BEFORE INDEPENDENT HEARING COMMISSIONERS
AT CHRISTCHURCH

I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHAKE
KI ŌTAUTAHI

IN THE MATTER	**of the Resource Management Act 1991**
AND	
IN THE MATTER	**of the hearing of submissions and further submissions on Plan Change 14 to the Operative Christchurch District Plan**

<u>SUPPLEMENTARY</u> LEGAL SUBMISSIONS ON BEHALF OF KĀINGA ORA – HOMES AND COMMUNITIES

RESIDENTIAL PROVISIONS AND RELATED QUALIFYING MATTERS

4 DECEMBER 2023

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MAY IT PLEASE THE COMMISSIONERS:

1. ANALYSIS OF SCOPE

1.1 These supplementary submissions respond to a request from the Commissioners to provide a brief written analysis of how, in our submission, questions of lawful scope of PC14 should be approached in respect of both:

(a) The nature of changes to the rules, including changes to the nature of anticipated activities (eg industrial to residential), or status of certain activities (eg controlled to restricted); and

(b) The geographical extent of any changes to zones or overlays.

1.2 The discussion leading to this request included a submission that PC14 could not lawfully "change the status quo so as to be more restrictive". As we clarify, the position is slightly more nuanced than that.

1.3 In our submission to accommodate the requirements of the IPI process, the *Waikanae* decision, and the general RMA jurisprudence on scope, a two stage process is appropriate.

1.4 The step is to ask whether or not a proposed changes falls within s 80E. In that regard, in respect of the scenarios given, we submit that:

(a) A change in an activity status that makes the construction and use of housing more restrictive, including the change in a demolition control from permitted to restricted discretionary, cannot be said to give effect to Policy 3 or 4 (s 80E(1)(a)(ii)(A)) or nor could such a rule "support or be consequential on the MDRS or Policies 3, 4" (s 80E(1)(b)(iii)).

(b) A change in zoning, eg from industrial to residential, which as a necessary consequence made future industrial activities more restrictive, could fall within the scope of Policy 3 or 4 (s 80E(1)(a)(ii)(A)) and such a rule would also "support or be consequential on the MDRS or Policies 3, 4" (s 80E(1)(b)(iii)). (Refer also discussion below on scope more generally.) As discussed, we submit that a change in zoning from Residential New Neighbourhood to Future Urban Zone is a down-zoning and an effective dis-enablement of potential residential uses, and cannot give effect to or support MDRS or Policy 3.

(c) A change in an overlay (eg RCA or RHA) that restricts residential development would be within the scope of PC14 if it made that residential development easier (ie if it removed an overlay from a residential lot), but it would not be within scope if it made residential development harder (ie if it added an overlay onto a residential lot that was not previously subject to that overlay).

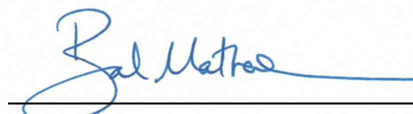
1.5 Assuming that a proposed amendment was within the scope of an IPI, then the second step is to ask whether or not there is scope under broader RMA principles: namely whether a proposed change in a submission is "on" the IPI, and was that proposed change fairly and reasonably raised in an original submission, thereby giving notice to other affected parties who might then lodge a further submission. (Of note here is clause 99 of the First Schedule which does allow Commissioners a discretion to recommend changes beyond what was originally sought in submissions, but any such change must still be within the scope of an IPI.)

1.6 Finally, we reiterate two submissions made at the hearing:

(a) It is difficult to understand how changes made under PC14 that make the provision of housing more difficult (or even more stringent than currently exists in the operative plan), could be said to "support or be consequential on the MDRS, or Policies 3 and 4 of the NPS-UD" (s 80E(1)(b), RMA)

(b) Section 80E(1) cannot be applied in the incredibly broad manner seemingly proposed by counsel for the Council – if such a wide interpretation were lawful (ie if one could rely on Objective 1 and a "well-functioning urban environment" to justify any changes under an IPI) there would be no need for any qualifying matters because virtually every restriction could be argued to fall within the scope of that objective.

Dated 4 December 2023



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