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**RECOMMENDATIONS REPORT: PART 6 - TREE CANOPY AND FINANCIAL  
CONTRIBUTION PROVISIONS AND SUBDIVISION**

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## **1. SCOPE OF THIS PART**

- [1] This part of the Report addresses both our recommendations on the following two topics:
- (a) Tree Canopy Cover and Financial Contribution provisions and
  - (b) District Plan Chapter 8 Subdivision provisions.
- [2] Tree Canopy Cover and Financial Contribution provisions have a slightly different statutory genesis than the other parts of Proposed Plan Change 14 (PC 14), therefore we have addressed the statutory framework and evaluation in Section 2 of this Part of the Report.
- [3] In relation to District Plan Chapter 8 Subdivision, these are related provisions for the purposes of s80E(b)(i) and (iii). We address the proposed changes to the Chapter 8 Subdivision in Section 3 below.

## **2. TREE CANOPY COVER AND FINANCIAL CONTRIBUTIONS**

### **Summary of Recommendations**

- [4] The Panel recommend that the Council delete the provisions in Chapter 6.10A, and their related provisions in other chapters and, if necessary, revisit their appropriateness in the context of a standard Schedule 1 process.
- [5] The Panel recommend the Council accept, and accept in part, submissions that opposed the Tree Canopy and Financial Contribution provisions and reject those submissions that supported them.
- [6] The Panel has found that the Tree Canopy and Financial Contributions provisions proposed by the Council are outside of the scope of matters that can be included in an Intensification Planning Instrument (IPI) pursuant to s80E(1)(b)(i).
- [7] Notwithstanding our finding on scope, we have also considered the merits of the Tree Canopy and Financial Contribution provisions and find that they are not appropriate when evaluated against the requirements of s32, 32AA or the matters in ss74-76 of the Resource Management Act 1991 (RMA).
- [8] Part 8, Appendix G details the Panel's recommended provisions, including related the related consequential change to Chapter 3, Strategic Objectives.

## Structure of Section

- [9] This section of Part 6 of the Report differs from Part 5 because it is not a Qualifying Matter (QM). This section addresses submissions on the legality and the merits of the objective, policies and rules in Chapter 6.10A Tree Canopy Cover and Financial Contributions (Tree Canopy and Financial Contributions provisions).
- [10] As part of PC 14, the Council included Tree Canopy and Financial Contribution provisions in reliance upon s80E(1)(b)(i), which provides a discretion for the Council to amend existing provisions or include new provisions in the district plan relating to financial contributions if the Council chooses to amend its district plan to do so under section 77E and 77T.
- [11] In this section of the Report we address:
- (a) the legal framework applying to financial contributions and the legality of the Tree Canopy and Financial Contribution provisions notified in PC 14
  - (b) the submissions and recommendations of s42A authors and further refinements offered in the Councils Reply
  - (c) our findings on the appropriateness of the objectives, policies, and rules.

## Legal Framework for Incorporating Financial Contribution Rules into PC 14

- [12] RMA, ss77E, and 77T provides that the Council may, if it considers it appropriate to do so, include financial contribution provisions, or change its financial contribution provisions (if applicable) in the District Plan for any category of activity except prohibited activities. If the Council so chooses, it may notify financial contribution provisions in an IPI that is required to be notified in accordance with s80F of the RMA.
- [13] At the outset we accept, as submitted by Mr Ryan for the Council, financial contributions are not QMs and are not subject to the additional evaluation required in sections 77I-L and O-R. Nor does the Council need to rely on financial contributions as being a “related provision” for the purposes of s80E(1)(b)(iii). As such there is no express requirement that the financial contributions have to “support or be consequential” upon the Medium Density Residential Standards (MDRS), or giving effect to National Policy Statement on Urban Development (NPS-UD) Policy 3, although Mr Ryan accepted that there still had to be a relationship to the object of PC 14. We return to the issue of the required connection to the object of PC 14 below.

[14] The Council position was that sections 77E, 77T and 80E(1)(b)(i) together enable financial contribution provisions to extend beyond MDRS or NPS-UD Policy 3 enablements and may also affect status quo development rights, by imposing the financial contribution provision on all permitted residential activities (assuming it was appropriate to do so). The Council position was that the *Waikanae* issue does not arise in this instance. We have already determined that we do not need to apply the findings of *Waikanae*, rather we rely on our own interpretation of the law in light of its text and purpose.<sup>1</sup>

[15] The lawful reach of the Tree Canopy and Financial Contribution rule and its reasonableness was challenged by submitters, including Kāinga Ora - Homes and Communities #834 #2082 #2099 (Kāinga Ora). We address those submissions further below.

[16] The Panel begin by reviewing the history of the financial contribution provisions in the Resource Management (Enabling Housing Supply and Other Matters Amendment Act 2021 (Housing Supply Amendment Act).

#### Financial contribution provisions included in the Housing Supply Amendment Act

[17] RMA, s77E was inserted under the Housing Supply Amendment Act, to enable local authorities to make a “rule” about financial contributions, for any class of activity other than a prohibited activity. This extended the application of financial contribution provisions to permitted activities, not just to activities requiring resource consent. Prior to the amendment, pursuant to s108(2)(a), financial contributions could only attach to a land use via a resource consent condition, which meant permitted activities did not trigger a financial contribution.

[18] Section 77E sits in the RMA provisions that apply to regional and district plans generally, along with a subset of “*Additional provisions for regional rules and district rules*”. Section 77E allows financial contributions rules to be included in a district plan, either as part of the usual Schedule 1 plan change, or via an IPI.

[19] Section 77E(2) provides that the requirements for a rule requiring a financial contribution, must specify:

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<sup>1</sup> See para Part 1 of Report at [156]

- (a) the purpose for which the financial contribution is required (which may include the purpose of ensuring positive effects on the environment to offset any adverse effect); and
- (b) how the level of the financial contribution will be determined; and
- (c) when the financial contribution will be required.

[20] Section 77E(3) provides that to avoid doubt, if the rule requiring a financial contribution is incorporated into the district plan under s77G, the rule does not have immediate legal effect under s86B when the incorporating IPI is notified.

[21] Section 77E(4) provides that financial contribution has the same meaning as s108(9) of the Act. A financial contribution is defined in s108(9), RMA, as *meaning a contribution of money, or land, or a combination of money and land.*

[22] The Panel agree with submissions made by Mr B Matheson for Kāinga Ora that:<sup>2</sup>

...the s 77E amendment was not intended to undermine or upset the well-established principle applying to the charging of financial contributions established through:

- (a) the High Court's decision in *Infinity Investment*,<sup>3</sup> and
- (b) the established, 43 year old, *Newbury* principles which apply as a matter of administrative law in relation to the exercise of any discretionary public power to impose conditions on a decision;<sup>4</sup> and
- (c) the requirement for any proposed objective to be most appropriate way to achieve the purpose of the Act,<sup>5</sup> and for every provision to be most appropriate way to achieve the objectives including by:
  - (i) identifying other reasonably practicable options;
  - (ii) assessing the relative efficiency and effectiveness of those options.<sup>6</sup>

[23] Section 77T, relates to the incorporation of financial contributions in an IPI, either as new financial contributions or as a change to operative financial contributions (if any). S77T sits within the provisions of the Act which addresses the mandatory and discretionary duties and additional evaluation requirements of an IPI.

[24] Section 80E sets out the meaning of an IPI, and the mandatory and discretionary elements of an IPI, which include the separate discretion to include provisions relating

<sup>2</sup> [Legal Submissions of Kāinga Ora, 12 April 2024](#) at 2.6

<sup>3</sup> *Infinity Investment Group Holdings Ltd v Queenstown Lakes District Council* [2011] NZRMA 321 (HC)

<sup>4</sup> See *Tauranga City Council v Minister of Education* [2019] NZEnvC 032, at [58]-[62]

<sup>5</sup> RMA s32(1)(a)

<sup>6</sup> RMA s32(1)(b)

to financial contributions in s80E(1)(b)(i). The correct interpretation of s80E(1)(b)(i) was raised by submissions and was the subject of legal argument and questioning during the hearing.

#### **PC 14 Tree Canopy and Financial Contribution Provisions as Notified<sup>7</sup>**

[25] PC 14 proposes an additional clause E to Strategic Objective 3.3.9 10(a)(ii) to ensure the outcomes sought in the objective include and recognise the role that urban tree canopy cover plays in providing important ecological and environmental/regulating services, and in enhancing the city's biodiversity and amenity.

[26] PC 14 also proposes to add a new sub-chapter 6.10A – Tree Canopy Cover and Financial Contributions which sets out a new objective, policies and rules to provide a framework for maintaining and enhancing urban tree canopy cover in areas of residential development. The provisions require that a minimum tree canopy cover amounting to 20% of the development site area is provided on the development site, and in the case of greenfield or brownfield subdivision/development where new roads are created, an additional tree canopy cover of 15% of the road corridor area is provided in the new road corridor. The trees required as part of this contribution can be planted in the landscape area required by the residential rules or elsewhere on the site, e.g. in the case of multi-unit development, in a communal area.

[27] Where the required tree canopy cover is not provided in part or in full, the payment of financial contribution in lieu of planting will be required. The charges are based on an average of costs comprising the cost of a tree(s), an engineered tree pit(s), often required in the road corridors to avoid damage to infrastructure, and the cost of maintenance of the tree and its immediate environment for seven years. The average cost per tree of \$2,037 (excl GST) is based on the following:

- (a) 75% of tree plantings will occur in open space land with an average cost per tree of \$623
- (b) 10% of tree plantings will be in street environments requiring some specialised but not very complex planting and maintenance with an average cost per tree of \$700

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<sup>7</sup> PC 14 notified in Chapter 6.10A and in Chapter 8.

- (c) 15% of tree plantings will be in street environments with complex planting (engineered pit) and maintenance requirements with an average cost per tree of \$10,000.

[28] A larger and secondary-component to the financial contribution would then be based on the cost of land required to accommodate each tree, on the premise that the land beneath a given tree could only accommodate that single tree (i.e., no ability for trees to share or ‘overlap’ one another’s canopy spread was made in the proposed provisions).

### **Submissions and Section 42A Report Recommendations**

[29] Most submissions on this topic support the concept of encouraging tree canopy retention and planting, and other submissions that support the use of a financial contribution alternative.<sup>8</sup> Submissions also sought further clarity as to the mechanics of the provisions and suggested alternative drafting approaches to improve clarity.

[30] Submitters who opposed the provisions challenged both the legality and reasonableness of the methods to calculate financial contributions.

[31] Legal issues arising from submissions included;

- (a) Is Rule 6.10A.4.1.1 in its entirety a financial contribution rule? If not, is the part that requires a developer to plant trees to contribute to the city tree canopy a ‘provision relating to a financial contributions’?
- (b) Is the tree canopy part of the rule an unlawful limitation on the density standards in Schedule 3A of the RMA?
- (c) Is it lawful for Rule 6.10.4.1.1 to apply to all residential activities in relevant residential zones or just those relevant residential zones incorporating the MDRS and Policy 3 enablements?
- (d) Do the legal principles of *Waikanae* apply to the rule, in relation to “disabling” the status quo?

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<sup>8</sup> Submissions on this topic are summarised in [s42A Report of Anita Hansbury, 11 August 2023](#) and in the [Statement of Evidence of Toby Chapman, 11 August 2023](#)



- (e) Are the proposed objectives, policies and rule (and associated matters of discretion), the most appropriate method to give effect to the objective(s) of PC 14.

[32] The Council in Part 7 of the s32 Report and in the evidence of Ms Hansbury<sup>9</sup>, Mr Chapman<sup>10</sup>, Dr Morganroth<sup>11</sup> and Dr Muerk<sup>12</sup>, justified the need for additional tree cover in Christchurch in relation to losses in tree cover as a consequence of residential development historically, and the adverse effects of increased carbon emissions, increased stormwater run-off, increased heat island effects, and loss of biodiversity and amenity. These reasons for promoting additional tree canopy were largely undisputed.

#### Submissions on legality of Tree Canopy and Financial Contributions

[33] The Panel address the legal issues in the first instance, before then applying the evidence before us to the evaluation required in s32 of the Act.

*Is Rule 6.10.4.1.1 a financial contribution rule? Is the tree canopy part of the rule a provision relating to a financial contribution?*

[34] Kāinga Ora challenged whether or not the proposed rule was a “financial contribution”; that is because the rule actually requires the planting of trees or the payment of money, but payment only applies in the event that a developer of residential property, elects not to plant the required tree canopy cover, as set out in Rule 6.10.4.1.1, P1 and P2.

[35] We find that as drafted the “rule” involves two requirements, residential development is only permitted if the required 20% tree canopy planting is provided, or a financial contribution is paid. This is reflected in the drafting of Rule 6.10A.4.1.1a, which provides:

The activities listed below are permitted activities if they meet the activity specific standards for tree canopy cover and/or financial contributions set out in this rule and the tree canopy cover and financial contributions standards, including calculations, specified in Rule 6.10A.4.2.

[36] On the issue of whether the package of provisions were properly a financial contribution, as defined in s108(9), Counsel for the Council submitted<sup>13</sup> that “*there are no limitations in sections 77E, 77T or 80E in terms of the purpose or scope of financial contribution provisions notified in an IPI, and that relying on these sections the Council notified a*

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<sup>9</sup> [s42A Report of Anita Hansbury, 11 August 2023](#)

<sup>10</sup> [Statement of Evidence of Toby Chapman, 11 August 2023](#)

<sup>11</sup> [Statement of Evidence of Justin Morgenroth, 11 August 2023](#)

<sup>12</sup> [Statement of Evidence of Colin Meurk, 11 August 2023](#)

<sup>13</sup> [Council Legal Submissions on Citywide Qualifying Matters and Financial Contributions, 8 April 2024](#) at 10.4

*package of new financial contribution rules (and associated provisions) in its IPI*’.

Furthermore, Counsel submitted that the provisions:

- (a) address the importance of retaining (and adding to) the city’s tree canopy cover, particularly in residential areas; and
- (b) respond to the likely adverse effects of residential intensification on the environment, including on tree canopy cover and its benefits.

[37] In the Council’s Reply it was argued that the Tree Canopy and Financial Contribution package can be considered as a “financial contribution provision(s)” and/or provisions “relating to financial contribution” in s77T and s80E(b)(i).<sup>14</sup>

[38] We have concluded that if the Tree Canopy and Financial Contribution package is not a financial contribution provision or provisions relating to financial contributions within the meaning of in s77T and s80E(b)(i) then the provisions could only be justified if they were a “related provision” within the meaning of s80E(b)(iii).

[39] During the hearing we tested if “hypothetically” the provisions could form part of the “related provisions” referred to in s80E(1)(b)(iii) and (2), with or without s77E or s77T. Counsel for the Council (Mr Ryan) agreed that they could, but that the inclusion of s80E(1)(b)(i) meant that they did not need to be 100% correlated to the MDRS or Policy 3, but he acknowledged there was still a need to consider the purpose and text of the legislation.<sup>15</sup> The evidence of Ms Hansbury was that there was a large degree of correlation between the Tree Canopy and Financial Contributions and the intensification requirements. Accordingly, we have assessed the rule on the basis that the Council proposes the provisions in reliance on s80E(1)(b)(i).

[40] The Council’s evidence led us to conclude that the payment of money is secondary to the principal purpose of the provision which is to entice tree planting by developers. This was confirmed in the evidence Mr Chapman, who said when answering questions from the Panel about the cost of the land component of the financial contribution that it was important to note that “the driver” is to have people incorporate trees on their own property and that the financial contribution is required when the developer cannot, or chooses not to, plant trees on their land. In the latter situation the Council would need to purchase land elsewhere, because the Council had already committed to planting on

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<sup>14</sup> [Council Reply, 17 May 2024](#) at 14.3(b)

<sup>15</sup> Hearing 17 April 2024, Morning Session 1

its own land.<sup>16</sup> Mr Chapman preferred that the regulatory tools in the plan required tree planting but acknowledged that would not always be possible and the financial contribution could address that situation.

[41] During cross examination by Mr B Matheson for Kāinga Ora, Ms Hansbury explained the reason for the rule as follows:

Mr B Matheson: Who made the decision to include the tree canopy and financial contribution rule in plan change 14? Was that a recommendation from you to do that or was that arrived at in another way?

Ms Hansbury: It was arrived at in a different way. The Councillors, for quite some time have been raising, and the community have been raising issues about the loss of tree canopy cover in Christchurch and at the same time there was work started on the Urban Forest Plan to remedy those issues. So there were conversations had between the planning unit and the parks unit and of course through the Council, a decision was made that something needs to be done about it.

Mr B Matheson: When was the conclusion reached to link the financial contribution and the tree canopy cover rule together?

Ms Hansbury: That was during the process of plan change 14 provisions.

Mr Matheson: Did you ever consider as part of your assessment and development of the rule to just have a tree canopy rule?

Ms Hansbury: Yes we did consider it but we didn't think that it was going to fly if you like because of the limitations on how much you could add to the standards provided through Schedule 3A.

Mr Matheson: So is that why you added the financial contribution component of it?

Ms Hansbury: Yes

Mr Matheson: So the primary purpose of the rule is tree canopy retention or replacement isn't it?

Ms Hansbury: Yes.

[42] In later questions from Mr B Matheson, Ms Hansbury acknowledged that the reason for the financial contribution provision was because the MDRS standards did not allow the Council to add a tree planting requirement to the landscaping requirement of 20%.<sup>17</sup>

[43] In the Reply the Council argued that the "optionality" aspect of the rule does not make it ultra vires. We had understood the Council's argument was that the coupling of the financial contribution part of the rule, with the tree canopy cover requirements, that part is a financial contribution as is contemplated in s80E(1)(b)(i) which enables the Council to include "provisions relating to financial contributions". Counsel submitted that the

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<sup>16</sup> [Statement of Evidence of Toby Chapman, 11 August 2023](#) at 8, and Hearing 17 April 2024, Morning Session 2

<sup>17</sup> Hearing 17 April 2024, Morning Session 2 at 1.33

references to “financial contribution provisions and provisions relating to financial contributions must *“on any sensible reading include an alternative that developers can adopt to avoid being liable for financial contributions being addressed.”* With respect we think this conflates the merits of the provisions with their legality.

[44] We prefer to take a more principled approach to interpreting the requirements of the Housing Supply Amendment Act, as they relate to financial contribution provisions.

## **Findings and Evaluation**

[45] The Panel find that the PC 14 tree canopy and financial contribution package of provisions are outside of the scope of matters permitted to be included in an IPI. We have concluded that the part of the rule requiring the planting of tree canopy cover is not a financial contribution rule as defined by s108(9) and is not properly included in PC 14 under s80E(1)(b)(i).

[46] We have approached the interpretation of s77E, s77T and s80E(1)(b)(i), in light of the text and purpose. Our interpretation is that;

- (a) Section 77E is the general power to make a financial contribution rule, as defined in s108(9), and prescribes what is required of that rule. It does not address rules for any other purpose.
- (b) Section 77T is the provision that enables a Council to include “financial contribution provisions” (as defined by s108(9)) in the IPI through the Intensification Streamlined Planning Process (ISPP) process. It does not address provisions for any other purpose.
- (c) Section 80E(1)(b)(i), provides that a council may amend or include provisions “relating to financial contributions” if the council chooses to amend its district plan under s77T. The provisions relating to financial contributions are the objectives, policies and other methods connected to the payment of land or money to offset adverse effects, (which in this case would be to enable the Council to plant trees as a response to the identified adverse effects from the permitted land use) or both and not a requirement to plant trees.

[47] For the purposes of s80E(1)(b)(i), the use of the words “relating to” is similar to the use of the term “related” in s80E(b)(1)(iii), except that sub-paragraph of the section has an extended meaning and refers to ‘including objectives policies, rules, standards and

zones, that support or are consequential on the MDRS or Policy 3. Further, in s80E(2), “related provisions” are given an extended meaning to include, without limitation a number of listed categories of provisions. The drafting in s80E(1)(b)(iii) is in contrast to the s80E(1)(b)(i) where there is no extended meaning.

[48] We find the ordinary meaning of the words “relating to” in s80E(1)(b)(i) means the provisions “connected” to financial contributions. That is, provisions that connect to the contribution of money, or land, or a combination of money and land. S80E(1)(b)(i) enables the council to include objectives, policies, rules, and other methods that implement the financial contribution the Council has opted to include in PC 14, but that does not extend to including other provisions such as requiring permitted land uses to plant trees to increase tree canopy cover.

[49] The legal submissions of counsel for the Council and the evidence of Ms Hansbury is that the primary purpose of the provision is to require developers of residential property to plant trees to contribute to the strategic objective of the Council to increase tree canopy cover across the city by 20%, and that the Council would rather not have to deal with the contribution of money.

[50] The broad application of the proposed Tree Canopy and Financial Contribution package to all residential development, not just to the response to MDRS or NPS-UD Policy 3 enablements impacts status quo development rights. Counsel for Kāinga Ora referred this to as a *Waikanae* scope issue. The Council, whilst taking the stance *Waikanae* was wrongly decided, noted that the Environment Court, in that case had not turned its mind to financial contributions provisions. We do not think we need to consider the issue of scope through the lens of *Waikanae*, as we have determined in Part 1 of our Report, our interpretation of the requirements of the Housing Supply Amendment Act, and s80E, turns on the ordinary meaning of text in light of its purpose.

[51] We find that while there must be a link between the financial contribution and the objective of the IPI, the incorporation of financial contributions is not constrained by the requirement that applies to QMs, and may, subject to appropriate evaluation under s32, apply to pre-existing development rights.

[52] Although we find that the Tree Canopy and Financial Contribution package of provisions are not a financial contribution provision or provision relating to financial contributions, in the event we are wrong, we have considered the merits of the proposal as if it were a financial contribution provision.

## Findings and Evaluation

- [53] The Panel has already accepted that on a city-wide basis tree canopy cover provides a valuable ecological service and should be encouraged. The Council's rationale for addressing tree canopy cover across the city is set out in the Urban Forest Plan and explained in the s32 Report Part 7 and in the s42A Report of Ms Hansbury and the evidence of Mr Chapman, Dr Muerk and Dr Morganroth.
- [54] The provisions in Chapter 6.10A that relate to the payment of money and/or land address the requirements, of s77E(2), by setting out the purpose in Policy 6.10A.2.1.2 – *The cost of providing tree canopy cover and financial contributions* and the method for calculating the financial contribution part of the provisions.
- [55] However, in terms of s32 and s32AA requirements the evidence does not support the conclusion that the proposed provisions are the most appropriate. That is because the evaluation takes a narrow view of the available alternatives and does not justify the findings that the benefits of the provisions outweigh the costs for residential development.

### Sections 32 and 32AA evaluation

- [56] The Tree Canopy and Financial Contributions provisions are addressed in two objectives:

Strategic Directions: Objective 3.3.9 add E

Tree canopy cover in areas of residential activity that maintains and enhances the city's biodiversity and amenity, sequesters carbon, reduces stormwater runoff, and mitigates heat island effects; and

6.10A.2.1 Objective – Urban tree canopy cover

- a. Tree canopy cover in areas of residential activities is enhanced through maintaining existing trees and/or planting new trees as part of new residential development to sequester carbon from emissions, reduce stormwater runoff, mitigate heat island effects, and improve the city's biodiversity and amenity.

- [57] The Council's s32 Report and in Ms Hansbury's Section 42A Report justify the provisions as being the most appropriate response to requirements for intensification of housing in response to the Housing Supply Amendment Act because intensification will likely lead to effects such as; increased carbon emissions, increased stormwater run-off, increased heat island effects, and loss of biodiversity and amenity.

[58] The Tree Canopy and Financial contribution rule was also proposed having regard to the Urban Tree Forest Plan for Ōtautahi Christchurch 2023 (UFP) which provides amongst other things:<sup>18</sup>

Goal 1:Plant

Our Urban forest canopy is growing sustainably

Objective 1.1 Grow our urban forest and achieve and maintain canopy cover targets. In order for us to meet our canopy cover targets we must take an active role in locating and planting trees throughout our city.

Associated action<sup>19</sup>

Establish requirements for new development sites to have a minimum of 20% projected canopy cover onsite or pay a Financial Contribution (FC) to Council for planting to occur elsewhere.

Objective 1.2 Distribute canopy cover equitably, with no ward having less than 15% total canopy cover. Many of the social benefits that come from trees are based on their location. In order to distribute these benefits across all our communities, we need to ensure that our canopy is spread across our city

Associated action

Continue to assess and focus on suburbs with low canopy cover to determine what can be done to increase it.

Target new planting projects in areas with low canopy cover.

Identify where land may need to be acquired for the purpose of increasing tree planting, particularly in areas of low canopy cover and, where possible, in association with achieving other Community Outcomes

[59] We observe that the Urban Forest Plan includes a number of non-regulatory actions and council funded initiatives and projects to support the retention and enhancement of tree canopy cover. These matters are relevant to the requirements of s32 of the Act.

[60] As stated by Ms Hansbury, the UFP was the genesis of the Council's Tree Cover and Financial Contribution provisions included into PC 14.

[61] We accept that there are widely recognised adverse effects arising from the loss of tree canopy cover, and positive effects from trees as an ecological service. We accept that evidence at a more general city-wide level, but it is not an adverse effect arising only from residential land uses. This is recognised in the UFP.<sup>20</sup>

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<sup>18</sup> Section 32 Report Part 7 at 2.1.15 The [Urban Forest Plan for Ōtautahi Christchurch 2023](#) is a strategy prepared under the Local Government Act 2002, and we are required to have regard to it, when making our recommendations, and we have done so

<sup>19</sup> Urban Forest Plan Page 23, one of ten actions associated with Objective 1

<sup>20</sup> Urban Forest Plan, at 13

## Equitable tree coverage

Building sustainable communities needs to be at the forefront of our thinking. Currently our urban forest is not spread across our communities evenly, so the benefits are not able to be shared by everyone to the same extent. In part, this is due to land use zoning, where often the areas with lower tree canopy cover are in, or near, commercial or mixed-use zones with little open space. There is also an international trend that shows an imbalance of canopy cover between wealthy and economically deprived areas, this has been reflected in the recent canopy cover surveys within Christchurch with wealthier suburbs having higher canopy cover. As we increase tree canopy cover across our district, we will need to prioritise neighbourhoods which are lacking trees and support businesses and communities to take stewardship of their role in contributing to urban forest growth.

- [62] The Council evidence is that retaining and increasing tree canopy cover will improve the ecosystem regulating services which justifies the introduction of the regulation to ensure that trees are provided and help mitigate the adverse effects of development.
- [63] Ms Hansbury noted that the adverse effects from developing a vacant site, for example arise from the hard surfaces, stormwater runoff, heat island, low carbon absorption effects and the lack of climate change resilience.<sup>21</sup>
- [64] Her evidence did not satisfy us as to whether those effects justified the 20% tree coverage requirement. Rather, her evidence was that 20% could be accommodated on a site within the landscaping and site coverage requirements of RMA, Schedule 3A, and that the 20% was a strategic target of the Council. We note here that the proposed tree planting provisions do not just apply to sites where three or more dwellings are enabled by the MDRS standards but would apply to all residential activities.
- [65] We also reflected on the context of this issue. It is not the case that the Christchurch urban zones are highly treed and that intensification enabled by PC 14 might lead to a considerable direct reduction in that in need of redress. Much of the canopy loss identified by the Council is historical, having occurred as a consequence of previous planning decisions. In many instances the residential sites subject to PC 14 have been cleared of canopy for decades, and this could remain the case under the Operative District Plan (ODP).
- [66] We also note that although in an overall sense PC 14 would result in a substantial up-zoning across the city, the specific metrics of building and site coverage and impervious surface area, two standards that directly relate to what land might be available to accommodate trees, and are not in many instances dramatically different between the Operative District Plan (ODP) and PC 14. In short, we did not see that an ODP suburban

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<sup>21</sup> Hearing 17 April 2024, Morning Session 3, in answer to questions from Mr B Matheson



residential-zoned site with cleared grass, extensive concrete parking areas and turning areas, and a very large house (with no canopy), was significantly different to a PC 14/ (MRZ) scenario of that same site accommodating three smaller houses, more building coverage but less concrete driveway and turning areas, and grass as it relates to triggering a justification for a 20% on-site canopy requirement. On this basis we did not see the PC 14 tree-canopy nexus as strongly as the Council did.

[67] The Section 32 Report evaluated 3 options (do nothing, use Development Contributions or provide the proposed Tree Canopy and Financial Contribution Rule). Ms Hansbury dismissed the first two options as not meeting the stated objective.

[68] During the hearing Ms Hansbury specifically accepted that the Council could have but did not consider a range of alternative options to improve tree canopy cover. In the Council's Reply the Council assessed, under s32AA, two other alternatives that arose during the hearing.

Option 2: Retaining the overall scheme (permitted activity rules with an option to provide either physical tree canopy cover or financial contributions), while amending the rules to either:

- reduce the amount of FC payable to only reflect the cost of the tree/s, planting and maintaining the tree/s on Council land; and / or
- remove the consent notice requirement.

Option 3: Amend the scheme so that it applies to development of four or more units only, which is proposed to be a restricted discretionary activity by default in Chapter 14. Under this option, associated matters of discretion would apply if the 20% tree canopy cover or equivalent financial contributions are not provided. The Chapter 6.10A rules would need to be adjusted to apply to 4+ unit developments only.

[69] Ms Hansbury's analysis was included with the Reply.<sup>22</sup> Her overall conclusion was that the scheme notified in PC 14 (as refined in the Reply version) was more appropriate than those other options, in addition to being preferable to the other options considered in the original s32 Report.

[70] In the Reply the Council noted the support for the "optionality" from some submitters involved in greenfield developments, who often faced challenges with the timing of planting and maintenance requirements associated with their developments. Ms Comfort, a senior planning consultant provided evidence on behalf of a number of submitter developers in that regard.<sup>23</sup>

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<sup>22</sup>Council Reply, 17 May 2024 [Attachment 5 Section 32AA analysis - Financial Contributions Tree Canopy Cover](#)  
<sup>23</sup> [Statement of Evidence of Julie Comfort for Sutherlands Estates Ltd and Ors, 20 September 2023](#) and [Summary Statement Julie Comfort, 17 April 2024](#)

[71] The Council referred to cross examination of Ms Strachan, a landscape architect on behalf of Kāinga Ora, who accepted that requirements of Rule 6.10A.4.1.1 could be readily accommodated within the many Kāinga Ora developments, either within the 20% landscaping requirements or the 50% site coverage requirements in Schedule 3A.

[72] We accept that both Ms Comfort, and Ms Strachan's evidence demonstrate that as far as the planting requirements of the rule package, they could be workable within the context of the MDRS, but of course the rule is not limited to increased density due to the MDRS.

[73] However, this conclusion must also be tempered by the answers provided to us in our questions of the various experts. These answers confirmed amongst other matters that:<sup>24</sup>

- (a) the planted trees would have an "assumed" canopy based on the species and the canopy size at maturity, and noting that the extent of canopy could be less if sufficient area was not provided for roots to grow to the required extent or other planting around the tree reduced root space;
- (b) there was no monitoring proposed and there was no clarity as to how compliance with the permitted activity rule would be measured;
- (c) the landowner could trim the tree so that it never achieved its 20% canopy coverage;
- (d) trees planted on a site can overhang onto a neighbour's site, and could be trimmed by a neighbour, again meaning the tree never achieved its 20% canopy coverage.

[74] This left us in the position of being unassured that a 20% canopy rule was robust and sufficient when the 20% in question need not be confined to the site on which the standard relates and would not in any event actually be policed by way of canopy measurement over time.

#### *Reasonably practicable options*

[75] The Panel found that the Council did not consider all reasonably practicable options to achieving its objective of increasing tree canopy coverage across the city. The s32 Report does not evaluate non-regulatory methods, a combination of regulatory and

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<sup>24</sup> Panel Questions of Ms Hansbury, 17 April 2024

non-regulatory methods, nor did it evaluate a city-wide plan change to include financial contributions for new developments for commercial, industrial or mixed use land<sup>25</sup>, or any combination of the above. The additional matters addressed in the Reply are just two of many other alternatives.

[76] Ms Hansbury's evidence, and answers to questions in cross examination and the approach undertaken in the s32 Report Part 7 demonstrates that the Council applied a very narrow lens to addressing this city-wide issue, in order to leverage the opportunity to include a financial contribution rule via PC 14. Even if legally open to the Council to do so, it immediately constrained the nature of evaluation undertaken. The work undertaken in the context of the UFP, predetermined the Council's preferred option in its s32 evaluation.

#### *Costs and benefits*

[77] In terms of the costs and benefits of the proposed provisions, the Panel has concerns at the lack of robustness of the analysis and conclusions reached and the reasonableness and proportionality of the provisions. The Section 32 Report concluded that in relation to the preferred option:

Option 3 is the preferred option and is recommended as the most efficient and effective option of the alternatives considered. The recommended proposal addresses the issues identified, and the benefits of the proposed amendments outweigh the costs. It provides alternative mechanisms for developers to contribute appropriately to tree canopy cover across the city. The proposed solutions to the issues are considered more effective than the other options in achieving the relevant Plan objectives and the desired outcomes.

[78] The economic evidence of Mr Osborne for the Council does not equivocally support the efficiency of the provisions from an economic perspective.<sup>26</sup> Mr Osborne's evidence was that whilst the environmental, amenity and social benefits of appropriate tree cover are relatively obvious, there are three key economic aspects of the proposed provisions:<sup>27</sup>

- (a) the potential economic costs associated with the provision;
- (b) the corresponding economic benefits; and
- (c) who is paying the cost and to what degree is it equitable.

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<sup>25</sup> Although they are mentioned in the conclusions, but were not evaluated as an option

<sup>26</sup> [Statement of Evidence of Philip Osborne, 11 August 2023](#)

<sup>27</sup> Ibid at 41-51

[79] Potential economic costs include;

- (a) Cost increases for some residential development, either the cost of trees if planted by the developer or the cost of the financial contribution which includes a land value component (approximately 8% of the realised land value);
- (b) Impact on feasible capacity, which is not necessarily proportionate, noting that there is more potential for greenfield sites to take the option of planting, rather than the financial contribution. In this respect, Mr Osborne noted:

It is expected that the average site cost, in terms of financial contribution has the potential to increase land costs by \$20,000 per site. I consider that the proposed financial contributions provisions are likely to result in some reduction in feasible capacity for the city, though the extent to which this reduction is realised is not known and was not assessed as part of the section 32 cost benefit analysis. It is my understanding that Council is nonetheless comfortable with the residential capacity position of the city with the financial contribution provisions in place.

- (c) Impact on distribution of development by impacting on the balance of residential feasibility and impact on the distribution of development. Mr Osborne anticipates a greater impact on greenfield development and in areas of higher land value, which could impact on the level of risk developers are prepared to take.
- (d) Impact on affordability: The proposed financial contributions provisions have the potential to increase the costs of residential development, by up to 8% on the cost of land and additional costs of tree planting or retention across all development. This will impact upon the cost of housing as well as potentially impact upon choice (as per the potential for redistribution).
- (e) Distribution of Cost/Equity: In assessing the potential economic costs of a policy it is important to understand the parties that are likely to bear the cost in relation to those that benefit. In relation to the urban tree canopy policy, the overall costs will primarily be borne by new home buyers (and, through competition, resales). It is therefore important that some degree of the “extent” of the issues improvement of the tree canopy would solve is linked to new residential development.
- (f) Other market impacts: certainty/saleability/duplicating open space cost.

[80] Mr Osborne considered that there are a number of existing factors that are likely to reduce the economic burden of these provisions, including:

- (a) The requirement under the MDRS for residential development to provide landscaping over at least 20% of the land area, in respect of which the retention or new provision of the tree canopy will fulfil this obligation; and
- (b) A significant proportion of the market is likely to be able to retain or plant trees to meet this provision in lieu of a financial contribution, thereby avoiding or reducing the direct cost.

[81] He identified a number of economic benefits:

- (a) Long-term enhanced amenity of the urban environment.
- (b) Environmental infrastructures: wider community benefits of trees such as carbon storage and sequestration, stormwater runoff attenuation, and urban heat island mitigation.
- (c) Provision within a localised environment: The economic benefits attributable to the provisions sought under PC 14 not only provide for a contribution that would fund the proportional tree planting but also the value of the land required to plant the trees. This land value is based on the underlying value of the developed land by site and therefore provides for land for localised tree planting and so contributes to more localised benefits to that community.
- (d) Avoids consumption of current public land: The funding of additional land through the financial contributions avoids the utilisation of current public land that may otherwise be utilised for both public activities and for the Council's own commitment to tree planting.

[82] Overall Mr Osborne concluded that while the benefits to the wider community are important and significant, there is the potential for measurable impacts on the Christchurch housing market although these are likely to be substantially tempered through the provision of trees within the market itself rather than opting for contributions. His evidence was that when essentially costing trees, it is also important to consider the value of the existing canopy and the need to value and safeguard that.

[83] Mr Colegrave, for Kāinga Ora recommended removal of the Tree Canopy and Financial Contribution provisions on the basis that they:

- (a) Will increase the cost of development while inflating house prices and reducing affordability. It will reduce the rate of development, forego profits, and reduce consumer surplus, thereby imposing material economic costs.
- (b) Are regressive, with higher impacts on lower value properties, and vice versa.
- (c) Create uncertainty, which may delay or deter investment, e.g. displacing it to Selwyn and Waimakariri.
- (d) Unfairly require future developers to remedy the supposed “wrongs” of previous developers.
- (e) May cause double-dipping in tandem with CCC’s development contributions policy.
- (f) Overlook the obvious – and arguably – superior option of increasing canopy cover via the coordinated, mass planting of public land at-scale. This would be far more efficient than the proposal by utilising cheaper public land and minimising plant acquisition and planting costs through economies of scale.

[84] Overall, Mr Colegrave’s comments raise potential costs, which we understand are not disputed by Mr Osborne. However, Mr Colegrave has not undertaken any cost benefit evaluation.

[85] We find the Council’s own economic evidence demonstrates that the costs of the rule are high (and this was accepted by Ms Hansbury, in relation to the financial contribution component) and may well discourage housing intensification and impact on affordability, particularly in areas where it is most needed.

*Risk of acting or not acting*

[86] The Section 32 Report concluded:

With the imminent increase in development intensification enabled by the NPS-UD and RMA Schedule 3A, the risk of not acting is far greater than the risk of acting. The recent 2018/2019 survey of the tree canopy cover in Christchurch indicates that the overall canopy cover is now at 13.5% which represents a 2% loss since 2016. CCC owned land had 23% canopy cover, crown land had 16% canopy cover and private land had 11% canopy cover. While the public land lost 1% of the cover (mainly due to plantation forest felling and Port Hills fires), the biggest loss (2%) occurred on privately owned land, predominantly where redevelopment occurred. With nearly 70% of land in Christchurch being in private ownership and 57% of tree canopy cover being on private land, the risk of further canopy loss across the city is very real. To reverse that trend and address the associated adverse effects, the tree canopy cover in the city needs to be maintained and increased. Even with the maximum planting targets on all vacant

Council land (e.g. former Red Zone), the 20% canopy cover target cannot be achieved without additional tree planting on private land. [Panel emphasis underlined]

[87] Notably the risks identified relate to all privately owned land, not the risk of not acting in relation to residential land. The evaluation is at a city-wide level and does not robustly evaluate the efficiency or effectiveness of the provisions proposed.

#### Overall appropriateness of the Tree Canopy and Financial Contribution rule

[88] The Panel has carefully considered those matters against the city-wide benefits identified in the Section 32 Report and the additional s32AA evaluation in the Reply. However, the general nature of the Section 32 Report, and the literature upon which it relies, is not sufficiently robust to support a finding that the proposed method of the Tree Canopy and Financial Contribution rule is the most appropriate means to address the city-wide objective of increasing tree canopy cover. Based on the limited evaluation undertaken we do not find the analysis supports the conclusions reached that the provisions are the most appropriate. We also record misgivings as to the fundamental workability of canopy rules put to us based on the combination of canopy requirements premised on a percentage of a site area that can then be positioned so as to substantially overhang neighbouring properties, all in a context of inadequate ongoing monitoring. At the least, we see it likely that landowners will simply externalise canopy spread across each other's boundaries, and then trim the other's respective overhanging canopy. It is just too simple for the rule to be undermined and this will in turn weakens the integrity of any financial contributions actually levied.

[89] To the contrary, the Council's own s32 Report and the economic assessment upon which it relies identifies a real risk of inequitable outcomes, as is also acknowledged in the UFP.

[90] The merit of rules to require the planting and/or recovery of financial contributions to support planting elsewhere, will undoubtedly benefit the "ecological services" for city on a city-wide basis, and may improve amenity values associated with tree cover. However, the evidence provided to support the rule to be incorporated into PC 14, does not sufficiently justify the regulatory method as being effective, or efficient and there is significant risk the rule could undermine the ability of PC 14 to improve housing choice and affordability and give effect to NPS-UD, Objective 1, Policy 1.

[91] For the reasons set out above, we find that the proposed Tree Canopy and Financial Contribution provisions are not supported by sufficient evidence, or identification of reasonable alternatives to reach the conclusion that they are the most appropriate.

[92] For the above reasons we recommend the Council delete Chapter 6.10A and any associated provisions and revisit a full range of options and alternatives through a city-wide Schedule 1 process.

### **3. SUBDIVISION, DEVELOPMENT AND EARTHWORKS**

#### **Summary of Recommendations**

[93] The Panel recommends that Chapter 8 *Subdivision, Development and Earthworks* be amended generally in accordance with the Council's Reply version, subject to the following amendments as shown in the Panel's recommendation version:

- (a) Policy 8.2.2.1 *Recovery activities* and Policy 8.2.2.3 *Allotments* be retained as per the ODP;
- (b) Amend Rule 8.5.1.2 *Controlled activities C2B* to revert to the ODP;
- (c) consequential amendments are required to be made to align with other Panel recommendations, such as:
  - (i) the rezoning of the RNN Zone to MRZ or High Density Residential Zone (HRZ) – not Future Urban Zone (FUZ), with consequential deletion of all FUZ provisions;
  - (ii) retaining the Residential Hills zone where outline development plans and overlays apply, and rezoning the remainder to MRZ with Council to reconsider and re-evaluate whether a Residential Hills area-specific qualifying matter might apply and be subsequently sought on parts of that (refer to Part 4 of our Report);
  - (iii) deletion of Residential Heritage Areas
  - (iv) deletion of/amendments to Residential Character Areas;
  - (v) deletion of the Riccarton Bush interface Area QM;



- (vi) retain the Waste water constraints area (vacuum sewer) QM;
- (vii) not including the Loess Soils Management Area;
- (viii) retaining the operative 'dripline' provisions (not the proposed 'tree protection zone radius'); and
- (ix) not including the Tree Canopy Cover and Financial Contributions provisions.

[94] The Panel acknowledges that our recommendations in relation to the submissions on Subdivision, Development and Earthworks are to a large extent a consequence of our findings and recommendations on submissions on other parts of PC14. This is because the Subdivision, Development and Earthworks chapter is a related set of provisions supports or is a consequence of incorporating the MDRS and NPS-UD Policy 3 enablement, except to the extent that the MDRS required mandatory subdivision provisions to be included. Therefore, the submissions supporting or opposing Chapter 8 provisions as notified are accepted in part to the extent that we have recommended changes to PC 14 notified provisions.

[95] Referring to Part 4 of our report and our recommended three-pathway approach to development on residential-zoned land, we considered whether residential subdivision should be subject to the same approach. On review of the provisions, we are satisfied that the MRZ and HRZ subdivision provisions will be sufficiently co-enabling that existing ODP-intensity residential subdivision could still be sought and would not be subject to a more restrictive activity status or Council assessment.

[96] Part 8, Appendix G includes the direction to the Council to reflect the Panel's recommendations regarding residential zones.

### **PC 14 as Notified**

[97] PC 14 as notified included a number of changes to the subdivision, development and earthworks provisions, to give effect to the MDRS and Schedule 3A of the RMA and Policy 3 of the NPS-UD, which in summary included the following:

- (a) modifying the activity status of subdivision activities for sites subject to the MDRS so that subdivision rules do not constrain the ability to build according to the MDRS;

- (b) removing limitations on the size, shape or other site-related requirements for subdivision as required by clause 8 of Schedule 3;
- (c) ensuring that the subdivision rules provide for the same (or greater) level of development as the MDRS; and
- (d) changes to align with the National Planning standards zoning references and definitions ('boundary adjustment').

### **Submissions and Section 42A Recommendations**

[98] As set out in the Council legal submissions<sup>28</sup> and the Council evidence<sup>29</sup> the main issues raised in submissions related to the following matters:

- (a) replace the 'tried and true' minimum allotment size and shape requirements for subdivision with a new 'shape factor' approach;
- (b) changes to the minimum allotment size for vacant lots;
- (c) controls of allotments with existing or proposed buildings;
- (d) infrastructure rules;
- (e) removal of Outline Development Plan for partially development greenfield areas;
- (f) change from 'net density' to 'net yields'; and
- (g) changes to the maximum earthworks volumes.

[99] Each of these matters are discussed in turn with those relating to subdivision addressed first and earthworks second.

### Subdivision

#### *Changes to Objectives and Policies*

[100] Mr Bayliss set out in his s42A report the submissions related to objectives and policies that are sought to be retained.<sup>30</sup>

<sup>28</sup> [Legal Submissions of Council, 16 November 2023](#) at 4.33 to 4.41

<sup>29</sup> [s42A Report of Ian Bayliss, 11 August 2023](#) at 3.1.1

<sup>30</sup> *Ibid* at 8.3.1 and 8.3.2

[101] Changes requested to infrastructure policies was also addressed in the s42A report from Mr Bayliss.<sup>31</sup> The main issue raised by submitters was in relation to the Council's proposed addition of the term 'development' within the policies to broaden the application of the relevant policies to both subdivision and development. Mr Bayliss' opinion was that the term 'development' is required as it also creates demand for infrastructure services and that no definition of the term is required as it is a well-used and understood term.

[102] Changing the term 'net density' to 'net yields' is supported by submitters as a response to the use of the term 'density' in MDRS provisions in Schedule 3A and within the NPS-UD. Mr Bayliss' opinion was that a definition of 'net yield' is not required as the meaning is clear from the balance of the wording in Policy 8.2.2.7 *Urban density*.<sup>32</sup>

[103] No additional evidence was provided to the Panel in respect of the evaluation of these objectives and policies.

[104] One matter not specifically addressed by Mr Bayliss in his s42A report was the proposed deletion in PC 14 of Policy 8.2.2.1 *Recovery activities*. Later in his s42A report in assessing the removal from Rule 8.5.1.2 Table 1 C2B *Conversion of tenure for all other zones*, of the words '*for the repair and rebuild of multi unit residential complexes*' he raised whether there is scope to delete the policy and the rule wording. This matter is discussed further below.

#### *Minimum Net Site Area and Dimensions*

[105] The operative 400m<sup>2</sup> minimum site area in the MRZ and 300m<sup>2</sup> minimum site area in the HRZ with a minimum 10m dimension was challenged by some submitters seeking that the area of sites (including vacant sites) should be increased whilst others sought a decrease.

[106] Mr Clease on behalf of Kāinga Ora provided evidence to support a 8m x 15m shape factor standard (i.e. 120m<sup>2</sup> site) rather than a minimum vacant lot requirement, on the basis that this approach had been tested by Tauranga City Council and that it provided a vacant site of sufficient size for development of a compliant unit.<sup>33</sup>

[107] Mr Bayliss considered Mr Clease's evidence. He concluded that the minimum shape factor did not support the provision of affordable housing choices and the forms of

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<sup>31</sup> Ibid at 8.3.3 and 8.3.8

<sup>32</sup> Ibid at 8.3.12 to 8.3.18

<sup>33</sup> [Statement of Evidence of Jonathan Clease on behalf of Kāinga Ora, 20 September 2023](#) at 8.1 to 8.4

development intended to be enabled by the MDRS and that it could lead to less reliable hydraulic and stormwater modelling.<sup>34</sup>

### *Residential Hills*

[108] Andrew McCarthy #681 #2081 provided evidence on a range of matters in PC 14 that affected the Residential Hills area.<sup>35</sup> As set out in Mr Bayliss' s42A report.<sup>36</sup> the PC 14 proposal of applying MRZ with 'Suburban Hill Density Precinct' and removing some QM provisions (such as the Low Public Transport Accessibility Area QM) has the effect of retaining the ODP subdivision standards.

[109] Legal submissions and planning evidence were provided to the Panel from Ms Eveleigh (legal) and Ms Aston (planning), for Red Spur Limited #881 #2068. The main issue is whether transferring the ODP zoning of Red Spur to the equivalent National Planning Standard residential zone, includes Red Spur as a 'relevant residential zone' for the purposes of PC 14. Redmond Spur's position was that irrespective of the zoning, the rules package under PC 14 can be no less restrictive than under the ODP rules package.<sup>37</sup>

[110] The zoning of the Residential Hills areas that are subject to the Redmund Hills and other outline development plans are addressed in Part 4 and 7 of the Report, where we have found that the particular characteristics of the Residential Hills zone, as it applies to Redmund Spur and other outline development plans is not a relevant residential zone, and that the operative subdivision provisions should be retained as they apply to Redmund Spur and other outline development plans.

### *Allotments with existing or proposed buildings and 'Metropolitan Centre Zone'*

[111] Mr Bayliss explained that there was an error in not providing for subdivision of allotments with existing or proposed buildings as was provided in the ODP.<sup>38</sup> This is recommended to be corrected.

[112] The Panel's recommendation in Part 3 of the Report is not to include a 'Metropolitan Centre Zone' (MCZ) and accordingly no subdivision provisions are required.

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<sup>34</sup> [Rebuttal Evidence of Ian Bayliss, 9 October 2023](#) at 8 to 12

<sup>35</sup> [Statement of Evidence of Andrew McCarthy, 20 September 2023](#)

<sup>36</sup> [s42A Report of Ian Bayliss, 11 August 2023](#) at 8.4.14 and 8.4.15

<sup>37</sup> [Statement of Evidence of Fiona Aston on behalf of Red Spur Limited, 20 September 2023](#) at 14

<sup>38</sup> [s42A Report of Ian Bayliss, 11 August 2023](#) at 8.4.19 and 8.4.20

### *Unit Title Subdivisions and Conversion of Tenure*

[113] Mr Bayliss addressed the matter of unit titles raised by the ‘Architect submitters’, setting out three reasons why there should be a requirement to have touching residential units subdivided under Unit Title provisions.<sup>39</sup> No evidence from submitters was provided with respect to this matter.

[114] With regard to the conversion of tenure provision provided by controlled activity C2 (proposed through PC 14 to be split into two rules), Mr Bayliss raised issues in relation to whether the proposed changes in PC 14 and those sought in submissions can be ‘*considered to be a material change to the effect of an existing rule*’.<sup>40</sup> However, he concluded that the removal of the words ‘*repair and rebuild of multi-unit residential complexes*’ that were introduced in response to earthquake recovery, would be accommodated within his amended rule C2B. No other submitters specifically addressed this matter.

### *Matters of Control and Discretion in North Halswell*

[115] The specific matters raised by submitters in relation to development in North Halswell are discussed by Mr Bayliss and no submitters specifically addressed the amendments he was recommending.<sup>41</sup>

### Earthworks

[116] Other than changes to zone names, no changes to the earthworks provisions in sub-chapter 8.9 *Rules – Earthworks* of the ODP were proposed through PC 14. Mr Bayliss discussed the issues raised in submissions and concludes that due to the highly variable issues associated with earthworks in the Christchurch context, specialist expertise is required.<sup>42</sup>

[117] The Panel also heard from other submitters with respect to earthworks with Mr Clease providing planning evidence in support of Kāinga Ora, with respect to their proposed permitted activity rule being, 50m<sup>3</sup> volume per site where supported by erosion and sediment control plan. However, Mr Clease did not provide a s32AA evaluation to

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<sup>39</sup> Ibid at 8.4.25 and 8.4.26

<sup>40</sup> Ibid at 8.4.31

<sup>41</sup> Danne Mora Limited #903 and Milns Park Limited #916

<sup>42</sup> [s42A Report of Ian Bayliss, 11 August 2023](#) at 8.5.1 to 8.5.4

support the changes, nor any evidence to satisfy the Panel that the changes were in support of or consequential on the MDRS or NPS-UD Policy 3.

## **Findings and Evaluation**

### Subdivision

#### *Changes to Objectives and Policies*

[118] The only matter where the Panel disagrees with the analysis and recommendations provided in Mr Bayliss' s42A report is with respect to the proposed deletion of ODP Policy 8.2.2.1 *Recovery activities*. The proposed deletion of the policy is not in 'support' or 'consequential' on the MDRS or NPS-UD Policy 3, and as such is not in accordance with the *Waikanae* decisions.

[119] The Panel has authority under RMA, Schedule 1, clause 99(2) to make recommendations on matters raised during the hearing that were not raised in submissions, also we did not raise this directly with Mr Bayliss, but the matter was addressed in his s42A Report. We decline to exercise our power to remove ODP Policy 8.2.2.1, and recommend that it be reinstated.

#### *Minimum Net Site Area and Dimensions*

[120] The Panel concurs with Mr Bayliss that although a 120m<sup>2</sup> site could accommodate a dwelling in accordance with MDRS standards, enabling subdivision to the minimum would not meet the purpose of the MDRS. This is particularly relevant to MDRS Objective 2 which seeks a variety of housing types or typologies and sizes. Subdivisions not meeting the controlled activity standards can be considered as a restricted discretionary activity.

#### *Residential Hills*

[121] The Panel's recommendations in Parts 4 and 7 of the Report addresses the appropriate zoning of Redmund Spur and the subdivision provisions for that zone applies accordingly.

#### *Allotments with existing or proposed buildings and 'Metropolitan Centre Zone'*

[122] The Panel concurs with the recommendation from Mr Bayliss regarding the need for subdivision provisions for existing and proposed buildings as is already provided for in the ODP.

[123] As set out in Part 3 of this report, the Panel is not recommending a MCZ and hence no subdivision provisions are required.

#### *Unit Title Subdivisions and Conversion of Tenure*

[124] Both the Unit Titles and the changes to the 'repair and rebuild' rule do not meet the requirements of being related 'provisions that support or are consequential on the MDRS or Policy 3'. Accordingly, the Panel recommends that the proposed amendments to C2B that have the effect of removing the 'repair and rebuild' provision and add an additional net site area standard (standard ii) are removed and the ODP provisions reinstated.

#### *Matters of control and discretion*

[125] The changes and deletions to the matters of control and discretion are a result of the Meadowlands Exemplar Overlay being fully implemented. The Panel agrees that these provisions are consequential on the rezoning of the area to 'relevant residential zones' and as such recommends that they can be included within PC 14.

#### Earthworks

[126] The Panel finds that the changes sought to the earthworks provisions do not support nor are they consequential on the MDRS or NPS-UD Policy 3. In addition, the necessary analysis to support the changes and to analyse the likely effects of more than doubling the permitted activity standard was not provided. Accordingly, the Panel recommends no change to these provisions.

### **Section 32AA Evaluation of Recommended Changes**

[127] We have considered the Councils s32 Report and the evidence and submissions received on subdivision and the associated MRZ and HRZ zone provisions, and find that the outcome we have recommended in the Panel's recommendations version to be the most appropriate. In reaching that conclusion we have drawn on our findings elsewhere regarding the appropriate density controls, and qualifying matters. Accordingly, we rely on the s32AA evaluation in other parts of the Report and no additional evaluation is necessary.

## **Conclusion**

[128] For the above reasons, the Panel recommends that Chapter 8 *Subdivision, Development and Earthworks* be amended generally in accordance with the Council's Reply version, subject to the amendments as shown in the Panel's recommendation version.