

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 52: RESPONSE TO THIRD COUNCIL REQUEST FOR CLARIFICATION

- [1] This is the fifty second (52) procedural Minute to be issued by the Independent Hearings Panel (the Panel) 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 respond to the Memorandum of Counsel for Christchurch City Council filed at the end of the day on 19 August 2024 (the third memorandum)¹ requesting the Panel clarify how it is has interpreted and applied the High Court decision in *Kāpiti Coast District Council v Waikanae Land Company Limited* [2024] NZHC 1654 (*Waikanae*).²
- [3] Under the RMA, Schedule 1, clause 101(4)(c) the Council may seek clarification from the independent hearings panel on a recommendation in order to assist the specified territorial authority to make a decision.

Council Request

- [4] The Council seeks, in its third memorandum, further clarification to assist in reconciling the Panel's recommendations. In particular, the Council asks the Panel to:³
- (a) advise whether the Council has correctly understood the recommendations in respect of these matters (as summarised in this memorandum);
 - (b) clarify how it has interpreted and applied *Waikanae*, supplementing (to the extent necessary) the analysis of that recommendation in its Recommendation Reports;
 - (c) confirm whether any changes to the Panel's recommendations are necessary; and
 - (d) provide the details of any legal opinion(s) or submission(s) the Panel has relied upon to support its analysis of and approach to *Waikanae*, in addition to those referred to in paragraphs [176] and [178] of Part 1 of its Recommendations Report (**Part 1**).
- [5] In seeking these clarifications, the Council has advised that it is conscious that the Panel⁴:

¹ [Memorandum of Counsel for Christchurch City Council - 19 August 2024 - Regarding further clarifications](#)

² [2024-NZHC-1654.pdf \(courtsfnz.govt.nz\)](#)

³ *Ibid* at 7

⁴ *Ibid* at 8

- (a) has set out its key findings in respect of *Waikanae* in paragraphs [155] to [183] of Part 1 and in paragraphs [59] and [60] of Part 4 of its Recommendations Report (**Part 4**); and
 - (b) has already provided clarifications regarding the redrafting of Chapter 14 of the District Plan in its minute 50, which exercise has brought to light the additional matters on which clarification is now sought.
- [6] Counsel has also advised that it is mindful that the Panel has not invited further legal argument from the Council or submitters in respect of *Waikanae*, for the reasons given at paragraph [158] of Part 1 of the Recommendations Report.

Panel Response

Advise whether the Council has correctly understood the recommendations in respect of these matters (as summarised in this memorandum)

- [7] In respect to Paragraphs 19-27 of the third memorandum the Council has correctly summarised aspects of the Panel's approach to our recommendations, particularly at Paragraph 26. The Panel also refers the Council to Part 1 paragraphs [154] - [183] in full and in particular to [156], [157] and [181].
- [8] However, the Council appears to have interpreted the Panel's three pathway approach which recommends that pathway A retain the 'status quo' in its entirety, as having been arrived at simply by extrapolating the factual circumstances of the High Court decision of *Waikanae*, rather than the Panel's interpretation of s80E of the Act. The Panel has interpreted s80E in light of its text and purpose, and as we interpret the *Waikanae* decisions, so too did the Environment Court and the High Court. We refer the Council to Part 1 of the Recommendations Report at [156]. We have simply applied the law to the facts in front of us.
- [9] In Part 1 and Part 4 of our Recommendations Report, in particular Part 1 [173] and Part 4 [61] – [64], the Panel, recommends the three pathway approach to separate out status quo enablement's entirety, because as we have said, we found ourselves unable to unpack or unpick Chapter 14 to account for the proper interpretation and application of s80E. The Panel landed on the three pathway approach as the simplest and most pragmatic work around given the timing available.

Clarify how it has interpreted and applied *Waikanae*, supplementing (to the extent necessary) the analysis of that recommendation in its Recommendation Reports

[10] The Panel has already set out how it has interpreted and applied s80E and 80G of the Act, including how both the Environment Court and High Court interpreted s80E in *Waikanae* in Part 1 of the Recommendations Report at paragraphs [155] – [183]. The Council appears to be inviting the Panel to reconsider aspects of its interpretation in a way that appears beyond the bounds of a ‘clarification’. We do not consider this is necessary or appropriate, given our reasons were reached having considered the views of a range of submitters, who do not have standing in this ‘clarifications’ aspect of the ISPP process.

Confirm whether any changes to the Panel's recommendations are necessary

[11] It is not clear if the Council’s query relates to the Recommendation Report reasoning or the recommendations themselves. The Panel confirms no changes are necessary to the Recommendations Report reasoning nor in response to the specific ‘recommendations’ referenced in the Council’s third memorandum on the basis of the issues the Council has raised in the third memorandum in paragraph 37. The Council has signalled the prospect of a further memorandum seeking other clarifications. We respectfully request that the Council to collate its remaining questions of clarification and file these in one go, rather than on a piecemeal basis, both in the interests of efficiency and to ensure that the Panel has the opportunity to consider the context of the clarifications being sought.

[12] Once the Panel has received the further memorandum we will consider if any further clarifications or corrections are necessary, as we have done in Minutes 50 and 51.

Provide the details of any legal opinion(s) or submission(s) the Panel has relied upon to support its analysis of and approach to *Waikanae*, in addition to those referred to in paragraphs [176] and [178] of Part 1 of its Recommendations Report (Part 1).

[13] The Panel refers the Council to Part 1 of the Recommendations Report at [154] – [181], in particular to [154], [156] and at [174] and [175] and the associated footnotes. Further all the legal opinion(s) or submission(s) are available on the Panel’s website⁵, and a recording of the hearings is also available on the Panel’s website. For the avoidance of doubt, the Panel has not obtained any other ‘legal opinions’ on the interpretation of s80E or the *Waikanae* decisions outside of the hearing process and has relied on the materials

⁵ chch2023.ihp.govt.nz

and references provided to the Panel during the hearings by submitters, their legal counsel and the Council's legal counsel, and we interpreted the legislation having considered the range of views expressed.

[14] The Panel does not agree that further clarification is required or is necessary to support the Panel's interpretation of s80E of the Act beyond that set out in [154] - [183] of Part 1 of the Recommendations Report. To the extent the Council may find it useful as part of its decision making to review for itself the range of written legal submissions and the oral presentations of those submissions that were available to the Panel, the Panel has attached a list of legal submissions and links to the presentations that the Panel found useful to assist in our interpretation of s80E of the Act.

Dated 27 August 2024

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

Cindy Robinson
Chair
for Independent Hearings Panel

References to legal submissions on the interpretation of s80E of the Act

Legal submissions

Party	Reference/Document	Link	Hearing Session	Recording link
Council	Opening legal submissions dated 3 October 2023 Strategic Overview Hearing	00-Opening-Legal-Submissions-for-CCC.pdf (ihp.govt.nz)	10 October - Morning session 1	https://vimeo.com/872767460 In particular discussion on Waikanae from minute 60
Kāinga Ora – Homes and Communities #845	Legal Submissions dated 6 October 2023 Strategic, City Centre and Commercial Zone Provisions	Kainga-Ora-Homes-and-Communities-834-Legal-submissions-6-October-2023.pdf (ihp.govt.nz)	11 October - Afternoon session	https://player.vimeo.com/video/873145145
Kāinga Ora – Homes and Communities #845	Supplementary Legal Submissions dated 11 October 2023	Kainga-Ora-845-Supplementary-Legal-Submissions-Tabled-Evidence-at-hearings-11-October-2023-v2.pdf (ihp.govt.nz)		
Infrastructure Submitters • Christchurch International Airport Limited #852 #2052 #2099 • Lyttelton Port Company #853 #1083 #2045 • Orion New Zealand Limited #854 #2056	Opening Legal Submissions dated 11 October 2023	CHRIST1.PDF (ihp.govt.nz)	12 October - Morning session 1	https://player.vimeo.com/video/873179875

Party	Reference/Document	Link	Hearing Session	Recording link
Council	Legal submissions dated 17 October 2023 Central City and Commercial Zones	Christchurch-City-Council-Legal-submissions-Week-3-Central-City-and-Commercial-zones-17-October-2023-24-October-2023.pdf (ihp.govt.nz)	24 October - Morning session 1	https://player.vimeo.com/video/875755040
Carter Group Limited #814 #824	Legal submissions dated 24 October 2023	Carter-Group-814-824-Legal-Submissions-for-Central-City-and-Commercial-Zones-hearing-Week-3-21-October-2023.pdf (ihp.govt.nz)	25 October - Afternoon session 1	https://player.vimeo.com/video/877695831
The Catholic Diocese #823 #2044	Legal submissions dated 24 October 2023	Catholic-Diocese-823-2044-Legal-Submissions-for-Central-City-and-Commercial-Zones-hearing-week-3-24-October-25-October-2023.pdf (ihp.govt.nz)	25 October - Afternoon session 2	https://player.vimeo.com/video/879606373
Foodstuffs South Island Limited and Foodstuffs (South Island) Properties Limited #705 #2057	Legal submissions dated 17 October 2023	Foodstuffs-South-Island-Limited-and-Foodstuffs-South-Island-Properties-705-2057-Legal-Submissions-17-October-2023-25-October-2023.pdf (ihp.govt.nz)	25 October - Afternoon session 2	https://player.vimeo.com/video/879606373
Ministry of Justice Te Tāhū o te Ture #910	Legal submissions dated 18 October 2023	Ministry-of-Justice-910-Legal-submissions-Central-City-and-Commerical-Zones-18-October-2023-26-October-2023.pdf (ihp.govt.nz)	26 October - Morning session 1	https://player.vimeo.com/video/877754426 From minute 12

Party	Reference/Document	Link	Hearing Session	Recording link
Council	Legal submissions dated 26 October 2023	Christchurch-City-Council-Legal-submissions-Residential-Zones-Weeks-4-7-hearing-25-October-2023-31-October-2023-.pdf (ihp.govt.nz)	31 October - Afternoon session 2	https://player.vimeo.com/video/879677744
Cashmere Park Ltd, Hartward Investment Trust and Robert Brown #593 #2002	Legal submissions dated 7 November 2023	Cashmere-Park-Ltd-Hartward-Investment-Trust-and-Robert-Brown-593-2009-Legal-Submissions-Hearing-week-6-14-November-2023.pdf (ihp.govt.nz)	14 November - Morning session 2	https://player.vimeo.com/video/884158190
Retirement Villages Association #811 and Ryman Healthcare Limited #749	Legal submissions dated 7 November 2023	RYMANH2.PDF (ihp.govt.nz)	14 November - Afternoon session 1	https://player.vimeo.com/video/884196730
Red Spur Limited #881 #2068	Legal submissions dated 8 November 2023	Red-Spur-Ltd-881-2068-Legal-Submissions-Hearing-week-6-15-November-2023.pdf (ihp.govt.nz)	15 November - Morning session 1	https://player.vimeo.com/video/885083246
Kauri Lodge Rest Home #2059	Legal submissions dated 8 November 2023	Kauri-Lodge-Rest-Home-2008-Limited-2059-Legal-Submissions-Hearing-week-6-15-November-2023.pdf (ihp.govt.nz)	15 November - Morning session 2	https://player.vimeo.com/video/884558967 From minute 32
Carter Group Limited #814 #824	Legal submissions dated 9 November 2023 Residential Zones	Carter-Group-814-824-Legal-Submissions-for-Residential-Zones-Hearing-week-6-16-November-2023.pdf (ihp.govt.nz)	16 November - Afternoon session 2	https://player.vimeo.com/video/885086145

Party	Reference/Document	Link	Hearing Session	Recording link
LMM Investments Limited #826 #2049	Legal submissions dated 10 November 2023	LMM-Investments-2012-Ltd-826-2049-Legal-Submissions-for-Residential-Zones-Hearing-week-6-16-November-2023.pdf (ihp.govt.nz)	16 November - Morning session 1	https://player.vimeo.com/video/884656151
Council	Legal submissions dated 16 November 2023 Other Zones, Subdivision, Development and Earthworks and Other Matters (Transport)	Christchurch-City-Council-Legal-Submissions-Other-Zones-Subdivision-Tranport-Hearing-week-7-21-November-2023.pdf (ihp.govt.nz)	21 November - Morning session 1	https://player.vimeo.com/video/886748907
The Riccarton Bush Trust #44 #2085	Legal submissions dated 15 November 2023	Riccarton-Bush-Trust-44-2085-Legal-Submissions-Hearing-week-7-22-November-2023.pdf (ihp.govt.nz)	22 November - Morning session 2	https://player.vimeo.com/video/887813758 From minute 13 – 42
Council	Legal submissions dated 16 November 2023 Heritage Items QM	Christchurch-City-Council-Legal-Submissions-Historic-Heritage-Hearing-week-7-23-November-2023.pdf (ihp.govt.nz)	23 November - Morning session 1	https://player.vimeo.com/video/888365406
Kāinga Ora – Homes and Communities #834 #2083 #2099	Legal submissions dated 22 November 2023 Residential Provisions and Related Qualifying Matters	Kainga-Ora-Homes-and-Communities-834-2082-2099-Legal-Submissions-Hearing-week-8-29-November-2023.pdf (ihp.govt.nz)	29 November - Morning session 1	https://player.vimeo.com/video/889628266

Party	Reference/Document	Link	Hearing Session	Recording link
Kāinga Ora – Homes and Communities #834 #2083 #2099	Supplementary Legal submissions dated 4 December 2023	Kainga-Ora-Homes-and-Communities-834-2083-2099-Supplementary-Legal-Submissions-Residential-and-Related-QMs-from-29-November.pdf (ihp.govt.nz)	Filed in December 2023	
Cambridge 137 Limited #1092 #2042	Legal submissions dated 9 April 2024	Cambridge-137-Limited-1092-2042-Legal-Submissions-Hearing-week-9-9-April-2024.pdf (ihp.govt.nz)	16 April - Morning session	https://player.vimeo.com/video/934677042
Carter Group Limited #814 #824	Legal submissions dated 8 April 2024	Carter-Group-Limited-814-824-Legal-Submissions-Blue-Cottage-and-Specific-Purpose-Zones-APPENDICES-Hearing-week-9-8-April-2024.pdf (ihp.govt.nz)	16 April - Afternoon session	https://player.vimeo.com/video/935207198
The Catholic Diocese #823 #2044	Legal submissions dated 9 April 2024	Catholic-Diocese-823-2044-Legal-Submissions-Specific-Purpose-Zones-and-Brownfield-Precinct-APPENDICES-week-9-hearings-9-April-2024.pdf (ihp.govt.nz)	16 April - Afternoon session	https://player.vimeo.com/video/935207198
Kāinga Ora – Homes and Communities #834 #2083 #2099	Legal submissions dated 12 April 2024	Kainga-Ora-834-2083-2099-Legal-Submissions-City-WideQMs-Hearing-week-9-12-April-2024.pdf (ihp.govt.nz)	18 April - Afternoon session 1	https://player.vimeo.com/video/936060757
Christchurch International Airport Limited #852 #2052 #2034	Legal submissions dated 16 April 2024	Christchurch-International-Airport-Ltd-852-2052-2105-Legal-Submissions-Airport-QM-17-April-2024.pdf (ihp.govt.nz)	23 April - Morning session 2	https://player.vimeo.com/video/938052475

Party	Reference/Document	Link	Hearing Session	Recording link
Canterbury Regional Council / Environment Canterbury #689 #2034	Legal submissions dated 17 April 2024	Canterbury-Regional-Council-689-2034-Environment-Canterbury-Legal-submissions-17-April-2024.pdf (ihp.govt.nz)	24 April - Morning session 2	https://player.vimeo.com/video/938393049 From hour 1.28

Memorandum of Counsel – Submitters

Party	Reference/Document	Link
LMM Investments 2012 Limited and Ors #826 #2049	Memorandum of counsel on behalf of LMM Investments 2012 Limited and Ors dated 21 December 2023	Memorandum-of-Counsel-LMM-Investments-2012-Limited-and-others-21-December-2023.pdf (ihp.govt.nz)
Red Spur Limited #881	Memorandum of counsel for Red Spur Limited dated 30 April 2024	Red-Spur-Ltd-881-2068-Memorandum-of-Counsel-Topic-Residential-Zones-30-April-2024.pdf (ihp.govt.nz)
Kauri Lodge Rest Home #2059	Memorandum of counsel dated 30 April 2024	Kauri-Lodge-Rest-Home-2008-Limited-2059-Memorandum-of-Counsel-Residential-Zones.PDF (ihp.govt.nz)
Various submitters represented by Chapman Tripp	Memorandum of counsel dated 1 May 2024	Memorandum-of-Counsel-for-Various-Submitters-Chapman-Tripp-Scope-and-Other-Matters-1-May-2024.PDF (ihp.govt.nz)

Council Right of Reply – 17 May 2024

[Reply-for-Christchurch-City-Council-17-May-2024-updated.pdf \(ihp.govt.nz\)](https://www.ihp.govt.nz/Reply-for-Christchurch-City-Council-17-May-2024-updated.pdf)

Reply Attachment 1: [Attachment-01-List-of-information-requests.pdf \(ihp.govt.nz\)](https://www.ihp.govt.nz/Attachment-01-List-of-information-requests.pdf)