

**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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**ADDENDUM TO PART 4 OF RECOMMENDATIONS REPORT IN RELATION TO THE  
SUNLIGHT ACCESS AND AIRPORT NOISE QUALIFYING MATTERS**

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## Introduction

- [1] This addendum to Part 4 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 sections 4 and 6 of Part 4 of the Recommendations Report in response to two matters of clarification requested by the Council in accordance with RMA, Schedule 1, clause 101(4)(c) as set out in its Memorandum of Counsel filed on 8 August 2024 (the Council's Memorandum).<sup>1</sup>
- [3] The Council's requests are detailed in a table attached to the Council's Memorandum. The Panel has separately responded to matters of clarification in Minute 51 and in further addenda to Part 3 and Part 5 of the Recommendations Report. This addendum relates only to the requests relating to **5. Airport Noise** and **13. Sunlight Access** qualifying matters (QMs).
- [4] Corrections to the paragraphs identified below are deletions shown as ~~strike through~~ and additions underlined.

## Addendum to Section 4, Part 4 of the Recommendations Report in relation to Sunlight Access

- [5] At paragraph [134] of Part 4 of the Recommendations Report the Panel recorded:

We pointed out to Counsel for the Council that the information received was not what had been asked for. Although understanding the effects of additional east or west building bulk on north-based shadows and mid-day solar access was of interest to us, the principal request for better understanding of the difference in morning and afternoon shadows (specifically in the case of properties east or west of neighbours and who only received principal sunlight access to their outdoor living space or associated large living room windows in the morning or afternoon period) had not been addressed. We did not receive any further response on the matter.

- [6] Further at paragraph [145](a)-(g) the Panel recorded:

In respect of the MRZ:

- (a) The Council's argument was based in large part on the unique latitudinal context of Christchurch and that this formed a key justification to vary the MDRS on the

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<sup>1</sup> [Memorandum of Counsel for Christchurch City Council - Regarding further clarifications, 8 August 2024](#)

basis that the MDRS did not even-handedly recognise Christchurch amongst other Tier 1 local authorities. We do not accept that argument. Specifically:

- (i) Firstly, and in terms of the argument of what the MDRS did and did not take into account, we are aware that the Council and some submitters who appeared before us on PC 14 also submitted and were heard by a Select Committee considering the Housing Supply Amendment Act. Although the Council submission did not focus on the latitudinal differences aspect of the height to boundary ratio, other submitters from Christchurch did so.<sup>2</sup> In legal submissions from Kāinga Ora on the Sunlight QM, Mr B Matheson drew our attention to the changes that were made to the height to boundary density standards, as a result of hearing submissions through the Select Committee process, and in a Government Supplementary Order Paper. The original standard in the Bill when introduced was set at 6 metres plus 60 degrees. The Select Committee reduced that to 5m at side and rear boundaries plus 60 degrees and reduced again to 4m plus 60 degrees in the Government Supplementary Order Paper. Parliament was well aware of the importance of sunlight as a principle of good design as was apparent during the third reading of the Bill.<sup>3</sup>
  - (ii) On this basis, we find that the MDRS and the process that led to the MDRS has demonstrated a recognition of the issues raised by the Council and have been reduced in scale from their original proposal in response. It was not correct of the Council or some submitters to conclude that the MDRS were Auckland-centric or otherwise had not been arrived at without proper consideration of Christchurch's context.
  - (iii) Second, in terms of real-world context, we find the Council's comparison with Auckland overly simplistic. We accept Auckland has a more northerly latitude than Christchurch, but it also receives substantially more wet-weather days on an annual basis than Christchurch (limited or no sun). In addition, in as much as Christchurch is quite famously flat in most of its urban area, Auckland is known as a hilly city with many south-facing sites on the south-side of hills, and despite the more favourable latitudinal setting, will receive in many cases less sunlight access than implied by the models relied on by the Council in support of its QM.
- (b) We therefore cannot accept the Council's claim that the MDRS would not provide an acceptable level of sunlight access by comparing modelled simulations of Christchurch sites to Auckland sites.
  - (c) Following on from that, s77G of the RMA allows qualifying matters to reduce the enablement of the MDRS but only to the extent that is "necessary" (s77I). Having identified significant defect in the Council's position we attempted to investigate an alternative. This was based on:
    - (i) accepting the Council's position in respect of north and south boundaries (we identified that as north-west to north-east, and south-east to south-west), but
    - (ii) reverting to the MDRS recession plane for eastern and western boundaries (identified as north-east to south-east, and south-west to north-west).
  - (d) This alternative would have been more enabling than the Council's position, be less enabling of the MDRS only to the extent absolutely necessary, but still recognise the latitudinal context of Christchurch as sought by the Council. Our rationale for this was that in the early morning and later afternoon periods the low

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<sup>2</sup> For example Christian Jordan #737#1068 #2093

<sup>3</sup> [Legal Submissions of Kāinga Ora, 22 November 2023](#) at 9.1-9.7

solar angle often causes very long shadows to be cast across neighbouring sites anyway and that it was primarily the shadows in the middle period of the day that were of greatest potential nuisance between neighbours. This raised the question of whether amending the MDRS recession plane, if it could be justified at all, could be reduced to just the key part of the day where effects would be most pronounced. Regrettably the information we asked the Council for was not what was provided to us and despite this being communicated to the Council, no further corrections or updates were provided. This prevented us considering such an alternative any further and we discarded that potential option from our thinking.

- (e) Being left with the MDRS or the Council's notified alternative, and on the basis that the evidence in support of the Council's alternative was flawed, we are left with only one functional option we can recommend – the MDRS.
- (f) Because of the nature of our findings, we also observe that our recommendation is not that the MDRS is necessarily the best of all theoretically possible solutions for Christchurch. It is the most appropriate outcome for our process simply because it stands at the end of our evaluation as the only suitable option available to us. It may be that a future plan change based on more precise technical justification could allow greater nuance or location-specific variation of the recession plane to be successful. We confirm that we have no opinion on that.
- (g) Having determined that the MDRS recession plane should apply, we then considered the submissions that sought exclusions, exemptions, or other changes to that. We find that the technical evidence available before us was not sufficient to justify any change to the recession plane or where or how it should be measured.

[7] The Memorandum of Counsel has identified that the Panel omitted to refer to a supplementary statement of evidence from Mr Hattam dated 25 March 2024, filed as Appendix E to the Council's Memorandum of Counsel of 11 April 2024 responding to a number of further requests for information from the Panel.<sup>4</sup>

[8] The Panel members have reviewed their records. The Panel confirms that the 11 April 2024 Memorandum was received and reviewed at the time. By that time the Panel had determined to focus on the options that the Council had identified in its s32 evaluation rather than its own potential additional option and Mr Hattam's supplementary statement did not persuade the Panel to revisit that (although it did contribute to the thinking set out in paragraph [145](f) of Part 4 of the Panel's report as explained below). But inadvertently the supplementary statement was omitted from the materials collated and then used and referred to in recording the Panel's Recommendations in section 4 of Part 4 of the Recommendations Report.

[9] The Panel apologises to Counsel and Mr Hattam to the extent our Report recorded our request had gone unanswered and we also record our appreciation to Mr Hattam, who undertook the additional analysis provided.

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<sup>4</sup> [Memorandum of Counsel for Christchurch City Council - Information requests - 11 April 2024](#) Appendix E, Supplementary Statement of Evidence of David Anthony Hattam, 25 March 2024

## **Record of Panel findings in relation to Mr Hattam’s Supplementary Statement of Evidence**

[10] As recorded in Section 4, Part 4 of the Recommendations Report, the Panel determined that the MDRS was the only option it could support having evaluated all other viable options. The Council has asked in its Memorandum of 8 August 2024, whether Mr Hattam’s supplementary statement alters the Panel’s Recommendations in relation to the Sunlight Access QM. The Panel confirms that having re-considered Mr Hattam’s supplementary statement our recommendation in relation to the Sunlight Access QM has not changed, for the reasons set out below.

[11] Mr Hattam’s supplementary statement provides helpful analysis of the potential option identified by the Panel. But it also led to several other questions and concerns arising that caused the Panel to conclude the potential option had not been sufficiently demonstrated as being either appropriate or inappropriate and could not be carried forwards in the Panel’s evaluation. Specifically, Mr Hattam’s supplementary statement considered sunlight hours received from the northerly quadrant (+/- 30-degrees) and on one side of a dwelling.<sup>5</sup> This reinforced our previously identified uncertainty as to whether Mr Hattam and the Council was focused on:

- (a) total (non-continuous, non-single room) sunlight received by a dwelling across a day as a whole (there was no evidence given to the Panel that sunlight was only beneficial if received in one specific room);
- (b) only that portion of sunlight that was continuous across a day and only when from a northerly aspect;
- (c) total sunlight received by only a principal living room but no other rooms; or
- (d) total sunlight received by a nominated outdoor living space separate to rooms within a dwelling.

[12] The Panel remains of the view that the Council’s approach, and Mr Hattam’s methodology, has focused on one aspect of the solar access question - sunlight in the middle of the day to the rear of dwellings in the context of other dwellings built to the maximum standards adjacent to the space(s) being tested. This is a very relevant, possibly ‘worst case’ part of the question. But it is not in the Panel’s view a complete or

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<sup>5</sup> Supplementary Statement of Evidence of David Anthony Hattam, 25 March 2024, paragraphs 4 and 18. Also related are paragraphs 6 and 22 where Mr Hattam’s conclusion that his modelling approach identified no relevant sunlight access to dwellings either side of the middle of the day.

sufficient 'representative' analysis of the overall solar access possible to typical Christchurch sites across a day. Even if the Panel was persuaded to agree with the Council's approach, it still remains an option for people to position their principal windows and living spaces to adjoin an open space or street rather than at the rear of a section (where that is an option available to them), and this would be likely to deliver different results than identified by Mr Hattam.

[13] The Panel still sees no accounting of front sites or sites that faced open spaces, or the potential early-morning or late-afternoon sun which contributed to the Panel's original inquiry. In fact, Mr Hattam concluded that the Panel's suggestion would make no difference in these respects because he did not in his supplementary statement consider such sunlight materially relevant. Lastly, the Panel notes that Mr Hattam's modelling was on the basis of north-south building forms (+/- 30-degrees) and sunlight from either an east or west side. The Panel is not clear on how many of Christchurch's potential dwellings realisable via PC 14 would likely sit within that orientation range as opposed to being east-west orientated and possibly receiving more (or possibly less) sunlight than Mr Hattam's test would indicate. That is a question of the existing orientation of lots across urban Christchurch. Because of these ongoing and significant uncertainties as to the likely overall benefits, costs, and other characteristics of the potential method, the Panel remains of the view that it is not (at least in the form that we can consider as part of PC 14) workable and does not lead to any change in the overall conclusions reached by the Panel.

[14] The Panel wishes to emphasise here, as it stated in paragraph [145](f) of Part 4 of the Recommendation Report that it has no opinion on whether or not there may be a workable alternative to the MDRS height in relation to boundary approach that may be justifiable and defensible for Christchurch. The limitations of the analysis provided to the Panel relating to its potential additional option, amongst other matters, did directly lead to the inclusion of paragraph [145](f) in Part 4 of the Recommendations Report. This is because the Panel could see that with a more fulsomely analysed and justified set of options and public (RMA Schedule 1) process commencing with those, many of the points made by submitters and the Council to PC 14 could be potentially sustained.

[15] Accordingly the Panel corrects paragraph [134] of Part 4 of its report to read as follows:

[134] We pointed out to Counsel for the Council that the information received was not what had been asked for. Although understanding the effects of additional east or west building bulk on north-based shadows and mid-day solar access was of

interest to us, the principal request for better understanding of the difference in morning and afternoon shadows (specifically in the case of properties east or west of neighbours and who only received principal sunlight access to their outdoor living space or associated large living room windows in the morning or afternoon period) had not been addressed. ~~We did not receive any further response on the matter.~~ The Council provided additional information addressing this in a Memorandum of Counsel dated 11 April 2024, including as Appendix E to that additional analysis provided by Mr Hattam.

[16] The Panel corrects paragraph [145](d) of Part 4 of its report to read as follows:

[145](d) This alternative would have been more enabling than the Council's position, be less enabling of the MDRS only to the extent absolutely necessary, but still recognise the latitudinal context of Christchurch as sought by the Council. Our rationale for this was that in the early morning and later afternoon periods the low solar angle often causes very long shadows to be cast across neighbouring sites anyway and that it was primarily the shadows in the middle period of the day that were of greatest potential nuisance between neighbours. This raised the question of whether amending the MDRS recession plane, if it could be justified at all, could be reduced to just the key part of the day where effects would be most pronounced. ~~Regrettably the information we asked the Council for was not what was provided to us and despite this being communicated to the Council, no further corrections or updates were provided. This prevented us considering such an alternative any further and we discarded that potential option from our thinking.~~ The Council's information was helpful in testing this option and Mr Hattam, in his supplementary statement included in Appendix E to a Memorandum of Counsel dated 11 April 2024<sup>6</sup> provided analysis of what he considered to be the likely effects of the approach. But the information provided was not sufficient to persuade us that it was workable (or unworkable). It only considered continuous sunlight hours on the single side of a dwelling that had a principal living room / outdoor living space and did not report on the issues of how solar access might be enjoyed in other rooms of a dwelling across all available (non continuous) sunlight hours including in particular where

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<sup>6</sup> [Memorandum of Counsel for Christchurch City Council - Information requests - 11 April 2024](#)

an allotment fronted a street or other open space. The Panel determined that the analysis was mixing separate considerations of total (non-continuous, non-single room) sunlight a dwelling might receive across a full day; sunlight that a principal living room alone might receive; and sunlight that an outdoor living space may receive. These all need to be addressed as part of reaching a sound conclusion on whether such an option was truly appropriate or not. These limitations, and we do not say this as a criticism of Mr Hattam who was in fairness responding to a Panel query made during the hearings process, prevented us considering such an alternative any further. We discarded that potential option from our thinking.

### **Addendum to Section 6, Part 4 of the Recommendations Report in relation to the Airport Noise QM**

[17] The Council has requested clarification of the Panel's intention with regard to the rules and standards that are proposed to be amended in relation to relevant residential zones within the 55dBALdn and 65dBA Ldn noise contours, and further clarification regarding the Panels intention with regard to the incorporation of ventilation requirements for new residential units within the 50dBA Ldn Noise Contour.

[18] The Council's memorandum of 8 August 2024, sets out a number of questions of clarification in relation to the Airport Noise QM under request 5, as follows:

Is the operative rule framework to include only those rules contained within Chapter 6 Noise, Rule 6.1.7 Activities near infrastructure?

That is, is it the case that none of the operative rules in Chapters 8 (for example a minimum allotment size of 450m<sup>2</sup> for RS zones within the 55dB Ldn) and 14 that currently apply to the locations within the 55 and 65 dB Ldn Noise Contours are to apply?

Moreover, is it the case that within the 55dB Ldn only an insulation rule applies (Rule 6.1.7.2.2 Activities near Christchurch Airport) and if breached Rule 6.1.7.1.5 Non-complying activities applies?

Further, is it the case that only Rule 6.1.7.1.6 Prohibited activities which manages sensitive activities within the Air Noise Boundary applies and, as a consequence, that the subdivision of land and its use for residential activity (residential units) is enabled to the medium density standards within the 55dB Ldn noise contour?

Furthermore, Part 4 [353] outlines the redrafting exercise required to Chapter 14 to include the recommended approach to the Airport Noise Interface Area. Specifically, (c) directs the application of the evidence of Mr Selkirk's recommendations. Clarity is sought on this matter. **With specific reference to the evidence of Mr Selkirk, could the Panel please detail which aspects of the evidence it recommends should be**

**standards (either as a permitted activity or restricted discretionary activity) and what the associated matters of discretion are intended to be.**

[19] In answering the questions, the Panel has identified a number of drafting errors in Section 6 of Part 4 of the Recommendations Report and wishes to issue a correction to the report for the sake of clarity and we then address the final question and drafting of our recommended ventilation rule.

[20] In the first instance the Panel acknowledges there is some inconsistency in the terminology and drafting which on reflection has contributed to the lack of clarity.

[21] The Panel did not recommend that any of the rules and standards (provisions) that apply to residential activities within the 55dBA and 65dBA Noise Contours as identified on the Operative District Plan (ODP) planning maps be changed. Rather, it was intended that all of those rules and standards (provisions) should be retained as a QM for MDRS in those locations. For the avoidance of doubt that includes all operative rules and standards for the 55dBA L<sub>dn</sub> and 65dBA L<sub>dn</sub> Noise Contours in Chapter 6 and Chapter 8, notwithstanding the relevant zones are to be renamed HRZ and MRZ.

[22] Corrections to Part 4 of the Report:

- (a) Amend Paragraph [214](b) to refer to matters (c) to (h)
- (b) In relation to [214](g) and (h):
  - (g) For the MRZ within the 55dB L<sub>dn</sub> noise contour the ODP rules and standards applying to residential units and density are retained.
  - (h) For the MRZ within the 65dB L<sub>dn</sub> Noise Contour the ODP rules and standards applying to residential units and density are retained.
- (c) Amend paragraph [347](d) to:
  - (d) The operative rule framework for residential activities, including density within the 55dB L<sub>dn</sub> and 65dB L<sub>dn</sub> Contour be retained as the QM in respect of those locations, i.e. non complying and prohibited activities respectively.
- (d) Amend [214](j) to correct the cross reference to ~~[416]~~ to [353].

[23] In relation to Mr Selkirks evidence<sup>7</sup> on ventilation systems the Panel recommends for the purposes of Pathway B and C that a new standard be incorporated into Chapter 14.5 and 14.6, or alternatively in Chapter 6:

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<sup>7</sup> [Statement of Evidence of Jonathan David Selkirk on behalf of Kāinga Ora, 18 September 2024](#) at 1.6 and 4.1

As a permitted activity standard for new residential units within the 50dBA Ldn Noise Contour as shown on the Operative Planning Maps and within the 2023 Remodelled OE contour are required to provide and maintain:

- (a) heating and cooling devices that are capable of maintaining the internal habitable space to a temperature of 18-25 degrees Celsius year round with windows and doors closed, and

where opening windows are provided mechanical ventilation is provided in compliance with NZBC G4 as if the windows were closed.

- (b) Mechanical ventilation systems and air-conditioning units are required to meet the same standards as Rule 6.1.7.2.1 a. v. and vi.

- (c) Non-compliance with the standard is a restricted discretionary activity, with discretion limited to alternative methods to provide for heating, cooling and ventilation to mitigate the effects of aircraft noise on the occupants of residential units.

[24] The clarification and corrections are to be read as part of and supplementary to the original Part 4 Recommendations Report.<sup>8</sup>



Cindy Robinson – Chair



David McMahon – Deputy Chair



Karen Coutts



Alan Matheson



Ian Munro

15 August 2024

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<sup>8</sup> [IHP Recommendations Report - Part 4 - 29 July 2024](#)