

**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 56: RESPONSE TO COUNCIL MEMORANDUM REGARDING REDRAFT OF  
CHAPTER 14: RESIDENTIAL**

---

- [1] This is the fifty sixth (56) 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 Council for Christchurch City Council filed on 18 October 2024 regarding the redraft of Chapter 14: Residential.<sup>1</sup>
- [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 relates to the Panel's request that the Council redraft Chapter 14: Residential.
- [5] The Memorandum updates the Panel on the redrafting exercise, highlights a number of further matters or queries and seeks the Panel confirm its preferred approach and clarify its recommendations in relation to Chapter 14.<sup>2</sup>

### **Response to matters / queries arising**

- [6] In terms of a general response the Panel acknowledges the challenge for the Council officers to rework the Chapter 14 provisions in accordance with the Panel's Recommendations. The Panel also found the exercise to be complex, because of the way in which the Council had drafted the provisions in PC 14, which is why the Three Pathway approach was recommended as the only practical way the Panel could see to unpack PC 14 and properly account for the legal limitations of an IPI. The Panel acknowledges the efforts the Council officers have gone to redraft Chapter 14 so far.
- [7] The Panel considers that the approach undertaken by the Council officers to date to rework the provisions into the three independent pathways is commendable and would generally address the concerns expressed by the Panel in its Recommendations Report.

---

<sup>1</sup> [Memorandum of Counsel for Christchurch City Council with Appendices - Regarding redraft of Chapter 14: Residential - 18 October 2024](#)

<sup>2</sup> Ibid at 4.

There are, however, a number of issues where the Panel consider the drafting and structure could be improved and we set out our feedback on the drafting below, as well as responses to particular matters of clarification requested by the Council in the memorandum.

- [8] The Panel note there are some areas where the solution approaches the limits or exceeds the boundaries of the Panel and Council jurisdiction in an IPI process. The Panel is mindful that submitters are not directly involved in the redrafting exercise, therefore the extent to which the Panel can offer any further comment on matters which are beyond those matters raised in the hearings and in our recommendations is limited. We also exercise caution in suggesting drafting solutions that were not tested through the hearing process.
- [9] In the event that the Council prefers an alternative drafting solution which the Panel expresses some discomfort with, or declines to express a preference, for the reasons in [8] above, then the Council has the ability to refer the matter to the Minister under RMA, Schedule 1, clause 105, or alternatively, commence a subsequent Schedule 1 process to address those matters.
- [10] The Panel has not, in the time available, and given we have not received the full set of Chapter 14 redraft provisions, provided a forensic review of the Council provisions in Appendix 2, although we have identified potential errors or matters that require further drafting improvements in order to assist the Council.

#### Hybridisation

- [11] The Panel acknowledges the issues raised by the Council in paragraphs 9 - 16 of its memorandum, and notes that it was clearly the Panel's intention that the pathways would be independent, and that an applicant could not mix and match the pathways. The Panel is comfortable with the clarity provided in the Introduction section to Chapter 14. As noted below we do not consider these need, nor is it appropriate, to be incorporated in a bespoke objective and policy.

#### Appendix 1

##### *General Framework of approach to Chapter 14 redraft.*

- [12] The Panel generally agrees with the approach. However, the Panel does not agree there is a need to include the new objective and policy proposed for 14.2, as neither are

worded as an objective or policy. Rather they are instructions as to how the rule framework is to apply and be administered or adapted as a rule as discussed below.

- [13] Accordingly, the Panel recommends that proposed Objective 14.2.1 and Policy 14.2.1.1 should be deleted and the content within each of these incorporated into 14.3 *How to interpret and apply the rules*.
- [14] The Council could consider adapting the drafting of its proposed Policy 14.2.1.1 b., c. and d. as permitted activity rules under 14A and 14B as a method to regulate the pathway election.
- [15] The Panel then suggests that the Council give thought to including a discretionary activity rule in both sub-chapters under the activity rules/ or built form standards, to provide that if an applicant undertakes a permitted activity under either of pathways A or B (the "initial" activity), and then subsequently undertakes another activity (including another permitted activity) from the other of pathways A or B (the "subsequent" activity) resulting in a situation where the initial activity would no longer comply with the relevant permitted activity standard(s), then resource consent for the initial activity that no longer complies with the relevant permitted activity standard(s) shall be required.

#### *Independent Pathway approach*

- [16] The Panel confirms that the proposed approach to describe Pathway A, B and C as independent pathways appropriately responds to the Panel's Recommendations.
- [17] The Panel notes however, that there is some confusion to the reader of the provisions due to the Council's choice to use the sub chapter 14A as the Panel's Pathway B and C. It would seem that it would be more intuitive to title Chapter 14A as Pathway A and Chapter 14B as Pathway B and C. It also became confusing when considering the 'definitions' (for example see Appendix 2 of the Council Memorandum, page 12 j.), where intuitively the operative provisions should apply, then it would be simpler if the relevant operative definitions in Chapter 2 apply and use an appendix or sub-chapter for the NPS definitions associated with the MDRS. We discuss the approach to definitions below.
- [18] The Panel recommends caution with the Council's proposed approach to 14B.2 Objectives and Policies Appendix 1 page 2:
- and **removal** of any objective or policies that specifically do not relate to one of the seven zones or associated overlays;

[19] That is because there is the potential to remove a relevant objective or policy, and the Panel did not hear evidence or make any recommendations on the relevance of all objectives and policies. It would be more appropriate, in the context of the IPI to use 14.3 to clearly set out the approach for Pathway A. The Panel makes a similar observation in the context of the proposed 'Airport Noise' framework approach.

[20] In terms of the Council's comments on 'newly created vacant lots' in Appendix 1, page 3, if the Council means that, notwithstanding that the subdivision creating the lot might have been pursued under Pathway A – the new allotment can elect which pathway to follow afresh. The Panel considers that to be appropriate, provided that the election is made in accordance with the relevant rule package as stated above. The Panel's suggestion to incorporate Policy 14.2.1.1 b., c. and d. as permitted activity rules under 14A and 14B as a method to regulate the pathway election, would reinforce that approach.

#### *Overlays*

[21] The Panel notes that Clause 12 *District Spatial Layers Standard* of the National Planning Standards sets out that '**overlays**' are to be used to spatially identify distinctive values, risks or other factors, that are in relation to district-wide matters chapters in Part 2 of a District Plan (such as Natural Hazards, Subdivision and Noise).

[22] The Residential zones are not a district-wide matter. Rather, they are contained in Part 3 – *Area Specific Matters*. In accordance with Clause 12 of the National Planning Standards, it would appear that the Council should use '**precincts**' to identify the spatial areas that the provisions in sub-chapters 14A and 14B apply.

[23] Airport noise is a matter that could appropriately be addressed as an overlay.

#### *Definitions*

[24] The Panel consider that it would be clearer for the Operative Definitions to remain as a separate chapter. The Plan structure is that of an ePlan, whereby the definitions in the Pathway A would still link to the operative definitions. This would keep sub-chapter 14B as relatively self contained.

[25] If the Council adopted their officers' suggested approach for definitions, they would also need to do the same for every other relevant chapter of the Operative District Plan (ODP).

[26] To the Panel's mind this appears to be a fraught exercise, and risks errors. Pathway A was intended to simply maintain the operative plan status quo approach as far as practical.

#### *Airport noise pathway*

[27] In relation to the airport noise pathway approach, the Panel confirms that the approach generally addresses the Panel's Recommendations, subject to the following comments.

[28] The Panel notes that the Council proposes to modify the wording of the 'limited notification' aspect of the new rules RD 14A5.1.3 and 14A 6.1.3 to replace the word 'shall' with 'may' in the equivalent operative rule RS/RSDT Rule 14.4.1.3 RD34 on the basis that '*Officers consider that this best reflects the IHP's recommendations to apply MRZ and HRZ within the operative and remodelled 50 dB contours.*' (Appendix 1, page 4). The Panel did not make any recommendation regarding the specific wording of the operative version of the rule, and therefore is unclear as to what aspect of the Panel's Recommendations the officers are relying on to support the change. The Panel recommends that for the purposes of Council decisions on PC 14, that the operative version of the limited notification aspect of the provision be retained.

[29] In terms of how the Council addresses sites within the 55dB or greater, the Panel agrees with the Council's alternative suggestion that it would be simpler to have a cross reference to confirm the same provisions as for Pathway A apply also to Pathway B and C. The Panel considers that attempts to redraft provisions by adding to matters of control and discretion references to which objectives and policies apply, as depicted in the tracked (highlighted) changes in Appendix 2 is fraught with risk that the operative provisions are given an unintended gloss or emphasis. The Panel notes that referencing objectives and policies as matters of control or discretion is not used elsewhere in the plan. The Panel did not recommend any changes to the operative rules, objectives and policies that apply to the 55dB or greater contours, and therefore we do not consider it appropriate to revisit their drafting beyond simply renumbering to include in the new pathway structure. The Panel recommends that the Council simply use chapter 14.3 to explain the airport noise pathway approach.

*Communal waste – controlled activity pathway*

- [30] The Panel notes that this matter was addressed in two parts of Mr Kleynbos' evidence,<sup>3</sup> the reference included in the Council's Appendix 1, Paras 10.1.77 to 10.1.79 but also in Paras 9.1.67 - 9.1.69 which was specific to the High Density Residential Zone.
- [31] In the MRZ and HRZ chapters accompanying the s42A reports, the C1 provision was included in the HRZ but not in the MRZ. This was the situation for the Reply versions of the two chapters.
- [32] The Panel clarifies that the C1 provisions in the HRZ should also be incorporated into the MRZ, noting that RD25 in the MRZ will need to be amended to be in accordance with RD18 of the HRZ

*Minimum unit size non-compliance*

- [33] The Panel notes that under the ODP RCC zone, there was no specific restricted discretionary provision for situations where minimum unit size was not achieved and that fully discretionary activity applied under Rule 14.6.1.4 D4.
- [34] However, under the ODP RMD zone Rule 14.5.1.3 RD22 did provide for non-compliance.
- [35] This distinction appears to reflect the objective and policy difference between the two zones regarding the importance of minimum unit sizes to reflect the different residential environments.
- [36] No change to these rules was proposed in the notified version of PC14, the s42A report versions or the Council Reply.
- [37] The Panel notes that submissions on this matter set out in Appendix A with respect to the HRZ in the s42A report by Mr Kleynbos ranged from 'support' to 'removal'. There were no submissions seeking a change to the activity status., however a change of activity status could be considered to fall in between. In any event the changes recommended by Council could also be made in reliance upon RMA Schedule 1, Clause 99(2). The Panel is satisfied on the merits of the proposed change and recommends that the changes proposed by Council be made.

---

<sup>3</sup> [s42A Report of Ike Kleynbos, 11 August 2023](#)

*Firefighting water supply non-compliance*

[38] The Panel notes that under the ODP RCC zone, there was no general RD provision for situations where water supply for fire fighting was not achieved and that fully Discretionary activity applied under Rule 14.6.1.4 D4. It is noted that specific provision was provided in RD1 with respect to the cultural activity at 52 Rolleston Avenue and RD5 with respect to retirement villages.

[39] The Panel notes that the matter of providing adequate water supply was raised in a number of submissions, but that from its review of the s42A reports for the Residential Chapters, there were no submissions seeking a change to the activity status. No change to the rule was proposed in the notified version of PC 14, the s42A report version or the Council Reply.

[40] However, the Panel is satisfied on the merits of the proposed change and recommends that the changes recommended by the Council be made in reliance upon RMA Schedule 1, Clause 99(2).

*Breach of windows to street standard*

[41] The Panel confirms that it had recommended adoption of the addition, but the change to the purple colour has been missed.

[42] The Panel notes that through the application of the Three Pathways approach, Pathway A would apply to alterations and additions to existing developments. Accordingly, the Panel recommends that 'i.' can be deleted from rule in both the MRZ and HRZ.

*Non-residential controls (home occupations, education activity, preschools, healthcare facilities, veterinary care facilities and places of assembly)*

[43] The Panel clarifies that the changes suggested by Council officers in Appendix 1, page 8 are recommended.

*Residential Character Areas and other operative overlays*

[44] The Panel confirms that the reduced or removed extent of the proposed and existing RCA's should apply to all of the Three Pathways.



[45] The Panel confirms that the various overlays that it has recommended be removed should not apply to Pathway A under proposed sub-chapter 14B, as each of these have been shown to be unnecessary.

[46] This will need to be made clear in the Council's redrafting of Section 14.3 *How to use the plan*.

Dated 31 October 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