

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

**ADDENDUM 3 TO PART 3 OF RECOMMENDATIONS REPORT IN RELATION TO
RADIO COMMUNICATION PATHWAY QM**

Introduction

- [1] This third addendum to Part 3 of the Recommendations Report is 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 addendum is to correct and clarify parts of Part 3 of the Recommendations Report in response to matters of clarification requested by the Council in accordance with RMA Schedule 1, clause 101(4)(c) as set out in the Memorandum of Counsel filed on 25 October 2024 (the Council's Memorandum).¹
- [3] The Council's Memorandum and appendices detail a number of requests for clarification, including matters related to radio communication pathway and a letter by Counsel for the Ministry of Justice, Te Tāhū o te Ture² (the Ministry). The Panel has responded to other matters of clarification in Minute 57 and an addendum to Part 7 of the Recommendations Report.
- [4] The Panel records, that although the Council referred correspondence from the Ministry to the Panel for reference, the Panel has refrained from responding to the correspondence, as the correspondence provides comments/submissions or arguments that were not in front of the Panel during the hearing. The Panel is conscious that it has limited jurisdiction to offer clarifications and make to corrections to its recommendations, and that it does not have the jurisdiction to 're hear' a submission on the basis of a submitter's dissatisfaction with the recommendation.
- [5] The Panel has focused on reviewing the evidence in response to the suggestion that we may have misconstrued the evidence on the topic of the Radio Communication Pathway QM. We provided an initial response in Minute 55³ setting out the Panel's understanding of the case presented by the Ministry at the hearing.

¹ [Memorandum of Counsel for Christchurch City Council - 25 October 2024 - Regarding further final clarifications](#)

² Ministry of Justice, Te Tāhū o te Ture #910 #2012

³ [IHP Minute 55 - Response to Final Clarifications Sought - 7 October 2024](#)

[6] We leave it for the Council to consider whether, out of an abundance of caution it refers this QM for determination by the Minister, given the limited scope of clarifications under RMA, Schedule 1, clause 101.

Amendment to Recommendations for Radio Communication Pathway QM

[7] The Panel recommended the deletion of the Radio Communication Pathway QM for the reasons outlined in para [155] to [164].

[8] The Panel accepted the obvious merits of providing for the Radio Communication Pathway in the District Plan but rejected the proposed QM on the understanding that it would not apply in a real world sense to the additional enablement under PC 14, and therefore was not properly advanced through an IPI, and therefore the matter should be progressed via a Schedule 1 Plan Change (as the Council and the Ministry had been endeavouring to pursue in an earlier plan change⁴ prior to being incorporated into PC 14). The Panel did not therefore provide any findings on the appropriate rule framework to address the QM, having found that to be moot in the circumstances.

[9] The Council has alerted the Panel to the possibility that the Panel misconstrued aspects of the evidence from the Ministry of Justice regarding the likelihood that the Radio Communication Pathway would in fact intercept with one site within the CCMUZ zone, as a consequence of the 32m height enabled by the Panel's recommendations for PC 14 in that zone. The Council has drawn the Panel's attention to the evidence of Ms Small for the Ministry.⁵

[10] The Panel did not identify that its recommendations for the 32m height in the CCMUZ would intercept with the Radio Communication Pathway and, had we done so we would have accepted that the Radio Communication Pathway could qualify as a QM. Given our findings the Panel did not then consider the appropriate method to address the QM.

[11] On the issue of the appropriateness of a non-complying activity status the Council Reply identified that the proposed QM triggered consideration of the application of the *Waikanae* findings. In its Reply the Council submitted:

3.20 Also highlighted in Table G1 are the following QMs, where the potential additional constraints on development are more theoretical than real, given the other provisions in the Plan regulating the relevant activities: (footnotes omitted)

⁴ [Statement of Evidence of Fiona Small, 19 September 2023](#) at 14 and Council [s32 Report Part 2, Appendix 20](#).

⁵ [Statement of Evidence of Fiona Small, 19 September 2023](#).

...radio communications pathways, only insofar as more restrictive activity statuses will apply for buildings encroaching within the pathways; and ...

- 3.21 All of these QMs are discussed in specific terms in the relevant sections of the reply below. In general, the constraints on status quo development rights are modest and justifiable in light of the matters identified that are the basis of the relevant QMs. While the Council could advance a separate plan change using the standard Schedule 1 process, with full appeal rights, PC14 has clearly signalled the proposed constraints to potential submitters in this process, and it would be duplicative and wasteful of resources (both of the Council and submitters) to require that to occur.
- 3.22 Further, in the meantime it can be challenging to weave provisions into the operative Plan in a way that solely target the new intensification otherwise enabled by PC14, particularly given that the proposed response for each QM is bespoke, to integrate with the relevant District Plan provisions. As the Panel will recall, one mechanism has been proposed for coastal hazards (using a new definition of "residential intensification") that may have more general application. The Council has not opted to rework each proposed QM to use that mechanism, partly due to time constraints but also because, as explained above, it does not accept that Waikanae was correctly decided.

[underlining Panel emphasis]

[12] And then in response to the Radio Communication Pathway QM the Council responded:

- 9.23 The Radio Communication Pathways QM is concerned about maximum building heights to avoid adverse impacts on radio communications between the Justice and Emergency Services Precinct and the Port Hills.
- 9.24 Amendments to the Radio Communication Pathway QM provisions have been agreed between the Council and the Ministry of Justice as set out in the JWS on Radio Communication Pathway Protection Corridors. The agreed changes make the provisions clearer and require limited notification to the Ministry of Justice where a resource consent application is made that triggers non-complying activity Rule 6.12.4.1.5 NC1. These provisions are carried through into the proposed provisions in Attachment 2.
- 9.25 The agreed provisions are unaffected by the modified planning framework for the CCZ, as it does not extend the height limit for the limited part of the pathway overlapping the CCZ (over the Justice Precinct Building). The pathway largely overlaps other zones, being the Central City Mixed Use Zone (CCMUZ) the Central City Mixed Use (South Frame) Zone (CCMUZ(SF)) and Special Purpose Tertiary Zone as shown on the planning maps.

[13] Under the ODP buildings could be erected above the maximum specified heights as a Restricted Discretionary activity, however, with no matters of discretion related to the Radio Communication Pathway QM.

[14] The Joint Witness Statement (JWS)⁶ between Council and witnesses for the Ministry proposes a rule framework that would make the activity status for buildings within the influence of the Radio Communication Pathway a non-complying activity. They did not

⁶ [Joint Witness Statement - Planners - Radiocommunication Pathway Protection Corridors - 14 November 2023.](#)

distinguish between heights enabled through a RD pathway in the ODP from the additional enablement required under NPS UD Policy 3.

[15] The Panel would not have recommended that the activity status become a non-complying activity as that is more restrictive than the status quo plan enablement and not consistent with the *Waikanae* principles in respect of the limitations of RMA s80E.⁷ However, the QM could be appropriately addressed by the addition of a new matter of discretion to qualify the NPS UD Policy 3 enablement of buildings that intrude upon the Radio Communication Pathway to allow for consideration of the extent to which a new building would avoid interference with, or provide for the maintenance of, the Radio Communication Pathway.

[16] The Panel recommends that the Council accept the JWS version of Chapter 6.12 objective 6.12.2.1 and policy 6.12.2.1.1, but modify the rules in Chapter 6.12 proposed by the JWS to provide:

- (a) retaining the zone RD status by amending proposed Rule 6.12.4.1.3 Restricted discretionary activities to provide this activity status (i.e., incorporating the provisions of proposed Rule 6.12.4.1.5 Non-complying activities) and adding a matter of discretion which addresses the matters in Chapter 6.12; and
- (b) deleting the provisions of Rule 6.12.4.1.5 Non-complying activities and replacing with “There are no non-complying activities”.

[17] In this way the rule responds to the requirements of NPS-UD Policy 3 and to the requirements of Policy 4 and RMA s770 to modify the relevant height and density requirement ‘only to the extent necessary’. Resource consent could still be refused if a new building inappropriately impeded the Radio Communication Pathway. The Panel considers that would more effectively implement the objective and policy; by providing for a targeted evaluation of the effect on the Radio Communication Pathway so as to avoid physical obstruction, should a building design have the potential to disrupt or block the pathway.

[18] To assist with the implementation of the provisions, the Panel recommends that the ‘Maximum Height Limit’ set out in Chapter 6.12 Tables 1, 2 and 3 be changed from ‘m A.M.S.L’ to the equivalent ‘existing ground level’, and that the illustration of the

⁷ [IHP Recommendations Report - Part 1 - 29 July 2024](#) at 181.

maximum height limits be clearly illustrated on the planning map to provide clarity for plan users.

[19] The Panel's recommendation is therefore amended to accept the Radio Communication Pathway QM as an efficient and effective method to achieve the requirements of the NPS UD Policy 3 and 4, RMA s32 as modified by s77O and 77P. The Panel notes that the Council's s32 evaluation⁸ of the Radio Communication Pathway QM in support of PC 14 as notified, adequately evaluates the costs and benefits of the QM, although it is not clear what the real difference is between Option 2 and 4 in real terms given the Council proposed a non-complying activity to 'control heights'. The change to a restricted discretionary activity status does not appear to warrant any additional evaluation under s32AA but is more appropriate in our view to balance the NPS UD Policy 3 and 4 requirements in this case.

[20] Accordingly, the Panel makes the following corrections to Part 3 paragraphs [155] – [164]:

- (a) Amend [155] to show the recommendation as accepted.
- (b) Delete para [163]

~~In accordance with our findings in Part 1 at [210], and in light of the High Court findings in Waikanae, we find that despite the obvious merit of including provisions in the plan to identify the pathway, this is not a matter we can accommodate via an IPI, in this way, that is because it affects status quo development rights. To the extent that it may be able to be accommodated without affecting such rights is moot, because it was not clear that in a real world sense a development enabled in response to Policy 3(a), (c)(ii) or (d) would breach the radio communication signal plane in any event.~~

- (c) and replace with:

The Panel is satisfied as to the merits of the proposed Radio Communication Pathway QM, and recommends that amended Chapter 6.12, as agreed in the JWS, 14 November 2023 be accepted, except that proposed Rule 6.12.4.1.3 shall be amended to be a Restricted Discretionary Activity (i.e. incorporating the provisions of proposed Rule 6.12.4.1.5 Non-complying activities) and adding a matter of discretion which addresses the matters in Chapter 6.12; and deleting the

⁸ [s32 Qualifying Matters Part 2](#) at 6.21.

provisions of Rule 6.12.4.1.5 Non-complying activities and replacing with “There are no non-complying activities”.

Amend paragraph [164]

We recommend that this QM be accepted for those reasons. ~~and pursued through a Standard Schedule 1 process or a proposed airspace designation similar to previous radio corridors in the 1995 District Plan.~~

[21] This addendum is to be read as part of and supplementary to the original Part 3 Recommendations Report.⁹



Cindy Robinson – Chair



David McMahon – Deputy Chair



Karen Coutts



Alan Matheson



Ian Munro

8 November 2024

⁹ [IHP Recommendations Report - Part 3 - 29 July 2024.](#)