

**BEFORE THE INDEPENDENT HEARINGS PANEL**

**UNDER** the Resource Management Act 1991

**AND**

**IN THE MATTER OF** Plan Change 14 to the Christchurch District Plan

**IN THE MATTER OF** Submission 259 by Ara Poutama Aotearoa, the Department of Corrections

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**LEGAL SUBMISSIONS ON BEHALF OF  
ARA POUTAMA AOTEAROA THE DEPARTMENT OF CORRECTIONS**

Dated 6 November 2023

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## 1 INTRODUCTION

- 1.1 These legal submissions are filed on behalf of Ara Poutama Aotearoa, the Department of Corrections (**Ara Poutama** or **the Department**), in relation to its submission on Plan Change 14 (**PC14**) to the Christchurch District Plan (**Plan**). That submission is supported by evidence from Ms Andrea Millar (Manager of Resource and Land Management and Statutory Compliance at the Department) and planning evidence provided by Mr Maurice Dale (Boffa Miskell).
- 1.2 In brief, Ara Poutama supports the aspirations of PC14 to facilitate an increase in the supply of housing in the city to meet the diverse needs of the community and to give effect to the National Policy Statement on Urban Development 2020 (**NPS-UD**) in the Plan. Its concern however is that the existing Plan definitions of *residential activity* and *sheltered housing* – or at least the way in which those definitions may be interpreted – will limit the extent to which those aspirations will be realised.
- 1.3 In particular, and as set out in the evidence of Mr Dale, the specific exclusion of "*supervised living accommodation where the residents are detained on site*" opens the door to an interpretation in which households with diverse support needs are treated differently from so-called "typical" *residential activity*. Ara Poutama's position, supported by Mr Dale, is that such an outcome is incongruous with the objectives of PC14 and the NPS-UD.
- 1.4 Consequently, to better ensure that those objectives are met, Ara Poutama seeks that the "supervised living accommodation" and the "residents detained on site" exclusions are removed from the definitions of *residential activity* and *sheltered housing*.
- 1.5 As noted by Mr Dale in his evidence, the Council's Reporting Officer has recommended that that relief is rejected on the basis that it is beyond the scope of PC14. The remainder of these submissions address that issue.

## 2 SCOPE

2.1 The well-established legal approach to determining whether a submission is within the scope of a plan change requires consideration of the following inter-connected factors/limbs:

- (a) Whether the submission reasonably falls within the ambit of the plan change, i.e. does it address the proposed alteration to the status quo/existing management regime?
- (b) Whether there is a real risk that people directly or potentially directly affected by the additional changes proposed in the submission have been denied an effective response to those additional changes in the plan change process.<sup>1</sup>

### **Ambit of the plan change**

2.2 As notified, PC14 applies to a significant portion of the Christchurch district, and proposes “extensive” alterations to the status quo under the Plan for the supply of housing in residential areas.<sup>2</sup>

2.3 Proposed PC14 objective 3.3.7 (as notified) is for *a well-functioning urban environment that enables all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future*. That objective sets a new strategic direction for the Plan, which reflects objective 1 of the NPS-UD, and is supported by the following PC14 objectives also proposed for inclusion/amendment in the Plan:

- (a) Objective 14.2.1...*an increased supply of housing that will meet the diverse and changing needs of the community and future generations.*
- (b) Objective 14.2.3...*a relevant residential zone provides for a variety of housing types and sizes that respond to housing needs and demands...*

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<sup>1</sup> *Clearwater Resort Limited v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003 at [66]; *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290, at [81] – [82].

<sup>2</sup> Resource Management Act 1991 – Christchurch District Plan – *Plan Change 14 – Section 32 Evaluation*; Public Notice – Resource Management Act 1991 – Christchurch District Plan, *Proposed Plan Change 14 – Housing and Business Choice and Proposed Plan Change 13 – Heritage*, 17 March 2023.

- 2.4 As these provisions make clear, the intensification enabled through PC14 is inextricably tied to meeting the diverse needs of households and communities. As set out in the evidence of Mr Dale, Ara Poutama's proposed amendment to the Plan's definition of *residential activity* directly addresses PC14's proposed alteration to the way in which those needs are currently met in the Plan. In particular, it seeks to ensure that intensification enabled under PC14 will in fact provide for those with a variety of housing needs, including those within Ara Poutama's care.
- 2.5 On that basis, Ara Poutama's relief comfortably and reasonably falls within the ambit of PC14.
- 2.6 The fact that notified PC14 and its supporting section 32 evaluation reports do not address or propose any amendments to the *residential activity* definition is not, in my submission, fatal to that finding. As Whata J observed in *Albany North Landowners*, the section 32 evaluation for a plan change does not "fix the final frame of the instrument as a whole...".<sup>3</sup>
- 2.7 In this instance, the absence of any such amendments to the *residential activity* or *sheltered housing* definitions (and to the relevant exclusions in particular) is, with respect, a shortcoming of the notified PC14 which will constrain PC14's ability to achieve its stated objectives and the objectives of the NPS-UD if left unrectified. In line with the dicta of the Environment Court in *Bluehaven*, the impact of those exclusions on those objectives is a matter that should have been addressed in the section 32 evaluation report in light of the statutory and regulatory directives (described above) which bear on the issue raised by Ara Poutama.<sup>4</sup>
- 2.8 As the Panel appointed to make recommendations on this intensification planning instrument (**IPI**), you are entitled to recommend the alterations requested by Ara Poutama to the notified PC14 to address that shortcoming.<sup>5</sup> Those alterations do not fall foul of the limitation in the Resource Management Act 1991 on using an IPI for the purposes set out in section 80E of that Act.<sup>6</sup>

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<sup>3</sup> *Albany North Landowners v Auckland Council* [2017] NZHC 138 at [132].

<sup>4</sup> *Bluehaven Management Limited v Western Bay of Plenty District Council* [2016] NZEnvC 191, at [38] – [39].

<sup>5</sup> Resource Management Act 1991, Schedule 1, Part 6, clause (3)(a).

<sup>6</sup> Resource Management Act 1991, section 80G(1)(b).

Importantly, that section sets the legal boundaries for an IPI and authorises it to “amend or include...related provisions...that support or are consequential on...the MDRS”.<sup>7</sup> As amendments which will help ensure that the MDRS achieves its objectives and gives effect to the NPS-UD within the Christchurch district, Ara Poutama’s relief falls squarely within that category.

### **Fairness to other parties**

- 2.9 This second limb of the scope assessment is concerned with ensuring that the reasonable interests of people and communities to participate in the amendment of planning instruments are not overridden by “submissional side-winds”.<sup>8</sup>
- 2.10 For the following reasons, that risk is not considered to arise with respect to Ara Poutama’s relief:
- (a) The public notice for PC14 explicitly states that the changes to the Plan “are extensive” and include (but are not limited to) “applying the MDRS...across all urban residential areas...” and “changes to objectives, policies and other provisions throughout the [Plan] that support or are consequential on the above changes”. The notice also refers to the requirement to “give effect to the NPS-UD”.<sup>9</sup>
  - (b) As set out above, increasing housing supply to meet the diverse needs of communities is a principle objective of the MDRS and the NPS-UD. Therefore, from the outset, potentially interested parties were made aware via the public notice that changes were being made to the provisions of the Plan to support that objective, and that submissions were being invited in respect of those changes.
  - (c) In my submission, as in *Albany Landowners Group*, that context combined with the broad spatial extent of PC14 must inform the standard of enquiry which might reasonably be expected from potentially affected parties seeking information

<sup>7</sup> Resource Management Act 1991, section 80E(1)(b)(iii)(A).

<sup>8</sup> *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290, at [80] – [83].

<sup>9</sup> Public Notice – Resource Management Act 1991 – Christchurch District Plan, *Proposed Plan Change 14 – Housing and Business Choice and Proposed Plan Change 13 – Heritage*, 17 March 2023.

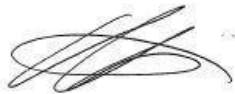
about PC14, particularly where those parties wish to preserve the status quo.<sup>10</sup>

- (d) In this instance, the Council notified summaries of submissions received on PC14 by category and by submitter, making it more straightforward for potentially affected parties to examine the extent of potential changes to the Plan and decide whether to participate through a further submission.
- (e) The relief sought by Ara Poutama was clearly summarised in those documents. It was then open to potentially affected parties to respond to those submission points by way of further submissions, thereby ensuring their ongoing ability to participate in PC14. That opportunity was taken by Kāinga Ora – Homes and Communities and the Christchurch Civic Trust.

2.11 In summary, the relief sought by Ara Poutama is not a “submissional side-wind”; rather it is a requested change that falls within the ambit of PC14 and, for the reasons set out by Mr Dale, would better ensure that the broader objectives of PC14 and the NPS-UD can be realised.

### **3 CONCLUSION**

- 3.1 On that basis and contrary to the Council’s position, the Panel is lawfully entitled to consider and make recommendations on that relief.
- 3.2 Based on the careful analysis of Mr Dale, that relief can, (and in my submission should) be granted.




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**Rachel Murdoch**

Counsel for Ara Poutama Aotearoa, the Department of Corrections

6 November 2023

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<sup>10</sup> Above, at n3.