

## **RESIDENTIAL PROVISIONS AND RELATED QUALIFYING MATTERS**

### **SUMMARY STATEMENT OF JONATHAN CLEASE**

**29 NOVEMBER 2023**

#### **Significant agreement on the key strategic issues and outcomes**

1.1. Strategic urban form and height issues were discussed in the earlier hearing, with differences in views on residential heights largely turning on the application (or not) of Metropolitan Centre Zoning and Town Centre Zoning to various centres. Apart from the extent of HRZ in the Riccarton area, I agree with the geographic extent of residential areas identified as being suitable for increased heights by Mr Kleynbos for Council.

#### **Significant agreement on MRZ and HRZ provisions**

1.2. There is likewise a significant degree of agreement regarding the residential policy framework and rule package. Differences in view have narrowed considerably via the exchange of evidence and rebuttal processes. Differences remain with detailed wording of several residential policies<sup>1</sup>. Differences likewise remain with the following MRZ and HRZ rules, however I do not consider these provisions to be of strategic importance, and the remaining differences to the rule package may well be capable of further refinement and resolution via conferencing.

- The provision of small-scale non-residential tenancies at the base of larger apartment blocks in the HRZ, noting the rule should be clarified so that it only applies to larger towers/ complexes<sup>2</sup>;
- HRZ 14m+ tower rules<sup>3</sup>;
- Road boundary fencing<sup>4</sup>;

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<sup>1</sup> EiC, Para 4.7-4.41

<sup>2</sup> EiC, Para 5.8-5.13

<sup>3</sup> EiC, Para 5.14-5.18

<sup>4</sup> EiC, Para 4.64-4.71

- The need for indoor storage<sup>5</sup> and heat pump location rules<sup>6</sup>;
- The need for a continuous wall length rule<sup>7</sup>;
- The need for a building reflectivity rule<sup>8</sup>;
- Urban design assessment matters<sup>9</sup>;
- Minimum site areas and dimensions (Chapter 8)<sup>10</sup>;
- Earthworks volumes in MRZ and HRZ (Chapter 8)<sup>11</sup>;
- Earthworks near street trees (Chapter 9)<sup>12</sup>.

#### **Policy 14.2.3.7 - management of building heights**

1.3. As set out by Counsel, proposed Policy 14.2.3.7 states that taller buildings over permitted heights shall only be provided for where a series of criteria are all concurrently met. This policy approach in my view is not consistent with MDRS Policy 5 which addresses this scenario and which seeks to 'provide for developments not meeting permitted activity status, while encouraging high-quality developments'.

1.4. A replacement Policy 14.2.3.7 is sought as follows:

*Within medium and high density zoned areas, manage building heights over permitted levels to ensure:*

- i. The height and building mass are compatible with the anticipated character and built form of the area;*
- ii. That where the additional height provides for extra stories, the site has good accessibility to public and active transport corridors, public open space, and a town or local commercial centre; and*
- iii. The design of the building is of high quality and appropriately manages potential shading, privacy, and visual dominance effects on the surrounding environment.*

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<sup>5</sup> EIC, Para 4.80

<sup>6</sup> EIC, Para 4.85

<sup>7</sup> EIC, Para 4.88-4.92

<sup>8</sup> EIC, Para 4.83

<sup>9</sup> EIC, Para 7.1-7.5

<sup>10</sup> EIC, Para 8.1-8.4

<sup>11</sup> EIC, Para 8.5-8.8

<sup>12</sup> EIC, Para 8.9-8.17

## **Future Urban Zone approach to unbuilt Residential New Neighbourhood areas**

- 1.5. In my view, Council's approach in applying FUZ to already zoned but unbuilt residential areas is flawed. This is both because these areas are a relevant residential zone (and therefore should be subject to MDRS), and also in terms of the context to which the National Planning Standards (NPS) zone description and use of the FUZ zone should be applied.
- 1.6. In my experience the FUZ is applied to areas where medium to long term urban growth is anticipated. The rule package functions as a 'holding pattern' by enabling rural activities whilst limiting activities that would frustrate future urbanisation, and where the provisions make clear that a further plan change process needs to be undertaken to 'live zone' the area to enable urban development.
- 1.7. My view is that an already live (but unbuilt) residential zone has its best NPS fit/ equivalency as a General Residential Zone (GRZ) as there is no hurdle to development occurring – you simply need to apply for a subdivision consent and then get building. GRZ is a relevant residential zone and therefore MDRS should be applied to this situation unless there is an applicable Qualifying Matter.
- 1.8. I am not aware of any other IPI process (or operative Plan) that has applied FUZ in the way proposed in PC14. As a local example, Selwyn has just completed its IPI process and has applied MDRS to extensive areas of 'live zoned' but unbuilt greenfield areas. The need for subdivision to be in accordance with an Outline Development Plan (ODP) is simply a subdivision rule. Localised setbacks to manage reverse sensitivity effects on strategic infrastructure are qualifying matters. Such an approach is simple, effective, and consistent with approaches nationally.

## APPENDIX 1 – SECTION 32 / 32AA CONSIDERATIONS

In respect of a Section 32 / 32AA evaluation of the issues raised in my evidence, along with the proposed amendments to provisions which I have recommended (as set out as an attachment to my Evidence in Chief), I provide the following assessment and commentary:

### 1. RULE FRAMEWORK FOR MRZ AND HRZ

Whilst broad agreement has been reached with the rule package as put forward in the CCC Officer rebuttal, further amendment is sought to a number of discrete provisions to improve the manner in which the rules achieve the MRZ and HRZ policy outcomes. The provisions that would benefit from further refinement are as follows:

- The provision of small-scale non-residential tenancies at the base of larger apartment blocks in the HRZ;
- HRZ 14m+ tower rules;
- Road boundary fencing;
- The need for indoor storage and heat pump location rules;
- The need for a continuous wall length rule;
- Urban design assessment matters;
- Earthworks volumes in MRZ and HRZ (Chapter 8);
- Earthworks near street trees (Chapter 9);

Effectiveness and efficiency	<ul style="list-style-type: none"><li>• The recommended changes to the provisions provide an effective approach to managing residential amenity and character outcomes commensurate with the level of change to the existing environment anticipated in the MRZ and HRZ zone.</li><li>• The recommended provisions give effect to the relevant Objectives and Policies of the NPS-UD (particularly Objectives 1, 2, 3 and 4 and Policies 1, 2 and 6) by providing for increased development opportunities balanced against managing character values to</li></ul>
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	reflect amenity values will change over time and this in itself is not an adverse effect.
Costs/Benefits	<ul style="list-style-type: none"> <li>• The recommended changes to the provisions do not present any increased consenting costs (and generally result in a reduction in such costs) compared to the notified provisions but provide greater clarity for Plan users.</li> <li>• The benefits allow for greater enablement of residential housing and design choice whilst concurrently maintaining sufficient control of design outcomes to ensure good designs result.</li> </ul>
Risk of acting or not acting	<ul style="list-style-type: none"> <li>• The risk of acting (to amend PC14) is that intensification or redevelopment opportunities occur that result in poor design outcomes due to the reduction in regulation relative to that provided by PC14. This risk is mitigated by the 'catch-all urban design rule that enables consideration of a broad range of design matters, and the limited nature of the effects that are in play that the proposed PC14 rules seek to address (and that are sought to be deleted) such as the location of heat pumps, or the provision of internal storage.</li> <li>• Conversely the risk of not acting (to amend PC14) is that intensification or redevelopment opportunities are unduly stifled by regulation that results in development costs with little environmental benefit.</li> </ul>
Decision about more appropriate action.	<ul style="list-style-type: none"> <li>• The recommended amendments as set out in my evidence are therefore considered to be more appropriate in achieving the purpose of the RMA than the notified version of Plan Change or the proposed changes set out in the section 42A (and Council rebuttal) reports.</li> </ul>

## 2. POLICY 14.2.3.7 – MANAGEMENT OF BUILDING HEIGHTS

PC14 as recommended by Officers includes Policy 14.2.3.7 which manages building heights in the MRZ and HRZ zones. Proposed Policy 14.2.3.7 states that taller buildings over permitted heights shall only be provided for where a series of criteria are all concurrently met. This policy approach in my view is not consistent with MDRS Policy 5 which addresses this

scenario and which seeks to 'provide for developments not meeting permitted activity status, while encouraging high-quality developments'. A replacement policy is set out in my Evidence in Chief.

<p>Effectiveness and efficiency</p>	<ul style="list-style-type: none"> <li>• The recommended changes to Policy 14.2.3.7 are more effective in delivering the mandatory outcome sought through MDRS Policy 5, which also forms part of the residential policy framework. The PC14 Policy 14.2.3.7 as notified is in direct conflict with Policy 5 and therefore does not result in an effective policy framework as the framework is currently seeking different and incompatible outcomes.</li> <li>• The recommended policy conversely aligns with Policy 5, whilst providing more direction as to the circumstances where higher density development is more likely to result in a high quality outcomes.</li> </ul>
<p>Costs/Benefits</p>	<ul style="list-style-type: none"> <li>• The recommended changes to the Policy provides benefit in correctly providing for greater heights in appropriate locations, thereby enabling people to live close to employment, services, and public transport. The recommended policy likewise balances enablement with the need to properly consider effects on the surrounding area, thereby maintaining a level of amenity commensurate with a medium or high density residential zone</li> </ul>
<p>Risk of acting or not acting</p>	<ul style="list-style-type: none"> <li>• The risk of acting (to amend PC14) is that intensification or redevelopment opportunities occur in a manner that results in outcomes that are unanticipated.</li> <li>• Conversely the risk of not acting (to amend PC14) is that intensification or redevelopment opportunities are unduly stifled by regulation that results in development costs with little environmental benefit and a policy bar that is set inappropriately high such that the mandatory MDRS Policy 5 direction is not achieved.</li> </ul>

Decision about more appropriate action.	<ul style="list-style-type: none"> <li>The recommended replacement policy as set out in my evidence is considered to be more appropriate in achieving the purpose of the RMA than the notified version of Plan Change or the proposed changes set out in the section 42A report.</li> </ul>
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### 3. FUTURE URBAN ZONE APPROACH

Council’s approach to applying FUZ to already zoned but unbuilt residential areas is considered to be incorrect both in terms of such areas being a relevant residential zone (and therefore should be subject to MDRS), and in terms of the context to which the NPS zone description and use of the FUZ zone should be applied.

In my experience the FUZ is applied to areas where medium to long term urban growth is anticipated. The rule package functions as a ‘holding pattern’ by enabling rural activities whilst limiting activities that would frustrate future urbanisation, and where the provisions make clear that a further plan change process needs to be undertaken to ‘live zone’ the area to enable urban development.

My view is that an already live-zoned (but unbuilt) low density residential zone has its best NPS fit/ equivalency as a General Residential Zone as there is no hurdle to development occurring – you simply need to apply for a subdivision consent and then get building. GRZ is a relevant residential zone and therefore MDRS should be applied to this situation unless there is an applicable Qualifying Matter.

I am not aware of any other IPI process (or operative Plan) that has applied FUZ in the way proposed in PC14. Rather than the use of a FUZ (and low density rule package for managing subsequent residential development), MDRS should be applied to ‘live zoned’ but unbuilt greenfield areas. The need for subdivision to be in accordance with an Outline Development Plan (ODP) is simply a subdivision rule. Localised setbacks to manage reverse sensitivity effects on strategic infrastructure or to protect significant local features are qualifying matters (provided the necessary evidential thresholds are met). Such an approach is simple, effective, and consistent with approaches nationally.

Effectiveness and efficiency	<ul style="list-style-type: none"> <li>The recommended application of MDRS to zoned but unbuilt areas is more effective in delivering the outcomes sought by Parliament for MDRS than applying a FUZ (with low-density built</li> </ul>
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	<p>form rules). Inclusion of subdivision rules to require subdivision layouts that are in accordance with ODPs is effective in ensuring integration of new urban areas with adjacent road and infrastructure networks and any site-specific rules can either be incorporated as qualifying matters or specific control areas as an effective means of managing site-specific environmental features without undermining the wider outcome of enabling additional housing capacity.</p> <ul style="list-style-type: none"> <li>• The avoidance of the mis-use of the FUZ zone makes the Plan more effective for Plan users as confusion as to zone purpose and inconsistency with how FUZ is applied nationally (as directed by the NPS) is avoided.</li> <li>• The recommended change in approach is efficient in enabling additional housing capacity whilst providing for site-specific features that require bespoke management.</li> <li>• The proposed change in approach gives effect to the relevant Objectives and Policies of the NPS-UD (particularly Objectives 1, 2, 3 and 4 and Policies 1, 2, and 6). They strike an appropriate balance to build into Plan Change 14 a framework of provisions which balances the need to enable and provide for future urban growth opportunities, whilst also ensuring that potential adverse effects (relating to amenity, health, well-being as well as issues of land use compatibility) can be appropriately identified and assessed.</li> </ul>
Costs/Benefits	<ul style="list-style-type: none"> <li>• Enabling greater housing capacity in existing greenfield areas provides the opportunity for increased housing choice, greater yield (and therefore less sprawl), and more efficient infrastructure provision.</li> <li>• No costs to the correct application of MDRS to a relevant residential zone is identified, noting that any site-specific features can be addressed as specific control areas or if need be a qualifying matter.</li> </ul>



<p>Risk of acting or not acting</p>	<ul style="list-style-type: none"> <li>• No risks of acting (to amend PC14) are identified.</li> <li>• The risk of not acting is that intensification or redevelopment opportunities are not able to be taken up in a relevant residential zone and therefore the purpose do the Enabling Act is not delivered.</li> </ul>
<p>Decision about more appropriate action.</p>	<p>The recommended change in approach is considered to be more appropriate in achieving the purpose of the RMA than the notified version of Plan Change or the proposed changes set out in the section 42A report.</p>