

**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

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**MINUTE 32:**

**DECISION ON THE REQUEST BY THE COUNCIL ON 22 DECEMBER 2023 FOR AN  
ADJOURNMENT OF HEARINGS ON PC14 AND FURTHER DIRECTIONS**

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[1] This is the thirty second (32) 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) Advise of the IHP decision to reschedule weeks 9 and 10 of hearings in response to the request from the Council on 22 December 2023 for an adjournment of hearings on PC14 originally scheduled to recommence on 30 January 2023; and
- (b) issue further directions to the Council to assist with the rescheduling of hearings to meet certain requirements of the IHP.

## **Background**

[3] By memorandum of 6 December 2023 counsel for the Council advised that the Council had resolved to request the Minister for the Environment (the Minister) to issue directions under section 80M of the Resource Management Act 1991 to pause the hearings on PC14 considering an anticipated change in government policy on the mandatory requirements of the Medium Density Residential Standards (MDRS).

[4] In our Minute 29 issued on 14 December 2023 the IHP requested that the Council keep the IHP advised of any response from the Minister and referred to legal advice the IHP had received to the effect that we do not have the power to suspend the hearings.

[5] The Council filed a memorandum on 22 December 2023 after the IHP Secretariat office closed for the year. In the memorandum the Council advised that the Minister was unable to respond the Council's request until after 26 January 2024. Considering that delay, the Council has now requested the IHP to exercise discretionary powers to regulate our own procedures to adjourn the hearings which are due to recommence on 30 January 2024.

[6] The Council has also advised that the timeline for the IHP to make its recommendations to the Council already builds in sufficient time for the Council to meet the current legal requirements to make its decisions by 12 September 2024 even if there was to be a delay in the IHP issuing its recommendation to accommodate the requested adjournment. Further the

Council says it could, if necessary, ask the Minister to extend the period for making its decision to accommodate any delay in the IHP recommendations due to adjourning the hearings.

[7] The Council's request has been given urgent attention by the IHP despite the Christmas holiday period and we issued directions by Minute 31 on 28 December 2023 requiring the Council to serve a copy of its memorandum on all submitters, along with our directions in Minute 31. Attached to Minute 31 was a copy of independent legal advice the IHP had previously sought in response to earlier requests of some submitters to suspend the hearings.

[8] The IHP acknowledges that the period for seeking submitter responses has been short and has coincided with the Christmas holiday period. The IHP has considered the Council's request with urgency because, had we waited until after 15 January to consider the Council's request and then allow further time to seek the views of submitters, the reasons for the Council's request would become moot, with week 9 and 10 submitters and council having already undertaken work to meet the existing hearing timetable. In our view, on balance, it was appropriate and fair to allow limited time for submitters to respond to enable the IHP to consider the Council's request and issue a decision on 8 January 2024 in order to provide certainty to the Council and week 9 and 10 submitters.

[9] Despite the timing of the Council's request and inconvenience to some submitters we have been fortunate to receive the considered views of 79 submitters, 16 of whom are opposed to the request for an adjournment and the remaining 63 support the Council's request. A list of all submitters who responded is attached to this Minute, including reference to whether they have already presented at hearings or are yet to be heard. We note that it is not the numbers of submitters for or against the Council's request that we are concerned with, but rather the existence or otherwise of our legal powers to adjourn the hearings and the overall fairness of the request being made.

[10] The Council also filed a further memorandum in response to Minute 31 on 5 January 2024 as directed. The Council's memorandum sets out the steps the Council undertook to serve submitters and to follow up with the week 9 and 10 submitters individually. We are grateful for that assistance given the urgency of the request.

[11] We have carefully considered the responses and comments on the IHP's legal advice regarding the power to suspend the hearings and the merits raised for and against the request by the Council and submitters who responded. We have benefited from various legal submissions made on behalf of some parties, including submitters who are scheduled to be heard in weeks 9 and 10.

[12] We note that the circumstances which lead to the request for an independent legal opinion differed in terms of the current request by the Council. In particular the Council is seeking a short delay in hearings and not their suspension, and further the Council has indicated that they have already built in some flexibility to the time line between receipt of the IHP recommendations and the full Council making their decision on PC 14 before the 12 September 2024 as the law currently requires.

[13] There are two relevant considerations before us:

- (a) Firstly, whether the circumstances of the Council's request are distinguishable from the circumstances of our earlier advice, that we did not possess the power to delay or suspend hearings, and
- (b) Secondly, whether overall fairness dictates that we should exercise our discretion, to approve a short adjournment to allow the Council to receive a decision from the Minister on their request of 6 December 2023, on the grounds that it is appropriate and fair to do so.

#### **Legal powers to consider adjournment.**

[14] We have considered the legal submissions received from the Council<sup>1</sup>, and from a number of submitters who are legally represented.<sup>2</sup>

[15] We acknowledge that the legal counsel for the Council and the IHP legal advice differ in terms of the ability to suspend hearings, however we consider that the current request from the Council differs from the circumstances which were considered in the earlier advice.

[16] Although the Act does not expressly prescribe powers of waiver under section 37 of the Act to the IHP we are satisfied that a short adjournment does not require us to rely on such powers of waiver, provided that the IHP can complete its functions within sufficient time to allow the Council to issue a decision by 12 September 2024. We are satisfied that the Council's request falls to be considered as part of our general discretion to undertake hearings in a manner that is appropriate and fair under section 39(1) and clause 96(4), Schedule 1 of the Act. Our conclusion is however contingent on a process to reschedule the remaining hearing dates, which allow all submitters who had advised they wished to be heard in weeks 9 and 10 of hearings the opportunity to be heard, with adequate notice at a later date, and that

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<sup>1</sup> Memorandum of counsel for the Council dated 3 January 2024

<sup>2</sup> For example, submitters #852,853,854,689,883 and 2102

date ensures the IHP retains ability to complete its deliberations and issue its recommended report in time for the Council to complete its statutory obligations.

[17] In considering when the hearings will be rescheduled, we have made our decision based on the law as it stands today, which requires the Council to reach a decision by 12 September 2024. It is not appropriate in our view to try and anticipate what, if any legislative changes may result from the government's intentions to make "MDRS' optional. As noted in paragraph [9] of Minute 29, it is uncertain as to what that means for the hearings and or the later decisions Council may make. That is a matter for the government to address in due course. For now, we have made our decision on the Council's request for an adjournment with the presumption that the PC 14 process will continue until otherwise directed by the Minister or change to the legislation. We are agreed however, that our powers allow for a brief adjournment and rescheduling of the remaining hearing days as requested in the Council's memorandum of 5 January 2024.

[18] We emphasise that the adjournment requested by the Council has been requested to allow sufficient time for the Council to receive direction from the Minister (expected on 26 January 2024), and presumably to consider the effect of those directions on PC 14. The Council has requested an adjournment of 6-8 weeks from the scheduled hearing dates.<sup>3</sup> Our expectation is that the Council will give urgent attention to the effect of the Minister's response on PC 14 within the period of the adjournment and keep the IHP and submitters informed.

[19] Rescheduling the hearings is not a simple process, and requires an alignment of availability of IHP members, submitters and council representatives and their witnesses. In addition, we will require a venue, and or appropriate technical arrangements to hear submitters via electronic means if necessary.

[20] We do not consider it appropriate for the IHP to 'suspend' or halt hearings without directions for the rescheduling of the hearings, and therefore require the Council to work with submitters who were to be heard in weeks 9 and 10 and the Secretariat to secure dates for a reconvened hearing **between 18 March and 30 April 2024**, as soon as practicable.

### **Overall fairness of adjournment**

[21] As already noted, we acknowledge the timing of the Council's request is unfortunate. We have provided some opportunity for submitters to respond before we decided on the Council's request, particularly considering the fact the Council's request directly impacts on

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<sup>3</sup> Memorandum of Christchurch City Council, 5 January 2024 at [21].

those submitters who would have been preparing for weeks 9 and 10 of the hearings from this coming week.

[22] We acknowledge that for some submitters who are opposed to the adjournment, there is a frustration of further delay being initiated by the Council and some have incurred costs already.

[23] We wish to make it clear that we are an independent hearing panel, and the Council's role as proponent for the plan change, and its request to the Minister for delay is separate from the administration and decision-making functions of this panel.

[24] Our concern is that we are part way through a legal process, which we are required to complete under the law as it stands. It is not for us to second guess what legislative changes may occur in the future. Having said that the Council has now advised that there is some leeway in the timelines, to allow the Council to receive our recommendations and still complete its current legal requirements to decide on PC 14 by 12 September 2024. The IHP had intended to complete its work by 30 April 2024 to allow the Council to comply with the existing Gazetted timeframe.

[25] We are particularly concerned about the effect of the adjournment on submitters who had intended to be heard in week 9 and 10. Of those submitters, we have heard from a number in response to Minute 31.<sup>4</sup> Some of those submitters are agreed to an adjournment, provided the panel can complete its task in sufficient time for the Council to decide by 12 September 2024. Their concern is not to incur unnecessary cost in preparing their cases between now and the start of week 9 and 10, if there is a chance the Minister may issue directions to suspend hearings as requested by the Council on 6 December 2023. A submitter who is opposed to the request and intended to be heard in weeks 9 and 10 is concerned about the costs they have already incurred and express frustration about delays in the process.

[26] On balance, having considered the overall fairness to those submitters to be heard in weeks 9 and 10, the views of submitters who responded and of Council, we accept a short adjournment, contingent on the following directions is appropriate and fair in the circumstances.

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<sup>4</sup> See attached record of responses received.

## **Decision on adjournment and further directions**

[27] The hearings of week 9 and 10, scheduled to commence on 30 January, 1 and 2 February, and 13-15 February 2024 are hereby adjourned to dates to be rescheduled between 18 March and 30 April 2024.

[28] The Council is to confer with the Secretariat and with submitters who are wishing to be heard in weeks 9 and 10 (including submitters who have requested to be heard but have not yet confirmed their attendance in week 9 and 10) regarding the revised hearing schedule, taking into consideration:

- (a) The availability of the hearings panel members and an appropriate venue and technical requirements;
- (b) Availability of submitters, their representatives, and witnesses;
- (c) The hearing procedures, including adequate notice of reconvened hearings;
- (d) A minimum period of 8 weeks post receipt of the Council's right of reply for the IHP to complete its deliberations and recommendation report and deliver the same to the Council in sufficient time for the Council to make a decision on PC 14 by 12 September 2024 (or such later date if amended by further direction of the Minister).

[29] We expect the Council will keep the IHP and all submitters apprised of any further correspondence or directions from the Minister.

Dated 8 January 2024



Cindy Robinson  
Chair  
for Independent Hearings Panel

Submitter #	Submitter Name	Supportive of Adjournment	Neutral	Heard (weeks 1-8)	Scheduled To be Heard Weeks 9/10
500	Hamish West	No		No	
720	Mitchell Coll	No		No	
1050	Defyd Williams - Papanui Heritage Group	No		Yes	
63	Kathleen Crisley	Yes			Yes
469	Beverley Nelson	Yes		No	
199	Luke Cairns/Abigail Cairns	No		No	
697	Katrina Askew	Yes		No	
317	Dr Sandy Bond	Yes		No	
311	Barry Newcombe	Yes		No	
423	Mark Arneil	Yes		No	
462	Mark Hazeldine	Yes		No	
1079	Bruce Harding	Yes		No	
270	Robert A. Harris	No		No	
475	Rachel Sanders	Yes		Yes	
873	David Lawry	No			Yes
315	Denis Morgan	Yes		No	
177	David Lang	Yes		No	
205	Graham Robinson - Addington Neighbourhood Association	Yes		Yes	
1065	Graham Robinson	Yes		Yes	
538	Jaimita de Jongh	Yes		Yes	
108	Charles Etherington	Yes			Yes
2111	Tony Simons	Yes		Yes	
188	Tony Simons – Riccarton Bush-Kilmarnock Residents' Association	Yes		Yes	
237	Marjorie Manthei	Yes		Yes	
390	Mike Singleton	Yes		No	
2006	Stephen Lavery	No		No	
431	Sonia Bell	Yes		No	
425	Tom king	Yes		No	
686	Robyn Thomson	Yes		No	
679 / FS2036	Tony Dale	Yes			
685	Glenn Murdoch – Canterbury/Westland Branch of Architectural Designers NZ	No			Yes
672	Debra August-Jordan	Yes		Yes	
1089/908/FS 2037	Prof. Chris Kissling / Anne Dingwall – Christchurch Civic Trust	Yes		Yes	
417	Jason Bi – Viso NZ Limited	Yes		No	
902/1090/FS2027	Waipuna Halswell Hornby Riccarton Community Board	Yes		Yes	Yes
886	Helen Broughton	Yes		Yes	
772	Robert Braithwaite	Yes		No	



Submitter #	Submitter Name	Supportive of Adjournment	Neutral	Heard (weeks 1-8)	Scheduled To be Heard Weeks 9/10
262	Alfred Lang	No		No	
799	Benjamin Love	No		Yes	
788	Greater Hornby Residents' Association	Yes			Yes
153	Susan Peake	Yes			Yes
246	Robert Black	Yes		No	
272	Catriona Cameron	Yes		No	
834/FS2082/FS2099	Kainga Ora – Homes and Communities		Yes	Yes	Yes
380	Southshore Residents Association	Yes			Yes
139	Peter Ackroyd	Yes		No	
286	Millie Silvester	Yes		No	
1048	Cameron Matthews	No		No	
72	Rosemary Neave	No		No	
486	Brian Reynolds	Yes		No	
200	Robert Manthei	Yes		Yes	
443/FS2022/FS2097	Summerset Group Holdings Limited	Yes			Yes
689/FS2034	Environment Canterbury/Canterbury Regional Council	Yes			Yes
2086	Cheryl Horrell	No		No	
61	Victoria Neighbourhood Association (VNA)	Yes		Yes	
2083	Robert Broughton	Yes		Yes	
1092/FS2042	Cambridge 137 Limited	Yes			Yes
883/FS2050/FS2100	Miles Premises Ltd	Yes			Yes
2102/FS2107	Equus Trust	Yes			Yes
875	Philippa Rutledge	Yes		Yes	
701	Ian McChesney	Yes		No	
758	Tosh Prodanov		Yes	No	
2092	Simon Watts – Brighton Observatory of Environment and Economics	Yes		No	
430	Tracey Berry		Yes	No	
638	Central Riccarton Residents' Association	Yes			Yes
832	Finn Jackson	No		No	
535	Prudence Morrall	Yes		No	
852	Christchurch International Airport Limited (CIAL)	Yes			Yes
853	Lyttelton Port Company Limited (LPC)	Yes			Yes
854	Orion New Zealand Limited (Orion)	Yes			Yes
202	Trevor Wilson	No		Yes	
336	John Walker	No		No	
794	Gregory Partridge	Yes			Yes

<b>Submitter #</b>	<b>Submitter Name</b>	<b>Supportive of Adjournment</b>	<b>Neutral</b>	<b>Heard (weeks 1-8)</b>	<b>Scheduled To be Heard Weeks 9/10</b>
39	Ilam and Upper Riccarton Residents' Association Inc	Yes		Yes	
2066	Danne Mora Ltd	Yes		Yes	Yes
914	David Lovell-Smith Ltd	Yes			Yes
819	Benrogan Estates Ltd	Yes			Yes
728	Sutherland Estates Limited	Yes			Yes
820	Knights Stream Estates Ltd	Yes			Yes