

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 54: RESPONSE TO COUNCIL REQUEST REGARDING CITY CENTRE ZONE
CLARIFICATIONS RAISED BY SUBMITTER**

- [1] This is the fifty fourth (54) 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 on 3 September 2024¹ regarding City Centre Zone clarifications raised by a submitter (the Memorandum).
- [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 Memorandum

- [4] The Council's Memorandum attaches correspondence to the Council from Counsel for Carter Group Limited² raising three issues with the Panel's recommendations in relation to the City Centre Zone (CCZ). In consideration these matters Council officers have identified some additional issues with the CCZ provisions.
- [5] The Memorandum advises that Council is not in a position to make a decision to adopt / reject the Panel's recommendations on the CCZ due to the clarifications needed, and that decision making will be rescheduled to occur as soon as possible after the Panel clarifies the issues identified to provide certainty regarding the CCZ.

Panel Response

- [6] The Panel's response to the clarifications sought are detailed below. Accompanying this Minute are updated recommended provisions. The changes to the provisions have been incorporated into an updated Chapter 15, as tracked changes with a yellow highlighting applied to the amended provisions for ease of reference.
- [7] The Panel has issued a second Addendum to Part 3 of the Recommendations Report to record corrections to the Report.

¹ [Memorandum of Counsel for Christchurch City Council - 3 September 2024 - Regarding City Centre Zone clarifications raised by Submitter](#)

² Carter Group Limited #814, #824, #2045

Rule 15.11.1 P13

- [8] The Council has requested clarification in relation to the changes to rule 15.11.1 P13 that were recommended by the Panel. The Panel's drafting recommendation in relation to this rule was based on the Council's Reply version, which was the same as the notified version.
- [9] The Council has forwarded on correspondence from a submitter, Carter Group Limited (CGL), which raised a concern that changes to the rule were outside of the scope of an IPI because they purported to constrain or restrict status quo development rights.³
- [10] The Council seeks clarification from the Panel whether rejecting the tracked changes proposed in activity specific standards (e), (f), (h) and (i) of rule 15.11.1.1 P13 correctly reflects the Panel's interpretation of *Waikanae* as applied to Chapter 15 and the CCZ.
- [11] The answer is 'yes' and those tracked changes should be rejected and the operative version of rule 15.11.1.1 P13 should be reinstated.
- [12] In order to assist the Council decision making the Panel clarifies the background to the issue below.
- [13] CGL opposed the Council's proposed changes to the operative rule notified in PC 14 to the extent that they added to the operative standards and constrained development of residential activity in the CCZ more than the operative plan (submission 814). The rule already exists in the operative plan, and CGL have clarified with the Council that it is only the 'tracked' pink changes to the Recommendations Version of Rule 15.11.1 P13 that it is concerned about. As we understood the Council position in support of the PC 14 notified rule, was that the changes proposed were necessary to meet the requirements of the NPS-UD, Policy 3 and Policy 1 with regard to a 'well-functioning urban environment.'
- [14] At the hearing CGL legal counsel argued that such a constraint was not permitted in the scope of an IPI and found further support in the Environment Court decision of *Waikanae*.⁴ The submitter called evidence from Mr Phillips a planner⁵ and Mr Compton-Moen an urban designer on this issue.⁶ Mr Compton-Moen did not undertake any

³ Letter to Council from Chapman Tripp dated 30 August 2023 appended to the [Council Memorandum](#)

⁴ [Legal Submissions on behalf of Carter Group Limited, Commercial Centres, 24 October 2023](#)

⁵ [Statement of Evidence of Jeremy Phillips for Carter Group Limited, 20 September 2023](#) and [Summary Statement of Jeremy-Phillips, 25 October 2023](#)

⁶ [Statement of Evidence of Dave Compton-Moen for Carter Group Limited, 20 September 2023](#) at 26 and [Summary Statement of Dave-Compton-Moen, 25 October 2023](#).

specific evaluation of the impact of the rule on status quo development rights but simply recorded his general support for Mr Phillips views. Mr Phillips submitted at [164]:

The new or amended residential activity standards in rule 15.11.1.1 P13 (e), (f), (h) and (i) are disabling relative to the status quo and are therefore beyond scope per *Waikanae*. They are otherwise inappropriate with reference to objective 3.3.2. As such, these amendments should be deleted.

[15] The Council's planning witness Ms Gardiner accepted in her evidence that the changes to the rule did impinge on existing development rights and would fall foul of *Waikanae*, however her view was the rule remained appropriate to achieve a well-functioning urban environment.⁷ In support of the changes to the provision notified in PC 14 Ms Gardiner relied on the technical evaluation in the Council's s32 Report⁸, which assessed the urban design matters related to residential intensification for commercial areas⁹ which in turn supported the appropriateness of the standards as a consequence of residential intensification in the CCZ (and the CCMUZ).

Rule 15.11.1.1.P13 (e)(i) and (f)

[16] Our interpretation of rule 15.11.1.1.P13 (e)(i) and (f) is that, while not changing the requirement for residential units with a habitable ground floor space to have 10m² of outdoor living space, the amended provision would prescribe a more stringent method of how that it is to occur, with the consequence that if the more stringent minimum dimensions are not able to be met, it would trigger a new requirement for a resource consent, where one was not required before. It is those aspects of 15.11.1.1.P13 (e)(i) and (f) which fall foul of the Panel's interpretation of s80E of the Act. The requirement for outdoor living space of 10m² remains appropriate.

Rule 15.11.1.1.P13 (h) and (i)

[17] Our interpretation of rule 15.11.1.1.P13 (h) and (i) is that they each introduce new provisions for all residential units to have an outlook space from habitable room windows oriented over the development site, street or public space, where there is currently no such requirement in the District Plan. The Panel considers such provisions have merit for residential units of taller buildings now enabled by PC 14 for the reasons outlined by Ms Gardiner in her evidence and in the Council's s32 Report Part 4, Appendix 6. However, as the Panel found in Part 1 of the Recommendations Report, and consistent

⁷ [s42A of Holly Gardiner, 11 August 2023](#) at 8.1.104 - 8.1.113.

⁸ [Summary Statement of Holly Gardiner, 31 October 2023](#) which references Part 4 s32 Report. Appendix 6.

⁹ [s32 Report, Part 4, Appendix 6 - Technical Report Urban Design](#) at section 4.8 and 4.81.

with our findings in Part 4 of the Recommendations Report, such changes are not authorised by s80E unless they are consequential or supportive of the additional enablement. The Panel reflected on whether a drafting solution could separate out those enablements in a sensible manner without creating different standards applying to parts of the same building and has not been able to do so. Consequential corrections are also needed to delete the reference in rule 15.11.1.3 RD4 to the following matters of discretion:

- b. Glazing – 15.14.3.37; and
- c. Outlook Spaces 15.14.3.38.

[18] The Panel acknowledges a similar correction may need to apply to the CCMUZ and other commercial zones where the effect of the additional standard results in the same outcome. However, given the urgency under which the Council has requested clarification for the CCZ, the Panel has not addressed those matters in this Minute nor in the revised update of Chapter 15, and invites the Council to address this in its wrap up clarifications memorandum (if required) to allow more time for the Panel to respond ahead of the Council's intended December 2024 decision making meeting.

Rule 15.11.1.2 C1 and associated provisions

[19] The Panel does not consider any change is needed to provide for a permitted activity for buildings under 28m in height because buildings that comply with all built form standards, including rule 15.11.2.11 Building height includes the maximum building base height of 28m. Building base is defined in Chapter 2 as:

means all those parts of the building above ground level, that form a structural element of a building, but excluding the building tower, and any street level veranda, signage, or covered ground level walkways

[20] However, the Panel agrees that there is an inadvertent omission from the provisions and has corrected this by adding reference to buildings up to 28m in height that do not meet built form standards, and we have recommended an amendment to rule C1 to address that gap as follows:

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| C1 B | a. Any new building, external alteration to any existing building, or the use of any part of a site not occupied by a building, for an activity listed in Rule 15.11.1.1 P1 to P17, which is: | a. That the activity is undertaken in accordance with the |
|---------|---|---|

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| | <ul style="list-style-type: none"> i. less than 28m in height; and ii. does not meet all the built form standards; and iii. is not provided as a permitted activity under P18 'small building'; and iv. visible from a publicly owned and accessible space; and v. is certified by a qualified expert on a Council approved list as meeting each of the urban design provisions / outcomes in Rule 15.14.2.6 City Centre Zone Urban Design <ul style="list-style-type: none"> b. Certification shall include sufficient detail to demonstrate how the relevant urban design provisions/ outcomes in Rule 15.14.2.6 have been met. c. This rule does not apply to any activity requiring consent under C2 below d. Any application arising from this rule shall not be publicly or limited notified. | <p>urban design certification.</p> |
|--|---|------------------------------------|

[21] The Panel does not consider that the 'small buildings rule' P18 is the appropriate mechanism to address the issue raised in the Council's memorandum. The Panel confirms that it did not intend that P18 be the permitted pathway referenced in Part 3 of the Report at 176(a). The Panel considered the 'small buildings' rule pathway as a separate activity pathway.

[22] The Council has identified a possible cross-referencing error in the drafting of P18, activity specific standard 'b' which refers to other heights in rule 15.11.2.1 (a)(ii). The Panel observes that the reference appears to be incorrect as that rule relates to Building setback and continuity, not height. The Council memorandum suggests that perhaps it was intended to refer to 15.11.2.11 (a)(ii). The Panel notes that 15.11.2.11 (a)(ii) relates only to buildings within New Regent Street. We are not sure why, if that is the intended reference it would be limited to New Regent Street and not to the Arts Centre which is referenced at 15.11.2.11 (a)(iii). We note that buildings within New Regent Street and Arts Centre Heritage settings are addressed in rule 15.11.1.4 D1. It appears on reflection that part of the issue identified by the Council is that 'small buildings' permitted under P18 are exempt from the height standards set out in the table under rule 15.11.2.11 sub clause (a), by the wording in sub clause (b), which creates an internal drafting inconsistency.

[23] The Panel has no view on what the alternative cross reference should be and does not recall any specific evidence on that matter. P18 and its related exemptions were included in the Council's PC 14 notified version, and retained in the reply version unchanged. The Panel accepted the recommended rule unchanged and did not pick up any drafting errors when issuing our report.

[24] The rule was supported as notified by Kāinga Ora – Homes and Communities¹⁰, and Ms Gardiner, the Council's s42A Report author noted that no changes were recommended or sought.¹¹ The Panel does not recall the drafting of the rule having been raised by anyone at the hearing. To the extent the Council considers an amendment is required to tidy up the cross references then the Council could address this as a Schedule 1 cl16(2) minor correction.

Rule 15.14.3.1(b)

[25] The Panel has reviewed our findings and deliberation materials in relation to this provision and notes there is a drafting inconsistency between Part 3 of the Recommendations Report at [175](e) and the provisions in Chapter 15. The Panel was initially concerned during its deliberations that there was an overlap between matters of discretion for **built form** standards of 15.14.3.1 (b) Maximum building height, and the matters of discretion for **activity specific** standards of 15.14.2.6 City Centre and Central City Mixed Use zones urban design. However, during our deliberations the Panel concluded that the provisions, whilst overlapping to some extent were still relevant to the built form standards, such as under RD5 where the built form standard for building height (15.11.2.11 - 28m building base) and road wall height (rule 15.11.2.12) are not met, so we recommended that the provisions are to be retained.

[26] For completeness and to assist the Council with its decision making the Panel notes that CGL, supported the retention of 15.14.3.1 (b)(v) as requested by Kāinga Ora #834.324 in its further submission #2045.

[27] In reviewing the clarification request the Panel has identified that the error is not with the provisions, but rather an inadvertent drafting error in Part 3 of the Report. Paragraph [175](e) should be deleted. We have issued the attached addendum to correct that reference.

¹⁰ Kāinga Ora – Homes and Communities #834 #2082 #2099

¹¹ [s42A of Holly Gardiner, 11 August 2023](#) at 8.1.19

Relationship between certification path and wind matter of discretion

- [28] With respect the Panel is unclear as to what the uncertainty is. The urban design certification pathway is intended to apply only to urban design considerations and responses to the urban design provisions/outcomes under 15.14.2.6 (a) – (f).
- [29] The Panel does not agree with Counsel for Council that wind expertise and urban design expertise do not overlap. Rather, it understands that the controlled activity resource consent application would include technical evidence from a suitably qualified wind expert setting out how a building has been changed to manage the wind effects detailed in (x)(f). The role of the urban design expert would be to certify that in designing the building to address wind effects, all the other urban design matters under 15.14.2.6 have been met (such as (x)(d) - *reflected heat from glass*, and (x)(e) – *shading and visual dominance on heritage items and settings*).
- [30] The Panel understands that for a controlled activity resource consent application that is supported by an urban design certificate, the Council's only procedure is to approve the application, and it is limited to imposing a condition that the activity is undertaken in accordance with the urban design certificate. Further, the Panel understands that should the application require resource consent approval for any other matter, it would not be able to be considered as a controlled activity.
- [31] The Panel clarifies that the urban design certification under rule 15.11.1.2 C1 includes the urban design certification for building design to address mitigation of wind. Accordingly, there are no changes to the Recommendation Report or the recommended provisions.

Matter of discretion for maximising use of development capacity

- [32] The Panel intended an additional and specific matter of discretion to be added in addition to 15.14.2.6 (a)(viii). The matter recommended by the Panel at [175](c) was intended to be more focused on street frontages only, but more importantly also relates to that part of a building up to a height of 45m and the intent that development capacity up to this height is maximised, which was the Council's rationale for supporting a height of 90m. In terms of the Council's suggested alternative wording, the Panel accepts that is generally appropriate and has added a new matter of control and discretion for buildings above 45m in height as follows:

- a. The extent to which the building or use:...
- ix. maximises the development capacity of the site along the street frontage(s), for those parts of a building below 45m in height.

Heritage matter of discretion

[33] The issue of clarification raised at paragraph 22 of the Council's memorandum has identified a typographical error in paragraph 175(d) of Part 3 of the Report, which has the consequence of suggesting the Panel had in mind a wider application of the matter of control and discretion beyond that intended by the Panel. The Panel clarifies that there was no intention to refer to all heritage items and settings and the provision relates only to the heritage item and settings of the Arts Centre and New Regent Street as described in Appendix 9.3.7.2. We refer the Council to our findings at paragraphs [109]-[154] and our discussion of the Council's evidence on those items and the s32 evaluation. The Panel records that it did, during our deliberations consider whether the provision should refer to scheduled items in Appendix 9.3.7.2 but dismissed that on the basis that there was no evidence before us that supported an extension of the provision beyond those two areas and no s32 or s32AA evaluation to evaluate the issue further. In addition, there were no submissions that we had identified or had been brought to our attention in the s42A Reports that sought an extension of the concept of a central city heritage interface QM to all heritage items and settings.

[34] For completeness we note that a submission from Historic Places Canterbury¹² requested additional controls for tall buildings adjacent to the heritage items of Hagley Park, Cramner Square and Latimer Square. The CCZ does not immediately adjoin Hagley Park or Cramner Square and the significant public spaces of Latimer Square is already addressed in Rule 15.14.2.6 in the Recommended provisions.

[35] Part 3 of the Report at paragraph [175](d) is amended accordingly:

That the matters of control and discretion in Rule 15.14.2.6 and 14.3.1 should be amended to include an additional matter of assessment for the effects of buildings in excess of 28m on the heritage values of the scheduled heritage items and settings, of New Regent Street and the Christchurch Arts Centre. We have also recommended additional drafting changes for clarity and consistency.

Chapter 15 Provisions

[36] As requested, the Panel has re-issued Chapter 15 with the corrections referred to above.

¹² Historic Places Canterbury #835

[37] We thank the Council and Counsel for CGL for bringing these matters to the attention of the Panel and providing an opportunity to clarify those matters and to provide clarification and corrections where necessary.

Dated 11 September 2024

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