073 #903 #2066 | Milns Park Limited/Danne Mora | Gerard Cleary | Request to look at objective 6 of NPSUD and what role it plays in decision process being undertaken by IHP and Council. | |
| 29 November | #834 #2082 #2099 | Kainga Ora | Bal Matheson | In response to questioning regarding changes to rules including changes in nature, status of activities or built form standards. Request to provide information to illustrate answers in relation to either the character areas or heritage areas. Illustrating change to status quo under spatial basis and rule basis (existing and new constructs). | Legal submissions filed 4 December 2023 |